BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

IN THE MATTER OF PINON RIDGE MINING LLC
PERMIT NOS. M-1978-039 (ST. JUDE MINE), M-1981-021 (WEST SUNDAY MINE), M-1980-055HR (TOPAZ MINE), M-1977-285 (SUNDAY MINE), M-1977-416 (CARNATION MINE)

PETITION TO INTERVENE

The Information Network for Responsible Mining (INFORM), Earthworks, Sheep Mountain Alliance, San Juan Citizens Alliance, Uranium Watch, Living Rivers, and Conservation Colorado, through undersigned counsel, hereby timely request that the Colorado Mined Land Reclamation Board (MLRB or Board) grant this Petition to Intervene in the above captioned matter under Rule 1.13.6(2) of the Board's Hard Rock/Metal Mining Rules and Regulations.

Each of these organizations, through their members, are directly and adversely affected or aggrieved by these mines' long-standing inactive and unreclaimed status and these organizations' conservation and environmental protection interests, and that of their members, are entitled to legal protection under the Act. Members of these organizations use and enjoy the federal public lands upon which these mines are located, and the surrounding lands and waters, for recreational, conservation, aesthetic, and other purposes, and those uses are impaired and degraded by the ongoing lack of reclamation. The relief sought in this Petition for Intervention will remedy that impairment, at least in part. As such, these organizations have demonstrated the requisite interest under the Colorado Mined Land Reclamation Act (MLRA or Act).

In this proceeding, the Division of Reclamation, Mining and Safety (DRMS or Division) has correctly given notice to the operator, Pinon Ridge Mining, LLC, that the mine permits referenced above are required to commence final reclamation as each has failed to produce any ore for longer than ten (10) years, as required by the MLRA. As described below, the operator of these mines did not take timely action "to prevent termination of the operation under section 34-32-103(6)(a)(III)." *Information Network v. Colo. Mined Land,* 2019COA114 at ¶18. The Board thus lacks the authority to allow continued temporary cessation. The Board should accept the Division's finding that the operator does not qualify for temporary cessation status.

Factual Background

The material facts in this matter are not substantially disputed. All five of the mine permits at issue have not seen any production activities in more than ten (10) years. The records held at DRMS demonstrate, including through operator admissions, that all production at each of the permitted mine sites ceased at the latest in 2009.

DRMS records indicate that only in the last year has any measurable activity occurred at the complex. Even that activity was conducted only as a response to deteriorating conditions and Division remediation directives, which included covering and providing storage areas for economically unviable ores and wastes that have languished at the site for decades. These activities were limited to stabilization, stormwater management, maintenance, and exploration activities. No production has occurred, and, by the operator's admissions, no production is planned until significant improvement in the uranium and/or vanadium market occurs. As a result, the Act leaves the Board no discretion but to order the permits be terminated, and to direct the operator and the Division to immediately begin reclamation.

The DRMS files contain annual reports for each of the five mine permits that conclusively demonstrate that each of the permits had ceased any production and had been put into temporary cessation status by request of the operator no later than November 30, 2009:

1) Sunday Mine, Permit No. M-1977-285; May 22, 2010 letter from Denison Mines to Mr. Bob Oswald (DRMS) stating "[t]he Sunday Mine was placed under temporary cessation on November 30, 2009. This letter is intended to notify you that active mining has ceased at the above referenced mine and the mine has been placed on temporary cessation."

2) West Sunday Mine, Permit No. M-1981-021; May 22, 2010 letter from Denison Mines to Mr. Bob Oswald (DRMS) stating "[t]he West Sunday Mine was placed under temporary cessation on November 30, 2009. This letter is intended to notify you that active mining has ceased at the above referenced mine and the mine has been placed on temporary cessation."

3) Carnation Mine, M-1977-416; May 22, 2010 letter from Denison Mines to Mr. Bob Oswald (DRMS) stating "[t]he Carnation Mine was placed under temporary cessation on November 30, 2009. This letter is intended to notify you that active mining has ceased at the above referenced mine and the mine has been placed on temporary cessation." Additionally, the annual reports for this mine do not demonstrate that any production has occurred under this mine permit since 1990. This fact was confirmed by a February 4, 2020 letter from DRMS to Pinon Ridge Mining, LLC noticing this hearing.

4) Topaz Mine, M-1980-055HR; letter from Denison Mines to Mr. Bob Oswald (DRMS), stamped received by the Durango DRMS office on January 26, 2010 (apparently mis-dated January 20, 2009) stating "[t]he Topaz Mine was placed under temporary cessation on July 31, 2009. This letter is intended to notify you that active mining has ceased at the above referenced mine and the mine has been placed on temporary cessation."

5) St. Jude Mine, M-1978-039HR; May 22, 2010 letter from Denison Mines to Mr. Bob Oswald (DRMS) stating "[t]he St. Jude Mine was placed under temporary cessation on November 30, 2009. This letter is intended to notify you that active mining has ceased at the above referenced mine and the mine has been placed on temporary cessation."

There is no further evidence in the record that any "production" ever restarted at any of these mines at any time following the dates specified in these letters from the operator to DRMS.

There was a brief period during the intervening years where the operator (at that time, Energy Fuels Resources Inc. (EFRI)) requested to have the mines placed back on "active" status. However, the record demonstrates that the only activities conducted during those periods were general maintenance and the installation of water monitoring equipment to collect data necessary to comply with the DRMS-approved Environmental Protection Plan (EPP) and an order from the land management agency, the U.S. Bureau of Land Management. The lack of any "production" activities during this time is demonstrated by an April 9, 2013 letter from EFRI to DRMS stating: "The Mine was placed into temporary cessation status on November 30, 2009. On September 10, 2012, EFRI received approval from the Colorado Division of Reclamation, Mining, and Safety (the 'Division') to place the Mine back into active status. EFRI requested the Mine be placed back in active status in order to implement the Environmental Protection Plan and perform further groundwater characterization at the site by installing five deep monitoring wells and one shallow monitoring well at the Sunday Mines Complex." This same letter states that the last production at the Sunday Mine occurred in "July 2009" – demonstrating that the 2012 activities did not constitute "production" at the site.

Further, on January 12, 2012, then-operator Denison Mines (USA) Corp. submitted a final Environmental Protection Plan for all five permits. That document confirms (at p. 14-1):

> All mines in the Sunday Complex are currently on Temporary Cessation status. No ore stockpiles are present on any of the sites so no uncontrolled runoff and related discharge of potentially radioactive solids is occurring. Prior to reactivating any of these mines Denison must notify DRMS of the intentions to resume operations. In conjunction with submitting formal notification of the intentions to resume mining operations at a mine site Denison will provide a detailed schedule for installation of the ore pad liner at that site.

The record contains no notification of any operator's intent to resume production, or any other operations, during this time period.

By letter dated January 26, 2015 (attached), BLM notified the operator that enough water had accumulated in the mines to require pumping and water treatment and noted repairs of the storm water control structures damaged by flash flooding that is typical of the region. The letter confirms that the operator "decided to idle the mine while continuing to collect additional base line data" to satisfy the 2009 remand by the BLM State Director's office. To date, the operator has not submitted the necessary information to BLM required in the remand directives to satisfy the requirements of the National Environmental Policy Act (NEPA) review process.

On January 20, 2016, the current operator Pinon Ridge Mining, LLC sent a letter to Lucas West (DRMS) requesting another period of temporary cessation status for all five of the permits, again confirming that no production had occurred during the interim period between 2012 and 2016 because no notification of resumption of activities had been made. The new request for temporary cessation status was approved by DRMS at that time.

On December 18, 2018, a contractor for the operator submitted a letter regarding the water quality data from the wells that had been installed in 2012. The letter stated that "upon

request from [the operator], [the contractor] will prepare a formal hydrogeologic report of the Sunday Mine Complex based on the results of the groundwater monitoring program and other sources of information association with past hydrogeologic investigations." A report was filed on March 20, 2020. There has been no public notice to reopen the NEPA process to take into account the information in the report.

Only in 2019 did the operator, Pinon Ridge Mining, LLC, provide any indication of activity at the site by notifying the Division that it was preparing for exploration. On May 21, 2019, the operator sent a letter to DRMS stating that:

> Pinon Ridge Mining will be opening the Sunday, Carnation, and St. Jude Mines. It is Pinon Ridge intension to commence operations beginning June 3, 2019. The company would like to start maintenance repairs to the buildings, clear the portals and start ventilation fans to ventilate the mine and workings. Underground drilling, in addition to bulk sampling, will be used to evaluate the vanadium resource in the mines.

On June 18, 2019, the Division responded in a letter from Lucas West (DRMS) to Pinon Ridge Mining LLC, confirming, among other things, that the operator was required to construct necessary Environmental Protection Facilities (EPF) as approved in the 2012 EPP in order to bring any ore to the surface for any prospecting or evaluation purpose.

On July 25, 2019, the Colorado Court of Appeals issued its ruling in *Information Network v. Colo. Mined Land*, 2019COA114. In that ruling, the Court confirmed that the plain language used in the MLRA does not provide the administrative status the Division or Board previously used to extend a mine permit. The Court confirmed that the Board's power to allow a mine permit to remain in place without commencing final reclamation is limited to determining whether the mine has been in "production" in the last ten (10) years. If not, the Act requires the operational aspects of the permit be terminated and the operation to begin reclamation. Notably, this Court of Appeals case dealt with a mine permit for which Pinon Ridge Mining LLC was the operator and for which Pinon Ridge Mining LLC had full notice and opportunity but failed to make any appearance – either before the District Court, Court of Appeals, or the subsequent remand hearing before this Board.

On August 15, 2019, Pinon Ridge Mining LLC sent a letter to Mr. West (DRMS) detailing maintenance and minor prospecting activities that had been performed at the mine sites, and describing additional prospecting and mine development – but not production – activities that the operator expected to perform in the coming months. Pinon Ridge Mining LLC proposed to undertake all of these additional activities despite the clear mandate of the Court of Appeals and the knowledge that all five of the subject mine permits had not been in production since 2009, at the latest.

On September 19, 2019, Mr. West responded to Pinon Ridge Mining LLC confirming that all of the activities anticipated to be completed by the operator constituted either prospecting or development activities, and in light of the unambiguous ruling from the Colorado Court of Appeals, did not qualify to bring any of the mine permits into legitimate "active" status. In addition, the Division reminded the operator that the references in the operator's August 15,

2019 letter to conducting ore evaluation via "ablation" would require both DRMS and Colorado Department of Public Health and Environment Radiation Control Act permits – none of which has been applied for. In short, the prospecting plan alluded to by the applicant would require substantial additional permitting that has yet to even begin.

Despite the operator's understanding that it had exceeded the applicable ten (10) year non-production limitation in the MLRA for each of the five mines at issue, it nevertheless proceeded to notify the Division in a letter dated January 17, 2020 that the company was finally proceeding with construction of ore pads as contemplated in the 2012 EPP. As required by the 2012 EPP, the ore pad construction was necessary prior to the surfacing of any ore at any of the mine sites. Although the operator placed additional earthen material on the radioactive wastes to reduce the potential for airborne emissions and stormwater contamination, the impacts of toxic metals and radionuclides in the waste piles remain an ongoing problem that the operator and BLM have not fully addressed, despite the 2009 BLM remand order.

On February 4, 2020, DRMS notified the operator that the Division's internal review had demonstrated that each of the five mine permits had exceeded the allowable ten (10) year limitation on non-production. As such, the Division set the matter for a hearing before the Board. On February 11, 2020, DRMS staff conducted an inspection of the site and found, among other things, that the construction of the ore pad was ongoing and that "[s]ignificant work had been performed recently which included cleaning out sediment ponds and ditches." On February 13, 2020, DRMS informed the operator that due to scheduling constraints, the hearing on the permit terminations would need to be continued until the April 2020 Board hearing.

On March 17, 2020, the operator submitted notice to DRMS that the construction of the ore pads had been completed. On March 20, 2020, the operator's contractor submitted the hydrologic report as contemplated by the January 2012 EPP. On April 1, 2020, the operator submitted its annual report due May 1, 2020. In that report, in response to the query: "4. Please enter the date of last activity at the mine (excavation, processing or hauling). Or, if activity has not yet begun, please indicate so," the report states that the date activity began at the site was February 20, 2020.

In a news report published March 30, 2020, the operator admitted that, with regard to the Sunday Mines Complex: "We've got mines that we opened this summer getting ready for production that are waiting for the commodity price to recover...." See attached article, available at https://investingnews.com/ceo-interviews/western-uranium-and-vanadium-corp-ceo-george-glasier-uranium-vanadium-markets/ (last viewed April 3, 2020). This admission demonstrates the lack of any production to date. Notably, when these mines ceased operating in 2009, the short-term spot price of uranium ranged between $42 and $56 a pound, whereas it is at $23.75 this month. Similarly, vanadium prices have dropped from over $30/pound in 2019 to under $7/pound currently. Future projections of the viability of uranium or vanadium mining in Colorado remain speculative.

Legal Requirements

The MLRA is unambiguous in its requirement that "[i]n no case shall temporary cessation of production be continued for more than ten years without terminating the operation and fully complying with the reclamation requirements of this article." C.R.S. § 34-32-103(6)(a)(III). The Colorado Court of Appeals recently confirmed that the Act limits the Board's authority, regardless of any administrative designation applied by the Division or the Board. Rather, the only relevant criteria is whether a mine has produced ore during the prior ten (10) years. *Information Network v. Colo. Mined Land,* 2019COA114. This ruling, binding on the Board in all subsequent matters, made clear that the Board unlawfully exceeds its discretion under the MLRA to the extent it allows a mine permit to forestall reclamation beyond ten (10) years after that particular mining operation has ceased production of ore.

The record in this case is uncontroverted: there has been no production of ore in the last ten years associated with any of the permits at issue. Rather than compliance, it appears that the operator has attempted to ramp up maintenance, reclamation, exploration and development activities – all falling short of production – in an attempt to acquire some equitable (or "fairness") advantage in this proceeding. However, the Board lacks discretion to consider equities based on MLRA's command that *"[i]n no case* shall temporary cessation of production be continued for more than ten years without terminating the operation and fully complying with the reclamation requirements of this article." C.R.S. § 34-32-103(6)(a)(III) (emphasis supplied).

Even if equitable considerations were allowable after ten years of non-production, equity does not give weight to "self-inflicted" harms flowing from failure to timely comply with statutory duties. *Davis v. Mineta*, 302 F.3d 1104, 1116 (10th Cir. 2002) (finding that entering into contracts while assuming a "pro forma result" of an environmental analysis is self-inflicted injury). It is well established that Courts "will not consider a self-inflicted harm to be irreparable" or allow self-inflicted harm to outweigh other considerations, such as statutory mandates. *Davis. Salt Lake Tribune Publ'g Co. v. AT&T Corp.*, 320 F.3d 1081, 1106 (10th Cir. 2003). Colorado case law similarly rejects claims of hardship made in full knowledge of the regulatory requirements by characterizing them as voluntarily incurred and self-inflicted. *Nopro Co. v. Cherry Hills Vill.*, 180 Colo. 217, 227, 504 P.2d 344, 349 (1972). The MLRA's temporary cessation provisions have not changed since the operator acquired the permits.

Moreover, "reliance on agency action must be reasonable before the agency is estopped from taking a contrary action." *Dep't of Health v. Mill*, 887 P.2d 993, 1000 n.3 (Colo. 1994 citing *Committee for Better Health Care v. Meyer*, 830 P.2d 884, 892 (Colo. 1992); *P-W Investments, Inc. v. City of Westminster*, 655 P.2d 1365, 1373 (Colo. 1982) (unreasonable to rely on mere issuance of water and sewer tap permits as a representation that service would be available indefinitely). The MLRA's plain language confirms it is unreasonable for the operator to believe a life-of-mine permit would last forever, let alone continue after a decade of non-production. Documents in the Division's publicly available database provided ample notice that lack of production has characterized the Sunday Mine Complex for most of the past four decades, long before Pinion Ridge Mining, LLC obtained the MLRA permits from other operators. As the United States Supreme Court has explicitly held, in the mining context, "[r]egulation of property rights does not "take" private property when an individual's reasonable,

investment-backed expectations can continue to be realized as long as he complies with reasonable regulatory restrictions the legislature has imposed. See, *e.g., Miller v. Schoene,* 276 U.S. 272, 279-280, 48 S.Ct. 246, 247, 72 L.Ed. 568 (1928); *Terry v. Anderson,* 5 Otto, at 632-633, 95 U.S., at 632-633; cf. *Hawkins v. Barney's Lessee,* 5 Pet. 457, 465, 8 L.Ed. 190 1831) ('What right has any one to complain, when a reasonable time has been given him, if he has not been vigilant in asserting his rights?')." *United States v. Locke*, 105 S.Ct. 1785, 1799 (1985).

Last, the operator had the opportunity to litigate the legal issues presented, but did not actively participate in the litigation involving its Van 4 mine. Nor did the operator seek review by the Colorado Supreme Court. The Board accepted the decision, and the Court of Appeals' plain language interpretation of the MLRA cannot be challenged in these proceedings. Claim preclusion applies and prevents parties from litigating claims that were or that could have been litigated in a prior proceeding. *Meridian Serv. Metro. Dist. v. Ground Water Comm'n*, 2015 CO 64, ¶ 36 cited by *Gale v. City & Cty. of Denver*, 2020 CO 17, ¶16.

The operator has signaled an intent to argue its belief that it is unfair for MLRA compliance to prevent production from restarting under stale permits, but that is not an allowable question under the MLRA and binding case law. Any such equitable argument should be excluded from presentation and consideration at the upcoming hearing.

Should the operator choose to restart production, which is unlikely, a new permit must be obtained based on the current local, state, and federal requirements. Achieving reclamation of inactive mines is the express purpose of the MLRA's design and intent. There is no legal or equitable basis to let this operation escape that mandate.

Relief Requested

In this case, the record is uncontroverted that each of the mine permits at issue have exceeded the ten (10) year limit. As such, Intervenors request that the Board deny any further temporary cessation status, terminate the permits, and require the operator commence reclamation of the subject mine sites immediately, in accordance with the Act and Rules.

Respectfully submitted,

/s/ Jeffrey C. Parsons

Jeffrey C. Parsons
Senior Attorney
Western Mining Action Project
P.O. Box 349
Lyons, CO 80540

Travis Stills
Energy and Conservation Law
1911 Main Avenue, Suite 238
Durango, Colorado 81301