



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

October 9, 2020

George Glasier
Pinon Ridge Mining, LLC
P.O. Box 825
Nucla, CO 81424

Re: Findings of Fact, Conclusions of Law, and Order, Pinon Ridge Mining, LLC
File 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)

On October 8, 2020 the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. Because this document is the final order of the Board, it is legally binding on and affects the above-captioned operation, and we strongly advise that you read this document carefully.

Sincerely,


Camille Mojar
Board Administrator

Enclosure(s)

Certified Mail

7018 2290 0001 8923 1212

cc:

Lucas West
Travis Marshall
Jeff Fugate
Scott Schultz
Charles Kooyman
Patrick Siglin
Jennifer Thurston
Jeff Parsons
Fred Aldrich



BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

**ORDER ON DIVISION OF MINING RECLAMATION AND SAFETY'S
REQUEST TO TERMINATE MINING OPERATIONS OF PINION RIDGE
MINING, LLC'S SUNDAY MINE COMPLEX, File 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)**

THIS MATTER came before the Mined Land Reclamation Board ("Board") on July 21, 2020 via video conference for a hearing regarding the Division of Reclamation, Mining and Safety's ("Division") request to terminate the mining operations of Piñon Ridge Mining, LLC's ("Operator") for the mines known as the Sunday Mine Complex, file numbers 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). Lucas West and First Assistant Attorney General Jeff Fugate appeared on behalf of the Division. Frederick Aldrich, Esq., George Glazier, and Frank Filas, P.E. of Filas Engineering and Environmental Services, Inc. appeared on behalf of Operator. Jeff Parsons, Esq. appeared on behalf of Intervenors Information Network for Responsible Mining, Earthworks, Sheep Mountain Alliance, San Juan Citizens Alliance, Uranium Watch, Living Rivers, and Conservation Colorado ("Intervenors").

The Board, having considered the presentations and testimony of the Division, Operator and Intervenors, and being otherwise fully informed of the facts in the matter, enters the following:

FINDINGS OF FACT

1. Operator holds 112d-2, 112d-3, 110d, and 100d permits for five uranium and vanadium mines in San Miguel County.
2. Operator requested that the Sunday Mine Complex mines be placed into temporary cessation, which became effective on April 19, 2015.
3. The Sunday Complex Mines have not had recorded production of ore since 2009.
4. Through a letter dated May 21, 2019, received by the Division on June 6, 2019, Operator submitted notification that it intended to "commence operations beginning June 3, 2019" at the Sunday, Carnation, and St. Jude Mines.

5. On June 18, 2019, the Division responded to Operator's notice and requested additional information regarding its plan to commence operations, including details regarding environmental protection facilities that needed to be completed prior to removing any material from underground workings and other information about the proposed operations and impacts to the mine pool. The Division's letter also informed Operator that work required under the previously approved TR-04 would need to be completed prior to any operations and that any use or testing of ablation milling processes, on or off the site, was mining activity that would need to be approved and permitted.

6. Operator responded to the Division in a letter dated August 15, 2019, expanding the mines to include the Topaz and West Sunday Mines, and detailing work that had already been done at the Sunday Mine Complex. The letter also described actions Operator intended to take, including mining up to 100 tons of ore for testing that would be stored underground until a testing facility had been permitted. The letter also provided more details on Operator's construction of environmental protection facilities, potential impacts to the mine pools, and about operator's "bulk sampling project" which was intended to transport and test twenty tons of ore and up to eighty more tons of ore taken from potential pods of "high-grade vanadium" to produce "a concentrate that can be shipped to potential buyers for further testing."

7. The Division responded to Operator in a letter dated September 18, 2019, acknowledging that Operator was seeking to change the status of all five mines in the Sunday Mine Complex to active. The Division informed Operator that, based on inspections and Operator's letters, it did not consider the mines in the Sunday Mine Complex to be active. In particular, the Division deemed the activity observed and described in Operator's communications to be "prospecting" and primarily "investigatory in nature." The Division informed Operator that without substantial development or production, the current temporary cessation period for all of the permits would expire on April 19, 2020. The Division also informed Operator that the Colorado Court of Appeals opinion in *INFORM v. Colo. Mined Land Reclamation Board*, 2019 COA 114, may impact the status of the mines in the Sunday Mine Complex.

8. In a letter dated January 17, 2020, Operator informed the Division that it would be constructing three ore pads at the Sunday Mine Complex in accordance with the environmental protection plan. Operator noted that the Sunday, St. Jude, and West Sunday Mines were associated with the construction.

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9. On February 4, 2020, the Division provided Operator notice that it had determined that the mining operations were subject to termination under section 34-32-103(6)(a)(III) of the Mined Land Reclamation Act, Article 32 of Title 34, C.R.S. ("Act") and *INFORM v. Colo. Mined Land Reclamation Board*, 2019 COA 114, because the mines in the Sunday Mine Complex had no recorded production within the past ten years. The Division provided notice that the matter had been set for a hearing before the Board for its consideration at the Board's March 25, 2020 meeting. Due to COVID-19 impacts the hearing was subsequently continued, first to the April 22, 2020 Board meeting, and again to Board's July 21, 2020 meeting.

10. Intervenors filed a petition to intervene on April 3, 2020, arguing that the Board lacked "authority to allowed continued temporary cessation." Intervenors' petition also pointed to Operator statements in a news article that the mines it "opened this summer" were "getting ready for production" if commodity prices recovered as indicative that Operator's activities at the Sunday Mine Complex were not "production." Intervenors requested that the Board deny any further temporary cessation status, terminate the permits, and require immediate commencement of reclamation.

11. At the hearing, the Division presented testimony regarding the status and history of the Sunday Mine Complex permits. The Division presented evidence regarding Operator's activities at the Sunday Mine Complex observed through Division inspections and that those activities were not the production and shipment of ore. The Division also stated that there is currently no mill facility in the United States to receive ore even if Operator had commenced production. The Division also presented testimony that the Operator's activities regarding ore were closer to prospecting than production or extraction. Though the term "production" is not defined by the Act or Regulations the Division argued that the term has not been vague, has historically been interpreted and applied by the Division and Board to include recovery, transportation and processing, and cannot be broadly interpreted to include just any mining activity at a site.

12. The Division acknowledged that it had directed Operator not to remove ore from the mines but explained that direction was because Operator had not complied with its environmental protection plans for the mines. Removal of ore without full environmental protection plan compliance was not appropriate.

13. The Division also stated that the Sunday Mine Complex consisted of five permitted sites and Operator's recent work was only done at three of the five.

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No mining activity has occurred at Topaz mine or the Carnation mine. The Carnation mine only exists to provide proper ventilation to the other mines.

14. Intervenors presented testimony regarding their position that Operator's work at the Sunday Mine Complex was not "production" under the Act and was development. Intervenors also pointed to Operator's filings with the U.S. Securities and Exchange Commission that stated it had no reserves and no saleable reserves. Intervenors also pointed to filings made with the federal Mine Safety and Health Administration ("MSHA") regarding work Operator had done at the Sunday Mine Complex that Intervenors argued demonstrated no underground production had occurred.

15. At the hearing, Operator argued that the Division's definition of "production" had been shifted away from its historical view that tied production to mining activity. Operator presented testimony that it had been conducting work at the Sunday Mine Complex including improving buildings, operating vents and ventilating the mines, setting up electricity and bringing in water, conducting detailed sampling and testing to put a mining plan together, covering low-grade stockpiles, and mining about 200 tons of ore and stockpiling it inside the mines. Operator argued that these activities were active mining.

16. Operator also presented testimony that its extraction activities were not "prospecting" because they had used an XRF machine to locate ore bodies and drilled to locate the ore they knew was there. Operator stated that they several full-time workers at the mine, had mined twelve areas and stockpiled that ore, and were mining rather than prospecting. Operator also presented testimony that the MSHA reports Intervenors had referenced reflected just the underground supervision hours and did not include the actual underground hours of Operator's contractors. Accounting for both sources of hours, Operator stated that 3,000 hours of underground work had been done.

17. The Board also heard public comment at the hearing from Paul Szlagi of the Western Small Miners Association. Mr. Szlagi stated that the Colorado Court of Appeals had not defined "production" in the *INFORM v. Colo. Mined Land Reclamation Board*, 2019 COA 114, opinion, and that the Division should continue working with industry to define production in a rulemaking to eliminate the substantial uncertainty for mining operations.

CONCLUSIONS OF LAW

18. The Board has jurisdiction over this matter pursuant to Act, Article 32 of Title 34, C.R.S.

19. Under section 34-32-103(6)(a)(II), C.R.S., an operator may temporarily cease production upon compliance with the notice requirements therein. Pursuant to section 34-32-103(6)(a)(III), C.R.S., an operator may be in temporary cessation of production of up to ten years.

20. Temporary cessation of production cannot continue beyond ten years "without terminating the operation ..." § 34-32-103(6)(a)(III), C.R.S.

21. Temporary cessation of production is a factual status to be determined by looking at an operator's activities, or lack thereof, at the site. *See INFORM v. Colo. Mined Land Reclamation Board*, 2019 COA 114, ¶ 11.

22. In evaluating the factors regarding temporary cessation of production, the Board "will consider all relevant testimony and facts ... and no one factor is necessarily determinative, but ... each determination will be based on site specific conditions." Rule.1.13.1(2).

23. "Production" is not defined in the Act. *See* 34-32-103, C.R.S. The Rules, however, are instructive regarding what constitutes temporary cessation of production.

24. Rule 1.13.2 sets forth Indications of Temporary Cessation, including that "there are no personnel working at the site for one hundred eighty consecutive days," "there are personnel other than security people at the site, but they are engaged in activities which can be described as maintenance or housekeeping," "there is only minimal or token excavation of mineral or other material," and "mine development has ceased and mining has not recommenced." Rule 1.13.2(1), (4), (6) and (7). Operator has had personnel at the site who were engaged in activities beyond maintenance or housekeeping, excavation is more than token or minimal, and mine development and mining operations were underway. These factors indicate that the site was no longer in a period of temporary cessation.

25. Rule 1.13.3 sets forth Indications Against Temporary Cessation, including that "[e]xtraction of minerals has been completed and only final reclamation and related activities occurring at the site are part of the 'life of the mine'" and "a permit has been issued, but the mining operation has not commenced." Rule 1.13.3(1) and (2). Operator demonstrated that extraction of minerals was not

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complete and that there were known reserves yet to be extracted and that mining operations were commencing.

26. Under Rules 1.13.2 and 1.13.3, Operator's activities at the Sunday Mine Complex indicate that the permits are no longer in temporary cessation of production.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board hereby DENIES the Division's request to terminate the mining operations of the Sunday Mine Complex, file numbers 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).

DONE AND ORDERED this 8 day of October 2020.

FOR THE COLORADO MINED LAND
RECLAMATION BOARD


Nell Wareham-Morris, Chair

NOTICE OF JUDICIAL REVIEW RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing a complaint with the district court within thirty-five (35) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2020) and the Colorado Rules of Civil Procedure. In the event that a complaint for judicial review is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at: 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Camie Mojar.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 9th day of October 2020 addressed as follows:

By certified mail:

7018 2290 0001 8923 1212

George Glasier
Pinon Ridge Mining, LLC
P.O. Box 825
Nucla, CO 81424

By electronic mail to:

Patrick Siglin
Pinon Ridge Mining, LLC
31161 Hwy 90
Nucla, CO 81424
psiglin@western-uranium.com

Jennifer Thurston
INFORM
P.O. Box 332
Paradox, CO 81429
jennifer@informcolorado.org

Jeff Parsons
Senior Attorney
Western Mining Action Project
P.O. Box 349
Lyons, CO 80540
wmap@igc.org

Frederick G. Aldrich
Aldrich Law Firm, LLC
601A 28 1/4 Road
Grand Junction, Colorado 81506
faldrich@aldrich-law.com

By electronic mail to:

Lucas West
Division of Reclamation, Mining & Safety
101 South 3rd, Suite 301
Grand Junction, CO 81501

Travis Marshall
Division of Reclamation, Mining & Safety
101 South 3rd, Suite 301
Grand Junction, CO 81501

Charles J. Kooyman
Assistant Attorney General
Office of the Attorney General
1300 Broadway, 8th Floor
Denver, CO 80203

Jeff Fugate
First Assistant Attorney General
Department of Law
Natural Resources Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203

Scott Schultz
Assistant Attorney General
Department of Law
Natural Resources Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203



Camille Mojar, Board Administration

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