STATE OF COLORADO

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

Grand Island Resources Cross and Caribou Mines Amendment 2 Application

Jeff Parsons <jeff@wmaplaw.org> Tue, Dec 28, 2021 at 3:17 PM
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Dear Ms. Eschberger,

Please find the attached letter submitted on behalf of Save the Colorado regarding the Division of Reclamation Mining and Safety's consideration of Grand Island Resources Amendment 2 application for the Cross and Caribou Mines, Permit No.: M-1977-410.

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Save the Colorado letter to DRMS 12-28-21.pdf
362K

December 28, 2021

Amy Eschberger
Environmental Protection Specialist
Colorado Division of Reclamation Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203

Re: Cross Mine, Permit No. M-1977-410

Dear Ms. Eschberger,

On behalf of local residents concerned and directly adversely affected by the ongoing water quality problems at the Cross Gold Mine, Permit No. M-1977-410, this letter seeks review by the Division of Reclamation Mining and Safety (DRMS or Division) of the ongoing permit application amendment process for the mine to ensure compliance with the Colorado Mined Land Reclamation Act (MLRA or Act) and the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations (Hardrock Rules), and to ensure an opportunity for meaningful participation by the affected public in the DRMS permit amendment review process.

As an initial matter, we commend and appreciate the efforts made on the part of the Division to ensure compliance with the Act and its overriding requirement that operators minimize impacts to the hydrologic balance, including both to water quantity and quality. The discussion at the enforcement hearing conducted by the Colorado Mined Land Reclamation Board (MLRB or Board) on December 15, 2021 confirms the information available in the Division's records that the mine operator, Grand Island Resources (operator or applicant), is in the process of a complete redesign and reconfiguration of its entire water treatment facility. Such a major change in the operation must factor heavily in the Division's review of the pending Amendment 2 (AM-02) application.

The original AM-02 application was formally submitted for Division review on February 8, 2021. At that time, very little was known about the extent and the scope of the water quality issues at the mine site. Since that time, the mine site has seen a consistent and repeated pattern of violations of water quality limits in its point source pollution discharge permit. These violations have spurred formal enforcement actions from both the Colorado Water Quality Control Division and the Division of Reclamation, Mining and Safety. The correspondence between the agencies and the operator conclusively demonstrates that a complete re-working of the water quality treatment system at the mine site will be necessary in the coming year. Indeed, at the December 15, 2021 MLRB hearing, the operator conceded the necessity of a wholesale redesign of the water treatment system from the historic passive system to an active water treatment system. These significant changes to the situation and conditions at the mine site render the existing AM-02 process inadequate to allow for either

comprehensive Division review of the application or meaningful public participation in the application process.

The Division Should Ensure Meaningful Public Participation in the AM-02 Application Review

The Division should reject the permit application for AM-02 as it currently stands because there is no conceivable way the applicant can provide the necessary water quality treatment and mitigation information to enable full Division review before the current decision deadline of January 8, 2022. Even if the applicant seeks an extension, the 365-day regulatory limit expires no later than February 8, 2022. In this case, the applicant concedes that it will take several months just to run the necessary tests of the current surface water treatment process – and then take the necessary time to design and implement a permanent solution. The applicant also conceded that it will take substantial time, past the current January 8, 2022 deadline, to finalize its responses to the outstanding citizen complaints. Lastly, the applicant has yet to submit the required and overdue comprehensive surface and ground water monitoring plan and has stated its intention to do so only by December 31, 2021.

Given these extenuating circumstances, the Division should reject the Amendment application in its current form as expressly provided for in Hardrock Rule 1.4.1(9). There is no impediment to the operator re-submitting a completed application once it has determined a permanent and suitable water treatment plan, suitably responded to the numerous citizen complaints, and provided an acceptable surface and ground water monitoring plan. In this way, all interests are served: the Division would not be required to spend additional staff time reviewing an application that is incomplete for lack of water quality protection information; the public would have a meaningful opportunity to review and comment on the application, given the significant changes necessary to ensure adequate water quality protection; and the operator would have the opportunity to resubmit the application without prejudice once it has determined a suitable course of action regarding water quality treatment and monitoring.

In the alternative, the Division should exercise its authority under Hardrock Rule 1.6.6, which provides for re-initiation of public process where substantial changes to an application have been made. Here, the process embodied in Hardrock Rule 1.6.6 is fitting given the serious ongoing water quality problems at the site, the substantial work necessary to resolve these serious issues through a complete redesign of the water quality treatment system and submission of a surface and ground water monitoring plan, and the multitude of citizen complaints over these water problems at the operation. The Division's exercise of its discretion would serve the public interest through a re-start of the application approval clock so that the public can have a meaningful opportunity to participate in this process that will determine the long-term water quality protection measures to be employed at the mine site.

The AM-02 Application Fails to Demonstrate Minimization of Impacts to Water Quality

On November 23, 2021, the operator submitted an extensive update to its AM-02 application materials. The package included a complete replacement application document and a list of responses to DRMS review questions. A review of the document demonstrates that despite having been out of compliance with its pollution discharge permit for several months, the water quality portions of the new submittal are devoid of any discussion of recent violations. Bewilderingly, the application instead states that "surface water quality impacts are not expected." November 23, 2021 submission at section 1.3.1.

See also section 1.9. The company must reconcile the months (if not years) of CDPS permit violations and the citizen complaints that indicate potential impacts to surface and groundwater quality.

The Act requires that "disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and groundwater systems both during and after the mining operation and during reclamation shall be minimized." C.R.S. § 34-32-116(7)(g). The application material relies exclusively on compliance with CDPS permit as the basis for compliance with this "minimization" standard. This reliance is unreasonable and cannot be relied on given the serious, repeated, and ongoing permit violations that have occurred.

Further, in response to the DRMS comments detailing the failure of the applicant to provide long-promised surface and ground water quality monitoring plans for the site, the applicant simply states that "a water quality monitoring plan would be submitted to DRMS by December 31, 2021." November 23, 2021 submission Response to DRMS comment #13; section 1.9 and 1.10.3. This failure to provide necessary information renders meaningful review of the application by the Division or the public an impossibility, particularly by the current January 8, 2022 deadline for the Division to make a final determination on the application. Nonsensically, elsewhere the application materials state that "the surface and groundwater monitoring programs will be submitted to DRMS separate from this Amendment." November 23, 2021 submission at section 1.3.1. This contradiction cannot be accepted and in no case can the applicant meet its burden to demonstrate surface and water quality protection without any data or even submittal of a surface and ground water monitoring plan associated with AM-02.

As discussed herein, the applicant's own documents and testimony before the Board demonstrate that the entire water quality treatment facility will have to be substantially, if not wholly, overhauled over the next 6 months and beyond. Given this reality, there is no conceivable way for the applicant to meet its statutory and regulatory burdens at the current time. The application should be dismissed and rejected as containing insufficient information on this basis alone.

The Cross Mine Should be Considered a Designated Mining Operation (DMO)

The November 23, 2021 materials contain a DRMS comment stating that "the Division is continuing to evaluate whether this operation will be considered a Designated Mining Operation (DMO), as described by Rule 1.1(20). Additional information may be required (through this amendment and/or outside of this amendment) in order for the Division to make this determination." November 23, 2021 submission DRMS comment # 11. The MLRA defines a "Designated Mining Operation" in relevant part to include any "mining operation at which: (I) Toxic or acidic chemicals used in extractive metallurgical processing are present on site; [or] (II) Acid- or toxic-forming materials will be exposed or disturbed as a result of mining operations…." C.R.S. § 34-32-103(3.5)(a). Thus, even apart from acid issues, the presence of other toxic materials trigger DMO consideration. Given the recent water quality permit violations, a more robust investigation into this issue is warranted.

The applicant has stated, including at the December 15, 2021 Board hearing, that it has conducted acid accounting tests on its ore in order to assess the potential for acid-mine drainage. Similarly, the November 23, 2021 submission at section 1.3.9 states that the mine "materials have been analyzed for leachability and acid production by DRMS-approved methods. The results of the analyses

demonstrated the materials are non-acid producing and non-metals leaching." This material should be expressly requested by the Division in its review of AM-02 and made part of the publicly available application materials to enable Division and public scrutiny.

The repeated violations of the water pollution discharge permit alleged by the Colorado Water Quality Control Division (WQCD) in its November 30, 2021 Notice of Violation include discharges above permitted levels for lead, cadmium, zinc, silver, copper, and Whole Effluent Toxicity (WET). Given that a mine operation qualifies as a DMO for exposing or disturbing toxic materials (apart from acid), this evidence of discharges of toxic heavy metals demonstrates that the mine should be categorized as a DMO. At minimum, the applicant should be required to provide a detailed explanation as to why the discharge of such toxic heavy metal materials, including at levels that exceed the permitted levels, does not *per se* qualify the site for DMO status. The application materials do not reconcile this data nor provide any demonstration or data that mine operations do not have the potential to expose or disturb toxic or acidic materials. Given the known discharge of toxic heavy metals, DRMS should categorize the mine as a DMO.

The AM-02 Application Fails to Demonstrate Compliance with HB 19-1113

HB 19-1113, as embodied in the Act at C.R.S. § 34-32-116(7)(g), requires as condition for approval of any amendment, including AM-02 at issue here, a demonstration of an "end date" for all water quality treatment. The application material does not provide the required "substantial evidence" necessary for the operator to meet this statutory burden. Indeed, a review of the application materials submitted on November 23, 2021 do not indicate any discussion of "end date" for water quality treatment. There also does not appear to be any exemption applicable for the Cross Mine. The only exception from the end-date demonstration requirement for an active operation amendment application is where the applicant makes specific showing regarding the pre-existing nature of the contamination **and** only where is an Environmental Protection Plan (EPP) in place. The materials do not demonstrate anything regarding the pre-existing nature and there is no EPP in place – largely because the applicant has denied any applicability of the MLRA's DMO provisions. As such, the end-date exception cannot apply.

Along these same lines, the applicant states in its recently submitted materials, in response to DRMS comment #39, that it "does not anticipate any groundwater or surface water monitoring after reclamation." However, no basis for this assumption is provided and no evidence is included to demonstrate that the mine discharges will not continue into the future beyond the proposed life of the mine. The only final reclamation plan evident in the November 23, 2021 submittal pertains to the installation of bulkheads at the mine portals. These plans do not discuss the impacts such bulkheads may have on surface and ground water flows. At the December 15, 2021 hearing, the Division testified that any plan to place bulkheads as an element of final reclamation intended for water containment would require substantial additional review, given the location in a historically heavily mined and tunneled area. This additional review is necessary to ensure that installation of bulkheads does not result in discharges of polluted water in other nearby areas, as so often experienced in Colorado – as in the case of the Gold King Mine, where the poorly conceived placement of mine tunnel bulkheads helped give rise to disastrous consequences.

Conclusion

Since the time that AM-02 was submitted to the Division for its review, substantial changes have occurred at the site with regard to compliance with water quality requirements, including formal enforcement action by both the DRMS and WQCD. Further the proposal has morphed substantially to now include a proposal to wholly and fundamentally redesign and rebuild new water quality treatment facilities. These are not issues that the public would reasonably have been aware of at the time of the AM-02 application in February 2021. Further, the applicant has conceded that it will take months to conduct the necessary studies and design work to implement a new water treatment system – necessary for compliance with Act's water quality protection requirements and thus a prerequisite for any decision by the Division to approve AM-02.

Given these changes and new circumstances, and the elapsing of the Rule 1.4.1 timeframe, the Division should reject the AM-02 application in its current indisputably incomplete form. At minimum, the Division should exercise its authority under Rule 1.6.6 to require republication of the application to ensure that the adversely affected public downstream from the mine site has an opportunity to participate in the process given the significant threats to downstream water quality.

Please do not hesitate to contact me or counsel copied on this letter directly to discuss this matter in more depth. We appreciate your consideration of these important matters.

Sincerely,

Gary Wockner

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