



STATE OF
COLORADO

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Henderson Mine, M-1977-432, Recommendation to MLRB for Financial Warranty Package

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Wed, Oct 11, 2023 at 7:49 AM

To: "Hamarat, Miguel" <mhamarat@fmi.com>

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Bcc: Brock Bowles <brock.bowles@state.co.us>, Jason Musick <jason.musick@state.co.us>

Hello Miguel,

Please see the attached recommendation DRMS has prepared for the MLRB. Please let me know if you have any questions.

Thank you,

Jared

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Jared Ebert

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Division of Reclamation Mining and Safety Recommendation to accept Financial Warranty

Date: October 11, 2023

To: Mined Land Reclamation Board

Parties:

1. Colorado Division of Reclamation, Mining and Safety
2. Climax Molybdenum Company

RE: Henderson Mine, Permit No. M-1977-342, Acceptance of Interest in Real and Personal Property as Financial Warranty in Accordance with C.R.S. 34-32-117(3)(b)

1. Introduction

On October 1, 2020, Climax Molybdenum Company (“CMC” or “Operator”) submitted a proposal to the Colorado Division of Reclamation, Mining and Safety (“DRMS” or “Division”) to use Deeds of Trust and interest in real and personal property as a form of financial warranty. CMC currently utilizes water rights as part of its financial warranty. It seeks to retain the water rights as financial warranty, but utilize the increased value of these water rights. Additionally, CMC seeks to add real property as part of its financial warranty. On November 18, 2020, the Mined Land Reclamation Board (“MLRB” or “Board”) authorized the Division to conduct further due diligence to review CMC’s proposal. CMC revised their initial proposal on April 20, 2021 by withdrawing some interests in properties from consideration for use as financial warranty. Pursuant to Rule 4.1.2(9) the Division has retained Amy Ruhl, attorney with Reinhart Boerner Van Deuren to assist with the title review, due diligence and preparing documentation for security provided for the Henderson Mine. In addition, DRMS retained Bonnie Roerig of Roerig & Associates, LLC. to assist with the review of the land valuation and appraisals submitted by CMC. Finally, DRMS retained Brett Bovee with WestWater Research, LLC. to assist with due diligence regarding the water rights. After extensive review, and collaboration between the Division and CMC, the Division recommends that the Board approve CMC’s proposal to accept water rights and real property as Financial Assurance, as set forth in detail below. The following memorandum and recommendation documents the Division’s findings of acceptance with the proposal and the terms of acceptance.

2. Current Financial Warranty Held:

As set forth in Table 1 the Division currently holds a total of \$141,656,674.31 in financial warranty for the Henderson Mine. The total warranty is comprised of several Corporate Sureties, Deeds of Trust for Water Rights, and a Letter of Credit.



Table 1. Current Financial Warranty Structure as of October 11, 2023

Type of Surety	Amount
Corporate Surety Bond (CS)	\$132,074,777.00
Water Rights	\$6,451,896.31
Letter of Credit (LC)	\$3,130,001.00
Total	\$141,656,674.31

3. CMC's Financial Warranty Proposal

CMC's proposes to retain the use of two Deeds of Trust for water rights (Incidental Water Rights and Skylark Water Rights) taking into account their increase in value. In addition, CMC proposes to add three Deeds of Trust for land (Henderson Mill Non-Industrialized Property, Alkali Creek Ranch, and Silver Springs Ranch) as part of the financial warranty package. The amount of value associated with each type of financial warranty to be attributed to the financial warranty is shown in Table 2.

Table 2. CMC's Financial Warranty Proposal.

Financial Warranty	Type	Valuation (\$)	% of Value Proposed by CMC	CMC Proposed Acceptance Value
Corporate Surety Bond	CS	\$ 131,025,027.00	100%	\$ 132,074,777.00
Letter of Credit	LC	\$ 3,130,001.00	100%	\$ 3,130,001.00
Incidental Water Rights	DT*- Water Rights	\$ 9,996,800.00	75%	\$ 7,497,600.00
Skylark Water Rights	DT*- Water Rights	\$ 11,626,500.00	75%	\$ 8,719,875.00
Henderson Mill Non-Industrialize Property	DT* – Land	\$ 12,970,000.00	85%	\$ 11,024,500.00
Alkali Creek Ranch	DT* – Land	\$ 8,810,000.00	85%	\$ 7,488,500.00
Silver Springs Ranch	DT* – Land	\$ 2,410,000.00	85%	\$ 2,048,500.00
TOTAL				\$ 171,983,753.00

*DT – Deeds of Trust and Other Security Interests in Real or Personal Property

4. Regulatory Compliance

Although rarely utilized, the Colorado Mined Land Reclamation Act ("Act") and the Hard Rock Rules ("Rules") authorize the use of real property as collateral for financial warranty. The following will include a

citation of the applicable Statute and Rule and a description of the Division's finding regarding compliance with the applicable regulation.

C.R.S. 34-32-117(3)(f) – "Proof of financial responsibility may consist of any one or more of the following subject to approval by the board:

(IV) – A deed of trust or security agreement encumbering real or personal property and creating a first lien in favor of the state;"

Rule 4.3 – " Proof of financial responsibility may consist of any one or more of the following, subject to approval by the Board:

Rule 4.3.6 - A Deed of Trust or security agreement encumbering real or personal property and creating a first lien in favor of the State."

In accordance with C.R.S. 34-32-117(3)(f)(IV) and Rule 4.3.6, subject to approval by the Board, CMC may use Deeds of Trust and Security Agreements as a type of financial warranty.

C.R.S. 34-32-117(3)(b) The board may accept interests in real and personal property as financial warranties to the extent of a specified percentage of the estimated value of any such property. Any person offering such financial warranty shall submit information necessary to show clear title to and the value of such property.

Rule 4.9.1 – General Provisions

(1) – "The Board or Office may accept interests in real and personal property as Financial Warranties of not more than eighty-five percent (85%) of the estimated value of any such property."

CMC does not propose a value in excess of 85% to be used toward the financial warranty. Upon review of the proposal, DRMS will recommend the Board accept the value of the properties in question shown on Table 3. below:

Table 3. DRMS Recommendation of Acceptable Value

Financial Warranty	Type	Valuation (\$)	% of Value Proposed by DRMS	DRMS Proposed Acceptance Value
Corporate Surety Bond	CS	\$ 131,025,027.00	100%	\$ 132,074,777.00
Letter of Credit	LC	\$ 3,130,001.00	100%	\$ 3,130,001.00
Incidental Water Rights	DT*- Water Rights	\$ 9,996,800.00	75%	\$ 7,497,600.00
Skylark Water Rights	DT*- Water Rights	\$ 11,626,500.00	75%	\$ 8,719,875.00
Henderson Mill Non-Industrialize Property	DT* – Land	\$ 12,970,000.00	75%	\$ 9,727,500.00
Alkali Creek Ranch	DT* – Land	\$ 8,810,000.00	75%	\$ 6,607,500.00
Silver Springs Ranch	DT* – Land	\$ 2,410,000.00	75%	\$ 1,807,500.00
			Total	\$ 169,564,753.00

*DT – Deeds of Trust and Other Security Interests in Real or Personal Property.

The current required surety for the Henderson Mine per Surety Increase No. 4 (SI4) is \$171,125,253.00. Therefore, CMC must provide an additional \$1,560,500.00 in financial warranty to be considered fully bonded once the Water Rights and Land property Deeds of Trust are also finalized properly recorded.

Rule 4.9.1 (2) - “Any person offering such Financial Warranty shall:”

- (a) *“submit current information necessary to show clear title to the property and the current appraised value of such property. This information shall contain a completed appraisal in a form approved by the Board.”*

The Division retained Amy Ruhl, attorney with Reinhart Boerner Van Deuren to review the Title documents for the land in question. In addition, the Division retained Bonnie Roerig of Roerig & Associates, LLC to review the appraisals of the land assets provided by CMC. Finally, the Division engaged Brett Bovee with WestWater Research, LLC. to assist with the review of the ownership and transferability of the water rights in question as well as their valuation. CMC’s original proposal submitted on October 1, 2020 included the information required by the above referenced Rule and subsequent communications between the Division and CMC provided additional information the Division used to make the following findings.

Water Rights:

Incidental Water Rights and Skylark Water Rights

The Incidental Water Rights and Skylark Water Rights (together “Subject Water Rights”) are owned by CMC and are part of the current financial warranty at Henderson. Part of the CMC proposal is to keep these Subject Water Rights as part of the financial warranty, but to recognize and include the increased value of these in the new financial warranty proposal. As part of the Division’s review and due diligence, a number of questions and concerns were raised and adequately addressed by CMC and their consultants. There are some obligations that come with these water rights including timed release of water for the City of Golden. CMC has demonstrated the decreed right of exchange of the Skylark Water Rights for the City of Golden’s use does not provide them with a legal right to the Skylark Water Rights nor does it obligate CMC to deliver the Skylark Water Rights to Golden. There was concern about the Skylark Water Right being currently subject of another change-of-water-rights application filed by CMC in Division 5 Water Court. CMC seeks to use the Skylark Water Rights as a substitute supply pursuant to the Green Mountain Reservoir Protocol with Denver to contractually provide water to Green Mountain Reservoir (“GMR”). Use of the Skylark Water Rights as a substitute supply under the GMR Protocol would not appear to burden successors in interest of those rights. Further, while Denver has the right to use “excess” Skylark Water Rights under the separate agreement from 1995 between CMC and Denver, this right terminates upon the cessation of the Henderson Mine operations. Per the 1995 agreement, Mineable Ore Reserves for the Henderson Mine shall be deemed exhausted and the Henderson Mine no longer in operation when the Mineable Ore Reserves attributed to the Henderson Mine are reported in an Annual Report on Form 10-K as zero. Given this wording, it is unclear if in a financial warranty forfeiture scenario it could be found that the Henderson Mine is “no longer in operation” if Mineable Ore Reserves exist and could be reported in the referenced annual report form as stated in the agreement. Pursuant to Resolution No. 2012-2-31, recorded on February 29, 2012, at Reception No. 20125001588, the City and County of Denver has a right of first refusal (the “Denver ROFR”) on certain water rights, identified in the Resolution as the “Incidental Rights” and the “Skylark Rights.” In the event DRMS takes ownership of the Skylark Water Rights, and Denver does not purchase the Skylark Water Rights, Grand County is the next likely buyer.

The complexities noted above do not appear to impose substantial risk to the State should they take possession of the Skylark Water Rights; but given the scenario is not without risk, a reduction in the value of the water rights to be used toward the financial warranty is appropriate.

The Division finds the Subject Water Rights are owned by CMC and are transferable. Additionally, the Division has confirmed the appraised value of the Subject Water Rights, however, it is the transferability or sale of the Subject Water Rights that could take 15-20 months that further justifies the reduction in the percentage of value associated with the Subject Water Rights. Based on the Division’s due diligence, the advice and recommendation from the Division’s retained expert, and the communication with CMC the Division recommends acceptance of 75% valuation of the Subject Water Rights.

Land:

Henderson Mill – Non Industrialized Property

The Division finds CMC has clear title to the property and given the possible impacts to the value of the property noted here, a reduction in the value (75%) of the land to be used toward the financial warranty is appropriate. For the Henderson Mill – Non Industrialized Property, the water rights discussed above and the associated obligations regarding disposition of the rights may affect the value and ultimate disposal of this asset. Also, there are existing easement or trails/roads and utility lines on the property that will also impact the value of these asset. Should the State take possession of the property, maintenance of these easements may affect the value of the property. Finally, the State’s ability to transfer or sell this land could take 18-24 months, further justifying the reduction in the percentage of value associated with this property.

The Division does accept the appraised value of the land and recommends the Board accept the Henderson Mill—Non-Industrialized Property as financial warranty at a 75% value of the appraisal.

Alkali Creek Ranch

This property is owned by Mt Emmons Mining Company (“MEMC”) a corporate affiliate to CMC. Both MEMC and CMC are affiliated entities of the former Cyprus Amax company that was acquired by Phelps Dodge Corporation/nka Freeport Minerals Corporation and itself now a wholly owned subsidiary of Freeport-McMoRan Inc. As a signatory of the Promissory Note and Deed of Trust for this parcel, MEMC will be affirming the relationship with CMC and the consideration for placing its properties in the Financial Warranties package.

For the Alkali Creek Ranch, there exists a Right of First Refusal (“ROFR”) for Parcels A and B running to the benefit of the Spann family. This ROFR would likely be triggered by any foreclosure or other conveyance of the property, including forfeiture of the financial warranty by the Board. This ROFR could have priority over any securitization of the property. The Division and CMC have agreed to terms to be included on the Deed of Trust to address the ROFR.

In addition, Parcel A (West Parcel) lacks direct access to a public road, although an existing road (in some areas designated County Road 749) does extend all the way to the property, the portion of the road owned and controlled by the County appears to stop at the border of the USDA Forest Service Lands (“USFS”) one must pass through to access the property. CMC has provided a draft access agreement between MEMC and the USFS for access to Parcel A (West Parcel). This agreement is for a 20 year term and MEMC is waiting for final signatures on this agreement. The access agreement is not transferrable and the successor owner of the property would have to secure its own agreement with the USFS for access. This process seems fairly routine and it would appear unlikely the USFS would not approve a new agreement with a successor property owner for access.

The Division does accept the appraised value of the land. MEMC appears to have clear title to the land; however the Spann Family ROFR and the access issue pertaining to Parcel A are not without risk. Therefore the Division recommends the Board accept the Alkali Creek Ranch Property as financial warranty at a 75% value of the appraisal.

Silver Springs Ranch

This property is owned by Mt Emmons Mining Company as discussed above. As a signatory of the Promissory Note and Deed of Trust for this parcel, MEMC will be affirming the relationship with CMC and the consideration for placing its properties in the Financial Warranties package.

For the Silver Springs Ranch, Parcel D lacks direct access to a public road. Because Parcels C and D are adjacent properties and co-owned, Parcel D has direct access to a public road through Parcel C. However, if the properties are separately conveyed or otherwise come under separate ownership, access to Parcel D will need to be secured, through an easement across Parcel C, or through other means. DRMS recognizes this issue and the possible impact on the sale of the property and finds a reduction in the value of the land to be used toward the financial warranty is appropriate.

The Division does accept the appraised value of the land and recommends the Board accept the Silver Springs Ranch Property as financial warranty for Henderson at a 75% value of the appraisal.

5. Update of Proposal for October 2023 Board Hearing:

The Division and CMC recognize that the review and consideration of this financial warrant proposal has taken nearly three years to complete. In an effort to ensure the most updated information is available to the Board, without having to re-commence a formal appraisal or valuation process, the Division has asked CMC to provide the following information to bring the proposal current, or indicate that there have been no changes in circumstances to render the appraisals and valuations inaccurate.

Rule 4.9.1 (2) - "Any person offering such Financial Warranty shall:

(b) Submit together with the Annual Report as required by Rule 1.15, the following:

- (i) an update by a qualified independent appraiser indicating any changes in property value;*
- (ii) a statement summarizing any circumstances which may affect the adequacy of the Deed if it is a Trust or security agreement; and*
- (iii) proof that there are no past-due property taxes."*

In preparation for the MLRB approval of the proposed financial warranty package, the Division requested CMC provide the information required by subpart (i) through (iii) of the above referenced rule. On August 31, 2023, CMC provided a response to the Division's request. CMC included documentation from their appraiser and water engineers that the values of the proposed properties and water rights have increased since the 2020 proposal. CMC has certified that there are no changes in any circumstances from the date of

their original proposal which may affect the adequacy of the Deeds of Trust. Finally, CMC provided documentation that there are no past-due properties taxes for the properties included with the proposal.

Rule 4.1.2(8) – “The Board or Office may refuse to accept any type of Financial Warranty if:

(a) the value of the Financial Warranty offered is dependent upon the success, profitability, or continued operation, of the mine;

(c) the Board determines that the Financial Warranty offered cannot reasonably be converted to cash within one hundred and eighty (180) days of forfeiture.”

The Division finds the value of the Financial Warranty offered is not dependent upon the success, profitability, or continued operation, of the mine. It is unlikely these assets could be converted to cash within one hundred and eighty days of forfeiture. However, in the event of forfeiture, the State would have to expend about 79% of the other types of financial warranty held (in the form of corporate sureties and a letter of credit) before needing the real property financial warranty funds to conduct reclamation, allowing time for the sale of these assets.

5. Terms of Acceptance

The Division recommends the Board accept CMC’s proposal to retain the Incidental Water Rights and the Skylark Water Rights as part of the financial warranty and to add the Henderson Mill Non-Industrialized real property, Alkali Creek Ranch, and Silver Spring Ranch real property to the financial warranty. Table 3. indicates the value DRMS recommends the Board accept for these assets to apply toward the financial warranty. The Division will recommend to the MLRB to require CMC to submit the additional required financial warranty in the amount of \$1,560,500.00 within sixty days of the October 18, 2023 board hearing.

CMC will be required to comply with Rule 4.9.1(1)(b) on an annual basis. Regarding Rule 4.9.1(2)(b)(i), DRMS will require CMC to provide a market analysis for each of the Deeds of Trust on an annual basis and full updated appraisals every five years with the first full reappraisal due on October 1, 2024. In accordance with Rule 4.9.2(2), failure to provide the documents required by Rule 4.9.1(2) shall indicate a reason to believe the Financial Warranty is not being maintained in good standing as required by Rule 4.1(7) and the Division shall pursue enforcement action. Pursuant to Rule 4.9.2(3), a request for an increase in the bond by the Office shall require a reappraisal of any real property used as security for the bond. Such reappraisal shall be timely, provided by the Operator and shall be completed by an independent appraiser, acceptable to the Office.

In accordance with C.R.S. 34-32-117(6)(B), and Rule 4.1.2(5), CMC shall annually cause to be filed with the board a certification by an independent auditor that, as of the close of their most recent fiscal year, CMC continues to meet all applicable requirements of the subparagraphs (IV) to (VII) of paragraph (f) of subsection (3) or in subsection (8) of C.R.S. 34-32-117. If CMC no longer meets said requirements, they shall instead cause to be filed an alternate form of financial warranty.