



STATE OF
COLORADO

Lennberg - DNR, Patrick <patrick.lennberg@state.co.us>

Comments/objections M1977410

Jeff Parsons <jeff@wmaplaw.org>

Wed, Apr 2, 2025 at 12:21 PM

To: "patrick.lennberg@state.co.us" <patrick.lennberg@state.co.us>

Cc: "Means - DNR, Russ" <russ.means@state.co.us>

Mr. Lennberg, please find attached comments/objections submitted on behalf of Save the World's Rivers (formally Save the Colorado) regarding the DMO/modification application for Mine Permit No. M1977410 – Cross Mine. Thank you.

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Save the Worlds Rivers-Save the Colorado comment M1977410 4-2-25.pdf
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April 2, 2025

Via email: patrick.lennberg@state.co.us

Patrick Lennberg
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 Mr. Lennberg,

This letter is submitted by Save the World's Rivers (formally Save the Colorado) on behalf of our members and local residents concerned and directly adversely affected by the proposed expansion of the Cross Gold Mine, Permit No. M-1977-410, the reclamation plan submitted therewith, and the associated application for designated mining operation status. While Save the Colorado submitted previous comments to the Division of Reclamation Mining and Safety (DRMS or Division) supporting treating the Cross Mine as a Designated Mining Operation (DMO), the new application fails to meet the requirements of 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).

In particular, the application as submitted fails to demonstrate the operator will minimize impacts to the hydrologic balance, including both to water quantity and quality. This issue is of particular concern given the recent history of water discharges from the mine causing numerous and significant violations of water quality standards. These violations spurred formal enforcement actions from both the Colorado Water Quality Control Division and DRMS. While the operator re-worked its water quality treatment system at the mine site and has shown a short-term ability to come into compliance with water quality discharge standards, the application fails to provide sufficient information to demonstrate a long-term ability to do the same. This is especially important as the application contemplates a mine life as long as fifty (50) years.

As submitted, the application lacks sufficient information to demonstrate compliance with the MLRA and Hardrock Rules. In order to remedy these failings, the Division will undoubtedly require the operator to submit significant additional information. Save the Colorado reserves the right to submit additional comments based on that new information.

The Application Fails to Demonstrate Minimization of Impacts to Water 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 in the past.

The application fails to demonstrate how the mine will control water pollution during the mining operation and in the long-term, post-mining. Given the history of water pollution problems, a more detailed analysis of how the mine is going to ensure future water quality protection is required under state law. As discussed in more detail below, the Application simply and inadequately states without support that no long-term water quality protections will be required. Application at E-11. This assumption is unsupportable given the repeated violations of the water pollution discharge permit found by the Colorado Water Quality Control Division (WQCD) in its November 30, 2021 Notice of Violation, which included 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, this evidence of discharges of toxic heavy metals demonstrates that, without additional evidence, it must be presumed that the mine will continue to do so in the future, including both during and post-mining.

Further, the Application relies on core sampling that occurred over 30 years ago and from only two composite samples. Application at G-6. This outdated and limited data set should not be relied upon as the sole evidence of ore and waste rock geo-chemistry. The Application asserts that the testing was done in accordance with DRMS-approved methods, and that no acid generating potential was found. *Id.* These assertions are not supported. The DRMS must require updated and more robust sampling from every location in the mine where extraction will occur, and a full explanation of the methodologies used and analysis performed to reach any conclusions as to a lack of acid-generating potential. Exhibit G2 appears to contain a more involved discussion of ore testing methodologies and these must be verified and if found appropriate, utilized prior to any Application approval to test all ore and waste rock samples.

Lastly, the Application states that the final reclamation plan proposes to close the mine portals on site using bulkheads. Application at E-4 to E-6. These plans do not discuss the impacts such bulkheads may have on surface and ground water flows. At the December 15, 2021 hearing before the Board, 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. No such analysis or review appears evident in the Application.

The Application Fails to Demonstrate Compliance with HB 19-1113

Directly related to the above discussion of the failure to demonstrate the minimization of water quality impacts, the MLRA Act was amended through HB 19-1113 to require any application for “a new or amended permit must demonstrate, by substantial evidence, a reasonably foreseeable end date for any water quality treatment necessary to ensure compliance with applicable water quality standards.” C.R.S. § 34-32-116(7)(g)(II). 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 do not indicate any discussion of “end date” for water quality treatment.

It appears the entirety of the discussion of future water protections In the Application materials is confined to one paragraph stating that:

Post-reclamation water monitoring is not anticipated. Once the mining has ceased, the water treatment system will continue its operations during reclamation activities. It is anticipated that once vegetation has taken hold and all reclamation activities have been complete, the mine water will no longer require treatment. Following the end of mining, water samples will be taken from the inlet of the water treatment system as well as the discharge. The inlet samples will be compared to water baseline data. If the water treatment inlet water is in line with baseline water quality, the water treatment system will be disassembled and removed.

Application at E-11. These statements are entirely conclusory and provide no data, information, analysis, or other basis to substantiate this statement, rendering it pure conjecture. There is thus insufficient basis for the operator’s assumption that the mine discharges will not continue into the future beyond the proposed life of the mine. As such, the Application does not comply with the requirements of the MLRA. This is particularly true given the November 30, 2021 Notice of Violation finding discharges above permitted levels for lead, cadmium, zinc, silver, copper, and Whole Effluent Toxicity (WET). It is simply not reasonable to simply assume that all water quality issues will be resolved at reclamation without a detailed analysis and study as to basis for this assumption.

Lack of Sufficient Mine Plan and Reclamation Details

Apart from the foregoing, the Application fails in other ways to provide sufficient detail as to the mining and reclamation plans. For instance, the Application fails to provide sufficient information as to the ore material to be mined, including where the ore from the mine will be processed, how it will be transported, via what route, and how it will be stored on site.

The Application also fails to demonstrate legal right to enter for the full permit area. It appears based on submission from local governments that the Application includes lands within its permit area that are subject to conservation easements that prohibit mining activities. Further, no approvals from the U.S. Forest Service are evident in the Application, despite including U.S. Forest Service lands in the permit area. The applicant should be required to resubmit to demonstrate legal right to enter every parcel contained within its significant proposed expansion.

Further, the Application references a mill to be constructed on site, but expressly admits the Application does not provide sufficient information for any milling activity to be included in, or approved through, the current Application. Application at U-4. Nevertheless, the Application asserts that future mill designs and impacts may be reviewed through a mere technical revision submittal to the Division. Application at G-8, L-2, U-1. The Division should expressly reject any reference to a mill in this Application unless the applicant is prepared to present its full plan. Further, as any mill construction on site would result in a significant change to the reclamation plan, the Division should require the Application be struck of any reference to approval of a sight-unseen mill via a technical revision and clarify that any mill will require a full amendment process.

The application lacks a sufficient description of the area surface hydrology to enable the public to understand all of the drainages and bodies of water that might be affected by the mining operation. The public has expressed confusion as to which bodies of water the mine proposes to discharge to. Further, there is some indication that there have been recent spikes in copper levels in water at the site. These increased levels cannot be assumed to be attributable to natural causes without a detailed and complete study of the hydrogeologic factors that gave rise to them. If these increases are influenced by the mine disturbance, those factors must be fully reviewed and factored into the long-term water quality reviews, reclamation standards, and bond amounts.

The application also does not appear to include an adequate discussion of financial assurance/bonding. Any bonding calculation must incorporate all aspects for full reclamation. The MLRA specifically requires that:

The amount of the financial warranty must be sufficient to assure the completion of reclamation of affected lands if the office has to complete the reclamation due to forfeiture, **including all measures** commenced or reasonably foreseen **to assure the protection of water resources, including** costs necessary to cover water quality protection, **treatment**, and monitoring as may be required by permit.

C.R.S. § 34-32-117(4)(b)(I) (emphasis added). Thus, the reclamation bond must be recalculated to account for water quality protection. Because, as discussed herein, the Application contains insufficient information for the Division or public to assess the needs for post-closure water quality protections, including active treatment, the Application is similarly inadequate to demonstrate a sufficient bond amount.

The Application does not account for the fact that the site is in a fire-prone area. Given this fact, the Application must assess the impact of a fire on the water treatment system and other reclamation features at the site.

Conclusion

The Application as submitted lacks sufficient support in a multitude of areas and must be substantially revised in order to comply with the MLRA and the Mine Land Reclamation Board's regulations. Without this information, the Division should reject the Application in its current indisputably incomplete form. At minimum, given the need for substantial additional information, Save the Colorado reserves the right to supplement these comments as warranted based on new information.

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,

A handwritten signature in black ink, appearing to read "Gary Wockner". The signature is fluid and cursive, with the first name "Gary" and last name "Wockner" clearly distinguishable.

Gary Wockner

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970-218-8310

CC:

Jeffrey C. Parsons, counsel, Western Mining Action Project
Boulder County Board of County Commissioners
Town of Nederland
City of Boulder
Representative Lesley Smith (HD 49)
Representative Junie Joseph (HD 10)
Senator Judy Amabile (SD 18)
Senator Janice Marchman (SD 15)