

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

Phone: (303) 866-3567

FAX: (303) 832-8106



John W. Hickenlooper
Governor

Mike King
Executive Director

Loretta E. Piñeda
Director

July 19, 2012

Glenn Williams
Cotter Corporation
P.O. Box 700
Nucla, CO 81424

Re: C-JD-8 Mine, Hard Rock/Metal 112d-1 Permit No. M-1984-014, Division of Reclamation, Mining & Safety Recommendation for Approval of Amendment (AM-1), Incorporating the Environmental Protection Plan into the Permit.

Dear Mr. Williams,

The Division of Reclamation, Mining & Safety has completed technical review of the above-referenced amendment application, incorporating the Environmental Protection Plan ("EPP") into the permit. The Division believes that Cotter Corporation has complied with the applicable requirements of the Mined Land Reclamation Act, C.R.S. § 34-32-101, *et seq.* ("Act"), and Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations 2 C.C.R. 407-1 ("Rules"). Accordingly, the Division will recommend that the Mined Land Reclamation Board ("Board") approve this 112d-1 permit amendment over the objections received. The Division's rationale for approval is enclosed herewith.

Upon publication of the public notices for this amendment, the Division received a timely letter of objection from Sheep Mountain Alliance through the Western Mining Action Project (objectors). Copies of these letters were forwarded to Cotter. Receipt of timely objections triggers the requirement for the Division to schedule a Pre-hearing Conference. A Pre-hearing Conference is scheduled for Wednesday, July 25, 2012, beginning at 1:00 P.m. The conference will be held at the Reams Construction Company building, located at 28490 Highway 141, Naturita, Colorado. Enter the building's front entrance and proceed to the ground level conference room. Mr. Steven Renner will preside as the Pre-hearing Conference Officer.

The amendment application will be considered by the Board during a Formal Public Hearing scheduled for August 9~10, 2012. Please note the schedule change from the original notice of 8th and 9th to the 9th and 10th of August. The August 9~10, 2012 Board meeting will be held at the Centennial Building, 1313 Sherman Street, Room 318, Denver, Colorado, 80203, commencing at 9:00 a.m. on August 9, 2012 or as soon thereafter as the matter can be considered.

If you need additional information please contact me at the Division of Reclamation, Mining and Safety, Grand Junction Field Office, 101 S. 3rd St., Suite 301, Grand Junction, Colorado 81501, by telephone at 970.241.1117, or by e-mail at russ.means@state.co.us.

Sincerely,



G. Russell Means
Senior Environmental Protection Specialist
West Slope Field Office Supervisor

Encl: DRMS Rationale for Recommendation for Approval over Objections;
Certificate of Service

Ec: Tony Waldron, DRMS, Denver
Jeff Fugate, AGO, DRMS
John Roberts, AGO, MLRB
Steve Renner, Pre-Hearing Officer, DRMS

Cc: Jeff Parsons, Sheep Mountain Alliance c/o
Western Mining Action Project

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July 19, 2012

Recommendation for Approval over Objections
Hard Rock/Metal 112d-1 Permit, Amendment AM-1
Cotter Corporation
C-JD-8 Mine
Permit No. M-1984-014

John W. Hickenlooper
Governor

Mike King
Executive Director

Loretta E. Piñeda
Director

1. Introduction

The purpose of this document is to outline the basis for the Division of Reclamation Mining and Safety ("Division")'s recommendation for approval of the Hard Rock/Metal 112d-1 Permit Amendment (AM-1) ("Amendment"), submitted by Cotter Corp. (the "Operator"), for the C-JD-8 Mine, Permit No. M-1984-014, over objections raised by the Sheep Mountain Alliance and Western Mining Action Project (collectively the "Objectors").

The C-JD-8 Mine is located in the Paradox Valley. Surface disturbances are primarily on patented lands, while underground mining activities are located on Department of Energy lease Tract C-JD-8 in western Montrose County. It was permitted in 1984, and currently contains 20.96 permitted acres, of which 13.65 is proposed as affected lands. Its approved post-mining land use is Rangeland.

The C-JD-8 Mine is an underground mine that produces uranium and vanadium. Pursuant to House Bill 08-1161, all uranium mines are considered designated mining operations ("DMOs"). See C.R.S. § 34-32-103(3.5)(a)(III). The Reclamation Permit for every DMO must include an adequate Environmental Protection Plan ("EPP"). The Operator submitted the application for this Amendment in order to develop and incorporate an EPP into its Permit in accordance with Rules 6.4.21 and 7.1.4.

In the interest of clarity and administrative efficiency, the Division has scheduled Board hearings for consideration of each of the C-JD-8 Mine Complex EPP Amendments on August 9th and 10th, 2012. The Division will present recommendations for Board approval of each EPP Amendment at those hearings.

2. Objections

The Division received a timely objection letter on July 26, 2011 during the public comment period from the Western Mining Action Project on behalf of Sheep Mountain Alliance:

Issues Raised by the Objectors:

The issues raised by the Objectors are summarized below. The Division's responses are also summarized, along with citations to the applicable sections of the Mined Land Reclamation Act, C.R.S. § 34-32-101, *et. seq.* ("Act") and/or the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations, 2 C.C.R. 407-1, *et. seq.* ("Rules"). The Division has listed the issues it believes are within the jurisdiction of the Board first and the issues it believes are outside of the jurisdiction of the Board last.

A. ISSUES WITHIN THE JURISDICTION OF THE BOARD

Intermittent Status is not Allowable for the C-JD-8 (C.R.S. § 34-32-103(6)(a)(II), and Rule 1.13.7)

1. *Objection:* The C-JD-8 Mine has been in Intermittent Status since 1997, in violation of the Act's requirement that "in no case shall temporary cessation of production be continued for more than ten years without terminating the operation and fully complying with the reclamation standards of this article." C.R.S. § 34-32-103(6) (a) (III). Additionally, reporting requirements under Rule 1.13 have not been submitted properly which should include the conditions at time of cessation, specific measures to fully comply with reclamation, performance standards, and the EPP requirements and plans to resume mining...

Based on the forgoing, Sheep Mountain Alliance asserts the Division is without authority to process this amendment to the mining operation permit, as Cotter is not eligible to extend its period of cessation of production activities and failed to provide information necessary to maintain any "intermittent status" designation. Thus Sheep Mountain Alliance request the Division begin the process of terminating the permit and require reclamation, as expressly required by the MLRA.

The Division's Response: The Objectors are time-barred from raising objections to the status of the operation. The Rules provide that parties who are adversely affected or aggrieved by a Division decision must appeal that decision to the Board with certain prescribed time periods. Here, the applicable time period was thirty days. *See* Rule 1.4.11. The Objectors failed to request a Board hearing regarding the Division's approval of Revision TR-01 in February of 1997.

The Objectors are lacking correct information. The Operator is in full compliance with C.R.S. § 34-32-103(6)(a)(II), and Rule 1.13.9. The C-JD-8 Mine was in active operation from 2005-2007. Other mining activities occurred in 2010 and 2011. In fact, the requirement of submission of the current EPP amendment was precipitated by defined mining activities which required an operator to immediately comply with the law while final rules for HB1161 were promulgated and enacted. During this period of time, the operator engaged in activities consistent with the definition of active mining and inconsistent with the regulatory factors indicating that TC is appropriate. *See* C.R.S. § 34-32-103(8); Rules 1.1(31) and 1.13.2. The Operator opened a previously-closed mine portal and mobilized the site in 2005. It produced 9200 tons of ore in 2005 and 2006 that was shipped to its mill facility in Canon City. In 2010 some stockpiled ore was moved from the surface back into the underground mine and the remainder were moved in 2011 under enforcement action from the Division. (See Annual Reports and Division inspection reports for these time frames.)

As part of the normal review process the open ended construction schedule for EPP structures "when mining operations resume" has been corrected. Cotter has submitted a schedule to begin construction of critical Environmental Protection Facilities, such as stormwater controls and retention ponds will begin upon approval of this amendment. The construction of these facilities are considered development activities for mining operation infrastructure and therefore classified as a mining activity by definition. *See* C.R.S. § 34-32-103(8). Once these activities are completed the operator will have to assess whether to continue mining or comply with C.R.S. § 34-32-103(8); Rules 1.1(31) and 1.13.2. Factors that will need to be considered include the court action prohibiting mining activities while the Department of Energy completes its Programmatic Environmental Impact Study.

The Division agrees that annual reports for this site lack information. The Division identified the issue for not only at this site and operator but across the board. The Division has begun using a more comprehensive reporting system that should address the lack of information for both the Division and public review. Poor records and reporting are not a basis for termination of a permit or denial of this amendment application.

The Division is unsure as of the basis for the statement that it is without authority to process this amendment. C.R.S. § 34-32-105(1) creates the Office of Mined Land Reclamation and the Mined Land Reclamation Board. C.R.S. § 34-32-104 gives full power and authority to carry out and administer the provisions of the Article.

All Areas should be covered by the Mine Permit should be Covered by the EPP

2. *Objection:* Cotter concedes on Page 1 of the EPP that it's "permit includes a proposed upper affected area on the DOE JD-8 Lease Tract," Cotter never the less failed in any way to include the upper area in the EPP.

The Division's Response: The Division as part of its normal review process agrees with objectors. Cotter opted to remove all plans for mining disturbance on top of the mesa within the DOE lease tract from consideration at this time except three possible vent hole locations and a monitor well. The disturbances and access are not considered to have negative environmental impacts that are required to be addressed within the EPP and the monitor well is part of the EPP itself. Should Cotter at a future date decide to include any additional areas in its mining activities, an amendment with public notice requirements would be required.

All Contemplated Stormwater Mitigation Measures should be implemented immediately.

3. *Objection:* As briefly mention, Cotter appears to propose in its Construction Schedule (EPP, Section 10, Page 50) that additional proposed storm water management would only be contingent on resumption of mining. The proposal should not be accepted by the Division.

The Division's Response: The Division as part of its normal review process agrees with objectors. The open ended construction schedule for EPP structures "when mining operations resume" has been corrected. Cotter has submitted a new schedule to begin construction of critical Environmental Protection Facilities (EPF), such as stormwater controls and retention ponds. Construction will begin upon approval of this amendment. Construction of the EPF's is allowed as the surface area in question is private, patented and not on DOE lease tracts lands where activity is prohibited per a court order.

Hydrological (Surface and Groundwater) and Geological information is lacking (C.R.S. § 34-32-116(7) (g); Rules 3.1.5(11), 3.1.6, and 6.4.21)

4. *Objection:* Hydrological (Surface and Groundwater) and Geological Information is Lacking. The EPP lacks a complete analysis of the hydrological and geological setting of the mine. It is not clear that Cotter has appropriately factored in faulting to its predictions of potential groundwater contamination.

The Division's Response: The Division through its normal review has had the operator fully address its concerns over the lack of data which addresses the Objectors' concerns. The EPP now includes a thorough groundwater, surface water, geology, and geochemical characterization.

The Division believes that geochemical testing of the development rock and ore stockpiles produced very conservative results that do not directly correlate to potential negative impacts to the prevailing hydrologic balance.

The operator will be required to establish ambient water quality levels if present based on five to ten quarters of groundwater quality samples taken from a well located down-gradient from the mine workings per this amendment. The ambient water quality data will allow the Division to establish a baseline characterization of the groundwater regime. A monitoring protocol that ensures disturbances to the prevailing hydrologic balance are minimized may then be further defined “if” necessary.

As part of the response to adequacy issues brought forth by the Division, Cotter submitted 559 drill log reports and data to define the hydrological regime. Analysis of the data notes that while 29% of the holes had some kind of water interception they were random in nature in depth, quantity, and location. The randomness exhibited in the data shows no clear connectivity between these encounters that meet the definition of an aquifer. Rather it appears these are perched lenses of trapped water with no true recharge capabilities. Several holes have actually been mined through under present activities and Cotter has pointed out no groundwater was produced within the mine in these areas. While the data supports a dry mine the Division recognizes the potential for unanticipated groundwater interceptions. A standard stipulation for approval notes that if unanticipated groundwater is encountered that produces a flow of over a gallon per minute, the operator shall report the incident to the Division with 10 working days. The operator and Division will then consult on the level of characterization of the groundwater that will be required and timetables for meeting the requirements.

A more detailed geological description was submitted per the adequacy review. The Division notes the current waste pile straddles a slip fault created when the Paradox Salt Dome collapsed many centuries ago. The primary waste pile will however be south of the fault. As noted in the amendment a historic mine, the Black Diamond sits 200 feet below the dumps and current mine workings and transects this fault under the waste piles. This mine in affect acts as a monitor well. Reconnaissance done within the mine in the past seven years notes no groundwater observed up to and just past the fault in question. The Black Diamond Mine has been in existence for over 70 years and the waste pile in place for nearly as long if not longer. This data clearly shows no groundwater, leachate formation, or water migration in that lengthy time span under the waste pile or instability issues of the ground itself. A lizometer located at the toe of the current mine dumps at a lesser depth also continues to run dry. The Division believes this information thoroughly addresses the issue.

A question regarding the ephemeral stream adjacent to the mine has been addressed. Reconnaissance of the drainage found no surface springs. Arial photographs show the drainage was covered up at least 30 years ago in the valley floor with no visible impacts. No other surface water concerns were identified. While the US Geological Society map indicates the drainage as ephemeral current evidence suggests this may be an error of original classification. The EPP has EPF’s in place to ensure potential negative impacts to the prevailing hydrologic balance once constructed will minimize any off-site impacts to surface waters.

Cultural Resource Assessments are not complete

- 5 *Objection:* Given the high number of historic and prehistoric cultural, archeological, and paleontological resources in the area, the Division should coordinate with Colorado SHPO to ensure that Cotter has appropriately inventoried, identified, and mitigated impacts to all historic resources at the site.

The Division's Response: As part of the normal review process for any amendment or application the Division provides SHPO with a copy of the submitted application for comments. SHPO responded on June 20, 2011 with "recommendations" for a new survey since the last one was over ten years old. Cotter followed the recommendations and hired a consultant to do a new survey of the current and potential areas of disturbance. A cultural resource report was submitted to the Division by Cotter on May 4th, 2012 identifying one site as being eligible for listing on the National Register of Historic Places. SHPO responded on June 11, 2012 with acceptance of the inventory report. Based on that listing the Division had the operator commit to and verify that no proposed activities were near the site, thus mitigating any impacts to the historical resource as the objectors requested.

B. ISSUES NOT WITHIN THE JURISDICTION OF THE DIVISION AND BOARD

Abandoned Mine Features in the Area should be considered for reclamation

1. *Objection:* Cotter notes the abandoned Black Diamond Mine is in the vicinity of the JD-8 Mine. Area maps indicate other historic mines in the area as well. As part of an EPP, the Division should explore with Cotter the potential for reclamation work to be accomplished on these mines to improve and mitigate the wildlife, water quality, and other impacts to the area.

The Division's Response: The Act and Rules provide no mechanism for the Division to force an operator to reclaim areas outside the proposed affected area and undisturbed by proposed activities. The area has numerous legal mining claims filed by others and DOE. The issue of reclamation of these other sites is more complicated than just work by one individual entity and outside the scope of this amendment and the EPP. The Division would like to note to the objectors and public however that Cotter in the past 10 years has worked with BLM and DOE to reclaim numerous abandoned pre-law mines in Western Colorado to protect human life, provide critical bat habitat, and mitigate impacts to drainages and the hydrological balance.

C. Division's Conclusion and Recommendation

The foregoing discussion supports the Division's findings that the Hard Rock/Metal 112d-1 Amendment submitted by Cotter Corporation for the JD-8 Mine, Permit No. M-1984-014 has met the requirements of the Act and Rules and should be approved. It is therefore the Division's recommendation that, pursuant to § 34-32-115(4) of the Act, the Board approves this Amendment AM-1 for the JD-8 Mine.

CERTIFICATE OF SERVICE

I, G. Russell Means, certify that I mailed a true and complete copy of the foregoing document ("Recommendation for Approval of Amendment") and its enclosures, to the addressee and to all other parties designated therein to receive copies, by depositing them with the US Postal Service, postage paid, and via electronic mail on the signature date shown below.

Parties to whom the documents were mailed and / or e-mailed are:

Glenn Williams
Cotter Corporation
P.O. Box 700
Nucla, CO 81424

Loretta Pineda
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Division of Reclamation, Mining, and Safety
Inter-office E-mail

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Western Mining Action Project
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Steve Renner
Pre-Hearing Conference Officer
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Grand Junction, Colorado 81503
Inter-office E-mail



(signature)

7-17-2012 (date)

STATE OF COLORADO

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June 26, 2012

John W. Hickenlooper
Governor

Mike King
Executive Director

Loretta E. Piñeda
Director

Notice to Parties and Interested Persons for AM-03

RE: Notice of Formal Board Hearing, Pre-hearing Conference, and Recommendation Date for an Application to Amend a 112d-1 Operation (AM-01), to Include an Environmental Protection Plan, Cotter Corporation, JD-8 Mine, Permit No. M-1984-014.

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (Division) appreciates all parties taking time to participate in the review process of the above referenced application. The submittal of an Environmental Protection Plan (EPP) amendment was filed with the Division on June 8, 2011, by Cotter Corporation (Applicant).

An explanation of the Division's review process, your rights as either a party or a non-party, and the jurisdiction of the Mined Land Reclamation Board (Board), is provided in the enclosed 12-page memo, Guide to Citizen Participation. As noted in the citizen's guide memo, in these proceedings the Division's authority is limited to enforcement of the Colorado Mined Land Reclamation Act, 34-32-101 et seq., C.R.S. (Act), and the Mineral Rules and regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal and Designated Mining Operations (Rules), which can be accessed on the Division's website, www.mining.state.co.us.

Upon publication of the public notices for this amendment, the Division received timely letters of objection. Copies of these letters were forwarded to the operator. Receipt of timely objections triggers the requirement for the Division to schedule a Pre-hearing Conference. **Pursuant to Rule 2.7.1, the Division has scheduled a Pre-hearing Conference to occur on July 25, 2012,** located at the Reams Construction Business Offices, 28490 Highway 141, Naturita, Colorado, beginning at 1:00 p.m. and concluding at or before 3:00 p.m. Mr. Steve Renner will preside as the Pre-hearing Conference Officer.

The EPP amendment application will be considered by the Board during a Formal Public Hearing scheduled for August 8~9, 2012. The Board meeting will be held at the Centennial Building, 1313 Sherman Street, Room 318, Denver, Colorado, 80203, commencing at 9:00 a.m. on August 8, 2012 or as soon thereafter as the matter can be considered.

The Pre-hearing Conference will be held to describe the Division's review process, to explain the rights and responsibilities of parties, to discuss and resolve issues to the extent possible, to describe the Board Hearing processes, to propose a list of issues under the Board's jurisdiction, to simplify that list, and to identify parties. **All parties must supply fifteen (15) copies of lists of any exhibits and witnesses the parties intend to present at the Formal Board Hearing. List and exhibits must be exchanged between the parties at the Pre-hearing Conference in accordance with the requirements of Rule 2.6(2). Failure to participate in the Pre-hearing Conference will result in the loss of your party status.**

After the conference the Pre-hearing Officer shall prepare a proposed Pre-hearing Order. The proposed Pre-hearing Order will be made available to all parties prior to the Formal Board Hearing. The proposed Pre-hearing Order will contain a list of the parties, provide a recommended list of issues to be considered by the Board, and outline a schedule for the hearing with time allotments set for presentations by each party and the Office. The conditions of the Pre-hearing Order are not final until adopted or approved by the Board at the Formal Board Hearing. Any party has the right to file a motion to the Board to review any decision of the Pre-hearing Officer according to the provisions of Rule 2.6(1).

The Division's deadline for issuing a recommendation on the EPP is scheduled for July 16, 2012. On or before July 16, 2012, the Division will issue its recommendation to the Board for approval, approval with conditions, or denial of the application. Copy of the Division's recommendation will be forwarded to all parties and interested persons by no later than July 20th, 2012.

If you need additional information please contact me at the Division of Reclamation, Mining and Safety, Grand Junction Field Office, 101 S. 3rd St., Suite 301, Grand Junction, Colorado 81501, by telephone at 970.241.1117, or by e-mail at russ.means@state.co.us.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Russell Means".

G. Russell Means
Senior Environmental Protection Specialist
West Slope Field Office Supervisor
Grand Junction / Durango

Attachment: Certificate of Service

Enclosure: Guide to Citizen Participation

Ec w/enclosure: Steven Renner, Pre-hearing Officer
John Roberts, Esq., AGO for the MLRB
Steve Nagy, Esq., AGO for DRMS

CERTIFICATE OF SERVICE

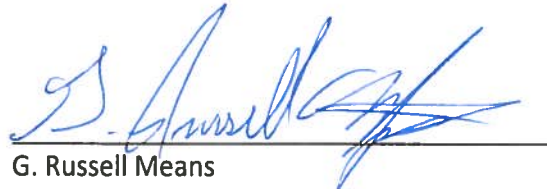
I, G. Russell Means, hereby certify that on this 26th day of June, 2012, I deposited a true copy of the foregoing document, RE: Notice of Formal Board Hearing, Pre-hearing Conference, and Recommendation Date for Submittal of an Environmental Protection Plan Application to amend a 112d-1 Operation (AM-01), Cotter Corporation, JD-8, Permit No. M-1984-14, with the enclosed Guide to Citizen Participation, in the United States Mail, postage paid, addressed to the following:

Ed Cotter
S.M. Stoller Corporation
Contractor to the U.S. Department of Energy Office of Legacy Management
2597 Legacy Way,
Grand Junction, CO 81503

Glen Williams
Cotter Corporation
P.O. Box 700
Nucla, Colorado 81424

Montrose County
Board of County Commissioners
161 S. Townsend Ave.
Montrose, CO 81401

Western Mining Action Project
On behalf of Sheep Mountain Alliance
P.O. Box 349
Lyons, Colorado 80540



G. Russell Means