

**BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO**

IN THE MATTER OF COTTER CORPORATION (N.S.L.) C-JD-8, PERMIT NO. M-1984-014, AMENDMENT AM-1

**CONSOLIDATED RESPONSE TO MOTION TO LIMIT SCOPE OF THE HEARING
AND MOTION TO PROHIBIT USE OF WITNESSES AND EXHIBITS**

On July 27, 2012, Cotter Corporation (“Cotter”) submitted two Motions in the above captioned matter. In accordance with Mined Land Reclamation Board Rule 2.6(1), Sheep Mountain Alliance (SMA) hereby files this consolidated response.

Response to Motion to Limit Scope of Hearing

Cotter’s first Motion seeks to limit the scope of the hearing to eliminate the issue of whether the JD-8 Mine is lawfully in intermittent status. Cotter asserts that SMA is time-barred from raising this issue because the Division approved a request by Cotter for “intermittent status” on February 25, 1997. Cotter argues that any appeal of this issue should have been raised within 30-days of that date. Cotter also argues that the Environmental Protection Plan process is not the time to raise issues related to temporary cessation.

However, Cotter ignores that the rules expressly provide that where a permit amendment is filed, as here, that amendment “shall be reviewed by the Board or Office in the same manner as applications for new Permits.” Rule 1.10(4). Thus, the filing of an amendment opens the permit to public and regulatory scrutiny as if a new application has been filed. This is the proper course as a matter of good public policy and faithful implementation of the Mined Land Reclamation Act, so as to enable the public to bring the Division’s and Board’s attention to potential prior mistakes.

Additional provisions of the Board's Rules also support SMA's ability to raise the temporary cessation issue. For instance, Rule 1.7.1(1) provides that "Any person has the right to submit written statements supporting or objecting to any application for a permit, or for an amendment or revision of a previously granted permit." This broad language confirms that amendments to prior approved applications are not insulated from future review. Lastly, the Board Rule 1.10(5) provides that "All aspects of the mining operation and Reclamation Plan that are subject to the amendment will be subject to these Rules, as amended, in effect at the time the Permit is amended." Thus, in this case, the applicable Rules regarding temporary cessation (Rule 1.13) apply. Further, the Mined Land Reclamation Act itself specifically provides 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 requirements of this article."

In short, Cotter has offered no compelling basis for the Board to turn a blind eye to this important and critical issue regarding the JD-8 Mine.

Response to Motion to Exclude Witnesses and Exhibits

Cotter's second motion seeks to exclude witnesses and exhibits from Sheep Mountain Alliance's presentation to the Board. With respect to witnesses, the only witness identified by Sheep Mountain Alliance was Russ Means, Division staff. The hearing officer proposed to strike Mr. Means as witness for SMA, but the Division has indicated he will be at the hearing and present to the Board. SMA merely sought to be sure that the relevant Division staff is on hand so that the Board could conduct a thorough review. As this does not appear to be an issue, SMA anticipates that any necessary information from Mr. Means can be elicited upon minimal and concise cross-examination.

With respect to exhibits, Cotter seeks to have all of SMA's exhibits excluded based on an unreasonably restrictive interpretation of the Board Rules. Specifically, Cotter objects to the fact that, while the relevant documents were fully identified in SMA's exhibit list, SMA did not have a hard copy of those exhibits at the hearing. Yet, SMA transmitted all of the exhibits it intends to rely on to all parties by the close of business on the same day as the Prehearing Conference. *See* Draft Pre-hearing Order at 2. Thus, Cotter received a full copy of the exhibits on the day of the prehearing conference. Importantly, Cotter does not even attempt to make any argument that it was in any way prejudiced by the minimal delay in receiving the exhibits – because it was not prejudiced. The Board should adopt the ruling of the prehearing officer to allow the materials to be used in the hearing.

Cotter further argues that certain exhibits should be excluded because, in Cotter's view, the documents are irrelevant. However, Cotter is making this assertion without even the benefit of hearing SMA's presentation, which will directly connect the documents cited to the relevant issues before the Board. Cotter is incorrect in stating that the documents listed are not relevant to the JD-8 Mine. Each document pertains directly to the issues identified for hearing, and that direct connection will be explained to the Board when, and if, the documents are submitted for inclusion in the record. Thus, the Board should wait to rule on any relevancy objections until the document is offered into the record, at which time the Board will be in a position to determine the relevance of any particular document.

Based on the foregoing, Sheep Mountain Alliance requests that the Board deny both Motions submitted by Cotter.

Respectfully submitted on this 6th day of August, 2012,

/s/ Jeffrey C. Parsons

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CERTIFICATE OF SERVICE

I, Jeffrey C. Parsons, hereby certify that on this 6th day of August, 2012, I served by email and deposited a true and correct copy of the foregoing Response to Motions to Dismiss in the U.S. Mail, first class, addressed to the following:

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