

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
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John W. Hickenlooper
Governor

Mike King
Executive Director

Loretta Piñeda
Director

August 27, 2012

Notice to Parties and Interested Persons to AM-10

RE: Recommendation for Approval with Conditions over Public Objection of an Application to Amend a 112d-3 Operation (AM-10), to Include Mine Life Extension 2, Cripple Creek & Victor Gold, Cresson Project, Permit No. M-1980-244.

Dear Party and/or Interested Person:

The Division of Reclamation Mining and Safety hereby issues its recommendation for approval with conditions, over public objection the application to Amend a 112d-3 Operation (AM-10), to Include Mine Life Extension 2, Cripple Creek & Victor Gold, Cresson Project, Permit No. M-1980-244.

This recommendation is based on the Division's determination that the application for AM-10 satisfied the requirements of section 34-32-115(4) of the Colorado Mined Land Reclamation Act 34-32-101 *et seq.*, C.R.S. A copy of the Division's rationale for its recommendation is enclosed for your review.

As noted in the enclosed document pursuant to Rule 2.8.1(1), a party requesting to participate by telephone at the formal hearing must file a written request with the Board Chair no later than 14 calendar days prior to the formal hearing. The deadline by which such requests must be received is **August 29, 2012**.

Colorado Mined Land Reclamation Board
c/o Sitira Pope
sitira.pope@state.co.us
Colorado Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203


A live audio broadcast of the formal hearing can be found at the following link, [mms://165.127.23.236/DRMS Stream](mms://165.127.23.236/DRMS%20Stream). Audio stream service may be temporarily unavailable or limited due to technical difficulties and bandwidth limitations and could result in loss of audio signals or in the impairment of the quality of the transmission.

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If you need additional information please contact me at the Division of Reclamation, Mining and Safety, 1313 Sherman St., Room 215, Denver, Colorado 80203, by telephone at (303) 866-3567, ext 8169, or by e-mail at tim.cazier@state.co.us.

Sincerely,



Timothy A. Cazier, P.E.
Environmental Protection Specialist

Enclosures: Certificate of Service
Rationale for Recommendation

cc w/ enclosure: John Roberts, Esq., AGO for MLRB
Jeff Fugate, Esq., AGO for DRMS
Tony Waldron, DRMS
Bruce Stover, Pre-hearing Officer, DRMS

CERTIFICATE OF SERVICE

I, Timothy A. Cazier, certify that I mailed a true and complete copy of the foregoing document, Recommendation for Approval with Conditions over Public Objection of an Application to Amend a 112d-3 Operation (AM-10), to Include Mine Life Extension 2, Cripple Creek & Victor Gold, Cresson Project, Permit No. M-1980-244, 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:

Mr. Timm Comer
Cripple Creek & Victor Gold
100 North Third Street
P. O. Box 191
Victor, CO 80860

Teller County Commissioners
County Commissioner
Box 1010
Cripple Creek, CO 80813

Vern Vinson
Teller-Park Conservation District
33 Dureli Dr
Sedalia, CO 80135

Janet A. Kunz
386 East 60 South
Ivins, UT 84738

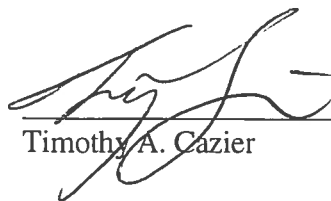
Kirby Hughes, Conservation Co-Chair
Sierra Club/Rocky Mountain Chapter
(Colorado)
2725 Black Canyon Rd.,
Colorado Springs, CO 80904

Bill Clymer, President
Citizens for Victor!
P.O. Box 142,
Victor, CO 80860

Bruce Stover
Pre-Hearing Conference Officer
1313 Sherman St, Room 215
Denver, Colorado 80203
Inter-office E-mail

John Roberts
Office of the Attorney General
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1525 Sherman Street, 7th Floor
Denver, CO 80203

Jeff Fugate
Office of the Attorney General
Natural Resources Section
1525 Sherman Street, Room 125
Denver, CO 80203



(signature)

8/27/2012

(date)

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Recommendation for Approval over Objections
Hard Rock/Metal 112d-3 Permit, Amendment AM-10
Cripple Creek & Victor Gold
Cresson Project
Permit No. M-1980-244
August 27, 2012

Introduction

Herein all references to the Act and Rules refer to the Colorado Mined Land Reclamation Act 34-32-101 *et seq.*, C.R.S. (the Act or Hard Rock Act) and to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock Metal and Designated Mining Operations (the Rules). Copy of the current Act and Rules is available on the Division's web site www.mining.state.co.us.

On August 27, 2012 the Division of Reclamation Mining and Safety (Division or Office) issued its recommendation to approve with conditions, over public objection, the application to amend (AM-10) the existing permit, a 112d-3 operation to include Mine Life Extension 2 (MLE2), for the Cresson Project, Permit No. M-1980-244. This document is intended to explain the process by which the Division arrived at its recommendation to approve with conditions, over objections.

The Amendment application was submitted by Cripple Creek & Victor Gold (Applicant) on February 28, 2012 and considered complete (filed) on March 5, 2012. The public comment period ended on May 1, 2012

The Cresson Project is an open pit mine that produces gold and some silver. The Cresson Project MLE2 involves additional mining of ore and overburden that is anticipated to add approximately nine years of active mining (until 2025) to the operation. MLE2 will encompass: additional backfilling and overburden placement; an additional valley leach facility in Squaw Gulch (SGVLF); an additional adsorption, desorption and recovery plant in Squaw Gulch (SGADR); addition of a high grade mill for processing higher grade ore; accompanying changes to mine and overburden storage areas; and subsequent reclamation of the MLE2 disturbance areas. The affected acreage after the approval of the proposed MLE2 is approximately 4,670 acres, an increase of roughly 470 acres over that approved under the previous amendment (AM-09). This affected area includes the currently affected Carlton Tunnel area. The permit boundary for MLE2 is proposed to include an additional 127 acres beyond the approximate

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5,862 acres approved under AM-09 for a total permit area of roughly 5,990 acres.

As previously noticed to all parties and interested persons, the Division's recommendation is to the Mined Land Reclamation Board (Board). The Division's recommendation will be considered by the Board during a formal hearing scheduled to occur **September 12-13, 2012** at 1313 Sherman Street, Room 318, Denver, Colorado commencing at 9:00 am, or as soon thereafter as the issue may be considered.

Pursuant to Rule 2.8.1(1), a party requesting to participate at the formal hearing must file a written request with the Board Chair no later than 14 calendar days prior to the formal hearing. The deadline by which such requests must be received is **August 29, 2012**.

Please address written requests for participation to the Board's secretary Ms. Sitira Pope at the address displayed on this letterhead.

Colorado Mined Land Reclamation Board
c/o Sitira Pope
sitira.pope@state.co.us
Colorado Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203

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All parties and interested persons who intend to participate in the Board hearing are strongly encouraged to attend the Pre-hearing Conference. Failure to attend the Pre-hearing Conference will result in forfeiture of party status.

As previously noticed, the Pre-hearing Conference is re-scheduled to occur on August 31, 2012, at the City of Victor Council Chambers, 500 Victor Ave., Victor, Colorado; beginning at 1:00 p.m. and concluding at or before 3:00 p.m.

This document provides a summary of the review process by which the Division arrived at its recommendation; identifies the issues raised by the objecting parties; and defines a closely regulated process whereby the Applicant may demonstrate compliance with the Act and Rules. The Division reserves the right to further supplement, amend, modify, or clarify this document and recommendation with additional details as necessary.

Summary of the Review Process for AM-10

AM-10 was filed with the Division on March 5, 2012. Notice of the filing occurred in accordance with the requirements of the Act and Rules. The public comment period closed on

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May 1, 2012. During the public comment period the Division received comments and objections from the following individuals and agencies:

Timely Letters of Objection:

- A. Janet A. Kunz, no date, received April 19, 2012.
- B. Bill Clymer (Citizens for Victor!), via email from Jeff Parsons dated April 30, 2012, received May 1, 2012.
- C. Kirby Hughes (Sierra Club/Rocky Mountain Chapter), via email dated May 1, 2012, received May 1, 2012.
- D. Patrick & Jolene Sharrett, via email dated May 1, 2012, received May 1, 2012.

Timely Agency Comments:

- E. Colorado Parks & Wildlife, dated March 19, 2012, received March 22, 2012.
- F. State Historical Preservation Officer, dated March 26, 2012, received March 30, 2012.
- G. Bureau of Land Management, via email, dated April 26, 2012, received April 26, 2012.

Late Agency Comments:

- H. Division of Water Resources, via email dated May 9, 2012, received May 9, 2012.

The Division forwarded copies of all comments and objections to the Applicant and scheduled the application for a hearing before the Board. The Division provided notice of the scheduled Pre-hearing Conference and Board hearing to all parties and interested persons. Due to the receipt of timely objections, the Division would not make a decision regarding the application on the decision date, but rather make a recommendation to the Board.

On August 27, 2012, the Division completed its review of the submitted materials and determined the Applicant had addressed, or committed to address within an agreed timeline, the requirements of §34-32-115(4) C.R.S. Therefore, on August 27, 2012 the Division issued its recommendation for approval with conditions.

Circumstances Leading to Recommendation for Approval with Conditions

A critical component of MLE2 is the proposed Squaw Gulch High Grade Mill. The mill foundation is currently being constructed under approvals related to Amendment 9 and consists of compacted select overburden material. Due to the proposed use of designated chemicals in the mill, the facility is designated as an environmental protection facility (EPF). Pursuant to Rule 6.4.21(10) and (16), EPFs are required to undergo engineering review, be constructed in accordance with approved design specifications, and demonstrate compliance with design specifications by Operator submittal of design certification reports. The design specifications used for the construction of the mill foundation were approved for previous EPFs at the mine. However, to date, the design certification reports have not been submitted to the Division for review and approval of the placement of the overburden material that will be the foundation of the new mill. In addition, the Applicant is in the process of providing the Division with additional design and analysis data from their consultant to support their assertion that the mill vibrations and settling of the foundation material will not reduce the function of the new

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proposed SGVLF. Based on the absence to date of this information, the Division recommends the following conditions be included in any approval by the Board:

- 1) Prior to placement of any liner system, CC&V shall submit and receive Division approval of, the requested weekly CQA reports for the placement of select overburden used as the foundation for the new mill.
- 2) Prior to construction of the new mill and SQVLF, CC&V shall submit and receive Division approval of, the requested additional design and analysis data to support the assertion that the mill vibrations and settling of the foundation material will not reduce the function of the new proposed SGVLF.

Issues Raised by the Objecting Parties and Commenting Agencies:

The issues raised by the objecting parties and commenting agencies are represented by *italic bold font*. The last names of the objecting parties who raised the issue are listed after the issue. The Division's response follows in standard font.

The issues raised by the Objecting Parties and Commenting Agencies 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.

ISSUES RAISED BY THE OBJECTING PARTIES WITHIN THE JURISDICTION OF THE BOARD

1. *At the very end of Section 2.3 there is a statement that "Most surface water infiltrates to the basin soil and bedrock before forming streams, and none re-emerges from the ground as springs within the footprint of the Diatreme." We take issue with this, as the springs within Grassy Valley (forming Beaver Creek flowing to the east) and Arequa Gulch (forming the Arequa Gulch flow heading south and west into Cripple Creek) appear to be within the footprint of the Diatreme. This said, wherever the springs actually occur, surface water infiltrates the basin soil and bedrock before forming these 2 flows, and does re-emerge from the general area with "spring water" constituted from water that infiltrated into, and then from, the Diatreme. The bottom line is that the "spring water" in these 2 flows is highly influenced by the Diatreme and is mineralized by the constituents of the Diatreme. Mining activity in the Diatreme – exposing much, much more of a surface area, will therefore have a great impact on the mineralization of all springs in that general area. (Parsons/Clymer).*

The Division's Response: In section of 3.2 Volume II Appendix 1, the operator states, "In summary, there is almost no surface water flow in the valleys and gulches that exist over the

Diatreme. Most water infiltrates to the basin soil and bedrock before forming streams, and none re-emerges from the ground as springs within the footprint of the Diatreme". The Division agrees that there are shallow alluvium springs within the Grassy Valley Drainage that form Beaver Creek. However, there is a surface water monitoring point in Grassy Valley to monitor for possible hydrologic impacts from the mining operation. In addition, there are shallow and bedrock groundwater compliance and monitoring wells (with specific numeric protection levels) for the purpose of detecting possible impacts to the prevailing hydrologic balance. The data collected from the monitoring and compliance wells are submitted to the Division on a quarterly basis. To date, no upward trends of constituents for which numeric protection levels set by the Division have been observed. However, the Division also agrees, most of the precipitation within the diatreme passes through a preferential flow path in the diatreme and discharges from the Carlton Tunnel. The increased affected area resulting from mining within the diatreme is expected to have negligible impacts to the existing springs and surface water flows in Grassy valley.

All surface water drainage from Arequa Gulch (which includes the spring pipe and underdrain) are presently pumped back as make-up water for the VLF. In addition, the operator also pumps back all the water from the surface water detention basins to the pump-back station to be used as make-up water. There is no surface water drainage from the permit affected area in Arequa Gulch at present. The Arequa Gulch drainage also has a discharge permit from the Colorado Department of Public Health and Environment (CDPHE) based on the receiving stream standards for Four Mile Creek. If there is discharge to Arequa Gulch drainage, the operator is required to collect a sample. In addition, the Division has groundwater compliance and monitoring wells in both the shallow and bedrock aquifers of Arequa Gulch. The data collected is submitted to the Division on a quarterly basis. To date, with the exception of sulfate spikes, no other parameters have shown upward trends.

2. *Within Section 2.4.1, under 3. Carlton Tunnel, item "3. Sequestration in overburden produced by prior surface mining," it's stated, with respect to water sequestration, that "What is occurring is likely more complex: sequestration is occurring in newer overburden, but the effect on Carlton Tunnel flow is being compensated for by exfiltration from overburden and mine backfill areas where field capacity has been reached, and flow of infiltrating water has resumed." Clearly, the mechanisms behind "more complex: sequestration" are NOT very well understood, and this is statement is INDEED a supposition where use of the adverb "likely" should be read as a crucial clarification within that sentence. The subsequent statement "The result is that net sequestration has reached approximate steady state, and is not expected to change with future mine extension, including MLE2," taken together with the following concluding statement, "Taken together, the reduction in Carlton Tunnel flow reduction [sic] since 2002 is 10% is [sic] due to the recent reduction in precipitation, 25% due to covering of diatremal catchment by the AGVLF, and the remaining 65% is due to the net effects of sequestration." These are important conclusions, with seemingly accurate percentages, but they actually emanate from the prior supposition, and are only as good as that supposition! We would like to see a more rigorous evaluation of sequestration, and infiltration/exfiltration, in order to be able to more definitively*

assert “sequestration ... is not expected to change with future mine extension” and that “65% [of the reduction in Carlton Tunnel flow] is due to the net effects of sequestration.” Otherwise stated, CC&V has a primary charge of managing many millions of gallons of effluent from the Carlton Tunnel (and including the Roosevelt Tunnel, too), and we would request a better assessment of the anticipated flows from the Diatrema (with the resultant mineralization of waters within Four Mile Creek. (Parsons/Clymer).

The Division’s Response: The focus on the word “complex” is appropriate for the topic of flow sequestration. However, the Division believes a rigorous assessment has been performed by the Applicant. This assessment, presented in Appendix 1 of Volume II of the MLE2 application, includes a summary of the regional groundwater model developed for the diatremal groundwater system, along with a summary of the monitoring data and other measurable parameters (e.g., disturbed area) used to develop and calibrate this model. The report attributes the reduction in observed flow at the Carlton Tunnel since 2002 to: a) reduced precipitation (10%), b) covering of the diatremal catchment by the VLF (25%), and c) sequestration effects from the overburden storage areas (65%). The predominance of the overburden sequestration effect (with respect to flow reduction) is a result of the very large overburden stockpile already in place within the diatrema. The cumulative overburden storage area is being increased in size each year as mining continues. To date, the net effect of sequestration by the overburden has not increased, as evidenced by the flow rate at the Carlton Tunnel since 2002. Based on the aforementioned assessment, the Division does not anticipate the sequestration effect of the additional overburden proposed under MLE2 to have a significant impact on the flow rate at the Carlton Tunnel.

With respect to the “mineralization of waters within Four Mile Creek”, the Carlton Tunnel discharge is permitted by the CDPHE with its discharge parameters based on the receiving stream standards for Four Mile Creek. The permit also requires the operator to conduct wet testing in Four Mile Creek, below the discharge point. If impacts to the prevailing hydrologic balance are observed, corrective actions will be implemented at that time.

The Roosevelt Tunnel is not connected to any activity permitted by the Cresson Project, Permit No. M-1980-244.

3. *We feel the Storm Water Management Plan, as stated, does not sufficiently address storm water concerns, especially considering the Plan for Upper Grassy Valley. (Parsons/Clymer).*

The Division’s Response: The MLE2 stormwater management plan (SWMP) is consistent with the Division’s past and present requirements for managing stormwater at the Cresson Project. The Division believes these requirements and the proposed SWMP are adequate to manage stormwater.

4. *The Wildlife Protection Plan is inadequate. Another thing that stands out with this plan is that it doesn’t address the needs of much smaller species, including smaller aquatic species. Under “IV) Legacy Considerations” under “A) Reclamation,” states “Habitat management and creation, if part of the Reclamation Plan, should be directed toward encouraging the diversity of both game and non-game species, and shall provide protection, rehabilitation or improvement of wildlife habitat,” we*

question the words “if part of the Reclamation Plan” – what does this mean? If, indeed, the Reclamation Plan does include “Habitat management and creation,” we recognize that “non-game species” can include smaller species, including smaller aquatic species. We would request that CC&V specifically address these smaller species. (Parsons/Clymer).

The Division’s Response: The questions raised by the above comments are related to Rule 6.4.21(18) which requires the Applicant to describe measures to minimize or prevent harm or damage to wildlife species and habitat.

The Applicant has stated in the response to the Division’s adequacy review that additional raptor surveys will be conducted in the areas that have the potential to support red-tailed hawks prior to the disturbance of those areas. The Applicant has further committed to working with the Colorado Division of Parks and Wildlife (CPW) to identify mitigation measures should nesting raptors be present in the survey areas. The CPW did not provide further comments regarding impacts to wildlife for Amendment No. 10.

The Applicant has stated in the response to the Division’s adequacy review that habitat for small species will be created by emulating historic underground development rock piles. The rock piles will create microhabitats for small mammals (foxes, pocket gophers, and ground squirrels), rodents (field mice and voles), ground nesting birds, reptiles, and other wildlife species.

Smaller aquatic species have not been directly addressed under the Wildlife Protection Plan. However, one of the most important factors for healthy aquatic ecosystems is water quality, which is addressed under Exhibit G and Exhibit U.

The habitat needs of the various species that utilize the areas to be affected by the mining operation are interrelated. Therefore, habitat creation for large game species will also lead to the enhancement of suitable habitat for small non-game species. The Division is satisfied that the objection has been addressed.

5. *The “Design Precipitation Depths and Return Period Criteria” for the 10 yr/24-hr event is 2.7 inches. MLE2 is designed to cover the period from 2016 – 2025, a period of 9 years. You have sized ponds for 2 times the 10 yr/24-hr discharge volume... My [very rough] calculations show this volume of water to correspond to the discharge volume for a 90 yr/24-hr event (10 times the anticipated period for the mine life extension), and my question simply would ask whether you should consider designing ponds that are only marginally capable of handling the 100 yr/24-hr event, which could always occur in that 9-year mine life extension period? It seems to me that a safety factor of 10 is insufficient when considering the possible toxicities of the ponds’ fluids. (Hughes).*

The Division’s Response: Runoff volumes are not directly proportional to precipitation depth, but rather dependent on: rainfall intensity as it relates to infiltration capacity, depression storage, vegetation cover, and other factors. It turns out that the 10-year, 24-hour design storm runoff volume for most, if not all contributing areas within the Cresson Project is more than half the 100-year, 24-hour design storm runoff. Thus, the requirement to store the 10-year, 24-hour design storm runoff is typically more conservative than a requirement to store the 100-year, 24-hour design storm runoff.

Furthermore, runoff captured by these ponds is not stored indefinitely. Rather, the captured runoff is reduced via infiltration and evaporation. As such, these ponds are more often dry, than retaining stormwater.

Regarding “possible toxicities”, the ponds serve primarily to control sediment. The possibility of toxic substances entering these ponds is limited to incidents such as occasional spills, which is further reduced by the mine’s spill prevention and control plan. Facilities on site that utilize designated chemicals are by definition Environmental Protection Facilities (EPF – reference Rule 1.1(15)) and require an Environmental Protection Plan (EPF – reference C.R.S. 34-32-116.5). Finally, pursuant to C.R.S. 34-32-121.5 the mine is required to notify the Division “of any failure or imminent failure as soon as reasonably practicable after such person has knowledge of such condition” with respect to an EPF.

6. *Considering there may well be an “MLE3” (or another Amendment and/or Technical Revisions) requested in subsequent years – and perhaps even before the completion of MLE2 where reclamation becomes a dominant consideration - and recalling question 1 above, the risk for a 100 yr/24-hr event will be increased, so will the currently planned pond design allow for areal expansion for possible subsequent Amendment(s) and/or TRs? (Hughes).*

The Division’s Response: In the event the mine proposes another significant modification to their operating and/or reclamation plan, the Division will require an amendment be filed in a similar fashion as this MLE2/Amendment 10 submittal. At such a time, the Division will require the mine to meet the standards current at that time as promulgated by C.R.S.34-32-101 *et seq.*

7. *Per Section 2.6.3, item “3. After MLE2 Operations,” CC&V states “the liner systems of the valley leach facilities (“VLFs”) will be breached, and the surfaces reclaimed.” We feel strongly that this should not be accomplished, but have no historical data from other sites indicating this is the recommended approach to be used for dealing with a dormant and abandoned leachpad. ... Generally, as the statement indicating the breach will occur has not substantiated by any supportive information, we request some [very good!] analyses indicating that puncturing the liner has substantially better environmental effects than not puncturing it, prior to making any definitive statements. (Hughes).*

The Division’s Response: The primary reason for breaching the VLF liner system is in fact for safety. The lined area is essentially a large bathtub full of “gravel”. If the liner was not punctured and allowed to drain, this “bathtub” would fill to the rim with water (rainfall and snowmelt), spill over the low side of the liner and seep out, saturating the toe of the VLF slope. This would lead to an unstable condition for the several 100 feet of additional unsaturated gravel above the toe that could very well result in a significant slope failure. The puncturing of the liners serves three additional general purposes: 1) it will allow the Division to detect any metal releases from the VLF by monitoring the ground water compliance points during reclamation, 2) it will allow root zones to properly establish in and around the perimeter of the liners and 3) it will help eliminate build up of hydrostatic head.

Pursuant to the aforementioned general purpose No. 1, the liner is not punctured until after the VLF is rinsed. This detoxification process consists of rinsing with two pore volumes of water

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and one pore volume of hydrogen peroxide. The numeric limit for the decommissioning of the VLFs remains at 0.2 mg/l wad CN (weak acid dissociable cyanide).

- 8. *As BLM lands are within the expanded boundaries of Amendment 10, CC&V must be able to demonstrate a right of entry to those BLM lands, having properly pre-negotiated this with the BLM. (Hughes).***

The Division's Response: The BLM Royal Gorge Field Office coordinated with CC&V personnel at the BLM's request to determine if any federal lands were involved in the proposed MLE2 expansion. On June 8, 2012, the Division received confirmation from BLM that "there are NO federal interests located within the proposed permit expansion area".

- 9. *Regarding backfilling, we request that "economics" not be the criterion for that process, but that CC&V provide distinct and definite plans for backfilling some of the pits. (Hughes).***

The Division's Response: The Division will require the Applicant to adhere to the approved reclamation plan. However, the Division also acknowledges that extraordinary circumstances have the potential to occur, and that under such circumstances, economics should not be the primary criterion for altering the proposed reclamation plan with respect to backfilling the pits. Therefore, the Division worked with the Applicant to establish non-economic criteria on which to prioritize pit backfilling. These criteria included hydrology, water quality, safety and aesthetics (in no particular order). The following criteria were agreed upon by the Division and the Applicant. Based on the anticipated mine plan as presented in Section 5.7.3 of the Project Description within Volume 1 of the MLE2 application, the highest priorities for backfill to occur would be the main portion of the WHEX and western portion of the Globe Hill, should development of those areas occur. CC&V is committed to backfill these areas to promote free drainage of stormwater runoff from these areas. The establishment of free drainage of stormwater runoff is consistent with prior amendment applications reviewed and approved for the Cresson Project. The next priority would be the northern part of the WHEX portion of the East Cresson Mine area and Schist Island portion of the North Cresson Mine area, should development of those areas occur. CC&V is committed to backfill these areas to the approximate existing ground surface. The lowest priority for backfill would occur in the Main Cresson Mine area at the end of the expected mine life. As also presented in Section 12.4.1 of the Project Description within Volume 1 of the application, should development of the North Cresson occur, CC&V is committed to North Cresson Mine Area Viewshed Conservation Plan.

ISSUES RAISED BY COMMENTING AGENCIES WITHIN THE JURISDICTION OF THE BOARD

- 10. *We encourage the mine to review CPW's past suggestions when it comes to rehabilitation of the habitat after mining has concluded. (Colorado Parks & Wildlife).***

The Division's Response: See Item 4 above.

11. Request an update regarding the previously agreed to documentation of five (5) sites located within the Cripple Creek & Victor Gold Mine (CC&V), Cresson Project, Amendment (AM) #9 area... (State Historic Preservation Office).

The Division's Response: The SHPO has reviewed the documents submitted by CC&V. It appears they have received all of the documents discussed in their 2008 meetings with the exception that the documentation of the Simms Ore Sorting House (5TL.3596) is not complete as it does not meet Level II documentation standards. CC&V is continuing to work with the SHPO to resolve this discrepancy.

12. Request that the applicant coordinate with the Royal Gorge Field Office regarding this issue, prior to CDRMS issuing a decision on this amendment application. (BLM).

13. The Division's Response: See Item 8 above.

14. Is MLE2 included in any Substitute Water Supply Plan approved by the State Engineer of any application approved by the Water Court? (Division of Water Resources).

The Division's Response: CC&V has assured the Division that additional consumptive use with respect to MLE2 has been addressed with their water supply agreements.

ISSUES RAISED BY THE OBJECTING PARTIES NOT WITHIN THE JURISDICTION OF THE BOARD

15. Request to retrieve remains of Wayne B. Tease. (Kunz).

The Division's Response: The Division has no jurisdiction over this matter. The Mary McKinney mine shaft is approximately 1,300 feet deep and by several accounts, was unstable and unsafe. As such, the Division's Inactive Mine Program capped the shaft with a solid concrete plug. Documentation in the form of letters and interviews indicate all practical and safe measures were taken to retrieve Mr. Tease's remains prior to the shaft being capped. The Applicant has provided assurances that the Mary McKinney workings at depth will not be impacted by the current mining plans and has offered to create a new memorial site for Mr. Tease near the current site.

16. Request DRMS to not approve due to affect on viewshed. (Sharrett).

The Division's Response: The Division has no jurisdiction over this matter. Teller County has jurisdiction over issues related to viewshed.

17. We request some clarification on the amount of mercury air emissions, requesting that they be within EPA limits, and that any emissions occur so as not to have a primary deposition over the towns of either Cripple Creek or Victor. (Hughes).

The Division's Response: The responsibility for controlling air pollution falls under the Colorado Department of Public Health and Environment's Air Pollution Control Division. The Applicant has affirmatively indicated that the operation will comply with Air Pollution Control Division requirements.

18. In 2008 CC&V agreed to a 5-year minimum on post-mine-closure monitoring of the output from Carlton Tunnel, including bonding, and we request confirmation that this agreement will continue to be honored at the end of the proposed Amendment 10. (Hughes).

The Division's Response: The Applicant is required to perform a 5-year minimum post-mine-closure monitoring of the discharge from Carlton Tunnel as required by the Colorado Department of Public Health and Environment's Water Quality Control Division as incorporated into Amendment 9. Amendment 10 does not change this requirement. Therefore, it is still incorporated in to the permit.

Division's Conclusion and Recommendation

The foregoing discussion supports the Division's findings that the Hard Rock/Metal 112d-3 Amendment (AM-10) submitted by Cripple Creek & Victor Gold for the Cresson Project, Permit No. M-1980-244 has met the requirements of the Act and Rules and should be approved with conditions. It is therefore the Division's recommendation that, pursuant to §34-32-115(4) of the Act, the Board approve this Amendment AM-10 for the Cresson Project with the following condition(s):

- 1) Prior to placement of any liner system, CC&V shall submit and receive Division approval of, the requested weekly CQA reports for the placement of select overburden used as the foundation for the new mill.
- 2) Prior to construction of the new mill and SQVLF, CC&V shall submit and receive Division approval of, the requested additional design and analysis data to support the assertion that the mill vibrations and settling of the foundation material will not reduce the function of the new proposed SGVLF.