

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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November 28, 2012

Glen Williams
Cotter Corp.
P.O. Box 700
Nucla, CO
81424

John W. Hickenlooper
Governor

Mike King
Executive Director

Loretta Piñeda
Director

RE: SR-13A Mine, Permit No. M-1977-311, Comments Regarding 110d Amendment Application

Dear Mr. Williams,

On November 26, 2012 the Division of Reclamation, Mining and Safety (Division) received an objection (copy enclosed) to the above referenced application from INFORM.

Please inform the Division of how the Applicant will respond to the jurisdictional issues presented by INFORM by Friday, December 21, 2012.

If you require additional information, or have questions or concerns, please contact me at the DRMS Grand Junction Field Office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dustin Czaplá", written over a large, stylized blue circular mark.

Dustin Czaplá
Environmental Protection Specialist
Department of Natural Resources
Division of Reclamation, Mining and Safety
101 South 3rd, Suite 301
Grand Junction, CO 81501
Phone: (970) 243-6299
Fax: (970) 241-1516

Enc: INFORM Objection letter dated November 26, 2012

Cc: Ed Cotter, U.S. Department of Energy

RECEIVED

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GRAND JUNCTION FIELD OFFICE
DIVISION OF
RECLAMATION MINING & SAFETY

INFORM

INFORMATION NETWORK FOR
RESPONSIBLE MINING

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Nov. 26, 2012

Mr. Dustin Czapla
Colorado Division of Reclamation, Mining and Safety
Grand Junction Field Office
101 South 3rd St., Ste 301
Grand Junction CO 81501

Via email to dustin.czapla@state.co.us

Re: Cotter Corporation 110(d) SR-13A amendment application, Permit No. M-1977-311

Dear Mr. Czapla,

Thank you for the opportunity to comment on the Environmental Protection Plan submitted by Cotter Corporation for the SR-13A Mine (Permit No. M-1977-311, AM-01), located on the Dolores River in western San Miguel County, Colorado. The Information Network for Responsible Mining is a Colorado-based citizens organization that advocates for the protection of communities and the environment and actively participates in mining reviews. INFORM appreciates your consideration of the following comments and concerns related to the amendment application.

The SR-13A has not produced ore since at least Aug. 27, 1980, when Cotter Corporation requested that the Division approve the mine for Temporary Cessation status. That was 32 years ago.

The SR-13A is in a sensitive location on slopes above the Dolores River in one of Colorado's most spectacular canyons. Historic contamination and waste areas outside the permitted area continue to impact the Dolores River and the Slick Rock area. The siting of the SR-13A make it problematic and poses serious risk that radionuclides and other mining-produced contaminants could harm the watershed, especially under the limited oversight and maintenance that occurs

with an idled mine. Considering the inactivity of the mine for such an extensive amount of time, the permit should be terminated. The Division's Sept. 14, 2011, inspection of the SR-13A recommends the full release of the permit, notes that the site is fully releasable under existing requirements, and that the permit is out of date and must be revised in conjunction with the consideration of a new EPP amendment.

Cotter Corporation's submitted application raises a number of environmental concerns. Should the EPP be approved, the impacts of any future mining should be evaluated in context of the presence of desert bighorn. The application's information related to wildlife appears out of date and does not take into consideration the reintroduction of 30 bighorn to Slick Rock in 2010 and 2011 and the additional in-migration of wild sheep to the group. The Dolores River herd now numbers around 60 animals. Desert bighorn are a species with a special management focus for Colorado Parks and Wildlife and the Bureau of Land Management, and they are a BLM Colorado Sensitive Species. Both agencies should be consulted so that bighorn habitat in the vicinity of the SR-13A and other Slick Rock area mines is fully protected. Regional bat species are also of concern and are likely to be present in any of the mines in the Slick Rock area, including Thompson's Big Eared Bat, another BLM sensitive species. The portals of the SR-13A are currently sealed with bat gates. The final reclamation should retain the bat gate closures and protect any potential bat habitat. The site provides critical winter habitat for mule deer and the Environmental Protection Plan should include specific provisions for how habitat and wildlife will be protected during these periods. Raptors, songbirds, pronghorn and numerous other species all find habitat in the area, and the Dolores River provides potential habitat to endangered fish.

Because of the limited area for mine staging and the quarter-acre size of the proposed ore pad, special consideration for the potential of migration of contaminants into the nearby Dolores should be considered. If future mining activities are approved, the ore storage area should be lined with a synthetic liner and ore should be fully contained; the proposed compacted clay base is not sufficient to guarantee that the river will be protected. Ore storage should be strictly limited to 30 days total after ore is removed from the mine, not just 30 days after mining has ended. Cotter Corporation says in the amendment application that it will conduct a radiometric survey, but doesn't say when; the survey must be conducted as soon as possible so that it may be considered in context of the Environmental Protection Plan and address how the public, wildlife, ground water and surface waters will be impacted. The site currently has no stormwater management features; those features proposed in the Environmental Protection Plan should be implemented as soon as possible regardless of future permitting status.

The amendment application also does not address the actual or potential recreational use of the area in the immediate vicinity of the SR-13A. The Dolores River is used by boaters and anglers as well as some commercial outfitting. The Slick Rock area and adjacent canyons are frequented by many types of visitors and quiet users, including climbers, hikers, photographers, birders and wildlife enthusiasts. The Dolores River canyons are of special concern to many environmental and conservation groups in the region because of its importance as a tributary of the Colorado

River; regionally, stakeholder groups have worked collaboratively to address overall environmental, ecological and economic issues in the watershed. Any future mining plans should consider the multiple uses of the public lands surrounding the SR-13A site and impacts to recreational users.

The Division's Oct. 25, 2012, adequacy review addresses a number of issues that are also of concern to INFORM. The amendment application does little to address the Rules' requirements that the adverse impacts of uranium mining and the potential for forming toxic materials or acid mine drainage that can harm the environment, particularly from the ore storage and waste areas. Baseline water quality should be established with the immediate development of a monitoring well and the collection of five quarters of monitoring data, rather than accepting Cotter's proposal to develop a monitoring well if and only if groundwater that is encountered has uranium present. The amendment application makes a passing reference to the presence of numerous water monitoring wells in the vicinity of SR-13A, including wells at the nearby Slick Rock UMTRA site. All available data from nearby wells should be collected and considered in determining the hydrological issues of the general site vicinity and potential for contamination through renewed mining activities. The application notes that other wells in the vicinity have indicated the presence of water as high as 50 feet below the surface, yet the applicant has chosen to design its plan around the assumption that much lower water depths will be encountered. The hydrology of this important riparian zone should be fully documented and explained by the applicant, utilizing all available information.

The Division's adequacy review identifies a number of places where Cotter has not provided sufficient information in the application. These include identifying adjacent property owners, fully identifying drainages and waterways, information about the amount of ore that will be stockpiled on site, the size and design of waste rock piles, and information about how offsite impacts will be addressed. Cotter should be required to address all these issues thoroughly. As the technical review proceeds and Cotter responds to the Division's requests, INFORM reserves the right to supplement these comments as appropriate.

The SR-13A is also located in an area rich with cultural and archeological resources and should be properly surveyed. Because the SR-13A is on a Department of Energy leasing tract, it is subject to the forthcoming Programmatic Environmental Impact Statement and the site-specific analysis under the National Environmental Policy Act that will be required for mining to begin. These and many of the additional issues and cumulative impacts raised by the possibility of mining at the site can and should be addressed through this site-specific NEPA analysis.

In addition, Cotter is subject to a federal court injunction in the litigation *Colorado Environmental Coalition et al. v. Department of Energy* and must adhere to the Colorado Mined Land Reclamation Act (MLRA) and the Division's Rules. Under the injunction, Cotter is prohibited from engaging in any exploration or mining activities and this precludes Cotter from obtaining an "Active" status for SR-13A in the near-term.

This raises the serious issue of compliance and the longterm idleness of the SR-13A. Again, we are discussing a mine that has been inactive for over 32 years. That is specifically prohibited under the MLRA, which clearly states 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." [See C.R.S. § 34-32-103(6)(a)(III).] Production at the SR-13A ceased in 1982 or earlier; following two periods of five-year cessation, Cotter should have entered reclamation in 1992 and the permit should have been released once the work was completed.

That release did not happen and neither did timely reclamation. According to the current amendment application, Cotter finished reclamation work at the site in 2003, 21 years after the mine stopped producing. Yet it has continued to assert that the mine is entitled to intermittent operation and retained the permit, a violation of the MLRA and the Division's Rules. This unjustified status has been routinely and unlawfully asserted by Cotter for years as the company has resisted all attempts to bring all of its mines into universal compliance with the MLRA and the terms of HB 08-1161, the 2008 legislation that requires the Environmental Protection Plan. Already it has taken nearly five years for Cotter to submit the Environmental Protection Plan to the Division for review, despite numerous notices and requests. Most recently, the Division informed Cotter on November 9, 2012, that the SR-13A was in violation of the MLRA and does not meet the requirements of Intermittent Status. Cotter was informed that it must re-commence mining activities at the SR-13A (impossible without an approved Environmental Protection Plan, a lifting of the DOE injunction, or the conclusion of a NEPA review) or enter Temporary Cessation status before Dec. 15, 2012.

Allowing Cotter to enter Temporary Cessation again, however, ignores the requirements of the MLRA that in no instance nor under any circumstances may a mine remain inactive for longer than 10 years. Allowing Cotter to enter a new period of Temporary Cessation virtually guarantees that the SR-13A will be idle for more than four decades by the time it is done and finally forced into compliance. Cotter has not demonstrated adequately in the amendment application that it has any real intent to actually mine and produce ore at the SR-13A. Cotter lacks authorization, it lacks the final development of facilities, it lacks a viable economic market, and it lacks the ability to process ore or access to a toll mill that will purchase it. This prolonged time frame of maintaining an idle status at the SR-13A is simply unacceptable. Given Cotter Corporation's record of noncompliance and outright resistance through legal means to come into compliance with Division requests and Colorado law, any other scenario other than permit termination would only provide more opportunity for Cotter to continue its established tactics.

A foundational tenet of HB 08-1161 was the need to address through legislation the noncompliant status of uranium mines that sit unworked and untended through the years without entering final release and reclamation; persisting as a relentless public risk and environmental problem for decades, with no final resolution. The SR-13A is a stellar example. Consider that this mine was permitted in 1977, during an era when the Division was rapidly ushering through the permitting of historic uranium mines across the state under the first programmatic

implementation of the State's fledgling regulation; that was a vastly different regulatory climate than exists today. It is certainly a vastly different political and cultural atmosphere than exists today across Colorado, in which the mines are required to operate under standards that are highly protective of the environment and the ecological health of watersheds and water ways. A uranium mine whose active status exists only on paper, yet remains physically untended in its highly problematic location on slopes above the Dolores River, is not acceptable under these contemporary standards.

The only reasonable alternative for the SR-13A to come into compliance with the law is to complete a full release and reclamation and terminate the permit. In the future, should the uranium market ever return to viability, should there ever be the ability to process, and should Cotter actually intend to exploit the ore resource at SR-13A, then it should have every right to apply for a new permit and be reviewed under contemporary Colorado, federal and county regulations and standards. At that time, Cotter should be provided the opportunity to withstand the tests of environmental protection and community benefit and receive a fresh permit.

INFORM believes that time is not coming soon and no truthful market indicators exist to convince us otherwise. If Cotter's proposal is accepted, then the SR-13A will sit around unlawfully through two more periods of Temporary Cessation under an outdated permit without being fully reclaimed and while posing direct risks of contamination to the Dolores River. The distant memory of mining at that location will grow older by another decade. This simply should not, and cannot, be allowed.

Thank you again for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Thurston".

Jennifer Thurston
Director
INFORM