

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY
Department of Natural Resources

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November 28, 2012

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

John W. Hickenlooper
Governor

Mike King
Executive Director

Loretta Piñeda
Director

RE: JD-6 Mine, Permit No. M- 1977-310, Comments Regarding 110d- Amendment Application (AM1)

Dear Mr. Williams,

On October 26, 2012 the Division of Reclamation, Mining and Safety (Division) received comments regarding the above referenced application from the Information Network For Responsible Mining (INFORM).

Please inform the Division of how the Applicant will respond to the concerns presented by INFORM.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "sreigh", written over a horizontal line.

Stephanie Reigh

Environmental Protection Specialist
Department of Natural Resources
Division of Reclamation, Mining and Safety
101 South 3rd, Suite 301
Grand Junction, CO 81501
Phone: (970) 242-5025
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Enc. INFORM comments dated November 25, 2012

Cc: Ed Cotter, DOE

Addressee Name

Date

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Nov. 25, 2012

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

INFORM
INFORMATION NETWORK FOR
RESPONSIBLE MINING

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TELLURIDE, CO
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(212) 473-7717
jennifer@informcolorado.org
www.informcolorado.org



Via email to Russ.Means@state.co.us

Re: Cotter Corporation 110(d) Mineral Joe amendment application, Permit No. M-1977-284, and 110(d) amendment application, JD-6, Permit No. M-1977-310

Dear Mr. Means,

Thank you for the opportunity to comment on the Environmental Protection Plans submitted by Cotter Corporation for the Mineral Joe (Permit No. M-1977-284) and C-JD-6 Mine (Permit No. M-1977-310) located in western Montrose 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 questions and comments related to the amendment applications for the Mineral Joe and JD-6 mines. Because the mines are essentially the same facility under two permits, we feel it is appropriate to comment on them together and encourage the Division to consider them as a cohesive mining facility that should be regulated under a single 112(d) reclamation permit.

Because the JD-6 uses the Mineral Joe portals for access and emergency exits and the features of the Mineral Joe are exclusively used for supporting mining activities on the JD-6 such as ore storage, the two permits should be consolidated and considered as a single mining operation. Having two separate applications results in a duplicative and confusing presentation that is a burden to the public. Having a single permit file for the entire mining site would foster a more cohesive review of the environmental impacts and allow a more comprehensive reclamation plan to be developed. In addition, the existing reclamation permit for the Mineral Joe is out of date and, if it is not discontinued, should be reviewed entirely rather than just approving the Environmental Protection Plan alone.

Neither the Mineral Joe nor the JD-6 are compliant with the Colorado Mined Land Reclamation Act. Cotter Corporation has been able to escape the reclamation requirements of MLRA by placing both permits on Intermittent Status for lengthy periods despite the lack of any mineral production -- in the case of the Mineral Joe, since 1994; and in the case of JD-6, since 1990 -- and clearly, both permits have been out of compliance with the law for two decades. In fact, Cotter Corporation's noncompliance reaches back even further, since there has been no serious, consistent and documented active mineral production at the mines prior to 1985. Although Cotter claims to have produced some ore at the JD-6 in late 2005 through February 2006, this brief output does not represent a return to active mining, since the ore was never delivered to a mill for processing. In any case, Cotter failed in 2006 to maintain its earlier approved Intermittent Status by notifying the Division; by actively extracting ore that year, Cotter implicitly ended the Intermittent Status and once operations ceased again, should have been fully reclaimed pursuant to the Mined Land Reclamation Act at that time. In any case, the clock had run out on Temporary Cessation status for both these permits many years before that. Actual ore production numbers for the Mineral Joe or the JD-6 have not been reported, presumably because there has been no real production.

In any case, there is no reference to Intermittent Status in the MLRA but it is explicitly stated that in no instance may a mine remain in a non-producing status for longer than 10 years; after 10 years of non-production, in all cases, a mine must be closed and reclaimed. [See C.R.S. § 34-32-103(6)(a)(III) where it states, "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."] Thus, regardless of whether the Division considers some of the activities occurring at a permitted mine site as "operations" under the Board's regulations, the MLRA instead speaks unambiguously in terms of "production" or ore.

In the case of the Mineral Joe, there has been no documented mining activities other than to support access to JD-6, and the last activity reported on Cotter's most recent annual report occurred in November 2005. These activities cannot be considered "production" under any reasonable interpretation of the MLRA. The Mineral Joe portal that is used for escape from the JD-6 has been collapsed since at least 2010, underscoring the inability of Cotter Corp. to mine at the site safely and necessarily limiting the types of activities they can undertake there. But the Mineral Joe's dormancy dates back far longer; original mining operations ceased in March 1984, during the previous ownership of Kelmine Corp. [Please see Division's March 22, 1999 inspection report of the Mineral Joe and Aug. 1, 1985 Notice of Temporary Cessation from Kelmine Corp in the file record.] In all, the record demonstrates an astounding 28 years of non-production at this mine through multiple ownerships, far longer than the explicitly defined maximum limit of 10 years of non-production under the MLRA.

Many parts of the Mineral Joe's permitted area have been reclaimed and as much of the remaining area that can be reclaimed should be reclaimed and released from the permit. Shaft 12 should be reclaimed since it is also collapsed and not usable for accessing the JD-6 and most of the area around it has been reclaimed already.

In addition, because the Mineral Joe has largely been reclaimed, it appears that there is no current, updated BLM Plan of Operations for the site nor any site-specific NEPA analysis, both of which must be in place before any mining activities can recommence. Because the Mineral Joe is tied to the JD-6, it should be subject to the final recommendations and record of decision in the pending Programmatic Environmental Impact Statement for the Department of Energy's Uranium Leasing Program and the site-specific analysis that will be required and conducted in the future as part of that PEIS.

In the case of inactivity at the JD-6, Cotter Corporation takes the untenable position in its Oct. 1, 2012, letter to the Division that it is entitled to Intermittent Status because in 2011 it removed some soil from a pond, and that meets the definition of "active mining activities" under the MLRA. However creatively Cotter interprets the law, removing soil from a pond cannot possibly be considered "production" under the MLRA. Simply put, the Division should put a permanent stop to Cotter Corporation's decades-long tactics to avoid reclamation of uranium mine sites that have not seen any serious effort at mining. In order to maintain Intermittent Status, some active mining must occur each year and the MLRA explicitly states that active mining does not include "general site maintenance, or off-site smelting, refining, cleaning, preparation, transportation, and other operations not conducted on affected land." [C.R.S. § 34-32-103(8); Rule 1.1(31)].

Cotter Corporation is also shielding its inactivity by misinterpreting the intent of the federal court injunction currently in effect at the JD-6 and claiming that it is relieved of responsibility to undertake any exploration, drilling or mining activities. The inactive state of both the JD-6 and Mineral Joe long predate the DOE court injunction. At maximum, because of the conditions of the injunction, the only proper status for the JD-6 is Temporary Cessation; Cotter must comply with Colorado state law on this matter, and Cotter is quite late in filing the technical revision to formally obtain this status. It is inappropriate for Cotter to delay these filings, as it suggests that it will in its Oct. 1, 2012, by saying that it will not review its status until next year at the earliest. This allows Cotter to continue the same pattern it always has and exacerbates the ongoing violation of the 10-year non-production prohibition in the MLRA.

Because the termination of the JD-6 and Mineral Joe permits are long overdue, the Division should not approve the proposed Environmental Protection Plan without strong conditions to ensure timely resumption of mining activities, time-limited periods of 30 days for stockpiling ore on-site, and continued ground water quality monitoring on a quarterly basis. Cotter should also be required to demonstrate where it will transport and process ore, since it has closed its own mill in Cañon City, Colo., and Energy Fuels Resources has recently announced that it will reduce toll processing at the White Mesa Mill in Blanding, forgo construction at any potential new mills, and concentrate on its own production and waste reprocessing into the foreseeable future. Because of the decades-long inactivity at these mines, and Cotter's failure to seriously demonstrate that they will resume mining activities, the Division should require Cotter to enter into full reclamation at both sites and stop delaying their inevitable closure.

The Environmental Protection Plan for the JD-6 indicates there are currently no groundwater monitoring wells on site. If the site does not enter reclamation, Cotter should be required to install the proposed monitoring well as soon as weather permits and gather at least five quarters of water quality monitoring data should in order to establish current baseline conditions. Rather than sampling only once a year, Cotter should be required to continue quarterly monitoring as long as its permit remains active.

As the technical review of the Mineral Joe and JD-6 amendments proceeds, the public should be able to consider that review and the entire permit file comprehensively and weigh in when serious issues arise, especially when the applications have been deemed complex and the review time lengthened. INFORM reserves the right to supplement these comments as appropriate as the review continues. Again, thank you for your consideration.

Sincerely,

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

Jennifer Thurston
Director
INFORM