

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

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December 5, 2012

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

John W. Hickenlooper
Governor

Mike King
Executive Director

Loretta Piñeda
Director

RE: C-LP-21 Mine, Permit No. M-1977-305, Comments Regarding 112d Amendment Application

Dear Mr. Williams,

On December 5, 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, January 04, 2013.

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 black ink, appearing to read "Dustin Czapla", with a long horizontal flourish extending to the right.

Dustin Czapla
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 December 5, 2012

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

RECEIVED
DEC 05 2012
GRAND JUNCTION FIELD OFFICE
DIVISION OF
RECLAMATION MINING & SAFETY

INFORM
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RESPONSIBLE MINING

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Dec. 5, 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 112(d) C-LP-21 amendment application, Permit No. M-1977-305

Dear Mr. Czapla,

Thank you for the opportunity to comment on the Environmental Protection Plan submitted by Cotter Corporation for the C-LP-21 Mine (Permit No. M-1977-305, AM-01), located on Long Park 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 comments and concerns related to the amendment application.

On Aug. 8, 1980, Cotter Corporation requested that the LP-21 Mine be entered into Temporary Cessation and it has not operated since. Considering the idled state of the LP-21 for the last 32 years, this is not the time to approve an Environmental Protection Plan but, rather, a final reclamation plan and permit termination.

It is important to consider how the LP-21 has remained inactive for over three decades. Between 1980 and 1990, the mine went through two authorized periods of Temporary Cessation, as allowed under the Colorado Mined Land Reclamation Act. Then, Cotter submitted a technical revision to be considered an intermittent operation, a status for which it does not meet the definition in the Division's Rules. The technical revision was approved on a technicality because

the State did not consider it before the statutory deadline. Even though a mine classified as an intermittent operation is required to conduct mining activities each and every year, the LP-21 has remained inactive. [See C.R.S. § 34-32-103(6)(a)(II).] During this 32-year period of inactivity, Cotter has not reported to the Division any production of ore, even though the production of ore is required in order to be actively mining. In its annual reports through the years, Cotter repeatedly failed to provide adequate information about activities at the LP-21 until its most recent annual report was filed on Feb. 21, 2012. In that report, Cotter dated the last activity at the LP-21 to “~2001.” That approximate reporting was off by more than two decades.

The Division has recently warned Cotter that it is in violation of the law and is not entitled to Intermittent Status and imposed a deadline of Dec. 15, 2012, for the LP-21 to provide notice of Temporary Cessation. Cotter has previously reiterated in correspondence with the Division that it is entitled to remain on Intermittent Status and intends to do so. Of course the Division will prevail in the end, and delay appears to be Cotter’s only intent. Even though INFORM understands the Division’s position, we do not believe under any circumstances that the LP-21 is entitled to another period of Temporary Cessation. Having already spent 10 years with this status, Cotter is not entitled to wipe the slate clean and start again. That only makes certain that the mine will remain inactive for another decade. The MLRA clearly 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.” [See C.R.S. § 34-32-103(6)(a)(III).] Production at the SR-13A ceased in 1980 or earlier; following the first two periods of cessation, Cotter should have entered reclamation in 1990 and the permit should have been released once the work was completed.

But Cotter waited instead until ~2000 to start reclamation and concluded all work required under existing standards in 2003, according to the Division’s records. In the Division’s Sept. 20, 2011, inspection report, the “fully reclaimed mine site” was recommended for final inspection and release, as the permit was out of date and would need to be completely revised along with this Environmental Protection Plan.

That recommended permit revision has still not occurred, nor will it. In the Environmental Protection Plan amendment, Cotter asserts that it is permitted as an intermittent operation but does not adequately demonstrate that it has any real intent to actually mine and produce ore at the LP-21. Not only is the uranium market unviable and the mine in need of facilities, Cotter has no means to process its ore as it has permanently closed its mill in Cañon City and there is currently no other mill accepting ore. Cotter also attempts to shield itself from its obligation to actively mine at the LP-21 with the court injunction imposed in the Department of Energy in the legal case *Colorado Environmental Coalition et al v. DOE*. The injunction prohibits Cotter from undertaking any exploration or mining activities and specifically inhibits Cotter’s ability to engage in active mining activities each year in order to comply with Intermittent Status, rather than the other way around. The injunction and the Department of Energy also require Cotter to comply with the Mined Land Reclamation Act and Colorado’s Rules.

The LP-21 is also subject to the court's decision in the DOE legal case and the pending Programmatic Environmental Impact Statement, which requires site-specific analysis under the National Environmental Policy Act. This future review, combined with the current lack of authorization, the likelihood that additional mill processing will remain unavailable for many years, and the economic state of the market, means that the LP-21 will remain dormant into the foreseeable future. This is all the more reason to terminate the permit now, and this is the only reasonable course toward bringing the LP-21 into compliance with the law. Should the day arrive when mining at the LP-21 becomes a possibility, Cotter should be entitled to apply for a new permit and withstand the scrutiny of regulators and the public under contemporary rules and standards.

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 of delay. A prolonged state of suspended activity without bona fide mining is intolerable, especially when it is in flagrant disregard of the law.

The Division's Oct. 30, 2012, adequacy review addresses a number of issues that are also of concern to INFORM, including deficiencies in planning for offsite impacts of standby mining, the potential impacts to the nearby Horsethief Spring, lack of complete information in the geotechnical stability analysis and others that Cotter should be required to address thoroughly. Cotter's proposed water quality monitoring plan is also insufficient. Monitoring wells should be installed at the site now in order to establish adequate baseline data, not when water is produced by mining and installation is dependent on testing results.

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. Previous SPLP testing indicates that aluminum is a constituent of concern and the ore has a high likelihood of creating acid leaching. 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. SPLP tests should be conducted on both the ore and waste rock at regular intervals when the mine is operating. The assertion that radionuclides will not migrate off the ore pad or waste rock pile is based on the assumption that limited precipitation and natural geology will prevent that from happening. It would be more prudent to require synthetic liners in the ore pad and waste rock areas to decrease the likelihood of any leaching effects. 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.

Cotter should also be required to demonstrate that it has adequate water available for mining. In the application, Cotter says it plans to purchase water from the Town of Naturita and a commercial hauler will deliver it to the mine, up a long and below-standard back road, at the rate

of 10,000 gallons per month. In a recent CDPHE hearing Energy Fuels testified that during portions of dry years the region's rivers cannot provide an adequate water supply for Energy Fuels to saturate and cover the mill tailings in its proposed waste disposal cells at the Piñon Ridge site. Like Cotter, Energy Fuels also plans to rely on a letter-agreement to purchase San Miguel River water from the Town of Naturita. Where multiple companies are relying Town of Naturita's seemingly unlimited willingness to promise water to the uranium industry, the Division should require Cotter to provide proof regarding the Town of Naturita's right and ability to provide water to multiple operations and companies.

Stormwater management features should be implemented at the LP-21 regardless of its permitting status or the commencement date of future authorized mining. Stormwater management features should be implemented in order to protect surface and ground water from the possibility of contamination from the reclaimed waste rock and ore pad areas.

Because the mine is located in both winter range and severe winter range for mule deer and elk, it should be restricted from operating between December and April, and prohibit any road extensions or new road construction in order to reduce habitat fragmentation. The Environmental Protection Plan should include specific provisions for how wildlife and habitat will be protected during these periods. Water features at the mine site and ore stockpile areas should be controlled so that wildlife can't access them. Final reclamation plans should include the use of bat gates on closed portals in order to accommodate bats in the future. The area is home to 10 bat species, including the Thompson's Big Eared Bat, a BLM sensitive species and a species of special concern in Colorado, which should be considered in the review.

As the technical review proceeds and Cotter responds to the Division's requests, INFORM reserves the right to supplement these comments as appropriate. Thank you again 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