



February 1, 2013

Mr. Dustin Czapla
Environmental Protection Specialist
Department of Natural Resources
Colorado Division of Reclamation, Mining and Safety
Grand Junction Field Office
101 South Third St., Suite 301
Grand Junction, CO 81501

RECEIVED
FEB 04 2013
GRAND JUNCTION FIELD OFFICE
DIVISION OF
RECLAMATION MINING & SAFETY

RE: LP-21 Mine, Permit No. M-1977-305, Response to Comments from Information Network for Responsible Mining ("INFORM")

Dear Mr. Czapla:

I am writing in response to your letter dated December 5, 2012, which requests that Cotter Corporation (N.S.L.) ("Cotter") respond to the jurisdictional issues presented by INFORM in its letter, dated December 5, 2012, to the Division of Reclamation, Mining and Safety ("Division"), regarding Cotter's 112d Amendment Application ("Amendment") for the LP-21 Mine. Subsequent to writing its letter, the Division expanded its request to also include the non-jurisdictional issues presented by INFORM. This letter is written to comply with the Division's original and expanded requests, and will respond to INFORM's concerns in the order in which it presents them in its letter.

I. Jurisdictional Issues

INFORM asserts several positions in its December 5, 2012 letter that misstate the authority of the Division and the Mined Land Reclamation Board ("Board") under the Mined Land Reclamation Act ("MLRA"), C.R.S. §§ 34-32-101 to -127, and its implementing regulations, particularly as to the Division's and Board's authority to approve intermittent status for the LP-21 Mine and to place the LP-21 Mine into temporary cessation. While Cotter will address those positions below, it also wishes to make clear that INFORM's assertions on jurisdiction should not be considered in this proceeding.

The purpose of the Environmental Protection Plan ("EPP") for the LP-21 Mine is to meet the requirements of Hard Rock/Metal Mining Rule 6.4.21 and to update portions of Cotter's permit, not to question the Division's prior approval of intermittent status. The EPP process is neither the time nor proper procedure to criticize Division decisions made more than two decades ago or to present legal arguments regarding how the Division should be implementing its intermittent status and temporary cessation rules. Cotter applied for intermittent status for the LP-21 Mine on July 26, 1990. In its application, Cotter described the activities undertaken since 1980 which constituted mining operations and which qualified the mine to be in intermittent status. By letter dated December 5, 1990, the Mined Land Reclamation Division informed Cotter that its application was deemed approved as a matter of law. The Division has consistently confirmed

the LP-21 Mine's intermittent status since that approval, including in an inspection report signed October 1, 1999. Moreover, in a letter dated September 30, 2011, the Division requested that Cotter update its permits by submitting EPPs, which Cotter has now done. INFORM should not be allowed to question these decisions or the LP-21 Mine's future status in this proceeding where these decisions and status are not now being adjudicated, and Cotter is merely attempting to comply with the Division's requests to update its permit and submit an EPP. INFORM's assertions on temporary cessation are especially inappropriate in this proceeding, because Cotter submitted a Notice of Temporary Cessation for the LP-21 Mine in mid-December 2012. The filing of such notice initiates a separate administrative process specifically addressing temporary cessation.

Notwithstanding the above, Cotter responds below to the specific jurisdictional issues raised by INFORM.

- A. *INFORM Comment: 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.*

The LP-21 Mine has not been idle for the last 32 years. In its July 26, 1990 application for intermittent status, Cotter expressly told the Division that "Since 1980, many activities have been undertaken at the LP-21 Mine which constitute mining operations according to the current definition in the Mineral Rules and Regulations." As explained in Cotter's application, those activities included "surface and underground drilling, determining ore reserves, radiometric scanning, ore sampling, mine mapping, mine feasibility studies, geological report preparation, mine surveying, timber installation/ repair and ground control in preparation for mining, ventilation fan installation for geologic and survey projects, and resurfacing the portal area in preparation for mining." Cotter also informed the Division that in the "most recent nine year period, \$391,600 were spent at the mine (an average of \$43,500 per year) on activities of this nature, as well as mine maintenance," and "the ability to produce ore from the [LP-21] Mine and process it through a milling facility has been actively maintained" Further, Cotter informed the Division that "Since 1980, Cotter has operated the LP-21 Mine as an intermittent operation." Subsequent to 1990, there was a variety of activity at the site. Ground support work occurred in 1995, 1998, 2000, and 2002, and surface drilling occurred in 1996. Additional drilling occurred in 2010.

INFORM's claims that this is not the time to approve Cotter's EPP, and that the permit should be terminated, are also without support. On one hand, as shown above, the LP-21 Mine has not been idle, as alleged by INFORM. But even if the above-described activity had not occurred, Cotter's Amendment and EPP should be approved. Substantial economic reserves continue to exist at the LP-21 Mine, and these reserves can be mined in the future. *See* Colorado Division of Reclamation, Mining, and Safety Minerals Program Inspection Report, signed July 30, 2010, at 2 ("The mine was reclaimed due to economic reasons and not ore reserve depletion. Should

favorable market conditions evolve Cotter could reactivate the mine once an approved [EPP] amendment is approved.”). Cotter intends to mine those reserves when market conditions recover, and has submitted a plan to the Division for doing so. Further, through its EPP, the Amendment, and its Response to Adequacy Review #1, Cotter has submitted to the Division the measures it will take to prevent off-site impacts during periods of inactivity. The site will be inspected one to two times per week during periods of temporary cessation. If any adverse off-site impacts are noted, Cotter will take appropriate steps to correct the problem. The reclaimed waste rock pile has a 4H:1V slope, and vegetation is well established. Moreover, as discussed in sections 6.1.3.3, 8.3.2 and (10) of the EPP, it is unlikely that there would be any adverse effects on surface or groundwater from the LP-21 site. Cotter has submitted a Notice of Temporary Cessation to the Division in compliance with C.R.S. § 34-32-103(6)(a)(II) and Hard Rock/Metal Mining Rule 1.13.5.

- B. INFORM Comment: 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.*

Whether the LP-21 Mine currently meets the definition of an intermittent operation is irrelevant to this proceeding. On one hand, as discussed above, that question does not bear upon the question of whether Cotter's EPP for the LP-21 Mine should be approved. The question is also irrelevant because Cotter has submitted to the Division its Notice of Temporary Cessation for the LP-21 Mine. In that notice, dated December 13, 2012, Cotter requested a change in the permit status for the mine from intermittent activity to temporary cessation, and requested that such change be made effective December 15, 2012. The notice explains that Cotter plans to resume production at the mine after the price of uranium returns to a profitable point. The plan for such resumption of mining is attached as Exhibit D to Cotter's Amendment. Cotter's notice satisfies the requirements of Hard Rock/Metal Mining Rule 1.13.5, and should therefore be approved.

- C. INFORM Comment: 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 LP-21 Mine has not been inactive for 32 years, as explained above. INFORM is also incorrect that active mining requires the production of ore. As explained in correspondence from

the Division dated January 24, 2012, “Active mining includes the development or extraction of a mineral from its natural occurrence, and/or, the following other activities on affected land: transportation, concentrating, milling, evaporation, and other processing. See C.R.S. § 34-32-103(8); Rule 1.1(31).” Letter, dated January 24, 2012, from the Division, to Cotter, re LP-21 Mine. The Division has also expressly found that the construction of Environmental Protection Facilities is a mining activity, because “[t]he construction of the facilities is part of the infrastructure required to develop the site towards extraction of a mineral . . . and therefore considered a mining activity.” Letter, dated November 9, 2012, from the Division, to Cotter, re CM-25 Mine.

Cotter has submitted annual reports to the Division in compliance with the MLRA and the Board’s Rules. Contrary to INFORM’s assertion, Cotter’s most recent annual report for the LP-21 Mine, dated February 21, 2012, did not date the last “activity” at the site as approximately 2001, but identified that date in response to a question requesting the “date of last excavation, processing or hauling activity at the mine.”

- D. *INFORM Comment: 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.*

Since 1990, when the LP-21 Mine entered intermittent status, Cotter has regularly submitted annual reports to the Division in compliance with the MLRA and the Division’s rules. The Division has also regularly inspected the LP-21 Mine, as documented by its written reports. None of these reports found that, by maintaining intermittent status for the LP-21 Mine, Cotter was violating the MLRA or the Division’s rules. Cotter is aware that, in November 2012, the Division found that the LP-21 Mine did “not meet the definition of an intermittent operation as defined by the Act and Rules and [is], therefore, not in compliance with the law.” Letter dated November 9, 2012, from G. Russell Means, Division, to Cotter, at 2 (bold and underscoring omitted). However, the basis of that finding was the injunction entered by the United States District Court in *Colorado Environmental Coalition v. Office of Legacy Management*, 819 F. Supp. 2d 1193, 1224-225 (D. Colo. 2011), and the fact that such injunction still did not authorize “exploration, drilling, [and] mining” on Uranium Lease Management Program lands. *Colorado Environmental Coalition v. Office of Legacy Management*, 2012 WL 628547 (D. Colo. Feb. 27, 2012). Because of this federal court prohibition on mining and exploration and the “significant delay related to the DOE PEIS process,” the Division concluded “TC is the only status that would allow these sites to remain [compliant] with State law.” Under these circumstances, INFORM’s claim that the Division found Cotter in violation of the MLRA mischaracterizes the facts. Cotter filed for temporary cessation on December 15, 2012.

- E. *INFORM Comment: 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).]

This comment is based on INFORM's contention that the MLRA imposes a ten-year limit on the amount of time that a mine can exist in temporary cessation over its entire life. To support this contention, INFORM relies on the MLRA's definition of "Life of the mine." The MLRA does not support INFORM's position.

INFORM's position fails because it disregards the plain language of C.R.S. § 34-32-103(6)(a)(III). The word "continue" means "keep up or maintain esp. without interruption a particular condition, course, or series of actions." Merriam-Webster Inc., *Webster's Third New International Dictionary* 493 (2002). Based on the plain meaning of those words, section 34-32-103(6)(a)(III) fails to impose any maximum period in which a mine may exist in "temporary cessation" over its life but, at most, indicates an intent to limit periods of "temporary cessation" to ten continuous years. Here, the LP-21 Mine was placed in "temporary cessation" over 30 years ago, and such status ended in 1990 when the Division approved Cotter's technical amendment as a matter of law and revised the mine's status to "intermittent." This intermittent status remained in effect from 1990 until mid-December 2012 when Cotter submitted its Notice of Temporary Cessation for the LP-21 Mine. A change in the LP-21 Mine's status to "temporary cessation" does not, therefore, cause such status to be "continued" for more than ten years, and is fully authorized under the MLRA.

INFORM's position that the MLRA establishes a maximum ten-year period in which a mine may exist in "temporary cessation" also disregards the Board's and Division's interpretation of the MLRA. The Board's Hard Rock/Metal Mining Rules impose no such maximum allowable period for "temporary cessation," but instead provide that "In no case shall Temporary Cessation be continued for more than ten (10) years" 2 Code Colo. Regs. 407-1, Rule 1.13.9 (emphasis added). Likewise, the Division has not interpreted section 34-32-103(6)(a)(III) to impose such a maximum ten-year limit. In its letter dated November 9, 2012 for the LP-21 Mine and other sites, the Division requested that Cotter "**place the above referenced sites into TC by December 15, 2012**" Letter dated November 9, 2012, from the Division, to Cotter (bolding and underscoring in original). In November 2012, the Division knew that it had approved temporary cessation for the LP-21 Mine from 1980 to 1990. Under these circumstances, the Division's statements in its November 9, 2012 letter reflect its position that the MLRA does not impose a ten-year maximum limit on the period in which a mine may exist in temporary cessation.

- F. *INFORM Comment: 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.*

This comment is ambiguous, because it refers to the “SR-13A.” If INFORM is asserting that the Division erred when it authorized intermittent status for the LP-21 Mine in 1990, such position fails for several reasons.

First, INFORM’s position fails because it is time barred by Hard Rock/Metal Mining Rule 1.4.11, which requires persons adversely affected or aggrieved by a Division decision to file an appeal within certain prescribed time periods. 2 Code Colo. Regs. 407-1, Rule 1.4.11(1)(b) (2010). Here, INFORM makes no claim that it filed any such timely appeal. Any claim by INFORM that the Division erred when it authorized intermittent status for the LP-21 Mine is therefore time barred.

Second, INFORM’s position fails because it misapprehends the two separate regulatory categories in which a non-producing mine may be placed under the MLRA. The first category is “temporary cessation,” which applies when the “operator plans to, or does, temporarily cease production for one hundred eighty days or more . . .” C.R.S. § 34-32-103(6)(a)(II). The second category is “intermittent status,” which applies when operators “resume operating within one year and have included, in their permit applications, a statement that the affected lands are to be used for less than one hundred eighty days per year.” *Id.* INFORM contends that Cotter “should have entered reclamation in 1990” because the “SR-13A” had existed in temporary cessation from 1980 to 1990. This contention ignores the independent category of “intermittent status,” and the fact that the ten-year period contained in section 34-32-103(6)(a)(III) solely applies to mines continuing in “temporary cessation” and does not apply to mines changing to “intermittent status,” which was the case for the LP-21 Mine in 1990.

Third, INFORM’s position fails because, in 1990, the LP-21 Mine had not been “idled,” “inactive,” or in a non-operating status for a ten-year period, as discussed above. Based on the activities described in Cotter’s July 26, 1990 application, “temporary cessation” did not appropriately characterize the LP-21 Mine in the 1980s, as mine operations were then occurring. The ten-year period in C.R.S. § 34-32-103(6)(a)(III) therefore did not even apply to the LP-21 Mine, as the mine was operated as an intermittent operation.

G. *INFORM Comment: 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.*

The completion of reclamation work is not a basis to terminate a permit, as set forth in C.R.S. § 34-32-103(6)(a) (defining “Life of the mine”). Permit termination is especially inappropriate in this case, where substantial economic reserves continue to exist at the LP-21 Mine, and these reserves can be mined in the future. In 2010, the Division reported that the LP-21 Mine “was reclaimed due to economic reasons and not ore reserve depletion.” *See* Colorado Division of Reclamation, Mining, and Safety Minerals Program Inspection Report, signed July 30, 2010, at

2. The Division also recognized that “Should favorable market conditions evolve Cotter could reactivate the mine once an approved [EPP] amendment is approved.” *Id.* Cotter intends to mine the existing reserves when market conditions recover, and has submitted the previously mentioned Amendment to the Division as a plan for doing so. No permit termination should therefore occur.

H. *INFORM Comment: 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 by 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.*

As discussed above, on December 13, 2012, Cotter sent to the Division its Notice of Temporary Cessation for the LP-21 Mine. In that notice, Cotter requested a change in the permit status for the mine from intermittent activity to temporary cessation, and requested that such change be made effective December 15, 2012. The notice explains that Cotter plans to resume production at the mine after the price of uranium returns to a profitable point. The plan for such resumption of mining is attached as Exhibit D to Cotter's Amendment. Cotter's notice satisfies the requirements of Rule 1.13.5, and should therefore be approved. Since the MLRA and Rule 1.13.5 impose no requirement that an applicant for temporary cessation demonstrate that it has any “real intent” to actually mine and produce ore, INFORM's contention to that effect is irrelevant to this proceeding and should be disregarded. To the extent a showing of “real intent” to mine is required, Cotter has made such showing by filing its Amendment, EPP, mine plan, Response to Adequacy Review #1, and Notice of Temporary Cessation.

The current viability of the uranium market and the current existence or not of facilities and a mill are not relevant to entering temporary cessation, because C.R.S. § 34-32-103(6)(a)(II) does not impose any such requirements. In any event, Cotter can send its ore to the White Mesa Mill south of Blanding, Utah. Cotter has also recently sold ore to another company for processing at their mill processing facility.

Contrary to INFORM's assertions, the injunction ordered in *Colorado Environmental Coalition v. Office of Legacy Management*, 819 F. Supp. 2d 1193, 1224-225 (D. Colo. 2011), supports Cotter's request for temporary cessation. As explained above, the injunction prohibits exploration, drilling and mining at the LP-21 Mine. Given this prohibition and the “significant

delay related to the DOE PEIS process,” the Division believes that temporary cessation is the only status that would allow the LP-21 Mine to remain compliant with Colorado law. Letter, dated November 9, 2012, from the Division, to Cotter, regarding the LP-21 Mine, at 2.

- I. INFORM Comment: 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 (“NEPA”). 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.*

The ongoing and future NEPA review for the Department of Energy’s Uranium Lease Management Program and the United States District Court’s decision support placing the LP-21 Mine into temporary cessation, as explained in the Division’s November 9, 2012 letter to Cotter. The authorization to enter temporary cessation is found in C.R.S. § 34-32-103(6)(a)(II) and the Division’s specific request that Cotter place the LP-21 Mine into temporary cessation by December 15, 2012. INFORM’s assertions that additional mill processing will remain unavailable for many years and regarding the economic state of the market are not relevant to entering temporary cessation, because C.R.S. § 34-32-103(6)(a)(II) does not impose any such requirements. In any event, Cotter can send its ore to the White Mesa Mill south of Blanding, Utah for processing. Moreover, Cotter has recently sold ore to another company for processing at their mill processing facility.

The purpose of this proceeding is not to deliberate a “reasonable course,” but is instead to determine whether Cotter’s Amendment complies with the law and should be approved. Pursuant to the Division’s instructions, Cotter has submitted an EPP and Amendment for the LP-21 Mine that comply with the MLRA and the Board’s implementing regulations. INFORM has not produced facts or argument showing noncompliance with those laws. The Division has also found that placing the LP-21 Mine into temporary cessation will allow the mine to remain compliant with Colorado law. Moreover, the LP-21 property has significant ore reserves that can be produced when the price of uranium reaches a profitable level. Under these circumstances, the Amendment and EPP should be approved.

- J. INFORM Comment: 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.*

Cotter denies having a record of non-compliance with Division requests and Colorado law regarding the LP-21 Mine. Cotter has not resisted or delayed achieving compliance with Division requests and Colorado laws regulating the LP-21 Mine, particularly HB 08-1161. As explained in a letter to Cotter dated September 30, 2011, the Board conducted a rule making process for purposes of implementing HB 08-1161 from January 26, 2010 until August 2010, and the Board's rules first became effective on September 30, 2010. However, during the "interim period" between 2008 and September 2010, the Division's policy was not to require an EPP from a non-producing mine such as the LP-21. Letter, dated September 30, 2011, from the Division to Cotter, at 1. Thus, no delay on Cotter's part occurred in this period. On September 30, 2011, the Division wrote to Cotter and explained that "With promulgation of the Rules, the Division is now requiring all uranium mine permit holders to gain compliance with the Act and Rules," and requested that operators submit their application amendments by October 1, 2012. *Id.* (emphasis added). Cotter complied with this deadline. No delay therefore occurred.

II. Non-Jurisdictional Issues

- A. *INFORM Comment: 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.*

Cotter responded to these adequacy review issues in its Response to Adequacy Review # 1, which was submitted to the Division on December 7, 2012.

The LP-21 Mine has historically been a "dry mine." Notwithstanding this fact, Cotter committed to installing a monitoring well if groundwater is encountered during mining operations, as explained in its Response to Adequacy Review #1.

- B. *INFORM Comment: 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 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.

The proposed clay lined ore storage pad is designed to contain the 100-year 24-hour storm event.

The ore stockpile will be handled on a first in/first out basis to minimize the length of time that the ore will be stored on the ore stockpile area.

While it is true that the SPLP test results indicate that aluminum is a constituent of concern, the EPP explains that the source of the aluminum in this area is the native shales of the Brushy Basin member of the Morrison Formation.

The SPLP results for the waste rock indicate a pH of 9.92, which suggests no potential for acid mine drainage. SPLP results for ore have not been received yet.

In the EPP, Cotter explains why the clay-lined ore storage pad and the existing natural geology of the Brushy Basin member of the Morrison Formation will limit potential leachate migration. Cotter considers those explanations adequate.

Cotter submitted the baseline radiometric survey to the Division in the Response to Adequacy Review #1.

- C. *INFORM Comment: 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.*

Cotter proposes to use the same source of water that it has used as a source of water for other mining operations in this area in the past.

- D. *INFORM Comment: 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 groundwater from the possibility of contamination from the reclaimed waste rock and ore pad areas.

The proposed Drainage Design Plan that is incorporated into the EPP portion of the Amendment will be implemented upon re-opening of the LP-21 Mine. Previous site inspections indicate that current site conditions do not warrant installing stormwater management features at this time.

- E. *INFORM Comment: 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.*

Cotter has recommended seasonal work restrictions for the LP-21 Mine in the recently submitted Response to Adequacy Review #1. Cotter has also been in contact with Colorado Parks and Wildlife ("CPW") to try to determine potential off-site habitat enhancement projects to offset impacts to wintering big game use of severe winter range.

Cotter proposes to use pre-existing access and drill roads as much as possible to access the mine site and associated facilities.

Prior to final reclamation, Cotter will contact CPW for any recommendations regarding preferred mine opening closure methods.

If you have any questions regarding this submittal, please call me at Cotter's Nucla office, 970-864-7347.

Respectfully,



Glen Williams
Vice President, Mining Operations