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February 21, 2013

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FEB 26 2013

GRAND JUNCTION FIELD OFFICE
DIVISION OF
RECLAMATION MINING & SAFETY

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

Re: SM-18 Mine, Permit No. M-1978-116, Response to Comments from Information Network for Responsible Mining ("INFORM")

Dear Mr. Marshall:

I am writing in response to your letter dated December 6, 2012, which requests that Cotter Corporation (N.S.L.) ("Cotter") inform the Division of Reclamation, Mining and Safety ("Division") of how it will respond to the jurisdictional issues presented by INFORM in its letter, dated December 5, 2012, to the Division, regarding Cotter's 112d Amendment Application ("Amendment") for the SM-18 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 first to INFORM's concerns on jurisdiction, and second to the non-jurisdictional concerns raised by INFORM.

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 SM-18 Mine. 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 SM-18 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 SM-18 Mine on July 26, 1990. In that 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 SM-18 Mine's intermittent status since that approval, including in inspection reports, signed October 1, 1999 and January 29, 2001. 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 SM-18 Mine's future status in a proceeding where such 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.

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

- A. *INFORM Comment: Understanding Cotter's historic pattern of delay is also relevant to the review of the SM-18 amendment application. First and foremost is the unjustified nature of SM-18's status as an intermittent operation. SM-18 was first permitted on Oct. 31, 1979, and entered Temporary Cessation a year later, on Oct. 31, 1980. Cotter renewed that status for a second five-year period on Aug. 22, 1985. At that point, following a technical revision to the permit, SM-18 was inexplicably granted Intermittent Status, even though it remained idle and inactive for another 24 years. That is specifically prohibited under the Mined Land Reclamation Act, 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).] 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 before it must be closed. The SM-18 Mine should have been fully closed and the permit released in 1990.*

The gist of this comment is that the SM-18 Mine should not have been granted intermittent status in 1990, and that such status has unlawfully continued through the present. This 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 that persons adversely affected or aggrieved by a Division decision 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. Its current claim that the SM-18 Mine should not have been granted intermittent status in 1990, and that such status has unlawfully continued, is therefore time barred.

Second, INFORM's position fails because, contrary to its assertions, the MLRA did not state in 1990, and does not state today, that "[i]n no instance may a mine remain in a non-producing status for longer than 10 years before it must be closed." INFORM's statement is flawed on its

face 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.* Citing the ten-year period applying to “temporary cessation” in C.R.S. § 34-32-103(6)(a)(III), INFORM contends that Cotter was required to close the SM-18 Mine in 1990 because the mine 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 SM-18 Mine in 1990.

Third, INFORM’s position fails because, in 1990, the SM-18 Mine had not been “idle” and “inactive” for a ten-year period. In its July 26, 1990 application for intermittent status, Cotter expressly told the Division that “Since 1980, many activities have been undertaken at the SM-18 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 “determining ore reserves, surface drilling, geologic report preparation, ground control in preparation for mining, timber repair in preparation for mining, pump and pump line repair in preparation for mining, ore sampling, roadway repair work in the decline in preparation for mining, resurfacing the portal area for drainage control in preparation for mining, and mine dewatering in preparation for mining.” Cotter also informed the Division that in the “most recent nine year period, \$609,300 were spent at the mine (an average of \$67,700 per year) on activities of this nature, as well as mine maintenance,” and “the ability to produce ore from the [SM-18] Mine and process it through a milling facility has been actively maintained” Further, Cotter informed the Division that “Since 1980, Cotter has operated the SM-18 Mine as an intermittent operation.” Based on the activities described in Cotter’s July 26, 1990 application, “temporary cessation” did not appropriately characterize the SM-18 Mine in the 1980s, as mine operations were intermittently occurring. The ten-year period in C.R.S. § 34-32-103(6)(a)(III) therefore did not even apply to the SM-18 Mine, as the mine was operated as an intermittent operation.

Fourth, INFORM’s position fails because following approval of Cotter’s technical revision application in 1990, the SM-18 Mine did not “remain[] idle and inactive for another 24 years.” Cotter constructed a new pond at the SM-18 Mine in 1994, conducted surface drilling in 1997, and conducted timber repair in the decline in 1999. In 2004, Cotter applied for a technical revision and amendment to its SM-18 Mine permit in order to delete five undisturbed acres from the permit area and incorporate five new acres into such area (Wright Mine portals and facilities area, new vent hole sites, and a new waste rock dump area), and to thereby more effectively mine the ore reserves on the south portion of the SM-18 lease block. Letter, dated July 12, 2004, from Cotter, to the Division of Minerals and Geology; letter, dated November 12, 2004, from the Division of Minerals and Geology, to Cotter. Following approval of Cotter’s applications in November 2004, Cotter commenced ore production from the SM-18 Mine in mid-March 2005.

Letters, dated April 26, 2005, May 12, 2005, and May 19, 2005, from Cotter, to the Division of Minerals and Geology. This ore production continued through early 2006. Letter, dated September 7, 2005, from Cotter, to the Division of Minerals and Geology (“This mine is currently being mined by Reams Construction . . .”); Minerals Program Inspection Reports for inspections of the SM-18 Mine conducted October 5, 2005, at 2 (“The SM-18 Mine is in full production currently.”), and April 5, 2006, at 2 (“The mine has been active in the past 6 months . . .”). In 2011, Cotter re-worked the vent hole access road at the SM-18 Mine, worked on the mine’s storm water catchment ponds and mine yard area, and conducted rehabilitation work on the surface vent hole in the 2000 drift.

Fifth, contrary to INFORM’s contention, the MLRA authorizes intermittent status in its definition of “Life of the mine,” which provides, in pertinent part: “The requirement of a notice of temporary cessation shall not apply to operators who 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.” C.R.S. § 34-32-103(6)(a)(II). The MLRA’s authorization of intermittent status has also been recognized by the Board and the Division. *See* Hard Rock/Metal Mining Rules 6.3.3(1)(a) and 6.4.4(e); letter, dated January 24, 2012, from the Division, to Cotter, regarding the SM-18 Mine.

For the above reasons, there is no basis to INFORM’s assertions that Cotter engaged in a “historic pattern of delay,” and the “SM-18 Mine should have been fully closed and the permit released in 1990.” Further, INFORM’s characterization of the SM-18 Mine’s permit status as “unjustified” is incorrect.

- B. *INFORM Comment: After another 14 years of inactivity under Intermittent Status, Cotter Corporation began short-lived mine development activities in November 2004 that did not last beyond April 2006, according to inspection reports. During this period and throughout the history of the permit, Cotter provided insufficient information in its annual reports to fully document mining activities and never reported ore or actual production figures. The MLRA makes unambiguous reference to the cessation of production of ore and not simply mining activities as defined in the Rules. [See C.R.S. § 34-32-103(6)(a)(III).] Regardless of how we count up all the prior years, since April 2006, the SM-18 has unlawfully retained Intermittent Status and remained in a non-producing state. The SM-18 Mine should be fully reclaimed and the permit terminated as time has run out on idleness and leniency.*

INFORM’s assertion that the SM-18 Mine was inactive from 1990 through 2004 is incorrect, as discussed above. INFORM is also incorrect that the activities Cotter conducted at the SM-18 Mine from 2005-2006 were limited to “short-lived mine development.” As discussed above, the SM-18 Mine produced ore in the 2005-2006 time period.

INFORM's assertion that Cotter's annual reports for the SM-18 Mine contained "insufficient information" to "fully document mining activities" is irrelevant to this proceeding. But even if INFORM's assertion has some relevance, it is without merit. Since 1990, the Division has regulated the SM-18 Mine as intermittently active, has required Cotter to submit annual reports, and has provided the form that Cotter was required to complete for such reports. During that time, Cotter regularly submitted annual reports to the Division, and provided the information requested on the Division's forms. Cotter's annual reports therefore complied with the Division's requirements. INFORM's assertion that Cotter "never reported ore or actual production figures" is likewise irrelevant and without merit, as INFORM does not identify any authority requiring the reporting of such information. *See* C.R.S. § 34-32-116(3) ("[o]perator shall submit a report and a map showing the extent of current disturbances to affected land, reclamation accomplished to date and during the preceding year, new disturbances that are anticipated to occur during the upcoming year, and reclamation that will be performed during the upcoming year."); 2 Code Colo. Regs. 407-1, Rule 1.15(1)(2010) ("[A]nnual Report shall include all information specified on the Annual Report Form . . .").

INFORM is incorrect to the extent it asserts that Cotter was required to produce ore from the SM-18 Mine to maintain the mine's intermittent status. As explained by the Division in a letter to Cotter, dated January 24, 2012, regarding the SM-18 Mine, intermittent status requires some "active mining," and "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)." The Division has also 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 further develop the site towards extraction of a mineral . . . and therefore considered a mining activity." Letters, dated November 9, 2012, from the Division, to Cotter, regarding the SM-18 Mine, Mineral Joe Mine, and the CM-25 Mine. Based on the above, active mining does not require ore production, and includes other mining activity. Accordingly, ore production was not required to keep the SM-18 Mine in intermittent status.

The Division has already addressed INFORM's assertion that "[s]ince April 2006, the SM-18 has unlawfully retained Intermittent Status and remained in a non-producing state." In a letter to Cotter dated November 9, 2012, the Division notes that "activity at the SM-18 Mine is planned upon approval of the [EPP] including construction of Environmental Protection Facilities." Letter, dated November 9, 2012, from the Division, to Cotter, regarding the SM-18 Mine, at 1. Further, the Division reports that the "construction of the facilities is part of the infrastructure required to further develop the site towards extraction of a mineral, not general site maintenance, and therefore considered a mining activity." *Id.* The Division also recognizes Cotter's plans to review the status of its SM-18 Mine permit following the completion of the facilities, and explains "If Cotter does not resume approved mining activities on or before the 180 day time frame it must submit a request to place the mine into TC [temporary cessation]." *Id.* (emphasis in original). These statements reflect the Division's position that the SM-18 Mine can continue in "intermittent" status if Cotter constructs the facilities identified in the Amendment, and then timely resumes additional mining activities. Further, the Division's statements show that, if

Cotter complies with the above process, Cotter would not need to terminate its permit for the SM-18 Mine and that the SM-18 Mine can continue as an “intermittent” operation or go into “temporary cessation.”

INFORM’s claims that the SM-18 Mine “should be fully reclaimed and the permit terminated” are without support. Substantial economic reserves continue to exist at the SM-18 Mine, and these reserves can be mined in the future. 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, Amendment, and 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. These measures include inspecting the stormwater control structures one to two times per month, and maintaining those structures to minimize adverse off-site impacts. For these reasons, and as discussed below, Cotter’s reclamation permit should not be terminated, and the SM-18 Mine should not be inspected for final release.

- C. *INFORM Comment: The permit file reflects that, over the years, Cotter Corporation has made every attempt it could to resist complying with updated regulations and policies from the Division. Cotter has also neglected the SM-18 site and Division inspections have raised issues of stormwater management, erosion, runoff control, public access and other indicators of absentee maintenance. Cotter stiffly fought the Division's classification of the SM-18 as a Designated Mining Operation and has taken more than four years since the passage of HB 08-1161 to file the required amendment for the Environmental Protection Plan. INFORM couldn't agree more with the Division's own comments when it stated in a May 12, 2005, letter to Cotter Corporation: “By Rule, the Division can and will require Cotter to meet current standards not 1977 ones.”*

INFORM does not substantiate its assertion that, over the years, “Cotter Corporation has made every attempt it could to resist complying with updated regulations and policies from the Division.” The updated regulations and policies that Cotter allegedly resisted are not disclosed. Nor does INFORM cite facts or documents to support its assertion. Moreover, INFORM’s assertion is irrelevant, as the issues before the Division in this proceeding exclusively concern whether Cotter’s EPP and Amendment comply with the MLRA and its implementing rules, and should be approved. Under these circumstances, INFORM’s assertion should be disregarded.

There is no basis to INFORM’s assertion that Cotter has neglected the SM-18 site. The site has been subject to extensive maintenance over the years, as confirmed by correspondence from Cotter dated October 3, 2001 (listing reclamation work performed on the mine and surface structures), and December 8, 2008 (listing measures taken to prevent public access and for maintenance). The Division’s inspections of the SM-18 Mine also confirm such maintenance, as set forth in Minerals Program Inspection Reports for inspections of the SM-18 Mine conducted March 26, 1997 (no problems or possible violations were observed), September 24, 1999 (no problems or possible violations were observed), January 17, 2001 (no problems or possible

violations were observed), August 23, 2004 (no problems or possible violations noted), October 5, 2005 (no issues noted), October 23, 2006 (no problems or violations are noted at this time), February 7, 2007 (no issues, problems, or violations noted), July 28, 2010 (no issues or problems are noted at this time), September 15, 2011 (no issues or problems are cited at this time), and October 2, 2012 (no problems or violations were noted during this inspection).

Cotter is aware that, in 2005, the Division raised certain general maintenance issues for the SM-18 Mine. However, as explained by the Division, those issues “did not constitute major problems as the appellant would have the Board believe.” Division of Reclamation, Mining and Safety Response to Appellant’s Brief concerning the Appeal of Non-Designated Mining Status for the SM-18 Mine Permit No M-1978-116, dated August 29, 2007, at 2. The Division reported that Cotter “complied with corrective actions in a timely manner and to DRMS satisfaction,” and that “[n]o Notices of Violation were issued.” *Id.* In the same response, the Division reported that “stockpiles on-site are temporary by design and that no ore remains on-site longer than 180 days per DRMS policy.” *Id.* at 3. Moreover, the issues identified by the Division did not result from “absentee maintenance,” as the SM-18 Mine was operating at that time. The measures that Cotter took in response to the Division’s inspections are described in correspondence from Cotter dated June 10, 2005, August 29, 2005, and September 20, 2004 (should be 2005).

As INFORM notes, Cotter did appeal the Division of Mineral and Geology’s classification of the SM-18 Mine as a “Designated Mining Operation.” This appeal was supported by substantial evidence deemed credible by that Division: “The Division Staff has carefully reviewed the report and modeling concerning the SM-18 Mine. The Division finds that Cotter Corporation has satisfactorily demonstrated that the operation does not expose or disturb acid or toxic materials in quantities that adversely affect human health, property or the environment. Staff accepts that contaminants from the waste rock or underground workings will not have a deleterious affect [sic] on the ground water quality in the immediate area. Therefore, the Division is rescinding its initial designation of DMO per Rule 7.2.4(1)(a).” Letter, dated March 9, 2006, from H. Bruce Humphries, Minerals Program Supervisor, Division of Minerals and Geology, to Glen Williams, Cotter. While the Division subsequently reversed this finding in a determination dated October 12, 2007, Cotter’s appeal was not lacking merit, as INFORM suggests.

Cotter did not wrongfully procrastinate over four years before submitting its EPP for the SM-18 Mine. As explained in the Division’s 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 SM-18. Letter, dated September 30, 2011, from the Division, to Cotter, at 1. Thus, no wrongful delay on Cotter’s part could occur 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

amendment applications by October 1, 2012. *Id.* (emphasis added). Cotter complied with this deadline. No wrongful delay therefore occurred.

INFORM's comment on meeting current standards is irrelevant, as the Division requires the Amendment and EPP to meet such standards. Letter, dated January 13, 2013, from the Division, to Cotter, Re: SM-18 Mine, at 1 (The Division "is in the process of reviewing the above reference application in order to ensure that it satisfies the requirements of the [MLRA] and the associated *Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations . . .*") (italics in original).

- D. *INFORM Comment: The proposed Environmental Protection Plan and amendment application fails to provide evidence of Cotter's intent to mine the SM-18 rather than simply delay final reclamation and closure and continue its strategy of delay. Many years are likely to pass before the viability of the uranium market makes mining in the Uravan district viable and Cotter no longer has an operating mill to process its ore and no plans to reopen. Again, we are talking about a mine that has been largely inactive -- and hasn't provided evidence to the contrary -- since 1980. Considering the flaws of the proposed EPP, it is more appropriate to terminate the permit.*

No provision of the MLRA or its implementing rules requires that Cotter's EPP and Amendment contain "evidence" of "intent to mine" in order to be approved. On this point, please see C.R.S. §§ 34-32-103(4.9) and 34-32-116.5, and Hard Rock/Metal Mining Rules 1.1(16), 6.4.4, and 6.4.21. INFORM's contention to that effect is therefore irrelevant to this proceeding and should be disregarded. To the extent evidence of "intent to mine" is required for approval of an EPP and the accompanying Amendment, Cotter has made such showing by filing its Amendment, EPP, mine plan, and Response to Adequacy Review #1 for the SM-18 Mine.

There is no basis to INFORM's assertion that the EPP and Amendment should not be approved because "Many years are likely to pass before the viability of the uranium market makes mining in the Uravan district viable and Cotter no longer has an operating mill to process its ore and no plans to reopen." The current viability of the uranium market and the current existence or not of an operating mill are irrelevant to approving the EPP and Amendment, because the MLRA and its implementing rules do not impose any such requirements. In any event, INFORM's assertions as to when the uranium market will recover are speculation. Cotter can send its ore to the White Mesa Mill south of Blanding, Utah for processing. Moreover, Cotter recently sold ore to another company for processing at their mill processing facility.

As to INFORM's third point, the SM-18 Mine has not been "largely inactive" since 1980, as explained in Cotter's response to comment I.A., above. But even if the activities described above had not occurred, no basis would exist to deny approval of the EPP and Amendment. No provision of the MLRA or its implementing rules requires that a mine demonstrate a threshold level of historic mining activity before its EPP and amendment application may be approved.

The SM-18 Mine permit should not be terminated for the reasons discussed in Cotter's response to comment I.B., above. Moreover, if any "flaws" exist in the proposed EPP, those "flaws" will be resolved through the Division's adequacy review process.

- E. *INFORM Comment: If the EPP is approved, Cotter should be held to a strict timetable to construct the Environmental Protection Features and to commence mining operations. Adequate and timely progress toward final completion of mine development should be documented and demonstrated. If Cotter does not immediately begin mining activities, they should under no circumstances be allowed to retain Intermittent Status, as the SM-18 does not meet the definition of an intermittent operation in the Rules.*

The timetable for the construction of facilities at the SM-18 Mine is discussed in section (15) of the EPP. In that section, Cotter explains that ore and waste rock pile sites have already been constructed. Further, the existing ditches, berms and constructed containment ponds have proven effective in minimizing erosion of the existing surface facilities. These structures are regularly monitored and maintained. With the exception of a ditch and minor maintenance to existing berms and ditches, there are no plans for any further construction at the SM-18 Mine site. The construction of the ditch will be done following the approval of the mine permit amendment.

The approval of the SM-18 Mine's EPP should not be linked to the resumption of mining activities at that mine. Hard Rock/Metal Mining Rule 6.4.21 imposes no such requirement for approval of an EPP. However, Cotter plans to resume production operations at the SM-18 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.

INFORM's assertion that the SM-18 Mine should not be allowed to retain intermittent status is irrelevant to approval of the EPP and Amendment. Notwithstanding this fact, the Division has already addressed this concern. In a letter to Cotter dated November 9, 2012, the Division identified the steps that Cotter must take to ensure that the SM-18 Mine meets the definition of an intermittent operation. If Cotter does not, or cannot, take such steps, then Cotter must submit a request to place the SM-18 Mine into temporary cessation. INFORM's concern has therefore been addressed.

II. Non-Jurisdictional Issues

- A. *INFORM Comment: If the EPP is approved, INFORM hopes that strong restrictions are placed on the permit to protect wildlife and habitat. Cotter has proposed building new roads over short distances, but should be prohibited from doing so. The SM-18 is located in a sensitive habitat area that provides access for elk and deer from the severe winter range and winter range of the mesa slopes above to the San Miguel River below. Any road construction will increase habitat fragmentation in this area and have a detrimental impact on deer and elk as well as other species. Winter operations and haulage at the mine should be prohibited*

entirely between December and April. Water features and the run-off catch basins should be fenced to prevent wildlife and grazing cattle from drinking. The mine is already possibly used by bats, including the BLM sensitive species Thompson's Big Eared Bat, and drainage and runoff from the mining site could impact sensitive fish species in the Dolores River basin. Magnesium chloride should not be used for dust control of the access and mine roads, but rather a more environmentally friendly alternative.

Cotter has proposed using existing roads as much as possible for accessing the mine site, as recommended by Colorado Parks & Wildlife.

Cotter proposes limiting ore haulage activities from the mine site during the months of December-April to 10:00 am thru 3:00 pm.

Cotter is not aware of any potential problems as a result of wildlife drinking water from any of the stormwater catchments.

Stormwater run-off controls have been designed to contain a ten-year 24-hour storm event, and safely convey run-off from a 100-year 24-hour storm event, which should minimize negative impacts to sensitive fish species in the Dolores River Basin.

Dust control on surface access areas and roads has been accomplished using water as necessary during past mining activities at the mine site. Considering that the SM-18 Mine is a dry mine, Cotter has used magnesium chloride previously for dust control, and plans on using it in the future, as necessary, as a reasonable means of reducing water requirements for the mining effort.

- B. *INFORM Comment: Water concerns abound with the SM-18. The southern portion of the permit area has a documented history of problems with stormwater management and with historic heavy rains that have damaged stormwater control features. The proposed stormwater plan should be reviewed to make sure the controls withstand the particular nature of the storm that damaged the site in 2005 and the variation of weather in the area, not just the standard 100-year event. The haul ramp to the lower portal is in poor condition and should be improved to reduce erosion and uncontrolled drainage.*

Cotter considers the proposed stormwater controls to be adequate to deal with the Division's recommended storm considerations.

Run-off from the 105 foot-long by 15 foot-wide ramp to the portal is contained at the bottom of the ramp. The ramp is maintained, as necessary, to maintain access to the portal area.

- C. *INFORM Comment: Cotter's assertion that the ore will have no acid-leaching effects because of the area's limited precipitation does not realistically reflect this history. Previous geochemical analysis of samples from the SM-18 have identified aluminum, selenium, lead and uranium as constituents of concern.*

Cotter should be required to remove all ore from the pad within 30 days of its placement, rather than 30 days of the end of mining, and the ore pad should have a synthetic liner to prevent ground penetration of contaminants. SPLP testing should be conducted on both the ore and waste rock on an annual basis to continually monitor the potential for acid generation from these piles. Even though water was produced from a Wright Group drift and abandoned because of it, Cotter incredulously uses this as a basis for asserting that water will not be encountered during SM-18 mining operations. Because selenium, arsenic and radionuclide contaminants are all a concern at the SM-18, a groundwater monitoring regime should be established and five quarters of baseline data obtained before future mining activities are approved. Cotter also plans to supply its mining operations at the SM-18 with purchase of 1,000 gallons of water per day hauled from the Town of Naturita. Cotter should be required to demonstrate that there is a formal agreement in place for this supply or demonstrate that it has other adequate water rights to mine. Numerous mining proposals, including Cotter's, appear to be reliant on the same municipal water supply from Naturita without consideration for availability of future supplies or legal agreement to guarantee it.

As mentioned in the EPP, the ore that is being mined has a calcium carbonate cement binding the sand grains together. This calcium carbonate cement results in the ore material having a pH well above 7, which makes this material more of a basic material as opposed to an acidic material. This means the ore is not acid producing.

The ore that will be temporarily stored on the ore pad will be handled on a first in-first out basis.

Cotter has proposed using a clay liner under the ore pad, which will provide substantial protection to the underlying environment.

As explained previously, there is no potential for acid production from the calcium carbonate cemented ore or waste rock.

Contrary to INFORM's assertion, Cotter has never encountered water in any of the Wright Group mine workings.

Cotter has proposed a reasonable approach to the Division in the Response to Adequacy Review for the SM-18 Mine in the unexpected case that water is encountered during the mining effort.

Cotter has previously supplied water for this and other mining operations in the area, and has not had any problems with this source.

- D. *INFORM Comment: It does not seem that Cotter has put together an amendment application with the thorough updating, analysis and planning that the Environmental Protection Plan requires. Supporting documents, such as the*

groundwater contamination study, have been submitted to the Division by Cotter in previous years and became subject to later scrutiny and disputes. As the technical review proceeds and Cotter responds to the Division's requests, INFORM reserves the right to supplement these comments as appropriate.

The Amendment and EPP meet the requirements of the MLRA and its implementing rules. Accordingly, the Division should issue a "Decision Recommendation" that the Board approve the Amendment and the EPP.

INFORM's reservation of rights to supplement its comments does not comply with Rule 1.7.1(2)(a) of the Hard Rock/Metal Mining Rules. In a letter to INFORM dated December 17, 2012, the Division responded to INFORM's reservation of rights regarding the SM-18 Mine, and explained that "according to Rule 1.7.1(2)(a) all comments received after December 5, 2012 are considered to be untimely and will not be considered by the Division." Cotter requests that the Board and Division enforce the December 5, 2012 deadline established by Rule 1.7.1(2)(a).

- E. *INFORM Comment: According to correspondence in the permit file, Cotter Corporation requested final release of the Wright Group permit. It is our understanding that the relevant features of the Wright Group permitted area have already been incorporated into the SM-18 permit area and is addressed in the amendment application. This results in a less confusing process. However, the problem of the historic waste dump that descends down steep slopes below the main Wright portal is not addressed in reclamation plans in either permit. This waste dump should be reclaimed, as it clearly poses risks to the environment and creates a pathway for the movement of radionuclides and other toxic materials toward the San Miguel River in the canyon below. Although this waste dump is referenced in the permit files as a "pre-law mining feature" and thus appears to escape any regulatory concern, its condition and danger are such that it should finally be addressed and included in reclamation requirements. Because of the high visibility of the waste dump from the state highway, its proximity to notable historic points and a nature preserve, the site's historic ore bin and the short trip up the hill on the county road, the SM-18/Wright Group mine is an easily accessible attractor to curious members of the public. All the more reason to clean it up.*

The pre-law Wright Mine dump that INFORM is referencing is not a part of the permit area, and should not be considered during the approval process for the SM-18 Mine permit.

- F. *INFORM Comment: According to the Division's Oct. 4, 2011, inspection report, the remainder of the Wright Group permitted area that was not incorporated into the SM-18 permit has not seen any disturbance for 33 years and the existing permit and documentation are out of date. These remarks adequately characterize the overdue nature of Cotter Corporation's request for final release, which has clearly arrived after many years of delay.*

Mr. Travis Marshall
February 21, 2013
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This comment appears to reference the Wright Group permit area which is part of a distinctly different reclamation permit, and should not be considered during the approval process for the SM-18 Mine permit.

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

Respectfully,

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

Glen Williams
Vice President, Mining Operations