



**cotter**

VIA U.S. MAIL

February 21, 2013

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

**RECEIVED**

FEB 26 2013

GRAND JUNCTION FIELD OFFICE  
DIVISION OF  
RECLAMATION MINING & SAFETY

Re: JD-9 Mine, Permit No. M-1977-306, 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 JD-9 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 INFORM 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 JD-9 Mine and to place the 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 JD-9 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 JD-9 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 JD-9 Mine's intermittent status since that approval, including in inspection reports, signed April 18, 1997 and October 8, 2010. 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 JD-9 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. INFORM's assertions on temporary cessation are especially inappropriate in this proceeding, because Cotter submitted a Notice of Temporary Cessation for the JD-9 Mine in mid-December 2012. The filing of such notice initiates a separate administrative process specifically addressing temporary cessation, and the hearing on that issue has been scheduled for April 17-18, 2013.

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

- A. *INFORM Comment: The JD-9 Mine is not in compliance with the Colorado Mined Land Reclamation Act. It does not have approval to actively mine, its current condition does not meet regulatory requirements, and it has been inactive for at least 29 of the previous 32 years. Cotter Corporation has been able to escape compliance with the MLRA for over three decades by relying on a self-perpetuating and unwarranted status as an intermittent operation. Throughout most of this mine's permitted history, and along with other Cotter-permitted mines in the area, Cotter has resisted the Division's directions and repeatedly challenged regulations and policies intended to protect the environment, water quality and the public from contamination problems associated with uranium mining. Most recently, the Division has directed Cotter to place the JD-9 into Temporary Cessation before Dec. 15, 2012, and reiterated that the mine is not eligible for Intermittent Status nor in compliance with the law.*

INFORM's assertion that the JD-9 Mine does not comply with the MLRA is incorrect. On November 9, 2012, the Division requested that Cotter place the JD-9 Mine into temporary cessation by December 15, 2012. On December 13, 2012, Cotter complied with the Division's request by submitting to the Division a Notice of Temporary Cessation for the JD-9 Mine. Cotter's notice requested a change in the JD-9 Mine's permit status from intermittent activity to temporary cessation, requested that such change be made effective December 15, 2012, and explained 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. The JD-9 Mine therefore complies with the MLRA.

There is no basis to INFORM's assertion that the JD-9 Mine's "current condition does not meet regulatory requirements." INFORM does not specify the "regulatory requirements" that the JD-9 Mine's current condition fails to meet or provide facts to support its assertion. INFORM's assertion is also contradicted by the two most recent inspection reports for the JD-9 Mine. Following an inspection of the JD-9 Mine on September 15, 2011, the Division reported "[n]o issues or problems are cited at this time." Minerals Program Inspection Report for inspection of the JD-9 Mine, signed October 5, 2011, at 2. Following an inspection of the JD-9 Mine on October 2, 2012, the Division reported "[n]o problems or violations were noted during this inspection." Minerals Program Inspection Report for inspection of the JD-9 Mine, signed October 12, 2012, at 2. But even if the JD-9 Mine's current condition did not meet some regulatory requirement, that circumstance would not provide a basis to deny approval of the Amendment or EPP. Those documents were prepared to ensure that the JD-9 Mine achieved compliance with applicable regulatory requirements.

INFORM is also incorrect that the JD-9 Mine has been "inactive" for at least 29 of the previous 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 JD-9 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, radiometric scanning, mine mapping, mine feasibility studies, drill hole surveying, computerization of drill hole data, ore sampling, timber repair and ground control in preparation for mining, reconstruction and repair of air lines in preparation for mining, reconstruction of water lines in preparation for mining, vent bag installation in preparation for mining, installation of a 'Geotextile' blanket to control water seepage in the decline in preparation for mining, and mine dewatering in preparation for mining." Cotter also informed the Division that in the "most recent nine year period, \$1,291,600 have been spent at the mine (an average of \$143,500 per year) on activities of this nature, as well as mine maintenance," and "the ability to produce ore from the [JD-9] Mine and process it through a milling facility has been actively maintained . . . ." Further, Cotter informed the Division that "Since 1980, Cotter has operated the JD-9 Mine as an intermittent operation."

More recent activity at the JD-9 Mine contradicts INFORM's assertion that the JD-9 Mine has been largely inactive. Ground control work occurred in the 1100 and 1400 areas of the mine in 1991 and 1992, surface drilling occurred in 1991 and 1997, repair work in the #3 venthole occurred in 1991 and 1992, a power drop from the surface to the 1400 area was installed in 1992, and the decline was re-timbered in 1997. In 1994, Cotter amended its permit to include the construction of new settling ponds, which were later built. Minerals Program Inspection Report for inspection of the JD-9 Mine, signed March 30, 2005, at 2; memorandum dated April 5, 2005, from Russ Means to Carl Mount, titled "Cotter Corporation, Active Uranium Mine Permit Review and Preliminary Report," at 4. Further, Cotter mined ore from the JD-9 Mine from 2004-2006, as reported in Cotter's Annual Reports for the JD-9 Mine dated August 20, 2004 and August 2, 2005, the Division's Minerals Program Inspection Reports for inspections of the JD-9 Mine conducted March 24, 2005, May 4, 2005, June 16, 2005, October 5, 2005, and April 5,

2006, and the April 5, 2005 memorandum from Russ Means, to Carl Mount. This ore was also shipped. Minerals Program Inspection Report for inspection of the JD-9 Mine, signed June 27, 2005, at 2. In 2011, Cotter built storm water catchment ponds below the JD-9 Mine dump and re-worked the power supply for the venthole fan at the JD-9 Mine.

The activity enumerated above shows that the JD-9 Mine was not “inactive” for at least 29 of the previous 32 years. Further, it dispels INFORM’s assertion that, for over three decades, Cotter has relied on a “self-perpetuating and unwarranted status as an intermittent operation.”

INFORM’s assertion that Cotter has “escape[d] compliance with the MLRA” is unsupported and is contradicted by the Division’s regular inspections and monitoring of the JD-9 Mine, the work that Cotter conducted in response to the Division’s oversight, and the Amendment and EPP for the JD-9 Mine that Cotter has recently submitted to the Division.

INFORM does not substantiate its assertion that, throughout most of the JD-9 Mine’s permitted history, “Cotter has resisted the Division’s directions and repeatedly challenged regulations and policies intended to protect the environment, water quality and the public from contamination problems associated with uranium mining.” INFORM does not specify the “directions” that Cotter has resisted or the regulations and policies that Cotter has repeatedly challenged. 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.

INFORM’s assertion that the Division recently reiterated that the JD-9 Mine is not eligible for intermittent status and is not in compliance with the law mischaracterizes the facts. Cotter is aware that, in November 2012, the Division found that the JD-9 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 Division to Cotter, at 2 (bolding and underscoring in original). 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.” As explained above, Cotter complied with the Division’s request by submitting to the Division its Notice of Temporary Cessation for the JD-9 Mine in mid-December 2012.

- B. *INFORM Comment: Cotter Corporation first received Temporary Cessation status at the JD-9 in August 1980, noting in its letter to the State that, “Interim surveillance and maintenance will be conducted to keep the mine in a condition to allow eventual resumption of mining.” The JD-9 was renewed for a second, five-year period of*

*Temporary Cessation from 1985 to 1990, then Cotter applied for a change of status to an intermittent operation and the mine remained in a non-operating, non-productive state for at least another 15 years, according to Division records. Cotter justifies the inactive status of the JD-9 by arguing that its periodic and limited activities at the site, such as drilling, ore sampling and other activities in preparation for mining, constitute the definition of "mining activities" under the Division's Rule. However, the MLRA refers unambiguously to the "production of ore" when determining whether a mine is active and specifically forbids an inactive mine to remain open longer than 10 years without production activity. The MLRA 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).] The JD-9 should have been closed and fully reclaimed in 1990, but it was allowed to remain idle through the following years.*

Beginning in 1990, the JD-9 Mine did not remain in a "non-operating, non-productive state" for at least 15 years. As explained above, there was a variety of activity at the JD-9 Mine after 1990 including ground control work, surface drilling, repair work, pond construction, re-timbering the decline, and the mining and shipping of ore.

INFORM is also incorrect that the "production of ore" is required for a mine to qualify as "active" under the MLRA. As explained by the Division in a letter to Cotter, dated January 24, 2012, regarding the JD-9 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 Mineral Joe Mine, CM-25 Mine, and SM-18 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 JD-9 Mine in intermittent status.

Contrary to INFORM's assertions, the MLRA fails to "specifically forbid[] an inactive mine to remain open longer than 10 years without production activity." No such language appears in the MLRA. Further, INFORM's statement is flawed because it attempts to equate a mine's active status with the production of ore. As explained above, such interpretation of the MLRA is incorrect. INFORM's statement is also flawed because the ten-year period in C.R.S. § 34-32-103(6)(a)(III) solely applies to mines continuing in "temporary cessation."

INFORM's assertion that the JD-9 Mine "should have been closed and fully reclaimed in 1990" is without basis. This assertion fails for several reasons.

First, INFORM's assertion 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 Division erred when it authorized intermittent status for the JD-9 Mine is therefore time barred.

Second, INFORM's assertion 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 the JD-9 Mine "should have been closed and fully reclaimed in 1990," because the JD-9 Mine had existed in temporary cessation for two five-year periods. 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 JD-9 Mine in 1990.

Third, INFORM's assertion fails because, in 1990, the JD-9 Mine had not been "idle" or "inactive" 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 JD-9 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 JD-9 Mine, as the mine was operated as an intermittent operation.

- C. *INFORM Comment: In its annual reports in August 2004 and August 2005, Cotter reported that the mine was in active production, yet it did not report any actual production numbers or actual mining, presumably because production was minimal or even nonexistent. Throughout the history of the permit, Cotter has provided insufficient information in its annual reports to fully document mining activities, in violation of the Division's requirements. Understanding Cotter Corporation's history of noncompliance and pattern of delay is relevant to the current review. Even if the most recent flurry of activity at the mine in 2004 and 2005 briefly returned the JD-9 to active status, it does not change the fact that under the terms of the MLRA, the JD-9 is not eligible for additional periods of Temporary Cessation. The mine should be fully reclaimed and the permit terminated. The approval of the proposed Environmental Protection Plan and the additional development of facilities and infrastructure to support mining activities is not appropriate at this time.*

In its Annual Reports for the JD-9 Mine dated August 20, 2004 and August 2, 2005, Cotter reported “actual mining” at that mine: “This mine is classified as intermittent operation, and is currently being mined.” (emphasis added). INFORM’s assertions to the contrary are therefore incorrect.

INFORM’s presumption that “production was minimal or even nonexistent” at the JD-9 Mine from 2004-2006 is also incorrect. In a March 2005 inspection report for the JD-9 Mine, the Division reported: “Some ore has been brought to the surface for stockpiling. The operator stockpiles ore until there is enough for several loads. At which point, the stockpile is removed and the process started over.” Minerals Program Inspection Report for inspection of the JD-9 Mine, signed March 30, 2005, at 2. In an April 2005 memorandum covering the JD-9 Mine, the Division reported: “Currently . . . some ore is being pulled out and stockpiled in a staging area,” and approximately 60 to 80 tons of ore were “noted stockpiled at this time.” Memorandum, dated April 5, 2005, from Russ Means to Carl Mount, titled “Cotter Corporation, Active Uranium Mine Permit Review and Preliminary Report,” at 5. In May and June 2005, the Division reported that such stockpiling of ore from the JD-9 Mine was continuing. Minerals Program Inspection Reports for inspections of the JD-9 Mine, signed May 11 and June 27, 2005, at 2. In October 2005, the Division reported that “The JD-9 Mine is in full production currently,” and “There is approximately 30 tons of ore stockpiled on site at this time.” Minerals Program Inspection Report for inspection of the JD-9 Mine conducted October 5, 2005, at 2. INFORM’s presumption that “minimal or even nonexistent” production occurred from the JD-9 Mine in 2004-2006 is therefore without basis.

INFORM’s assertion that Cotter’s annual reports for the JD-9 Mine contained “insufficient information” to document mining activities and therefore violated the Division’s requirements is without merit. Beginning in 1990 and continuing through mid-December 2012, the Division regulated the JD-9 Mine as intermittently active, required Cotter to submit annual reports, and provided the form that Cotter was to complete for its annual 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 provides no facts or analysis to support its contention that Cotter engaged in a “history of noncompliance and pattern of delay.” Nor does INFORM explain how any such information would be “relevant to the current review.” Accordingly, INFORM’s assertion does not support denial of Cotter’s Amendment.

INFORM’s assertion that the JD-9 Mine “is not eligible for additional periods of Temporary Cessation” is incorrect. It fails initially, because INFORM disregards the plain language of C.R.S. § 34-32-103(6)(a)(III), which provides, in pertinent part, “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.” (emphasis added). 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 JD-9 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 JD-9 Mine. A change, today, in the JD-9 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 JD-9 Mine is not eligible for additional periods of 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 JD-9 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 JD-9 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.

INFORM’s claims that the JD-9 Mine “should be fully reclaimed and the permit terminated” are also without support. Substantial economic reserves continue to exist at the JD-9 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 and the Amendment, Cotter has submitted to the Division the measures it will take to prevent off-site impacts during periods of inactivity. The site will be regularly inspected during periods of temporary cessation. If any adverse off-site impacts are noted, Cotter will take appropriate steps to correct the problem. 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 JD-9 Mine 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.

INFORM’s position that it is not currently “appropriate” to approve the JD-9 Mine’s EPP and the additional development of facilities and infrastructure to support mining activities relies on the same assertions set forth above. Accordingly, for the reasons discussed above, INFORM’s position should not be adopted by the Division or the Board.

- D. *INFORM Comment: The proposed Environmental Protection Plan and amendment application fails to provide evidence of Cotter's actual intent to mine at the JD-9 rather than simply delay final reclamation and closure. 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 one. 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. If the regional uranium market become viable in the future, Cotter should have the opportunity to apply for a reclamation permit under current laws and regulations that meet contemporary standards.*

No provision of the MLRA or its implementing rules requires that Cotter's EPP and Amendment contain "evidence" of "actual 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 "actual 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 Notice of Temporary Cessation for the JD-9 Mine.

There is no basis to INFORM's claim 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 one." The current viability of the uranium market and the existence or not of an operating mill are not relevant 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 JD-9 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. Further, in mid-December 2012, Cotter submitted to the Division its Notice of Temporary Cessation for the JD-9 Mine, which complies with C.R.S. § 34-32-103(6)(a)(II) and Hard Rock/Metal Mining Rule 1.13.5 and should therefore be approved.

The JD-9 Mine permit should not be terminated for the reasons discussed in Cotter's response to comment I.C., 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 Division approves the EPP, 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. Cotter should not be allowed to push off meaningful activities that are protective of the environment. If Cotter does not immediately begin mining activities, they should under no circumstances be allowed to retain Intermittent Status, as the JD-9 does not meet the definition of an intermittent operation in the Rules. In the very first page of the amendment application, Cotter again seems to be creating a safe place for itself now in order to delay later by carefully noting that, "Due to the erratic nature of the Uravan Mineral Belt's ore deposits and past mining experience in this area, the life of the mine may be extended."*

The timetable for construction of facilities at the JD-9 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 JD-9 Mine site.

The approval of the JD-9 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, as explained in Cotter's Notice of Temporary Cessation for the JD-9 Mine, Cotter plans to resume production operations at the JD-9 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 JD-9 Mine should not be allowed to retain intermittent status is irrelevant to approval of the EPP and Amendment. Notwithstanding this fact, as explained above, Cotter has submitted a Notice of Temporary Cessation for the JD-9 Mine. In that notice, Cotter requested a change in the permit status for the JD-9 Mine from intermittent activity to temporary cessation. Further, Cotter requested that such change be effective December 15, 2012, which also serves as the date of cessation.

INFORM's comment that Cotter "seems to be creating a safe place for itself now in order to delay later" is incorrect. The comment responds to a note on page 2 of Cotter's JD-9 Mine Plan (Exhibit D to the Amendment), which states: "Due to the erratic nature of the Uravan Mineral Belt's ore deposits and past mining experience in this area, the life of this mine may be extended. This extension will be based, in part, on further delineation of ore horizons by surface drilling and by underground longhole drilling from development headings." The purpose of this note was not to forewarn about future delay, but to explain that, as a result of future exploration drilling, the size of the ore horizons at the JD-9 Mine may be greater than what is currently

known. Thus, the estimated time for mining the uranium and vanadium deposits at the JD-9 Mine may exceed the “6+ years” set forth in the mine plan.

## **II. Non-Jurisdictional Issues**

- A. *INFORM Comment: Groundwater and surface water quality concerns and impacts are significant at the JD-9, and have not been minimized through the current application. In the Division’s Oct. 11, 2011 inspection report, the inspector noted that the water treatment plant “is now unusable due to its age and condition” and that previously, the failed condition of the liners in the two discharge ponds was such that both the Division and CDPHE required them to be shut down. Even so, Cotter’s amendment application does not specify the construction of a new water treatment facility but continued use of the existing plant. Cotter notes that 2 million gallons of water currently in the mine will need to be pumped and treated before discharge, a volume that will pose quite a challenge to a nonfunctioning water treatment plant.*

Cotter proposes to upgrade the water treatment facilities to make sure that the water discharged from the treatment process meets the required discharge limits.

- B. *INFORM Comment: Current stormwater management features at the JD-9 are insufficient to protect the environment and there is insufficient baseline water surface and ground water monitoring described in the amendment application. Cotter states that there is a spring west of the mine that may indicate the presence of another aquifer but does not identify it or describe in detail how its hydrology will be affected by proposed mining activities. Considering that the JD-9 is a wet mine with seeps from the surface, the presence of aquifers that are already impacted by the mine, the history of producing water from perched aquifers, and the proximity of the mine to Bull Canyon and its pathway to the Dolores River, the hydrology of the JD-9 lease tract should be carefully studied and understood before it is further disturbed by mining. Additional monitoring wells should be installed and sequential monitoring data gathered to document baseline conditions.*

In the response to adequacy review, Cotter is proposing the installation of up-gradient and down-gradient monitor wells to help determine the conditions of the groundwater in the vicinity of the mine prior to resuming mining operations at the mine.

- C. *INFORM Comment: Regardless of the outcome of the EPP approval or the status of the permit, Cotter should be required to implement or confirm the existence of new stormwater management features immediately in order to prevent additional migration of radionuclides and other toxic contaminants from the permitted area offsite, into the Bull Canyon drainage or into ground water supplies. Because of the*

*lack of documentation for approvals of existing stormwater management features, the status of these features is not fully described in the EPP and needs to be clarified..*

In the EPP, Cotter proposes several stormwater management features. As mining operations resume, additional stormwater control features will be added as necessary.

- D. *INFORM Comment: The poor condition of the two previous discharge ponds is not adequately addressed in the application. Cotter states that the ponds are about two-thirds full with evaporate TENORM waste that will have to be hauled offsite to a licensed disposal facility. Yet, precautions for how this material will be handled and where it will be ultimately disposed are not discussed in the application.*

The dried precipitate from the previous settling ponds will be loaded into haul trucks and hauled offsite to a licensed disposal facility.

- E. *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, quite a ways up the county road to the mine, which will require 8 gallons per minute to operate. In a recent CDPHE hearing, Energy Fuels Resources 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.

- F. *INFORM Comment: In the amendment application, Cotter says that it will conduct a radiometric survey of the JD-9 site prior to commencing any future mining activities. That will surely mean that it will be many years before the results of such a survey are available for review. (It is worth noting that in a letter to the State from Cotter on July 26, 1990, Cotter claimed that "radiometric scanning" was one of the defined mining activities that entitled it to Intermittent Status.) This is critical information, as well as a fully and current radiometric survey that should be undertaken now so that impacts to the public, wildlife, water quality and the environment can be taken into consideration during the review of the Environmental Protection Plan.*

Cotter has conducted the baseline radiometric survey and will submit the results to the Division in the Response to Adequacy Review #1.

- G. *INFORM Comment: In an April 2005 Division review of the JD-9 permit, it was noted that between 60 and 80 tons of ore was stockpiled at the mine and the "current activity" of the mine was primarily stockpiling. The report also noted that the Department of Energy informed Cotter that it was not allowed to gob waste rock into the underground workings, thus precipitating the need for the proposed waste rock pile expansion on the surface. However, in the proposed EPP, Cotter again says that a portion of the waste rock generated will be finally disposed underground, despite the DOE prohibition.*

Cotter proposes to store as much of the mine waste in the underground mine workings as possible to minimize the impacts to the surface area.

- H. *INFORM Comment: Cotter proposes building a new access road to the lower-level portal. Why is this necessary? Altogether, new roads should be prohibited and surface activities and features limited to places where they are accessed by existing road. Magnesium chloride should not be used for dust control of the access and mine roads, but rather a more environmentally friendly alternative. Further road development will result in loss of habitat for wildlife and will contribute to a degradation of the surrounding ecosystem. The JD-9 is located in a sensitive area that is both winter range and severe winter range habitat for mule deer and elk, and mining impacts these species. Operations should not be allowed between December and March. The mine may be used by hibernating bats, as there are ten bat species in the region, including Thompson's Big Eared Bat, which is a BLM sensitive species and a species of concern in Colorado. Cotter should develop a protocol for how to protect potential bat habitat and prevent disturbances to hibernating and roosting bats.*

A new access road will be required as the proposed waste dump expands to the south and covers the area of the current access road. The routing of the new access road is designed to minimize the amount of area impacted by the location of the mine waste dump, access road, and other surface facilities associated with the mining effort.

During past mining activities at the mine site, dust control on surface access areas and roads has been accomplished using water as necessary. Cotter proposes to use the most reasonably effective means to control dust at the mine site.

Cotter has addressed the wildlife issues in the response to Colorado Parks and Wildlife comments.

- I. *INFORM Comment: Cotter's assertion that the ore will have no acid-leaching effects because of the area's limited precipitation is not realistic. Previous geochemical analysis of samples from the JD-9 has found that the waste rock could liberate radium, uranium and other metals into surface runoff. SPLP testing has found that aluminum, arsenic, vanadium and uranium exceed federal water quality standards and that fluoride, aluminum, molybdenum, uranium, zinc and radium are all constituents of concern. Cotter proposes to construct a compacted clay pad for the ore stockpile, but it should have a synthetic liner in order to reduce the possibility of contamination. SPLP testings should be conducted on both the ore and waste rock on a regular basis in order to continually monitor the potential for acid generation from these piles. Ore should be removed within 30 days of being brought to the surface, rather than within 30 days of the end of mining, as Cotter proposes. As Cotter's definition of mining appears to be very fluid, we cannot rely on how those 30 days will actually be counted in the future.*

The ore and waste that will be mined have 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.

Cotter has proposed using a clay liner under the ore pad, which will provide substantial protection to the underlying environment. This fact, along with the fact that the underlying strata is a Ustic torriorthents soil type (primarily consisting of clays with some sandstone, which has high sequestration potential for radioactive constituents), will limit the potential migration of uranium related constituents.

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

- J. *INFORM Comment: It does not seem that Cotter has put together an amendment application with the thorough updating, analysis and planning that an Environmental Protection Plan requires. 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 JD-9 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).

Mr. Travis Marshall  
February 21, 2013  
Page 15

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 a small mark at the end.

Glen Williams  
Vice President, Mining Operations