



cotter

VIA U.S. MAIL

February 21, 2013

Ms. Stephanie Reigh
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: SR-11 Mine, Permit No. M-1977-451, Response to Comments from Information Network for Responsible Mining ("INFORM")

Dear Ms. Reigh:

I am writing in response to your letter dated December 17, 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 concerns presented by INFORM in its letter, dated December 6, 2012, to the Division, regarding Cotter's 112d Amendment Application ("Amendment") for the SR-11 Mine. This letter 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 6, 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 SR-11 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 SR-11 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 Permit No. M-1977-451 in August 1990, as part of its conversion application for that permit. Permit No. M-1977-451 covers the mining operation known as the SR-11 Mine. By letter dated October 30, 1990, the Mined Land Reclamation Division informed Cotter that the Board had approved the conversion application. The Division has consistently confirmed the SR-11 Mine's intermittent

status since that approval, including in an inspection report signed July 26, 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 SR-11 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 SR-11 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 SR-11 is associated with the Ike No. 1 mine, located adjacent to Summit Canyon in the Slick Rock area and the Dolores River. While the Ike Mine portal has been reclaimed, all activity in recent years appears to have been focused on the short-lived development of the new SR-11 portal. According to Division records, this activity was brief, with construction of the mine staging area and development of an incline occurring between July and November 2005. The entire SR-11 lease tract has been idle since, and has been idle for most of its permitted history.*

INFORM is incorrect that the "entire SR-11 lease tract" has been "idle for most of its permitted history," including the period after November 2005.

Permit No. M-1977-451 was originally a 110 category permit covering the old Ike No. 1 Mine, and permitted two acres. The mine operated before Cotter acquired Permit No. M-1977-451 in 1985.

After Cotter acquired the SR-11 lease tract and Permit No. M-1977-451, the SR-11 lease block continued to be active. Cotter conducted surface drilling on the SR-11 lease block from 1986-1988. Based on this drilling, Cotter submitted to the Mined Land Reclamation Division its conversion application on July 18, 1990. This application requested approval to expand the original two-acre permit area by 11.3 acres to enable Cotter to develop a new ore deposit that would become the SR-11 Mine. On October 18, 1990, the Board approved the conversion application. Following this approval, Cotter conducted additional surface drilling on the expanded permit area from 1991-1994 and 1996-2002. By letter dated June 21, 2005, Cotter informed the Division of Minerals and Geology that it planned to begin "underground mining (development and production)" at the permitted site on the SR-11 lease block in sections 17 and 18, T43N, R19W, NMPM, and that surface work related to the new mine was anticipated to begin in early July 2005. Shortly thereafter, Cotter commenced construction of the SR-11 Mine's portal and waste dump followed by development of the main drift. This work continued until November 2005, at which time the drift reached 300 feet. Further, in 2005, Cotter

constructed berms and stormwater runoff basins at the SR-11 Mine, which have proven efficient in diverting stormwater. In 2010 and 2011, Cotter pocked the mine waste dump at the SR-11 Mine and worked on the lower stormwater catchment berm.

INFORM's assertion that development of the new SR-11 portal was "short-lived" is inaccurate. Cotter plans to resume development of the SR-11 Mine, including its main drift, when market conditions recover. The plan for completing the work is attached as Exhibit D to the Amendment, and estimates that completion of the decline to the ore horizon will take six to twelve months. The mine plan estimates that the SR-11 Mine will be viable for up to ten years.

- B. *INFORM Comment: The inactive status of this mine is of concern and the most appropriate action the Division can take is to terminate the permit. Most recently, the Division has imposed a deadline of Dec. 15, 2012, on Cotter to place the mine into Temporary Cessation and reiterated that it is not in compliance with the Mined Land Reclamation Act. The SR-11 was first placed into Temporary Cessation in 1980, a status that was renewed in 1985. In 1990, the mine should have been closed and reclaimed and the permit terminated. 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).] Instead of reclaiming the mine, however, Cotter filed a technical revision to its permit and was granted status as an intermittent operation, which it has retained ever since.*

The Division has already addressed INFORM's "concern" regarding the "inactive status" of the SR-11 Mine. In a letter to Cotter dated November 9, 2012, the Division requested that Cotter place the SR-11 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 SR-11 Mine. Cotter's notice requested a change in the SR-11 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. As explained above, 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. INFORM's "concern" is therefore without basis.

INFORM's assertion that the "most appropriate action the Division can take is to terminate the [SR-11] permit" is without merit. On one hand, the purpose of this proceeding is not to determine "appropriate action," but to decide whether the Amendment and EPP comply with the MLRA and its implementing rules, and should therefore be approved. Moreover, no basis exists to terminate the SR-11 Mine's permit. Substantial economic reserves continue to exist at the SR-11 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. 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 SR-11 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 assertion that the Division recently reiterated that the SR-11 Mine is not in compliance with the MLRA mischaracterizes the facts. Cotter is aware that, in the Division's November 9, 2012 letter (discussed above), the Division found that the SR-11 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.**" (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 SR-11 Mine in mid-December 2012.

There is no basis to INFORM's assertion that "In 1990, the mine should have been closed and reclaimed and the permit terminated." This comment is assumed to refer to the original Ike No. 1 Mine.

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 SR-11 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 appears to contend that the old Ike No. 1 Mine should have been "closed and reclaimed" in 1990 because the two-acre area had existed in temporary cessation from 1980 to 1990. INFORM's 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.”

Third, INFORM’s position fails because, in 1990, the Ike No. 1 Mine had not been “inactive” or in a non-operating status for a ten-year period. Permit No. M-1977-451 first entered temporary cessation on December 23, 1981, and not in 1980, as INFORM contends. Letter, dated December 23, 1981, from the Mined Land Reclamation Division, to Anschutz Mining Corporation, regarding Permit Nos. 77-453, 77-452, and 77-451. Therefore, Permit No. M-1977-451 and the associated Ike No. 1 Mine had not existed in temporary cessation for ten years as of 1990.

- C. *INFORM Comment: INFORM is in complete agreement with the Division’s recent determination that the SR-11 is not an intermittent operation and cannot retain that status. Cotter has a lengthy history of resisting attempts by the Division to bring all of its permitted mining operations into compliance with the law. On Oct. 9, 2012, for example, Cotter claimed in correspondence with the Division that it is entitled to retain its Intermittent Status because it spent some time in 2011 seeding the topsoil pile and repairing a berm. These are not active mining activities as defined in the Act and Rules. In fact, the MLRA specifically requires that ore be produced when determining the status of a mine. Intermittent operations are not on “standby mode,” waiting for the day when the commodity will be back in demand; an intermittent operation must undertake active mining activities every year, and general maintenance is specifically excluded from this definition. Cotter is also wrongfully clinging to a court injunction against the Department of Energy in a legal case that prohibits any exploration or mining activity at the SR-11 as another reason to retain Intermittent Status, when in fact that injunction makes it impossible to retain Intermittent Status. Perhaps white is also black! In fact, because Cotter has leased the mine from the Department of Energy, it is strictly obligated to comply with the Division’s Rules and the MLRA. Instead, Cotter says that it will wait for the EPP to be approved, then construct the storm water management controls, and then consider applying for Temporary Cessation. This is simply not acceptable.*

INFORM’s assertion that the SR-11 Mine “is not an intermittent operation and cannot retain that 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 SR-11 Mine. In that notice, Cotter requested a change in the permit status for the SR-11 Mine from intermittent activity to temporary cessation. Further, Cotter requested that such change be made effective December 15, 2012, which also serves as the date of cessation.

INFORM does not substantiate its assertion that “Cotter has a lengthy history of resisting attempts by the Division to bring all of its permitted mining operations into compliance with the law.” No facts supporting this “lengthy history” are set forth in INFORM’s letter. Instead, in an effort to support its assertion, INFORM refers exclusively to a single statement allegedly made

in October 2012 regarding “seeding the topsoil pile and repairing a berm.” This single statement, if true, would not support INFORM’s assertion. However, no such statement appears in the record for the SR-11 Mine. Instead, Cotter reported “In 2011, active mining activities at the SR-11 (Ike No. 1) Mine included pocking the mine waste dump and working on the lower storm water catchment berm.” Notwithstanding this misapprehension of what Cotter said, 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 the “MLRA specifically requires that ore be produced when determining the status of a mine.” The context of the assertion is the “intermittent status” of the SR-11 Mine. In that context, INFORM’s assertion is incorrect. As explained by the Division in a letter to Cotter, dated January 24, 2012, regarding the SR-11 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 SR-11 Mine in intermittent status.

Cotter is not “wrongfully clinging to a court injunction against the Department of Energy.” Due to the injunction ordered by the District Court in *Colorado Environmental Coalition v. Office of Legacy Management*, 819 F. Supp. 2d 1193, 1224-225 (D. Colo. 2011), the Division requested that Cotter place the SR-11 Mine and other sites into temporary cessation by December 15, 2012. The Division made this request in a letter to Cotter, dated November 9, 2012. As explained in section I.B., above, Cotter has filed the requested Notice of Temporary Cessation, and did so by the date set forth in the Division’s November 9, 2012 letter. INFORM’s comment therefore provides no basis to deny the Amendment or the EPP.

- D. *INFORM Comment: Despite the limited construction activity that took place in 2005, the SR-11 is not a mine in operating condition. In the amendment application, Cotter states that it did not finish the development work and that the drift must still advance another 1,000 feet before the ore will be intercepted, an effort that will take approximately six months. The proposed Environmental Protection Plan and amendment application fails to provide evidence of Cotter’s actual intent to mine at the SR-11 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. In fact, all of the circumstances that led Cotter to halt development of the SR-11 in 2005 remain firmly in place. There is nowhere to deliver the ore and no one to buy it. 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 becomes viable in the future, Cotter should have the opportunity to apply for a reclamation permit under current laws and regulations that meet contemporary standards.

Whether the SR-11 Mine is currently in operating condition or not is irrelevant to whether the Amendment and EPP should be approved. No provision of the MLRA or its implementing rules imposes such requirement. But even if the SR-11 Mine's operating condition was a factor in approving the EPP, such condition would not require denial of the EPP. The completion of the SR-11 Mine's decline to the ore horizon is anticipated to require only six to twelve months.

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 SR-11 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 next point, the SR-11 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 SR-11 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 SR-11 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 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 Facilities 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 continually delay meaningful activities that are protective of the environment or that are required under the terms of its permit.*

The timetable for the construction of facilities at the SR-11 Mine is discussed in section (15) of the EPP. In that section, Cotter explains that ore and waste rock pile sites have already been chosen and will expand as mining continues (See Amendment, Exhibit C – Maps, Figure C4). Further, berms and catchment basins will be improved and added as necessary, as presented in the Amendment, Appendix III – Drainage Design Plan. These structures will be regularly monitored and maintained.

The approval of the SR-11 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 SR-11 Mine after market conditions recover. The plan for such resumption of mining is attached as Exhibit D to Cotter's Amendment.

The permit file for the SR-11 Mine shows that Cotter has not delayed activities that are protective of the environment or that are required under the terms of the SR-11 permit.

II. Non-Jurisdictional Issues

- A. *INFORM Comment: Current stormwater management features at the SR-11 apper [sic] to be inadequate and problems with erosion and rilling have been noted in multiple inspection reports. Regardless of the outcome of the EPP approval or the status of the permit, Cotter should be required to implement the new stormwater management features immediately in order to prevent additional migration of radionuclides and other toxic contaminants from the permitted areas offsite and into the Dolores River. There is no groundwater monitoring plan or water quality data available. A monitoring well should be installed prior to the start of any mining and five quarters of data should be collected in order to establish an adequate baseline. The overall hydrology of the site needs to be understood much better in order to plan and mitigate any impacts from mining and prevent the migration of radionuclides offsite. And Cotter should not be allowed to wait to implement a groundwater monitoring plan if and only if it produces water during active mining and uranium is verified through chemical analysis; rather, this should be occurring now.*

Cotter has already implemented all of the necessary stormwater management features required for the current condition of the mine site. INFORM's concern about potential migration of radionuclides and other contaminants is unfounded as this mine is only in the developmental stages, and no ore material has been encountered yet.

Cotter anticipates that this mine will not encounter groundwater during mining activities based on previous exploration drilling in this area. Consequently, Cotter has not proposed a groundwater monitoring plan.

- B. *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. The mine will consume 10,000 gallons per year. 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.

- C. *INFORM Comment: Cotter proposes building a new access road to the SR-11 portal. This does not appear necessary at all, considering the existing access road is located nearby. 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 access road to the portal was built in 2005. Cotter will use existing roads as much as possible and will construct new roads only as necessary.

- D. *INFORM Comment: The SR-11 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. In*

addition, the Dolores River herd of bighorn sheep heavily depend on and utilize the adjacent Summit Canyon area at all times of the year. The desert bighorn were transplanted to the Slick Rock area in 2010 and 2011 and are a species of concern in Colorado. The mine's operating plan should be carefully scrutinized to make sure that the bighorn will not be adversely affected.

The response from Colorado Parks & Wildlife ("CPW") indicated that the impacts to deer, elk, and bighorn sheep should be minimal. As such, Cotter has proposed no seasonal limitations to the proposed operation.

Further, Cotter will follow the CPW recommendations regarding avoiding initial re-entry into bat winter roosting sites during the hibernation season, and constructing exclusions to prevent use of the site by bats prior to Cotter's re-entry into winter roosting sites.

- E. *INFORM Comment: Cotter's assertion that the ore will have no acid-leaching effects because of the area's limited precipitation is not realistic. Geochemical analysis of the waste rock from SR-11 indicates that aluminum, arsenic, uranium, selenium and radium are all present and the rock has potential to cause acid or toxic leaching. SPLP tests should not only be conducted on the waste rock, but also on the ore, and not just once but on regular intervals. 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. The ore pad should be constructed with a clay liner, not simply a compacted clay pad.*

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.

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. 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.

- F. *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 SR-11 Mine, and explained that "according to Rule 1.7.1(2)(a) all comments received after December 6, 2012 are considered to be untimely and will not be considered by the Division." Cotter requests that the Board and Division enforce the December 6, 2012 deadline established by Rule 1.7.1(2)(a).

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

Respectfully,

A handwritten signature in cursive script, reading "Glen Williams".

Glen Williams
Vice President, Mining Operations