BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

INFORMATION NETWORK FOR RESPONSIBLE MINING'S COMBINED REPLY TO DIVISION AND COTTER CORPORATION'S RESPONSES SUPPORTING MULTIPLE NOTICES OF TEMPORARY CESSATION OF PRODUCTION

In the Matter of Cotter Corporation, Notices of Temporary Cessation of Production for: LP-21 Mine, Permit No. M-1977-305; JD-9 Mine, Permit No. M-1977-306; JD-6 Mine, Permit No. M-1977-310; SR-13A Mine, Permit No. M-1977-311; SR-11 Mine, Permit No. M-1977-451; JD-7 Mine, Permit No. M 1979-094HR

Information Network for Responsible Mining (INFORM), through counsel, submits this combined reply to the Division of Reclamation, Mining, and Safety ("DRMS") and Cotter Corporation arguments for Board approval of Cotter's December 15, 2012 requests to extend "life of the mine" permits through the "temporary cessation of production" provision of the Mined Land Reclamation Act ("MLRA"). C.R.S.§ 34-32- 103(6)(a).

Introduction

The Colorado legislature has removed the discretion of the Board to grant Cotter's request to extend the life of mine permit at mines that have not produced for decades. *Id*. at 103(6)(a)(III). (**"**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.") *accord* Rule 1.1 (53)("temporary cessation" defined as "limited periods of non-production […]").

Here, both responses confirm that these non-producing mines remain uneconomic where "Cotter plans to resume production at the Mines after the price of uranium returns to a profitable point." Cotter Response at 16 (*emphasis supplied*). However, Cotter's response, like the 2012 Notice, does not identify the costs or the price at which the low grade/high production cost carnotite becomes profitable, and therefore falls short of the statutory requirement that "mineral reserves are shown by the operator to remain in the mining operation . . ." C.R.S.§ 34-32- 103(6)(a)(II). Carnotite deposits that "remain underground" after many decades where "depressed market conditions" have rendered them "unprofitable" are not "mineral reserves" that allow "temporary cessation of production" to extend a life of mine permit. *Id*., Cotter Response at 19. Although DRMS does not address this critical "mineral reserve" factor, its response confirms that the 2012 Notice does not satisfy this necessary condition for the Board's "temporary cessation of production" inquiry.[1] DRMS Response at 2.

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[1]These carnotite mines are not likely to ever again contain economic reserves where uranium has become subject to global commodity pricing and the federal price guarantees that once made these deposits economic are not likely to return. *See Gay v. United States*, 174 Ct. Cl. 420, 422 (Ct. Cl. 1966)(discussing the diminished role of the low grade

Perhaps recognizing that the plain language of the MLRA precludes renewed "temporary cessation of production" status, Cotter and DRMS staff respond to INFORM's objections with a set of similar legal arguments directed at the untenable positions that: 1) objections made pursuant to the 2011 Amendments to the Hard Rock/Metal Mining Rule are barred by equitable concerns; 2) the statutory 10 year limitation of two 5-year periods of "temporary cessation of production" does not prevent DRMS from issuing a series of indefinite extensions; and, 3) and whether or not production has occurred at these previously producing mines is irrelevant to the "temporary cessation of production" provision.

The key facts are admitted: A) production commenced at these mines many decades ago in response to federal buying programs; B) production most recently ceased in the 1980s after the uranium and/or vanadium deposits again proved uneconomic after a short boom in the late 1970s; C) a token amount of carnotite was removed from some of the mines in 2006, but none was processed into yellowcake or vanadium oxide; D) production at these conventional uranium mines remains uneconomic; and, E) a federal injunction was entered in October 2011 that prevents Cotter from engaging in production until the federal land management agencies remedy ongoing violations of federal law at these sites.[2]

In short, where Cotter has not demonstrated that its 2012 Notice satisfies the statutory requirements and where the statutory term "temporary" means less than 10 years, the MLRA removes discretion from the Board and imposes the mandatory remedy of "terminating the operation and fully complying with the reclamation requirements of this article." C.R.S. § 34-32- 103(6)(a)(III).

The action by the Board should include deadlines that ensure Cotter fully reclaims of these sites in accordance with the permit, reclamation plan, and the MLRA and implementing regulations within a reasonable amount of time. Should the pending federal injunction pose practical barriers on the update and/or implementation of the existing reclamation plans, INFORM and the other plaintiffs in the federal litigation are amenable to discuss the reasonable amount of time and other accommodations consistent with the terms of the pending injunction.

II. Standard of Review

The burden is on Cotter, as proponent of a Board Order approving its proposal to allow the life of mine permit to be extended based on approval of "temporary cessation of production" status. C.R.S.§ 34-32- 103(6)(a)(II)(requiring "operator" to show mineral reserves remain). The burden extends past the presence of economic reserves and requires the operator to show "reasons for the continuation of non-production and those factors necessary to, and his plans for, resumption of production." *Id*. at II. The burdens imposed by these MLRA provisions are consistent with the licensing provisions of the Colorado Administrative Procedure Act. C.R.S. §§ 24-4-101 *et. seq.*

Colorado Plateau carnotite in setting out the "history of Atomic Energy Commission (AEC) policy regarding uranium procurement.").

[2]Although the claims were brought against the federal government, had Cotter used water for mining purposes, such depletions would likely have constituted violations of the Endangered Species Act.

The Board owes no deference to DMRS' past or present interpretations of the MLRA or the regulations. This is particularly true where the MLRA and the regulations speak in plain terms to a 10 year limitation on the "temporary cessation of production" at Colorado mines. C.R.S.§ 34-32- 103(6)(a)(II); *Colo. Ethics Watch v. Clear the Bench Colo*., 2012 COA 42, P40 (Colo. Ct. App. 2012)(setting forth statutory interpretation canons).

In sum, the MLRA allows the Board to resolve this matter in a straightforward manner by applying the plain language of the MLRA's "temporary cessation of production" limitation to the undisputed fact that these previously producing mines have not produced in decades due to the admittedly uneconomic deposits of carnotite. C.R.S. § 34-32- 103(6)(a).

III. Argument

A. Equitable Defenses Must Fail where Pre-2011 Objections to Notices of Temporary Cessation of Production were Not Available and INFORM is not Subject to a Duty to Object

Cotter and DRMS argue that it would be unfair to consider objections to the 2012 Notices because similar Notices have been approved in the past. These arguments fail to recognize that in response to legislative action taken in 2008 to address problems at these and other uranium mines, the Board amended its regulations to explicitly allow organizations such as INFORM to raise objections. The amended Rule 1.13,

> allows those individuals who are directly and adversely affected or aggrieved and whose interest is entitled to protection under the Act to participate in Board hearings concerning temporary cessation.

Exh. 1 (2010 Statement of Basis and Purpose) at 7-8 *accord Id*. at 20.[3] INFORM has timely filed objections in reliance on this newly-adopted provision.

Further, Cotter and DRMS argue that it would be unfair to allow objections where "temporary cessation of production" has admittedly been ongoing since the late 1970s or 1980s. However, the MLRA and regulations use time periods of 180 days, five years, and ten years. These time periods require recurring justification and analysis of the conditions and status of these mines, in part, to avoid a new wave of abandoned mines. The 2010 Rule Amendments specifically provided for the filing of objections to supplement the information and legal analysis that may be presented to the Board when an operator files requests it Notice be approved by the Board.

Instead of relying on current information in the 2012 Notice, both responses reference and rely upon information from previous temporary cessation and intermittent status requests. However, the attempt to infer information from past reports into the 2012 Notice via inference and post hoc

[3]Similar amendments were made in 2005 to address the State Auditor's findings "that the Office was lacking in its ability to enforce reclamation requirements for Notices of Intent to Conduct Prospecting (NOI)." Exh. 2 Statement of Basis and Purpose - 2005 Amendments. ("Specifically, the Office lacked adequate information to determine whether prospecting operations had ceased, whether contact information was current for all prospectors, the exact location of prospecting activities, and the extent of disturbance prior to implementation of an NOI.").

references in the response briefs is explicitly prohibited. Rule 1.13.5(5)("The Notice shall be separate from any other correspondence or reports submitted to the Office."). Even where the responses attempt to rescue the faulty 2012 Notice, the information is not current, often referring to 1990s era documents. The 2008 Legislation and 2010 Rule Amendments were adopted, in part, to prevent ongoing violations by allowing persons other than the Operator and DRMS to participate in this process.

Similarly, common law equitable defenses are not available to shield Cotter from the statutorily-compelled Board action, and even if such defenses were available, equity would not be served by barring the Board from considering INFORM's objections over whether or not Cotter has satisfied the MLRA criteria for "temporary cessation of production."

Dispositive of all equitable theories in the Cotter/DRMS responses is that INFORM had no duty to present its objections prior to this proceeding. *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1, 74 (Colo. 1996)("laches is not applicable to a party who has no duty to act"). Further, Cotter purchased the leases for each of these sites from the federal government in 2008 with the knowledge of the "temporary cessation of production" requirements and the ongoing effort by INFORM and the Board to enforce provisions such as the Environmental Protection Plan (EPP) requirement, that had been ignored by DRMS staff and Cotter for a number of years. Where INFORM successfully intervened in the 2005 DMO proceeding regarding several of these mines, the result was that existing EPPs were confirmed as applicable to Cotter during an administrative proceeding. *See Appeal of Designated Mining Operation (DMO) Classifications tor the JD-6 Mine (M-1977-310), JD-8 Mine (M-1984-014). JD-9 Mine (M-1977-306) and the SM-18 Mine CM-1978-116)*. Contrary to DRMS allegations that INFORM has allowed this issue to "languish," the inapplicability of temporary cessation to Cotter's mines was raised by INFORM and others during the DMO proceeding in 2006. Exh 3 (DMO Objections).

Here, Cotter cannot rely on previous non-enforcement of the MLRA by the DRMS. *V Bar Ranch LLC v. Cotten*, 233 P.3d 1200, 1211 (Colo. 2010)("equitable estoppel cannot be asserted, based on an initial administrative decision, in contravention of the statutory mandate"). Consistent with the 2010 Rule Amendments and the 2008 MLRA Amendments, when public notice of Cotter's temporary cessation request was published, INFORM promptly filed its objections.

Last, attempts by the DRMS staff and Cotter to shield the Cotter mines from compliance with the MLRA and its implementing regulations is unreasonable where "under Colorado common law, land uses that cause pollution constitute a nuisance." *Department of Health v. The Mill*, 887 P.2d 993 (Colo. 1994) *quoting Wilmore v. Chain O' Mines*, 96 Colo. 319, 325-26 (1934). There is no question that uranium mining is a source of pollution and is subject to MLRA regulation.

B. The 10 Year Limit Implements a Fundamental Legislative Purpose

Cotter and DRMS forward a number of regulatory interpretations that attempt to eliminate the 10 year statutory limitation on "temporary cessation of production." Both responses argue that the Board must accept these interpretations.

To the contrary, no deference is due DRMS staff's past or present determinations. Instead, the Board is presented with a question of statutory and regulatory that is guided by the canon that when a statute speaks in plain terms to a specific issue, the statutory language and legislative intent must be followed. *Colo. Ethics Watch v. Clear the Bench Colo.*, 2012 COA 42, P40 (Colo. Ct. App. 2012). Where a statute speaks plainly to an issue, there is no reason to accept or even consider other interpretations. *Id. quoting Wiesner v. Huber*, 228 P.3d 973, 975 (Colo. App. 2010)("an unwritten policy that is not promulgated through formal rulemaking is entitled to no deference"); *citing Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842 (U.S. 1984)("If the intent of Congress is clear, that is the end of the matter").

Here, the MLRA lacks ambiguity and there is no reason to consider the interpretations of DRMS and Cotter.

> 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.

C.R.S.§ 34-32- 103(6) (a). The statutory phrase "temporary cessation of production" is shortened to "temporary cessation" by the regulatory definition, and the regulatory definition confirms that the legislative intent is to impose defined limits on the period of time where production does not take place during the life of the mine.

> Temporary Cessation means those limited periods of non-production as specified according to Section 1.13.

Rule 1.1(53). Here, there is no question that production ceased in the 1980s without terminating the mining operations and fully complying with the MLRA's reclamation requirements.

The interpretations forwarded by DRMS and Cotter would prevent the beneficial use of these federal public lands by INFORM and by other members of the public. The plain interpretation of the MLRA's "temporary cessation of production" provision is consistent with the declared purposes of the MLRA, which strikes a balance between orderly mining and prompt reclamation:

> It is the intent of the general assembly by the enactment of this article to foster and encourage the development of an economically sound and stable mining and minerals industry and to encourage the orderly development of the state's natural resources, while requiring those persons involved in mining operations to reclaim land affected by such operations so that the affected land may be put to a use beneficial to the people of this state.

C.R.S. § 34-32-102. In order to implement the ten year statutory limitation, the MLRA and the regulations split the ten year period into initial period that begins after the 180 day period of non-production and ends within 5 years. C.R.S. § 34-32- 103(6) (a)(II-III), Rule 1.13.5. If production has not occurred in the first 5 year period of non-production, a second 5 year Notice may be filed with additional requirements. *Id*. There is no statutory or regulatory provision that allows a request for a third 5 year period, as this would violate the plain language of the MLRA. Instead,

the MLRA and regulations plainly state that the permit shall be terminated and reclamation shall take place after ten years of non-production. *Id*. The Board need not even consider the 2012 Notice where the legislature has already established that "in no case shall temporary cessation of production be continued for more than ten years without terminating the operation." *Id*. at § 103(6)(III).

Allowing uranium mines to languish for multiple decades of non-production is not only inconsistent with the plain language and intent of the MLRA and the structure of the regulations, it would undo the balance the MLRA requires between mining and beneficial use of land. If the indefinite renewal theory forwarded by DRMS and Cotter were accepted, mines that have gone into production only to be proven uneconomic after a short period of uneconomic production could languish indefinitely on the unsupported, speculative assertion that the price may rise, someday, to a level where economic reserves may be present and economically viable production may take place.

Instead, where Cotter and DRMS confirm that production has commenced decades past and ceased when the deposits proved uneconomic, "temporary cessation of production" status is not available to allow a permit to linger for decades. Instead, the statute requires that the Board deny the Notice and fashion relief "terminating the operation and fully complying with the reclamation requirements" of the MLRA, including prompt return of this land to the beneficial use of the people of Colorado. *Id*. at §§ 102, 103(6)(III). Should the reclaimed site and currently uneconomic deposits on federal public lands someday prove economically viable, there is no bar to a federal lessee filing a new application.

C. Ongoing Reclamation and Maintenance at Mines where Production has Commenced does not Excuse Non-Production

Cotter and DRMS argue that activities conducted after production started and ceased can excuse decades of non-production. These arguments are inconsistent with clear statutory definitions and provisions that clearly recognize a distinction between development and production phases of mining.

> (4) "Development" means the work performed in relation to a deposit, following the prospecting required to prove minerals are in existence in commercial quantities <u>but prior to production activities</u>, aimed at, but not limited to, preparing the site for mining, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities.

C.R.S. § 34-32-103(4)(e*mphasis supplied*). The ability of the Board to terminate a non-producing "life of the mine permit" that has moved past development and into production is consistent with the MLRA, which regulates according to stages: prospecting, exploration, production, and final reclamation. Temporary cessation is an exception to this scheme, and as such is carefully limited in time and scope by the MLRA and the regulations.

The MLRA contemplates a period of time where production does not take place and final reclamation takes place.

> (b) "Life of the mine" includes that period of time after cessation of production necessary to complete reclamation of disturbed lands as required by the board and this article, until such time as the board releases, in writing, the operator from further reclamation obligations regarding the affected land, declares the operation terminated, and releases all applicable performance and financial warranties.

C.R.S. § 34-32-103(6)(b). The MRLA further limits the "life of mine" in that a permit "may continue in effect as long as: (I) An operator continues to engage in the extraction of minerals and complies with the provisions of this article;" C.R.S. § 34-32-103(6)(a) However, development, reclamation, and maintenance cannot serve as a substitute for "production" or "extraction" as those terms are used in the MLRA, and the MLRA plainly mandates that non-producing mines may not occupy the landscape for more than 10 years. C.R.S. § 34-32-103(6)(a).

For the majority of the mines at issue, "production" admittedly commenced decades ago and ceased decades ago based on the inability to mine profitably. Two mines made token production, but the ore was never processed into a salable commodity. It would be an absurd construction of the MLRA to allow token development, interim reclamation, and maintenance activities to extend the statutory limitation on the 10 year period of time a mining operation can remain in "temporary cessation of production" and avoid termination. C.R.S. § 34-32-103(6) (a). Simply put, while these activities may constitute mining operations" under the Board Rules, they are not "production" under the MLRA.

IV. Conclusion and Relief

The present situation was confronted by recent legislation (2008) and rulemaking (2010), both of which placed increased scrutiny on the problems posed by inactive uranium mines. Abiding by these new provisions, INFORM filed objections to require DRMS and Cotter to come into compliance with existing "temporary cessation of production" limitations that give meaning to the balance between orderly mining and prompt reclamation of Colorado lands for beneficial use. Cotter's Response confirms that production ceased in the early 1980s because the costs of mining conventional uranium does not constitute an economic reserve in an era of federal stockpiles of "already mined uranium", and the development of lower-cost reserves of uranium.

Although DRMS fashions an argument (Response at 9-10) to suggest that the Board must go through a lengthy process to terminate the life of mine at a non-producing operation, this is not the case. A more direct and unwavering statutory command is difficult to imagine.

> 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.

C.R.S. § 34-32- 103(6)(a)(III). The Board is not only empowered to deny Cotter's request, it is compelled by statute to issue an order that accomplishes termination and reclamation without

further delay where C.R.S. § 34-32-103(6) and MLRB Rule 1.14 expressly grant the Board the authority to terminate the life of the mine permit.

Cotter argues that it should be given time to rectify its chronic non-compliance with the MLRA, but there is little or nothing Cotter can do to rectify the situation where the mines have been out of production for decades and the MLRA restricts "temporary cessation of production" to only 10 years. In any case, that debate should be had in the context of a termination proceeding under Rule 1.14, as the Rule and MLRA contemplate, and not at this stage of the proceedings.

RESPECTFULLY SUBMITTED ON THIS 22nd DAY OF MARCH 2013

S/Travis E. Stills
Travis E. Stills, #27509
Energy & Conservation Law
1911 Main Avenue, Suite 238
Durango, Colorado 81301
(970) 375-9231
Fax (970) 382-0316
stills@frontier.net

S/Jeffery C. Parsons
Jeffrey C. Parsons, #30210
Roger Flynn, #21078
Western Mining Action Project
P.O. Box 349
Lyons, CO 80537
(303) 823-5738
Fax (303) 823-5732
wmap@igc.org

CERTIFICATE OF SERVICE

This is to certify that on the 22th day of March 2012, I caused the foregoing document to be served upon all parties via email to the following:

Julie Murphy
Assistant Attorney General
Julie.Murphy@state.co.us

Robert Tuchman
robert.tuchman@bryancave.com
Counsel for Cotter Corporation

/S/ Travis E. Stills
Travis E. Stills

Statement of Basis, Specific Statutory Authority, and Purpose for New Rules and Amendments to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal and Designated Mining Operations, 2 CCR 407-1.

Consistent with § 24-4-103(4), C.R.S., of the Administrative Procedure Act, this statement sets forth the basis, specific statutory authority, and purpose for the new rules and amendments ("rules") to the Mined Land Reclamation Board's ("Board") current rules. The rules implement new statutory requirements and authority as well as update existing regulations. The rules are intended to protect the public health, safety and welfare as required by the Mined Land Reclamation Act ("Act"). They also are intended to foster and encourage the development of the State's natural resources and the development of a sound and stable mining and minerals industry, and require mining operators to reclaim land affected by such operations so that the affected land can be put to a use beneficial to the people of this State. *See* § 34-32-102, C.R.S.

In drafting these rules for the Board's consideration, the Division of Reclamation Mining and Safety ("Division" or "Office") took into account the Act's statutory requirements and the Board's and Division's regulatory authority including new provisions the General Assembly enacted in 2008. The Division also considered extensive written comment, oral discussion, and legal argument, which occurred during eight months of informal stakeholder meetings held by the Division.

Statutory Authority

The General Assembly delegated broad rulemaking authority to the Board respecting the administration of the Act at § 34-32-108, C.R.S. In addition, the General Assembly passed several pieces of legislation in 2008, which set forth new statutory requirements and increased the regulatory authority of the Board and the Division. Specifically, the Legislature passed Senate Bill ("SB") 08-228 concerning prospecting, codified at § 34-32-113, C.R.S; House Bill ("HB") 08-1161 concerning uranium mining, codified at §§ 34-32-103, 110, 112, 112.5, 115, 116, and 121.5, C.R.S; and SB 08-169 concerning fees, codified at § 34-32-127, C.R.S. In addition, the General Assembly set new fee amounts in 2007 in SB 07-185, codified at § 34-32-127, C.R.S. Further authority for the proposed new rules and amendments resides in §§ 34-32-112.5 and 116.5, C.R.S., which concern designated mining operations.

Purpose

The primary reason for adopting the rules is to implement legislation the General Assembly passed in 2008. In addition, the rules update the existing rules to correspond to the changes required for the implementation of the legislation and also

amend areas of the existing rules that need clarification, correction, or to reflect new information or current practice or procedure.

The new rules and amendments include edits and additions to numerous sections of the current rules, and include, among other amendments and additions, new definitions; changes to existing definitions; new application, reclamation and temporary cessation requirements for uranium mining; provisions regarding confidentiality and public disclosure of prospecting information, including a process to request hearings before the Board regarding confidentiality disputes and a process to appeal the Division's decisions on prospecting notices; provisions concerning permit fees and costs of third party experts; changes to the designated mining operation process; and changes to the spill reporting requirements.

Stakeholder Process and Rulemaking Hearing

In May 2009, the Division began an informal stakeholder process. The Division held its first stakeholder meeting on May 27, 2009 at which the Division provided an overview of its proposed draft set of rules. The Division posted proposed regulations on its website on May 28, 2009. Throughout the stakeholder process, interested persons were given opportunities to submit written comments on each version of the draft and to orally discuss the draft and comments thereto at stakeholder meetings.

For the most part, the Division discussed the rules sequentially, with participants having an opportunity after each stakeholder meeting to submit written comments and then discuss their comments at the next stakeholder meeting. In total, the Division held eight stakeholder meetings: May 27, June 11, July 9, July 30, August 19, September 16, September 30; the Division posted a complete set of the proposed regulations with all edits indicated on the draft on October 20, set November 10 as the deadline for comments on that draft set, then held the final stakeholder meeting on December 3.

Legislation and Rules

In 2008, the General Assembly passed three bills that affected the Act: SB 228 concerning prospecting, HB 1161 concerning uranium mining, and SB 169 concerning fees. In addition, the General Assembly set fees in 2007 in SB 07-185. The proposed rules implement all of these pieces of legislation.

<u>Senate Bill 228</u>

Prior to this bill, all information concerning a notice of intent to conduct prospecting was confidential unless the prospector filed a written release or the Board found that reclamation had been satisfactorily completed. With the passage of SB 228, all information in a notice or a modification of a notice filed on or after the effective date of this bill is public with the exception of information about mineral deposit location,

size, or nature, and proprietary information, trade secrets and information that may cause harm to the competitive position of the prospector.

SB 228 provides that information that is designated by the prospector as exempt from disclosure shall remain confidential until a final determination is made by the Board. This bill requires the Board to promulgate rules to implement the bill, and requires the Board to consider the timing of disclosure of the prospector's identity.

This bill requires the Division to post on its website all information in a notice except that information exempt from disclosure.

Rules to implement SB 228

The rules at Rule 1.3 and Rule 5 implement SB 228. Rule 1.3 requires an applicant for a notice of intent to conduct prospecting to designate what the applicant believes is confidential information in the notice, in modifications of the notice, and in subsequently submitted documents such as annual reports. A prospector may designate its identity as confidential but must file quarterly reports with the Division justifying continued confidentiality of its identity. Rule 1.3 also sets forth the process for a person or the Division to request disclosure of information designated by a prospector as confidential and to request a hearing before the Board on the confidentiality issue.

Rule 1.3 provides that any dispute as to whether information is properly designated as exempt from public disclosure is a deficiency issue concerning the notice. Accordingly, the Division will not approve a notice, and prospecting activities may not begin, until the Board resolves the designation issue and the applicant has met all other requirements applicable to a notice of intent.

Rule 5 distinguishes between notices filed before June 2, 2008 (when SB 228 was signed into law) and those filed after that date. For those notices filed before June 2, 2008, the information in the notice is confidential. However, if the prospector modifies the notice, the modification as well as the underlying notice may be public.

Applicants must file two separate forms: (1) one that contains all information including confidential information; this form will only be used internally by the Division and will not be made public; and (2) one form with the information designated as confidential redacted. The Division must post on its website within five (5) days of its receipt the notice with any confidential information redacted.

The Division received a number of comments and had extensive discussions at stakeholder meetings and the parties made presentations at the rulemaking hearing about the process that should be involved concerning a notice of intent. Environmental entities believed that the Division's approval of a prospecting notice should be subject to an appeal to the Board, with the Board's decision being subject to

judicial review. Industry representatives asserted that, unlike the sections of the Act dealing with permit applications, § 34-32-113 of the Act, which specifically concerns prospecting, does not provide for any process concerning a notice, including allowing public comment or an appeal to the Board.

Given the Board's broad rulemaking authority and in response to comments from both sides of this issue, the rules allow for public comment on notices of intent to conduct prospecting. Specifically, the rules provide that once a notice of intent to conduct prospecting is posted on the Division's website, the public has ten working days to submit comments to the Division.

As to the issue of appeals to the Board of Division Prospecting determinations, the Board has amended the existing Rule to allow any prospective prospector or person who filed a timely comment on a Notice and who meets the definition of party, to appeal an Office determination within five (5) business days from the date the Office sends notice of its decision. Please note that by law, confidentiality does not apply to baseline site characterizations even if conducted under a notice of intent. See § 34-32-112.5(5)(c), C.R.S.

House Bill 1161

This bill provides new requirements for uranium mining operations including, but not limited to:

(1) Making every uranium mining operation a designated mining operation (which subjects such operations to additional application and permitting requirements);

(2) Imposing new and additional application requirements for in situ leach mining operations such as (a) conducting a thorough baseline site characterization prior to submitting an application, (b) describing five similar operations that demonstrate the applicant's ability to conduct the proposed operation without causing leakage into groundwater, and (c) submitting a certification of past and present violations of environmental protection requirements;

(3) Setting specific water quality standards for reclamation of in situ leach mining operations; and

(4) Specifying the circumstances under which the Board may or must deny applications for in situ leach uranium mining operations.

Rules to Implement HB 1161

The new rules and amendments mirror the Act's requirements. Much comment and discussion during the stakeholder meetings and during the rulemaking hearing centered on the process concerning the baseline site characterization and monitoring

plan required for applications for in situ leach uranium mining operations. Environmental groups asserted that the rules should allow for comment to the Division and appeal to the Board from Division's decisions concerning baseline site characterization and monitoring plan issues. Industry members argued that the Act does not provide or allow for any process as to the baseline site characterization and monitoring plan. Industry asserted that decisions related to baseline site characterization and monitoring plans are not final actions subject to appeal since the Act requires the characterization to be conducted prior to submittal of a permit application and a prospective applicant may never file an application. In addition, industry representatives submitted that the appropriate time for public comment and participation is when a permit application is filed, which is when the Act explicitly provides for public participation.

Given the Board's broad rulemaking authority and the statutory language in the Act, the rules allow for public comment on baseline site characterization and monitoring plans for in situ leach mining operations but do not specifically allow for appeals to the Board of Division's decisions concerning the plans. However, as previously discussed, the new rules allow appeals of Division decisions on notices of intent to conduct prospecting. Accordingly, if a baseline site characterization plan is conducted under a notice of intent, it is subject to appeal to the Board.

The regulations require the Division to post on its website notice that a baseline site characterization and monitoring plan has been submitted. The public may request review of the plan and may submit comments within ten working days of the posting of the notice on the Division's website. If and when a prospective applicant actually files a permit application, parties to the permit application proceeding may submit objections and further comments on the baseline site characterization and monitoring plan.

At stakeholder meetings and the rulemaking hearing, industry members raised concerns about potential confusion that the proposed rules require a baseline site characterization to be conducted prior to conducting pure prospecting activities. To be clear, the baseline site characterization plan required by § 34-32-112.5(5)(b), C.R.S. for in situ leach mining operations is only required when submitting a permit application for such an operation; the baseline site characterization plan is not required for prospecting as that term is defined by the Act. However, under new Rule 3.1.6(4), the Division has the discretion to require baseline site characterization data prior to initiation of prospecting.

Please note that if prospecting activities are combined with baseline site characterization and monitoring plan activities, or information obtained from prospecting activities will or may be used in the baseline site characterization and monitoring plan required for a proposed in situ leach mining operation, then the prospecting activities will be regulated as baseline site characterization and monitoring plan activities and not prospecting activities. HB 1161 authorizes the

Division or a third party expert to monitor field operations. Thus, the Division may monitor (or may hire a third party expert to monitor) any activities that concern a baseline site characterization and monitoring plan.

As stated above, HB 1161, among other things, made all uranium mines designated mining operations ("DMOs"). However, the bill allows the operators of these mines to seek exemption from DMO status. Importantly, any exemption from DMO status does not relieve an operator from its obligation to comply with in situ leach application, mining and reclamation requirements.

In an effort to simplify DMO status in the context of uranium mining operations, these rules provide that all uranium mining operations, regardless of whether they are filed under section 110 or 112 of the Act, are DMOs which must follow the procedures for, and will be considered, 112d-3 applications and operations. These operations are entitled 112d applications and operations; they are not given a separate name from other 112d applications. The rules provide that any uranium mining operation may seek exemption from DMO status.

If an in situ leach mining operation obtains an exemption from DMO status, such operations are named 110 ISL or 112 ISL. Operations or applications involving 110 ISL or 112 ISL operations must still comply with all in situ leach mining and application requirements (*e.g.*, baseline site characterization, specified water quality standards, 240-day deadline for decision on application). These applications and operations will follow regular 112 operation procedures, rather than 112d-3 DMO procedures. Thus, an in situ leach mining operation will never follow section 110 procedures regardless of its size. In addition, the 240-day deadline for a decision on an application applies to all in situ leach mining operations - the 240-day deadline is not based on DMO status but on in situ leach mining status. Consequently, given this, the 112 procedures provide a better structure for such applications.

Senate Bill 08-169

This bill set fees for applications and amendments. In addition, the bill requires an applicant for an in situ leach uranium mining permit, amendment or revision to pay the costs of the Division if the cost to review and process an in situ leach permit application, amendment, or revision exceeds twice the fee for a permit application, amendment, or revision. The costs include those of the Division, another division in the Department of Natural Resources, and any consultant or other nongovernmental agents that have specific expertise on the issue in question. The bill requires the Division to inform the applicant that the actual fee will exceed twice the value of the listed fee and to provide the applicant with a cost estimate of the actual charges for the review within ten (10) days after receipt of the application. The applicant may appeal the Division's estimate to the Board within ten (10) days after the applicant's receipt of the estimate.

The rules mirror the above summarized changes at Rule 1.5.

Senate Bill 07-185

In 2007, the Legislature enacted changes to the fee schedule for permit applications, amendments and revisions. In addition, the bill requires an applicant for an oil shale mining permit, amendment or revision to pay the costs of the Division if the cost to review and process an oil shale permit application, amendment or revision exceeds twice the fee for a permit application, amendment or revision. The costs include those of the Division, another division in the Department of Natural Resources, and any consultant or other nongovernmental agents that have specific expertise on the issue in question. The bill requires the Division to inform the applicant that the actual fee will exceed twice the value of the listed fee and to provide the applicant with a cost estimate of the actual charges for the review within ten (10) days after receipt of the application. The applicant may appeal the Division's estimate to the Board within ten (10) days after the applicant's receipt of the estimate.

The rules reflect the provisions of SB 07-185 at Rule 1.5.

Other Important Proposed Changes

Conversions: In existing Rule 1.11, conversions include changing 110 permits to 112 permits and also changing designated mining operations to non DMOs. The new rules and amendments parallel the Act by stating that conversions only cover increases in acreage included in a permit. § 34-32-110(7), C.R.S. The new rules require any operator who wishes to be a non DMO to comply with the provisions of Rule 7, rather than conversion requirements. In addition, the new rules require operators who seek a conversion to file a permit application. Again, this requirement is based on the Act. § 34-32-110(7), C.R.S.

Permit Transfers and Successions of Operators

Based on the requirements of HB 1161 at § 34-32-115(5), C.R.S., Rule 1.12 requires entities who wish to succeed to an in situ leach mining permit to comply with the requirement of filing Exhibit Y, Certification of Prior and Current Violations, in Rule 6.4.25. The rule also provides that the Board may deny the transfer request based on prior or current violations or a pattern of willful violations as set forth in § 34-32-115(5) regarding in situ leach permit applications. In addition, the rules allow those individuals who are directly and adversely affected or aggrieved and whose interest is entitled to protection under the Act to appeal the Division's decision to the Board regarding a transfer.

Temporary and Permanent Cessation of Operations

HB 1161 at § 34-32-112.5, C.R.S., requires an operator to commence ground water reclamation upon permanent cessation of mining operations and allows the Board to order the operator to commence ground water reclamation upon temporary cessation based on the expected duration of the cessation. Rule 1.13 implements these provisions. In addition, this Rule allows those individuals who are directly and adversely affected or aggrieved and whose interest is entitled to protection under the Act to participate in Board hearings concerning temporary cessation.

Below is a summary of the specific changes as to each rule. **Please note that in situ leach mining operations and permits may be referred to as "ISL operations" or "ISL permits"; designated mining operations may be referred to as "DMOs"; and notices of intent to conduct prospecting may be referred to as "NOIs."**

Rule 1: General Provisions and Requirements – Permit Process

Rule 1.1 Definitions

Rule 1.1: Adds new definitions of "Affected Surface Water and Ground Water," "Analogous Law, Rule or Permit," "Baseline Site Characterization and Monitoring Plan," "Best Available Technology," "Description of ISL Mines," "In Situ Leach Mining," "In Situ Mining," "110 ISL Operation or 112 ISL Operation," and "Pattern of Willful Violations." These new definitions reflect terms and requirements set forth in HB 1161.

Two of the new definitions that were discussed during stakeholder meetings and the rulemaking hearing are the definition of "Affected Surface Water and Ground Water" and the definition of "In Situ Leach Mining."

Rule 1.1(4.1): Adds a definition for "Affected Surface Water and Ground Water" for the purposes of the Baseline Site Characterization and Monitoring Plan required for in situ leach uranium permit applications. The new definition includes surface or groundwater affected or potentially affected by such mining operations.

Rule 1.1(24.1): Adds a definition for "In Situ Leach Mining." This definition is identical to the statutory definition added by HB 1161 which limits the definition of in situ leach mining to in situ leach mining of uranium. To address concerns industry members raised, this definition also contains language which requires operators who extract or disturb trace amounts or de minimus amounts of uranium while mining another mineral to notify the Division of such extraction or disturbance.

Rule 1.1(14): Amends the definition of "Designated Mining Operation":

(a) To reflect that, as required by HB 1161, all uranium mines are DMOs unless the operation is granted an exemption from such status; states that when an in situ leach

mining operation obtains such an exemption, it shall be referred to as an "110 ISL" or "112 ISL" operation, whichever is applicable;

(b) To provide for the exclusion from Designated Mining Operation status of those operations that do not use toxic or acidic chemicals in processing for purposes of extractive metallurgy and that will not cause acid mine drainage but states that this exclusion does not apply to uranium mines;

(c) Clarifies that 110 mining operations which do not use or store designated chemicals are excepted from the requirements applicable to Designated Mining Operations unless they have a potential to produce acid or toxic mine drainage in quantities sufficient to adversely affect any person, property or the environment; sets forth that this exception from Designated Mining Operations requirements does not apply to section 110 uranium mining operations, but states that such uranium operators may seek an exemption from Designated Mining Operation status pursuant to Rule 7;

(d) Clarifies how Designated Mining Operations will be identified by a "d" suffix and provides that in situ leach mining operations shall be treated as 112d-3 operations unless they obtain an exemption under Rule 7, in which case such operation will be referred to as a "110 ISL" or a "112 ISL" operation, as appropriate.

Rule 1.1(15): Amends "Environmental Protection Facility" to include structures identified in an environmental protection plan that are designed, constructed or operated for control or containment of uranium, uranium by-products and other radionuclides.

Rule 1.1(20): Amends the definition of "Failure or Imminent Failure":

(a) To make it consistent with the statutory language in § 34-32-121.5, C.R.S.;

(b) To add language required by HB 1161 concerning in situ leach mining operations.

Rule 1.1(20.1): Amends the definition of "Filed" to add language to cover in situ leach mining operations.

Rule 1.1(22): Amends the definition of "Financial Warranty" by clarifying that a financial warranty is a promise to be responsible for reclamation costs, together with proof of financial responsibility consistent with § 34-32-117(3)(a), C.R.S.

Rule 1.1(23): Amends the definition of "Independent Reviewer" to include the authority granted by HB 1161 to the Division to have an independent reviewer review baseline site characterization and monitoring plans and to monitor field operations.

Rule 1.1(27): Amends the definition of "Limited Impact Operation" to exclude in situ leach mining operations consistent with the provisions of HB 1161.

Rule 1.1(31): Amends the definition of "Mining Operation" to include in situ mining and in situ leach mining, and to clarify that this term does not include extraction of construction materials where there is no development or extraction of any construction material as that term is defined in § 34-32.5-103(3), C.R.S.

Rule 1.1(55): Amends the definition of "Two Acre Limited Impact Operation" to specify that for this type of operation, the permit application must have been submitted prior to July 1, 1993, consistent with the language in § 34-32-110(1)(a), C.R.S.

Rule 1.2 Scope of Rules And Activities That Do Not Require A Reclamation Permit

Adds new Rule 1.2.3 which states that nothing in the rules supplants, alters, impairs or negates the regulatory authority of the Colorado Department of Public Health and Environment in relation to mining operations, nor the regulatory authority of any other federal or state agency.

Rule 1.3 Public Inspection of Documents

Amends this rule to implement the provisions of SB 228 as follows:

Rule 1.3(1): Specifies that except as otherwise stated in this rule or as provided by law, permit applications, notices of intent to conduct prospecting, and other documents are available for inspection upon the submittal of a written request.

Rule 1.3(3): Provides that as to mining operations, an operator may mark certain information confidential and that information shall not be made available unless the operator gives written consent to release the information.

Rule 1.3(4)(a)(i): Specifies that as to notices of intent to conduct prospecting, notices submitted and approved prior to June 2, 2008, when SB 228 became law, are confidential. This rule also specifies, however, that if a NOI is used to conduct the baseline site characterization required for an ISL mining permit application, the design and operation of the baseline site characterization and the monitoring plan and any information collected in accordance with the NOI are matters of public record.

Rule 1.3(4)(a)(ii)(a): States that for NOIs or modifications submitted or approved on or after June 2, 2008, all information in the NOI is public, with the exception of information concerning the location, size or nature of the mineral deposit, and other information the prospector designates and the Board determines to be proprietary, trade secret or information that would cause substantial harm to the competitive

position of the prospector. This rule, however, provides that if an NOI is used to conduct the baseline site characterization required for an ISL mining permit application, the design and operation of the baseline site characterization and the monitoring plan and any information collected in accordance with the NOI are matters of public record.

Rule 1.3(4)(a)(ii)(b)(i): Provides that an applicant or prospector may designate its identity as confidential and describes the circumstances under which its identity would be released.

Rule 1.3(4)(a)(ii)(b)(ii): States that if identity is designated as confidential, the prospector must submit quarterly reports justifying the continuance of confidentiality for the prospector's identity. Likewise, once the prospector no longer believes that confidentiality is necessary it shall notify the Office and the Office will treat the identity as a matter of public record.

Rule 1.3(4)(a)(iii)(a): Provides that a prospector must designate any information it considers to be confidential at the time it submits an NOI or a modification to an existing NOI. The rule states that the Office will post on its website any information not designated as confidential within five (5) days of submittal.

Rule 1.3(4)(a)(iii)(b): Provides that any written materials submitted by a prospector, including annual reports and final reports must designate which materials are confidential.

Rule 1.3(4)(a)(iv): HB 1161 states that information designated as confidential "shall remain confidential until a final determination by the board." § 34-32-113(3), C.R.S. Rule 1.3(4)(a)(iv)(a): Provides a process by which any person may request that information designated as confidential be made public. Pursuant to that process the Board can make the final determination required by the Act. Any person challenging a confidentiality designation may submit a written request, within 10 days of the Office posting the NOI on its website, with the basis for the challenge to the Office. Within the time frame laid out in the rule, the Office shall inform the prospector. If the prospector does not consent to release of the information, the person bringing the challenge may request a hearing before the Board. Rule 1.3(4)(a)(iv)(b): Provides a process by which the Office may seek a hearing before the Board if it believes that a prospector has improperly designated certain information as confidential. During the period of any challenge the designated information shall be kept confidential.

Rule 1.3(4)(a)(v): Sets out how the Board will conduct hearings on challenges to confidentiality designations. Rule 1.3(4)(a)(v)(a): States that the Board shall hold such hearings in executive session. Under Rule 1.3(4)(a)(v)(b)(i) the Board may allow an opportunity for oral argument on the issues prior to going into executive session. In addition, the Board may require the parties to submit written materials on the issues. Rule 1.3(4)(a)(v)(b)(ii): States that any information that the Board

determines should be released will be held confidential for 30 days after the date of the Board's written order to allow an opportunity for appeal.

Rule 1.3(5): States that unresolved issues concerning confidentiality shall be considered deficiency issues and that prospecting activities shall not commence until the designation issue has been resolved.

Rule 1.4 Application Review and Consideration Process

Rule 1.4.1(1): States that ISL operations will be required to submit certain exhibits as part of a permit application.

Rule 1.4.1(7): Allows the Office to extend the decision date for all complex permit applications except for ISL mining applications, which have a two hundred forty (240) day deadline. *See* § C.R.S. 34-32-115(2).

Rule 1.4.1(9): Clarifies the Office's process for allowing extensions of time to meet adequacy requirements for a permit application. The rule states that if adequacy issues remain unresolved after 365 days and there are no timely objections to the application, the Office may issue a decision or set it for a Board hearing.

Rule 1.4.1(13): Sets out the timeline for when an Office or Board decision must be made when there is a failure to publish required notice by the Operator.

Rule 1.4.2(1): Provides that applications for 110 ISL mines shall be treated as 112d-3 permit applications consistent with the Act's requirement that all uranium mining operations are Designated Mining Operations. § 34-32-103(3.5)(a)(III) C.R.S. If the applicant, however, obtains an exemption to Designated Mining Operation status, the DMO requirements shall not apply. Because ISL operations are subject to additional requirements unrelated to DMO status, Rule 1.4.4 will apply to any ISL mine regardless of DMO status.

Rule 1.4.2(2)(b)(v): Makes a numbering change so that a cross reference cites the appropriate subsection in the proposed rules.

Rule 1.4.3(1)(a): Explains how ISL mining operation applicants should submit the required baseline site characterization and on-going monitoring plan required by the Act. Applicant must confer with the office prior to conducting any activities and may not conduct any activities without office approval. Rule 1.4.3(1)(b): Provides a time line for the posting of, and public comment on, baseline site characterization plan and monitoring plan. Rule 1.4.3(1)(c): Provides that data for baseline site characterization obtained prior to the effective date of the rules may be utilized with the Office's approval.

Rule 1.4.3(2): Provides that the Office may retain a third-party expert to oversee the baseline site characterization, monitor field operations, and review the information collected pursuant to § 34-32-112.5, C.R.S. The remainder of this rule describes the process for defining the scope of work and payment to the expert.

Rule 1.4.4: Provides the requirements for ISL mining operation applications. Rule 1.4.4(2) references the various exhibits which must be submitted with an ISL application. Each exhibit corresponds to statutory requirements enacted by HB 1161. As previously noted, such applications must include the materials required for DMO applications, unless the operation is exempted from such status.

Rule 1.4.5: States that all applications for ISL mining operations must meet the requirements of this section unless granted a DMO exemption.

Rule 1.4.6: Provides the timelines for office consideration of 110 ISL mining operation applications. Rule 1.4.6(2) also provides that in the event of an objection to a 110 ISL application, the matter shall be set for a hearing before the Board.

Rule 1.4.8: Provides that the Office shall issue a decision on ISL applications no more than two hundred forty (240) days after the application is filed. The Act mandates this deadline. § 34-32-115(2), C.R.S.

Rule 1.4.9: Sets out the timeline for Office and Board consideration of 112 ISL permit applications.

Rule 1.4.10(1): Provides that the Board or Office may deny a permit application for any ISL mining operation based on the following grounds: scientific uncertainty, if the ground water potentially affected by the operation may be used for domestic or agricultural purposes and the Board or Office determine that the operation will adversely affect the water for such uses, or if the applicant has a history of violations as described in the proposed rule. This rule draws directly on the Act's provisions regarding discretionary grounds for denial. § 34-32-115(5)(a),(c),(d), C.R.S.

Rule 1.4.10(2): States that the Board or Office shall deny a permit if the applicant fails to demonstrate that reclamation will be accomplished in compliance with the Act or if the Applicant fails to demonstrate that it will reclaim all affected ground water to the standards identified in the Act and rules. This rule draws directly from the Act's provisions regarding mandatory denial of the application. § 34-32-115(5)(a),(b), C.R.S.

Rule 1.4.11(1): States that an applicant may appeal the Office's cost estimate for the review of the application for an ISL or oil shale mining operation permit. *See* § 34-32-127(2)(a)(I), (N), and (O), C.R.S.

Rule 1.4.11(3): Provides the requirements for filing an appeal of the cost estimate. It also states that the applicant and the Office may consult and attempt to resolve any dispute prior to the expiration of the appeal period.

Rule 1.4.12: Adds references to ISL mining operation applications and rules.

Rule 1.5 Fees

Rule 1.5.1: States that fees for DMOs must be submitted at the time the environmental protection plan is submitted. Other changes incorporate the new fee provisions contained in the Act at § 34-32-127, C.R.S.

Rule 1.5.2(1): States the fees that will apply to ISL and oil shale mining operations.

Rule 1.5.2(2): States that if the cost of review for oil shale or ISL mining permit applications exceeds twice the fee, applicants will be required to pay the additional costs. This requirement corresponds to the statutory provisions at § 34-32-127(2)(a)(I), (N), and (O), C.R.S. Rule 1.5.2(2)(b) places conflict of interest limitations on consultants or agents used in the review of ISL or oil shale mining applications.

Rule 1.5.3., 1.5.4, 1.5.5, 1.5.6, and 1.5.7: Incorporate the new fee provisions contained in the Act at § 34-32-127, C.R.S.

Rule 1.6: Public Notice Procedures

Rule 1.6.1(1): This rule adds language to clarify that the notice the Office will provide is regarding the Office decision date for applications for all types of mining operations. Rule 1.6.1(1)(a) adds conforming language clarifying that notice of the Office decision date will be provided for 110 and non-ISL 110d permit applications. Rule 1.6.1(1)(c) is added to include both 110 ISL and 112 ISL mining operations to the list of types of mining operations that the Office will provide notice regarding the Office decision date.

Rule 1.6.2(1)(b): Makes a conforming change to include 110 ISL and 112 ISL mining operations to the types of permit application for which an applicant must follow the pre-submittal requirements under Rule 1.6. This rule is related to the requirement to post signs at the proposed mine site. This rule also includes new language clarifying that the pre-submittal requirements for 110 permit applications do not apply to 110 ISL mining operations. 110 ISL mining operations must follow the process for 112 mining operations.

Rule 1.6.2(1)(c): Conforming language is included to add non-ISL 110d operations, 110 ISL operations, and 112 ISL operations to the requirement that, prior to submitting the application to the Office, the applicant must place a copy of the

application with the clerk and recorder's office in the county where the proposed mine is located.

Rule 1.6.2(1)(e)(iii): This rule incorporates the language from § 34-32-112(10)(c), C.R.S., requiring that, if the proposed operation is an ISL operation, notice must be provided to all owners of record of all land within three (3) miles of the boundary of the affected land.

Rule 1.6.3: Language was added to the section heading to clarify that Rule 1.6.3 applies only to 110 and non-ISL 110 mining operations. 110 ISL mining operations are regulated under Rule 1.6.5.

Rule 1.6.3(1)(a): Conforming language is added to clarify that this rule applies to 110 and non-ISL 110d limited impact mining operations and does not apply to 110 ISL operations. Rule 1.6.3(1)(b): Conforming language was added to clarify that this rule applies to 110 and non-ISL 110d limited impact mining operations and does not apply to 110 ISL operations.

Rule 1.6.3(4): Subsection (4) was added to explain that, procedurally, this rule is not applicable to permit applications under § 34-32-110 that are for ISL mining operations. Pursuant to § 34-32-110(2)(a), all ISL permit applications must be filed pursuant to § 34-32-112.5(3)(d). Therefore, the added language clarifies that all ISL permit applications must be filed as a 112 permit and must follow the notice requirements for 112d-3 permit applications under Rule 1.6.5. The new language further clarifies that even if a 110 ISL permit application is granted an exemption from DMO status under Rule 7, the applicant must still follow the notice and permitting requirements that apply to a 112 permit.

Rule 1.6.5: Language was added to the section heading to clarify that Rule 1.6.5 applies to all 112 permit applications and 110 ISL permit applications. Pursuant to § 34-32-110(2)(a) all ISL permit applications must be filed pursuant to § 34-32-112.5 (3)(d). Therefore, a 110 ISL permit application must follow the notice and permitting requirements of a 112 permit application.

Rule 1.7: Submission of Comments and Petitions for Hearing

Rule 1.7.1(2)(a): This rule applies to public comment regarding 112 and 112d permit applications. Conforming language has been added to include 110 ISL and 112 ISL mining operations to the list of permit applications for which written comments and objections may be submitted. Additional language was added to conform Rule 1.7.1 (2)(a) with Rule 1.7.1 (2)(b) clarifying that comments on all types of 112 permit applications and 110 ISL permit applications must be received by the Office not more than twenty (20) days after the last day of publications.

Rule 1.7.1(2)(b): Language was added explaining that 110 ISL permit applications are excepted out of this rule and must follow the 112 permit application and review process. Clarifying language was added that explains that Rule 1.7.1(2)(b) applies to public comment on all 110 and non-ISL 110 permit applications. Additional conforming language was added to clarify that, if the matter is not set for a formal hearing after the Office receives written comment, any person meeting the definition of party under Rule 1.1 may file an appeal of the Office's decision pursuant to Rule 1.4.11.

Rule 1.7.2: Adds conforming language to the section heading indicating it covers only 110 and non-ISL 110d limited impact DMO permit applications.

Rule 1.7.2(1): Adds language excepting 110 ISL mining operation permit applications from this Rule and clarifies that 110 ISL mining operations permit applications must follow the 112d permit application process.

Rule 1.7.4: Adds conforming language to the section heading indicating it covers 112, 112d, 110 ISL, and 112 ISL reclamation permit applications.

Rule 1.8: Amendments and Technical Revisions to a Permit Application

Rule 1.8.1: Adds conforming language to the section heading indicating it covers 110 and 110d limited impact or 112 and 112d or 110 ISL and 112 ISL permit applications. This Rule applies to all types of reclamation permit operations.

Rule 1.8.1 (3): Clarifying language has been added to explain that provisions of Rule 1.8.2 shall apply to technical revisions for 110 and non-ISL 110d mining operations and provisions of Rule 1.8.4 shall apply to technical revisions for all ISL mining operations and 112 and 112d permit applications.

Rule 1.8.2: Conforming language was added to the section heading indicating this Rule covers only 110 and non-ISL 110d permit applications. Further language was added clarifying that Rule 1.8.2 does not apply to technical revisions for ISL permit applications. Technical revisions to an ISL permit application must follow the procedural requirements for 112d permit applications under Rule 1.8.4.

Rule 1.8.4: Adds conforming language to the section heading indicating it covers 112, 112d, 110 ISL, and 112 ISL reclamation permit applications.

Rule 1.8.4(1): Adds conforming language to include 110 ISL and 112 ISL to the list of applications which will be set for formal hearing upon receipt of a written comment. Also clarifies that a hearing cannot be set any earlier than twenty (20) days after the technical revision has been filed unless the applicant, the Office, and all parties agree to setting the matter for hearing earlier than twenty (20) days.

Rule 1.10: Amendment to a Permit

Rule 1.10(1): Adds conforming language making Rule 1.10(1) applicable to 110 ISL and 112 ISL permit amendments.

Rule 1.10(2): Adds conforming language making Rule 1.10 (2) applicable to only 110 and non in situ leach mining operation 110d limited impact permit amendments.

Rule 1.10(3): Language has been added clarifying that, because all ISL permit applications must follow the 112d permit review process, the fee for all ISL permit amendment applications is the basic fee for 112d permit applications or for 112 permit applications if the ISL operation has been granted an exemption from DMO status.

Rule 1.11: Conversions

Rule 1.11.1(1): This rule was revised to clarify that a conversion is an application to change an existing permit to another type of permit based on an increase in acreage. Because it is an increase in acreage, a proper conversion scenario is going from a 110 type permit to a 112 type permit. A reduction in acreage is not a conversion; a reduction of acreage would be completed through a bond reduction or bond release process based on completion of reclamation. Language has also been added to clarify that, pursuant to § 34-32-110 (7)(a), operators requesting a conversion of a permit must file a new permit application. A conversion to a 112 type permit, regardless of DMO or ISL status, requires the submittal of a new 112 permit application.

Rule 1.11.2(2): This rule clarifies that all warranty and permit processing requirements shall apply as though the conversion application were a new permit application. The statutory provision that requires a new permit application to be filed for all conversion of permit requests is § 34-32-110(7)(a), C.R.S. If an ISL operator wants to convert from a 110 ISL to a 112 ISL, this rule requires that a new baseline and site characterization plan be submitted in accordance with § 32-34-112.5 and Rule 1.4.3. The purpose for the submittal of a new plan is to account for the affected land, and affected surface water and ground water in the new acreage. However, if the operator believes the original 110 ISL permit contains relevant baseline and site characterization information, that information may be incorporated into the conversion application, subject to Office discretion.

Rule 1.10.2 (4): This rule was amended to clarify that a request to change the status of a mining operation from a DMO to a non-DMO is not a conversion and, therefore, the provisions of Rule 1.10 do not apply. The language added to the rule makes it clear that an operator seeking to change from a DMO to a non-DMO must follow the DMO exemption requirements and procedures of Rule 7.2.6. Text was deleted from this rule because it was no longer relevant to the conversion process.

Rule 1.12: Permit Transfers and Succession of Operators

Rule 1.12.1(2): Language was added to this rule to clarify that a request for transfer of minerals permit is not considered filed until there is an executed performance warranty and an acceptable financial warranty submitted to the Office. In addition, to be considered filed, this rule now has language that all requests for transfer of mineral permits for ISL mining operations must comply with Rule 6.4.25 and exhibit Y.

Rule 1.12.1(3): This rule clarifies that not only permit applicants but successor operators must comply with the requirements of HB 1161 concerning certifications of violations, and provides that the Board and Office may deny a permit transfer based on failure to meet these requirements. Specifically, this rule implements HB 1161's requirement that in situ leach mining permit applicants certify in applications that the applicant or an affiliate, officer or director of the applicant has not violated within ten (10) years prior to the date of submission of the application or committed a pattern of willful violations of the environmental protection requirements of the Act, these regulations, a permit issued under the Act or any analogous law, rule or permit issued by another state or the United States.

The rule provides that if the successor operator cannot so certify, the successor operator must set forth the specified information about violations or patterns of willful violations. In addition, this rule allows the successor operator to explain the circumstances of violations or patterns of willful violations, the relationship it has with the violator and any other information the successor operator believes is relevant.

The rule also allows the Board or Office to conditionally grant the transfer of permit if the violation is in the process of being resolved and corrected or if the violation is the subject of appeal or judicial review.

Rule 1.12.2(1): Non-ISL Appeal--The denial and appeal process has been modified to differentiate between a transfer of permit for a non-ISL mining operation and an ISL mining operation. Subsection (1) of this rule is applicable to non-ISL mining permit transfers and clarifies that if the Office denies a permit transfer in a non-ISL mining operation that only the applicant has standing to appeal the Office decision to the Board.

Rule 1.12.2(2): ISL Appeal--This new subsection covers the appeals process for all ISL mining operation permit transfers. It allows for the Office, the applicant and any other person that meets the definition of a party under Rule 1.1 to appeal the Office's decision regarding a permit transfer to the Board. Unlike subsection (1) which allows for only an appeal of an Office decision of denial by the applicant, subsection (2) allows anyone that meets the statutory and regulatory requirements of a party to appeal either a denial or an approval of a permit transfer of an ISL permit to the Board.

Rule 1.13: Cessation of Operations - Temporary for all Mining Operations or Permanent for all ISL Operations

The heading of Rule 1.13 was amended to clarify that this section now covers both temporary cessation for all mining operations and permanent cessation for ISL mining operations.

Rule 1.13.5: This Rule covers temporary cessation for both ISL and non-ISL mining operations. It implements HB 1161's requirement that an operator conducting any ISL mining operation shall file the notice of temporary cessation at least thirty (30) days prior to ceasing operations. The notice shall include the reasons for the temporary cessation and the expected duration of the temporary cessation.

Rule 1.13.5(1)(a) and Rule 1.13.5(2) are applicable to the initial period of temporary cessation and Rule 1.13.5(1)(b) and Rule 1.13.5(3) are applicable to the second five year period of temporary cessation. The language states that, in the case of ISL mining operations, the Board has been granted discretion under § 34-32-112.5 (5)(d)(II) to determine if the expected duration of the temporary cessation will be of such length that that the Board believes that ground water reclamation should commence. Additional language has been added requiring that, for ISL mining operations, the notice of temporary cessation shall include a description of the ground water monitoring and pumping regime that will be maintained during the period of cessation pursuant to § 34-32-112.5(5)(d)(II), C.R.S.

Rule 1.13.5(6): ISL mining operators have been excepted out of this rule because the provisions of HB 1161 provide that any period of temporary cessation for an ISL mining operation requires notification to the Board at least thirty (30) days prior to the commencement of temporary cessation. Therefore, HB 1161 requires that notice always be provided for ISL operations even if the operator will resume mining operations within one (1) year.

1.13.6(2): This section has been amended to provide clarification to the words "interested parties" used in the regulations. Language has been deleted and replaced with conforming language from the definition of party under Rule 1.1.

1.13.6(2)(e): This subsection was added to implement the Board's authority to order, during a regularly scheduled formal hearing, the operator of an ISL mining operation to begin groundwater reclamation pursuant to Rule 1.13.5. This authority was granted to the Board under HB 1161.

Rule 1.13.6(3)(a) & (b): This subsection was amended to require that all notices for temporary cessation for ISL mining operations will be set for a formal hearing. At the hearing the Board will determine whether ground water reclamation should commence pursuant to § 34-32-112.5(5)(d)(II), C.R.S.

The rule contains additional language regarding the hearing process and who may participate at the hearing. The language used conforms to the definition of party under Rule 1.1 and allows for any person who meets the definition of party to participate at the formal hearing before the Board. The Office will participate as staff to the Board.

Rule 1.13.7: Clarifying language was added changing "the operator" to "the permit applicant" since this rule applies to substitute notice which occurs in the original permit application. There is no operator because the application would be under review. If the permit is approved, this substitute notice serves as notice of temporary cessation pursuant to Rule 1.13.5. Rule 1.13.7(b) states that this rule does not apply to ISL mining operations. This inapplicability is based on § 34-32-112.5(5)(d)(II), which requires that the operator of an ISL mining operation file a notice of temporary cessation with the Board at least thirty (30) days prior to the commencement of temporary cessation. This notice of temporary cessation triggers a hearing before the Board to determine whether groundwater reclamation should commence and such a notice cannot be provided at the time of the original permit application.

Rule 1.13.8(1)(c): Language was added to clarify that the liabilities and obligations that exist under a reclamation permit continue in effect as long as the operator of an ISL mining operation is conducting reclamation pursuant to an approved reclamation plan or Board order. The language clarifies that even though the mining activity at the site has concluded the permit obligations and reclamation liabilities remain in effect until the site is fully reclaimed and has achieved bond release from the Office or Board.

Rule 1.13.10: This rule was added to implement the provisions of HB 1161 that require an operator of an ISL mining operation to immediately begin reclamation of groundwater in accordance with the approved reclamation plan when there is a permanent cessation of production operations. The provisions of permanent cessation only apply to ISL mining operations.

Rule 1.13.10(1): This rule was added to require an operator of an ISL mining operation to provide the Board at least thirty (30) days notice prior to permanent cessation of production operations. This thirty day time period is based on the notice requirement for temporary cessation provided in § 34-32-112.5(5)(d)(II), C.R.S.

Rule 1.13.10(2): This rule was added to allow either the Board or the Office, in the absence of notice from the operator, the authority to determine if permanent cessation of production operations at an ISL site has occurred and final reclamation of ground water must immediately begin.

Rule 1.14: Termination

Rule 1.14.1(2)(b): Language was added to this subsection to allow the Board to add additional permit conditions to a permit that is not in compliance with the provision of Rule 1.14.1. This Rule is intended to allow the operator to bring the permit back into compliance prior to termination and final reclamation.

Rule 2: Board Meetings -- Permit Application Hearings, Decisions and Appeals

Rule 2.6: Prehearing Procedures -- Motions, Witnesses and Exhibit Lists

Specifies that the prehearing process provisions of Rule 2.6 apply to the applicant and those with party status regarding all 112, 112d, 110 ISL, and 112 ISL applications.

Rule 2.6(3): Modifies the existing number of copies of motions, responses, replies, witness lists, and exhibit list that must be submitted to the Board from thirteen (13) to fifteen (15).

Rule 2.8: Hearings

Rule 2.8.1: Changes the title of the rule to clarify that this rule also covers the process for filing a request for telephonic appearances at a formal Board hearing.

Rule 2.8.1(1): This rule clarifies that a party may not appear at a formal Board hearing by proxy. Proxy representation is allowed only at a prehearing conference. Party attendance at the formal hearing is required, unless otherwise ruled on by the Board. This rule also creates a process that allows parties to file a request for telephonic appearance at a formal Board hearing with the Board Chairman. It sets forth time periods in which the original telephonic appearance request shall be filed and allows for other parties to file a response to the telephonic appearance request. It states the Board Chairman will rule on the motions at least seven (7) calendar days prior to the hearing.

Rule 2.8.2(2): Clarifies that every decision rendered by the Board after a formal public hearing, and after issuance of a formal written order pursuant to Rule 2.8.2 (1), becomes a final decision on that matter. Removes language that the Office can make a final decision on a matter at a formal hearing.

Rule 2.9: Reconsideration of Board Decisions

Rule 2.9.3**:** Makes a conforming change to reference a term defined in Rule 1.1 definition section.

Rule 3: Reclamation Performance Standards, Inspection, Monitoring, and Enforcement

Rule 3.1 Reclamation Performance Standards

Language was added after the heading of Rule 3.1 to clarify that the performance standards included in Rule 3.1 are always applicable to mining operations and may be applicable to prospecting operations, if relevant, as determined by the Office. Discretion is provided to the Division regarding when a relevant performance standard should be required for a prospecting operation.

Rule 3.1.2: States that the Board and Office may not approve an exchange of lands for reclamation for lands affected by uranium mining. This provision is based on § 34-32-116(7)(q)(III)(B) which bars uranium and in situ leach mining operations from reclaiming substitute land.

Rule 3.1.3: Sets out when reclamation of ground water must begin for in situ leach mining operations pursuant to § 34-32-113(5)(d)(I)(A),(B), C.R.S.

Rule 3.1.6(4): This new rule codifies the Division's discretion to require baseline site characterization data prior to the initiation of prospecting or mining. The rule provides that the baseline site characterization data must be sufficient to ensure that impacts from prospecting will be detected.

Rule 3.1.6(5): This new rule codifies the Division's discretion to require the use of pit liners, fencing, netting or other protective measures related to drilling pits used during prospecting or mining operations. The purpose is to ensure that, if drill pits are used, that they will be constructed, operated and managed in a manner that minimizes the impacts to public health, safety and the environment.

Rule 3.1.7: Changes were made to make explicit that, if determined to be relevant by the Division, the provisions of Rule 3.1.7 are applicable to both mining and prospecting operations.

Rule 3.1.7(1)(e): Provides the reclamation standards for reclamation of ground water at ISL mining operations. The rule uses the same standard set out in the Act at § 34-32-116.5(8), C.R.S. Rule 3.1.7(1)(f) and (g) provide further statutory requirements related to the reclamation of ground water. Rule 3.1.7(1)(f) requires operators to use "best available technology" when establishing, designing and implementing a ground water reclamation plan. Rule 3.1.7(1)(g) provides the further requirement that ISL mining operators must protect pre-existing groundwater uses during prospecting, development, extraction and reclamation. This requirement may pertain to both water quantity and quality protections.

Rule 3.1.7(8): States that in addition to conducting reclamation so that existing and reasonably potential future uses of ground water are protected, ISL operators must reclaim ground water as required by Rule 3.1.7(1)(e).

Rule 4: Performance Warranties and Financial Warranties

Rule 4.2: Financial Warranty Liability Amount

Rule 4.2.2: Changes the section heading to include language that clarifies that this rule applies to 110 and non-ISL 110d mining operations. This rule does not apply to 110 ISL mining operations as these application and operations must be filed and are treated as 112 ISL operations. Financial Warranty rules specific to 112, 112d and all ISL mining operations are included under Rule 4.2.5.

Rule 4.2.2(2): This rule clarifies that Rule 4.2.2, which is applicable to 110 and non-ISL 110d operations, does not apply to 110 ISL mining operations and permits. The rule states that it is inapplicable to ISL permits because, pursuant to § 34-32-110(2)(a) all ISL permit applications must be filed pursuant to section § 34-32-112.5 (3)(d). Therefore, a 110 ISL permit application cannot be filed pursuant to section § 34-32-110 (2) and is not subject to automatic approval after office inaction for 30 days.

Rule 4.2.3: Removes language that is repetitive. Clarifies that a conversion from any 110 permit to any 112 permit requires a financial warranty to cover the increased reclamation liability.

Rule 4.2.5: Changes the language of the section heading to include language that clarifies that this rule applies to all 112 mining operations and all 110 mining operations involving in situ leach mining. Pursuant to § 34-32-110 (2)(a), all 110 mining operations involving in situ leach mining must file for a permit application pursuant to § 34-32-112.5(3)(d), C.R.S. Therefore, all 110 permits involving in situ leach mining shall be filed and treated as 112d permit applications.

Rule 4.2.5(1): Makes a conforming change to include 110 ISL and 112 ISL mining operations. This section clarifies that a financial warranty for 112, 112d, 110 ISL and 112 ISL mining operations shall be in an amount determined by the Board.

Rule 4.2.5(2): Makes a conforming change to include 110 ISL and 112 ISL mining operations in the requirement to submit a financial warranty in the event a permit is automatically issued due to Board inaction. It modifies the current language regarding automatic approval of application due to Board inaction. It states that the Board must take action within two hundred and forty (240) days on an ISL application or within one hundred and twenty (120) days for all non-ISL mining applications or the permit will be automatically issued. In such an event, the financial warranty for both ISL and non-ISL operations will be either $2,000 per acre of affected land or an amount as the Board may determine at a subsequent hearing.

Rule 4.17: Release of Performance and Financial Warranties for Mining Operations

Rule 4.17.1(1): Eliminates unnecessary and duplicative language regarding which operators must file a notice of completion of reclamation and request for release of financial warranty. This rule clarifies that all operators possessing any permit must comply with the requirements of Rule 4.17.

Rule 4.18: Public Notice and Filing of Written Objections Regarding a Request for Release of Financial Warranty.

Rule 4.18(1): Adds language to the existing rule to conform to the definition of party contained in Rule 1.1. Clarifies that comments regarding a request for release of financial warranty must be received no more than fifteen (15) days after the notice of the request has been sent to the counties and owners of record of affected land.

Rule 5: Prospecting Operations

Rule 5.1: Notice of Intent to Conduct Prospecting Operations

Rule 5.1.1(1): Makes a numbering change so that a cross reference cites the appropriate subsection in the proposed rules.

Rule 5.1.2(h): Provides that NOI applicants must designate which portions of the application are confidential. The rule requires the applicant to submit two NOI forms; one containing both the public and confidential information, and one containing only the public information. As noted above, S.B. 228 modified § 34-32-113 to make information contained in an NOI public, but permitted an applicant to designate certain information as confidential.

Rule 5.1.2(i): Requires NOI applicants to submit an NOI in both paper and electronic form. The electronic submittal will allow the Office to post the NOI to its website promptly.

Rule 5.1.2(j): Provides that modifications to an existing NOI will be reviewed in the same manner as a new NOI application. Applicants for modifications to existing NOIs must designate which information, if any, the applicant believes should be confidential.

Rule 5.1.2(m): Requires that concurrently with the submission of an NOI the prospector must also provide notice of the NOI to the Boards of County Commissioners in the counties where the proposed prospecting activities will occur. Certification of notice must be provided to the Division.

Rule 5.1.3: States that the Office will post the NOI on its website within five (5) days of submittal. The posting will be followed by a ten (10) day public comment/confidentiality challenge period. As government agencies the Division and Board routinely receive public comment regarding the matters before them. In

addition, each month at the Board hearing, the Board allots time for general public comment which may pertain to any matter before the Board. Providing structure to govern the receipt of public comment is a reasonable rule respecting the administration of the Act. The Rule states that disputes regarding confidentiality will be treated as a deficiency of the NOI which means prospecting activities may not commence until the confidentiality dispute is resolved and other applicable requirements are met. Rule 5.1.3(b) states that if the Board has determined after a hearing that certain information designated as confidential should be treated as public, the Office will post the information on its website after the expiration of a thirty (30) day delay period. The posting of newly released information will trigger a ten (10) day public comment period pertaining to only the newly released information.

Rule 5.1.3(d): Deletes existing language that provides appeals of Office determinations regarding notices of intent follow the procedures set forth in Rule 1.4.11 and replaces it with a new procedure for such appeals. Appeals of Office determinations on NOIs are no longer limited to prospective prospectors. Language has been added to expand the appeal process to include those who meet new standing requirements. The new appeal process requires the Office to send notice of its decision on an NOI to the prospective prospector and any person who filed a timely comment. Any prospective prospector or person who filed a timely comment and who meets the definition of party may appeal an Office determination within five (5) business days from the date the Office sends notice of its decision. In order to avoid commencement of work prior to the expiration of the appeal time period, the Office's determination shall not take effect until the expiration of the five (5) business days allowed for an appeal, or, in the case of an appeal, until the Board issues its decision.

Rule: 5.2: Confidentiality

Rule 5.2.1(1): States that for NOIs submitted prior to the enactment of SB 228 all information will be treated as confidential.

Rule 5.2.1(2): Provides that for NOIs filed after the enactment of SB 228, all information contained in the NOI will be public, except that certain information may be designated as confidential. Once designated as confidential the information will remain confidential until the Board orders otherwise.

Rule 5.2.2(1): States that for NOIs submitted prior to the enactment of SB 228 drill hole information contained in various reports will remain confidential. Rule 5.2.2(2): States that this same information will be public for NOIs filed after June 2, 2008 unless designated as confidential by the prospector.

Rule 5.6: Annual Report.

Rule 5.6(1): States that annual reports shall be submitted on the anniversary date of the approval of the NOI rather than on December 31. This will allow for more

efficient processing by the Office. The new proposed rule also deletes an obsolete reference to a due date for NOI annual reports.

Rule 5.6(3): Provides that annual reports for NOIs filed after the enactment of SB 228 shall be public information unless designated as confidential pursuant to Rule 1.3.

Rule 5.7: Final Report

Rule 5.7(3): Provides that final reports filed after the enactment of SB 228 will be public information unless designated as confidential.

Rule 5.8: No Waiver of Administrative Requirements

Rule 5.8: States that the Director may not waive administrative reporting requirements.

Rule 6: Permit Application Requirements

Rule 6.1: Requirements for Specific Operations

Rule 6.1.2: Provides in the title of this rule that the rule applies to 110, non in situ leach 110d mining operations, 112 and 112d, 110 ISL and 112 ISL mining operations.

Rule 6.1.4: Specifies in the title of the rule that it applies to all in situ leach mining operations. States that in addition to the exhibits required in this rule, in situ leach operations must also provide exhibits set forth in Rules 6.4.22, 6.4.23, 6.4.24, and 6.4.25.

Rule 6.3: Specific Permit Application Exhibit Requirements – 110 and Non In situ Leach Mining Operations 110d Limited Impact Operations

Specifies that this rule applies only to 110 and non in situ leach 110d mining operations. Makes clear that 110 in situ leach mining operations must comply with 112d application requirements, and if exempted from designated mining operation status, the in situ leach mining operation application must still comply with in situ leach mining exhibit requirements.

Rule 6.3.4(2): Adds that this rule applies to non in situ leach 110d limited impact operations.

Rule 6.3.5(2)(a): Makes conforming change to specify that this rule applies to non in situ leach 110d limited impact operations.

Rule 6.4: Specific Exhibit Requirements – 112, 112 ISL or 110 ISL Reclamation Operation and 112d Designation Mining Operations

Provides that the exhibit requirements set forth in this rule are required for all applications for any in situ leach mining operation, 112 operation, and non in situ leach 112d operation. If any in situ leach operation is exempted from designated mining operation status, the applicant must still comply with this rule.

Rule 6.4.11: Makes conforming change to a paragraph reference.

Rule 6.4.20: Makes a conforming change to a paragraph reference.

Rule 6.4.21(1): Adds language that requires an environmental protection plan to cover areas that will be or have the potential to be affected by uranium mining.

Rule 6.4.21(1)(a): Exempts uranium mining operations from the rule that states an environmental protection plan need not be filed under certain situations, thus requiring all uranium mining operators to file an environmental protection plan.

Rule 6.4.21(1)(b) and (c): Provides that the Board may consider whether there is a potential for adverse impacts from uranium mining, among other conditions, such impacts to include adverse impacts from any in situ leach mining operation.

Rule 6.4.21(2): Requires that environmental protection plan for uranium mining operations include maps that show location of affected land, surface water and ground water which will be or has the reasonable potential to be affected by such operations.

Rule 6.4.21(4)(c): Adds requirement that an applicant/operator provide the Division with information about permits obtained for uranium mining after submission of an environmental protection plan.

Rule 6.4.21(4)(d): Sets forth language that in addition to the existing reasons the Board may or shall deny a permit application, as to any in situ leach operation, the Board may or shall, whichever is applicable, deny any such permit application pursuant to Rule 1.4.10.

Rule 6.4.21(7)(b): Adds "uranium, uranium by-products and other radionuclides" to the required evaluation of the effectiveness of proposed or existing facilities set forth in the environmental protection plan.

Rule 6.4.21(9)(b): Provides that as to in situ leach mining operations, an applicant must design and conduct a scientifically defensible ground water, surface water and environmental baseline site characterization and monitoring plan, which at a minimum includes five successive calendar quarters, or a period specified by the Division as necessary to adequately characterize baseline conditions, of water quality data, prior to submittal of a permit application.

Rule 6.4.21(11)(b): Provides that as to in situ leach mining operations, an applicant must design and conduct a scientifically defensible ground water, surface water and environmental baseline site characterization and monitoring plan, which at a minimum includes five successive calendar quarters, or a period specified by the Division as necessary to adequately characterize baseline conditions, of water quality data, prior to submittal of a permit application.

Rule 6.4.21(12): Specifies that in addition to other monitoring plan requirements, in situ leach operations must design a plan to thoroughly characterize pre-mining conditions, detect subsurface excursions of ground water containing chemicals used in or mobilized by such operations, and evaluate the effectiveness of post mining reclamation and ground water reclamation.

Rule 6.4.21(12): Provides that geochemical data and analysis must cover uranium mining.

Rule 6.4.21(12)(b): Adds "mineral" to geochemical evaluations.

Rule 6.4.21(12)(d): Makes a conforming change to reference a subsection of another rule.

Rule 6.4.21(15)(a): Adds "uranium, uranium by-products and other radionuclides" in required construction schedule information.

Rule 6.4.21(17)(c)(iv): Makes a conforming change to reference a subsection of another rule.

Rule 6.4.21(18)(b): Adds "uranium, uranium by-products and other radionuclides" in required measures to prevent wildlife from coming into contact with such material.

Rule 6.4.22: Creates a new Exhibit V as a requirement for in situ leach mining permit applications regardless of designated mining operation status. This exhibit implements HB 1161's requirement that in situ leach mining applicants provide a description of at least five in situ leach mining operations that demonstrate the applicant's ability to conduct the proposed mining operation without leakage, vertical or lateral migration, or excursion of any leaching solutions or ground water containing minerals, radionuclides, or other constituents mobilized, liberated or introduced by the mining operation into any ground water outside of the permitted area.

Sets forth the information required to be in the exhibit and requires the applicant to use reasonable efforts to obtain as much information as possible regarding the five in situ leach mining operations including researching and reviewing public documents and contacting the operators of such operations.

The rule provides that the applicant need not have been involved in any of the five operations.

Rule 6.4.23: Creates a new Exhibit W as a requirement for in situ leach mining permit applications regardless of designated mining operation status. This rule implements HB 1161's requirement that in situ leach mining applicants design and conduct a scientifically defensible baseline site characterization for affected surface water and ground water, and the environment prior to filing an application. Requires these applicants to confer with the Division and to obtain the Division's approval of the proposed baseline site characterization. Specifies that the baseline site characterization must include at least five successive calendar quarters or such period as the Division requires as necessary to adequately characterize baseline conditions, of monitoring data, and must be included in the application for the application to be considered filed.

Sets forth the information, data and analysis required to be in this exhibit.

Rule 6.4.24: Creates a new Exhibit X as a requirement for in situ leach mining permit applications regardless of designated mining operation status. Implements HB 1161's requirement that in situ leach mining applicants design and conduct a monitoring plan prior to submitting an application. Provides that the applicant must obtain the Division's approval of the proposed plan. Specifies that the plan must be sufficient to detect any subsurface excursions of ground water containing chemicals used in or mobilized by such operations, and sufficient to evaluate the effectiveness of post mining reclamation and ground water reclamation.

Rule 6.4.25: Creates a new Exhibit Y as a requirement for in situ leach mining permit applications regardless of designated mining operation status. The requirement for this exhibit applies to all in situ leach mining permit applications as well as requests for transfer of mineral permit and succession of operator for any in situ leach mining operation. This rule implements HB 1161's requirement that in situ leach mining permit applicants certify in applications that the applicant or an affiliate, officer or director of the applicant has not violated within ten (10) years prior to the date of submission of the application or committed a pattern of willful violations of the environmental protection requirements of the Act, these regulations, a permit issued under the Act or any analogous law, rule or permit issued by another state or the United States.

The Rule provides that if the applicant cannot so certify, the applicant must set forth the specified information about violations or patterns of willful violations. Allows the applicant to explain the circumstances of violations or patterns of willful violations, the relationship it has with the violator, and any other information the applicant believes is relevant.

Specifies that the applicant has a continuing obligation to update the information required in this exhibit throughout the permit application process and, if granted, throughout the life of the permit if any changes to the information occurs. Also provides that to constitute a certified statement the applicant must attest to the truthfulness of the statement in a form approved by the Board.

Rule 7: Designated Mining Operations

Rule 7.1: General Provisions

Rule 7.1.2: States all uranium mining operations are designated mining operations and therefore the designation process in the rules does not apply to uranium operations. This change is based on HB 1161 which amended the definition of designated mining operation to include mining operations at which "uranium is being developed or extracted, either by in situ leach mining methods or by conventional underground or open mining techniques." This rule also provides that if an ISL operation is exempted from designated mining operation status it will still remain subject to requirements applicable to ISL mines. The language recognizes that HB 1161 imposed a number of requirements specific to ISL mining operations that are not dependent on whether the ISL operation is a designated mining operation. The title of 7.1.2 is altered to read Effective Date and Applicability of Rule.

Rule 7.1.3: States that ISL mining operations must submit an Environmental Protection Plan unless exempted from designated mining operation status.

Rule 7.2: Determination of Designation of Designated Mining Operations

Rule 7.2.1(2): Replaces a reference to Rule 1.1(12) with a reference to Rule 7.2.6. Rules regarding exemption from designated mining operation status are now under Rule 7.2.6 as noted in this rule.

Rule 7.2.1(3): Makes a conforming change to cross-reference the appropriate rule.

Rule 7.2.1(4): Deletes subsection (4) of the current Rule 7.2.1. The existing rule permits any person with evidence that an operation should be a designated mining operation to petition for a hearing through the declaratory order process in Rule 2.5. At the same time, the existing Rule 7.2.7 permits any party to appeal the Office's determination of Designated Mining Operation status. These overlapping processes were difficult to implement and created confusion. The rules reorganized and clarified the process for third parties to challenge determinations of designated mining operation status as described below.

Rule 7.2.4: The title of this rule is changed to read "Designation Disputes."

Rule 7.2.4(1): States that when an operator or applicant disputes the Office's determination of designated mining operation status, it may submit a written appeal to the Office setting out the reasons and evidence for disputing the determination. Rule 7.2.4(1)(b) deletes a reference to notice being provided through the "monthly agenda, or otherwise" and a duplicative reference to the word "applicant." This rule also provides that any person meeting the definition of party may participate as a party to an appeal of the Office's determination.

Rule 7.2.4(3): Provides that any person who has facts that were not known when the Office made a determination regarding designated mining status for an operation, or where no determination has been made, may file a complaint requesting that the Office review the status of a mining operation. Based on that review the Office may make a determination that the mining operation should be a designated mining operation. This rule replaces, in part, current Rule 7.2.1(4) which allows any party to seek a declaratory order regarding an operation's status as a designated mining operation. By using the complaint process to initiate Office review, the rules create a uniform process for review of status determinations of mine sites.

Rule 7.2.5: Makes a conforming change to cross-reference the appropriate rule.

Rule 7.2.6(1)(A): Sets out the process for seeking an exemption from designated mining operation status. In the existing rules, the process for seeking exemption appeared in multiple rules including Rule 1.1 and 1.11. Rule 7.2.6 places the exemption process in a single rule with a single standard.

Rule 7.2.6(2): States that if an in situ leach mining operation is exempted from designated mining operation status under Rule 7.2.6 the requirements applicable to in situ leach mines will still apply to the operation. The rule also states that if an in situ leach mining operation is granted an exemption from designated mining operation status it will be referred to as a 110 ISL or a 112 ISL operation rather than a 112d operation.

Rule 7.2.7: Deletes the text of the existing rule and replaced it with language conforming to the definition of party contained in Rule 1.1.

Rule 7.3: Environmental Protection Facilities – Design and Construction Requirements

Rule 7.3.1: Adds references to uranium, uranium by products or radionuclides as materials that may not be placed in an environmental protection facility until the Board accepts certification of the facility. The existing rule places a similar limitation on the materials used by non-uranium producing designated mining operations. That definition includes not just toxic or acid-forming materials, but also the related category of any chemicals "used in the extractive metallurgical process." Because HB 1161 changed the definition of designated mining operations to include any

operations at which uranium is developed or extracted it is appropriate that this rule on environmental protection facilities applies to uranium, uranium by-products and other radionuclides.

Rule 8: Emergency Notification by all Operators, Emergency Response Plan For Designated Mining Operations and Emergency Response Authority of the Office

Rule 8.1: Situations that Require Emergency Notification by the Operator

Applies the requirement that the operator notify the Division as soon as practicable but no later than 24 hours for a failure or imminent failure of: (a) for designated mining operations, any environmental protection facility designed to contain or control designated chemicals or process solutions; (b) for in situ leach mining operations, any structure designed to prevent, minimize, or mitigate the adverse impacts to human health, wildlife, ground or surface water or the environment; and (c) for in situ leach mining operations, any structure designed to detect, prevent, minimize or mitigate adverse impacts to ground water.

Rule 8.2: Operator's General Notification Responsibilities for Reporting Emergency Conditions

Rule 8.2.3: Requires operators to submit a written report concerning an emergency situation or condition as soon as practicable but no later than five (5) working days.

Rule 8.3: Emergency Response Plan for Designated Chemicals and Uranium or Uranium By-Products

Makes a conforming amendment in referring to a subsection.

Rule 8.3.1: Exempts from the requirements of Rule 8.3 operations that do not involve uranium.

Rule 8.3.2: Includes in the requirement that operators who are required to submit emergency response plans include an outline of response procedures in the event of an emergency involving acidic or toxic materials, or uranium or uranium by-products.

Rule 8.4: Emergency Response Authority of the Office

Rule 8.4.1(e): Provides that as to designated mining operations, the Division may operate the environmental protection facility using any or all portions of the financial warranty established for such purpose.

Rule 8.4.2: Provides that circumstances considered in determining the Division's exercise of its emergency authority include an operator failing or refusing to respond to a Board order requiring corrective actions for (1) any structure for an in situ leach

mining operation designed to detect, prevent, minimize or mitigate adverse impacts on ground water and (2) any structure for an in situ leach mining operation designed to detect, prevent, minimize or mitigate adverse impacts on human health, wildlife or the environment.

Rule 8.8: Emergency Response Cost Recovery

Clarifies that recovery of response costs may be sought from the operator, if different from the permit holder.

STATEMENT OF BASIS
SPECIFIC STATUTORY AUTHORITY AND PURPOSE

Rules amendments and revisions to regulations implementing the Colorado Land Reclamation Act for Hard Rock, Metal and Designated Mining Operations, Sections 34-32-101 to 127, C.R.S.

This statement sets forth the basis, specific statutory authority and purpose for changes and corrections to the Hard Rock, Metal and Designated Mining Operations Rules and Regulations, 2 CCR 407-1 ("Hard Rock Rules"). These Rules implement the Colorado Mined Land Reclamation Act, Section 34-32-101 to 127, C.R.S. ("the Act"). This statement is hereby incorporated by reference in the adopted Rules.

These changes to the regulations, if adopted by the Board in total or in part, are being adopted under the provisions of the Act and the State Administrative Procedure Act ("APA"), Section 24-4-103, C.R.S. The proposed rules, as adopted by the Board, will be effective twenty (20) days after publication in the Colorado Register.

The changes include minor edits and corrections to errors and omissions, as well as substantive amendments and revisions to several sections of the of the Rules that deal with the application review and consideration process, public notice procedures, submission of comments, pre-hearing conferences, financial warranties in the form of cash escrow account and negotiable bonds of the United States Government, release of warranties for Prospecting operations, Prospecting, and specific permit application exhibit requirements.

SUMMARY OF THE RULE-MAKING PROCESS FOLLOWED

During the monthly Mined Land Reclamation Board meeting, which commenced on January 19, 2005, the Minerals Program of the Office of Mined Land Reclamation of the Colorado Division of Minerals and Geology (Division, DMG, or Office) petitioned the Mined Land Reclamation Board (Board) for permission to initiate the rule-making process. The Board granted the Division's request. Thereafter, the Division provided notice to the public through its monthly bulletin and through direct mailing that the Division was seeking comment on a set of proposed rules. On January 21, 2005 the Division submitted to the Secretary of State, for publication in the *Colorado Register*, the formal notice of a rulemaking hearing to be held by the Board on April 13, 2005. The notice was published on February 10, 2005.

An informational meeting was held on March 14, 2005. Other than representatives of the Division, two persons attended the meeting. Written comments from the party represented by the two present were received on March 24, 2005, and are discussed herein. Written comments were received from a party not present at the informational meeting, and those comments are discussed herein. The Office is also in the process of revising the Mineral Rules and Regulations of the Colorado Mined Land Reclamation

Board for the Extraction of Construction Materials (Construction Rules), and written comments pertaining to those rules were determined to be applicable to the Hard Rock rules. Accordingly, the comments are discussed herein as they pertain to these rules.

In accordance with Section 34-32-109(5)(b)(II), individual permit holders were notified of these proposed rules by letter on February 10, 2005, and again on March 23, 2005.

On April 13, 2005, the Board held a formal Public hearing on these proposed amendments and revisions to the rules and adopted them, with additional minor revisions. This Statement of Basis, Specific Statutory Authority and Purpose was also presented by the Office and adopted by the Board.

In accordance with Section 34-32-109(5)(b)(II), the Board made a specific finding that it is necessary to apply the requirements of Rule 3.1.13 and portions of Rule 5, as specifically detailed below, to existing permits to ensure public health and safety.

On May 10th, 2005, Office staff submitted the adopted rules to the Department of State, for publication and filing. On May 23, 2005, the Department of State returned the rules to the Office, noting that the Office had missed the filing deadline of May 3, 2005 imposed by C.R.S. 24-4-103(11)(d). The Department of State instructed Office staff to have the rules re-promulgated by the Mined Land Reclamation Board, obtain a new opinion on the constitutionality of the re-promulgated rules from the Attorney General, and again file the rules with the Department of State. Accordingly the Rules and this Statement were re-promulgated by the Mined Land Reclamation Board on June 14, 2005.

STATUTORY AUTHORITY

The authority for promulgating these amendments and revisions to these rules is Section 34-32-108, C.R.S., which states that, "The board may adopt and promulgate reasonable rules respecting the administration of this article." In addition, the rule-making process was carried out in conformity with the rule-making requirements of the APA, Section 24-4-103, C.R.S.

The specific statutory provisions relating to the changes to each rule are discussed below in the Basis and Purpose Section.

BASIS AND PURPOSE OF CHANGES

PURPOSE

The primary purpose for the proposed revisions to Rule 5 is to conform to requirements set forth by the State Auditor. During a routine audit of Office processes, the Auditor found that the Office was lacking in its ability to enforce reclamation requirements for Notices of Intent to Conduct Prospecting (NOI). Specifically, the Office lacked adequate information to determine whether prospecting operations had ceased, whether contact information was current for all prospectors, the exact location of prospecting activities,

and the extent of disturbance prior to implementation of an NOI. The Auditor required the Office to address the identified deficiencies no later than June 30, 2005. These proposed revisions are intended to remedy the inadequacies identified by the Auditor. Other revisions are proposed to improve clarity and to ensure consistency between these rules and the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Construction Rules). This maintained consistency is in the interest of operators, other government agencies, the public, and Office staff who might need to be familiar with or use both sets of rules.

As described above, in accordance with Section 34-32-109(5)(b)(II), the Board made a specific finding that it is necessary to apply the requirements of Rule 3.1.13 and Rule 5 to existing permits to ensure public health and safety. Specific rules that require action by existing permit holders are so noted below.

MINOR CLARIFICATIONS

Any changes in the proposed rules that are not explained in detail below are not considered substantive changes, and are being made for the purpose of general, grammatical, typographical, organizational, or numbering clarification; of bringing new and existing provisions into conformity with each other; and of correcting any cross-referencing errors.

RULE 1: GENERAL PROVISIONS AND REQUIREMENTS- PERMIT PROCESS

Rule 1.4 Application Review and Consideration Process
Rule 1.4.1 Applications- General Provisions
Rule 1.4.1(7)
For clarification, the phrase "as soon as possible" was relocated within the text. The phrase "such findings" was inserted where it had been inadvertently omitted in the currently approved rules.
Rule 1.4.1(8)
Further detail was included in the Rules regarding the time frame in which the Office must notify the Applicant of any deficiencies that prevent the application from being considered filed. The Office must notify the Applicant of any completeness deficiencies within 10 working days of receiving the application. In addition, if the Applicant does not adequately respond to the deficiencies within 60 days, the office may, rather than shall, deny the application. This will give the Applicant flexibility to respond to complex issues that may take longer than 60 days to address, and give the Office flexibility in determining whether an Applicant is making good faith efforts to complete an application package.

The Rule was also revised to correct typographical and punctuation errors, and to replace the term "subsection" with "Rule". "Subsection", "section", "paragraph", and "subparagraph" are commonly used to refer to sections of the Act, Colorado Revised Statutes, or the Constitution. These changes were made to minimize confusion by

making clear that the references are to portions of the Rules for Hard Rock, Metal, and Designated Mining Operations. The Office has determined that these are minor edits and not substantive changes to the Rules.

Rule 1.4.9 Office Consideration- 112 Reclamation Permit Application to which an Objection Has Been Received

The Rule was revised to specify objections to an application that are "timely and sufficient." The rule is now consistent with Rule 1.7 which defines deadlines for comments and petitions. If a timely objection is filed, than it must be considered by the Mined Land Reclamation Board within 120 days after the application is filed with the Office, also consistent with 34-32-115(2) C.R.S. The revised rule includes language relocated from Section 2.6 requiring that the Office provide all parties at least thirty (30) days written notice of the Formal Board Hearing date.

The Rule was also revised so that the Office's recommendation and rationale for approval or denial shall be sent to the Applicant and to all objectors of record at least three (3) working days prior to the pre-hearing conference, if practicable, and that copies of the Division's recommendation and rational will be available at the pre-hearing conference. Under the revised procedures for the Pre-hearing Conferences under Section 2.6, it will allow all parties to review the Division's rationale for approval, approval with conditions or denial of the application at or prior to the Pre-hearing Conference. This will enable all parties to determine if their issues of objection have been addressed. Based on comments received on similar proposed changes to the Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials, a provision for the Division to provide such recommendation(s) and rationale, upon request, by facsimile or electronic mail, or pickup at the Office is also included. The provision for pickup at the Office was added during the comment period, based on a comment by Office staff.

The rule was further revised to replace the term "subparagraph" with "Rules". The Office has determined that this is a minor edit and not a substantive change to the Rules.

Rule 1.5 FEES

Rule 1.5.7 Annual Fees

New **Rule 1.5.7** is proposed to include a provision for annual fees for permit holders. This fee is specified in Section 34-32-127(2)(a) of the Act, but had been inadvertently omitted from the Rules.

Rule 1.6 PUBLIC NOTICE PROCEDURES

Rule 1.6.2 General Applicant Procedures

Rule 1.6.2(1)(e) and (f)

Rule 1.6.2(1)(e) and (f) have been revised grammatically, and to replace "subparagraph" with "rule".

Rule 1.6.2(1)(f) was revised for the Office to designate any other Owners of record who might be affected by the proposed mining operation during the adequacy review process,

rather than within one week after the application has been filed. This will give the Office adequate time to review the application in order to designate such owners.

Rule 1.7 SUBMISSION OF COMMENTS AND PETITIONS FOR A HEARING

Rule 1.7.1 General Provisions

Rule 1.7.1(2)(a) and (b) have been revised to replace the terms "paragraph" and "subparagraph" with "Rules". The Office has determined that these are minor edits and not a substantive change to the Rules.

Rule 1.7.1(2)(a) has been revised to require the name, address, and telephone number of persons submitting written comments, protests, and/or petitions. This ensures that the Office can contact the person to advise them of subsequent proceedings.

Rule 1.7.1(2)(b) has been revised to require the name, address, and telephone number of persons directly or adversely affected or aggrieved by an Office decision. This ensures that the Office can contact the person to advise them of subsequent proceedings.

Rule 1.10 AMENDMENT TO A PERMIT

Rule 1.10(2) has been amended to include 110 permits in the required information for an amendment. The Office, with assistance from the Office of the Attorney General, determined that the Act did not specifically exclude 110 permits in those permits that may be revised.

Rule 1.10(3) has been revised to correct a typographical error ("amended" changed to "amendment"). The Office has determined that this is a minor edit and not a substantive change to the Rules. Language prohibiting amendments to 110 permits has been revised, since the Office determined such revisions are permissible.

RULE 2: BOARD MEETINGS- PERMIT APPLICATION HEARINGS, DECISIONS AND APPEALS

Rule 2.6 PRE-HEARING PROCEDURES- MOTIONS, WITNESS AND EXHIBIT LISTS

The majority of the revisions are limited to rearrangement. Changes to 2.6(1) allow additional time for parties to submit motions and information to the Board. This allows additional time for resolution of issues, which may eliminate the need for a hearing. This is consistent with 24-4-105, which governs Board procedure, in that the previously approved timeframes are not prescribed in the statute.

Rule 2.6(2)

These revisions were primarily rewording for clarification.

Rules 2.6(2)(a) and 2.6(2)(b)
These revisions were primarily rewording for clarification, as well as removing timeframes not prescribed by statute.

Rule 2.6(2)(a) and (b)(ii) have been revised to replace the term "subparagraph" with "Rules". The Office has determined that these are minor edits and not a substantive change to the Rules.

Rules 2.6(2)(b)(i) and (ii) have been revised to include the term "public" (Office public files) when referring to the materials in the Office public files which would be provided to parties in a pre-hearing information exchange. This clarifies that certain information, such as that under attorney/client privilege would not be exchanged.

Rule 2.6(3)
These revisions address organization of documents submitted to the Board, so that it is clear what material is provided for action on a particular permit or application, and that the Board, Office, and parties to the process will receive identical materials with equal time for review. It also revises the number of copies of materials provided to the Board to include one unbound copy which can then be easily reproduced.

Rule 2.7 PRE-HEARING CONFERENCES
Rule 2.7.1 General Provisions
Rule 2.7.1(1) was revised. Reference to the Office holding a Pre-hearing Conference was removed. The Board, according to Rule 2.7.1(1)(b), appoints a conference officer to conduct the conference.

The rule has also been revised to correct a numbering sequence error. The Office has determined that this is a minor edit and not a substantive change to the Rules.

Renumbered Rule 2.7.1(1) was reworded for clarification.

Renumbered Rule 2.7.1(2) was revised to delete most of the paragraph, since that language appeared at Rule 2.6(1).

Renumbered Rule 2.7.1(3) was revised to designate that a Pre-Hearing Conference Officer will prepare a proposed Pre-Hearing Order.

New Rule 2.7.1(4) was added to clarify the required elements of a proposed Pre-Hearing Order.

Existing Rule 2.7.1(1)(d) was deleted, as it was not supported by statute.

Existing Rule 2.7.1(2) was moved to 2.7.1(3) for organizational purposes.

Existing Rule 2.7.1(3) was moved to 2.7.1(4) for organizational purposes, and to designate that a Pre-Hearing Conference Officer will prepare a proposed Pre-Hearing Order.

Rule 2.7.2 Board Consideration of the Pre-hearing Order

Rule 2.7.2 was revised to include a heading change, as well as language within the body of the rule, to emphasize that the Board will consider a proposed pre-hearing order, which would only become final by Board action.

Rule 2.7.3 Parties Rights and Responsibilities

Rule 2.7.3(1) was revised to remove language that is redundant with the statute and the rules. Language referring to formal hearing was removed, since this rule pertains only to pre-hearing conferences. The rule was also revised to include the term "all" before "other parties' witnesses", to clarify that all parties' witnesses would be available for cross-examination by all parties.

Rule 2.7.3(2) was revised to clarify that, in order to seek judicial review of the Board's decision, the same person, and not any person, must have been party to the Formal Board Hearing.

Rule 2.7.3(3) was revised grammatically, and to include an opportunity for a person to withdraw as a party during a hearing as well as prior to its commencement.

Rule 2.7.3(4) was revised grammatically, and to allow for parties to attend a conference by telephone with less than five days' notice for good cause shown. This allows for concessions to be made in the event of a weather event, road closure, or other emergency that would preclude attendance of the conference. During the public comment period, the Office conducted another review of the proposed rules and became aware of a grammatical error, which has been corrected ("parties'" to "party's").

Rule 2.8 HEARINGS

Rule 2.8.1 General Provisions – Board Hearings

Rule 2.8.1(1) was revised grammatically, and to indicate that parties not present at a Board Hearing will forfeit their party status. It is reasonable to assume that by not attending a scheduled hearing, a party no longer has an interest in the issue. Such procedure is consistent with Rule 2.7.3(4), which states that a party who does not attend a pre-hearing meeting shall forfeit their party status and all associated rights and privileges. This will allow the Board to decide whether or not to proceed with a hearing when all objecting parties are not present, as has happened in the past.

Rule 2.8.2(3) was deleted, since it is redundant with language in paragraphs (1) and (4) of the same rule.

Rule 2.8.2 Board Decision

Rule 2.8.2(4) was revised for clarity and to be consistent with 24-4-105(16), which requires the service of the Board's decision on all parties. The rule requires that the service shall be by First Class Mail, and the Office herein would note that such Board actions are served by the Board Attorney, through the Office of the Attorney General, which, by policy, includes a certificate of service for all Board action notices.

Rule 2.9 RECONSIDERATION OF BOARD DECISIONS

Rule 2.9.3 Consideration of Petition

Rule 2.9.3 was revised to clarify the specific actions the Board may take, consistent with 24-4-105(4), which allows the Board to review written evidence as well as direct parties to appear and confer to consider issues. The Division will act as staff for the Board in providing written information, identifying additional sources of information, and advising the Board of what information might be obtained through oral arguments.

The rule was also revised to replace "petitioner and any party opponents" with "party", so as to remove the burden of determining the objectives of parties to a petition. The rule was also revised to clarify that "Office staff" (replacing "Division") will act as staff to the Board, except on matters of enforcement. In these cases, the Board's attorney would provide services to the Board.

During the public comment period, the Office received a comment from an operator on this rule. The commenter requested that additional language be added to clarify that in order for involvement to occur during consideration of a petition to reconsider a Board decision, a party would have to have been previously considered a party to the process. The Office agrees that reconsideration of a Board decision, as outlined in Rule 2.9.3 would be subject to the same comment procedures prescribed for an initial petition for a hearing, as prescribed by Rule 1.7. Language has been added to refer to the definition of "party" found in Rules 1.1(38.1) and 1.7.1.

Rule 2.9.4 Automatic Denial of Petition

Rule 2.9.4 was revised to make clear that the Board may take other action other than granting or denying a petition, such as delaying a decision, placing conditions on its decision, etc.

RULE 3: RECLAMATION PERFORMANCE STANDARDS, INSPECTION, MONITORING AND ENFORCEMENT

Rule 3.1 RECLAMATION PERFORMANCE STANDARDS

Rule 3.1.13 Spill Reporting

Rule 3.1.13 is a new proposed rule that specifies steps an operator must take in reporting spills of certain materials to the Office. Requirements for spill reporting were previously included in a stipulation to each permit or revision issuance document. This information will assist the Office in determining the level of response required for a given spill. Current permit holders will be required to comply with this rule commencing on the effective date of these rules (estimated to be July 30, 2005).

During the comment period, comments were received regarding how the Office would account for stipulations in place on existing permits, since the requirements of the stipulation and the rule were slightly different. Language was added to the rule stating that the rule would supercede stipulations placed on existing permits.

Also during the comment period, the Office received a written comment, noting a grammatical error which has since been corrected (adding a comma between "Office" and "Division").

Rule 3.2 INSPECTION AND MONITORING

Rule 3.2(5)(c) has been revised to include a requirement that the Office send copies of inspection reports to operators within a reasonable amount of time. Since the Act does not support a specific timeframe, the Office has proposed language that would address the potential concern of operators not receiving reports in a timely manner without proposing a requirement not supported by statute. The Office would then ensure that inspection reports are submitted in a timely manner through the use of internal guidelines and staff performance measures.

Rule 3.3 ENFORCEMENT AND PROCEDURES

Rule 3.3.4 Violation of a Cease and Desist Order – Surety Forfeiture

Rule 3.3.4 has been revised to replace the term "section" with "Rule". The Office has determined that this is a minor edit and not a substantive change to the Rules.

RULE 4: PERFORMANCE WARRANTIES AND FINANCIAL WARRANTIES

Rule 4.1 GENERAL PROVISIONS

Rule 4.1(2)

The existing Rules are silent regarding the time frame in which an applicant must post a financial warranty after the Board has approved a new permit, amendment or conversion beyond one calendar year. Therefore, **Rule 4.1(2)** has been revised to clarify that no permits will be issued until the Performance and Financial Warranties have been approved. The currently approved rule allows for permits to be issued with approval of the Performance and/or Financial Warranty, while submittal of both warranties is required by Section 34-32-117(1). The rule was also revised to require the Board to hold a hearing with the notification and comment provisions of Rule 1.6, if the warranties are not received within one calendar year of approval of an application for any new permit, to ensure that the public is afforded an opportunity to comment on the permit approval review, and to require the Board to set a new deadline for submittal of the Performance and Financial Warranties. The rule further allows the Office to terminate an application for a permit if the warranties are not provided by the date set by the Board. These revisions are intended to allow the Office to terminate applications where approval has been granted but permits never issued because no Performance and Financial Warranties are in place.

The Office received a written comment regarding Rule 4.1(2), which detailed concerns with the requirement for a financial warranty being financially burdensome for persons who have already paid more than 60% of the purchase price of their mining area land. The Office has not made revisions to the basic requirement for a Financial Warranty, but has instead allowed operators to have additional time and review options for submittal of a Financial Warranty beyond the required one year period. Accordingly, no changes to the proposed rule have been made based on these written comments.

Rule 4.1.2 General Requirements – Financial Warranties

Rule 4.1.2(5) has been revised to replace the terms "subsection" and "section" with "Rule". The Office has determined that this is a minor edit and not a substantive change to the Rules.

Rule 4.3 TYPES OF FINANCIAL WARRANTIES

Rule 4.3.2 Cash Escrow Account

The Rule is revised to further define the cash escrow account as a type of financial warranty that may be submitted as a reclamation bond. The Division has received a request, from an operator, to submit this type of bond.

During the comment period, the Office received a written comment, noting a grammatical error in Rule 4.3.2(ii), which has since been corrected (changing "an" to "a" commercial bank).

Rule 4.3.5 Certificates of Deposit

The Rule is revised to remove Treasury Note(s) and Treasury Bill(s) from the definition of Certificates of Deposit. The currently approved Rules did not distinguish them as separate bond instruments.

Rule 4.3.11 Negotiable Bonds of the United States Government

The rule is revised to add a definition for Negotiable Bonds as a type of financial warranty. The currently approved rules do not have a definition for this type of bond instrument.

Rule 4.5 Specific Requirements for Cash Escrow Accounts

The Rule is revised to provide the applicant/operator guidelines for submitting a financial warranty in the form of a cash escrow account. The Division received a request from an operator to supply this type of bond instrument.

Rule 4.8 SPECIFIC REQUIREMENTS FOR CERTIFICATES OF DEPOSIT

Rule 4.8(4) is being removed because it is unnecessary. Interest on Certificates of Deposit is addressed in the financial warranty form which accompanies the certificate.

Rule 4.9 SPECIFIC REQUIREMENTS FOR DEEDS OF TRUST AND OTHER SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY

Rule 4.9.3 First Priority Lien – Fixtures and Equipment

Rule 4.9.3 has been revised to replace the terms "subsection" and "section" with "Rule". The Office has determined that this is a minor edit and not a substantive change to the Rules.

Rule 4.12 SPECIFIC REQUIREMENTS FOR SALVAGE CREDIT

Rule 4.12.1 Requirements for Salvage Credit

Rule 4.12.1 has been revised to replace the term "paragraph" with "Rule". The Office has determined that this is a minor edit and not a substantive change to the Rules.

Rule 4.13 Specific Requirements for Negotiable Bonds of the United States Government

A new rule is included for the specific requirements for Negotiable Bonds of the United States Government if used by an applicant or operator. The Division has not had any requests from operators to submit this type of bond. The Division has received many requests regarding other types of acceptable bonds due to stringent requirements enforced by the insurance companies. The Division wanted to ensure that the bond had been researched and requirements set before acceptance.

During the April 13, 2005 hearing, one of the Board members questioned the appropriateness of having operators pledge treasury notes to the Division of Minerals and Geology, rather than to the Board as is required for all other types of Financial Warranty. Office staff determined that this direction was in error, and that treasury notes should be pledged to the Board. Accordingly, "Division" was replaced by "Board" throughout this rule.

Rule 4.14 IMPAIRMENT OF FINANCIAL WARRANTIES

Rule 4.14 has been revised throughout to replace the term "section" with "Rule". The Office has determined that this is a minor edit and not a substantive change to the Rules.

Rule 4.15 RELEASE OF WARRANTIES- PROSPECTING OPERATIONS

Rule 4.15 has been revised throughout to replace the terms "paragraph" and "subsections" with "Rule". The Office has determined that this is a minor edit and not a substantive change to the Rules.

Rule 4.15(2)(a)

The sequence of the Rule and reference to other Rules was changed to accommodate specific requirements for negotiable bonds of the United States Government. This Rule is now referred to as Rule 4.16. The Rule was revised to omit the current owner of record of the affected land to be included in the reclamation report because such information is not required for prospecting operations. In order to properly identify the reclamation report, the language of the Rule was revised to include the name of the operation, the name of the operator, file number of the Prospecting Notice of Intent and the name, mailing address and phone number of the contact person.

Rule 4.15(4) was revised to clarify that financial warranties would be released, not performance warranties, as prospecting operations do not require a performance bond.

Rule 4.16 RELEASE OF PERFORMANCE AND FINANCIAL WARRANTIES FOR MINING OPERATIONS

Rule 4.16.2(6)

For clarification purposes, the language of 4.17.2(6) (previously 4.16.2(6)) has been moved to Rule 4.18(2).

Rule 4.17 PUBLIC NOTICE AND FILING OF WRITTEN OBJECTIONS REGARDING A REQUEST FOR RELEASE OF FINANCIAL WARRANTY

The heading of the rule was changed to specify that this rule describes the process for filing of written objections regarding a bond release request.

Paragraph (1) was revised to include the language "directly and adversely affected" which is consistent with 24-4-105(2)(c), 34-32-103(1.5) and Rule 4.18(1). The revision is intended to clarify that legitimate objections to the release of Financial Warranty must be made by a person that is personally adversely affected or aggrieved, as set forth in the statute.

For clarification purposes, the language of 4.17.2(6) (previously 4.16.2(6)) has been moved to Rule 4.18(2).

Rule 4.20 FORFEITURE OF FINANCIAL WARRANTY

Rule 4.20 has been revised throughout to replace the terms "paragraph" and "section" with "Rule". The Office has determined that this is a minor edit and not a substantive change to the Rules.

RULE 5: PROSPECTING OPERATIONS

Much of Rule 5 has been rewritten primarily to assist the Office in locating prospecting operations, determining whether prospecting sites have been abandoned, and to fulfill the requirements of the State Auditor. Existing NOI holders will not be required to resubmit their NOIs.

Rule 5.1 NOTICE OF INTENT TO CONDUCT PROSPECTING OPERATIONS

Rule 5.1.1 General Provisions

Rule 5.1.1(1) was revised to make clear that a separate NOI application must be submitted for each noncontiguous parcel of land. This will ensure that any specific or unique issues for a given parcel of land will be addressed. The Office received a written comment regarding this rule change. The commenter questioned whether the Office

could waive this requirement if noncontiguous lands were adjacent to permitted mining areas. The Office has added language allowing a waiver for good cause.

Rule 5.1.1(2) was revised to remove ambiguous language regarding a determination that proposed prospecting activities should be considered mining activities.

Rule 5.1.1(3) was deleted, since the terms "exploration" and "development" are not defined in the Act. A new Rule 5.1.1(3) was added to allow for modification of an existing NOI. This new rule would allow for modification of current NOIs.

Rule 5.1.2 Application Requirements

Rule 5.1.2 was revised to improve clarity, to require additional information which would help Office staff field locate prospecting operations, to require additional information to make clear the extent of prospecting activities as to define reclamation requirements, and to provide a timeframe for reclamation. The office has added emphasis to an existing requirement for reclamation within five years of completion of prospecting (Rule 5.1.2(g)) that will apply to new and existing NOIs.

It should also be noted that in addition to a general mapping of existing disturbance, the Office would accept photographic documentation of disturbance which existed prior to the commencement of exploration activities. Photographs should include the date the photograph was taken, the orientation of the photograph, and a description of what is depicted in the photograph, and should be reproduced at 5" by 7" or larger. Slide film imprints would not be acceptable.

Rule 5.1.3 Office Review

Rule 5.1.3 was added to better define the Office review and decision process for NOI applications. Timeframes for the determination of application completeness and review periods were imposed. Possible actions for decisions were defined, and the appeal process of Rule 1.4.11 was invoked. These timeframes will help to ensure that an NOI application will not languish in the completeness or review process, and it will be clear where an application stands in the process, and, ultimately, whether an NOI has been approved or terminated.

During the comment period, the Office received a written comment detailing concern with the 20 day review period being tied to approval by a federal land management agency (Rule 5.1.3(a)). Both Memorandums of Understanding (MOUs) between the Office and the US Forest Service and US Bureau of Land Management state that the federal agency will conduct its review of an NOI within the timeframes required for the Office review. Accordingly, the rule has been revised so that the 20 day review period will commence when the Office has verified receipt of the NOI by the appropriate federal agency, either by notification from the agency, or in response to an Office inquiry. The same commenter suggested elimination of "working" in the 20 working day review period after which an NOI would be automatically approved. The Office has not incorporated this change, but will be diligent in its efforts to expedite review periods.

Rule 5.2 CONFIDENTIALITY

Rule 5.2.1 Preconditions for Release of Confidential NOI Information

Rule 5.2.1 was revised and the heading changed to clarify the requirements for and timing of release of confidential information contained in an NOI. Certain information may be released after release of warranty, or may be released in the event that a site is abandoned, in order for the Office to affect reclamation. In the event of abandonment (failure to submit an annual report for two consecutive years), existing NOIs will be subject to the new notification and information release provisions.

Rule 5.2.2 Portions of NOI File to Remain Permanently Confidential

Rule 5.2.2 was revised and the heading edited to clarify that certain NOI information will not become public at any time, particularly drillhole information. This rule will be applied to existing NOIs, ensuring confidentiality of information previously submitted.

Rule 5.3 TERMS AND CONDITIONS FOR PROSPECTING

Rule 5.3.1 Protection of Surface Areas

Rule 5.3.1 was revised for clarification. **Rule 5.3.1(c)** adds emphasis to confining prospecting to areas near existing roads or trails where practicable by requiring that any existing road which is substantially upgraded be included as part of the acreage. Improvements or alterations of a road which were made specifically for prospecting operations shall be considered affected land and require reclamation unless specifically requested by the landowner or land management agency to be left as improved. This rule change will apply to existing NOIs. **Rule 5.3.1(d)** includes a requirement that prospecting operations be maintained to ensure public safety. This new requirement will apply to existing NOIs. **Rule 5.3.1(h)** now includes a requirement for revegetation of backfilled areas, which will also apply to existing NOIs.

Rule 5.3.2 Protection of Wildlife

Rule 5.3.2 was revised to include suggested practices to ensure protection of wildlife.

Rule 5.3.3 Financial Warranty

Rule 5.3.3(1) was revised to make clear that the Office will consider the nature, extent, and duration of prospecting activities in determining an appropriate financial warranty amount. This will ensure that the financial warranty is adequate to cover all reclamation requirements.

Rule 5.3.3(3) was added to better define the Office's responsibility in maintaining the effectiveness of a financial warranty. This will require that the Office take necessary steps to ensure that the financial warranty remains adequate to cover all reclamation requirements for the duration of prospecting activities, such as reviewing approved NOI plans and doing a field comparison. The Office will also review existing NOIs to ensure that financial warranties remain adequate, and may require additional warranties for some existing NOIs.

Rule 5.3.4 Notice of Completion of Prospecting Prior to Initiating Reclamation

Rule 5.3.4 was revised to clarify the requirements for mailing a notice of completion of prospecting activities. Existing NOIs will be subject to the new requirements for notice of completion of prospecting activities.

Rule 5.3.4(2) was deleted, as discussions of this timeframe are also included in Rule 5.3.5.

Rule 5.3.5 Post-Reclamation Inspection and Release of Warranties
Rule 5.3.5(1) was revised to include a delay of inspection activities in the event of inclement weather which would hamper the inspection. This rule change will apply to existing NOIs. Reference to 4.15.1(2) was changed to 4.16.1(2), to accommodate the proposed new section at 4.13. Minor edits were made to improve clarity.

Rule 5.3.6 Compliance with Other Laws
Rule 5.3.6 was revised and the heading changed to make clear that prospecting must be in compliance with all applicable local, state, and federal laws, and not just state or federal air and water quality laws. This change makes clear that these prospecting rules do not take precedence over applicable local, state, or federal laws. This rule change will apply to existing NOIs.

Rule 5.4 ABANDONMENT OF PROSPECTING DRILL HOLES
Rule 5.4 was revised for clarity. During the time that the Office was researching and preparing these revisions, the Office and the Office of the State Engineer were revisiting an existing Memorandum of Understanding (MOU) between them. Accordingly, the Office had envisioned revisions to the Rules to comply with the revised MOU. During review and discussions of the MOU, it was determined that the June 22, 1998 MOU was sufficient as written, and no changes were implemented. Accordingly, there have been no revisions to the Rules regarding consultation with the Office of the State Engineer.

Rule 5.5 SURFACE RECLAMATION
Rule 5.5.2 was revised for clarity.

Rule **5.5.2(d)**, to include excavations and trenches in those features requiring reclamation. This will ensure reclamation of all disturbances associated with prospecting activities. Existing NOIs will be subject to this new rule.

Rule 5.5.2(g) was added to ensure that noxious weeds are controlled within the area affected by the prospector. This new requirement will apply to existing NOIs. During the April 13, 2005 Formal Hearing before the Board, the attorney for the Board asked for clarification whether the Office intended for the disturbed area or affected area to be referenced in the rule. It was determined that the appropriate reference is of the affected area, so this statement and the proposed rule have been revised accordingly.

Rule 5.5.2(h) was revised to include a requirement for restoration of roads used in conjunction with prospecting activities. This new requirement will apply to existing NOIs.

Rule 5.6 ANNUAL REPORT

Rule 5.6 was added to include requirements for submittal of an annual report of prospecting activities. The annual report will:

ensure that the Office has an accurate record of the contact person(s) for prospecting activities;

maintain an accurate record of the owners of land on which prospecting occurs;

provide information to the Office to determine the extent of prospecting activities and reclamation that has occurred in the prior year, which will aid the Office in determining whether the Financial Warranty remains adequate;

provide information to the Office that demonstrates that the Financial Warranty remains in effect; and

provide a date that prospecting activities have ended, to identify the beginning of the five year reclamation period prescribed in Rule 5.1.2(g).

Annual reports will be required for existing NOIs, and this rule specifies that the first annual report is not due until December 31, 2006. This gives current NOI holders ample time to comply with this new requirement.

During the comment period, Office staff noted and corrected a grammatical error ("the" to "an" annual report).

Rule 5.6(2) allows the Office to declare a prospecting site abandoned in the event that no annual report has been received for two consecutive years. This will ensure that the Office can identify an abandoned site and affect reclamation in a timely manner. This rule change will be applied to existing NOIs.

Rule 5.7 FINAL REPORT

Existing **Rule 5.6** was renumbered to accommodate new Rule 5.6, and minor clarification edits were made.

Rule 5.7 WAIVER OF SPECIFIC REPORTING REQUIREMENTS REGARDING AQUIFERS

Existing **Rule 5.7** was renumbered to accommodate new Rule 5.6, and minor clarification edits were made.

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

Rule 6.3 SPECIFIC PERMIT APPLICATION EXHIBIT REQUIREMENTS – 110 and 110d LIMITED IMPACT OPERATIONS

Rule 6.3.1 EXHIBIT A- Legal Description and Location Map

Rule 6.3.1(1) and (2)

The Rule is revised to include additional information on the location of a mine site. The current requirement of township, range and section to the nearest quarter-quarter section gives a general location of the proposed mine site. The addition of a UTM (Universal Transverse Mercator) coordinate of North American Datum (NAD) 1927, 1983 or a latitude and longitude coordinate at the entrance to the mine site will accurately depict the location of the mine site, ensuring that the Office and other interested parties can locate the mine site.

Rule 6.3.3 EXHIBIT C - Mining Plan

Rule 6.3.3(b)

The Rule is revised to include "other means" that the applicant/operator may propose for stabilization of stockpiled topsoil until it is used for reclamation. The current rule requires vegetation as the sole means of stabilization. Allowing other stabilization measures as an alternative to vegetative cover may facilitate immediate and possibly more effective stabilization. The rule has been revised to replace the term "subsection" with "Rule". The Office has determined that this is a minor edit and not a substantive change to the Rules.

Rule 6.3.7 EXHIBIT G - Source of Legal Right-to-Enter

The rule has been revised to replace the term "subparagraph" with "Rule". The rule was also revised to make "landowner" plural, as permitted lands may be owned by more than one entity. The Office has determined that these are minor edits and not a substantive change to the Rules.

Rule 6.3.12 EXHIBIT L - Permanent Man-Made Structures

The Rule was revised so that the description of characteristics of a man-made structure located within 200 feet of the affected land which may be adversely affected meets all of the requirements of significant, valuable, *and* permanent. The rule previously stated that such structures must be significant, valuable, *or* permanent. The proposed language is consistent with 34-32-115(4)(d). The Rule was also revised to correct typographical errors in paragraphs "(a)" and "(b)", and to include "or" between paragraphs of options which are available to the applicant in the rule. The Office has determined that this is a minor edit and not a substantive change to the Rules.

Rule 6.4 SPECIFIC EXHIBIT REQUIREMENTS – 112 RECLAMATION OPERATION AND 112d DESIGNATED MINING OPERATIONS

Rule 6.4.1 EXHIBIT A - Legal Description

Rule 6.4.1(1) and (2)

The Rule is revised to include additional information on the location of a mine site. The current requirement of township, range and section to the nearest quarter-quarter section

gives a general location of the proposed mine site. The addition of a UTM (Universal Transverse Mercator) coordinate of North American Datum (NAD) 1927, 1983 or a latitude and longitude coordinate at the entrance to the mine site will accurately depict the location of the mine site. This will ensure that representatives of the Division, the public, or other interested parties will be able to locate the site.

Rule 6.4.3 EXHIBIT C – Pre-mining and Mining Plan Map(s) of Affected Lands
Typographical errors in the paragraph numbering and lettering were corrected.

Rule 6.4.19 EXHIBIT S - Permanent Man-Made Structures
The Rule was revised so that the description of characteristics of a man-made structure located within 200 feet of the affected land which may be adversely affected meets all of the requirements of significant, valuable, *and* permanent. The rule previously stated that such structures must be significant, valuable, *or* permanent. The proposed language is consistent with 34-32-115(4)(d). Typographical errors in subparagraph "(b)" were also corrected.

INDEX
The Office has also proposed the inclusion of an index to the rules, which would include page numbers for the appearance of all terms included in Rule 1.1 (definitions), and other major headings within the rules.

Energy Minerals Law Center

1911 Main Avenue, Suite 238, Durango, Colorado 81301
Phone: (970) 375 9231 Fax: (970) 382 0316 Email: emlc@frontier.net

January 27, 2006

Bruce Humphries
Division of Minerals and Geology
Department of Natural Resources
1313 Sherman St., Room 215
Denver, Colorado 80202

RE: Designated Mining Operation Status of Cotter Corporation JD-6, JD-8, JD-9 and SM-18 Mines

Dear Mr. Humphries,

This letter is written on behalf of the San Juan Citizens Alliance, Information Network for Responsible Mining (INFORM), and the Colorado Environmental Coalition and concerns the Colorado Division of Minerals and Geology ("DMG") regulation of the Cotter Corporation's JD-6, JD-8, JD-9, and SM-18 mines. We appreciate the DMG's work in updating its regulatory efforts over re-opening mine sites in response to the latest boom in mining activity in Colorado. We look forward to participating in the emerging efforts to bring old mines, permits, and plans into compliance with the post-Summitville mining and reclamation standards.

The Energy Minerals Law Center (EMLC) is a project of the Western Mining Action Project that provides legal services to communities, grass-roots groups, and Native American Tribes fighting the destructive and harmful impacts of energy mineral mining. EMLC looks forward to working with the DMG staff and the Mined Land Reclamation Board ("MLRB") and especially those opportunities to include informed public participation in your regulatory program.

This letter specifically addresses the requests by Cotter Corporation to restart four uranium and vanadium facilities -- JD-6, JD-8, JD-9, and SM-18 mines. DMG records indicate that these four facilities were issued permits in 1979. The files indicate that the DMG considers three of these mines -- JD-6, JD-8, JD-9 -- geologically similar for purposes of determining DMO status. Although the four DMO determinations are being addressed in this letter, please consider each statement in support of DMG's DMO determinations and each objection to Cotter Corporation's DMO appeal/application as it applies to these mines individually and cumulative.

DMG Properly Determined These Four Mines are Designated Mining Operations

The DMG's July 15, 2005 and July 22, 2005 "SPLP results review" found toxic contaminants leaching from mine facilities and therefore properly determined that the JD-6, JD-8, JD-9, and SM-18 uranium/vandium mines satisfy the criteria for Designated Mining Operations. ("DMOs"). The subsequent July 25, 2005 DMO Notice of Determination also properly states that these mines are DMOs. Cotter must therefore comply with regulations applicable to a DMO, including the submission of an Environmental Protection Plan ("EPP") as specified in HRMM Rule 6.4.19.

On August 25, 2005 Cotter Corporation filed a one-page letter described as an "appeal" of the July 25, 2005 DMO determinations. The DMO appeal was based entirely on groundwater hydrology models that had not yet been designed or conducted. In later correspondence to DMG from Peter Kearl (a Cotter Contractor) dated November 28, 2005, Cotter argued that based on its modeling, toxic contaminants at the four mines "pose no significant threat to underlying groundwater resources." However, there is no indication in the study, the file, or relevant DMO standards as to what constitutes a "significant threat." Regardless, the groundwater models and the "significant threat" assertions, are irrelevant to an appeal of a DMO determination or an application for an exception to the DMO status.

Regardless, the data and conclusions presented by Cotter do not constitute reliable and conservative studies upon which the DMG can base a decision to treat the subject mines as non-DMO or DMO-exempt facilities. The December 2, 2005 internal DMG memo from Russell Means to Harry Posey and Kate Pickford correctly points out that the model results were presented to DMG without underlying data and description of the model parameters. The file also contains letters indicating that a Board consideration of the Cotter appeal has been delayed several times in order that the DMG staff can consider the various Cotter submissions. Although it is crucial for the DMG to be fully informed of the groundwater impacts, these types of considerations are properly done in context of reviewing EPPs and other requirements of DMO regulatory program. It would be in the interest of efficient use of DMG resources to direct staff to suspend its review of Cotter's model and to begin taking those measures appropriate for newly determined DMOs.

Cotter Corporation Has Not Demonstrated non-DMO or DMO-Exempt Status

The Mined Land Reclamation Act ("MLRA") defines DMO.

> "Designated mining operation" means a mining operation at which:
>
> (I) Toxic or acidic chemicals used in extractive metallurgical processing are present on-site; or
>
> (II) Acid- or toxic-forming materials will be exposed or disturbed as a result of mining operations.

C.R.S. § 34-32-103(3.5) (a). Here, there is no question that toxic-forming materials have been and will be exposed and disturbed at the four mining operations as a result of past mining, current conditions, and planned mining operations. The July 25, 2005 Notice of Determination clearly states that the mines meet the criteria for a DMO. Id. (acid- or toxic-forming materials exposed or disturbed).

Cotter does not contest that the DMG's tests revealed waste rock on these sites that are acid- and toxic forming nor does Cotter allege that such material will not be exposed or disturbed. Instead, Cotter apparently pursues a strategy that uses modeling to argue that the toxicity of contaminant plumes from the sites may meet "certain applicable water quality parameters" if sufficiently diluted before reaching ground and surface water bodies. However, the pollution dilution strategy provides no basis for a non-DMO finding.

DMO exemptions are available only by an application to the Board that demonstrates that the DMO **does not use, store, or disturb toxic-producing materials "in quantities sufficient to adversely affect any person, any property, or the environment."** C.R.S. § 34-32-112.5(2), HRMM Rule 7.2.6(2)(emphases added). Here, the operator has not met its burden to demonstrate, as the statute requires, that the quantity of toxic-producing materials stored and disturbed at any of the sites are of such insignificant quantities that there could be no adverse effects to "any person, any property, or the environment." Id. Notably, the standard for triggering DMO status is a much lower standard than whether the mines will violate state water quality standards, as an adverse impact inevitably occurs prior to violations of those standards. Equating the test for violation of state water quality standards with the DMO status threshold inappropriately heightens the DMO standard and is contrary to state law and DMG regulations. Such an approach also discounts the impacts to persons, property, and the environment in the immediate vicinity of the contaminating mine facilities.

State groundwater standards are of no consequence to the DMO inquiries. Violations of state groundwater standards by the types of contaminants found at these mining operations are very serious matters. However, whether violations are occurring or likely to occur is not the standard under which to review DMO status. Here, DMO status was properly determined at the mine site itself by answering in the affirmative that regulated materials are exposed or disturbed. C.R.S. § 34-32-103(3.5). Likewise, a DMO exception may be granted only after an application demonstrates the quantities of the materials "used, store, or disturbed" will not "adversely effect any person, any property, or the environment." C.R.S. § 34-32-112.5(*emphasis added*). The Cotter "appeal" based on groundwater modeling and assertions that it will not violate groundwater standards support neither a non-designation determination nor an exemption for these four mines.

Overall, there is no basis found in the record to reverse or grant an exemption from the DMO findings. Therefore, to the extent an exemption may have been sought by the appeal or is being sought from the DMG or MLR Board, the request for an exemption must be denied and the DMG should begin the process of ensuring that these four uranium mines comply with regulations applicable to DMOs, including submission of Environmental Protection Plans. HRMM Rule 7.1.3(2).

Cotter's Irrelevant Groundwater Modeling is Flawed

Even assuming *arguendo* that the groundwater modeling is relevant (which the modeling is not) to broad standards set forth above and followed by DMG in making the DMO determinations, the August 25, 2005 appeal relies on insufficient modeling of a different site. Cotter asks DMG and the Board to reverse its DMO findings based on a groundwater model of a similar site. However, as correctly documented by the DMG in the December 2, 2005 internal memo from Russell Means to Harry Posey and Kate Pickford, the model results were presented to DMG without underlying data and description of the model parameters.

The December 2, 2005 memo raises additional important questions as to how a contaminant plume would spread in accordance with the "variable transmissivities" and actual subsurface

geology in the two study areas. DMG properly questions Cotter's attempt to apply PORFLOW, highly modular modeling software with a wide range of applications to model fluid and energy flows, to geological conditions at a different site. There is no indication of what modules were used in the submitted study. Further, current versions of PORFLOW allow three-dimensional modeling. However, Cotter chose, without explanation, to use a two-dimensional model of a vertical slice from the SM-18 mine. A simple vertical examination from a different site is not an appropriate model for groundwater dispersion where a three-dimensional model is available to examine the horizontal groundwater flows that were somehow "assumed" into the two dimensional model.

The simultaneous horizontal and vertical flows of groundwater in the complex and varied geology of the actual sites necessitate the use of the available three-dimensional modeling and full documentation in the project file of the model modules, parameters, and input data. Absent such techniques, Cotter's analysis does not represent an appropriately conservative scientific approach to determining the impact of its toxic groundwater pollution. Further, the model must be run on data from the actual site in order to provide the most useful results. And finally, although the modeling might be of use in ensuring that these mines meet other regulatory standards, the entire discussion of groundwater modeling is irrelevant to the question of whether or not the DMG's DMO-determination should be reversed by the Board.

The Public has A Right to Participate in DMO Findings and Appeals

The Mine Land Reclamation Act's ("MLRA") public participation requirements are quite inclusive. "Any person has the right to file written objections to or statements in support of an application for a permit with the board." C.R.S. § 34-32-114. Consistent with the MLRA, the HRMM Rule 7.2.2 allows any person to appeal a non-DMO status determination. While a non-DMO appeal is unnecessary because a non-DMO finding has not been made, please consider this letter a written objection of Cotter's August 26, 2005 appeal and application for non-DMO status for the JD-6, JD-8, JD-9 and SM-18 Mines.

Also consistent with the MLRA, HRMM Rule 7.2.6 requires an operator seeking a DMO exemption to request a hearing or file an application to gain an exemption. Although Cotter's August 25, 2005 one page appeal is vague and does not explicitly request an exemption, the appeal and letters subsequently exchanged seem to indicate that Cotter is seeking a DMO exemption. Please consider this letter as written opposition to the consideration or application for a DMO exemption for the JD-6, JD-8, JD-9 and SM-18 Mines.

Since the process for involving the public in the current Cotter DMO appeal/request for exemption is not entirely clear and may fall under two sets of regulations, we look forward to working cooperatively to ensure a full, fair public process is used to review Cotter's request to gain either non-DMO or DMO-exempt status. Please feel free to call if you would like to discuss/clarify the regulatory process that the Board plans to use to review Cotter's appeal/application for DMO exemption. Colorado Environmental Coalition, INFORM and San Juan Citizens Alliance have a significant interest in participating in DMG processes that ensure that these mining operations, and all mining in Colorado, are properly regulated under the MLRA.

Colorado Environmental Coalition (CEC) is a Colorado-based environmental advocacy organization with three field offices in western Colorado and a main office in Denver. CEC has approximately 3,500 individual members and over 90 affiliated organizations. CEC campaigns engage citizens in the protection of Colorado's wild places, open spaces, wildlife and quality of life. CEC is a known and active participant in public land management in Colorado, with a demonstrated interest in energy development on Colorado's BLM lands. CEC members are concerned with protecting wildlife, scenery, water quality, quality of life, and other values.

Information Network for Responsible Mining (INFORM) is a nonprofit organization with the mission of educating the public about the dangers that exist when unsafe and irresponsible mining practices are permitted. Through the dissemination of information and education, INFORM helps organize residents in local communities most threatened by these practices to protect water quality, quality of life and the local economy.

The San Juan Citizens Alliance was founded in 1986 as a voice for environmental, social, and economic justice in the San Juan Basin of southwest Colorado and northwest New Mexico. San Juan Citizens Alliance works toward the protection of the wild lands, greater corporate and governmental responsibility in the development of natural resources, and for the protection of the waters in the Basin and includes more than 500 members who live in and who care about the natural and human resources of the basin.

Please consider this letter as both a written statement of these groups' support for the DMG's DMO determination and as their written objection to the August 25, 2005 non-DMO appeal and/or DMO-exempt status sought by Cotter in response to the DMG's well-founded DMO determination. C.R.S. § 34-32-114. Further, please include EMLC and the undersigned groups in any official notice of hearing or applications that may flow from the DMG regulation of these four mines. And, in the spirit of cooperation, proactive regulation, and full public participation, EMLC requests and would greatly appreciate informal notice of any action that the DMG or the MLRB may consider taking regarding these four mining operations.

The Twenty-Five Year Cessation May Have Voided the Permits

Last, based on our review of the file, these permits are likely invalid by operation of law. C.R.S.§ 34-32-103(6)(a). It appears that the permits for these four mines may not be valid by virtue of the temporary cessation rules at HRMM Rule 1.14. It is our understanding that the DMG review assumes these mines have remained on active status since the initial permits were issued in 1979. Our review suggests that the mines likely fall within the indicators for temporary cessation at HRMM Rule 1.13.2. Further, the permit file indicates that these mines were noticed for temporary cessation status in 1980 and have remained inactive for the ensuing 25 years.

The regulations, like the MLRA, states,

> In no case shall Temporary Cessation be continued for more than ten (10) years without terminating the mining operation and fully complying with the Reclamation and Environmental Protection Plan requirements of the Act and these Rules."

HRMM 1.13.9, C.R.S. § 34-32-103(6)(a)(III)("In no case shall temporary cessation of production be continued for more than ten years . . . " Id.). These inactive mines were noticed for temporary cessation in 1980, and the permits should have lapsed no later than 1990, over fifteen years ago. Our review of the permit file, particularly the annual reports, reveals no mining activity that would allow the permits "to continue in effect." C.R.S. § 34-32-103(6)(a). The annual reports also reveal little, if any progress toward reclamation. The MLRA provision on temporary cessation was adopted to avoid the situation where mines languish for decades without production **and** without full compliance with reclamation and EPP requirements.

Based on our understanding, we request DMG to undertake the necessary inquiry and actions to determine whether or not the permits for the JD-6, JD-8, JD-9 and SM-18 Mines are in fact extant, whether they have lapsed or otherwise become invalid, and/or whether other action is necessary to properly regulate what DMG has properly determined are DMOs.

Conclusion

The Colorado Environmental Coalition, San Juan Citizens Alliance, INFORM and the general public have considerable interest in the Dolores River Basin that will be affected by the current uranium boom in general and the regulation of the JD-6, JD-8, JD-9 and SM-18 Mines in particular. We look forward to participating in transparent and effective efforts to protect land, water, air, wildlife, human health, and the public interest. For these and the reasons stated above, we request that DMG and MLRB confirm DMO status for the JD-6, JD-8, JD-9 and SM-18 Mines and avoid further delay in ensuring that these four mines meet all regulatory standards applied to Designated Mining Operations.

Should you have any questions or would like to discuss this further, please do not hesitate to contact us.

Sincerely,

s/Travis Stills
Travis Stills
Attorney
Energy Minerals Law Center

On behalf of:
Colorado Environmental Coalition
San Juan Citizens Alliance
Information Network for Responsible Mining (INFORM)

Cc: Western Mining Action Project
Cheryl Linden, Colorado AG's Office