

**BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO**

**COTTER CORPORATION (N.S.L.)'S RESPONSE IN OPPOSITION TO INFORM'S
OBJECTIONS CHALLENGING COTTER'S NOTICES OF TEMPORARY CESSATION
FOR THE JD-6, JD-9, SR-11, LP-21, JD-7 PIT, AND SR-13A MINES**

**(FILE NOS. M-1977-310, M-1977-306, M-1977-451, M-1977-305, M-1979-094-HR,
M-1977-311)**

Cotter Corporation (N.S.L.) ("Cotter") responds as follows to INFORM's objections ("Objections") challenging the Notices of Temporary Cessation ("Notices"), dated December 13, 2012, that Cotter submitted to the Division of Reclamation, Mining and Safety ("Division") for the JD-6, JD-9, SR-11, LP-21, JD-7 Pit, and SR-13A Mines ("Mines"). As explained below, this Board should overrule INFORM's Objections and accept Cotter's Notices as submitted.

I. INTRODUCTION

INFORM seeks to permanently close the Mines as if they have no value, are unregulated by the Division, and were abandoned long ago by their owner. Nothing could be more remote from the truth. The Mines are of great importance to Cotter, have been analyzed recently in rigorous Environmental Protection Plans ("EPPs"), Drainage Design Plans, and other studies, and incorporate measures to protect the environment during periods of both temporary cessation and active mining. The Division has also regulated the Mines for over 30 years, and continues to do so. A decision denying Cotter's Notices would waste the resources that Cotter has invested in the Mines over three decades to preserve its permits and ability to mine uranium and vanadium from the Mines. Such decision would also conflict with the Division's policies, its oversight of the Mines for over three decades, and its express request made last November that Cotter place the Mines and their associated reclamation permits into temporary cessation. INFORM has not produced facts or law that support denial of the Notices or release of the Mines' permits.

Cotter's business is mining uranium and vanadium. An important component of that business is developing and operating the Mines, which indisputably contain valuable uranium and vanadium reserves. Cotter's commitment to developing and operating the Mines is confirmed by the work it has historically performed at those sites in exploring for and defining ore resources; preparing the sites for mining; building and maintaining mine and stormwater structures; producing ore when economically justified; and conducting other mine operations. More recently, Cotter's commitment to developing and operating the Mines is shown by the substantial resources it invested for those properties in preparing EPPs, Drainage Design Plans, mine plans, and other studies; collecting geologic and environmental data; and submitting Amendment Applications ("Amendments") to the Division. Specifically, on September 30, 2011, the Division wrote to Cotter and requested that it submit EPPs and Amendments for the Mines, among other sites, by October 1, 2012. After hiring two engineering firms and spending considerable sums, Cotter timely complied with the Division's requests. This expense and effort continues as Cotter responds to the Division's adequacy review questions for each Amendment.

The decision to place the Mines into temporary cessation originated with the Division, not Cotter. On November 9, 2012, following a review of each Mine's permit status, the Division wrote to Cotter and requested that it place the Mines into temporary cessation by December 15, 2012. 1:JD-6_0294-0295.¹ In its letter, the Division also informed Cotter that placing the Mines into temporary cessation was lawful: "TC is the only status that would allow these sites to remain [compliant] with State law." 1:JD-6_0295 (emphasis added). Cotter complied with the Division's requests by timely submitting its Notices to the Division, and requested that the Mines

¹ Citations are to the three-volume appendix submitted with this Response. Each volume of the appendix corresponds to two of the six Mines, and is separately paginated, *e.g.*, 1:JD-6_0056 (volume 1, JD-6 Mine, page 56).

be placed into temporary cessation by December 15, 2012. 1:JD-6_0296-0297; 1:JD-9_0428-0429; 2:SR-11_0312-0313; 2:LP-21_0379-0380; 3:JD-7 Pit_0304-0305; 3:SR-13A_0297-0298. The Division accepted each Notice.

Cotter's EPPs and Amendments contain measures that will protect the environment during periods of temporary cessation. Cotter will regularly inspect the sites during such periods. *See, e.g.*, Cotter's Responses to Adequacy Review #1 for JD-6, LP-21, and SR-13A Mines, 1:JD-6_0301; 2:LP-21_0371; 3:SR-13A_0291. If any adverse off-site impacts are noted, Cotter will take appropriate steps to correct the problem, including building or repairing berms, diversion ditches, settling ponds, and other structures. Cotter does not anticipate that the Mines will cause adverse effects on surface water, groundwater, wildlife, or other resources during periods of temporary cessation.

Against these facts, INFORM has failed to carry its burden of supporting denial of Cotter's Notices. INFORM does not dispute that the Mines contain valuable mineral reserves which can, and will, be mined when market conditions recover. It has produced nothing to substantiate its non-specific concerns that the Mines will adversely affect the environment, and agrees "Cotter is carrying out maintenance and other activities at these and other federally leased mines." Objections, at 2-3. INFORM contends that the Mined Land Reclamation Act ("MLRA"), C.R.S. §§ 34-32-101 to -127, "speaks unambiguously of the production of ore as a requirement for retaining a reclamation permit" and "states unequivocally that a mine must be reclaimed after a decade of inactivity," but ignores conflicting statutory language, this Board's and the Division's contrary interpretations of the MLRA, and historical mining operations at each Mine. Moreover, INFORM wrongfully dismisses as irrelevant the existing federal court injunction which prohibits Cotter from undertaking the mining activity that INFORM contends is

necessary to comply with Colorado law. No agency, person, or organization other than INFORM has objected to Cotter's Notices. Under these circumstances, this Board should decline to second-guess the Division's decisions within the area of its expertise. It should overrule the Objections and accept the Notices as submitted.

II. FACTS

A. The Mines' Historical Activity

INFORM's Objections focus on the alleged inactivity of the Mines since 1980, and the claim that the Mines have effectively been closed for the better part of the past three decades. As shown below, INFORM's assertions are without merit and should be rejected.

1. JD-6 Mine

The JD-6 Mine is an underground uranium and vanadium mine in Montrose County, Colorado. It holds a "Development and Extraction Mining Permit" (No. M-1977-310) from this Board with a date of issuance of July 31, 1977. 1:JD-6_0001-0002. Located adjacent to the JD-6 Mine is the Mineral Joe Mine, which is also owned by Cotter but is permitted under a separate mining permit (M-1977-284). Although INFORM discusses the Mineral Joe Mine in its JD-6 Objection, Cotter has not filed a notice of temporary cessation for that mine, and it is not here at issue.

Cotter mined the JD-6 Mine until 1980. Effective July 15, 1980, Cotter suspended production at the JD-6 Mine due to declining market conditions and placed the mine in temporary cessation. Following this change in permit status, Cotter continued to conduct mining operations at the JD-6 Mine, which included surface drilling, mine dewatering in preparation for mining, reconstruction of air and water lines (including electrical wiring) in preparation for mining, ground control in preparation for underground drilling which was designed to define the ore deposit, timber repair in preparation for mining, mine feasibility studies, radiometric mine

surveys to define the ore deposit, and access road regravelling and regrading in preparation for mining. Letter, dated May 10, 1990, from Cotter, to the Division, at 2, 1:JD-6_0008. Cotter spent approximately \$238,000 on this work and mine maintenance over a nine-year period. Letter, dated March 20, 1990, from Cotter, to the Mined Land Reclamation Division, at 3, 1:JD-6_0005.

On May 10, 1990, Cotter applied for intermittent status for the JD-6 Mine. 1:JD-6_0007-0008. Cotter's application listed the mining operations that Cotter had conducted at the JD-6 Mine since 1980. 1:JD-6_0008. It also incorporated information from a prior letter reporting that known economic reserves remaining in the JD-6 Mine were approximately 59,500 tons, and that 36,300 tons of additional reserves were expected to be encountered. 1:JD-6_0005, 0007.

On June 25, 1990, this Board approved Cotter's application "addressing the reactivation (removal from temporary cessation) of the JD-6 Mine." Letter, dated June 26, 1990, from the Mined Land Reclamation Division, to Cotter, 1:JD-6_0009. Through this approval, the terms of the approved technical revision were incorporated into the JD-6 Mine's permit, and the mine's permit status was revised to intermittently active. *Id.*

Mining activity continued at the JD-6 Mine after its permit status was revised. Waste material was moved from the 1500 drift in 1995 and 1996, ground support work was conducted from 1995 through 1998, stormwater diversions were constructed in 1996, and the pump in the 1500 drift was replaced in 1998. Mineral production also resumed in 2004 and 2005, as documented in the Division's records. In a letter dated February 24, 2005, the Division wrote "Cotter has resumed mining operations." 1:JD-6_0024. On April 5, 2005, the Division wrote a memorandum, reporting "Ore from the JD-6 is being brought out to the Load Out structure at the

Mineral Joe . . . Staff observed a loader and truck preparing a shipment of ore. Approximately 50 tons of material was observed stockpiled.” 1:JD-6_0030. In an inspection report memorializing an October 5, 2005 inspection of the JD-6 Mine, the Division wrote “[t]he JD-6 Mine is in full production currently,” “a new waste load out is under construction,” and “[t]here is approximately 75 tons of ore stockpiled on site at this time.” 1:JD-6_0035. In an inspection report memorializing an April 5, 2006 inspection of the JD-6 Mine, the Division wrote “[t]he mine has been active in the past 6 months . . . ,” and the “new load-out structure is now complete.” 1:JD-6_0039.

Based on the above, INFORM is incorrect that the JD-6 Mine has not produced ore “since at least 1990,” and that such production was not “serious, consistent, and documented.” JD-6 Objection, at 1. Further, no basis exists to INFORM’s assertion that such production did not “represent a return to active mining,” because “the ore was never delivered to a mill for processing.” *Id.* Active mining does not require the delivery of ore to a mill. *See* letter, dated January 24, 2012, from the Division, to Cotter, regarding the JD-6 Mine, 1:JD-6_0072-0073. But even if such delivery were required, the JD-6 Mine shipped ore. *See, e.g.*, Minerals Program Inspection Report for inspection conducted September 15, 2011, at 2 (“The [JD-6] mine actively produced uranium ore that was shipped out.”), 1:JD-6_0067. INFORM cites nothing to support its objection that Cotter’s annual reports were required to report ore production.

INFORM’s assertion that the JD-6 Mine’s permit has “been out of compliance with the law for two decades” is incorrect. Since 1990, when the mine’s permit status was revised to intermittently active, Cotter has regularly submitted annual reports in compliance with the MLRA. The Division has also regularly inspected the JD-6 Mine, as documented by its written reports. None of these reports found that, by maintaining the JD-6 Mine’s intermittent status,

Cotter was violating the MLRA or the Division's rules. To the contrary, many of those reports found no issues or problems. Minerals Program Inspection Reports for inspections conducted September 21, 1995, March 26, 1997, February 24, 1999, October 10, 2002, March 24, 2005, October 5, 2005, June 16, 2006, October 23, 2006, February 7, 2007, April 2, 2008, July 28, 2010, September 15, 2011, and October 2, 2012, 1:JD-6_0010-0023, 0025-0027, 0034-0037, 0041-0069, 0290-0293.

Cotter anticipates that it will mine 50 to 100 tons of ore per day from the JD-6 Mine once mining resumes, and that development and production will last at least six years. JD-6 Amendment, at C-1, 1:JD-6_0090.

2. JD-9 Mine

The JD-9 Mine is an underground uranium and vanadium mine in Montrose County, Colorado. It holds a "Development and Extraction Mining Permit" (No. M-1977-306) from this Board with a date of issuance of September 30, 1979. 1:JD-9_0001-0002.

Cotter mined the JD-9 Mine until 1980. Effective August 8, 1980, Cotter suspended production at the JD-9 Mine due to declining market conditions and placed the mine in temporary cessation. Following this change in permit status, Cotter continued to conduct mining operations at the JD-9 Mine, which included "surface and underground drilling, radiometric scanning, mine mapping, mine feasibility studies, drill hole surveying, computerization of drill hole data, ore sampling, timber repair and ground control in preparation for mining, reconstruction and repair of air lines in preparation for mining, reconstruction of water lines in preparation for mining, vent bag installation in preparation for mining, installation of a 'Geotextile' blanket to control water seepage in the decline in preparation for mining, and mine dewatering in preparation for mining." Letter, dated July 26, 1990, from Cotter, to the Mined Land Reclamation Division, at 2-3, 1:JD-9_0004-0005. Cotter spent approximately \$1,291,600

on this work and mine maintenance (an average of \$143,500 per year) over a nine-year period.

1:JD-9_0004.

On July 26, 1990, Cotter applied for intermittent status for the JD-9 Mine. 1:JD-9_0003-0005. This application listed the mining operations that Cotter had conducted at the JD-9 Mine since 1980. 1:JD-9_0004-0005. It also explained that “Since 1980, Cotter has operated the JD-9 Mine as an intermittent operation.” 1:JD-9_0005. Cotter’s application reported that known economic reserves remaining in the JD-9 Mine were approximately 143,100 tons, and that 92,700 tons of additional reserves were expected to be encountered. *Id.*

On December 5, 1990, the Mined Land Reclamation Division informed Cotter that its application for intermittent status was “considered approved as a matter of law.” 1:JD-9_0006. Through this approval, the terms of the approved technical revision were incorporated into the JD-9 Mine’s permit, and its permit status was revised to intermittently active. *See id.*

Mining activity continued at the JD-9 Mine after its permit status was revised. Ground control work occurred in the 1100 and 1400 areas of the mine in 1991 and 1992, surface drilling occurred in 1991 and 1997, repair work in the #3 venthole occurred in 1991 and 1992, a power drop from the surface to the 1400 area was installed in 1992, and the decline was re-timbered in 1997. In 1994, Cotter amended its permit to include the construction of new settling ponds, which were later built. Minerals Program Inspection Report, signed March 30, 2005, at 2, 1:JD-9_0014; memorandum, dated April 5, 2005, from Russ Means to Carl Mount, at 4, 1:JD-6_0031. Further, Cotter mined ore from the JD-9 Mine from 2003 through 2006. *See* Cotter’s Annual Reports dated August 20, 2004 and August 2, 2005, the Division’s Minerals Program Inspection Reports for inspections of the JD-9 Mine conducted March 24, 2005, June 16, 2005, October 5, 2005, and April 5, 2006, and the Division’s April 5, 2005

memorandum, 1:JD-9_0011, 0014, 0021, 0027, 0030, 0035; 1:JD-6_0032. This ore was also shipped. Minerals Program Inspection Report, signed June 27, 2005, at 2, 1:JD-9_0021. In 2011, Cotter built stormwater catchment ponds below the JD-9 Mine dump and re-worked the power supply for the venthole fan at the JD-9 Mine.

The activity enumerated above shows that the JD-9 Mine was not “inactive” for at least 29 of the previous 32 years. *See* JD-9 Objection, at 1. Further, it dispels INFORM’s assertion that Cotter has relied on an “unlawful status as an intermittent operation.” *Id.* INFORM’s assertion that Cotter has “escape[d] compliance with the MLRA” is unsupported and is contradicted by the Division’s regular inspections and monitoring of the JD-9 Mine, the work that Cotter conducted in response to the Division’s oversight, and the Amendment and EPP for the JD-9 Mine that Cotter has recently submitted to the Division.

Cotter anticipates that it will mine ore from the JD-9 Mine for at least six years once ore production resumes. JD-9 Amendment, at D-2, 1:JD-9_0065.

3. SR-11 Mine

The permit for the SR-11 Mine (M-1977-451) was originally a 110 category permit covering the old Ike No. 1 Mine, and permitted two acres. 2:SR-11_0001-0002. The Ike No. 1 Mine operated before Cotter acquired Permit No. M-1977-451 in 1985.

After Cotter acquired the SR-11 lease tract and Permit No. M-1977-451, the SR-11 lease block continued to be active. Cotter conducted surface drilling on the SR-11 lease block from 1986 through 1988. Based on this drilling, Cotter submitted to the Mined Land Reclamation Division its conversion application on July 18, 1990. 2:SR-11_0003-0006, 0008-0014. The application requested approval to expand the original two-acre permit area by 11.3 acres to enable Cotter to develop a new ore deposit that would become the SR-11 Mine, and that Cotter’s application be approved as an intermittent operation. The mine plan submitted with the

application estimated that ore production would be 34,000 tons/year for nine to ten years. 2:SR-11_0012. This Board approved the conversion application on October 18, 1990. Letter, dated October 30, 1990, from the Mined land Reclamation Division, to Cotter, 2:SR-11_0007.

Following approval of the conversion application, Cotter continued development of the SR-11 Mine. It conducted surface drilling on the expanded permit area from 1991 through 1994 and 1996 through 2002. In June 2005, Cotter informed the Division of Minerals and Geology that it planned to begin “underground mining (development and production)” at the permitted site on the SR-11 lease block, and that surface work was anticipated to begin in early July 2005. Letter, dated June 21, 2005, 2:SR-11_0015. Shortly thereafter, Cotter commenced construction of the SR-11 Mine’s portal and waste dump followed by development of the main drift. This work continued until November 2005, at which time the drift reached 300 feet. SR-11 Amendment, at D-3, 2:SR-11_0042. In 2005, Cotter constructed berms and stormwater runoff basins at the SR-11 Mine, which have proven efficient in controlling stormwater runoff. 2:SR-11_0160. In 2010 and 2011, Cotter pocked the mine waste dump at the SR-11 Mine and worked on the lower stormwater catchment berm.

Based on the above, INFORM is incorrect that supporting activities at the SR-11 Mine have been “minimal” since 1983. SR-11 Objection, at 2. INFORM is also incorrect that the SR-11 Mine “effectively shut its doors more than 29 years ago.” *Id.*

Cotter estimates that, once mining development resumes at the SR-11 Mine, the completion of the decline to the ore horizon will take six to twelve months. SR-11 Amendment, at D-1, 2:SR-11_0040. It estimates that reserves in the SR-11 Mine will be sufficient to support mining for up to ten years. 2:SR-11_0042.

4. LP-21 Mine

The LP-21 Mine is an underground uranium and vanadium mine in Montrose County, Colorado. It holds a "Development and Extraction Mining Permit" (No. M-1977-305) from this Board with a date of issuance of March 31, 1979. 2:LP-21_0001-0002.

Cotter mined the LP-21 Mine until 1980. Effective August 8, 1980, Cotter suspended production at the LP-21 Mine due to declining market conditions and placed the mine in temporary cessation. Following this change in permit status, Cotter continued to conduct mining operations at the LP-21 Mine, which included "surface and underground drilling, determining ore reserves, radiometric scanning, ore sampling, mine mapping, mine feasibility studies, geological report preparation, mine surveying, timber installation/repair and ground control in preparation for mining, ventilation fan installation for geologic and survey projects, and resurfacing the portal area in preparation for mining." Letter, dated July 26, 1990, from Cotter, to the Mined Land Reclamation Division, at 2, 2:LP-21_0004. Cotter spent approximately \$391,600 on this work and mine maintenance (an average of \$43,500 per year) over a nine-year period. *Id.*

On July 26, 1990, Cotter applied for intermittent status for the LP-21 Mine. 2:LP-21_0003-0005. This application listed the mining operations that Cotter had conducted at the LP-21 Mine since 1980. 2:LP-21_0004. It also explained that "Since 1980, Cotter has operated the LP-21 Mine as an intermittent operation." 2:LP-21_0005. Cotter's application reported that known economic reserves remaining in the LP-21 Mine were approximately 75,200 tons, and that 63,200 tons of additional reserves were expected to be encountered. *Id.*

On December 5, 1990, the Mined Land Reclamation Division informed Cotter that its technical revision application for the LP-21 Mine was "considered approved as a matter of law." 2:LP-21_0006. Through this approval, the terms of the approved technical revision were

incorporated into the LP-21 Mine's permit, and its permit status was revised to intermittently active. *See id.*

Mining activity continued at the LP-21 Mine after its permit status was revised. Ground support work occurred in 1995, 1998, 2000, and 2002, and surface drilling occurred in 1996. Additional drilling occurred in 2010.

The activity enumerated above shows that the LP-21 Mine was not "inactive" for the past 33 years. *See* LP-21 Objection, at 1. Moreover, Cotter's annual report, dated February 21, 2012, did not report that the mine is inoperable or that the site was fully reclaimed in 2001.

Cotter anticipates that, when ore production resumes, it will mine ore from the LP-21 Mine for at least 15 years. LP-21 Amendment, at D-2, 2:LP-21_0051.

5. JD-7 Pit Mine

The JD-7 Pit Mine is an open pit uranium and vanadium mine in Montrose County, Colorado. It holds a "Development and Extraction Mining Permit" (No. M-1979-094-HR) from this Board with a date of issuance of December 14, 1979. 3:JD-7 Pit_0001-0002.

Mining operations began at the JD-7 Pit Mine with the removal and storage of topsoil (for reclamation) and the removal of overburden from above the pit ore body. 3:JD-7 Pit_0115. Effective April 2, 1981, Cotter suspended operations due to declining market conditions and placed the mine in temporary cessation. Following this change in permit status, Cotter continued to conduct mining operations at the JD-7 Pit Mine, which included "determining ore reserves, surface drilling, geologic report preparation, drill plan preparation, mine feasibility and economic studies." Letter, dated February 13, 1991, 3:JD-7 Pit_0009. Cotter spent approximately \$96,200 on this work and pit maintenance (an average of \$12,025 per year) over an eight-year period. *Id.*

On February 13, 1991, Cotter applied for intermittent status for the JD-7 Pit Mine. 3:JD-7 Pit_0008-0011. This application listed the mining operations that Cotter had conducted

at the JD-7 Pit Mine since 1981. 3:JD-7 Pit_0009-0010. It also explained that “Since 1981, Cotter has operated the JD-7 Pit Mine as an intermittent operation.” 3:JD-7 Pit_0011. Further, Cotter’s application reported that mineral resources at the JD-7 Pit Mine were 623,700 tons: 508,500 tons to be mined from the pit, and 115,200 tons to be mined underground from the pit floor and walls. 3:JD-7 Pit_0010. Cotter expected that an additional 100,000 tons of mineral resources would be discovered as mining progressed. *Id.*

On February 25, 1991, this Board approved Cotter’s application for intermittent status. Letter, dated April 1, 1991, from the Mined Land Reclamation Division, to Cotter, 3:JD-7 Pit_0012. Through this approval, the terms of the approved technical revision were incorporated into the JD-7 Pit Mine’s permit, and its permit status was revised to intermittently active. *See id.*

Mining activity continued at the JD-7 Pit Mine after its permit status was revised. In-pit drilling was conducted from 1991 through 1993 and 1996 through 2004. Stormwater diversion work was conducted in the pit in 2006. In 2011, Cotter built a drill road in the JD-7 pit, and rehabilitated the stormwater pit dam and the upper diversion ditch.

Based on the above, INFORM is incorrect that the JD-7 Pit Mine has been “idle” for three decades and has never conducted mining activities. JD-7 Pit Objection, at 1, 2. INFORM is also incorrect that Cotter’s December 12, 2012 annual report for the JD-7 Pit Mine reported the date of “last activity” at the site as 1982. *Id.* at 1. Cotter’s report stated that 1982 was the date of last excavation, processing, or hauling activity at the mine.

Cotter estimates that, once mining resumes at the JD-7 Pit Mine, ten years will be required to extract all ore from the mine. JD-7 Pit Amendment, at D-4, 3:JD-7 Pit_0049.

6. SR-13A Mine

The SR-13A Mine is an underground uranium and vanadium mine in San Miguel County, Colorado. It holds a "Development and Extraction Mining Permit" (No. M-1977-311) from this Board with a date of issuance of August 31, 1979. 3:SR-13A_0001-0002.

Cotter mined the SR-13A Mine until 1980. Effective August 8, 1980, Cotter suspended production at the SR-13A Mine due to declining market conditions and placed the mine in temporary cessation. Following this change in permit status, Cotter continued to conduct mining operations at the SR-13A Mine, which included "determining ore reserves, surface drilling, mine mapping, radiometric scanning, ground control in preparation for mining, resurfacing the portal area for better drainage in preparation for mining, and haulage road repair work in preparation for mining." Letter, dated July 26, 1990, from Cotter, to the Mined Land Reclamation Division, at 2, 3:SR-13A_0004. Cotter spent approximately \$85,400 on this work and mine maintenance (an average of \$9,500 per year) over a nine-year period. *Id.*

On July 26, 1990, Cotter applied for intermittent status for the SR-13A Mine. 3:SR-13A_0003-0005. This application listed the mining operations that Cotter had conducted at the SR-13A Mine since 1980. 3:SR-13A_0004. It also explained that "Since 1980, Cotter has operated the SR-13A Mine as an intermittent operation." 3:SR-13A_0005. Cotter's application reported that known economic reserves remaining in the mine were 8,200 tons, and that 15,900 tons of additional reserves were expected to be encountered. *Id.*

On December 5, 1990, the Mined Land Reclamation Division informed Cotter that its application for the SR-13A Mine was "considered approved as a matter of law." 3:SR-13A_0006. Through this approval, the terms of the approved technical revision were incorporated into the SR-13A Mine's permit, and its permit status was revised to intermittently active. *See id.*

Mining activity continued at the SR-13A Mine after its permit status was revised. Underground drilling occurred in 1991, 1992, and 1994. Ground support work occurred in 1993, and surface drilling occurred in 1997 and 2010. The waste rock dump was re-pocked in 2010.

Based on the above, INFORM is incorrect that the “SR-13A has been a shuttered, idled mine since at least August 1980.” SR-13A Objection, at 2. INFORM is also incorrect that the SR-13A Mine “effectively shut its doors more than three decades ago.” *Id.*

Cotter estimates that the life of the SR-13A Mine will be between 10-15 years once mining resumes. SR-13A Amendment, at C-1, 3:SR-13A_0047.

B. Submittal of EPPs

House Bill (“HB”) 08-1161 amended the MLRA as it relates to uranium mining. *See* C.R.S. §§ 34-32-103(3.5)(a)(III), 34-32-112.5. This Board conducted a rulemaking process for purposes of implementing HB 08-1161 from January 26, 2010 until August 2010, and the Board’s rules became effective on September 30, 2010. Letter, dated September 30, 2011, from the Division to Cotter, at 1, 1:JD-6_0070. During the “interim period” between 2008 and September 2010, the Division’s policy was not to require an EPP from a non-producing mine. *Id.*

On September 30, 2011, the Division wrote to Cotter and explained that “With promulgation of the Rules, the Division is now requiring all uranium mine permit holders to gain compliance with the Act and Rules,” and requested that operators submit their application amendments by October 1, 2012. 1:JD-6_0070-0071. (emphasis added). Cotter complied with this request.

On October 1, 2012, Cotter timely submitted to the Division its Amendments, which included the EPPs and Drainage Design Plans. 1:JD-6_0074-289; 1:JD-9_0039-0427; 2:SR-11_0018-0306; 2:LP-21_0024-0366; 3:JD-7 Pit_0024-0303; 3:SR-13A_0007-0287.

Collectively, these documents and Cotter's responses to adequacy reviews specify the measures that Cotter will take, as required, to prevent off-site impacts during periods of inactivity. The sites will be regularly inspected during periods of temporary cessation and, if any adverse off-site impacts are noted, Cotter will take appropriate steps to correct the problem. Cotter does not anticipate that the Mines will cause adverse effects on surface water, groundwater, wildlife, or other resources during periods of temporary cessation.

C. Submittal of Notices

On November 9, 2012, following review of the Mines' permit status, the Division requested that Cotter place each of the Mines into temporary cessation by December 15, 2012. 1:JD-6_0294-0295. In its letter, the Division also concluded "TC is the only status that would allow these sites to remain [compliant] with State law." 1:JD-6_0295.

On December 13, 2012, Cotter complied with the Division's request by submitting its Notices to the Division. The Notices requested a change in each Mine's permit status from intermittent activity to temporary cessation, requested that such change be made effective December 15, 2012, and explained that Cotter plans to resume production at the Mines after the price of uranium returns to a profitable point. The plans for such resumption of mining are attached to Cotter's Amendments. Cotter's Notices satisfy the requirements of Hard Rock/Metal Mining Rule 1.13.5.

III. ARGUMENT

A. Statutory and Regulatory Background

The MLRA establishes a permitting program for mining operations in Colorado. C.R.S. §§ 34-32-109, -110, -112, -112.5. Under that program, the Board has "sole authority for reclamation permitting and standard setting." *Colorado Mining Ass'n v. Board of County*

Commissioners, 199 P.3d 718, 727 (Colo. 2009). The Division monitors compliance with permit requirements, and oversees mining and reclamation activities. C.R.S. § 34-32-104.

Reclamation permits granted under the MLRA do not have an expiration date, but “shall be effective for the life of the particular mining operation” if the operator complies with permit conditions and with the MLRA and the applicable, implementing rules. C.R.S. § 34-32-

109(5)(a). The MLRA also provides that reclamation permits granted under sections 34-32-110 or 34-32-115 “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;
- (II) Mineral reserves are shown by the operator to remain in the mining operation and the operator plans to, or does, temporarily cease production for one hundred eighty days or more if he files a notice thereof with the board stating the reasons for nonproduction, a plan for the resumption thereof, and the measures taken to comply with reclamation and other necessary activities as established by the board to maintain the mine in a nonproducing state. The requirement of a notice of temporary cessation shall not apply to operators who resume operating within one year and have included, in their permit applications, a statement that the affected lands are to be used for less than one hundred eighty days per year.
- (III) Production is resumed within five years of the date production ended, or the operator files a report requesting an extension of the period of temporary cessation of production with the board stating the reasons for the continuation of nonproduction and those factors necessary to, and his plans for, resumption of production. 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.
- (IV) The board does not take action to declare termination of the life of the mine, which action shall require a sixty-day notice to the operator alleging a violation of, or that inadequate reasons are provided in an operator’s report under subparagraph (I), (II) or (III) of this paragraph (a). In

such cases, the board shall provide a reasonable opportunity for the operator to meet with the board to present the full case and further provide reasonable time for the operator to bring violations into compliance.”

C.R.S. § 34-32-103(6)(a)(I)-(IV).

The notice required by subsection 103(6)(a)(II) is called a “Notice of Temporary Cessation.” 2 Code Colo. Regs. 407-1, Rule 1.13.5(1). As indicated above, an operator may file such notice when: (a) mineral reserves are shown by the operator to remain in the mining operation; and (b) the operator plans to, or does, temporarily cease production for 180 days or more. This Board has identified the information to be included in such notices. For the non-in situ leach mining operations at issue in this proceeding, such information is as follows: (a) “the date of cessation”; (b) “the reasons for non production or cessation of the mining operation”; (c) “a plan for resumption of mining”; (d) “the measures to be taken to comply with reclamation requirements and/or other activities related to the performance standards of Section 3.1 while the mine is in Temporary Cessation”; and (e) “demonstration that the existing Financial Warranty is adequate to cover the reclamation liability.” 2 Code Colo. Regs. 407-1, Rule 1.13.5(2).

When considering a “Notice of Temporary Cessation,” this Board may take “whatever action(s) it deems necessary and are authorized by law,” including but not limited to the actions specified in Hard Rock/Metal Mining Rule 1.13.6(2). 2 Code Colo. Regs. 407-1, Rule 1.13.6(2). One such action is “acceptance of the Notice of Temporary Cessation as submitted.” Rule 1.13.6(2)(a). While other actions are specified in Rule 1.13.6(2), none includes forcing an operator to release its reclamation permit, as INFORM requests.

B. The Board Should Accept the Notices as Submitted Because Cotter Has Satisfied the Requirements of the MLRA and Its Implementing Rules.

The Mines satisfy the criteria for entering temporary cessation as set forth in C.R.S. § 34-32-103(6)(a)(II) and Hard Rock/Metal Mining Rule 1.13.5.

Mineral reserves indisputably remain in the Mines. In the period 1990-1991, Cotter applied for intermittent status for each Mine. 1:JD-6_0003-0008; 1:JD-9_0003-0005; 2:SR-11_0003-0006, 0008-0013; 2:LP-21_0003-0005; 3:JD-7 Pit_0008-0011; 3:SR-13A_0003-0005. In its applications, Cotter estimated the tons of mineral reserves then existing in each Mine and, in some cases, the tons of additional reserves that it estimated would be discovered as mining progressed. *Id.* Because of depressed conditions in the uranium and vanadium markets, much of the Mines' estimated reserves currently remain underground. Moreover, in September/October 2012, as part of each Mine's Amendment, Cotter submitted a mine plan identifying the location of the ore zones at each Mine and the plan for extracting such ore. 1:JD-6_0090-0091; 1:JD-9_0064-0074; 2:SR-11_0040-0046; 2:LP-21_0050-0056; 3:JD-7 Pit_0046-0050; 3:SR-13A_0047-0052. Cotter has therefore shown that mineral reserves remain in each Mine.

There is no dispute that Cotter has suspended production at each Mine for at least 180 days. *See* Cotter's Notices, at 1, 1:JD-6_0296-0297; 1:JD-9_0428-0429; 2:SR-11_0312-0313; 2:LP-21_0379-0380; 3:JD-7 Pit_0304-0305; 3:SR-13A_0297-0298.

Furthermore, Cotter's Notices contain the information required by C.R.S. § 34-32-103(6)(a)(II) and Hard Rock/Metal Mining Rule 1.13.5(2). The Division agrees with this conclusion. *See* letter, dated December 18, 2012, from Division, to Cotter, 1:JD-6_0298; letter (undated), from G. Russell Means, Division, to Jennifer Thurston, 1:JD-6_0371.

Based on the above facts, which are undisputed, this Board should accept the Notices as submitted.

C. INFORM's Objections

In its Objections, INFORM urges this Board to decline Cotter's Notices because the Mines do not allegedly satisfy certain additional criteria that INFORM contends must be met. As set forth below, INFORM misapprehends the MLRA's requirements, this Board's rules, and historical activities at the Mines. This Board should therefore overrule INFORM's Objections.

1. The MLRA does not require that Cotter produce ore to retain its reclamation permits.

There is no basis to INFORM's initial objection that the MLRA "speaks unambiguously of the production of ore as a requirement for retaining a reclamation permit" Objections, at 2. This contention fails for several reasons.

First, INFORM's objection fails because it is contradicted by MLRA section § 34-32-109(5)(a), which provides, in pertinent part, that reclamation permits granted pursuant to applications filed after June 30, 1976 "shall be effective for the life of the particular mining operation"² The term "mining operation" means the "development or extraction of a mineral from its natural occurrences on affected land." C.R.S. § 34-32-103(8). The life of the "mining operation" and of the mine's associated reclamation permit therefore includes periods of mineral development. The term "development" means:

the work performed in relation to a deposit, following the prospecting required to prove minerals are in existence in commercial quantities but prior to production activities, 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.

Id. § 34-32-103(4) (emphasis added). Based on these definitions, the life of the "mining operation" includes time periods that precede "production." Since a reclamation permit "shall be

² The reclamation permit for each Mine was granted pursuant to an application filed after June 30, 1976. See permits for each Mine, 1:JD-6_0001-0002; 1:JD-9_0001-0002; 2:SR-11_0001-0002; 2:LP-21_0001-0002; 3:JD-7 Pit_0001-0002; 3:SR-13A_0001-0002.

effective” during such pre-production periods, the production of ore is not a requirement for retaining the permit or keeping it in effect.

Second, INFORM’s objection fails because INFORM misinterprets the definition of “Life of the mine” contained in C.R.S. § 34-32-103(6)(a). Subsection 103(6)(a)(I) of that definition states 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” Continuing to engage in the extraction of minerals necessarily includes “mining operations,” which, as discussed above, are broader than mere ore production. *See* 2 Code Colo. Regs. 407-1, Rule 1.13.1(1)(a). Further, the term “as long as” connotes “during the whole time that.” *Center for Biological Diversity v. Salazar*, No. 11-17843, 2013 WL 440727, at *7 (9th Cir. Feb. 4, 2013) (citing Oxford Dictionaries Online, <http://oxforddictionaries.com>). Subsection 103(6)(a)(I) therefore does not make ore production a condition or requirement to retaining a permit, as INFORM contends, but instead provides that a reclamation permit will continue in effect “during the whole time” that an operator continues to engage in the extraction of minerals and complies with the MLRA. Moreover, INFORM is incorrect when it asserts that section 34-32-103(6)(a) creates only two exceptions to the alleged requirement of producing ore to retain a reclamation permit. *See* Objections, at 2. Subsection 103(6)(a)(IV) specifies that a permit continues in effect as long as “[t]he board does not take action to declare termination of the life of the mine” C.R.S. § 34-32-103(6)(a)(IV). Since subsection 103(6)(a)(IV) authorizes a permit to remain in effect in the absence of Board action terminating the life of the mine, the production of ore is not a requirement for retaining a reclamation permit. Here, no such Board action has occurred.

Third, INFORM’s objection fails because it is contradicted by this Board’s rules. Rule 1.13.1(1)(a) provides, in pertinent part: “A permit granted pursuant to these Rules shall

continue in effect as long as: (a) an Operator continues to engage in the extraction of minerals and/or the mining operation and complies with the provisions of the Act.” 2 Code Colo. Regs. 407-1, Rule 1.13.1(1)(a) (emphasis added). As explained above, the term “mining operation” includes periods of mineral development. C.R.S. § 34-32-103(8). Moreover, the term “development” includes periods that follow prospecting but that precede production. *Id.* § 34-32-103(4). Accordingly, under Rule 1.13.1(1)(a), a permit continues in effect even if a mine is not producing ore. The same result follows from Rule 1.13.8(1), which provides, in pertinent part: “A permit granted pursuant to these Rules shall continue in effect as long as: (a) the mining operation is resumed within five (5) years of the beginning of Temporary Cessation” 2 Code Colo. Regs. 407-1, Rule 1.13.8(1) (emphasis added). If ore production was required to retain a permit, as INFORM contends, these regulations would not have used the more expansive term “mining operation.”

Fourth, INFORM’s objection fails because this Board has previously issued orders authorizing Cotter’s reclamation permits to remain in effect in the absence of ore production. For example, on June 25, 1990, this Board approved Cotter’s technical revision application requesting that the JD-6 Mine be classified as an intermittent operation. 1:JD-6_0009. Cotter’s application made no reference to ore production after 1980. Letter, dated May 10, 1990, from Cotter, to the Mined Land Reclamation Division, 1:JD-6_0007-0008. Likewise, on February 25, 1991, this Board approved Cotter’s technical revision application requesting that the JD-7 Pit Mine be classified as an intermittent operation. 3:JD-7 Pit_0012. In this case, Cotter’s application made no reference to prior ore production. *See* letter, dated February 13, 1991, from Cotter, to the Mined Land Reclamation Division, 3:JD-7 Pit_0008-0011.

Fifth, INFORM's objection fails because it contradicts the Division's interpretation of the MLRA. For over 30 years, the Division has overseen mining and reclamation activities at the Mines. It has also regularly inspected the Mines and overseen the Mines' reclamation permits. Throughout this entire period, the Division did not tell Cotter that its permits must be terminated because ore production was required to retain such permits. Instead, the Division specified that ore production was not such a requirement. For example, on January 24, 2012, the Division wrote letters to Cotter explaining what Cotter must do to maintain the Mines' intermittent status. 1:JD-6_0072-0073; 1:JD-9_0037-0038; 2:SR-11_0016-0017; 2:LP-21_0017-0018; 3:JD-7 Pit_0311-0312; 3:SR-13A_0299-0300. These letters explained that intermittent status requires some "active mining," and "active mining" includes "the development or extraction of a mineral from its natural occurrence, and/or, the following other activities on affected land: transportation, concentrating, milling, evaporation, and other processing." *See* C.R.S. § 34-32-103(8); 2 Code Colo. Regs. 407-1, Rule 1.1(31). Separately, the Division informed Cotter that the construction of Environmental Protection Facilities is a mining activity, because "[t]he construction of the facilities is part of the infrastructure required to further develop the site towards extraction of a mineral . . . and therefore considered a mining activity." Letters, dated November 9, 2012, from the Division, to Cotter, regarding the SM-18, Mineral Joe, and CM-25 Mines, 3:MISC_0001-0006. Based on the above, active mining does not require ore production, and includes other mining activity. Accordingly, mineral production is not required to: (1) keep the Mines in intermittent status; (2) keep their associated reclamation permits in effect; or (3) preserve the Mines' eligibility for additional periods of temporary cessation.

Sixth, INFORM's objection fails insofar as it contends that the JD-6 and JD-9 Mines have not produced ore. As explained in section II, above, the JD-6 Mine produced ore as

recently as 2004 through 2005, and the JD-9 Mine produced ore from 2003 through 2006. This production would be sufficient for Cotter to retain the reclamation permits for these mines, assuming there is any merit to INFORM's contentions.

INFORM's presumption that "production was minimal or even nonexistent" at the JD-9 Mine from 2003-2006 is also incorrect. JD-9 Objection, at 2. This presumption is refuted by the following: Minerals Program Inspection Report for inspection of the JD-9 Mine, signed March 30, 2005, at 2 ("The operator stockpiles ore until there is enough for several loads"), 1:JD-9_0014; memorandum, dated April 5, 2005, from Russ Means to Carl Mount, at 5 (approximately 60 to 80 tons of ore were noted stockpiled), 1:JD-6_0032; Minerals Program Inspection Report for inspection of the JD-9 Mine, signed June 27, 2005 (stockpiling of ore was continuing), at 2, 1:JD-9_0021; Minerals Program Inspection Report for inspection of the JD-9 Mine conducted October 5, 2005, at 2 ("The JD-9 Mine is in full production currently"), 1:JD-9_0030. INFORM's presumption that "minimal or even nonexistent" production occurred from the JD-9 Mine in 2003-2006 is therefore without basis.

INFORM's contention that Cotter's annual reports for the JD-9 Mine contained "insufficient information" to document mining activities and therefore violated the Division's requirements is without merit. JD-9 Objection, at 2. Beginning in 1990 and continuing through mid-December 2012, the Division regulated the JD-9 Mine as intermittently active, required Cotter to submit annual reports, and provided the form that Cotter was to complete for its annual reports. During that time, Cotter regularly submitted annual reports to the Division, and provided the information requested on the Division's forms. Cotter's annual reports therefore complied with the Division's requirements.

Finally, INFORM's first objection fails because, notwithstanding any requirement for ore production, the permit for each Mine has continued in effect pursuant to C.R.S. § 34-32-103(6)(a)(IV). Since each permit is fully effective, the existence or not of historical ore production at the Mines is irrelevant to whether any of the Mines or their associated permits can be lawfully placed today in temporary cessation.

For the above reasons, ore production is not a requirement for retaining a reclamation permit under the MLRA or this Board's rules. Accordingly, the existence or not of ore production at the Mines does not provide a basis to deny Cotter's Notices.

2. INFORM's second objection provides no basis to deny Cotter's Notices.

The gist of INFORM's second objection is that the Mines should not have been granted intermittent status in 1990 or 1991, and that such status has continued unlawfully through the present. This objection fails for several reasons.

INFORM's objection fails initially because it is time barred. Under the State Administrative Procedure Act, any appeal of this Board's decisions granting intermittent status to the JD-6, JD-7 Pit, and SR-11 Mines had to be filed within 30 days of the date such decisions became effective. C.R.S. § 24-4-106(4). INFORM makes no claim that such appeal was filed. Likewise, any appeal to this Board of the decisions granting intermittent status to the JD-9, LP-21, and SR-13A Mines had to be filed within certain prescribed time periods. 2 Code Colo. Regs. 407-1, Rule 1.4.11(1)(b). Again, INFORM makes no claim that such appeal was filed. Its current claim that the Mines should not have been granted intermittent status in 1990 or 1991, and that such status has continued unlawfully, is therefore time barred.

INFORM's objection also fails on the merits. Prior to submitting its applications requesting intermittent status, Cotter met with the Mined Land Reclamation Division to obtain

that agency's recommendations on the information that Cotter should submit to support its applications. *See* 1:JD-6_0003; 1:JD-9_0003; 2:LP-21_0003; 3:JD-7 Pit_0008; 3:SR-13A_0003. Cotter followed those recommendations, and submitted the requested information. As explained in section III.C.1 of this Response, such information did not require proof of ore production. Accordingly, for five of the Mines (JD-6, JD-9, JD-7 Pit, LP-21, and SR-13A), Cotter identified the mining operations it had conducted at each site during the prior ten years, estimated the dollar amounts it had spent on such operations, explained that mining operations similar to those which had occurred during temporary cessation would continue to occur until full production resumed, and explained that periods of inactivity greater than 180 days would exist. 1:JD-6_0003-0006; 1:JD-9_0003-0005; 2:LP-21_0003-0005; 3:JD-7 Pit_0008-0011; 3:SR-13A_0003-0005. For the SR-11 Mine, Cotter submitted a conversion application that requested approval to expand the original two-acre permit area by 11.3 acres to enable Cotter to develop a new ore deposit that would become the SR-11 Mine. 2:SR-11_0003-0006, 0008-0013. This Board then approved the applications for the JD-7 Pit, JD-6, and SR-11 Mines. 3:JD-7 Pit_0012; 1:JD-6_0009; 2:SR-11_0007. The technical revision applications for the JD-9, LP-21, and SR-13A Mines were approved as a matter of law. 1:JD-9_0006; 2:LP-21_0006; 3:SR-13A_0006. No basis therefore exists to find that the Mines were unlawfully granted intermittent status in the first instance.

Furthermore, no basis exists to find that the Mines or their associated permits unlawfully retained intermittent status. Following the revision of Cotter's permits to incorporate intermittent status, mining operations continued at each of the Mines, as described in section II of this Response. Cotter also regularly submitted annual reports to the Division in compliance with the MLRA and the Division's rules, and the Division regularly inspected the Mines. None

of the Division's reports found that, by maintaining the Mines' intermittent status, Cotter was violating the MLRA or the Division's rules. To the contrary, no issues or problems were noted in many of those reports, and several reports confirmed the continuing intermittent status of the Mines. *See, e.g.*, 1:JD-6_0013-0018; 1:JD-9_0007-0009; 2:SR-11_0315; 2:LP-21_0007-0009; 3:JD-7 Pit_0014-0023. The Division's January 24, 2012 letters to Cotter for each Mine again confirmed each Mine's intermittent status. 1:JD-6_0072-0073; 1:JD-9_0037-0038; 2:SR-11_0016-0017; 2:LP-21_0017-0018; 3:JD-7 Pit_0311-0312; 3:SR-13A_0299-0300. While the Division informed Cotter late last year that the Mines did not meet the definition of an intermittent operation, it also identified the steps that Cotter could take to correct the situation. Letter, dated November 9, 2012, from the Division to Cotter, 1:JD-6_0294-0295. Cotter has taken those steps by timely filing its Notices.

Finally, INFORM's second objection fails because, even if some deficiency existed in the approval or retention of the Mines' intermittent status, such deficiency provides no basis to decline Cotter's Notices. The Mines' reclamation permits are currently effective whether intermittent status was unlawfully granted and retained or not. *See* C.R.S. § 34-32-103(6)(a)(IV) (permit "may continue in effect as long as . . . [t]he board does not take action to declare termination of the life of the mine . . ."). Moreover, to the extent any prior violations may have occurred, the MLRA grants Cotter a "reasonable time" to bring those violations into compliance. *Id.* Each Mine's level of historic mining activity is also irrelevant to this Board's decision whether to accept Cotter's Notices. As set forth in the MLRA, the relevant factors for accepting Cotter's Notices are the current reasons for nonproduction, a plan for the resumption thereof, and the "measures taken to comply with reclamation and other necessary activities as established by the board to maintain the mine in a nonproducing state." C.R.S. § 34-32-103(6)(a)(II). Cotter's

Notices provide this information, as confirmed by the Division. *See* letter, dated December 18, 2012, from Division, to Cotter, 1:JD-6_0298; letter (undated), from G. Russell Means, Division, to Jennifer Thurston, 1:JD-6_0371.

For all the above reasons, INFORM's second objection provides no basis to deny Cotter's Notices.

3. INFORM's third objection is flawed.

INFORM's third objection rests on the erroneous proposition that "a mine must be reclaimed after a decade of inactivity." Objections, at 2. Thus, according to INFORM, the MLRA limits to ten years the amount of time that a mine can be placed in temporary cessation over its life. *See, e.g.*, LP-21 Objection, at 2 ("Having already spent 10 years with this status at the LP-21, Cotter is not entitled to wipe the slate clean and start again."); JD-7 Pit Objection, at 2 (same). Further, according to INFORM, a mine's permit status may not be revised to intermittently or fully active after having been classified in temporary cessation for ten years. To support its position, INFORM relies on the MLRA's definition of "Life of the mine." The MLRA does not support INFORM's position.

INFORM's position fails immediately because it disregards the plain language of C.R.S. § 34-32-103(6)(a)(III), which provides, in pertinent part, "In no case shall temporary cessation of production be continued for more than ten years without terminating the operation and fully complying with the reclamation requirements of this article." (emphasis added). The word "continue" means "keep up or maintain esp. without interruption a particular condition, course, or series of actions." Merriam-Webster Inc., *Webster's Third New International Dictionary* 493 (2002). Based on the plain meaning of those words, section 34-32-103(6)(a)(III) fails to provide that a mine "must be reclaimed after a decade of inactivity" but, at most, indicates an intent to limit periods of "temporary cessation" to ten continuous years. Here, each of the Mines was

placed in “temporary cessation” over 30 years ago, and such status ended in 1990 or 1991 when each Mine’s permit was revised to be intermittently active. *See, e.g.*, letter, dated June 26, 1990, from the Division, to Cotter (reporting that the Board approved Cotter’s technical revision application “addressing the reactivation (removal from temporary cessation) of the JD-6 Mine”) (emphasis added), 1:JD-6_0009. This intermittently active status remained in effect from 1990/1991 until mid-December 2012 when Cotter submitted its Notices to the Division. A change, today, in each Mine’s permit status to “temporary cessation” does not, therefore, cause such status to be “continued” for more than ten years, and is fully authorized under the MLRA.

INFORM’s position that a “mine must be reclaimed after a decade of inactivity” also disregards the Board’s and Division’s interpretation of the MLRA. This Board’s Hard Rock/Metal Mining Rules impose no such rule, but instead provide that “In no case shall Temporary Cessation be continued for more than ten (10) years” 2 Code Colo. Regs. 407-1, Rule 1.13.9 (emphasis added). The Board’s definition of “Life of the Mine” also supports this conclusion, as it fails to impose any maximum allowable period for temporary cessation. 2 Code Colo. Regs. 407-1, Rule 1.1(26). Likewise, the Division has not interpreted section 34-32-103(6)(a)(III) to impose such a maximum ten-year limit. In its letter dated November 9, 2012 addressing each of the Mines, the Division requested that Cotter “**place the above referenced sites into TC by December 15, 2012**” (bolding and underscoring in original), 1:JD-6_0295. In November 2012, the Division knew that each Mine had previously been placed in temporary cessation for a ten-year period. Under these circumstances, the Division’s statements in its November 9, 2012 letter reflect its position that the MLRA does not impose a ten-year limit on the period in which a mine may exist in temporary cessation over its life.

INFORM also objects that the JD-6, JD-9, SR-11, and SR-13A Mines have not “produced” as required by the MLRA and are therefore ineligible for additional periods of temporary cessation. This objection fails because ore production is not required to retain a reclamation permit under the MLRA or its implementing rules, as discussed in section III.C.1 of this Response. Such production is therefore unnecessary to maintain a mine’s eligibility for temporary cessation.

Finally, INFORM’s objection fails because the JD-6 and JD-9 Mines have produced ore within the past ten years. As explained in sections II and III.C.1, above, the JD-6 Mine produced ore as recently as 2004 through 2005, and the JD-9 Mine produced ore from 2003 through 2006. This production would be sufficient for Cotter to retain its permits for these mines and for the mines to re-enter temporary cessation, assuming there is any merit to INFORM’s third objection.

4. The Denial of Cotter’s Notices is inconsistent with Colorado law.

No basis exists to INFORM’s fourth objection that the denial of Cotter’s Notices is “consistent with Colorado law” and will help bring the Mines into “prompt compliance.” Instead, as set forth below, the denial of Cotter’s Notices is inconsistent with Colorado law and is unnecessary to achieve compliance.

The MLRA’s principal objectives include:

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(1); *see Hecla Mining Co. v. New Hampshire Insurance Co.*, 811 P.2d 1083, 1088 (Colo. 1991) (MLRA “proclaims that mining is a necessary and proper activity, and should be promoted by the state of Colorado.” (citing C.R.S. § 34-32-102)). These objectives are

undermined, not promoted, by the denial of Cotter's Notices and the forced release of Cotter's permits. If such action is taken, mining in this state would be thwarted, not promoted. Furthermore, the "orderly development of the state's natural resources" would be discouraged. Orderly development occurs when it makes economic sense to mine minerals. As the Ninth Circuit Court of Appeals recently observed, "mining activities are 'sensitive to world fluctuations of commodity prices, and may have to be discontinued when prices are not high enough to make the operation profitable,'" and the "occurrence or length of these 'down times' . . . cannot be determined in advance." *Center for Biological Diversity v. Salazar*, No. 11-17843, 2013 WL 440727, at *6 (9th Cir. Feb. 4, 2013) (citing 65 Fed. Reg. 69998, 70055 (Nov. 21, 2000)). Cotter should not lose its reclamation permits because commodity prices have not been, and are still not, sufficiently high to make operation of the Mines profitable. Moreover, the orderly development of minerals would be frustrated if Cotter is forced today to fully reclaim sites that could be mined in the foreseeable future. Performing such work at great expense, and then undoing it, does not comply with the MLRA's purpose of "orderly development."

Cotter's Notices need not be denied to achieve the statutory purpose of reclamation. Five months ago, Cotter submitted detailed reclamation plans to the Division for each of the Mines. *See* Amendments, Exs. D or E, 1:JD-6_0093-0095; 1:JD-9_0076-0081; 2:SR-11_0048-0051; 2:LP-21_0058-0062; 3:JD-7 Pit_0052-0057; 3:SR-13A_0054-0059. Pursuant to these reclamation plans, Cotter will restore the affected areas in accordance with Department of Energy ("DOE") lease requirements and the Division's requirements. Further, as explained in the plans, "The land will be reclaimed for range and wildlife habitat to meet DOE's directive to return the land as closely as possible to the pre-mining land use." *See*, e.g., 1:JD-6_0093. Affected land will therefore be put to a beneficial use, as contemplated by the legislature.

Likewise, Cotter's Notices need not be denied to foster the protection of human health, welfare, and the environment. Each Mine's Amendment includes an EPP, Drainage Design Plan, Geotechnical Stability Report, Emergency Response Plan, and other relevant studies, data, and maps. Cotter procured this information at great expense and effort, and believes implementation of these plans will protect the environment and human health. As part of the adequacy review process, the Division is also reviewing the Amendments to ensure that they fulfill applicable statutes and regulations. Again, denying Cotter's Notices is unnecessary and would frustrate the orderly process that is ongoing and working effectively.

INFORM's contention that denial of the Notices will help bring the Mines into "prompt compliance" is meritless, as Cotter is already in compliance with the MLRA and this Board's rules. The Division requested that Cotter "submit a complete amendment application containing all necessary elements of an Environmental Protection Plan to the Division by October 1, 2012." Letter, dated September 30, 2011, from the Division, to Cotter, 1:JD-6_0071. Cotter complied with this request, and timely submitted Amendments and EPPs for each of the Mines. By letter dated November 9, 2012, the Division requested that Cotter place each of the Mines into temporary cessation by December 15, 2012. Again, Cotter complied with the Division's request. 1:JD-6_0296-0297; 1:JD-9_0428-0429; 2:SR-11_0312-0313; 2:LP-21_0379-0380; 3:JD-7 Pit_0304-0305; 3:SR-13A_0297-0298. The Division has requested that Cotter respond to multiple adequacy review questions to ensure that the EPPs and associated documents contain all necessary information. Cotter has timely responded to these questions or sought any necessary extension of time. The Division has requested that Cotter respond to public comments received on its Amendments from Colorado Parks and Wildlife, the State Historic Preservation Office, the

Division of Water Resources, the Bureau of Land Management, and INFORM. Again, Cotter has responded to these requests or is in the process of preparing responses.

This Board may decline Cotter's Notices if, and only if, it is "necessary" to do so. 2 Code Colo. Regs. 407-1, Rule 1.13.6(2). For the reasons discussed above, it is not "necessary" to deny Cotter's Notices. Nor is it necessary to require that Cotter "fully reclaim" the Mines at this time and release its permits. For this additional reason, the denial of Cotter's Notices would violate applicable law.

5. The pending federal court injunction provides additional support for overruling INFORM's objections.

The pending federal court injunction in *Colorado Environmental Coalition v. Office of Legacy Management*, 819 F. Supp. 2d 1193 (D. Colo. 2011), supports overruling INFORM's Objections. In that case, the United States District Court for the District of Colorado enjoined the federal Office of Legacy Management and the DOE from "approving any activities on lands governed by the [Uranium Lease Management Program], including exploration, drilling, mining, and reclamation activities." 819 F. Supp. 2d at 1225. Although the injunction was subsequently modified, it still does not authorize "exploration, drilling, [and] mining" on Uranium Lease Management Program lands. *Colorado Environmental Coalition v. Office of Legacy Management*, No. 08-CV-01624-WJM-MJW, 2012 WL 628547 (D. Colo. Feb. 27, 2012). INFORM is one of the litigants in *Colorado Environmental Coalition*.

INFORM contends that Cotter's Notices must be declined because Cotter has failed to "continue operating and produce ore on an annual basis," and has therefore violated the MLRA. Objections, at 2. However, because of the injunction ordered in *Colorado Environmental Coalition*, Cotter cannot now explore, drill, or produce ore at any of the Mines, and therefore

cannot engage in the precise activity that INFORM contends is necessary to retain the permits and their eligibility for temporary cessation.

Before this Board takes action to “declare termination of the life of the mine,” it “shall provide a reasonable opportunity for the operator to meet with the board to present the full case and further provide reasonable time for the operator to bring violations into compliance.” C.R.S. § 34-32-103(6)(a)(IV) (emphasis added). Given the federal court injunction prohibiting exploration, drilling, and mining on Uranium Lease Management Program lands, the only available mechanism to bring the alleged violations into compliance is to place the Mines and their reclamation permits into temporary cessation. To foreclose this mechanism, as INFORM requests, would deny Cotter its statutory right under subsection 103(6)(a)(IV) to “bring violations into compliance,” and would violate that section. Accordingly, INFORM’s Objections should be overruled.

IV. CONCLUSION

For the above reasons, INFORM’s objections should be overruled, its requested relief should be denied, and Cotter’s Notices of Temporary Cessation should be accepted by the Board as submitted.

Respectfully submitted this 15th day of March, 2013.

BRYAN CAVE HRO

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CERTIFICATE OF SERVICE

I, Alicia Berry, certify that I sent via electronic mail on the signature date shown below a true and complete copy of the foregoing document **COTTER CORPORATION (N.S.L.)'S RESPONSE IN OPPOSITION TO INFORM'S OBJECTIONS CHALLENGING COTTER'S NOTICES OF TEMPORARY CESSATION FOR THE JD-6, JD-9, SR-11, LP-21, JD-7 PIT, AND SR-13A MINES (FILE NOS. M-1977-310, M-1977-306, M-1977-451, M-1977-305, M-1979-094-HR, M-1977-311) (including three-volume Appendix of exhibits)** to the following:

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Alicia Berry (signature) March 15, 2013 (date)