BEFORE THE NEW MEXICO MINING COMMISSION

IN THE MATTER OF THE PETITION FOR REVIEW OF THE DIRECTOR'S ACTION DATED JANUARY 31, 2012, PERMIT REVISION 10-1 TO PERMIT NO. CI002RE

THE MULTICULTURAL ALLIANCE FOR A SAFE ENVIRONMENT and AMIGOS BRAVOS,

Petitioners

MINING AND MINERALS DIVISION'S (i) RESPONSE TO MARCH 30, 2012 PETITION OF THE MULTICULTURAL ALLIANCE FOR A SAFE ENVIRONMENT AND AMIGOS BRAVOS AND (ii) MOTION TO DISMISS

In their Petition ("Petition") The Multicultural Alliance for a Safe Environment ("MASE") and Amigos Bravos ("together, Petitioners") attempt to make it appear that the Mining and Minerals Division ("MMD") did not follow appropriate procedure in renewing Rio Grande Resources' ("RGR") standby permit and that MMD's analysis in granting that renewal was inadequate. Petitioners are wrong on both counts. MMD respectfully submits that Petitioners have not sufficiently made a case for their requested relief, and MMD moves the Commission for a dismissal.

MMD also asks the Commission to bear in mind that the relief that Petitioners are asking for is substantive hearings on various topics. There are two stages, then, that are presented by the Petition. The threshold stage, the current stage, requires a determination by the Commission of whether the Petition and the arguments in it are sufficient for the Commission to order the relief that Petitioners request, and hold substantive hearings. The second stage is actually having the hearings that Petitioners request as relief, if the Commission determines the threshold issue in Petitioners' favor.

In order to make the threshold determination, the Commission must hold a hearing on the claims made in the Petition. Further hearings are in order only if the Petition raises a complaint that is sustained. Thus, MMD requests that the Commission hold a hearing on the sufficiency of the claims made in the Petition before making preparations to hold the substantive hearings that Petitioners request as relief.

Under 19.10.14.1431 NMAC, in order to carry the day and receive the hearings that they request as relief, Petitioners must prove their case by a preponderance of evidence. Before reaching that point, however, Petitioners must at least make a facial claim that the Director or MMD did something objectionable. Petitioners have not done that. On their face, it is plain that Petitioners' claims are that the Director made findings that he did not make, and that he has legal obligations that he does not have. Evidence need not even be taken to see those deficiencies, which are fatal to Petitioners' complaints. Moreover, Petitioners improvidently ask the Commission to hold hearings to sit in judgment on a business decision made by a company, and a regulatory decision made by another State Department.

Under these circumstances MMD respectfully submits that Petitioners cannot prevail on the threshold issue, and the Commission should dismiss this case based on the papers now before it.

I. A Brief Explanation of Why the Petition Should Be Dismissed

Petitioners base their appeal on what they claim is the Director's (i) failure to review and hold a public hearing on the adequacy of RGR's financial assurance, (ii) incorrect finding that the Mine would be economically viable during the standby period, (iii) abdication of his independent duty to find that RGR would meet all environmental standards during the standby period, as set forth in the New Mexico Environment Department's ("NMED") Determination

and (iv) "prohibiting" Petitioners from presenting testimony on issues Petitioners claim are relevant to RGR's application for renewal.

As explained more fully below, on their face, Petitioners' complaints about the economic viability finding and the environmental standards finding are without basis. The regulation does not require either of these findings, and the Director did not make the findings about which Petitioners complain. In effect Petitioners are claiming that certain findings are legally necessary to renew standby status, which they are not, claiming that the Director made those findings, which he did not, and arguing that the Director had no basis for making the fictitious findings.

Additionally, with respect to the economic viability issue, Petitioners (i) encourage the Commission to undertake an analysis that is not required by the regulations and that inappropriately seeks to substitute the judgment of the State for that of business owners, and (ii) mischaracterize the Director's unassailable conduct in following a procedure set forth in statute as keeping a document "secret."

Regarding their complaint about the NMED's Determination, Petitioners encourage the Commission to judge the adequacy of NMED's understanding and application of regulations for which NMED is responsible, and claim that Petitioners had no opportunity for input when, in fact, they had the opportunity, of which they did not take advantage, to have an NMED hearing on the abatement plans that are central to the Determination.

Concerning financial assurance, there is no requirement that a review of same take place before a standby permit may be renewed, nor that a public hearing be held in connection with a review of financial assurance; and the requirement in the permit that the financial assurance and closeout plan be updated fulfills any financial assurance requirement in connection with the renewal of the Mount Taylor Mine's ("Mine") standby status.

Finally, given all of the circumstances surrounding the public hearing, the hearing officer's action in not allowing some of Petitioners' testimony was reasonable. This is particularly so when Petitioners had the opportunity to submit post-hearing written testimony, though they chose not to take advantage of it. It simply cannot be that, with the opportunity to review the renewal application for months in advance, a public hearing that lasted over four hours, and the opportunity to submit for the record any testimony that they wished, Petitioners did not have a "reasonable chance to submit data, views or arguments orally or in writing" concerning the renewal.

II. Background

The Mine was first permitted on July 28, 1995 as an existing mine under Title 19, Chapter 10, Part 5 NMAC.[1] A closeout plan for the Mt. Taylor Mine was approved on December 18, 1998. Financial assurance for the Mt. Taylor Mine also was approved on December 18, 1998. The Mine's standby status was first approved on October 12, 1999. That status was renewed on July 27, 2005.

The Act and the regulations promulgated pursuant to it ("Rules"), allow a mine to go on "standby" if it ceases operations for more than 180 days. § 69-36-7(E); 19.10.7.701 NMAC. A standby permit may have a term of five years, and may be renewed up to three times. Id. Absent obtaining standby status, implementation of the reclamation plan must begin if a mine is not operational for 180 days. The opportunity to "go standby" is presented by the Act and Rules in an apparent effort to balance the State's interest in ensuring that mines are properly reclaimed with an operator's interest in coping with market conditions and other business issues and with

[1] The New Mexico Mining Act ("Act") was adopted in 1993. The Act required that the New Mexico Mining Commission adopt rules for issuing permits to mines that produced marketable minerals for two years between January 1, 1970 and the effective date of the Act, referred to as "existing mining operations." § 69-36-3(E), § 69-36-7(G).

the State's interest in not prematurely requiring the closing of a mine that could continue contributing to the State's economy after a halt in operations that is not intended to be permanent.

The permittee, RGR, applied for its second renewal on June 16, 2010. Pursuant to 19.10.7.701(E), MMD provided notice of the application to a variety of State agencies. Those agencies provided comment and RGR responded. Additionally, RGR submitted to NMED a Stage 1 Abatement Plan and a Stage 2 Abatement Plan to address concerns that NMED had regarding alluvial contamination and the possible contribution to the contamination by an existing waste rock pile. Exhibit 1.

Pursuant to Petitioners' request MMD provided notice of and held, on August 17, 2011, a public hearing. The public hearing lasted approximately 4 1/2 hours, beginning shortly after 5:00 p.m. and ending at approximately 9:30 p.m. Affidavit of Fernando Martinez, Exhibit 2. Under 19.10.9.905 NMAC the hearing officer is authorized to take, admit and exclude evidence, to protect an orderly hearing process, and to avoid needless expenditure of time. The hearing officer announced at the beginning of the hearing that he intended to keep the hearing to four hours. Exhibit 2; File STE-001, 00:00:53.[2]

At the hearing, RGR witnesses were cross examined by lawyers for Petitioners, as well as other members of the public. Petitioners put on four witnesses: Mary Ann Menetry of NMED; Jim Kuipers, a consultant of Petitioners; Nadine Padilla, of MASE; and Mike Jensen, of Amigos Bravos. Mr. Kuipers testified telephonically, over RGR's objection. File STE-001, 02:37:20. Mr. Kuipers was not allowed to testify concerning the amount of financial assurance held by MMD or concerning the adequacy of the previously approved close out plan for the Mine. File

[2]References to File STE numbers are to files created by the audio recorder at the public hearing. Following such references are the hour, minute and second markers on the file for the referenced portion of the hearing.

STE-001, 02:36:00. The Director informed Petitioners multiple times, however, that, while he was limiting the discussion at the hearing, itself, the record would remain open and they could submit Mr. Kuipers' testimony for the record, in writing. File STE-001, 02:37:50 - 02:38:20; 03:08:35 - 03:08:44; 03:10:54. Additionally, pursuant to 19.10.9.905 NMAC, at the close of the hearing, the Director announced that written comment and testimony would be accepted for the record until September 1, 2011. Exhibit 2; File STE-003, 00:30:58.

Both Amigos Bravos and MASE submitted post-hearing comments for the record, though neither submitted testimony from their witness, Mr. Kuipers, as they could have. Exhibit 3 (September 1, 2011 Post-Hearing Submittal from New Mexico Environmental Law Center, w/o exhibits); Exhibit 4 (September 1, 2011 Post-Hearing Submittal from Amigos Bravos, w/o exhibits). And both Amigos Bravos and MASE stated the outcome that they wanted, with respect to the standby renewal. Amigos Bravos, in its individual submittal, stated that

> Amigos Bravos does not believe that RGR should be given a renewed Standby permit. Instead, given the undisputed fact that the mine has already contaminated at least one place on its site and has not completed characterization of that contamination; the 22 years of non-operations and RGR's failure to initiate any meaningful return to operations during the recent uranium price boom despite the magnitude of such activity by the rest of the industry in New Mexico; the pattern of violations within its shared corporate structure; the strong likelihood that the Closure Plan, Financial Assurance, and possibly the Mine Plan of Operations will require updating; and a general failure to meet the requirements for Standby Status as outlined in the NMMA, RGR should be ordered to begin closeout.

Exhibit 4, p. 9.

And in a joint submittal Petitioners stated that "MASE and Amigos Bravos oppose issuing RGR a standby permit for five years without substantial conditions to address the source of the uranium contamination in the alluvium, interim reclamation measures to abate the alluvial

contamination, and an assurance that RGR has adequate financial resources to guarantee that interim reclamation measures will be conducted." Exhibit 3, p. 18.

On January 12, 2012, the Director issued the renewed standby permit, with an expiration date of October 7, 2014. The renewal permit contained, among other things, the following conditions:

> AA. The Permittee shall perform environmental remediation as required by NMED based on the results of the Stage One and Stage Two Abatement Plans for the Mount Taylor Mine site. The Permittee shall propose a corrective action plan for the waste rock pile at the Mount Taylor Mine, if NMED determines that remedial action is required, based on the Stage 1 and Stage 2 Abatement process, related to the mine's waste rock piles.
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> BB. Pursuant to 19.10.12.1206.A NMAC, within 180 calendar days of this revision approval, the Permittee shall submit to MMD, for MMD approval, (i) an updated reclamation cost estimate for the Mount Taylor Mine for the purpose of updating financial assurance and (ii) an updated closeout plan, upon which the reclamation cost estimate shall be based.

Permit Revision 10-1 to Permit No CI002RE ("Revision 10-1"), Ex. A to Petition, pg. 4 of 7.

III. Argument

Under the Rules, the Director is required to grant standby status if the Director finds

> (1) that the permittee agrees to take measures to reduce, to the extent practicable, the formation of acid and other toxic drainage and to prevent releases that cause federal or state environmental standards to be exceeded;
>
> (2) that the permittee agrees to meet applicable federal and state environmental standards and regulations during the period of standby status, and the Secretary of the Environment Department has indicated environmental standards of that Department are expected to be met during the term of standby status;
>
> (3) that the permittee agrees to stabilize waste and storage units, leach piles, impoundments and pits during the term of standby status;

(4) that the permittee agrees to comply with the applicable requirements of the Act, 19.10 NMAC and the permit during the term of standby status; and

(5) that the permittee has provided an analysis of the economic viability for each unit proposed for standby status.

19.10.7.701(F) NMAC.

A. Economic Viability

With respect to economic viability, the Director was not required to find, and did not find, that the Mine would be economically viable, as Petitioner claims. In accordance with the regulations, the Director found "DD. The Permittee has provided an analysis of the economic viability of the Mount Taylor Mine, as required by 19.10.7.701.F.5 NMAC." Revision 10-1, Ex. A to Petition, pg. 2 of 7. Thus, Petitioners base their Petition, in part, on the purported inaccuracy of a finding that was not made and that the regulations do not require to be made.

As a matter of policy, it makes sense that the Director should not be required to find that the permittee has proven economic viability of the mine. If that were the requirement, a permittee would face litigating its business judgment in placing a mining operation on hold for the possibility of future use, and having that decision made not by its officers, but by the State. In effect, such a requirement would remove the business decision from the permittee and place them in the hands of MMD, the public and the Commission. The business decision becomes one that is made not by the company, but by advocacy at trial and paid "experts."

There is no doubt that regulation, generally, encumbers business decisions -- and it should. The State has a right and an obligation to ensure that decisions are not made that benefit a business at the expense of the citizenry. But that is not the situation with respect to the economic viability issue now before the Commission. RGR has determined that the Mine could be economically viable in the future. It submitted to MMD an analysis of the issue, as the

regulations require. Petitioners now want to litigate RGR's business judgment because they claim, in part, that RGR did not "give any meaningful analysis of global demand for uranium." Petitioners cite figures from various sources regarding existing mining capacity, conclude that there is an insufficient market to support the Mine and place upon RGR, or MMD, the obligation to rebut that conclusion.

Of course, the citation of figures by Petitioner invites questions concerning not only the reliability of the data, but also the myriad issues that intervene between that data and Petitioner's conclusion that the market will not support the Mine (for instance, whether other producers will elect to produce, even though they may have capacity to do so). Judgments of this nature may be based on information possessed by a company about the way in which it runs it affairs, or even the way in which its competitors run their affairs. These are judgments that a company should not have to litigate.

In short, Petitioners are attempting to substitute the courtroom for the boardroom. This is not required by the regulations, nor should it be, and MMD respectfully requests that the Commission not to go down that path.[3]

1. The Economic Analysis Submitted by RGR Was Not "Secret," but Was Held Confidential Pursuant to a Process Established by Statute

In an apparent effort to garner sympathy for their position, Petitioners claim that MMD based its renewal on "secret" (a word with overtones of skullduggery) information. In fact, in its application, RGR claimed that its large, high-grade uranium deposit would increase in value

[3] There are circumstances where MMD could find it necessary to further investigate and take action with respect to an analysis submitted by a permittee. If, for instance, a permittee claimed that a mine was economically viable when its reserves were almost mined out or when the price it needed to receive was, on its face, not even a possibility. This would be an extraordinary circumstance, and not one presented here. And Petitioners do not claim that this is such an extraordinary circumstance. They claim that the permittee must "prove" economic viability, a requirement which is nowhere to be found.

as uranium from decommissioned weapons is used up and the demand for clean energy increases. RGR supplemented its statement with an analysis, which was marked as confidential. It is this analysis that Petitioners label "secret."

In accordance with NMSA 1978, Section 69-36-10, MMD treated the analysis as confidential. That statute provides:

> If the operator designates as confidential an exploration map, financial information, information concerning the grade or location of ore reserves or trade secret information, the director shall maintain the information as confidential and not subject to public records or disclosure laws; provided that if a request is made for public review of the information, the director shall notify the operator and provide a reasonable opportunity for substantiation of the claim that public disclosure of the information could harm the competitive position of the operator. If the claim of confidentiality is not substantiated to the satisfaction of the director, the information shall be released.

(Emphasis added).

In the copies of the applications that were made available for public inspection Attachment 3 of the application ("Attachment 3") was marked with the following language: "**Confidential Business Information NOTE:** Attachment removed and placed in the **Confidential File for the Mt. Taylor Mine, Permit No. CI002RE**." Exhibit 5. (Emphasis in original). Thus, it was plain to all who reviewed the application that RGR had submitted confidential business information as part of its application, and that that part of the application was being shielded from public inspection.

Petitioners attempt to paint the picture that they did not know about the confidential treatment until the public hearing. In fact, the attorney for Petitioners, Eric Jantz, reviewed the application, with the insert, months before the public hearing and was, therefore, on notice of the removal of the confidential information. Exhibit C to Petition, p. 2; Affidavit of David J. Ennis,

Exhibit 6. But it was not until after the public hearing that Mr. Jantz requested to review the confidential material. Exhibit C to Petition, p. 1.

In dealing with that request for the confidential material, MMD followed the procedure set forth in NMSA 1978, Section 69-36-10. It notified RGR, and gave it the opportunity to substantiate the claim that public disclosure of the analysis could harm RGR's competitive position. The Director deviated from the statutory procedure only in that he invited Mr. Jantz to respond to RGR's submittal, something that is not required by the statute. Exhibit C to Petition, pp. 1-2.

After reviewing submissions by both Mr. Jantz and RGR, the Director wrote to both parties a lengthy explanation of why he believed that the economic viability analysis should remain confidential.[4] Exhibit C to Petition.

Finally, Petitioners claim that the Director was in error when he evaluated the request from Mr. Jantz as a request under the Inspection of Public Records Act,[5] and claim, with no support, that the Director should have reviewed the request as though it was a discovery request in an administrative adjudication. Petitioners do not explain their theory that MMD should ignore the statutorily required procedure if the request for confidential information is made in the context of an administrative adjudication. Perhaps more important, in this context, it is plain that

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[4] Petitioners complain that the Director did not parse the confidential from the non confidential material in the RGR report, and claim that the Director did not do so because it would be too difficult for MMD staff. Petition, p. 5. The Director said nothing of the kind. He said that it would be inappropriate for MMD to attempt to redact confidential material because it would require attempting to separate data and analysis that had been integrated into a whole. "Even if some of the data might be subject to release if they were simply listed, unsurrounded by other data and analyses, in another format, the selection of those data and the use to which they are put in the format of this analysis could be revelatory to competitors. I do not believe that it is appropriate for MMD to attempt to winnow data from one document that, if in another format, might be subject to inspection. The obligation of an agency under IPRA relates to providing documents, or portions of them, for inspection, not to sifting through information provided in one, confidential format in order to place it in another, producible format." Petition, Ex. C. p. 4.

[5] Actually, Petitioners are somewhat unclear on this point. At page 15 of the Petition, Petitioners claim that "the Director improperly considered the request as an IPRA request." But at page 5 of the Petition, Petitioners say that they submitted their request pursuant to IPRA. "Petitioners subsequently attempted – pursuant to the Inspection of Public Records Act – to obtain the information RGR submitted...."

there was no adjudication taking place. MMD held a public hearing, as part of the renewal process and as required by the rules. Neither the renewal process nor the public hearing is an adjudication.

With respect to Petitioners' complaint concerning the economic viability of the Mine, then, Petitioners (i) posit a requirement that does not exist, (ii) claim that the Director made a finding that he did not, and was not required to, make, (iii) encourage the Commission to undertake an analysis that is not required by the regulations and that inappropriately seeks to substitute the judgment of the State for that of business owners, and (iv) mischaracterize as keeping a document "secret" the Director's unassailable conduct in following a procedure required by statute.

B. Meeting Environmental Standards and the Determination Issued by NMED

Petitioners complain that "[t]he Director's determination that RGR will meet all environmental standards ... is incorrect ... [citing Finding FF in Revision 10-1]." As with Petitioner's complaint regarding economic viability, the Director did not make the finding about which Petitioners complain, nor was he required to. The finding actually made by the Director reads:

> FF. Pursuant to 19.10.7.701.B.3 NMAC, The Secretary of the Environment Department provided a written determination on May 27, 2011 stating that the permit applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality, and other environmental standards if carried out as described in the standby status plan. The Permittee is engaged in an NMED approved Stage 2 Abatement Plan, following the NMED approval of a Stage 1 Abatement Plan for the Mount Taylor Mine.

The relevant finding that is required by the Rules is that "the Secretary of the Environment Department has indicated environmental standards of that Department are expected to be met during the term of standby status." 19.10.7.701(F)(2) NMAC.

The Director made the appropriate finding based on the Secretary of the Environment Department's May 27, 2011, Determination, which is attached to this Response as Exhibit 7. The Rule does not require the Director to make the determination. It requires that the Secretary of NMED make the Determination, which he did.

But, say Petitioners, the Director had the obligation to independently verify the NMED's Determination. Petitioners cite no authority for that proposition.

It is true that MMD takes on much responsibility for environmental safekeeping under the Act and the Rules. This responsibility is manifest in a variety of ways, one of which is consulting with a host of other departments and agencies when MMD is evaluating various of the exploration and mining permits for which it is responsible. See, e.g., 19.10.3.302(G) NMAC; 19.10.4.402(F) NMAC; 19.10.5.503(C) NMAC; 19.10.6.605(C) NMAC (requiring that MMD deliver different types of applications to a variety of different agencies to obtain their comments). Issuance of these permits, and judgments based on the comments received from the other agencies remains, ultimately, with MMD. In such instances, while MMD is to consider seriously comments received by other agencies, it is not bound by them.

The Determination from NMED, about which Petitioners complain, however, is different. It is not the same as the comments received under the previously cited Rules and is not a result of the commenting process. Unlike the agency comment requirements, it is a separate requirement specifically delineated for mining (not exploration) permits. See, e.g., 19.10.3.304(J)(6) NMAC; 19.10.5.506(J)(5) NMAC; 19.10.6.606(B)(3) NMAC; 19.10.7.701(B)(3) NMAC. Each of these regulations indicates that the Determination is supposed to address the permittee's compliance with standards for which NMED is responsible. 19.10.3.304(J)(6) NMAC, for instance, provides that the Determination "shall address applicable standards for air, surface water and ground

water protection enforced by the environment department or for which the environment department is otherwise responsible...." 19.10.7.701(B)(3) NMAC, the standby requirement, provides that the Determination for a standby permit shall state that the permittee has demonstrated that during standby status "the operation will be expected to achieve compliance with all applicable air, water quality and other environmental standards of the Environment Department." If standards that were not administered by NMED were applicable to a project the Determination would not apply to them.

Unlike all other interactions among MMD and other State and federal agencies that are contemplated by the Rules, the Determination is not a matter of comment, the significance of which is left to MMD's discretion. Instead, it is a matter of the NMED opining on compliance or expected compliance with standards, the enforcement of which are NMED's ultimate responsibility. And unlike comments received from NMED or other agencies when they are acting in a consulting role, the Determination is not simply input. If NMED refuses to release a Determination, MMD is not free to issue a permit if it disagrees with NMED's refusal. Similarly, if NMED issues a Determination, MMD may not refuse to issue a permit based solely on second guessing NMED.[6]

What Petitioners asked the Director to do at the public hearing was to undertake the substitution of MMD's judgment for the judgment of NMED with regard to the Determination. And what Petitioners now ask by requesting a hearing on "whether RGR will meet environmental standards and laws during the standby permit period," is that the Commission substitute its judgment for that of NMED's with respect to regulations for which NMED is ultimately responsible. Quite apart from whatever issues of jurisdiction and authority may lurk

[6] This is not to say that MMD believes that the Determination was improvidently issued in the instant case. It is simply to say that the requirement for the renewal is that NMED, not MMD, make the Determination.

beneath Petitioners' request, such a substitution would seem contrary to both common sense and comity.

Petitioners claim that if they are unable to challenge the NMED Determination in the MMD/Commission forum, they will be unable to raise the challenge at all. But Petitioners have not provided authority for the proposition that every, single decision made by an agency must be capable of being challenged. Moreover, on September 10, 2010, as required by NMED, notice was published of RGR's submission to NMED of the Stage 2 Abatement Plan that is referenced in Finding FF of Revision 10-01 and in the cover letter to the Determination. Affidavit of Gerard "Jerry" Schoeppner, attached as Exhibit 8. The Abatement Plan addresses the elevated concentrations of nitrate, chloride, sulfate, uranium and total dissolved solids found in an alluvial zone at the Mount Taylor Mine. Ex.1. The notice provided that comments and statements regarding the Abatement Plan could be submitted to NMED, and also that a public hearing regarding the Abatement Plan could be requested. Ex. 8 Neither of the Petitioners requested a hearing on the Abatement Plan, upon which NMED's Determination depended. Ex. 8; Ex. 7.

As an aside, it is worth noting that Petitioners make much of their claim that it has not been resolved whether the waste rock pile at the Mine is contributing to the alluvial contamination that is addressed by the Abatement Plan. Before Petitioners filed their Petition, however, NMED issued a finding that "as concluded by Rio Grande Resources Corporation, the likely source of this alluvial ground water contamination appears to be the residual saturation that remains within the sewage lagoon area," as opposed to the waste rock pile. Exhibit 9.

With respect to Petitioner's complaint regarding NMED's Determination, then, Petitioners (i) place upon the Director an obligation that he does not have, (ii) claim that the Director made a finding that he did not, and was not required to, make, (iii) encourage the

Commission to undertake a hearing regarding the adequacy of NMED's understanding and application of regulations for which NMED is responsible, and (iv) ask the Commission to hold a hearing to address a topic that Petitioners could have addressed in front of NMED, but did not.

C. Financial Assurance

There is no requirement under 19.10.7.701 that revising financial assurance is a pre-condition to approving or renewing a standby permit. It simply is not mentioned. Petitioners appeal to 19.10.12.1206(D) NMAC, which provides that if a permit is revised or modified, the Director shall review the financial assurance and "if necessary, shall require adjustment of the financial assurance to conform to the permit as revised or modified." (Emphasis added). There are several things to point out about this regulation. This requirement to review financial assurance in connection with a change in a permit is not arbitrarily imposed. From the language of Rule 1206(D), it seems plainly to contemplate that a revision or modification may, in some way, affect the environmental impact of the operation and may, as a result, affect the cost of reclamation and, so, financial assurance. This is the point of the "shall require adjustment ... to conform to the permit as revised or modified" language. The renewal of a standby permit is not a typical revision because, by and large, it holds the mining operation in stasis and does not increase disturbance. More importantly, Rule 1206(D) does not dictate the manner or timing of the review.

The Director found in Revision 10-01 that financial assurance and the closeout plan for the Mine were approved on December 18, 1998 (Findings LL, MM), and determined that financial assurance should be revisited, requiring RGR to submit, within 6 months of the revision, an updated closeout plan and cost estimate for the purpose of updating financial assurance. There is nothing in 19.10.12.1206(D) NMAC to suggest how long the process of

reviewing the financial assurance should be, or that it must be completed as a pre-condition to granting the revised permit. In fact, the Director is reviewing the financial assurance in connection with this revision and has signaled his intent to revise the financial assurance, if necessary. The Director is, then, in conformance with 19.10.12.1206(D) NMAC. In any case, the process that the Director is undertaking to review the closeout plan and financial assurance does not affect the propriety of granting the standby renewal under 19.10.7.701 NMAC.

Petitioners complain that reviewing the financial assurance in this way means that there will be no hearing on the financial assurance decision. But there is nothing in the Rules that requires a public hearing with respect to a financial assurance decision. Indeed, Rule 1206(D) requires the Director to review financial assurance in connection with modifications, as well as with revisions, and public hearings are not held for permit modifications. ("Revisions are modifications that require public notice and an opportunity for public hearing." 19.10.5.505(B) NMAC). Thus, because Rule 1206(D) requires a review of financial assurance in connection with an event that does not require a public hearing, Rule 1206(D) does not contemplate that a review of financial assurance triggers a public hearing.

Moreover, 19.10.12.1206(A) NMAC, which provides for periodic review and adjustment of financial assurance, does not require a hearing in connection with such a review. And 19.10.9.901 NMAC, which sets forth events for which a public hearing is required, requires a public hearing in connection with a release of financial assurance, but not in connection with a review or adjustment. And, as already observed, Rule 701 does not mention a financial assurance review as a necessary condition to approving a standby renewal.[7]

[7]While the amount of change in financial assurance is one factor taken into account when the Director determines whether a permit change is a revision or a modification, it is by no means dispositive, and a change in financial assurance does not of itself effect a revision. See, generally, 19.10.5.505 NMAC.

Thus, while the Rules require a hearing in connection with a standby renewal, which was held, they do not require or even imply that a public hearing must be held in connection with the review of financial assurance. Petitioners have not been deprived of a right under the Rules or the Act if a public hearing is not part of the financial assurance review process.

In short, there is no requirement that a review of financial assurance take place before a standby permit may be renewed, nor that a public hearing be held in connection with a review of financial assurance; and the requirement in the permit that the financial assurance and closeout plan be updated fulfills any financial assurance requirement in connection with the renewal.

D. The "Prohibition" of Testimony

Petitioners object that they were "prohibited" from testifying regarding groundwater, the "likely source" of alluvial contamination,[8] the adequacy of financial assurance and, perhaps, the economic viability of the mine.[9] As a result, Petitioners claim that the hearing was not meaningful and that the process was flawed.

Petitioners were not prohibited from submitting testimony. The hearing officer made it clear that Petitioners could submit Mr. Kuipers' testimony in writing, that the hearing record would remain open for two weeks after the hearing date, until September 1, 2011, and that anyone who wanted to submit further comment or testimony for the record was welcome to do so. Ex. 2. In fact, Petitioners took advantage of the open record at the end of the hearing and made submissions to the record. Exs. 3 and 4. But they did not submit testimony. Instead, their

[8]Petitioners claim that the waste rock pile is a likely source of contamination, but they also assert that the source is actually unidentified. Petition, p. 20. In fact, as mentioned earlier, NMED has determined that the source is not the waste rock pile. Ex. 9.

[9]It is not clear from the Petition whether Petitioners are claiming that they were in some way prohibited from putting testimony on concerning economic viability. They do not appear to make that claim, per se, but their economic viability complaint appears in the section where they complain about their inability to offer testimony on various topics. Petition, pp. 4-5.

submission was almost identical to the Petition that they have now filed in this proceeding. Compare Ex. 3 with Petition.

The hearing was held in Grants, New Mexico, in the evening so as not to interfere with work schedules, and on a week night, to encourage attendance. The hearing was scheduled to last for four hours, but lasted longer. The hearing officer is invested with the authority to admit and exclude evidence and "take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in hearings." 19.10.9.905 NMAC. Clearly it is the job of the hearing officer to attempt to allow as much orderly testimony and input from the public as s/he can in a reasonable length of time for the hearing. This necessitates making decisions regarding the allotment of time.

In the present case, on the issue of economic viability alone, it is plain from their brief that Petitioners raise global uranium demand, domestic and global energy demand, how the worldwide and domestic economic downturn affects electric power demand, improvements in energy efficiency and demand for renewable energy sources, European attitudes regarding nuclear power, and milling capacity. Petition, pp. 9–14. Combined with cross examination, the two other topics upon which Petitioners wished to offer testimony, cross examination regarding those topics, possible rebuttal testimony, and an already four hour, plus, hearing, it seems plain that the hearing officer had to make decisions to give as many people the opportunity to participate as possible.

Given the proper disinclination of the hearing officer to second guess the NMED Determination, the fact that RGR was not obliged to "prove" economic viability, and that financial assurance was not a required topic for hearing, it was reasonable for the hearing officer to disallow testimony on those topics during the hearing, but to allow the testimony to be

submitted sometime in the following two week period. Had the hearing officer not made such a decision, attendees other than Petitioners would not have been able to speak.

Both the statute and the Rules contemplate the hearing officer's decision. The statutory requirement is that the public (not just the Petitioners) "shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. (Emphasis added). NMSA 1978, § 69-36-7(K). The Rule provides that the hearing officer "may set a deadline for [submission of written statements] at the conclusion of the hearing." 19.10.9.905(E).

Petitioners treat the public hearing as though it is an adjudication. It is not. The public, generally, must have a reasonable opportunity to comment on and submit evidence regarding the permitting action that is being proposed.

Given the length of the hearing, the fact that people other than Petitioners wanted to speak, the likely additional length to the hearing had Petitioners been allowed to put on more testimony, the fact that Petitioners' proposed testimony addressed areas that were marginally related, if at all, to the purpose of the hearing, and the opportunity for Petitioners and anyone else to submit written statements or testimony for the two week period after the hearing, it was reasonable for the hearing officer to disallow the testimony proposed by Petitioners. More importantly, Petitioners were given "a reasonable chance to submit data, views or arguments orally or in writing," as required under the law.

E. Conclusion

Based on the material and arguments that have been placed before the Commission by MMD and by Petitioners, MMD submits that it is plain that the Director followed the Rules and process in renewing RGR's standby permit and in conducting the associated public hearing.

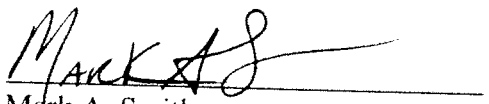
Petitioners were not prejudiced by the Director following the Rules and process, and have had an ample and a reasonable opportunity for input into the renewal process. The findings made by the Director in issuing the renewal followed Rule 70, and NMED submitted a Determination, all as required. Not only the letter but the spirit of the Act and Rules were followed in issuing the renewal.

The Petition now before the Commission alleges findings that neither were made nor are required, and posits obligations where there are none. These deficiencies are plain from an examination of the Petition, Renewal 10-01, and the Rules.

Moreover, the relief requested by Petitioners would place the Commission in the position of undertaking analyses that are not contemplated by the Rules, of second guessing a business judgment more properly made by the permittee, and of sitting in judgment on a Determination made by NMED with respect to environmental matters that are within NMED's purview.

For all of the foregoing reasons, MMD requests that Petitioners' relief be denied, that no further hearings be held by the Commission with respect to the renewal, and that the Petition be dismissed, with prejudice.

Respectfully submitted,



Mark A. Smith

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CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2012, a true and correct copy of the foregoing filing was mailed, First Class United States postage to:

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New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, New Mexico 87505
Telephone: 505-989-9022
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Mark A. Smith

CI002RE
Rio Grande Resour

State of New Mexico
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Ground Water Quality Bureau
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Governor

JOHN SANCHEZ
Lieutenant Governor

DAVE MARTIN
Secretary

RAJ SOLOMON, P.E.
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

April 12, 2011

Mr. Joe Lister
Rio Grande Resources Corporation
Mt. Taylor Mine
P. O. Box 1150
Grants, New Mexico 87020

RE: Conditional Approval of Supplemental Stage 1 Abatement Plan Proposal for the Mt. Taylor Mine, DP-61

Dear Mr. Lister:

Pursuant to the New Mexico Water Quality Control Commission Regulations (WQCC), 20.6.2.3109.E.1 NMAC, the Supplemental Stage 1 Abatement Plan Proposal dated December 22, 2010 for the Mt. Taylor Mine Facility is hereby approved subject to the conditions and requirements listed below. In conditionally approving this proposal, the New Mexico Environment Department (NMED) has determined that the Supplemental Stage 1 Abatement Plan proposal (SSAPP) meets the requirements of WQCC Regulation 20.6.2.3109.E.1 NMAC.

The Mt. Taylor Uranium Mine was originally owned by Gulf Mineral Resources, a subsidiary of Gulf Oil. The mine has since been sold, first in 1985 to Chevron Resources and then in 1991 to Rio Grande Resources Corporation (RGRC), who owns both the mineral and surface rights. Development of the mine started in 1971 with the drilling of two shafts and ore was produced during two separate occasions, 1979 to 1982 and from 1985 to 1990. In 1990 the mine was placed on stand-by due to low uranium prices and has remained there ever since.

During development and operation of the mine, a cattle pen and watering hole was converted to a sewage lagoon and was used to manage domestic waste until a waste treatment system was installed in 1980. Based on previous Stage 1 abatement activities, it appears that the sewage lagoon seeped fluids which created saturated conditions in the previously dry alluvium directly downgradient of the lagoon. Contaminants including nitrate, sulfate, total dissolved solids, and uranium are present in concentrations above standards in the saturated alluvium. Previous Stage 1 abatement activities have delineated the extent and magnitude of groundwater contamination as well as a characterization of the hydrogeology of the site. The purpose of the SSAPP is to assess the waste rock pile and retention pond as potential sources of contamination. Approval of this SSAPP does not relieve RGRC of its responsibility to comply with federal state and/or local laws and regulations.

CONDITIONS FOR APPROVAL

This conditional SSAPP approval is subject to the following conditions:

1. RGRC shall locate final soil boring locations in the waste rock pile once all utilities have been located, shall distribute soil borings throughout the footprint of the waste rock pile, and submit a final location map to NMED for approval prior to initiating fieldwork, if locations change significantly from locations depicted on Figure 1.

2. RGRC shall drill at least one soil boring between the former sewage lagoon and well WP-5 to bedrock to determine saturated conditions and contaminant concentrations in the soil/waste rock. If saturated conditions are encountered, the boring shall be converted to a monitoring well as outlined in the SSAPP.

3. RGRC shall conduct chemical analysis of collected soil/waste rock samples by EPA Method 1312, Synthetic Precipitation Leaching Procedure (SPLP). The leachate from the SPLP procedure shall be analyzed by the appropriate EPA method for chloride, nitrate, selenium, sulfate, total dissolved solids, uranium, and radium-226 and 228.

4. The proposed site investigation activities shall be performed in accordance with the supplemental abatement plan proposal dated December 22, 2010.

GENERAL ABATEMENT PLAN REQUIREMENTS

In addition to any other requirements provided by law, approval of this abatement plan proposal is subject to the general requirements specified in WQCC Section 20.6.2.4107. This regulation provides for:

1. NMED entry, inspection and sampling at the site and on the property;

2. Notification to NMED of sampling and well plugging, abandonment or destruction; and

3. Requirements for well plugging, abandonment or destruction.

MODIFICATIONS

RGRC shall notify NMED, pursuant to WQCC Section 20.6.2.4111A, of any proposed modifications to this approved plan and shall obtain NMED's written approval for such modifications. WQCC Section 20.6.2.4111.B also provides for possible future amendment of the abatement plan by NMED.

DISPUTE RESOLUTION AND RIGHT TO APPEAL

If RGRC is dissatisfied with the action taken by NMED, RGRC may either initiate the dispute resolution procedures of the WQCC Section 20.6.2.4113 NMAC or file a petition for a hearing before the WQCC pursuant to WQCC Section 20.6.2.4114. Either request shall be made within thirty (30) days of the receipt of this letter. The notification of a dispute shall be by certified mail to the secretary of NMED. The petition for hearing shall be in writing to the WQCC. Unless a timely request for dispute resolution or hearing is made, the decision of the NMED shall be final.

TRANSFER OF ABATEMENT PLAN

Pursuant to WQCC Section 20.6.2.4104.B, at least 30 days prior to any transfer of ownership or responsibility, RGRC shall notify the transferee in writing that an abatement plan has been required or approved for this facility and shall deliver or send by certified mail to NMED a copy of such notification together with a certificate or other proof that such notification has in fact been received by the transferee.

ENFORCEMENT

Please be aware that the conditions, requirements and provisions of this abatement plan approval are enforceable pursuant to § 74-6-10 NMSA 1978. Violations of this abatement plan may subject RGRC to a notice of violation, compliance order, civil penalties or an action in district court. Violations may also subject RGRC to NMED modification of DP-61 pursuant to 20.6.2.3109.E NMAC.

If you have any questions, please contact Jerry Schoeppner at (505) 827-0652.

Sincerely,

William C. Olson, Chief
Ground Water Quality Bureau
New Mexico Environment Department

cc: Mary Ann Menetrey, Manager, MECS
Charles Thomas, Chief, Mine Reclamation Bureau
David Ohori, MMD
Jerry Schoeppner, GWQB
Barbara Everett, Kleinfelder
DP-61 file

Rio Grande Resources
CI002RE

State of New Mexico
ENVIRONMENT DEPARTMENT
Ground Water Quality Bureau
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Lieutenant Governor

DAVE MARTIN
Secretary

RAJ SOLOMON, P.E.
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

May 2, 2011

Mr. Joe Lister
Rio Grande Resources Corporation
Mt. Taylor Mine
P. O. Box 1150
Grants, New Mexico 87020

RE: Conditional Approval of Stage 2 Abatement Plan for the Mt. Taylor Mine, DP-61

Dear Mr. Lister:

Pursuant to the New Mexico Water Quality Control Commission Regulations (WQCC), 20.6.2.3109.E.1 NMAC, the Stage 2 Abatement Plan Proposal dated August 2010 and additional information submitted on February 1, 2011 for the Mt. Taylor Mine is hereby approved subject to the conditions and requirements listed below. In conditionally approving this proposal, the New Mexico Environment Department (NMED) has determined that the Stage 2 Abatement Plan proposal (Plan) as contained in the August 2010 and February 1, 2011 submittals meets the requirements of WQCC Regulation 20.6.2.3109.E.1 NMAC.

The Mt. Taylor Uranium Mine was originally owned by Gulf Mineral Resources, a subsidiary of Gulf Oil. The mine has since been sold, first in 1985 to Chevron Resources and then in 1991 to Rio Grande Resources Corporation (RGRC), who owns both the mineral and surface rights. Development of the mine started in 1971 with the drilling of two shafts and ore was produced during two separate occasions, 1979 to 1982 and from 1985 to 1990. In 1990 the mine was placed on stand-by due to low uranium prices and has remained there ever since.

During development and operation of the mine, a cattle pen and watering hole was converted to a sewage lagoon and was used to manage domestic waste until a wastewater treatment system was installed in 1980. Based on previous Stage 1 Abatement Plan investigation activities, it appears that the sewage lagoon seeped fluids which created saturated conditions in the previously dry alluvium directly downgradient of the lagoon. Contaminants including nitrate, sulfate, total dissolved solids, and uranium are present in concentrations above standards in the saturated alluvium. Previous Stage 1 Abatement Plan investigation activities have delineated the extent and magnitude of groundwater contamination as well as a characterization of the hydrogeology of the site. The purpose of the Plan is to remediate alluvial groundwater downgradient of the former sewage lagoon. Approval of this Plan does not relieve RGRC of its responsibility to comply with federal state and/or local laws and regulations.

CONDITIONS FOR APPROVAL

This conditional Plan approval is subject to the following conditions:

1. RGRC shall pump alluvial groundwater from well WP-5 to augment dewatering of the alluvial aquifer by Saltcedar uptake and dispose of contaminated water in the existing open top tank through evaporation.

2. RGRC shall collect groundwater samples from all existing wells that have groundwater present on a semi-annual basis and submit samples to the laboratory for analysis for nitrate, sulfate, total dissolved solids, and uranium.

3. The Stage 2 Abatement Plan shall be revised if results from the characterization activities for the waste rock pile indicate that the waste rock pile or storm water retention pond is a source for alluvial groundwater contamination.

4. The proposed site abatement activities shall be performed in accordance with the Plan dated August 2010 and additional information dated February 1, 2011.

GENERAL ABATEMENT PLAN REQUIREMENTS

In addition to any other requirements provided by law, approval of this abatement plan proposal is subject to the general requirements specified in WQCC Section 20.6.2.4107. This regulation provides for:

1. NMED entry, inspection and sampling at the site and on the property;

2. Notification to NMED of sampling and well plugging, abandonment or destruction; and

3. Requirements for well plugging, abandonment or destruction.

MODIFICATIONS

RGRC shall notify NMED, pursuant to WQCC Section 20.6.2.4111A, of any proposed modifications to this approved plan and shall obtain NMED's written approval for such modifications. WQCC Section 20.6.2.4111.B also provides for possible future amendment of the abatement plan by NMED.

DISPUTE RESOLUTION AND RIGHT TO APPEAL

If RGRC is dissatisfied with the action taken by NMED, RGRC may either initiate the dispute resolution procedures of the WQCC Section 20.6.2.4113 NMAC or file a petition for a hearing before the WQCC pursuant to WQCC Section 20.6.2.4114. Either request shall be made within thirty (30) days of the receipt of this letter. The notification of a dispute shall be by certified mail to the secretary of NMED. The petition for hearing shall be in writing to the WQCC. Unless a timely request for dispute resolution or hearing is made, the decision of the NMED shall be final.

TRANSFER OF ABATEMENT PLAN

Pursuant to WQCC Section 20.6.2.4104.B, at least 30 days prior to any transfer of ownership or responsibility, RGRC shall notify the transferee in writing that an abatement plan has been required or approved for this facility and shall deliver or send by certified mail to NMED a copy of such notification together with a certificate or other proof that such notification has in fact been received by the transferee.

ENFORCEMENT

Please be aware that the conditions, requirements and provisions of this abatement plan approval are enforceable pursuant to § 74-6-10 NMSA 1978. Violations of this abatement plan may subject RGRC to a notice of violation, compliance order, civil penalties or an action in district court. Violations may also subject RGRC to NMED modification of DP-61 pursuant to 20.6.2.3109.E NMAC.

If you have any questions, please contact Jerry Schoeppner at (505) 827-0652.

Sincerely,

William C. Olson, Chief
Ground Water Quality Bureau
New Mexico Environment Department

cc: Mary Ann Menetrey, Manager, MECS
Charles Thomas, Chief, Mine Reclamation Bureau
David Ohori, MMD
Jerry Schoeppner, GWQB
Gary Richardson, Metric Corporation
DP-61 file

BEFORE THE NEW MEXICO MINING COMMISSION

IN THE MATTER OF THE PETITION FOR REVIEW OF THE DIRECTOR'S ACTION DATED JANUARY 31, 2012, PERMIT REVISION 10-1 TO PERMIT NO. CI002RE

THE MULTICULTURAL ALLIANCE FOR A SAFE ENVIRONMENT and AMIGOS BRAVOS,

Petitioners

AFFIDAVIT OF FERNANDO MARTINEZ

I, Fernando Martinez, declare and state the following:

1. I am over 18 years of age.
2. I am the Director of the Energy, Minerals and Natural Resources Department, Mining and Minerals Division, and have been Director or Acting Director since approximately July 2011.
3. I acted as the hearing officer at the public hearing held on August 17, 2011, regarding the renewal of Rio Grande Resources' ("RGR") standby permit No. CI002RE.
4. The public hearing lasted approximately 4 1/2 hours. It began shortly after 5:00 p.m. and ended at approximately 9:30 p.m.
5. I announced at the beginning of the hearing that I intended to keep the hearing to approximately four hours.
6. At the hearing, I allowed Mr. Kuipers to testify telephonically, over the objection of RGR's attorney. I did not allow Mr. Kuipers to testify concerning the amount of financial assurance held by MMD, the Determination made by the New Mexico Environment Department, or the adequacy of the previously approved close out plan for

EXHIBIT 2

the Mt. Taylor mine, sustaining objections of RGR's attorney. I did so, in part, out of concern for the length of the hearing and, in part, because the testimony was marginally, if at all, relevant to the renewal that was the subject of the hearing.

7. While I did not allow Mr. Kuipers' testimony on financial assurance or the close out plan at the hearing, I informed Petitioners' attorney that Mr. Kuipers' testimony could be submitted for the record, in writing.

8. Additionally, at the close of the hearing I announced that written comment and testimony would be accepted for the record until September 1, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of April, 2012.

Fernando Martinez

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

SUBSCRIBED, SWORN TO and ACKNOWLEDGED before me on April 24, 2012, by Fernando Martinez.

Notary Public

My commission expires:

12/31/15

New Mexico
Environmental Law Center

September 1, 2011

Mr. Fernando Martinez
Interim Division Director
Mining and Minerals Division
New Mexico Environment, Minerals and Natural Resources Department
220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Multicultural Alliance for a Safe Environment's and Amigos Bravos' Post Hearing Submission; Rio Grande Resources, Application for Renewal of Standby Permit, Permit Revision 10-1, Mt. Taylor Mine, Permit No. CI002RE

Dear Director Martinez:

On behalf of the Multicultural Alliance for a Safe Environment ("MASE") and Amigos Bravos, please consider the following post hearing submission in the above matter outlining concerns about Rio Grande Resources' standby permit application and the public hearing conducted on that permit application.

I. BACKGROUND

On June 16, 2010, Rio Grande Resources ("RGR") submitted an application to the Mining and Minerals Division ("Division" or "MMD") for renewal of its standby permit for the Mt. Taylor Mine. The Division began processing this standby permit application as a revision of RGR's Permit No. CI002RE , under the number Permit Revision 10-1. *See*, Sept. 29, 2010 letter from David Ohori to Joe Lister, available at http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/20100929_ReviewofApplicationforRenewalofStandbyStatus_Rev10-1_CI002RE.pdf. As part of the review process, MMD solicited comments from other agencies on RGR's permit revision application. *See*, July 22, 2010 letters from David Ohori to the New

1405 Luisa Street, Suite 5 Santa Fe, NM 87505
Phone (505) 989-9022 Fax (505) 989-3769 nmelc@nmelc.org

EXHIBIT 3

Mexico Environment Department ("NMED"), Office of the State Engineer, New Mexico Department of Game and Fish, the Historic Preservation Division, and the State Forestry Division, available at http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/20100722_RequestforreviewComments_MtTaylorMineStandbyStatus_CI002RE.pdf. NMED provided comments in a letter dated September 1, 2010, where NMED expressed concerns about uranium contamination in the alluvium near the existing waste rock pile at the Mt. Taylor Mine. A copy of that letter is attached as Exhibit A. Because of those concerns and the fact that the source of the contamination had not yet been identified, NMED recommended that RGR's standby period be granted for two, rather than the standard five, years. *Id.* Nevertheless, NMED issued a determination on May 27, 2011 that RGR would meet all groundwater standards at the Mt. Taylor Mine for the entire five year standby permit period. A copy of that determination is available at: http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/20110527_NMEDSupportof5YearStandbyRenewal_CI002RE.PDF.

MASE and Amigos Bravos requested a public hearing on RGR's standby permit renewal application. The Division scheduled a public hearing for August 17, 2011 in Grants. *See*, Public Notice: Mt. Taylor Mine Public Hearing, available at: http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/Mt_Taylor_PublicNotices_StandbyRenewal.pdf.

Amigos Bravos and MASE appeared at the August 17 hearing through their representatives and legal counsel. The Division presented testimony about the standby permit process and RGR presented testimony in favor of its standby permit application. Amigos Bravos and MASE attempted to present evidence concerning the undisputed groundwater contamination at the Mt. Taylor Mine. However, Rio Grande Resources objected, arguing that the Mining Act and its regulations only allowed the Division to accept, without question, NMED's determination

that the Mt. Taylor Mine would meet groundwater standards during the standby permit period. Audio Transcript of August 17 Public Hearing, STE-000 at 2:51:31 – 2:51:49 ("Tr."). Any question as to the source of the groundwater contamination or how it would be remediated was, according to RGR's argument, a challenge to the NMED's determination, which could only be challenged through a petition for a writ of certiorari pursuant to New Mexico Rule of Civil Procedure 75. Tr. at 3:07:45 – 3:08:10. The Hearing Officer upheld RGR's objection, and MASE and Amigos Bravos were prohibited from presenting any evidence on the issue of groundwater contamination or RGR's technical or financial ability to remediate that contamination. Tr. at 2:52:20 – 2:53:00.

Further, MASE and Amigos Bravos attempted to present testimony concerning RGR's willingness to conduct interim reclamation measures on the likely source of the alluvial contamination, i.e, the waste rock pile. RGR's attorney again objected, claiming that MASE and Amigos Bravos were attempting to challenge RGR's close out plan, which MMD approved in 1998. Tr. at 2:50:59 – 2:51:22. Again, the Hearing Officer upheld RGR's objection and MASE and Amigos Bravos were prohibited from presenting any evidence about interim reclamation measures that would be appropriate to address the alluvial contamination. Tr. at 2:51:54 – 2:52:19.

Finally, MASE and Amigos Bravos attempted to present testimony that RGR's financial assurance was outdated and would be insufficient to cover any interim reclamation of the waste rock pile or groundwater remediation. However, RGR's attorney also objected to this testimony, arguing that evidence about the sufficiency of RGR's financial assurance was beyond the scope of the standby proceeding. Tr. at 2:34:26 – 2:35:58. The Hearing Officer again agreed with

RGR, deciding that MASE and Amigos Bravos must pursue any concerns about RGR's financial assurance in a separate proceeding. Tr. at 2:36:07 – 2:37:54.

II. STATUORY AND REGULATORY FRAMEWORK

A. The New Mexico Mining Act.

The purposes of the New Mexico Mining Act ("Act" or "Mining Act") "include promoting responsible utilization and reclamation of lands affected by exploration, mining or the extraction of minerals that are vital to the welfare of New Mexico." NMSA, 1978 § 69-36-2. In order to realize the Mining Act's purposes, the New Mexico legislature delegated authority for its implementation to the New Mexico Mining Commission ("Commission") and Director of the Mining and Minerals Division ("Director"). *Id.*, §§ 69-36-7, 69-36-9; *see also*, *Rio Grande Chpt. of the Sierra Club v. Mining and Minerals Div.*, 130 N.M. 497, 501, 27 P.3d 984, 988 (Ct. App. 2001).

Among the responsibilities delegated to the Commission is the requirement that it adopt regulations for standby permits that at a minimum insure that a mining operation on standby status meet applicable federal and state environmental standards and regulations for the duration of the standby period. *Id.* at § 69-36-7(E)(3). The Commission's regulations must also insure that a permittee comply with the application requirements of the Mining Act and its regulations. *Id.* at § 69-36-7(E)(5).

Further, the Act places a particular emphasis on public notice and participation. The Act requires the Commission to promulgate regulations that give "all interested persons ... a reasonable chance to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing." *Id.* at § 69-36-7(K).

The Legislature also delegated specific duties to the Director. Under the Mining Act the Director is required to exercise all powers of enforcement and administration under the Act not delegated to the Commission, and execute and administer the Commission's regulations. *Id.* at § 69-36-9(A). Additionally, the Director is required to "confer and cooperate with the secretary of the environment in administering the New Mexico Mining Act, in developing proposed regulations and obtain the concurrence of the secretary of the environment regarding areas of the regulations that have an impact upon programs administered by the department of the environment." *Id.* at §69-36-9(D).

Finally, the Mining Act provides for both administrative and judicial review. Any "order, penalty assessment or issuance or denial of a permit by the director" pursuant to the Act may be appealed to the Commission by an adversely affected person within sixty days of its issuance. *Id.* at § 69-36-15(A). A final action of the Commission may be appealed to the district court. *Id.* at § 69-36-16(C).

B. Mining and Minerals Division Regulations.

Pursuant to its responsibilities under the Act, in 1996 the Commission promulgated regulations implementing the Mining Act. These regulations set the boundaries for the Director's implementation of the Act.

The primary regulation governing standby permit applications is 19.10.7.701 NMAC. That regulation requires, in relevant part, that the permit applicant provide, at a minimum, a description of how applicable federal and state environmental standards and regulations will be met during the standby status. 19.10.7.701.B.(3) NMAC. The applicant's submission must include a written determination from the Secretary of the Environment stating that the permittee has demonstrated that the operation will be expected to achieve compliance with applicable state

environmental standards. *Id.* Further, the applicant must describe how it will meet the requirements of the Act and Part 19.10 regulations. *Id.* at §701.B.(5). A standby permit application must be approved if the Director finds the applicant has met the requirements of § 701.B. *Id.* at § 701.F.

Pursuant to the Act, the Commission adopted regulations encouraging public participation. Those public participation procedures include procedures for public hearings, where any interested person may testify or submit written statements containing data, views or arguments. 19.10.9.905.C, E NMAC.

III. ARGUMENT

A. The Hearing Officer Improperly Prohibited Testimony on Rio Grande Resources' Financial Assurance.

As a matter of law, the Hearing Officer improperly prohibited MASE and Amigos Bravos from presenting evidence on the sufficiency of RGR's financial assurance. The regulations implementing the New Mexico Mining Act clearly require that the Mining and Minerals Division evaluate whether a permittee's financial assurance is sufficient when it applies for a standby permit.

Section 1206 of the Mining Act regulations provides, "[i]n the event that the approved permit is revised or modified, the director shall review the financial assurance for adequacy, and if necessary, shall require adjustment of the financial assurance to conform to the permit as revised or modified." 19.10.12.1206.D NMAC, emphasis added. The regulations further provide, "[i]f, due to a temporary cessation of mining operations exceeding 180 days, a permittee desires to suspend reclamation pursuant to a permit for an existing or new mining operation, the permittee shall submit an application for a permit revision for standby status ... ". 19.10.7.701.A

NMAC, emphasis added. Thus, RGR's application for a standby permit is a permit revision[1], and under § 1206.D the Director is required to review RGR's financial assurance for adequacy and adjust it if necessary. The Hearing Officer's decision to uphold RGR's objection is clearly contrary to the Mining Act regulations' mandate.

The Hearing Officer should have allowed MASE and Amigos Bravos to submit testimony regarding the sufficiency of RGR's surety. Moreover, the record of the administrative proceeding contains no evidence whatsoever that MMD considered the adequacy of RGR's financial assurance. Because the Mining Act regulations require that MMD review RGR's financial assurance in the course of evaluating its standby permit application, MASE and Amigos Bravos request that MMD hold a public hearing on the issue of RGR's financial assurance and allow MASE and Amigos Bravos to submit testimony and other evidence on the sufficiency of RGR's financial assurance.

B. The Hearing Officer Improperly Prohibited Testimony on Rio Grande Resources' Ability to Meet Environmental Standards.

The Mining Act is clear that before a standby permit application is approved, the applicant must demonstrate that it will meet all state environmental standards. NMSA 1978, § 69-36-7(E)(3). It is equally clear that the public must be given the opportunity to submit testimony and other evidence about the adequacy of any permit application, prior to any action being taken on the permit application. *Id.* § 69-36-7(K). These requirements advance the Mining Act's purposes of responsible use of state resources and meaningful public participation in the decisions affecting those resources. The Hearing Officer's decision to prohibit MASE and Amigos Bravos from presenting evidence concerning RGR's ability to meet groundwater

[1] As noted in Section I, above, the Division is processing RGR's application as Permit Revision 10-1.

standards during the standby period defeats both these purposes and is contrary to the Mining Act in two ways.

1. The Hearing Officer's Determination Renders the Public Participation Provision of the Mining Act and Its Regulations Meaningless.

The Hearing Officer's determination that Amigos Bravos and MASE were prohibited from presenting any evidence on the issue of groundwater contamination at the public hearing renders the Mining Act regulations encouraging public participation meaningless, and directly contradicts the mandate of the Act itself. The Act requires the Commission to promulgate regulations that give "all interested persons ... a reasonable chance to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing." NMSA 1978, § 69-36-7(K). The Commission promulgated regulations further defining the boundaries of public participation, but still seeking to maximize public input on regulatory decision-making by mandating that all interested persons have a reasonable opportunity to present testimony, data, views or arguments. 19.10.9.905.C, E NMAC. Moreover, both the Act and the regulations have extensive notice requirements to ensure that the public can take advantage of the public participation processes. NMSA 1978, § 69-36-7(K)(1)-(6); 19.10.902, 903 NMAC. Based on these extensive statutory and regulatory notice and hearing requirements, the Legislature's intent to promote broad and meaningful public participation is clear.

In this case, as described in Section I, Amigos Bravos and MASE were prevented from presenting any evidence on groundwater contamination at the Mt. Taylor Mine or RGR's ability to address the contamination and its source[2]. By prohibiting MASE and Amigos Bravos from

[2] It is noteworthy that NMED's process for making a determination that a permittee will meet all applicable environmental standards has no mechanism for public input. In this case, NMED did not seek public input on its determination, provided no public notice of its determination process, and provided no public notice of the determination itself.

meaningfully participating in the public hearing, the Hearing Officer undermined the Legislature's intent to promote public participation.

The New Mexico Supreme Court decision in *Colonias Development Council v. Rhino Environmental Services, Inc.* ("Rhino") is instructive in this case. *Id.*,138 N.M. 133, 117 P.3d 939 (N.M. 2005). In *Rhino*, the petitioner community group appealed a decision by the New Mexico Environment Department approving a landfill in their community pursuant to the New Mexico Solid Waste Act. *Id.*, 117 P.3d at 942. On appeal, the community group argued that although the hearing officer conducting the public hearing on the solid waste permit application had allowed community members to speak, NMED violated the Solid Waste Act's public participation provisions by failing to consider the community group's "quality of life" testimony. *Id.* The Supreme Court agreed. *Id.* at 945. The Court reasoned that the extensive public notice and hearing provisions in the Solid Waste Act demonstrated the Legislature's intent to foster broad and meaningful public participation in solid waste permit proceedings. *Id.* at 944-946. The Environment Department's failure to consider "quality of life" public testimony violated these provisions and NMED's decision was set aside and remanded for further proceedings. *Id.* at 949-950.

In this case, the Mining Act's public notice and hearing provisions are nearly identical to those in the Solid Waste Act. *See, e.g.*, NMSA, 1978 § 74-9-29 (ensuring all interested persons "a reasonable opportunity" to be heard at a public hearing); *compare with* NMSA, 1978 § 69-36-7(K) (ensuring all interested persons shall be given "a reasonable chance" to submit data, views or arguments). Unlike the *Rhino* case, however, in this case MASE and Amigos Bravos were not even given the opportunity to submit data, views or arguments on the groundwater contamination at the Mt. Taylor Mine site, much less have their data, views and arguments considered. By

prohibiting MASE and Amigos Bravos from presenting any information on the groundwater contamination at the Mt. Taylor Mine site, the Hearing Officer violated the public participation requirements of the Mining Act and its implementing regulations. The record in this case should remain open and MASE and Amigos Bravos should be allowed to submit testimony and data on the alluvial groundwater contamination at the Mt. Taylor Mine site.

2. The Hearing Officer's Interpretation of the Mining Act and Regulations Eliminates MMD's Statutorily Mandated Role in Regulating Mining's Environmental Impacts.

In addition to violating the public participation requirements of the Mining Act and its implementing regulations, if the Hearing Officer's interpretation of MMD's regulations is accepted, MMD's role in regulating environmental impacts of mines on standby status is virtually eliminated in violation of the mandate of the Act that the Director ensure that a permittee abides by all applicable environmental laws and standards. By prohibiting MASE and Amigos Bravos from challenging MMD's acceptance of NMED's determination, the Hearing Officer effectively made the standby permit evaluation and review process one in which MMD checks off boxes on a list of required documents. This interpretation not only undermines the Division's responsibility to ensure that all environmental laws, regulations and standards are met during the standby period, it also virtually eliminates any consultation and coordination function the MMD has under the Mining Act by forcing MMD to accept as valid any determination by NMED, irrespective of whether it is based on legally or technically supportable grounds.

In this case, based on documentation and cross examination of an NMED representative, MASE and Amigos Bravos established that NMED had no technical basis for making a determination that RGR would meet groundwater standards for the term of its standby permit. The administrative record indicates that on September 1, 2010, NMED sent a letter to RGR

indicating that NMED could not determine that RGR would be in compliance with New Mexico groundwater standards for more than two years. Exhibit A. NMED cited evidence of uranium contamination of the alluvium at the Mt. Taylor Mine and the fact the contamination's source had not been identified as the basis for the two-year limit on its determination. *Id.* At the time of that letter, according to NMED's representative at the public hearing, NMED had not approved RGR's Stage 2 abatement plan. Testimony of Mary Ann Menetrey ("Menetrey Testimony"), Audio Transcript of August 17, 2011 Hearing, STE-003 at 8:24 – 8:55 ("Tr.-3"). Ms. Menetrey also stated that between the time of the September 2010 letter in which NMED refused to make a determination for more than two years and May 27, 2011, when NMED determined that RGR would be able to meet groundwater standards for five years, no circumstances had changed except that RGR's Stage 2 abatement plan had been approved. *Id.*

Significantly, however, NMED's approval of RGR's Stage 2 abatement plan does not address the presumed source of the alluvial contamination, i.e., the waste rock pile. May 2, 2011 letter from NMED to RGR giving conditional approval of RGR's Stage 2 abatement plan, attached as Exhibit B at p. 2; Menetrey Testimony at Tr-3, 6:19 – 6:45. Indeed, the conditions placed on the abatement plan require that the abatement plan be revised if groundwater sampling and waste characterization studies show that the waste rock pile or storm water retention pond are the source of the alluvial contamination. Based on NMED's own documents, the source of the uranium contamination in the alluvium remains unidentified and the Stage 2 abatement plan does not address the uranium contamination. Therefore, the NMED had no apparent technical basis whatsoever to change its determination from a two year to a five year term.

Given the lack of basis for NMED's conclusion, the Division had an obligation to question the NMED's determination in order to insure that RGR would, in fact, be able to

comply with all applicable environmental laws, standards and regulations during the permit period. The Hearing Officer's conclusion that the Division must accept NMED's determination without question, irrespective of whether that determination has a legitimate technical basis, subverts the Act's requirements that permitted operations meet all applicable environmental laws, regulations and standards[3]. NMSA 1978, §§ 69-36-7(A)(1), (E)(3), (N), (P)(2), (S)(3),(4); 19.10.701.B.3. Moreover, the Hearing Officer's conclusion that any public challenge to the Division's acceptance of NMED's determination is beyond the scope of a standby permit proceeding, likewise violates the Act's and regulations' mandate to ensure that permittees comply with all applicable environmental laws and standards. *Id.*

The Hearing Officer's determination also undermines the consultation provisions of the Act and its regulations. *See*, NMSA 1978, § 69-36-7(J); 19.10.5.505.B.3 NMAC. The consultation requirements evince the Legislature's clear intent for MMD and the Director to consult with, but not be beholden to, other agencies that also have responsibility for regulating environmental matters. Moreover, while the Act explicitly provides that the Director may not implement environmental statutes which are the responsibility of other agencies, reclaiming the purported source or sources of contamination, i.e., the waste rock pile and storm water lagoon, are activities that lie squarely within the Director's regulatory authority. Thus, the Hearing Officer's interpretation of the Act and regulations subverts the Legislature's intent and improperly deprived MASE and Amigos Bravos of the opportunity to challenge MMD's acceptance of NMED's determination.

[3] Conversely, there is no provision in the Act that prohibits the Division from questioning the comments or determinations from other agencies.

C. Rio Grande Resources Failed to Demonstrate that the Mt. Taylor Mine Will be Economically Viable During the Standby Period.

The Act and MMD regulations require a standby permit applicant to demonstrate that the mine proposed for standby status will be economically viable during the standby period. NMSA 1978, 69-26-7(E)(6); 19.10.7.701.B.6 NMAC. In this case, RGR failed to demonstrate with any credibility that the Mt. Taylor Mine will be economically viable between now and 2016, when the current standby permit would expire.

In its standby application that it submitted to MMD, RGR asserts, without support, that:

> RGR has the largest uranium deposit in the United States, which is well over 100,000,000 pounds of U_3O_8 in the Mt. Taylor Mine ore body. The market price now does not permit a viable mining operation, primarily because of the availability of uranium from weapons decommissioning in the world and U.S. markets. However, such material will be used up after a period of time, after which the market demand for new uranium oxide should increase. Additionally, in the future the demand for clean [sic] nuclear power generating plants will increase as low-cost coal reserves are depleted and demand for electric power increases. These conditions and the high grade ore reserves at Mt. Taylor will increase the value of the Mt. Taylor Mine and lead to the resumption of operations in the relatively near future.

Standby Application at 3, § 1.6[4].

1. RGR Fails to Analyze Uranium Demand.

RGR has provided no substantive demonstration that the Mt. Taylor Mine will be economically viable during the standby permit period. Most significantly, neither RGR's written or verbal statements give any meaningful analysis of global demand for uranium.

RGR's written statement gives no meaningful analysis of uranium demand, asserting only that the supply of uranium from decommissioned weapons will fall "after a period of time" and

[4] At the public hearing on RGR's standby permit application, MMD's witness, on cross-examination, testified that RGR had submitted an economic analysis to MMD in June, 2011, but that it was confidential and unavailable for public review. Since the hearing, counsel for MASE and Amigos Bravos has made several requests, both in writing and telephonically, for MMD to make a determination whether all portions of RGR's economic analysis are confidential, but has not received a response from MMD.

that increased demand for nuclear power will fuel demand for uranium. However, RGR does not indicate when the uranium supply from decommissioned weapons will be depleted. Further, as explained in Section C.2, below, RGR fails to analyze global energy demand in support of its assertion that demand for nuclear energy will increase. RGR's written statement regarding the Mt. Taylor Mine's economic viability over the next five years lacks any specific information, data or analysis and is insufficient to support its standby permit application.

RGR also failed to provide adequate economic analysis in its testimony at the August 17, 2011 public hearing. There, RGR's witness, Mr. Doug Irving, simply touted RGR's position relative to other potential uranium operations that do not have existing mine infrastructure or permits. Testimony of Doug Irving ("Irving Testimony"), Tr. at 45:00 – 47:40.

Moreover, in his direct testimony, Mr. Irving offered no meaningful analysis of domestic or global uranium demand. He simply asserted, without support or analysis, that worldwide demand for uranium was increasing, that uranium prices are increasing, and uranium stockpiles from decommissioned weapons are decreasing. Irving Testimony, Tr. at 51:20 – 53:30.

On cross-examination, Mr. Irving was presented with data from the International Atomic Energy Agency ("IAEA"), Nuclear Energy Agency ("NEA") and Organization for Economic Cooperation and Development ("OECD") annual report on uranium supply and demand ("Uranium Red Book") showing that existing uranium mining capacity could fulfill global uranium demand until 2025. However, Mr. Irving was unable to rebut these data or provide data that contradicts the IAEA, NEA, and OECD data. Irving Testimony, Tr. at 1:39:04 – 1:42:30. A copy of the Uranium Red Book data is attached hereto as Exhibit C. Because IAEA data show that projected demand for the next 16 years can be satisfied with existing uranium mining capacity and RGR offered no evidence to contradict those data, RGR has not satisfied its burden

of showing that the Mt. Taylor Mine will be economically viable for the term of its standby permit.

2. RGR Fails to Analyze Energy Demand.

Additionally, RGR's permit application fails to analyze global energy demand during the permit period. RGR offered no testimony on this issue at hearing. Because of its failure to consider global energy demand – other than the cursory statement that demand for nuclear power will rise – RGR's analysis of the Mt. Taylor Mine is inadequate.

Indeed, had RGR provided, or the Division required, such an analysis it would have shown that global energy demand trends do not favor nuclear power in the long term and a surge in demand in the short term, i.e., in the next five years, is highly unlikely. For example, RGR does not provide any analysis about how the worldwide and domestic economic downturn affects electric power demand. According to the United States Energy Information Administration ("EIA"), the global economic downturn slowed energy consumption in 2008 and energy consumption contracted in 2009. United States Energy Information Administration, *World Energy Demand and Economic Outlook*, Report #:DOE/EIA-0484(2010), Chpt. 1 at 9 (July 27, 2010), attached as Exhibit D. The EIA's World Energy Demand and Economic Outlook report does not assume global economic recovery and energy demand growth until 2015. *Id.*

RGR also fails to consider how improvements in energy efficiency and demand for renewable energy sources will affect demand for nuclear power[5]. As indicated in the EIA world energy demand report, global demand for renewable sources of energy (and all other sources of

[5] Interestingly, although not a renewable resource, EIA projects that the percentage of electricity generated by coal will remain largely unchanged through 2035, directly contradicting RGR's statement that diminishing reserves of low-cost coal will increase demand for uranium. *World Energy Demand and Economic Outlook* at 12, Fig. 18.

energy) is projected to far outstrip demand for nuclear power. *World Energy Demand and Economic Outlook* at 11, Fig. 16.

Finally, RGR fails to account for the effect on worldwide energy demand due to countries such as Germany, Italy, Switzerland and Japan phasing out nuclear power. Mr. Lister's flat assertion that demand for uranium will grow despite the Fukashima disaster is insufficient. *See*, Tesimony of Joe Lister ("Lister Testimony"), Tr. at 1:02:19. Because RGR has failed to analyze energy demand, it has no basis for asserting that the Mt. Taylor Mine will be economically viable during the standby permit period.

3. RGR Fails to Consider the Lack of Uranium Ore Milling Capacity.

Finally, in order for uranium ore to be economically viable, it must be milled so that it can be further processed into fuel for nuclear power plants. Lister Testimony, Tr. at 1:03:02. In its written permit application, RGR fails completely to mention where Mt. Taylor Mine ore might be milled and whether the proposed mill has the capacity to receive RGR's ore.

At the August 17 public hearing, Mr. Lister provided some insight into how vague RGR's plans for securing a place to mill Mt. Taylor Mine ore are. Mr. Lister conceded that the only operating uranium mill in the United States is the White Mesa Mill in Blanding, Utah, owned by Denison Mines. Lister Testimony, Tr. at 1:03:09. Mr. Lister further testified that while Denison Mines was likely to use ore from its own mines for feed at White Mesa, it could accept ore from other mines. *Id.*, Tr. at 1:03:10 – 1:03:32. When asked whether the White Mesa Mill would accept Mt. Taylor ore, Mr. Lister stated that RGR had "talked" to Denison about milling. *Id.*, Tr. at 1:03:33. Mr. Lister did not offer any information to indicate that any agreements to mill Mt. Taylor ore had been made or were pending with Denison.

Further, Mr. Lister was vague about whether transportation costs to Blanding were prohibitive. *Id.*, Tr. at 1:04:30-31. However, Mr. Lister did concede that it was prohibitive to transport ore to Blanding at the current spot price of $50.00/lb. *Id.*, Tr. at 1:05:19. Significantly, this is the price for uranium that Mr. Lister indicated would be the price at which the Mt. Taylor Mine would be profitable. *See*, Mining and Minerals Division, March 25, 2009 Annual Inspection Report, an excerpt of which is attached as Exhibit E. Mr. Lister's inconsistent statements cast further doubt on the Mt. Taylor Mine's economic viability during the standby permit period.

Finally, RGR indicated that it is planning a mill near the mine site. However, since notifying the U.S. Nuclear Regulatory Commission ("NRC") in 2008 of its intent to build a mill near the Mt. Taylor Mine, RGR has delayed submission of required archaeological and radiological surveys twice. Copies of RGR's correspondence to the NRC is attached as Exhibit F and Exhibit G. Moreover, Mr. Lister testified that RGR had not yet completed the archaeological survey for the proposed mill site, nor had it begun the required radiological survey. Lister Testimony, Tr. at 1:09:50-51, 56-58. Because RGR failed to demonstrate that there will be any milling capacity for Mt. Taylor Mine ore during the standby permit period, the Mt. Taylor Mine will not be economically viable during that time[6].

IV. CONCLUSION

RGR's standby permit renewal application has several significant deficiencies that should prohibit it from being granted. In addition to uranium contamination of the alluvium whose

[6] Various public statements by RGR employees have indicated that Mt. Taylor Mine ore could be heap leached at the Cotter Mill in Canyon City, Colorado. However, RGR's permit application contains no mention of this possibility and RGR's witnesses did not discuss it during the public hearing. Therefore, that information is not part of the administrative record and should not be considered. In any event, the Cotter Mill's radioactive materials license prohibits it from accepting ore from any place except the Western Slope of the Colorado Rockies. See attached Exhibit H.

cause has not been addressed, RGR has also failed to demonstrate that the Mt. Taylor Mine will be economically viable in the period of its standby permit. Perhaps equally important, the public participation process for RGR's permit revision was so flawed that the Director cannot and should not reach a decision without further public input.

For these reasons, MASE and Amigos Bravos oppose issuing RGR a standby permit for five years without substantial conditions to address the source of the uranium contamination in the alluvium, interim reclamation measures to abate the alluvial contamination, and an a assurance that RGR has adequate financial resources to guarantee that interim reclamation measures will be conducted. Additionally, MASE and Amigos Bravos request additional public hearings or other opportunities to address the significant shortcomings identified in these comments. Alternatively, if these or substantially similar permit conditions are not placed on RGR's standby permit and further opportunities for public input are not provided, MASE and Amigos Bravos urge the Director to deny RGR's permit revision 10-1 and order RGR to begin close out activities immediately.

Thank you for your consideration of these concerns and please do not hesitate to contact me if you have any questions.

Sincerely,

Eric Jantz
Staff Attorney

Counsel for MASE and Amigos Bravos

cc: Stuart Butzier

AMIGOS BRAVOS
Friends of Wild Rivers

September 1, 2011

Mr. Fernando Martinez
Interim Division Director
Mining and Minerals Division
New Mexico Environment, Minerals and Natural Resources Department

Re: Amigos Bravos' Post Hearing Submission in the matter of Rio Grande Resources' Application for Renewal of Standby Permit, Permit Revision 10-1, Mt Taylor Mine, Permit No. CI002RE

Dear Director Martinez:

On behalf of Amigos Bravos, please consider the following post hearing submission in the above matter.

I. BACKGROUND

Amigos Bravos is a nationally recognized statewide river conservation organization dedicated to preserving and restoring the ecological and cultural integrity of New Mexico's rivers and waters. Amigos Bravos was a leading advocate in the process that led to the New Mexico Mining Act (NMMA) and has a vested interest in seeing that the NMMA is implemented effectively and fairly in accordance with its letter and intent.

The mining business is inherently boom-and-bust for a variety of reasons and Amigos Bravos understands that asking a mine to implement its closeout plan during "a *temporary* cessation of mining operations" [NMMA, 19.10.7.701 NMAC; emphasis added] is unreasonable. Absent, of course, evidence for environmental and/or public health problems from the mine site, a mine operator should have some latitude, although we would always prefer the earliest possible start to any remediation and reclamation activities.

However, "a temporary cessation of mining operations" is not the case with the Mount Taylor Mine (MTM), which has been out of production for almost 22 years.

In addition, the MTM has no prospects for viable economic activity into the foreseeable future, has existing and potential future contamination, and has outdated financial assurance.

Therefore, the Mining & Minerals Division should ***at best*** renew Standby Status for MTM only with conditions, for less than the maximum time period permitted, and after reviewing and updating the Closure Plan and Financial Assurance requirements. However, it is Amigos Bravos' preference that the mine owner, Rio Grande Resources (RGR), be informed that Standby Status is no longer appropriate and that closure should be implemented following a review and update of the Closure Plan and Financial Assurance.

II. Contamination

The NMMA requires the following as part of any Standby permit:

> **B.** ...
>
> **(2)** describe the measures to be taken to reduce, to the extent practicable, the formation of acid and other toxic drainage and to prevent releases that cause federal or state environmental standards to be exceeded;
>
> **(3)** describe how applicable federal and state environmental standards and regulations will be met during the duration of standby status and provide to the Director a written determination from the Secretary of the Environment Department stating that the permittee has demonstrated that the operation will be expected to achieve compliance with all applicable air, water quality and other environmental standards of the Environment Department during standby status if carried out as described;
>
> **(4)** describe how waste and storage units, leach piles, impoundments and pits will be stabilized during the duration of standby status

At present, the MTM and RGR cannot meet Standby permit requirements because there is incomplete characterization of existing contamination and therefore an inability to address subsections 2 through 4 of section B.

On September 1, 2010, the Mining Environmental Compliance Section, Groundwater Quality Bureau, New Mexico Environment Department (NMED) stated that they could approve at most a two (2) year Standby permit period because: 1) there is existing contamination in the alluvium whose source is unknown; and 2) the Stage 2 Abatement Plan investigation to characterize that contamination is incomplete.[1]

The new NMED Cabinet Secretary, David Martin, decided in May 2011 that RGR's ***promises*** to abide by all relevant environmental regulations were sufficient to issue a favorable Determination for a five (5) year Standby permit. However, in public testimony on the MTM Standby permit application in Grants on August 17, 2011, Mary Ann Menetrey, Program Manager of the Mining Environmental Compliance Section, who signed the September 1, 2010 letter, testified that characterization was still incomplete and

[1] Attachment #1

that the nature and extent of remediation/reclamation activities at the MTM would not be known until characterization was complete and could be analyzed.

Amigos Bravos agrees with the September NMED letter that it is not sufficient that RGR simply assert, without complete data and data analysis, that it can meet the requirements of the NMMA as they apply to Standby permits.

There is precedent for requiring more than promises from a mine operator.

On May 16, 2008, the Groundwater Quality Bureau wrote to Mr Holland Sheppard at the Mining Act Reclamation Program (MARP) regarding renewal of Standby Status for Freeport McMoRan's Little Rock Mine.[2] NMED said that,

> "...it is *inappropriate* for an additional standby period to be approved by NMED for the areas of the mine site posing *ongoing risks* to ground and surface water". [emphases added]

Although the Little Rock Standby permit application contained *provisions* for reclamation of the leach stockpile and other facilities and *promises* of a reclamation plan prior to remediation, NMED insisted that it could not issue a favorable Determination until a reclamation plan had been approved. Ultimately, Freeport McMoRan submitted a "Construction Design Quality Assurance Plan (CDQAP), although approval by MMD and NMED of the revised CDQAP was still contingent on approval of an amended Mine Plan of Operation to reclaim the leach stockpile. In this important case, MMD and NMED placed conditions on the mine operator before granting yet another Standby Status renewal. Similarly, NMED earlier sought to apply conditions in the case of the MTM based on the lack of adequate characterization and therefore lack of knowledge regarding the extent of possible reclamation/remediation activities. . The Little Rock standby permit process illustrates how the Mining Act intended for agencies to work together – consulting and cooperating to ensure that mining operations are conducted in as an environmentally responsible manner as possible. Forcing MMD to blindly follow NMED's direction is contrary to this purpose. As with the Little Rock mine, it is possible that the activities required at the MTM could require an amended Mine Plan of Operation (and amendments to the Closure Plan and Financial Assurance), further limiting RGR's ability to make a positive statement about its ability to meet the Standby permit requirements listed earlier.

The current positive Determination letter from NMED is based solely on assertions and promises from RGR. At the Grants public hearing on August 17th, Mining and Minerals Division Interim Director, Fernando Martinez, indicated reluctance, or even an inability, to require more of RGR than NMED's

[2] Attachment #2

Determination letter required. However, the NMMA Standby rules clearly state that:

> **D.** The Director may require additional information [beyond the list of requirements] to ensure that an operation in standby status minimizes adverse impacts to the environment and complies with applicable regulations.

In other words, the Director may – as NMED did earlier – require that RGR's Standby permit be limited in time in order to allow all necessary information to be brought to bear on the contamination at the MTM site. In refusing to act independently, the Director is abrogating his responsibility under the NMMA.

III. Standby Timeline

The NMMA allows a ***maximum*** of one (1) Standby permit and three (3) renewals ***up to*** five years each" [emphasis added]; that is, a maximum of twenty (20) years.

It is important to emphasize that RGR acquired the MTM in 1991 and has ***never*** put the mine into production. In other words, RGR has avoided closure at the MTM for twenty (20) years.[3] Placing conditions and a limited time period on the current Standby permit application is entirely consistent with the letter and intent of the NMMA.

MMD approved the mine's Closure Plan and Financial Assurance in 1998. The first Standby Status permit was approved in October 1999. Unofficially, then, the mine has been in "standby" for the 20 years that RGR has owned it. Officially, the mine has been in Standby Status for almost twelve (12) years. Amigos Bravos believes, then, that the MTM should have, at most, only another eight (8) years of Standby Status remaining.

That issue aside, and given the reality of non-operations at the MTM, there is every reason for MMD to declare that RGR can no longer claim that the MTM is experiencing "a *temporary* cessation of mining operations". RGR has never had mining operations at the MTM to cease, temporarily or permanently. There is no justification for renewing Standby Status for the mine under these circumstances; it clearly violates the intent of the NMMA in seeking a compromise between getting early closure and giving a mine operator time to resume operations.

IV. Economic Viability

The NMMA Standby regulations state that an applicant must:

---

[3] Amigos Bravos is well aware that the NMMA and Standby processes did not come into play until after RGR purchased the MTM, but the larger point is that RGR has an unfounded basis for claiming a "temporary" cessation of operations in an effort to avoid closure

B. ...

(**6**) provide an analysis of the anticipated future economic viability of the units proposed for standby status.

The MTM has been out of production since late 1989 – before RGR purchased the MTM – and was placed in "Inactive Status" in January 1990 – almost 22 years ago. As already noted, RGR has never had the mine in production. RGR asserts in its application that production at the MTM will resume in the "relatively near future", but the application contains no analysis – as required by the NMMA – on "future economic viability". Just as with the issue of contamination at the MTM, RGR is simply ***promising*** that it will resume operations "soon".

Amigos Bravos understands that – assuming the accuracy of the estimate of recoverable uranium at the site – the MTM represents a ***potentially*** enormous economic opportunity for the mine owner. The MTM also represents a ***potentially*** large source of jobs, although almost certainly not a source of a large number of long-term jobs, since the history of mining operations in New Mexico and around the world is one of boom-and-bust activity.

But "potential" is not the same as "viability" in the context of the NMMA's intent in granting Standby Status to a mine experiencing "temporary" cessation of operations. Imagine RGR going to a set of investors and telling them that if they just trust its promises, RGR will unleash the potential in the MTM and begin operations "in the relatively near future", with no indication of a path forward to profitable production. In this context, "viability" assumes that the mine – during the ***maximum*** five-year Standby period for any permit or renewal – can reasonably be expected to resume operations and that the mine operator can provide an analysis that justifies that expectation.

However, a look at production and other activities at the mine in relation to the spot price for uranium is instructive.[4]

The spot price was at or above $50 in 1979 when the mine started production, but had steadily declined to around $25 by the time production stopped in 1982. During the 1985-89 production run, the price ranged from around $18 down to $10. The price continued to hover around $10 when MMD approved the closure plan in 1998 and the first Standby Status permit in 1999. When the second Standby Status renewal was granted, in July 2005, the spot price of uranium had been rising for two (2) years, was higher than at any time since 1980, and was more than triple what it had been when RGR purchased the mine. The price continued to rise for another 1½ years until peaking in 2007 at $138. The current price is still around $50.

[4] Attachment #3

For the past five (5) years, the price of uranium has never been below what it was when the mine started producing in 1979, but RGR states in its renewal application that recent years have shown only "some improvement", and that it will have to wait until there is "sufficient improvement", which it expects, conveniently, in "another four or five years".

The recent price boost led the uranium industry across the globe to begin what industry representatives themselves characterized as "a feeding frenzy" for leases, permits, and mine plans. However, during this frenetic activity across the uranium industry, RGR made no apparent effort to finally start operations at MTM, made no apparent effort to move forward on its mill application with the Nuclear Regulatory Commission or get firm commitments from other mill operators, and made no apparent effort to get long-term contracts that would underpin mining and milling activities. Finally – since spot prices or any other market signal are not what lead to mine operations – RGR has given no indication at all that it has any likelihood of a long-term contract with a buyer over the next five years.

In fact, the only economic activity RGR points to in its application is a Water Supply Project, which appears to be a fancy way of describing mandatory mine dewatering necessary before any production at the mine and which, therefore, is not likely to actually go into full-time operation until the mine does and which, in any case, seems to suffer from a lack of interested parties.

On the other hand, Neutron Energy, which consolidated three mines into two on the other side of Mt Taylor, was very active during the uranium price boom. Neutron announced on August 16, 2011 – at a MMD Director's Advisory Committee meeting which Amigos Bravos and many MMD staff attended – that it plans on moving forward with its mining application process in early 2012 and is beginning the process to build its own mill.

Furthermore, RGR's Mine Manager, Joe Lister, stated at least twice at the Grants public hearing on the MTM application on August 17th that RGR ***always*** says in its Standby applications for the MTM that it expects that there will be "sufficient improvement" in "another four or five years".

This is simply outrageous. Mine companies cannot be allowed to treat the NMMA Standby process as a rubber stamp allowing them to avoid closure for twenty (20) years or more. Based on Mr Lister's statement alone, RGR's claim of economic viability should be thrown out and the request for renewed Standby Status declined. Amigos Bravos' own suspicion is that, because MTM is the single largest high-grade uranium source in the United States, viable production at the mine would depress prices across the industry, a condition that is likely to be the case for the foreseeable future – certainly much longer than "another four or five years".

Of course, doing remediation and reclamation *would* provide economic activity at the mine, but this does not appear to interest RGR.

V. Financial Assurance

The New Mexico Mining Act requires that before a permit is issued, the applicant must provide financial assurance (FA) sufficient to ensure that the permit's performance requirements can be met, including closure. The FA estimate must be reviewed periodically.

In the case of MTM, the FA has not been revised since 1998 when the MMD approved the Closure Plan and FA. It is highly unlikely that the $468,000 estimated in 1998 is still relevant. Taking into consideration the lack of complete characterization of the waste rock pile and the potential for significant reclamation activity, it is even less likely that either the Closure Plan or the FA is adequate.

As an example of recent mandated update of a FA requirement, the NMED Resource Protection Division (RPD) notified Chevron Mining in July this year that it had made a Determination of Inadequate Financial Assurance for the two discharge permits at the Molycorp Mine.[5] The required revision of FA at Molycorp is also a matter before the MMD in coordination with the RPD.

Therefore, before issuing a Standby Status renewal permit for the MTM, MMD must wait for complete characterization of the alluvium contamination and the full scope of potential reclamation/remediation activities, and then, if necessary, update the Closure Plan, amend the Mine Operation Plan, assure that other related permit requirements are met, and establish a new estimate for FA.

VI. "Bad Actor"

The NMMA has what are commonly referred to as "bad actor" provisions. In the scope of the NMMA, these are applied only to "new operations". It is a convenient fiction for RGR that at the time it came under the NMMA, the MTM was classified as an existing mine, even though it was in "Inactive" status before RGR purchased it and RGR had made no effort to initiate mining operations in the nine years between its purchase of the MTM and its first Standby permit.

Nevertheless, as previously noted, the NMMA allows the MMD Director to consider any additional information that might bear on a Standby permit or permit renewal.

In its review of RGR's DP-1712, the NMED Groundwater Quality Bureau noted that RGR and the Cotter

---

[5] Attachment #4

mill in Colorado are "closely held subsidiaries" of General Atomics, itself a privately held corporation.[6] At the time of the NMED DP-1712 review, both RGR and Cotter shared the same President and Treasurer. Given the close ties among RGR, Cotter, and General Atomics, NMED concluded that:

> [b]ecause both RGRC and Cotter engage in related businesses, have a common business purpose in processing uranium ore from the Mt. Taylor Mine, and share the same offices, Cotter's compliance history at the Canon City facility is relevant to this proceeding.

RGR's corporate sister, Cotter shows a pattern of violations at its site:

- In a letter stamped "Jul 25 2008", the Colorado department of Public Health and Environment notified the Cotter Mill that it was in violation of License Condition 23.1 for a plume of dissolved uranium.[7] Cotter was directed to submit a corrective action program proposal and schedule within sixty (60) days.
- In a letter stamped "Jul 07 2010", the same Department issued another Notice of Violation for deficiencies in the Radiation Management Program that resulted in corrective actions not being taken where radiation levels exceeded standards. In addition to the Notice of Violation, the letter also contained three (3) Items of Concern, including an outdated Reclamation Plan.[8]
- On December 9, 2010, the Colorado Division of Reclamation Mining & Safety sent Cotter a "Cease and desist" Order as final determination in the matter of Notice of Violation MV-2010-030. The Order was based on the undisputed fact that Cotter had refused to comply fully with four (4) corrective actions mandated by the Colorado Mined Land Reclamation Board.

Furthermore, RGR seems to have a pattern of unfounded and blatant attempts to block the public participation requirements of its various permits. Public participation is a key component of the Standby permit process (as it is for all permit processes in New Mexico) and concerted efforts to thwart that participation should not be treated lightly.

The NMED Groundwater Quality Bureau characterized RGR's attempt to "preempt" public comment – specifically testimony from the Multicultural Alliance for a Safe Environment (MASE) – at the public hearing for its Discharge Permit as "inappropriate". At the public hearing in Grants on August 17th, 2011, RGR succeeded in getting the Hearing Officer to improperly exclude any testimony by Amigos Bravos, MASE, their legal representative, the New Mexico Environmental Law Center (NMELC), or their technical expert, Jim Kuipers. RGR's reasons for excluding all this public participation were unfounded and seriously compromised the hearing.[9]

VII. Conclusion

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[6] Attachment #5 (minus original document attachments)
[7] Attachments 6, 7, and 8 cover the various Cotter violations referenced in the text
[8] Note that the Cotter Reclamation Plan that Colorado considered outdated was only five (5) years old at the time of the letter, while RGR's MTM Closure Plan is ***thirteen*** (13) years old
[9] More detail on this matter is contained in the submission from the NMELC

Amigos Bravos has for many years been concerned that the New Mexico Mining Act (NMMA) regulations providing for Standby Status have become a mechanism for mining companies to postpone reclamation activities rather than a tool to balance reclamation with reasonable scope for a return to operations. For 22 years – the entire period of its ownership of the MTM – RGR has ***neither*** entered the MTM into production nor commenced reclamation.

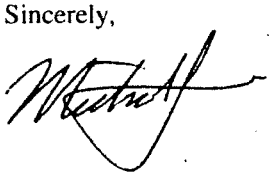
The NMMA clearly intended that mine owners and operators undertake as much reclamation and remediation as practical while in Standby Status. In general, this has not been the case, although the NMED had recently begun to insist on conditions, first at the Little Rock Mine and then – until the new administration – at the Mount Taylor Mine. That recent effort to impose meaningful conditions on standby permits needs to be revived:

- The Mt Taylor Mine is a pollution source in the alluvium and poses a risk for new pollution;
- The NMED had initially insisted on only a two (2) year permit renewal because of incomplete characterization and therefore unknown reclamation activities; those concerns have not been been met in a way that would justify the more recent NMED Determination supporting a five (5) year renewal;
- The most favorable interpretation shows that the mine has already been in Standby for 12 years and that a time-limited Standby renewal at this time would not "rob" RGR of any reasonable Standby Status;
- RGR cannot present any evidence that the MTM will be economically viable "in the relatively near future" or ever;
- The mine Closure Plan and Financial Assurance must be reviewed prior to any permit renewal; it is highly likely that given the length of time since the initial FA estimate as well as the potential for significant activities associated with a completed characterization that the FA estimate will have to be increased.

Amigos Bravos does not believe that RGR should be given a renewed Standby permit. Instead, given the undisputed fact that the mine has already contaminated at least one place on its site and has not completed characterization of that contamination; the 22 years of non-operations and RGR's failure to initiate any meaningful return to operations during the recent uranium price boom despite the magnitude of such activity by the rest of the industry in New Mexico; the pattern of violations within its shared corporate structure; the strong likelihood that the Closure Plan, Financial Assurance, and possibly the Mine Plan of Operations will require updating; and a general failure to meet the requirements for Standby Status as outlined in the NMMA, RGR should be ordered to begin closeout.

Thank you for your consideration of these concerns and please do not hesitate to contact me if you have any questions.

Sincerely,



Michael Jensen
Communications Director
Amigos Bravos

ATTACHMENTS

#1 – September 29 2010, MARP/MMD/EMNRD: Review of Application for Renewal of Standby Status, Permit Revision 10-1, Mt. Taylor Mine, Permit No CI002RE

#2 – May 16 2008, GWQB/NMED: Comments on Little Rock Mine Revised Application for Renewal of the Little Rock Mine Standby Status, Freeport McMoRan Copper & Gold, Permit No. GR007RE (attached as two pages)

#3 – Monthly Uranium Spot Price 1980-2011 w/ milestones in RGR MTM history

#4 – July 7 2011, RPD/NMED: Determination of Inadequate Financial Assurance, Chevron Mining Inc, Questa Mine and Tailing Facility, DP-1055 and DP-933

#5 – April 19 2010, GWQB/NMED: Groundwater Quality Bureau's Response to RGRC's Motion *In Limine* to Exclude Evidence and Limit the Scope of the Hearing

#6 – July 28 2008, CDPHE: Cotter Corporation Canon City Mill, Colorado Radioactive Materials License 369-01, Notice of Violation

#7 – July 7 2010, CDPHE: Notice of Violation

#8 – December 8 2010, CDRMS: Findings of Fact, Conclusions of Law, and Order, Cotter Corporation, File No. M-1977-300, MV-2010-030

Confidential Business Information **Attachment** #3

NOTE: Attachment removed and placed in the **Confidential File**
For the ~~Tyrone~~ MT. TAYLOR **Mine, Permit No.** ~~GR810RE~~ CI002RE

BEFORE THE NEW MEXICO MINING COMMISSION

IN THE MATTER OF THE PETITION FOR REVIEW OF THE DIRECTOR'S ACTION DATED JANUARY 31, 2012, PERMIT REVISION 10-1 TO PERMIT NO. CI002RE

THE MULTICULTURAL ALLIANCE FOR A SAFE ENVIRONMENT and AMIGOS BRAVOS,

Petitioners

AFFIDAVIT OF DAVID J. ENNIS

I, David J. Ennis, declare and state the following:

1. I am over 18 years of age.
2. I am a geoscientist at the Energy, Minerals and Natural Resources Department, Mining and Minerals Division ("MMD"), and have been employed as such for approximately two years.
3. On or about January 26, 2011, I met Mr. Eric Jantz at the MMD office in Santa Fe, New Mexico, provided him with a copy of Rio Grande Resources application for renewal of Standby Permit No.CI002RE, which MMD maintains for public inspection, and made a conference room available for him to use while reviewing the application.
4. The copy of the application that is retained by MMD for public inspection contains an inserted page that contains the following language: "**Confidential Business Information NOTE:** Attachment removed and placed in the **Confidential File for the Mt. Taylor Mine, Permit No. CI002RE.**"
5. Mr. Jantz did not ask me about the confidential information that had been removed or otherwise mention it to me, nor, to my knowledge, did he ask about it or mention it to any other MMD staff member.

EXHIBIT 6

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24 day of April, 2012.

David J. Ennis

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

SUBSCRIBED, SWORN TO and ACKNOWLEDGED before me on April 24, 2012, by David J. Ennis.

OFFICIAL SEAL
DIANA M. SAINZ
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: June 5, 2013

Notary Public

My commission expires:

June 5, 2013

State of New Mexico
ENVIRONMENT DEPARTMENT
Ground Water Quality Bureau
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 5469
Santa Fe, New Mexico 87502-5469
Telephone (505) 827-2918 Fax (505) 827-2965
www.nmenv.state.nm.us

SUSANA MARTINEZ
Governor

JOHN SANCHEZ
Lieutenant Governor

DAVID MARTIN
Secretary

RAJ SOLOMON, P.E.
Deputy Secretary

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

May 27, 2011

Joe Lister, Mine Manager
Rio Grande Resources Corporation
P. O. Box 1150
Grants, New Mexico 87020

RE: NMED Determination for Mt. Taylor Standby Request

Dear Mr. Lister:

The New Mexico Environment Department received correspondence from the Mining and Minerals Division (MMD) dated July 22, 2010, regarding Rio Grande Resources Corporation's (RGRC) request for Standby Status for the Mt. Taylor Mine. MMD requested that NMED either provide the written determination that environmental standards will be achieved during the standby period, or provide MMD with further information needed by the operator to address the NMED determination.

NMED responded to MMD's request in a letter dated September 1, 2010 in which NMED stated "Additional information has been obtained through the Water Quality Control Commission Abatement regulations over the last few years related to contamination in the alluvium. RGRC has not ruled out the potential contribution from the un-reclaimed waste rock pile at the site. Therefore, NMED cannot provide a written determination that environmental standards will be met over the 5-year period proposed for standby."

Following NMED's comment letter to MMD, RGRC submitted supplemental Stage 1 and revised Stage 2 Abatement Plans which NMED recently approved to address characterization of the retention pond and un-reclaimed waste rock pile and implementation of the selected remedial alternative to address alluvial groundwater contamination associated with RGRC's former sewage lagoon. NMED therefore is in agreement with granting the Standby request for a period of 5 years while abatement activites proceed and has provided a written determination.

EXHIBIT 7

State of New Mexico
ENVIRONMENT DEPARTMENT
Office of the Secretary
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 5469
Santa Fe, New Mexico 87502-5469
Telephone (505) 827-2855
www.nmenv.state.nm.us

SUSANA MARTINEZ
Governor

JOHN SANCHEZ
Lieutenant Governor

DAVE MARTIN
Secretary

RAJ SOLOMON, P.E.
Deputy Secretary

DETERMINATION PURSUANT TO
THE NEW MEXICO MINING ACT,
NMSA 1978, §69-36-7 (E)(3), AND
NEW MEXICO MINING ACT RULE 701.B.3
FOR STANDBY STATUS

Determination is hereby provided that Rio Grande Resources, the applicant for the Mt. Taylor Mine, Permit No. C1002RE, submitted pursuant to the New Mexico Mining Act NMSA 1978, §69-36-1 through 20 (Repl. Pamp. 1977) (NMMA), has demonstrated that during standby status the operation will be expected to achieve compliance with all applicable air, water quality and other environmental standards if carried out as described in the NMMA permit application for standby status and all applicable state and federal air, water quality and other environmental permits.

Applicant:	Rio Grande Resources Corporation
Operation:	Mt. Taylor Mine
Permit No.:	C1002RE

Determination by: David Martin

David Martin, Secretary
New Mexico Environment Department

Date: May 27, 2011

BEFORE THE NEW MEXICO MINING COMMISSION

IN THE MATTER OF THE PETITION FOR REVIEW OF THE DIRECTOR'S ACTION DATED JANUARY 31, 2012, PERMIT REVISION 10-1 TO PERMIT NO. CI002RE

THE MULTICULTURAL ALLIANCE FOR A SAFE ENVIRONMENT and AMIGOS BRAVOS,

Petitioners

AFFIDAVIT OF GERARD A. SCHOEPPNER

I, Gerard A. Schoeppner, declare and state the following:

1. I am over 18 years of age.
2. I am Acting Bureau Chief of the New Mexico Environment Department's Ground Water Quality Bureau and have been employed in the Bureau for approximately 9 years.
3. Attached to this Affidavit is a true and correct copy of a notice of the filing of Rio Grande Resources' submission of a Stage 2 Abatement Plan for the Mt. Taylor Mine, which was published on September 10, 2010.
4. Neither The Multicultural Alliance for a Safe Environment nor Amigos Bravos requested a hearing on the Abatement Plan.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of April, 2012.

Gerard A. Schoeppner

EXHIBIT 8

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

SUBSCRIBED, SWORN TO and ACKNOWLEDGED before me on April 24, 2012, by Gerard A. Schoeppner.

Catherine A. Velazquez

Notary Public

My commission expires:

12-05-15

OFFICIAL SEAL
Catherine Velazquez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 12-05-15

RIO GRANDE RESOURCES

Jerry Schoeppner
Ground Water Quality Bureau
New Mexico Environment Department
1190 St. Francis Drive
PO Box 5469
Santa Fe, New Mexico
87502-5469

September 13, 2010

SEP 15 2010

Regarding: Stage 2 Ground Water Abatement Program
Mt. Taylor Mine

Dear Mr. Schoeppner, Jerry,

Enclosed please find the information, publications and certified mailings of the Public Notice requirements for the Stage 2 Ground Water Abatement Program.

If you should have any questions, please call me at: 505-287-7971 or email at joe.lister@riogranderesources.com

Best Regards,

Joe Lister
Mine Manager
Mt. Taylor Mine

enc

PUBLIC NOTICE

MT. TAYLOR MINE STAGE 2 ABATEMENT PLAN

Rio Grande Resources Corporation, PO Box 1150, Grants, New Mexico 87020, located at the Mount Taylor Mine which is located about one half mile north of San Mateo, New Mexico, proposes the following abatement plan:

Nature of Pollution and Proposed Abatement Plan:

An isolated zone of saturation at the base of the alluvium, having an extent of approximately 9 acres and a thickness of approximately 1 foot, exhibits elevated levels of Nitrate, Chloride, Sulfate, Uranium and Total Dissolved Solids. The Abatement Plan proposes to eliminate the saturation using phytoremediation (remediation using plants) with a minor pump extraction component.

Procedures Followed By the Secretary in Making Final Determination:

The Secretary of the New Mexico Environment Department will accept written statements or comments regarding the proposed Stage 2 Abatement Plan and requests for a public meeting or hearing that include the reasons why a meeting or hearing should be held, until October 10, 2010. Written statements or comments should be submitted to:

Jerry Schoeppner
Ground Water Quality Bureau
New Mexico Environment Department
1190 St. Francis Drive
PO Box 5469
Santa Fe, New Mexico 87502-5469

A Public meeting or hearing may be held if the NMED determines that there is significant public interest. The secretary will then either approve the Abatement Plan or request modifications.

Viewing Abatement Plan

Persons interested in viewing a copy of the Stage 2 Abatement Plan, may do so by contacting Jerry Schoeppner of the New Mexico Environment's Ground Water Quality Bureau at the above address or at (505) 827-0652.

AVISO PUBLICO

MINA Mt. TAYLOR ETAPA 2 PLAN DE DESCONTAMINACION

Rio Grande Resources Corporation, PO Box 1150, Grants, Nuevo Mexico 87020, localizada en la Mina Mount Taylor la cual está ubicada aproximadamente a media milla hacia el Norte de San Mateo, Nuevo México, propone el siguiente plan de descontaminación:

Naturaleza de la Contaminación y Plan Propuesto de Descontaminación:

Una zona aislada (separada) de saturación a la base del aluvión, con una extensión de aproximadamente 9 acres y una profundidad (espesor) de 1 pie, muestra elevados niveles de Nitrato, Cloruro, Sulfato, Uranio y Solidos Totales Disueltos. El Plan de Descontaminación propone eliminar la saturación usando el proceso de phyto curación (curación o descontaminación usando plantas) con un equipo menor de bombeo.

Procedimientos seguidos por el Secretario durante la toma de Decisión Final:

El Secretario del Departamento Ambiental de Nuevo México (NMED)aceptaránotificacionesescritas o comentarios relacionados al propuesto Plan de Descontaminación Etapa 2 y solicitará por reuniones o audiencias públicas que incluyan las razones de las mismas y de porque las reuniones o audiencias deben ser sostenidas hasta October 10, 2010.

Notificaciones escritas o comentarios deben ser consignados a:

Jerry Schoeppner
Bureau de Calidad de AguasSubterráneas
DepartamentoAmbiental de Nuevo Mexico
1190 St. Francis Drive
PO Box 5469
Santa Fe, Nuevo Mexico 87502-5469

Una audiencia o reunión pública pudiese ser sostenida si el NMED determina que existe un interés público significante con relación al caso. El Secretario decidirá si aprueba el Plan de Descontaminación o si exige modificaciones del mismo.

Revisión (Vista) del Plan de Descontaminación

Personas interesadas en ver una copia del Plan de Descontaminación Etapa 2 pudiesen hacerlo contactando a Jerry Schoeppner del Bureau de Calidad de Aguas Subterráneas del Departamento Ambiental de Nuevo México a la dirección arriba especificada o al (505) 827-0652.

Cibola County Public Notices

Cibola County Beacon Classifieds

BOATS

1982 SUNRAY, 17 ft open bow, 140 horsepower, 4 cyld. Mercury outdrive $3,500. 285-7091.

MOTOCYCLES

2008 VICTORY Kingpin Freedom 100/6 50 V twin 4 stroke, low miles. Custom Detailed. Great condition; one owner. Contact Larry E-mail lsanchez @7cities.net or 505-290-7092.

ADVERTISE

PUBLIC NOTICE

PUBLIC NOTICE

THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF CIBOLA
STATE OF NEW MEXICO
STEVEN OLIVER,
Petitioner,
vs.
No. D-1333-PG-2010-037
v.
AMANDA OLIVER and JOSE WATSON,
Respondents.
In the Matter of MARCUS WAGGONER,
A Child:
AMENDED NOTICE OF KINSHIP GUARDIANSHIP PROCEEDING

GREETINGS:

Amanda Oliver and Jose Watson, Respondents:

TAKE NOTICE that in accordance with provision of NMSA 1978 Sections 40-10B-1 through 40-10B-15 the Petitioner, Steven Oliver, will apply to the Honorable Joseph Artie, Special Commissioner in the 13th Judicial District, Cibola County, New Mexico, at 9:00 a.m. on the 21st day of October 2010 for an ORDER GRANTING KINSHIP GUARDIANSHIP over Marcus Waggoner, dob 2/13/06. Notice is being given to the Navajo Nation, consistent with the Indian Child Welfare Act.

Kathy M. Gallegos
Chief Clerk
District Court Clerk
by Tolnette Garcia
Deputy Court Clerk
submitted by:
Steven Oliver
Petitioner, pro se

Published in the Cibola County Beacon August 27 and September 3, 10, 2010. Invoice #10948.

PUBLIC NOTICE

Notice is hereby given that on May 1, August 20, September 30, 2008 and again on October 27, 2008, Transmission Agency of Northern Arizona, Inc., c/o William F. Helfrich, P.O. Box 33695, Denver, Colorado, 80233-0695, filed application No. B-872 B with the STATE ENGINEER for Permit to Use Existing Well for Supplement Ground Water within the

PUBLIC NOTICE

which will allow additional flexibility to manage water production and water rights at those times additional water production is required at the Prewitt Escalante Generating Station."

Existing wells B-87-B-S-2 through B-87-B-S-6, existing well B-7 (proposed as a supplemental well by this application), and the place of use are all owned by the applicant. Wells B-87-B-S-2 through B-87-B-S-6 and the place of use are generally located approximately 4 to 8 miles northwest of the Town of Prewitt and north of Interstate 40 in McKinley County, New Mexico. Well B-7 is located approximately 8 miles southeast of the Town of Prewitt, just east of Interstate 40, in Cibola County, New Mexico.

Any person or entity shall have standing to file an objection or protest if they object that the granting of the application will: (1) be detrimental to the objector's water right, or (2) be contrary to the conservation of water within the state or detrimental to the public welfare of the state, provided, that they show how they will be substantially and specifically affected by the granting of the application.

A valid objection or protest shall set forth the grounds for asserting standing and shall be legible and signed, and include the mailing address of the objector. An objection or protest must be filed with the State Engineer no later than 10 calendar days after the date of the last publication of this notice. An objection or protest may be mailed to the Office of the State Engineer, 5550 San Antonio Dr. NE, Albuquerque, New Mexico 87109-4127, or faxed to (505) 383-4030, provided that the original is hand-delivered or postmarked

PUBLIC NOTICE

Denise Baca,
City Clerk

Published in the Cibola County Beacon September 10, 2010. Invoice #10955.

PUBLIC NOTICE

THIRTEENTH JUDICIAL DISTRICT COURT
STATE OF New Mexico
COUNTY OF CIBOLA
IN THE MATTER OF A PETITION FOR CHANGE OF NAME OF DONALD DEAN MILLER (MCCOY)
NO. D1333CV2010-215
NOTICE OF CHANGE OF NAME

TAKE NOTICE that in accordance with the provisions of Sec. 40-8-1 through 40-8-3 NMSA 1978, the Petitioner Donald Dean Miller (McCoy), will apply to the Honorable Joseph Artie, Special Commissioner of the Thirteenth Judicial District at the Cibola County Courthouse, Grants, New Mexico at 9:00 a.m. on the 12th day of October, 2010 for an ORDER FOR CHANGE OF NAME from Donald Dean Miller to Donald Dean McCoy.

Kathy M. Gallegos
District Court Clerk
By: Connie M. Gallegos
Deputy Court Clerk
Submitted by:
Donald Dean Miller (McCoy)
801 Gunnison
Grants, NM 87020

Published in the Cibola County Beacon September 10, 17, 2010. Invoice #10970.

PUBLIC NOTICE

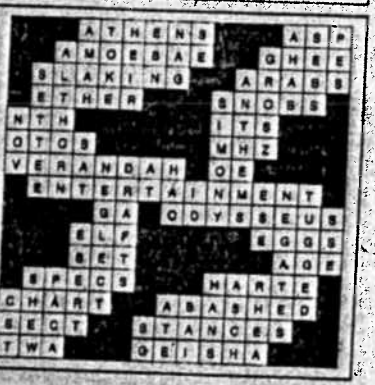
A special city council meeting is scheduled for Tuesday, September 14, 2010, at 6 P.M. in the County Complex, 515 W. High St., Grants. Agendas will be available at City Hall on Monday, September 13, 2010. The public is invited to attend. Contact the city clerk at 287-7927 for further information.

If you are an individual with a handicap/disability and require a type of auxiliary aid or service to participate in city meetings, please contact the city clerk at 287-7927 at least one week in advance of the scheduled meeting or as soon as possible, to make necessary arrangements.

Denise Baca,
City Clerk

Published in the Cibola County Beacon September 10, 2010. Invoice #10971.

PUZZLE SOLUTION



PUBLIC NOTICE
MT. TAYLOR MINE STAGE 2 ABATEMENT PLAN

Rio Grande Resources Corporation, PO Box 1130, Grants, New Mexico 87020, located at the Mount Taylor Mine which is located about one half mile north of San Mateo, New Mexico, proposes the following abatement plan:

Nature of Pollution and Proposed Abatement Plan:

An isolated zone of saturation at the base of the alluvium, having an extent of approximately 9 acres and a thickness of approximately 1 foot, exhibits elevated levels of Nitrate, Chloride, Sulfate, Uranium and Total Dissolved Solids. The Abatement Plan proposes to eliminate the saturation using phytoremediation (remediation using plants) with a minor pump extraction component.

Procedures Followed By the Secretary in Making Final Determination:

The Secretary of the New Mexico Environment Department will accept written statements or comments regarding the proposed Stage 2 Abatement Plan and requests for a public meeting or hearing that include the reasons why a meeting or hearing should be held, until October 10, 2010. Written statements or comments should be submitted to:

Jerry Schoeppner
Ground Water Quality Bureau
New Mexico Environment Department
1190 St. Francis Drive
PO Box 5469
Santa Fe, New Mexico 87502-5469

A Public meeting or hearing may be held if the NMED determines that there is significant public interest. The secretary will then either approve the Abatement Plan or request modifications.

Viewing Abatement Plan:

Persons interested in viewing a copy of the Stage 2 Abatement Plan, may do so by contacting Jerry Schoeppner of the New Mexico Environment's Ground Water Quality Bureau at the above address or at (505) 827-0552.

Published in the Cibola County Beacon September 10, 2010. Invoice #10966.

AVISO PUBLICO
MINA MT. TAYLOR ETAPA 2
PLAN DE DESCONTAMINACION

Rio Grande Resources Corporation, PO Box 1130, Grants, Nuevo Mexico 87020, localizada en la Mina Mount Taylor la cual está ubicada aproximadamente a media milla hasta el Norte de San Mateo, Nuevo México, propone el siguiente plan de descontaminación:

Naturaleza de la Contaminación y Plan Propuesto de Descontaminación:

Una zona aislada (separada) de saturación a la base del aluvión, con una extensión de aproximadamente 9 acres y una profundidad (espesor) de 1 pie, muestra elevados niveles de Nitrato, Cloruro, Sulfato, Uranio y Solidos Totales Disueltos. El Plan de Descontaminación propone elimi-

State of New Mexico
ENVIRONMENT DEPARTMENT

Ground Water Quality Bureau

Harold Runnels Building
1190 Saint Francis Drive, PO Box 5469
Santa Fe, NM 87502-5469
Telephone (505) 827-2855 Fax (505) 827-2965
www.nmenv.state.nm.us

SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

DAVE MARTIN
Secretary
BUTCH TONGATE
Deputy Secretary
JAMES H. DAVIS, Ph.D.
Division Director

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

March 13, 2012

RECEIVED
MAR 15 2012
MINING & MINERALS DIVISION

Mr. Joel Lister, Mine Manager
Rio Grande Resources Corporation
P.O. Box 1150
Grants, NM 87020

RE: Mt. Taylor Mine—Discharge Permit-61 abatement: New Mexico Environment Department comments on "Mine waste rock pile characterization report, Mt. Taylor mine, San Mateo, New Mexico [rev. 1]" (February 16, 2012)

Dear Mr. Lister:

The New Mexico Environment Department ("NMED") has reviewed the above-referenced report. In general, the report satisfies NMED's requirements for further investigation into potential sources of observed perched alluvial ground water contamination through characterization of the mine waste rock area, which includes the area underlain by the former sewage lagoon. From the data and analysis presented in this report and as concluded by Rio Grande Resources Corporation, the likely source of this alluvial ground water contamination appears to be the residual saturation that remains within the sewage lagoon area; this source should be addressed by the currently-ongoing abatement activities directed at this area, including ground water monitoring.

Please call me at (505) 476-3777 or at david.mayerson@state.nm.us if you should have any questions.

Sincerely,

David L. Mayerson, Permit lead

Mining Environmental Compliance Section
Ground Water Quality Bureau
New Mexico Environment Department

copies:
David Ohori, MMD permit lead

c:\users\david\outlook\ubcckqa8\unmed rgr mine waste char rpt rev 03012012kv.docx

EXHIBIT 9