SPECIAL MEETING AGENDA
Wednesday, February 24, 2021

Join a Meeting, Zoom.us, Meeting Id # 534.180.495, Password 014764, audio 1-301-715-8592 or 1-253-215-8782
Telluride, Colorado

1. **9:30 AM CALL TO ORDER - ZOOM Special/Work session- Meeting - Zoom.us - Join a Meeting, Meeting Id # 534.180.495, Password 014764, audio 1-301-715-8592 or 1-253-215-8782**
2. **REVIEW OF AGENDA**
3. **CALENDAR REVIEW**
4. **CONSENT AGENDA**
   a. Approval of a letter of support on behalf of Bruin Waste Management for support of a recycling resources grant through CDPHE.
   b. Other, as needed.
5. **ADMINISTRATIVE MATTERS**
   a. 9:35 am Update on the Applebaugh Bridge.
      Ryan Righetti, County Road and Bridge Superintendent
   b. Discussion concerning the 5-Star State Certification Program/budget
      Mike Bordogna, County Manager; Kris Holstrom, Commissioner
   c. Review of the Hardrock Mining Comments.
      Hilary Cooper, Chair
   d. Discussion on the Wilson Mesa Trust parcel of land, citation (4)(b).
      Mike Bordogna, County Manager
   e. Other, as needed.
6. **Recess for agenda-setting with the Board and Staff (No decisions will be made).**

7. **PUBLIC HEALTH AND ENVIRONMENT**

(Board of Commissioners sitting as the San Miguel County Board of Public Health and Environment.)

a. 12:45 pm Discussion and update with the San Miguel County Stakeholders concerning the COVID 19 outbreak.

90 mins Grace Franklin, Public Health Director

b. Potential Executive Session: Concerning Public Health, Meeting with an Attorney, citation (4)(b).

c. Other, as needed.

8. **UPDATE WITH THE COUNTY MANAGER**

a. Other, as needed.

9. **ADJOURNMENT**

NOTE: This agenda is subject to change, including the addition of items up to 24 hours in advance or the deletion of items at any time. All times are approximate. The County Manager reports may include administrative items not listed. Regular Meetings, Public Hearings, and Special Meetings are recorded, and ACTION MAY BE TAKEN ON ANY ITEM. Formal Action cannot be taken at Work Sessions. For further information, contact the County Administration office at 970-728-3174. If special accommodations are necessary per ADA, contact 970-728-3174 prior to the meeting.

The official, designated posting place for all BOCC notices will be online at https://www.sanmiguelcountyco.gov/liveagenda. Use this link to view the live agenda with any last-minute changes. To be automatically notified, please sign up at www.sanmiguelcountyco.gov, sign up for alerts, and follow the prompts.

AGENDA ITEM - 4.a.

TITLE:

Approval of a letter of support on behalf of Bruin Waste Management for support of a recycling resources grant through CDPHE.

Presented by:
Time needed:

PREPARED BY:

Kris Holstrom, Commissioner

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

Commissioner Holstrom requested this be on the agenda for approval.

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description	Upload Date
Letter of Support	2/18/2021

BOARD OF COMMISSIONERS

HILARY COOPER KRIS HOLSTROM LANCE WARING

February 24, 2021

Colorado Department of Public Health and Environment
Recycling Resources Grant Committee

Dear Sirs:

San Miguel County is in support of the grant application by Bruin Waste Management to expand their existing recycling operations in Montrose County. The recycling services benefit many communities in Western Colorado, and the expansion of their operations will only further improve services in our area. Bruin Waste Management was the first organization to offer recycling services to San Miguel and Montrose Counties, and have been able to expand their services to other surrounding counties. This service has helped divert materials toward recycling that would have otherwise gone to our landfills, shortening their lifespan.

We encourage you to consider approval of Bruin's grant request so that we may see even more material redirected and new jobs created in our region.

Sincerely,
San Miguel County
Board of Commissioners

Lance Waring, Chair

Kris Holstrom, Vice Chair

Hilary Cooper, Commissioner

DRAFT

AGENDA ITEM - 5.a.

TITLE:

9:35 am Update on the Applebaugh Bridge.

Presented by: Ryan Righetti, County Road and Bridge Superintendent
Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

AGENDA ITEM - 5.b.

TITLE:

Discussion concerning the 5-Star State Certification Program/budget

Presented by: Mike Bordogna, County Manager; Kris Holstrom, Commissioner
Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

AGENDA ITEM - 5.c.

TITLE:

Review of the Hardrock Mining Comments.

Presented by: Hilary Cooper, Chair
Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

Hilary will be working on the draft comment letter and this will be an update and follow up on any questions or additional comments.

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

ATTACHMENTS:

Description	Upload Date
Mining Operations	2/19/2021
Rulemaking	2/19/2021
2021 Hardrock Mining	2/19/2021

MINERAL RULES AND REGULATIONS

OF THE

COLORADO MINED LAND RECLAMATION BOARD

FOR

HARD ROCK, METAL, AND DESIGNATED MINING OPERATIONS

Promulgated May, 1977

Amended June-December, 1977; March-July, 1978; July-August, 1979; May, 1980; April, 1981; February-April, 1982, April, 1983; October, 1983; June, 1985; March, 1987; December, 1987; October, 1988; November, 1990; September, 1991; March, 1993; April, 1994; January, 1995; October, 1995; April, 1999; January, 2000; August, 2001; June, 2005; August, 2006; August, 2010; January, 2015; and July, 2019.

Effective July 15, 2019

This copy of the Rules and Regulations is prepared by the Office of Mined Land Reclamation, based on the records of the Division of Reclamation, Mining and Safety and those of the Secretary of State.

Legislative Declaration in Section 34-32-102 of the Colorado Mined Land Reclamation Act states that:

(1) It is declared to be the policy of this state that the extraction of minerals and the reclamation of land affected by such extraction are both necessary and proper activities. It is further declared to be the policy of this state that both such activities should be and are compatible. It is the intent of the general assembly by the enactment of this article to foster and encourage the development of an economically sound and stable mining and minerals industry and to encourage the orderly development of the state's natural resources, while requiring those persons involved in mining operations to reclaim land affected by such operations so that the affected land may be put to a use beneficial to the people of this state. It is the further intent of the general assembly by the enactment of this article to conserve natural resources, to aid in the protection of wildlife and aquatic resources, to establish agricultural, recreational, residential, and industrial sites, and to protect and promote the health, safety, and general welfare of the people of this state.

(2) The general assembly further declares that it it's the intent of this article to require the development of a mined land reclamation regulatory program in which the economic costs of reclamation measures utilized bear a reasonable relationship to the environmental benefits derived from such measures. The Mined Land Reclamation Board or the Division, when considering the requirements of reclamation measures, shall evaluate the benefits expected to result from the use of such measures. It is also the intent of the general assembly that consideration be given to the economic reasonableness of the action of the Mined Land Reclamation Board or the Division. In considering economic reasonableness, the financial condition of an operator shall not be a factor.

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RULE 1: GENERAL PROVISIONS AND REQUIREMENTS – PERMIT PROCESS

1.1 DEFINITIONS

103(1)

(1) "Acid and Toxic Producing Materials" means natural or reworked earth materials having acid or toxic chemical and physical characteristics that, under mining or post-mining conditions of drainage, exposure, or other processes, produce materials which contain detrimental amounts of chemical constituents such as acids, bases, or metallic compounds.

(2) "Acid Mine Drainage" means contamination of water by low pH or heavy metals that occurs from mined or disturbed materials as a result of the chemical and biological oxidation of reactive sulfide minerals when exposed to air and water. The possibility of generating "Acid Mine Drainage" exists where the pH of any exposed or potentially exposed overburden, waste rock, mill tailings, waste water treatment sludge, or other mined, placed, disposed or stockpiled material has the potential to develop a pH of 5.8 or less. Such determination may be based upon acceptable accelerated weathering and leaching tests of a representative sample of the overburden, waste rock, mill tailings, or other mined, placed, disposed, or stockpiled material. In determining whether a potential for acid mine drainage generation exists, the Office will consider natural pre-mining acidity and metals occurrence in bedrock, soil, groundwater and surface water where such information is available to the Office. Mined and stockpiled material does not include ore or other mined product that is or will be processed within one hundred and eighty (180) days of being stockpiled and removed from the permit area. However, the area affected by such stockpiled material may require the appropriate measures pursuant to Rules 3, 6 and 7, to prevent off-site impacts due to drainage or leaching, and for reclamation of the affected stockpile area.

(3) "Activity" for the purpose of protecting groundwater quality, means any mining, milling, storing, disposing, or processing operations, or any reclamation operation or process that may discharge or cause discharge of pollutants to groundwater.

103(1.5)

(4) "Affected Land" means the surface of an area within the state where a mining operation or Extractive Metallurgical Processing is being or will be conducted, which surface is disturbed as a result of such operation. Affected lands include but shall not be limited to private ways, roads, except those roads excluded pursuant to Rule 1.1(4), and railroad lines appurtenant to any such area; land excavations; prospecting sites; drill sites or workings; refuse banks or spoil piles; evaporation or settling ponds; leaching dumps; placer areas; tailings ponds or dumps; work, parking, storage or waste discharge areas; and areas in which structures, facilities, equipment, machines, tools or other materials or property which result from or are used in such operations are situated. All lands shall be excluded that would be otherwise included as land affected but which have been reclaimed in accordance with an approved plan or otherwise, as may be approved by the Board. Affected land shall not include off-site roads which existed prior to the date on which notice was given or permit application was made to the Office and which were constructed for purposes unrelated to the proposed mining operation and which will not be substantially upgraded to support the mining operation.

Commented [MR1]: Extractive Metallurgical Processing is being added to clarify that "milling" is affected lands

(5) "Affected Surface Water and Groundwater" means for purposes of the baseline site characterization and monitoring plan required for applications for in situ leach mining operations that surface water or groundwater affected or potentially affected by such mining operation.

(6) "Ambient Groundwater Quality" for mining operations permitted prior to January 31, 1994, ambient groundwater quality shall mean the quality of the groundwater at the mine site as of January 31, 1994. For mining operations permitted on or after January 31, 1994, ambient groundwater shall mean the quality of groundwater at the time of submittal of the permit application. In establishing ambient groundwater quality, an Operator or Applicant shall use available or collected groundwater data sufficient to characterize the site's ambient groundwater quality and submit such information in a form suitable to the Office.

112(8) (7) "Amendment" means a change in the permit or an application which increases the acreage of the affected land, or which has a significant effect upon the approved or proposed Mining Plan, Reclamation Plan, or Environmental Protection Plan.

(8) "Analogous law, rule or permit" means for purposes of violations and patterns of violation required to be disclosed in applications for in situ leach mining operations any federal or state law, rule or permit issued by this or another state or the United States which covers any of the environmental protections set forth in Sections 34-32-116 and 116.5, C.R.S.

(9) "Anniversary date of the Notice of Intent to Prospect" means the date the Office or Board issues the Notice of Intent to Prospect approval and is the date the annual fee shall be deposited with the Office on an annual basis until the Office terminates the Notice of Intent to Prospect.

(10) "Anniversary date of the permit" means the date the Office or Board issues the permit and is the date the annual fee shall be deposited with the Office on an annual basis until the Office or Board terminates the permit.

(11) "Applicant" means any person who applies to the Office for a mining permit.

(12) "Aquifer" means a geologic formation, group of geologic formations, or part of a geologic formation containing sufficient saturated permeable material that could yield a sufficient quantity of water that may be extracted and applied to a beneficial use.

(13) "Authorized Agent" means any corporate officer, corporate attorney, individual person, or persons so designated in the permit application.

(14) "Baseline site characterization and monitoring plan" means that baseline site characterization and monitoring plan required by Section 34-32-112.5, C.R.S. for all permit applications for in situ leach and designated mining operations. This term does not include other baseline characterizations, monitoring plans, studies or the like required under the act or these regulations.

(15) "Best available technology" means, for the purposes of establishing, designing and implementing groundwater reclamation plans for in situ mining operations, the best technologies, treatment techniques, reclamation techniques or other means that result in

effective reclamation of groundwater, taking into consideration all relevant factors including, but not limited to, technical feasibility, cost effectiveness, and the protection of public health, safety, welfare and the environment. In considering cost effectiveness, the financial condition of an operator shall not be a factor.

~~(16) "Certification by an Independent Auditor" means a letter or report from a Certified Public Accountant rendering an opinion as to the financial condition of a Financial Warrantor with regard to the financial tests required for self insurance. The opinion must demonstrate clearly and fully, without significant disclaimers, that the financial tests have been met by the Financial Warrantor.~~

Commented [MR2]: This is being deleted as it pertains to self-assurance Financial Warranties, which was eliminated in HB19-1113

115(2) ~~(17)~~(16) "Complex Application" is an application which may require the Office to involve additional professional staff or outside professional or agency expertise, and is beyond what the Office considers to be a typical application review process for the majority of applications received. Complex applications include those with significant public involvement and are beyond what the Office considers to be a typical application review process for the majority of applications received.

Commented [MR3]: The edit is to provide additional clarity that other factors, such as a large numbers of commenters, requires additional Office time for processing and review.

~~(18~~(17) "Description of ISL Mines" means that description required to be in applications for all in situ leach mining operations of at least five (5) in situ leach mining operations that demonstrates the ability of the applicant to conduct such a proposed mining operation without any leakage, vertical or lateral migration, or excursion of any leaching solutions or groundwater-containing minerals, radionuclides, or other constituents mobilized, liberated or introduced by the in situ leach mining process into any groundwater outside of the permitted in situ leach mining area.

~~(19)~~(18)"Designated Chemicals" are toxic or acidic chemicals identified by the applicant / operator, and accepted by the Office, or as determined by the Office, for use~~d~~ within the permit area primarily, but not exclusively, in extractive metallurgical processing, the use of which, has been determined, at certain concentrations, to represent~~s~~ a potential threat to human health, property or the environment.

Commented [MR4]: The additional text is being added to clarify how the "Designated Chemicals" list is created. The operator / applicant submits a list of chemicals to be used on site, that are reviewed and accepted by the Office. This creates the site specific "Designated chemicals" for that permit.

103(3.5)(a) 112.5 ~~(20~~(19) "Designated Mining Operation" means a mining operation at which:

(a) designated chemicals used in metallurgical processing are present on-site; or

(b) toxic or acid-forming materials may be exposed or disturbed as a result of mining operations; or

(c) acid mine drainage occurs or has the potential to occur due to mining or reclamation activities; or

(d) uranium is developed or extracted, either by in situ leach mining methods or by conventional underground or open mining techniques.

(e) The various types of Designated Mining Operations are identified in Section 34-32-112.5, C.R.S. 1984, as amended. Except as to uranium mining operations, designated mining operations exclude operations that do not use toxic or acidic chemicals in processing for purposes of extractive metallurgy and will not cause

acid mine drainage. Any designated mining operation, including uranium designated mining operations, may seek exemptions from this status pursuant to Rule 7.

(f) (1) Metal mining operations, permitted under Section 34-32-110, C.R.S. 1984, as amended, which do not use or store designated chemicals, shall be ~~excepted~~ exempt from the requirements applicable to Designated Mining Operations, unless they have a potential to produce acid or toxic mine drainage in quantities sufficient to adversely affect any person, property or the environment. It shall be the burden of the Operator or Applicant to demonstrate to the satisfaction of the Office that such potential does not exist.

(2) The exception set forth in Rule 1.1(19~~20~~)(f)(1) does not apply to Section 110 uranium mining operations. However, such operations may apply for an exemption from Designated Mining Operation status pursuant to the requirements and procedures set forth in Rule 7.

(g) Designated Mining Operations shall be identified with a "d" suffix, (i.e., 110d or 112d). An in situ leach mining operation under Section 110 or 112 shall be treated as a section 112d-3 operation unless such operation is granted an exemption from designated mining operation status under Rule 7, in which case such operation shall be referred to as an "110 ISL" or "112 ISL" operation, as appropriate.

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

Commented [MR5]: This language is straight from Statute. It is being included here for reference in Temporary Cessation reviews

(21) "Environmental Protection Facility" means a structure which is identified in the "Environmental Protection Plan" as designed, constructed and operated for control or containment of designated chemicals, uranium, uranium by-products or other radionuclides, acid mine drainage, or toxic or acid-forming materials that will be exposed or disturbed as a result of mining or reclamation operations.

103(4.9)

(22) "Environmental Protection Plan" means a plan submitted by a Designated Mining Operation for approval as part of the Operator's or Applicant's permit for such operation for the protection of human health, property or the environment in conformance with the duties of Operators as prescribed by the Act and these Rules.

(23) "Extraction" means the removal of minerals and/or overburden from places of natural occurrence to surface locations.

(24) "Extractive Metallurgical Processing" means the production-scale process of extracting metals of value from mineral ore, or waste water treatment for metals removal. Metallurgical processing may include but is not limited to crushing, concentrating, chemical leaching, evaporation, grinding, flotation, milling, or any other process of ore beneficiation on affected lands. It does not include laboratory analyses, metallurgical testing, potable

Commented [MR6]: Text is being added to encompass the broad range of chemical and mechanical methods for extraction of a metal from host rock. The last sentence is intended to tie extractive processing into defined mining operations.

water treatment, prospecting activities, or other activities which involve only incidental, or minimal, use of designated chemicals and which do not pose a threat to human health, property or the environment. All activities outlined herein constitute Mining Operations as defined herein.

(25) "Facility" means the combined "activities" occurring on the affected land.

121.5 (26) "Failure or Imminent Failure" means, for the purpose of emergency notification response:

(a) Any actual or imminent release of any material or liquid from any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property or to the environment;

(b) Any actual or imminent malfunction or nonperformance of any structure for in situ leach mining operations designed to detect, prevent, minimize, or mitigate adverse impacts on groundwater, human health, wildlife, or the environment; or

(c) The actual or imminent malfunction or nonperformance of any environmental protection facility designed to contain or control chemicals or waste that are acid or toxic-forming.

(27) "Filed" means an application submitted to the Office and determined to contain the permit application information required for all permits by Rules 1.4.1, 1.6.2(1)(a)(i) and (b), 1.6.2(1)(g), and Rules:

- 1.4.2(2) for a non in situ leach mining 110 or 110d for a Limited Impact operation application;
- 1.4.5(2) for a 112 or 112d Reclamation Permit Operation application; or
- 1.4.4 and 1.4.5 for all in situ leach mining operation applications. Note: all 110 and 112 in situ leach mining operations under section must comply with filing requirements for both 112d designated mining operation applications and in situ leach mining applications unless the applicant is granted an exemption from designated mining operation status. In such a case, the applicant need only comply with in situ leach mining application requirements.

A determination by the Office that an application submitted to the Office contains the referenced application materials shall trigger the decision making periods provided under Sections 34-32-110(6), or 34-32-115(1) and 115(2), C.R.S., as appropriate. A determination that an application is filed does not constitute a determination that the application adequately meets statutory and regulatory requirements.

(28) "Financial Warrantor(s)" means a person who provides a Financial Warranty to the Board.

103(5.5) 117(3) (29) "Financial Warranty" means a written promise to the Board to be responsible for reclamation costs up to the amount specified by the Board or Office or required by the Act, together with proof of financial responsibility.

(30) "Independent Reviewer" is a person who is utilized by the Office to review Quality Assurance/Quality Control certification documents designated by the Office, Baseline site Characterization and Monitoring Plans, environmental protection plans, applications, Amendments and Technical Revisions and to monitor field operations. An Independent Reviewer is not an agent of the Office, Operator, Applicant, or any other person involved in the application or other hearing before the Board.

(31) "Inert Material" means non-water soluble and non-putrescible solids together with such minor amounts and types of other materials, unless such materials are acid or toxic producing, as will not significantly affect the inert nature of such solids. The term includes, but is not limited to, earth, sand, gravel, rock, concrete which has been in a hardened state for at least sixty (60) days, masonry, asphalt paving fragments, and other inert solids.

103(5.7) (32) "In Situ Leach Mining" means in situ mining for uranium through the in-place dissolution of mineral components of an ore deposit by causing a chemical leaching solution, usually aqueous, to penetrate or to be pumped down wells through the ore body and then removing the mineral-containing solution for development or extraction of the mineral values.

(a) It is not intended that this definition of in situ leach mining include extraction or disturbance of trace amounts or de minimus amounts of uranium that have no potential to affect human health or the environment when such extraction or disturbance of uranium occurs while mining another mineral. If uranium is disturbed or extracted during the mining of another mineral, the operator shall immediately inform the Office of the disturbance or extraction, and include all information concerning the circumstances of the disturbance or extraction of the uranium in a written report submitted to the Office. After notification to the Office, the Office will determine whether the Operator must comply with the in situ leach mining and designated mining operation requirements.

103(5.8) (33) "In Situ Mining" means the in-place development or extraction of a mineral by means other than open mining or underground mining.

(34) "Landowner" means any individual person or persons, firm, partnership, association, corporation, or any department, division, or agency of federal, state, county, or municipal government which owns or controls the surface rights to any land area under consideration for mining or prospecting. These surface rights are separate from mineral rights which may or may not be owned and controlled by the same entity.

103(6)(a)
103(6)(b) (35) "Life of the Mine" means and includes, but is not limited to, those periods of time from when a permit is initially issued, that an Operator engages in or plans to continue extraction of minerals, complies with the Act and these Rules, and as long as mineral reserves remain in the mining operation. It can include limited periods of non-production or Temporary Cessation. "Life of the mine" also includes that period of time after cessation of production necessary to complete reclamation of disturbed lands as required by the Board and this article, until the Board releases, in writing, the Operator from further reclamation obligations regarding the affected land, declares the operation terminated, and releases all applicable Performance and Financial Warranties.

110(1)(a)(III) 110(2)

(36) "110 Limited Impact Operation" means any mining operation which requires a 110(1) or 110(2) permit:

(a) A 110(1) permit affects five (5) acres or less and requires a permit issued under Section 34-32-110(1)(a)(III), C.R.S. for the life of the mine; and is not an in situ leach mining operation or a designated mining operation; or

(b) A 110(2) permit affects less than ten (10) acres and requires a permit issued under Section 34-32-110(2), C.R.S. for the life of the mine; extracts less than seventy thousand (70,000) tons of mineral, overburden, or combination thereof per calendar year; and is not an in situ leach mining operation or a designated mining operation.

110

(37) "110 Limited Impact Permit" shall mean a permit issued to a 110 Limited Impact Operation pursuant to Section 34-32-110(1)(a)(III) or (2), C.R.S.

(38) "110d Limited Impact Permit" shall mean a permit issued to an operator for a Designated Mining Operation pursuant to Section 34-32-112.5(3)(a), C.R.S.

106(1)(a)

(39) "Meeting" as the term is used in these Rules, means the regular monthly session held by the Board in accordance with Section 34-32-106, C.R.S. 1984, as amended. The topics to be considered include, but are not necessarily limited to:

(a) approval or denial of permit applications;

(b) approval or denial of applications for permit revisions, amendments, and permit transfers;

(c) cause to hold a formal hearing with respect to a particular application or operation pursuant to Section 34-32-114, C.R.S. 1984, as amended;

(d) determinations with respect to temporary cessation; and

108(1) 115

(e) other permit related considerations which do not require a "formal hearing."

(f) These meetings may also include, but are not necessarily limited to hearings, rule making proceedings in accordance with the Administrative Procedures Act, Section 24-4-103, C.R.S. 1984, as amended, and executive sessions.

103(7)

(40) "Mineral" means an inanimate constituent of the earth in a solid, liquid, or gaseous state which, when extracted from the earth, is useable in its natural form or is capable of conversion into a useable form as a metal, a metallic compound, a chemical, an energy source, or a raw material for manufacturing or construction material. For the purposes of this article, this definition does not include coal, surface or subsurface water, geothermal resources, or natural oil and gas together with other chemicals recovered therewith, but does include oil shale.

103(8)

(41) "Mining Operation" means the activities associated with development, production and / or extraction of a mineral from its natural occurrences on affected land. The term includes,

but is not limited to, open mining, in situ mining, in situ leach mining, surface operations and the disposal of refuse from underground mining, in situ mining, and in situ leach mining. The term also includes the following operations on affected lands: transportation; concentrating; milling; evaporation; and other processing. The term does not include: the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe; the development or extraction of coal; the extraction of geothermal resources; smelting, refining, cleaning, preparation, transportation, and other off-site operations not conducted on affected land; or extraction of construction material where there is no development or extraction of any construction material as that term is defined in Section 34-32.5-103(3), C.R.S.

(42) "Modification" means any amendment or revision of any previously granted permit, including permit transfers, increases or decreases of the amount of financial warranty required by the Board, and declarations regarding temporary cessation, which is either:

(a) initiated by the Board pursuant to Rule 3.3.2 as necessary to bring the operation into compliance with the provisions of these Rules or the Act, or

(b) the subject of a petition for a formal hearing granted by the Board pursuant to Section 34-32-114 of the Act.

103(8.5) (43) "Office" means the Office of Mined Land Reclamation within the Division of Reclamation, Mining and Safety (DRMS).

(44) "Off-site" means the area outside of the permitted affected area.

(45) "110 ISL operation" or "112 ISL operation" shall mean those in situ leach mining operations which have been granted an exemption from designated mining operation requirements. Otherwise, 110 and 112 in situ leach mining operations shall be considered and referred to as 112d operations.

103(9) (46) "Open Mining" means the mining of minerals by removing the overburden lying above such deposits and mining directly from the deposits thereby exposed. The term includes mining directly from such deposits where there is no overburden. The term includes, but is not limited to, such practices as open cut mining, open pit mining, strip mining, quarrying, and dredging.

103(10) (47) "Operator" means any person, firm, partnership, association, corporation, or any department, division, or agency of federal, state, county, or municipal government engaged in or controlling a mining operation.

103(11) (48) "Overburden" means all of the earth and other materials which lie above natural minerals and also means such earth and other materials disturbed from their natural state in the process of mining.

(49) "Owner of Record" means the owner or owners of a surface property interest shown on the records of the County Assessor as of the date of filing.

(50) "Party" means a person who demonstrates that they are directly and adversely affected or aggrieved by the conduct of a mining operation, proposed mining operation, or an order of the Board and whose interest is entitled to legal protection under the Act.

(51) "Pattern of Willful Violations" means that information required to be disclosed in the application for an in situ leach mining operation that the applicant, or an affiliate, officer or director of the applicant, has or has not demonstrated a pattern of willful violations of environmental protection requirements of the Act or these regulations or a permit issued under the Act or an analogous law, rule or permit issued by another state or the United States.

103(11.5) 117(2) (52) "Performance Warranty" shall mean a written promise to the Board, by the operator, to comply with all requirements of the Act.

(53) "Permittee" means any person holding a mining Permit.

(54) "Person" means any individual, firm, partnership, joint venture, association, limited liability company, or corporation or other entity, or any department, division, or agency of federal, state, county, or municipal government.

(55) "Point of Compliance" means locations down gradient of the facility or activity at which water sampling may be conducted to demonstrate compliance with applicable groundwater standards established by the Water Quality Control Commission, or permit conditions required by the Office or Board to measure compliance with the MLRB permit.

(56) "Production" means the work performed in relation to the extraction and/or processing of a mineral deposit. The term may include, stockpiling of ore, transportation of ore to processing facilities, onsite metallurgical extraction, sale of extracted materials, and disposal of mine wastes. Minimal or token activity does not constitute production.

Commented [MR7]: This language is a starting point for discussion. It is intended to encompass activities that should be considered in the total aspect of production as it relates to the Act and other definitions and Rules.

103(12) (~~56~~57) "Prospecting" means the act of searching for or investigating a mineral deposit. "Prospecting" includes, but is not limited to, sinking shafts, tunneling, drilling core and bore holes and digging pits or cuts and other works for the purpose of extracting samples prior to commencement of development or extraction operations, and the building of roads, access ways, and other facilities related to such work. The term does not include those activities which cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices which are hand carried or otherwise transported over the surface to make magnetic, radioactive, or other tests and measurements, boundary or claim surveying, location work, or other work which causes no greater land disturbance than is caused by ordinary lawful use of the land by persons not prospecting. The term also does not include any single activity, unless specified in Rule 5 of these rules which results in the disturbance of a single block of land totaling one thousand six hundred (1,600) square feet or less of the land's surface, not to exceed two (2) such disturbances per acre; except that the cumulative total of such disturbances will not exceed five (5) acres statewide in any prospecting operation extending over twenty–four (24) consecutive months.

113 (~~57~~58) "Prospecting Notice" shall mean that notice required by the Act to engage in Prospecting.

117(7)(a) ~~(58) "Rating of 'A' or Better" means, with regard to financial warranties, that the rating organization has determined that the obligations are at least of an upper medium grade, meaning that factors giving security to the principal and interest are considered adequate but that elements may be present which suggest the possibility of adverse effects if economic and trade conditions change.~~

Commented [MR8]: This is being deleted pursuant to HB19-1113

103(13) (59) "Reclamation" means the employment during and after a mining operation of procedures reasonably designed to minimize as much as practicable the disruption from the mining operation and to provide for the establishment of plant cover, stabilization of soil, the protection of water resources, or other measures appropriate to the subsequent beneficial use of such affected lands. Reclamation shall be conducted in accordance with the performance standards of the Act.

103(14) (60) "Refuse" means all waste material directly connected with the cleaning and preparation of substances mined by a mining operation.

112 (61) "Regular Operation" applies to all mining operations not included within the definitions of Limited Impact or Prospecting Operations, specifically, any mining operation affecting ten (10) acres or more, or extracting seventy thousand (70,000) tons or more of mineral, overburden, or combination thereof per calendar year.

(62) "Rolling Stock" means any portable or mobile equipment.

117(7)(b) (63) "Salvage Value" of Project-related fixtures or equipment means the market value of the particular fixture or equipment less any necessary costs of demolition and/or removal, as determined by the Office or Board in accordance with the requirements in Rule 4.12.2.

115(4)(d) (64) "Structure; Significant, Valuable and Permanent Man-made" means a non-portable improvement to real property which has defined, current and recognizable value of an economic nature; generally including but not limited to: buildings, houses, barns, fences, above or below ground utilities, irrigation ditches, maintained or public roads, bridges, railroad tracks, cemeteries, communication antennas, pipelines, water wells, water storage structures, discharge and conveyance structures, etc.

(65) "Technical Revision" means a change in the permit or an application, which does not have more than a minor effect upon the approved or proposed Reclamation or Environmental Protection Plan.

(66) "Temporary Cessation" means those limited periods of non-production as specified according to Rule 1.13.

(67) "Topsoil" means the material at the surface of the earth which has been so modified and acted upon by physical, chemical, and biological agents that it will support rooted plants necessary to achieve reclamation goals.

110(1)(a)(I) (68) "Two Acre Limited Impact Operation" means any currently permitted mining operation issued under Section 34-32-110(1)(a)(I), C.R.S. which:

(a) the permit application for such operation was filed prior to July 1, 1993;

(b) affects less than two (2) acres for the life of the mine; and

(c) extracts less than seventy thousand (70,000) tons of mineral, overburden, or combination thereof per calendar year;

By July 1, 2015 an Operator issued a two acre limited impact permit pursuant to Section 34-32-110(1)(a)(I), C.R.S. shall file with the Office:

a) evidence of the source of the person's legal right to enter and initiate a mining operation on affected land; and

b) a financial warranty that complies with Sections 34-32-110(3) and 34-32-117(4), C.R.S.

(69) "Vegetation Cover" means an ocular estimate of the percentage of ground covered by the above-ground living plant parts.

(70) "Vegetation Type" means a designation for a natural grouping of plant species named according to one or more visually dominant species.

(71) "Working Day" means Monday through Friday, except for those days that are recognized or designated as State holidays or other non-work days as declared by the governor or legislature.

Commented [MR9]: The text is being added to take into account other non-work days declared by the State. Such as furloughs, weather days, etc.

(72) "1976 Act or the Act" refers to the Colorado Mined Land Reclamation Act of 1976, Section 34-32-101, et seq., C.R.S. 1984, as amended.

1.2 SCOPE OF RULES AND ACTIVITIES THAT DO NOT REQUIRE A RECLAMATION PERMIT

103(7)
103(8)

1.2.1 Specified by Rule

The Board has determined that certain types of activities do not need reclamation permits either because the excavated substance is not a mineral as defined in Section 34-32-103(7), Colorado Revised Statutes 1984, as amended or because the activity is not a mining operation as defined by Section 34-32-103(8), C.R.S. 1984, as amended. Such activities include the following:

(a) the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe;

(b) the development or extraction of coal (refer to the Colorado Surface Coal Mining Reclamation Act Section 34-33-101, et seq., C.R.S. 1984, as amended);

(c) smelting, refining, cleaning, preparation, transportation, and other off-site operations not conducted on affected land; and

(d) the extraction of geothermal or groundwater resources.

1.2.2 Reserved

1.2.3 Effect of Regulations

Nothing in these Rules shall supplant, alter, impair or negate the regulatory authority of the Colorado Department of Public Health and Environment in relation to mining operations, nor shall these Rules supplant, alter, impair, or negate the authority of other state and federal agencies in relations to mining operations.

1.2.4 Extraction or Prospecting on Federal Lands

Any person who intends to extract or prospect for minerals on federal lands shall apply for a Mined Land Reclamation Board permit or submit a Notice of Intent to conduct prospecting operations unless specifically exempted by the Board according to the provisions of Rule 1.2.

1.3 PUBLIC INSPECTION OF DOCUMENTS

112(10)(a) (1) Except as provided in this Rule 1.3 or as otherwise provided by law, all applications, notices of intent to conduct prospecting, public notices, inspection reports, documents, maps, exhibits, correspondence, tests, analyses, records of actions or findings of the Board or Office and other information required under the Act or these Rules shall be made available for inspection as required by law upon the written request of any member of the public at the offices of the Office, during its normal business hours.

(2) Upon request, copies shall be provided at cost or other suitable arrangements made for copying at the requester's expense, as allowed by copyright law.

112(9) (3) As to mining operations, an Operator may mark "CONFIDENTIAL" information supplied in a permit application disclosing the location, size, or nature of the deposit or depth and thickness of the ore body or deposit and thickness and type of overburden to be removed. Information concerning a mining operation marked as confidential and determined by the Office to be confidential shall not be made available to the public unless the Operator gives a written consent on company letterhead and signed by an authorized agent of the company to release all or any part of the information.

113(3) (4) As to notices of intent to conduct prospecting:

(a) All information in a Notice of Intent to Conduct Prospecting submitted and approved prior to June 2, 2008, shall be treated as confidential except as set forth in Rule 1.3(4)(a). Such confidential information shall not be made available to the public unless the Board finds that reclamation has been satisfactorily completed, or unless the Operator gives a written consent to the release of all or any part of the information. However, if a prospector uses the Notice of Intent to conduct the baseline site characterization and monitoring plan required for an in situ leach mining operation application, the design and operation of the baseline site

characterization and monitoring plan, together with all information collected in accordance with the plan, shall be a matter of public record.

(b) For Notices of Intent to Conduct Prospecting or modifications thereof submitted or approved on or after June 2, 2008, all information in a notice of intent or modification of such notice is a matter of public record including, in the case of a modification, the original notice of intent; except that, information relating to the mineral deposit location, size or nature, and other information designated by the prospector and determined by the Board as proprietary, trade secret or that would cause substantial harm to the competitive position of the prospector, shall be protected as confidential and shall not be a matter of public record in the absence of a written release from the prospector, until the Board finds that reclamation has been satisfactorily completed, or until the Board releases the information pursuant to Rules 1.3(4)(f) and (h). However, if a prospector uses the Notice of Intent to conduct the baseline site characterization and monitoring plan required for an in situ leach mining operation application, the design and operation of the baseline site characterization and monitoring plan, together with all information collected in accordance with the plan, shall be a matter of public record.

(c) An applicant or prospector may designate its identity as confidential if the applicant or prospector believes disclosure of its identity would cause substantial harm to its competitive position. If so designated, the Office shall keep the identity confidential until: (1) the applicant or prospector files a written release; (2) the applicant or prospector files the notice described in Rule 1.3(4)(c)(i); (3) the Board finds that reclamation has been satisfactorily completed; or (4) until the Board releases the identity pursuant to Rules 1.3(4)(f) and (h).

(i) If identity is designated as confidential and the Office approves the notice of intent to prospect, the prospector shall file with the Office quarterly reports in which the prospector justifies continuance of its confidential designation of its identity. In addition, once the prospector believes its identity no longer needs to be confidential, it shall forthwith file a written notice to the Office. Upon receipt, the Office shall treat the prospector's identity as public record and post the identity of the prospector on the Office's website within ten (10) days of receipt of the prospector's notice.

(ii) The confidentiality designation of an applicant's or prospector's identity shall be subject to the dispute resolution procedures set forth in Rule 1.3(4)(f) and (h).

(d) Upon submittal of a notice of intent or modification thereof, every applicant shall designate any information the applicant considers to be exempt from public disclosure. The Office shall post on its website within five (5) days of receipt of such notice or modification all information in a notice of intent or modification except information that the applicant has designated as exempt from disclosure.

(e) If the Office approves a notice of intent, the prospector shall continue to designate any information the prospector believes is exempt from public disclosure in any written submittals filed with the Office after the filing of the notice of intent including

in annual and final reports. Such designations shall be subject to the same grounds for designation and procedures for resolution of designation disputes as apply to information in a notice of intent.

(f) Any person may submit a written request to the Office asking that information in a notice of intent that a prospector has designated as confidential be disclosed. Such request must be filed with the Office within ten (10) working days of the Office's posting of the notice of intent on its website. The Office shall treat such request as a deficiency issue that must be resolved prior to approval of the notice of intent. Such request shall set forth the specific information requested to be disclosed and the factual and legal basis for the person's assertion that such information is public. Upon receipt of such a request, the Office shall forward the request to the prospector within three (3) working days of receipt of the request. If the prospector does not consent to disclosure of the information within seven (7) days from receipt of the request, the Office shall keep the information confidential and inform the requesting person in writing within three (3) working days of the prospector's decision. Within seven (7) days from the receipt of the prospector's decision, the requesting person may ask the Board to hold a hearing on whether the information should remain confidential. If the person requests a hearing, such hearing shall not be held any earlier than twenty (20) days after the Office has given notice of the hearing to the prospector and the requesting person. Any response by the Office or the prospector to the request for disclosure shall be kept confidential and shall only be sent to the Board, Office and prospector, as applicable.

(g) If the Office believes that a prospector has not properly designated information as confidential, the Office shall inform the prospector of the Office's decision. The Office's decision shall be kept confidential. If the prospector does not consent to disclosure of the information within seven (7) days from notice of the Office's decision, the Office shall keep the information confidential and may set the matter for hearing before the Board. The Board hearing shall not be held any earlier than twenty (20) days after the Office has given notice of the hearing to the prospector.

(h) The Board shall hold any hearing set under Rule 1.3(4)(f) in executive session. No entity other than the Board shall be present in the executive session. The Board shall electronically record such executive sessions and maintain such recordings in accordance with the Open Meetings Law, Section 24-6-204, C.R.S.

(i) Prior to holding an executive session, the Board in its discretion may hear oral argument in open meeting from the applicant or prospector, the Office and the requesting person, if applicable. The Board may decide the matter on the written request alone or on the Office's written decision alone, whichever is applicable, or it may require the applicant or prospector, the requesting person (if applicable) and the Office to submit written briefs on whether the information should be kept confidential or should be publicly disclosed. Such written briefs shall only be submitted to the Board, which shall keep them confidential. Within thirty (30) days of holding a hearing in executive session, the Board shall issue an order that grants or denies, in whole or in part, the request or that upholds or reverses in whole or in part

the Office decision. The order shall keep confidential the information the Board has determined should remain confidential.

(ii) If the Board determines that certain information is public rather than confidential, the Board shall delay disclosure of such information until thirty (30) days from the date of its written order. The Board's decision shall constitute final agency action for purposes of judicial review.

113(3) (5) Any dispute as to whether information is properly designated as exempt from public disclosure shall be considered a deficiency issue concerning the notice of intent to conduct prospecting. Accordingly, the Office shall not approve a notice of intent, and prospecting activities shall not be authorized to commence, until the designation issue has been resolved and the applicant has satisfied all other requirements applicable to a notice of intent.

113(3) (6) Anyone who willfully and knowingly violates the provisions of confidentiality shall be punished as provided by law.

1.4 APPLICATION REVIEW AND CONSIDERATION PROCESS

1.4.1 Applications – General Provisions

110
112(1) (1) Application forms, attachments, maps, and fees shall be submitted in accordance with the specific requirements for each permit type, except that Designated Mining Operations shall also submit an Environmental Protection Plan as outlined in Rule 6.4.21, and in addition, all In Situ Leach Mining Operations shall also submit Exhibits set forth in Rules 6.4.21 (unless exempt), 6.4.22, 6.4.23, 6.4.24, and 6.4.25.

112(4)(a) (2) All tests, analyses, surveys and maps shall be prepared by qualified persons.

(3) All information submitted in an application must be accurate and complete, and acknowledged as such by the signature of an authorized agent on an application form provided by the Board.

112(1)(c) (4) Prior to Office consideration of the application, submit proof of all required notices either by submitting return receipts of a Certified Mailing or by proof of personal service.

110(2)(a)(I) (5) All application forms shall contain the following information:

112(2)(e) (a) the physical address, e-mail, and telephone number of the general Office and the local address or addresses, e-mail and telephone number of the Operator/Applicant;

110(2)(a)(II)
110(2)(a)
112(2)(b) (b) the name, address, e-mail, and telephone number of the Owner of the surface of the affected land and the source of the Operator's/Applicant's legal right to enter and initiate a mining operation on the affected land;

Commented [MR10]: General editorial changes throughout are regarding email and electronic submission of application and reporting documents is to reflect current and future e-permitting

110(2)(a)(III) 112(2)(c)

(c) the name of the Owner of the subsurface rights of the affected land;

110(2)(a)(VIII) 112(2)(d)

(d) a statement that the Operator/Applicant has applied for all necessary approvals from local government;

110(1)(a)(III)(D) 110(2)(a)(IV)

(e) a statement that the operations will be conducted in accordance with the terms and conditions listed in the application, as well as with the provisions of the Act and these Rules, as amended, in effect at the time the Permit is approved or amended; and

(f) the Operator's/Applicant's signature.

112(1)

(6) In addition to submitting an appropriately completed Permit application form, the Operator/Applicant shall submit all applicable Exhibits specified in Rule 6 for the appropriate type of operation.

115(2)

(7) In the case of any complex Permit applications, serious unforeseen circumstances, or significant snow cover on the affected land that prevents a necessary on-site inspection, the decision date established by the Office may be extended up to sixty (60) days beyond the usual maximum limit for an operation of that particular type and size. The Office shall notify the Applicant and any persons commenting on the application, of such findings and of the new decision date as soon as possible. Rule 1.4.1 (7) shall not apply to in situ leach mining applications.

(8) The Office shall notify the Applicant of any deficiencies that prevent the application from being considered filed by the Office within ten (10) working days of receiving the application. An Applicant has sixty (60) days from such notice to submit all the necessary documents that the Office needs for an application to be considered filed. If, at the end of the sixty (60) day period, the application has not been determined to be filed with the Office, the Office may deny the application and terminate the application file. If the Office denies and terminates the application file, the Office shall determine if the Applicant desires a return of the applications and shall provide the applications to the Applicant at no cost to the Office. Otherwise, the Office may dispose of all copies as appropriate. An Applicant may appeal such denial to the Board according to the provisions of Rule 1.4.11.

(9) To allow the Applicant an opportunity to provide information necessary to meet the adequacy requirements of the Office, the Applicant may request that the Office's review time be extended and the Office's decision date reset, not to exceed 365 days from the date the application was filed. If, at the end of the three hundred and sixty-five (365) day period, the application has outstanding adequacy issues and there have been timely filed objections to the application, the Office may issue a rationale recommending approval or denial of the application and shall set the matter for a Board hearing. If there remain adequacy issues after three hundred and sixty-five (365) days but no objections to the application have been timely submitted, the Office may issue the decision on the application or set the matter for a Board hearing. At the hearing the Board may at the request of the Applicant extend the review time and decision date, deny the application, or approve the application with or without conditions.

(10) The Applicant has the burden of demonstrating that the application meets the minimum requirements of the Act, Rules, and Regulations.

112(10)

(11) The Applicant shall follow the appropriate Notice Procedures, according to permit type, as outlined in Rule 1.6.

(12) A condition or limitation to approval of the application, unless acknowledged and consented by the Applicant in writing, shall be treated as a denial.

Commented [MR11]: This language was proposed in 2018. The text is added to clarify that an applicant must accept any agreed upon permit approval conditions or limitations in writing for the permit file. Failure to acknowledge and consent to conditions of approval would lead to denial, which could be appealed to the Board.

112(10)

(13) Failure of an Applicant to publish the notice pursuant to Rule 1.6.2(1)(d) shall add a sufficient number of days for the required public notice to be accomplished. An additional time period, as determined by the Office, may be added for the Office or Board to make a decision. Such time period shall not exceed thirty (30) days for any non in situ leach mining 110 or 110d Limited Impact application, ninety (90) days for any 112/112d/112 ISL or 110 ISL Reclamation Permit application without objections, or one hundred and twenty (120) days for any 112/112d/112 ISL or 110 ISL Reclamation Permit application with objections.

1.4.2 Specific Application Requirements – 110(1), 110(2), 110 ISL and Non-In Situ Leach 110d Limited Impact Permit Applications

103(3.5)(a)(III)
110(1)(a)(III)
110(2)(a)
112(2)
112.5(3)(d)

(1) All general application requirements outlined in Rule 1.4.1, shall be required for 110(1), 110(2), and 110d Limited Impact Operations; except that any application for a 110 in situ leach mining operation must be filed and shall be considered as a 112d-3 permit application pursuant to Section 34-32-112.5(3)(d), C.R.S. and Rule 1.4.4; however, if such in situ leach mining applicant is granted an exemption from designated mining operation status, the application shall be labeled a "110 ISL" operation, and the applicant need not comply with the designated mining operation requirements but must still comply with all in situ leach mining application requirements in Rule 1.4.4. The process for Office and Board consideration of 110 ISL shall follow those set forth in Rule 1.4.8, and the two hundred and forty (240) day deadline for a decision shall apply.

110(6)

(2) An application will be considered filed for the purpose of calculating the thirty-day (30) decision-making time period under Section 34-32-110(6), C.R.S., as amended, when the application file includes all of the following submittals:

(a) the application fee; as determined under Section 34-32-127(2) C.R.S., as amended;

(b) one (1) original and one (1) copy, or an electronic submittal as designated and approved by the Office, of:

(i) the application form;

(ii) all information, attachments, maps, and exhibits, as listed and described in Rules 1.4.1 and 6.3;

(iii) an affidavit that notice signs were posted on-site pursuant to Rule 1.6.2(1)(b);

(iv) the appropriate information under Rules 6.5 and 7.3, if required by the Office for a non-designated operation pursuant to Rule 6.1.2;

(v) an environmental protection plan as described in Rule 6.4.21 if the operation is a designated mining operation; and

(vi) proof of notice according to the provisions of Rule 1.6.2(1)(a).

112(10)(c) (3) Proof of the notices required pursuant to Rules 1.6.2(1)(d),(e), and (f) is not required in order for an application to be considered filed, but such proof must be submitted to the Office prior to the Office's decision to approve an application, pursuant to Rule 1.6.2(1)(g).

112.5(5) **1.4.3 Pre-Application Requirements – All In Situ Leach Mining Operations Regardless of Designated Mining Operation Status – Reclamation Permit Operations – Retention of Third Party Expert – Baseline Site Characterization and Plan for On-Going Monitoring**

(1) (a) All prospective applicants for any in situ leach mining operation, regardless of size or designated mining operation status, shall confer with the Office prior to conducting any baseline site characterization activities. At such conference, the prospective applicant shall submit for the Office's approval a plan for conducting the baseline site characterization and for on-going monitoring of the affected land and surface and groundwater and reclamation and financial warranty requirements. The plan shall include all of the activities the prospective applicant proposes to conduct for the baseline site characterization, the methods of conducting such activities, including the operating procedures and standards, the proposal for on-going monitoring of affected land and water, and applicable reclamation requirements pursuant to Rule 3. The prospective applicant shall not conduct any baseline site characterization activities until the Office approves of the plan for conducting such activities and a financial warranty is posted pursuant to Rule 4.

(b) Within five (5) days of submittal of the baseline site characterization plan, the Office shall post notice of receipt of the plan on the Office website. Any public comment regarding the baseline site characterization and monitoring plan must be received by the Office no later than ten (10) working days after the notice was posted on the Office website. Copies of the plan will be available at the Office for review.

(c) If a prospective applicant has conducted baseline site characterization activities prior to the effective date of this Rule and prior to obtaining the Office's approval of the plan for such activities, the Office may in its discretion allow the prospective applicant to use data from those activities as long as, at a minimum, the prospective applicant submits and the Office approves the method the prospective applicant used in conducting the activities and the prospective applicant submits and the Office approves the plan required in Rule 1.4.3(1)(a) above for future activities.

(2) The Office may retain, and the prospective applicant shall pay the costs of, an independent third-party professional expert to oversee baseline site characterization, monitor field operations or review any portion of the information collected, developed, or submitted for the Baseline Site Characterization and Monitoring Plan to be included in a permit application as follows:

(a) The Office shall define the scope of work to be conducted by the expert;

(b) The expert shall submit and the Office shall review all invoices for payment;

(c) The Office shall approve invoices that are documented with, but not limited to, time sheets and receipts, and that reflect the reasonable costs of the expert. The Office may reject invoices that the Office believes are inaccurate, unreasonable or are not supported by sufficient and proper documentation. The Office shall summarize in writing its own costs for its review and oversight associated with the Baseline Site Characterization and Monitoring Plan;

(d) The prospective applicant shall pay the reasonable costs incurred by the Office and the expert;

(e) The prospective applicant may object to the selection of a specific expert only on the grounds that:

(i) The expert lacks the professional qualifications to accomplish the scope of work;

(ii) The expert has a conflict of interest with the prospective applicant or proposed project; or

(iii) The expert has a bias that could influence the objectivity of the work to be accomplished;

(iv) If the Board or Office concurs with the prospective applicant’s objection to the expert, the Board or Office shall select a different expert.

(f) If the prospective applicant fails to pay any costs the expert submits and the Office approves, or any costs the Office submits to the prospective applicant for its own costs, within 30 days of notice that such costs are due, any application the prospective applicant submits shall not be considered filed and the deadlines for Office review shall not be triggered. If the prospective applicant pays the costs due, any application submitted may be considered filed if payment occurs within three (3) months of when the costs were due and if other requirements for an application being considered filed are met. If the prospective applicant pays the costs later than three (3) months of when they were due, the Office may determine that the application is filed, that the applicant must update the application or that the application is not filed for reasons other than failure to pay the costs of the Office and expert.

1.4.4 Specific Application Requirements – All In Situ Leach Mining Operations Regardless of Designated Mining Operation Status – Reclamation Permit Operations

(1) All in situ leach mining operations are by law designated mining operations. For all applications for in situ leach mining operations including those filed under Section 34-32-110, C.R.S., the application requirements outlined in Rules 1.4.1 and 1.4.5 shall be required in addition to the requirements of this Rule 1.4.4; except that if such applicant is granted an exemption from designated mining operation status, the applicant need not comply with designated mining operation application requirements.

(2) An application for an in situ leach mining operation will be considered filed for the purpose of calculating the decision-making time periods in Sections 34-32-115(1) and 115(2), C.R.S., as amended, when the application file includes all the required items specified in Rules 1.4.1, 1.4.5(1) and (2) and includes all of the following submittals:

112(j) (a) a description of In Situ Leach Mines as described in Rule 6.4.22;

112.5(5)(a) (b) a Baseline Site Characterization for the proposed permit area as described in Rule 6.4.23;

112.5(5)(b) (c) a Monitoring Plan as described in Rule 6.4.24;

112(i) (d) a certification by the applicant regarding violations as required in Rule 6.4.25.

112(10)(c) (e) proof of notice according to the provisions of Rule 1.6.2(1).

112(10)(c) (3) Proof of the notices required pursuant to Rules 1.6.2(1)(d), (e) and (f) is not required in order for an application to be considered filed, but such proof must be submitted to the Office prior to the Office's decision to approve an application pursuant to Rule 1.6.2(1)(g).

1.4.5 Specific Application Requirements – 112, 112d Reclamation Permit and 112 ISL Reclamation Permit Operations

112.5(2) (1) All general application requirements outlined in Rule 1.4.1 shall be required for a 112 and 112d Reclamation Permit Application. For all 110 and 112 applications for in situ leach mining operations, the requirements of Rules 1.4.1, 1.4.4 and this Rule 1.4.5 shall be required; however, if an applicant for an in situ leach mining permit is granted an exemption from designated mining operation status, such applicant need only comply with in situ leach mining requirements and not designated mining operation requirements such as the environmental protection plan.

112(1)
115(1)
115(2) (2) An application will be considered filed for the purpose of calculating the decision-making time periods under Sections 34-32-115(1) and 115(2), C.R.S., as amended, when the application file includes all of the following submittals:

(a) the application fee, as determined under Section 34-32-127(2) C.R.S., as amended;

(b) one (1) original and one (1) copy, or an electronic submittal as designated and approved by the Office, of:

(i) the application form;

(ii) all information, attachments, maps, and exhibits, as listed and described in Rule 1.4.1 and Rule 6.4;

(iii) an affidavit that notice signs were posted on-site pursuant to Rule 1.6.2(1)(b);

(iv) the appropriate information under Rule 6.5 and Rule 7.3, if required by the Office for a non-designated operation pursuant to Rule 6.1.2;

(v) an environmental protection plan as described in Rule 6.4.21 if the operation is a designated mining operation; and

(vi) proof of notice according to the provisions of Rule 1.6.2(1)(a).

112(10)(c) (3) Proof of the notices required pursuant to Rules 1.6.2(1)(d), (e), and (f) is not required in order for an application to be considered filed, but such proof must be submitted to the Office prior to the Office's decision to approve an application, pursuant to Rule 1.6.2(1)(g).

1.4.6 Office Consideration – 110(1), 110(2), 110 ISL and 110d Limited Impact Operation Permit Applications

110(6) (1) Except as to 110 ISL applications, the Office shall approve or deny a 110(1), 110(2), or 110d Limited Impact application within thirty (30) days of the date the application is considered filed. Applications for 110 ISL mining operations shall be approved or denied within two hundred and forty (240) days from the date the application is considered filed. The date set for consideration by the Office for any 110 application may be extended pursuant to provisions of Rule 1.8 (unless the submitted materials satisfy Rule 1.8.1(4)) or of Rules 1.4.1(7), (9), or (13). Except as to 110 ISL applications, the time for consideration shall not be extended beyond thirty (30) days after the last such change submitted under Rule 1.8 unless requested by the Applicant. For 110 ISL applications, the time for consideration shall not be extended beyond one hundred and twenty (120) days unless requested by the Applicant.

115(2) (2) In the event that an objection to a 110(1), 110(2), or 110d Limited Impact permit application, submitted in the form of a protest or petition for a hearing, is received by the Office pursuant to the provisions of Rule 1.7, the Office shall proceed to issue its decision by the date set for consideration in Rules 1.4.6(1), 1.4.1(9), 1.4.1(13) or 1.8. However, the Office may set the matter for a hearing before the Board, pursuant to the provisions of Rule 1.4.11. As to 110 ISL applications, if an objection is filed, the Office shall set the matter for hearing before the Board, in which case the Office shall make a recommended decision on the application.

110
112(3)
115(2) (3) Unless exempted from designated mining operation status, an application for an in situ leach mining operation must be filed under Rule 1.4.8. If an exemption has been granted,

the 110 ISL application shall comply with 112 permit application and procedures and comply with in situ leach mining requirements including filing the exhibits required under Rules 6.22, 6.23, 6.24 and 6.25. In addition, the two hundred and forty (240) days for a decision on an in situ leach mining application shall apply.

1.4.7 Reserved

1.4.8 Office Consideration – 112, 112 ISL or 112d Reclamation Permit Application with No Objections

115 (1) When a 112**,** 112 ISL or 112d Reclamation Permit application has been filed, and there are no protests or petitions for a hearing on the application submitted by a party pursuant to Rule 1.7, the Office shall issue the decision to approve or deny the application, as provided for in Section 34-32-115 C.R.S., no more than ninety (90) days after a 112 or a non in situ leach 112d application is filed with the Office or two hundred and forty (240) days after an in situ leach 112d or a 112 ISL application is filed. The Office shall not set a new date unless the date for consideration has been extended pursuant to Rules 1.4.1(7), (9), or (13).

115(1) (2) The date set for a decision on the application may be extended, pursuant to Rule 1.8 (unless the submitted materials satisfy Rule 1.8.1(4)). Such date shall not be extended beyond ninety (90) days after the last revision to the application.

115(2) **1.4.9 Office Consideration – 112, 112 ISL or 112d Reclamation Permit Application to which an Objection Has Been Received**

(1) (a) If a timely and sufficient objection or petition for a hearing on a 112 or a non in situ leach 112d Reclamation Permit Application is received by the Office from a party pursuant to Rule 1.7, the Office shall set a date for consideration of the application in conformity with the provisions of this Rule. Such date shall be no more than ninety (90) days after the application is filed with the Office. The date for consideration may be extended pursuant to Rules 1.4.1(7), (9), or (13), or 1.8 (unless any submitted materials satisfy Rule 1.8.1(4)). Instead of a decision, the Office will issue a recommendation to the Board by the date set for Office consideration.

(b) If a timely and sufficient objection or petition for a hearing on a 112 ISL or a 112d in situ leach mining operation application is received by the Office from a party pursuant to Rule 1.7, the Office shall set a date for consideration of the application in conformity with this Rule. Such date shall be no more than one hundred and eighty (180) days after the application is filed with the Office. However, if the Office determines an extension is necessary for its consideration, the Office may extend such date by thirty (30) days for a maximum time for consideration of two hundred and ten (210) days. In addition, the date for consideration may be extended pursuant to Rules 1.4.1(9) or (13), or Rule 1.8. Instead of a decision, the Office may issue a recommendation to the Board by the date set for Office consideration.

(2) In addition, the Office shall:

(a) schedule the permit application for a hearing before the Board;

(b) provide all parties notice of the Pre-hearing Conference and of the Board hearing related to consideration of the application. Unless notice is waived in writing by all Parties, the Office shall provide all parties at least thirty (30) days written notice of the Formal Board Hearing date; and;

(c) on or before the date set for Office consideration of the application, issue a recommendation to the Board for approval, approval with conditions, or denial of the application. Such recommendation shall identify the issues raised by the Office or by the petitions for a hearing filed with the Office. The Office's recommendation and rationale for approval or denial shall be sent to the Applicant and to all objectors of record at least three (3) Working Days prior to the pre-hearing conference. Upon request, the Office will also send by electronic mail its recommendation and rationale to a party, or a party may pick up a copy at the Office. Copies of the Office's recommendation and rationale will be available at the pre-hearing conference.

(3) Where a non in situ leach mining 112 or non in situ leach mining 112d Reclamation Permit Application is set for a hearing, the Board shall make a final decision on the application within one hundred and twenty (120) days after the date the application was filed, unless the date set for consideration has been extended pursuant to Rules 1.4.1(7), (9), (13), or 1.8, or Section 34-32-115(2), C.R.S. Where any in situ leach mining Reclamation Permit Application (110,110 ISL, 112, or 112 ISL) is set for hearing, the Board shall make a final decision on the application within two hundred and forty (240) days after the date the application was filed, unless the date set for consideration has been extended pursuant to Rules 1.4.1 (9) or (13), 1.8, or Section 34-32-115(2), C.R.S.

(4) The decision rendered by the Board shall be considered final agency action for the purposes of the judicial review provisions of Section 24-4-106, C.R.S.

115(5)

1.4.10 Office and Board Consideration of Applications for Reclamation Permits for any In Situ Leach Mining Operations Regardless of Designated Mining Operation Status

(1) The Board or Office may deny a permit application for any in situ leach mining operation (112d which includes 110d, 112 ISL or 110 ISL) regardless of the proposed operation's status as a designated mining operation:

(a) based on scientific or technical uncertainty about the feasibility of reclamation;

(b) if the existing or reasonably foreseeable potential future uses for potentially affected groundwater, whether classified or unclassified pursuant to Section 25-8-203, C.R.S., includes domestic or agricultural uses, and the Board or Office determines the in situ leach mining will adversely affect the suitability of the groundwater for such uses;

(c) if the applicant or an affiliate, officer or director of the applicant, the operator or the claim holder has demonstrated a pattern of willful violations of environmental

protection requirements of this article, rules promulgated pursuant to this article, a permit issued pursuant to the article, or an analogous law, rule, or permit issued by another state or the United States as disclosed in the application; or

(d) if the applicant or any affiliate, officer or director of the applicant has in the ten (10) years prior to the submission of the application violated the environmental protection requirements of this article, rules promulgated pursuant to this article, a permit issued pursuant to the article, or an analogous law, rule, or permit issued by another state or the United States as disclosed in the application; however,

(i) the Board or Office may issue the permit if the applicant submits proof any said violation has been corrected; or

(ii) the Board or Office may conditionally issue the permit if the violation is in the process of being corrected to the satisfaction of the Board or Office or if the applicant has filed or is presently pursuing a direct administrative or judicial appeal to contest the validity of the alleged violation. An appeal of an applicant's relationship to an affiliate shall not qualify as an appeal to contest the alleged violation. Further, if the violation is not successfully abated or if the violation is upheld on appeal, the Board or Office shall revoke the conditionally issued permit.

(2) The Board or Office shall deny a permit application for an in situ leach mining operation:

(a) if the applicant fails to demonstrate that reclamation can and will be accomplished in compliance with article 32 of title 34, C.R.S., including the protection of groundwater and other environmental resources and human health; or

(b) if the applicant fails to demonstrate by substantial evidence that it will reclaim all affected groundwater for all water quality parameters that are specifically identified in the baseline site characterization required in Rule 1.4.4, or in the statewide radioactive materials standards or tables 1 through 4 of the Basic Standards for Groundwater as established by the Colorado Water Quality Control Commission, to either of the following:

(i) pre-mining baseline water quality or better, as established by the baseline site characterization required by Rule 1.4.4; or

(ii) that quality which meets the statewide radioactive materials standards and the most stringent criteria set forth in tables 1 through 4 of the basic standards for groundwater as established by the Colorado Water Quality Control Commission.

24-4-104(9)

1.4.11 Administrative Appeal – of an Office Decision

(1) Any person who demonstrates that they are directly and adversely affected or aggrieved by an action of the Office, including a decision to grant or deny a permit application, other than an application considered under the provisions of Rule 1.4.9 or a cost estimate determination for oil shale or in situ leach mining applications under the provisions of Rule

1.4.11(3), and whose interest is entitled to legal protection under the Act may petition for a hearing before the Board on such action within:

(a) sixty (60) days of the date of the Office decision if the Office decision was a denial, without a hearing, of an application for a permit or a Notice of Intent; or 24-4-104(9)

(b) thirty (30) days for an appeal of any other Office decision.

(c) Such hearings before the Board shall comply with this Rule and Section 24-4-105, C.R.S.

(d) Such petitions for a hearing shall state how the petitioner is directly and adversely affected or aggrieved by the Office's decision, and how the petitioner's interests are entitled to protection under the Act. The petitioner shall list and explain any issue the petitioner believes should be considered by the Board at the hearing on the matter. The petition for a hearing shall specify the application or file number assigned by the Office.

(2) If no petition decision is made by the Board within sixty (60) days of the date the petition is submitted, the petition will be deemed denied. Such denial shall be considered final agency action for the purposes of the judicial review provisions of Section 24-4-106, C.R.S.

(3) A permit applicant for an oil shale or any in situ leach mining operation may appeal to the Board the Office's cost estimate to review such an application done pursuant to Rule 1.5.2(1) by filing a petition for a hearing before the Board within ten (10) days from the date the Office mailed the cost estimate to the applicant. The petition for hearing shall set forth the list of issues the applicant believes should be considered by the Board and the specific factual and legal basis for the appeal. The petition for a hearing shall specify the application or file number assigned by the Office. The hearing shall not be held any sooner than twenty (20) days after notice is given to the permit applicant. The Office and applicant may consult on the cost estimate issue between the time the Office mails the notice to the applicant and the time in which the applicant must file an appeal with the Board.

(4) The Office shall give notice of any Formal Board Hearing to consider an appeal according to the provisions of Rule 1.6.1(4).

(5) The Office may determine whether to hold a pre-hearing conference dependent upon the number of parties to the Formal Board Hearing and/or complexity of the issues, or the Board may so direct the Office as the Board sees fit.

24-4-104(9)

1.4.12 Appeal of 112 and 112d (including in situ leach mining reclamation permits,) 112 ISL or 110 ISL Reclamation Permit Application Denial

If the Office issues a decision to deny an application for a 112, 112d (including in situ leach mining), 112 ISL or 110 ISL Reclamation Permit, it shall schedule the application for a hearing before the Board unless the Applicant decides to withdraw the application. Such hearing shall be scheduled prior to the deadline for a final decision on the application pursuant to Section 34-32-115(2), C.R.S.,

and Rules 1.4.8(2), 1.4.9(1), or 1.4.9 (3) above, and shall be conducted in conformance with the provisions of Section 24-4-105, C.R.S.

(a) Within ten (10) days of receipt of the letter of denial, the Applicant shall file a statement of issues to be considered by the Board at the hearing. The statement shall include an explanation of the grounds for seeking a reversal of the Office's decision.

(b) If there are no other parties to the proceedings on the application the Applicant may waive the statutory deadline for a final decision. In that event, the Applicant shall file the statement of issues to be considered by the Board at the hearing within sixty (60) days of the receipt of the letter of denial.

115(3)

1.4.13 Automatic Application Approval

(1) If the Office or the Board fail to make a decision on a permit application by the deadlines set forth in Rules 1.4.6, 1.4.8, and 1.4.9, the application shall be deemed approved and the permit shall be granted upon submittal by the Applicant and approval by the Office of the appropriate performance and financial warranties.

(2) Where an Applicant has waived its right, in writing, to a decision by the deadlines set forth in statute or by these Rules, the automatic approval provisions of Rule 1.4.13(1) shall not apply.

1.5 FEES

1.5.1 General Provisions – Application Fees

127(2)(a)(I)(M)

On and after July 1, 1994, a fee shall be paid by the Applicant of a permit for a designated mining operation at the time an Environmental Protection Plan is submitted for review and approval to the Office.

The fee shall be applied to both existing and new Designated Mining Operations and shall reimburse the Office for the estimated cost to the Office for processing certification and administrative review of such permit applications. The fees shall be as follows, based upon the level of effort: for Environmental Protection Plans filed before July 1, 2007, not less than eight hundred and seventy-five dollars ($875) and not more than nine thousand dollars ($9,000) pursuant to Section 34-32-127(2)(a)(I)(M), C.R.S. For Environmental Protection Plans filed on or after July 1, 2007, the fee shall not be less than one thousand dollars ($1,000) and not more than ten thousand three hundred and fifty dollars ($10,350).

127(2)(a)(I)(M)
127(2)(a)(I)(N)
127(2)(a)(I)(O)

1.5.2 Fees for In Situ Leach Mining Operations and Oil Shale Mining Operations

(1) For applications for in situ leach mining operations or oil shale mining operations the fees shall be as follows except as provided in Rule1.5.2 (2):

(a) for applications for new permit operations – the fee shall be that listed in Rule 1.5.5(8);

(b) for applications for an amendment to a permit shall be that listed in Rule 1.5.6(4);

(c) for applications for revisions to permits other than amendments, the fee shall be that listed in Rule 1.5.7(4).

(2) (a) If the costs to review applications for new permit operations, amendments to permits or revisions for permits exceed twice the fee for such application, the applicant shall pay the additional costs. The costs shall include those of the Office, another division of the department involved in the review, and any consultant or other nongovernmental agents that have specific expertise on the issue in question. The Office shall inform the applicant that the cost of review may exceed twice the amount of the listed fee and shall provide the applicant with an estimate of the actual costs within ten (10) days after the Office's receipt of the application. The applicant may appeal the estimate to the Board pursuant to Rule 1.4.11(3). In addition, the Office and applicant may consult on the cost estimate issue between the time the Office mails the notice to the applicant and the time in which the applicant must file an appeal with the Board.

(b) Any consultant or other non-governmental agent the Office uses pursuant to Rule 1.5.2(2)(a) shall not have any financial or business interest in the permit application, any current or previous direct involvement in the proposed mining operation, or have worked for the applicant or any objecting party as an employee or independent contractor on any major project for at least one (1) year prior to the filing of the application. In addition, the consultant or agent must avoid future conflicts with the Office including not working for any party to the permit application proceedings for at least one (1) year after the consultant or agent completes the work for the Office. Notwithstanding the above, the Office may use a consultant or agent if all parties to a permit application waive any conflict of interest.

127(2)(a)(I)(B)

1.5.3 Fees for Existing Operations – Technical Revisions

(1) Designated Mining Operations which qualify for permits under Section 34-32-110, C.R.S. 1984, as amended, which shall be referred to as "110d" permits - $1,006;

(2) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, but which affect less than fifty (50) acres and extract less than one (1) million tons per year, which shall be referred to as "112d-1" permits - $1,006;

(3) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, which do not qualify as 112d-1 permits, but which affect less than one hundred (100) acres and extract less than five (5) million tons per year, which shall be referred to as "112d-2" permits - $1,006; and

(4) any other Designated Mining Operation which shall be referred to as "112d-3" permits - $1,006.

127(2)(a)(I)(M) **1.5.4 Fees for Existing Operations – Permit Amendments**

(1) Designated Mining Operations which qualify for permits under Section 34-32-110, C.R.S. 1984, as amended, which shall be referred to as "110d" permits - $1,750;

(2) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, but which affect less than fifty (50) acres and extract less than one (1) million tons per year, which shall be referred to as "112d-1" permits - $2,300;

(3) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, which do not qualify as 112d-1 permits, but which affect less than one hundred (100) acres and extract less than five (5) million tons per year, which shall be referred to as "112d-2" permits - $4,025; and

(4) any other Designated Mining Operation which shall be referred to as "112d-3" permits - $7,475.

127(2)(a)(I)(M) **1.5.5 Fees for New Operations**

For purposes of these Rules, "new operations" are defined as operations that submit(ted) applications for permits after July 1, 1994.

(1) Designated Mining Operations which qualify for permits under Section 34-32-110, C.R.S. 1984, as amended, which shall be referred to as "110d" permits - $2,875;

(2) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, but which affect less than fifty (50) acres and extract less than one (1) million tons per year, which shall be referred to as "112d-1" permits - $4,025;

(3) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984 as amended, which do not qualify as 112d-1 permits, but which affect less than one hundred (100) acres and extract less than five (5) million tons per year, which shall be referred to as "112d-2" permits - $6,900; and

(4) any other Designated Mining Operation which shall be referred to as "112d-3" permits - $9,200.

127(2)(a)(I)(B) **1.5.6 Fees for New Operations – Technical Revisions**

(1) Designated Mining Operations which qualify for permits under Section 34-32-110, C.R.S. 1984, as amended, which shall be referred to as "110d" permits - $1,006;

(2) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, but which affect less than fifty (50) acres and extract less than one (1) million tons per year, which shall be referred to as "112d-1" permits - $1,006;

(3) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, which do not qualify as 112d-1 permits, but which affect less than one

hundred (100) acres and extract less than five (5) million tons per year, which shall be referred to as "112d-2" permits - $1,006; and

(4) any other Designated Mining Operation which shall be referred to as "112d-3" permits - $1,006.

127(2)(a)(I)(M) **1.5.7 Fees for New Operations – Permit Amendments**

(1) Designated Mining Operations which qualify for permits under Section 34-32-110, C.R.S. 1984, as amended, which shall be referred to as "110d" permits - $2,300;

(2) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, but which affect less than fifty (50) acres and extract less than one (1) million tons per year, which shall be referred to as "112d-1" permits - $2,875;

(3) Designated Mining Operations which qualify for permits under Section 34-32-112, C.R.S. 1984, as amended, which do not qualify as 112d-1 permits, but which affect less than one hundred (100) acres and extract less than five (5) million tons per year, which shall be referred to as "112d-2" permits - $4,600; and

(4) any other Designated Mining Operation which shall be referred to as "112d-3" permits - $8,050.

(5) Fees for all other applications for new Permits or Modifications to existing Permits are as specified in Section 34-32-127, C.R.S. 1984, as amended.

1.5.8 Annual Fees

127(2)(a)(IV) Each year, on the anniversary date of the permit, the Permittee shall submit the appropriate annual fee specified in Section 34-32-127(2)(a), C.R.S.

1.6 PUBLIC NOTICE PROCEDURES

106(1)(d) **1.6.1 Office/Board Procedures – Permit Application Decision Dates**

(1) The Office shall give such notice of the decision date for applications for all types of mining operations, including applications for:

(a) 110 and Non-in situ leach mining 110d Limited Impact Operations;

(b) 112 and 112d Reclamation Operations;

(c) 110 ISL and 112 ISL Mining operations.

(2) The Office shall give notice, as required by Rule 1.6 and the following specific provisions, of the decision date of the application to:

109(8) (a) the Applicant;

109(8) (b) the county(s) in which the proposed mining operation is to be located;

(c) any municipality within two (2) miles of the proposed mining operation; and

(d) the public, by newspaper release, and by electronic submittal on the Office website as designated and approved by the Office, and posting as prescribed in Rule 2.2.1(a)(iii).

115(1) (3) The Office shall send written and / or electronic notice of the date, time and place of any Pre-hearing Conference to:

(a) the Applicant;

(b) all persons that submitted timely statements in support of or objections to the application and a basis for party status; and

(c) the Board of County Commissioners and the applicable Conservation District.

(4) The Office shall provide notice of the date, time, and place of any application hearing by the Board, by:

(a) sending written and / or electronic notice to the Applicant, any person previously filing a protest or petition for a hearing or statement in support of the application, and the local Board of County Commissioners;

(b) publishing notice in a newspaper of general circulation in the locality of the proposed mining operation once a week for two (2) consecutive weeks immediately prior to the hearing; and

(c) mailing list, newspaper release, the Office website, and posting as prescribed in Rule 2.2.1(a)(iii).

110 112 **1.6.2 General Applicant Procedures**

(1) The Applicant shall:

(a) Prior to submitting the application to the Office, send a notice, on a form approved by the Board, to the local Board of County Commissioners and, if the mining operation is within the boundaries of a Conservation District, to the Board of Supervisors of the Conservation District.

(i) The Applicant shall include proof of such notice with the application at the time the application is submitted to the Office.

(ii) Proof of notice shall be in the form of a return receipt of a ~~Certified~~ certified mailing, e-receipt, or a date-stamped copy of the notice acknowledging receipt by the appropriate local Board.

Commented [MR12]: Throughout this rulemaking, references to electronic submittals is to modernize language to reflect current and e-permitting processes.

(b) Prior to submitting the application to the Office for a 110, 112, 112d, 110 ISL or 112 ISL Reclamation Permit, post notices (signs) at the location of the proposed mine site, as required by the Office, of sufficient number and a minimum size of eleven (11) inches wide by seventeen (17) inches high, with appropriate font size, to clearly identify the site as the location of a proposed mining operation giving name, address, and phone number of the Applicant, and stating that (name of Applicant) has applied for a mining permit with the Colorado Mined Land Reclamation Board. Anyone wishing to comment on the application may view the application at the County Clerk's or Recorder's office or on the Office Website and should ~~send~~ submit comments prior to the end of the public comment period to the Colorado Mined Land Reclamation Office, at the address given on the cover of these Rules and Regulations or by electronic submittal as designated and approved by the Office. For any class of 110 or 110d Limited Impact operation other than a 110 ISL operation the Applicant need only post notice (sign) at the location of the proposed access to the site. After having posted such notice (sign), failure by an Applicant to maintain such notice shall not constitute just cause to deny approval of the application. At the time the application is filed with the Office, the Applicant shall provide a signed affidavit that such notices (signs) were posted according to the provisions of this Rule.

Commented [MR13]: 110 was omitted in last rulemaking. These requirements are for all types of permits.

112(10(c)

(c) Prior to submitting the application to the Office and/or prior to submitting amendments to the application, place for public review a copy of the application and amendments, without confidential items, with the Clerk or Recorder of the county or counties in which the affected land is located, and provide proof as required by Rule 6.3.9 for 110 and non-in situ leach mining 110d Limited Impact Operations and Rule 6.4.18 for 112, 112d, 110 ISL or 112 ISL Reclamation Operations.

110(6)

(d) Within ten (10) days after the Office notifies the Applicant that the application is considered filed, publish a public notice in a newspaper of general circulation in the locality of the proposed mining operation containing:

(i) name and address of Applicant;

(ii) location of the proposed mining operation by section, township and range and street address where applicable;

(iii) proposed dates of commencement and completion of the operation;

(iv) proposed future use of affected land;

(v) location where additional information on the operation may be obtained, including the Office Website; and

(vi) location and final date for submitting statements, including the Office Website link, of support or objections with the Office.

112(10)(c)

(e) The Applicant shall mail or personally serve a copy of the notice provided for in Rule 1.6.2(1)(d) immediately after the first publication to:

(i) all Owners of Record of the surface and mineral rights of the affected land;

(ii) the Owners of Record of all land surface within 200 feet of the boundary of the affected lands, and;

(iii) if the proposed operation is any in situ leach mining operation, the Owners of Record of all land surface within three (3) miles of the boundary of the affected land.

112(10)(c)

(f) As soon as designated by the Office, mail a copy of the notice provided for in Rule 1.6.2(1)(d) to any other Owners of record who might be affected by the proposed mining operation. The Office shall designate such owners, if any, during its adequacy review process.

112(10)(c)

(g) Proof of Notice may be by submitting return receipts of a ~~Certified~~ certified mailing or by proof of personal service. An application will be considered filed by the Office when the Applicant supplies the proper application fee, a signed affidavit that all notices as provided for in Rule 1.6.2(1)(b) have been posted, and the application meets the applicable requirements of Rules 1.4.1, 1.4.2, or 1.4.5. Prior to Office consideration of the application, proof of notice provided for in Rule 1.6.2(1)(d), (e), and (f) must be received by the Office.

112(9)
112(10)(a)

(2) The copy of the permit application, adequacy responses of the applicant, application revisions, and any permit amendment applications placed at the office of the County Clerk or Recorder shall not be recorded, but shall be retained until final agency action, as defined at C.R.S. 24-4-105(14), on said application has occurred and be available for inspection during such period. At the end of such period, such application may be reclaimed by the Applicant or destroyed. Applicants should contact the Office prior to removal of the copy of the application materials placed with the office of the County Clerk or Recorder in order to ensure compliance with C.R.S. 24-4-105(14). The copy of the permit application, adequacy responses of the applicant, application revisions, and any permit amendment applications on file with the Office Website constitute the official public file and shall remain accessible to the public.

Commented [MR14]: Added text clarifies that the Office "official file" link will be located on the Office Website and available to the public.

110

1.6.3 Specific Provisions – 110 and Non-In Situ Leach Mining 110d Limited Impact Permit Applications and Conversions of Two Acre Limited Impact Permits

(1) The following Notice Rules and the notice requirements of Rule 1.6.2 also apply to applications for:

(a) new 110 and Non-In Situ Leach Mining 110d Limited Impact Permit Applications; or

110(7)

(b) conversions of Two Acre Limited Impact Permits to 110 and Non-In Situ Leach Mining 110d Limited Impact Permits.

112(10)(c) (2) The Office shall give written notice, by mailing, of the decision date for the application.

110(6) (3) The Public Notice, as required in Rule 1.6.2(1)(d), shall be published once.

(4) This Rule is not applicable to permit applications under Section 34-32-110 that are for in situ leach mining operations. Applications for in situ leach mining operations shall follow the notice requirements for 112d-3 permit applications in Rule 1.6.5. If such application is granted an exemption from designated mining operation status, the applicant must still comply with all in situ leach mining application requirements and shall follow the procedures for 112 permits.

1.6.4 Reserved

1.6.5 Specific Provisions – 112, 112d, 110 ISL and 112 ISL Reclamation Permit Applications

112(10)(b) (1) The Public Notice, as required in Rule 1.6.2(1)(d) shall be published four (4) times, once a week for four (4) consecutive weeks.

112(10)(c) (2) Within ten (10) working days after the last publication or as soon thereafter as proof has been obtained, the Applicant shall mail proof of the publication required by Rule 1.6.2(1)(d), to the Office. Proof of publication may consist of either a copy of the last newspaper publication, to include the date published, or a certified or notarized statement from the paper. An application may not be approved until such proof has been obtained.

1.6.6 Conditions that Require New Notice to the Public

If a notice is in error or a change to the application is so substantial, as determined by the Office, that it affects any of the terms contained in the notice that was published in the newspaper or mailed to the owners of the affected and adjacent lands, or the change is an amendment to the application, the Applicant shall be required to publish and mail a new notice of the application. In the event that the Applicant is required to issue a new notice, all applicable deadlines shall begin to run anew.

1.7 SUBMISSION OF COMMENTS AND PETITIONS FOR A HEARING

1.7.1 General Provisions

110(2)(b) (1) Any person has the right to submit written statements supporting or objecting to any application for a permit, or for an amendment or revision of a previously granted permit. For a person to become a party, the person must meet the definition of a party as provided in these regulations. Any party may petition for a hearing on any application for a permit, or for an amendment or technical revision to a previously granted permit.

(2) In order for statements supporting or objecting to an application, petitions for a hearing, and/or submissions to become a party to be considered timely, the following deadlines shall apply:

(a) In the case of a 112**,** 112d**,** 110 ISL or 112 ISL Reclamation Permit Application, such written comments, protests, and petitions for a hearing must be received by the Office not more than twenty (20) calendar days after the last date for the newspaper publication of notice of the application provided for in Rules 1.6.2(1)(d) and 1.6.5(1). Written comments, protests and/or petitions must contain the name, mailing address, e-mail, and telephone number of the interested parties. The Office shall set the matter for a hearing before the Board upon timely receipt of a written objection, protest, or petition for a hearing under this Rule.

(b) Except for 110 in situ leach mining permit applications, which must follow the application process for 112d permit applications or if exempt from designated mining operation status, 112 permit applications, written comments, protests or petitions for a hearing as to a 110 or non-in situ leach mining 110d Limited Impact Permit application must be received by the Office not more than ten (10) days after the last date for newspaper publication of notice of the application provided for in Rules 1.6.2(1)(d) and 1.6.3(3). The written comment, protest and/or petition must contain the name, mailing address, e-mail, and telephone number of the interested parties. The Office may set the matter for a hearing before the Board upon timely receipt of a written petition for a hearing under this Rule, but in any case shall approve or deny the permit application within thirty (30) days of the date the Office considers the application filed according to the provisions of Rules 1.4.1 or 1.8. If the Office does not set the matter for a hearing, any person who demonstrates that they are directly and adversely affected or aggrieved by the Office's decision to grant or deny the 110 or non-in situ leach mining 110d Limited Impact Permit application and whose interests are entitled to legal protection under the Act may appeal the Office's decision pursuant to Rule 1.4.11.

(3) If the Office receives any written objections to an application pursuant to the Rule 1.7.1(2), the Office shall provide a copy of the objection to the Applicant within ten (10) days of receipt.

1.7.2 Specific Provisions – 110 Limited Impact and Non In Situ Leach Mining 110d Limited Impact Designated Mining Operations Applications

110(6) (1) Except for 110 in situ leach mining operation permit applications, which shall follow the procedures for 112d permit applications or if exempt from designated mining operation status, the procedures for 112 permit applications, comments shall be submitted in accordance with Rule 1.7.1.

110(2)(b) (2) To be considered, such statements must be received by the Office within ten (10) days after the last date of the Applicant's newspaper publication.

1.7.3 Reserved

1.7.4 Specific Provisions – 112, 112d, 110 ISL and 112 ISL Reclamation Permit Applications

110(6) (1) Comments shall be submitted in accordance with Rules 1.7.1 and 1.7.4.

(2) In the event the Office receives an objection within twenty (20) calendar days of the last day of publication and in accordance with this Rule 1.7, it shall set the permit application for a hearing before the Board, according to the provisions of Rule 2.

1.8 AMENDMENTS AND TECHNICAL REVISIONS TO A PERMIT APPLICATION

1.8.1 General Provisions – 110 and 110d Limited Impact or 112 and 112d or 110 ISL and 112 ISL Reclamation Permit Applications

(1) An Applicant may amend, or make technical revisions to, an application for a permit under consideration by the Office by filing a copy of such amendment or technical revision with the Office and placing a copy with the County Clerk and Recorder.

(2) Within five (5) working days of placement with the County Clerk or Recorder, the Applicant shall provide the Office with an affidavit or receipt demonstrating that the amendment or technical revision was placed with the County Clerk and Recorder not later than the close of business on the day the amendment or technical revision was filed with the Office.

(3) Any amendment or technical revision to an application shall constitute a new filing for the sole purposes of determining the date for the consideration of the application by the Office, and for the deadline for a final decision on the application. The provisions of Rule 1.6.6 shall apply to submitted amendments**.** The provisions of Rules 1.8.2 shall apply to technical revisions for 110 and non-in situ leach mining 110d Limited Impact**,** and the provisions of Rule 1.8.4 shall apply to technical revisions for all in situ leach mining applications (regardless of designated mining operation status), 112 and 112d Reclamation Permit applications.

(4) If the Office determines that additional information is submitted by the Applicant for the purpose of detailing, clarifying or explaining any part of the application, whether at the request of the Office or otherwise, then such additional information shall not constitute a change or an addition resulting in an amendment or technical revision to the application.

(5) If the Applicant notifies the Office of a proposed change in post-mining land use, the Office shall decide whether such change in post-mining land use requires a change in the Reclamation Plan and whether such change shall require a Technical Revision or Permit Amendment.

(6) Within five (5) working days of the filing of an amendment or technical revision to an application, the Office shall set a new date for the consideration of the application. The new date shall be set pursuant to Rule 1.6.6, 1.8.2 or 1.8.4, as applicable.

1.8.2 Technical Revisions to 110 or Non In Situ Leach Mining 110d Limited Impact Permit Applications

The Office shall set a new date for the consideration of a technical revision to an application for a 110 or non-in situ leach mining 110d Limited Impact permit only as necessary to afford an adequate opportunity for a review of the technical revision by the Office and by any interested members of

the public. This Rule 1.8.2 does not apply to technical revisions for in situ leach mining permit applications. Technical revisions to in situ leach mining permit applications must follow the procedural requirements for 112d permit applications or if exempt from designated mining operation status, 112 permit applications.

1.8.3 Reserved

1.8.4 Technical Revisions to 112, 112d, 110 ISL or 112 ISL Reclamation Permit Applications

(1) Written objections to the application:
The Office shall not set a new date for consideration of an application for a 112, 112d, 110 ISL or 112 ISL Reclamation Permit for which it has received written objections, any earlier than twenty (20) days after the date of filing of a technical revision to the application, unless the Applicant, the Office and all parties agree on an earlier date.

(2) No written objection to the application:
The Office shall set a new date for the consideration of an application to which no objection has been submitted only as necessary to afford the Office an adequate opportunity to review the technical revision.

1.9 TECHNICAL REVISION TO A PERMIT

1.9.1 Filing and Review Process

An application for Technical Revision shall be filed ~~in writing~~by electronic submittal as designated and approved by ~~with~~ the Office. The Office shall act on a Technical Revision application within thirty (30) days after the Technical Revision has been filed with the Office. A Technical Revision is considered filed when the submittal includes the appropriate fee. A Technical Revision shall be considered automatically approved within thirty (30) days after filing unless the application is denied. Notice of Technical Revisions shall be acknowledged in the monthly activity report attached to the monthly Board agenda.

1.9.2 Denial and Appeal Process

114 In the event that the Office decides to deny an application for Technical Revision, the Office will notify the Operator in writing within ten (10) days after the decision deadline. The Operator may appeal the decision to the Board for a final determination by submitting a petition for a hearing pursuant to the provisions of Rule 1.4.11.

1.10 AMENDMENT TO A PERMIT

112(8) (1) Where applicable, there shall be filed with any application for a 112, 112d, 110 ISL or 112 ISL Reclamation Permit amendment, attachment(s), map(s), and one (1) original and one (1) copy, or by electronic submittal as designated and approved by the Office, of the application with the same content as required for an original application, except that the Applicant will not be required to submit any information which duplicates applicable

previous submittals. However, the Applicant shall clearly describe where in the original application and supporting documents the information not included in the amendment application, but necessary to render the amendment technically adequate, may be found.

(2) A 110 or non-in situ leach mining operation 110d Limited Impact permit amendment submittal shall include attachment(s), map(s), and one (1) original and one (1) copy, or by electronic submittal as designated and approved by the Office, of the application with the same content as required for an original application, except the Applicant will not be required to submit any information which duplicates applicable previous submittals. However, the applicant shall clearly describe where, in the original application and supporting documents, the information not included in the amendment application, but necessary to render the amendment technically adequate, may be found.

(3) The amendment application shall be accompanied by a basic fee as specified in Section 34-32-127, C.R.S. 1984, as amended. Amendment applications for any in situ leach mining operations shall be accompanied by the basic fee for a 112d amendment application or a 112 amendment application if the operation has been exempted from designated mining operation status.

(4) Applications for amendment shall be reviewed by the Board or Office in the same manner as applications for new Permits.

(5) All aspects of the mining operation and Reclamation Plan that are subject to the amendment will be subject to these Rules, as amended, in effect at the time the Permit is amended.

110(7) **1.11 CONVERSIONS**

1.11.1 Purposes and Types

(1) A conversion is an application to change an existing permit to another type of permit based on an increase in acreage of the mining operation. Operators requesting conversion of a permit, regardless of designated mining operation or in situ leach status, must file a new permit application pursuant to either Section 34-32-110 C.R.S. and Rule 1.4.2 or Section 34-32-112 C.R.S. and Rules 1.4.4 and 1.4.5.

(2) Unless such mining is incidental to the permitted activity, any Operator who intends to mine any commodity other than a "construction material" commodity, as defined in Section 34-32.5-103(3), C.R.S., shall apply for a conversion to a new permit under the provisions of Section 34-32-101, et seq, C.R.S. 1984. Upon issuance of the new permit, the existing permit under Section 34-32.5-101, et seq, C.R.S., shall be terminated. Such determinations may be made through a declaratory order by the Board.

110(7) **1.11.2 Application Process**

(1) Except for permit conversions under Rule 1.11.1(2), the original Permittee cannot convert a Permit unless the permit has been in existence for two (2) consecutive years.

(2) All warranty and permit processing requirements shall apply as though the Conversion application were a new permit application. A fee, as specified in Section 34-32-127(2)(a) C.R.S. shall be submitted at the time of the application submittal. Pursuant to Section 34-32-110(7)(a) C.R.S. and Rule 1.11.1, all conversion requests must include the filing of a new Section 110 or Section 112 permit application. In the case of converting from a 110 ISL operation to a 112 ISL operation, the Applicant/Operator must file a new baseline and site characterization and monitoring plan pursuant to the process set forth in Section 34-32-112.5 C.R.S. and Rule 1.4.3. If the Applicant/Operator believes that baseline site characterization information obtained for the original 110 ISL application is relevant to the permit conversion application, that information may, in the discretion of the Office, be incorporated into the conversion application pursuant to Rule 1.11.2(3).

(3) Contents of application:

(a) except as otherwise indicated in this Rule 1.11.2, the Operator shall provide all the information required by the Act and these Rules for the size of operation. However, the Operator need not supply any information required by the provisions of the Act which has been previously supplied unless such information is different from that in the original application. However, the Operator shall clearly describe where in the original application and supporting documents the information not included in the conversion application, but necessary to render the conversion application technically adequate, may be found.

(b) In addition, the application shall show:

(i) the area mined or disturbed; and

(ii) the area reclaimed since the original permit application.

(3) When an Operator is requesting a change in the status of a permit from a Designated Mining Operation to a Non-designated Mining Operation conversion provisions do not apply; the operator must comply with the exemption from designation requirements and procedures set forth in Rule 7.2.6.

1.11.3 Repealed

119 **1.12 PERMIT TRANSFERS AND SUCCESSION OF OPERATORS**

1.12.1 Approval Process

(1) Where one Operator succeeds another at any uncompleted operation, the first Operator shall be released from all liability as to that particular reclamation operation and all applicable Performance and Financial Warranties as to such operation shall be released if the successor Operator assumes, as part of the obligation under the Act and these Rules, all liability for the reclamation of the affected land, and the obligation is covered by replacement Performance and Financial Warranties as to such affected land.

(2) Requests for permit transfers and succession of Operators must be submitted on "Request for Transfer of Mineral Permit and Succession of Operators" forms provided by the Board. To be considered filed, each request must include an executed Performance Warranty, State approved W-9, and applicable replacement Financial Warranty, as well as any updated legal right of entry, damage waiver agreements, or a geo-technical report demonstrating approved safety factors to prevent off-site damage within 200 feet of the affected lands. In addition, each request for transfer of mineral permit and succession of operators for any in situ leach mining operation must include exhibit Y as required by Rule 6.4.25.

Commented [MR15]: The added text is to clarify the other documentation currently required in the SO process that is often overlooked by operators.

(a) The Office shall act on a Succession of Operator application within thirty (30) days.

(b) Succession of Operator requests will be considered automatically approved after thirty (30) days of the date the Succession of Operator request is filed with the Office unless the Operator is notified by the Office that the request is denied. Succession of operator requests must be submitted on forms provided by and approved by the Board, and include the fee specified, in Section 34-32-127(2), C.R.S., and the properly executed financial and performance warranties, and damage waiver agreements or geo-technical stability reports, where required.

(3) Approval of a permit transfer and succession of Operator request shall be given by the Office if it finds that the successor Operator is capable of assuming all responsibility for the conditions included under the original permit; except that for any in situ leach mining operation, the Office or the Board may deny a permit transfer if:

(a) the successor operator or any affiliate, officer or director of the successor operator has demonstrated a pattern of willful violations of the environmental protection requirements of C.R.S. title 34 article 32, rules promulgated pursuant to this article, a permit issued pursuant to the article, or an analogous law, rule, or permit issued by another state or the United States;

(b) the successor operator or any affiliate, officer or director of the successor operator has in the ten (10) years prior to the submission of the request violated the environmental protection requirements of this article, rules promulgated pursuant to this article, a permit issued pursuant to the article, or an analogous law, rule, or permit issued by another state or the United States as disclosed in the application; however,

(i) the Board or Office may approve of the request if the successor operator submits proof any said violation has been corrected; or

(ii) the Board or Office may conditionally grant the request if the violation is in the process of being corrected to the satisfaction of the Board or Office or if the successor operator has filed or is presently pursuing a direct administrative or judicial appeal to contest the validity of the alleged violation. An appeal of a successor operator's relationship to an affiliate shall not qualify as an appeal to contest the alleged violation. Further, if the violation is not successfully abated or if the violation is upheld on

appeal, the Board or Office shall revoke the conditionally issued transferred permit.

Notice of Permit Transfer will be acknowledged in the monthly activity report attached to the monthly Board agenda.

114 **1.12.2 Denial and Appeal Process**

(1) Non-ISL appeal: In the event the Office decides to deny a succession of Operator application in a non-in situ leach mining operation, the Office will notify the Applicant in writing within ten (10) days of the decision deadline. The applicant may appeal the Office's decision to the Board for a final determination according to the provisions of Rule 1.4.11.

(2) ISL appeal: As to an in situ leach mining operation the applicant/operator or any person who demonstrates that they are directly and adversely affected or aggrieved and whose interest is entitled to legal protection under the Act may appeal to the Board the Office's decision regarding a transfer of operations according to the provisions of Rule 1.4.11.

103(6) **1.13 CESSATION OF OPERATIONS – TEMPORARY FOR ALL MINING OPERATIONS OR PERMANENT FOR IN SITU LEACH MINING OPERATIONS**

Commented [MR16]: 1.13 edits are draft and intended for discussion to memorialize the Board agenda and hearing process for going into and coming out of TC.

1.13.1 General Provisions

(1) A permit granted pursuant to these Rules shall continue in effect as long as:

(a) an Operator continues to engage in the extraction of minerals and/or the mining operation and complies with the provisions of the Act; and

(b) mineral reserves are shown by the Operator to remain in the mining operation and Operator shows a reasonable plan to resume the mining operation.

(2) The Board will consider all relevant testimony and facts related to a mining operation in its determination as to whether or not temporary cessation has occurred. The Board recognizes that no one factor is necessarily determinative, but that each determination will be based on site specific conditions. Factors to be included in the determination if a mine will be considered for temporary cessation, include, but are not limited to the following:

1.13.2 Indications of Temporary Cessation

(1) there are no personnel working at the site for one hundred and eighty (180) consecutive days as may be determined through annual reports, inspections and / or operator submissions;

Commented [MR17]: Language is being added to clarify some of the methods that may be used to determine TC if not requested correctly by an operator.

(2) there are only security personnel at the site;

(3) ~~there are personnel other than security people at the site, but they are engaged in activities which can be described as maintenance or housekeeping, or related activity~~activity at the site is limited to general maintenance, housekeeping or similar related activity;

(4) ~~there are personnel at the site, but they are engaged in activities which are~~activity at the site is not significantly moving the site towards completion of the mining operation. The Board will judge these activities in relation to the size of the operation, the nature of the ore body and other relevant facts;

(5) there is no sale or processing of material or movement of stockpiled material off site;

(6) there is only minimal or token excavation of mineral or other material, and such activity is not legitimate Mining Operations, as determined by the Office or Board; ~~or~~

(7) mine development has ceased and mining has not recommenced; or ~~.~~

(8) the permit has not exhausted ten (10) consecutive years of non-production.

1.13.3 Indications Against Temporary Cessation

(1) Extraction of minerals has been completed, production has ceased and only final reclamation and related activities ~~occurring~~ remain at the site ~~are part of the "life of the mine" (see Definition or see Section 34-32-103(6)(b), C.R.S.)~~; or

(2) production has ceased for more than 10 consecutive years; or

(3~~2~~) a permit has been issued, but the mining operation has not commenced on the affected lands.

~~**1.13.4 Temporary Cessation for a Portion of a Mining Operation**~~**Reserved**

~~There may be Temporary Cessation for part of the mining operation when one or more operations of several separable types within a permit have been discontinued. Movement of portable equipment between permitted sites shall not be construed to be Temporary Cessation.~~

Commented [MR18]: There are no known situations where a portion of a permitted site has ever been placed in TC

1.13.5 Notice by Operator for Consideration of Temporary Cessation

(1) If the Operator plans to, or does, temporarily cease production ~~of the mining operation~~ for one hundred and eighty (180) days or more, the Operator must file a Notice of Temporary Cessation ~~in writing~~electronically on a form approved ~~,~~ ~~to~~by the Office. An Operator conducting any in situ leach mining operation, regardless of designated mining operation status, shall file the Notice of Temporary Cessation at least thirty (30) days prior to ceasing operations; such Notice shall set forth the reasons for the temporary cessation and the expected duration of the temporary cessation.

(a) Initial period shall be the first five (5) years of Temporary Cessation beginning with the one hundred and eighty (180) day period of production cessation; except that in the case of any in situ leach mining operation:

(i) If, in the judgment of the Board, the expected duration of any temporary cessation will be of such length that the Board believes that groundwater reclamation should commence, the Board shall so order.

(b) The second five (5) year period of Temporary Cessation shall begin at the end of the initial period of Temporary Cessation; except that in the case of any in situ leach mining operation:

(i) If, in the judgment of the Board, the expected duration of any temporary cessation will be of such length that the Board believes that groundwater reclamation should commence, the Board shall so order.

(2) The Notice of Temporary Cessation for the initial period shall include the following to be considered filed for review by the Office and Board and must include:

(a) the date of cessation of production or mining operations;

(b) the reasons for non-production or cessation of the mining operation;

(c) a plan for resumption of mining;

(d) the measures to be taken to comply with reclamation requirements and/or other activities related to the performance standards of Rule 3.1 while the mine is in Temporary Cessation including, but not limited to, any permit requirements or environmental monitoring and water treatment if required, and a schedule for reporting monitoring data;

(e) demonstration that the existing Financial Warranty is adequate to cover the reclamation liability; and

(f) for an in situ leach mining operation, a description of the groundwater monitoring and pumping regime that will be maintained during the period of cessation of operations and a schedule for reporting monitoring data.

(g) acknowledgement of the five (5) year limit date of the initial period of Temporary Cessation.

(3) The Notice for the second period shall include the following to be considered filed for Board consideration:

(a) demonstration that the existing Financial Warranty is adequate to cover the reclamation liability;

(b) explanation as to why the Operator has not recommenced operations or begun reclamation;

(c) demonstration of continued commitment to conduct mining operations at the site by the end of the second five (5) year period including a plan for resumption of mining operations and production; and

(d) the measures to be taken to comply with reclamation requirements and/or other activities related to the performance standards of Rule 3.1 while the mine is in Temporary Cessation including, but not limited to, any permit requirements for environmental monitoring and water quality treatment if required, and a schedule for reporting monitoring data;

(ed) for an in situ leach mining operation, a description of the groundwater monitoring and pumping regime that will be maintained during the period of cessation of operations and a schedule for reporting monitoring data; and.

(f) acknowledgement of the ten (10) consecutive year limit for non-production and temporary cessation of mining activities.

(4) Prior to the Board Hearing to consider the request of a for the second five (5) year period of Temporary Cessation, the Office shall:

(a) conduct an inspection of the site to verify compliance with the Act and Mineral Rules and Regulations;

(b) review the permit file for complaints against the operation and the status of resolution of those complaints;

(c) review environmental protection requirements for compliance as necessary;

(dc) report to the Board at the Hearing comments by any owner of affected land or local government comments.

(5) The Notice of temporary cessation shall be separate from any other correspondence or reports and submitted to the Office electronically on the approved form.

(6) Except as to in situ leach mining operations, the requirement of a Notice of Temporary Cessation shall not apply to Operators who resume the mining operation within one (1) year and have included in the permit applications a statement that the affected lands are to be used for less than one hundred and eighty (180) days per year.

1.13.6 Notice of Resumption of Mining Operations

If the Operator plans to resume mining operations and / or production for one hundred and eighty (180) days or more, the Operator must file a Notice of Resumption of Mining operations electronically on a form approved by the Office 30 days prior to reactivation. Such Notice shall set forth the following:

(a) date of resumption of mining activities;

(b) a detailed description of the mining activities that are to resume;

Commented [MR19]: This section is being added to define a process for coming out of TC. Currently the only requirement is a letter. However, a review of the reactivation plan and Financial Warranty is needed to ensure the activities comply with reactivation and are not token or general maintenance in nature. Any decision by the Office is appealable to the Board

(c) anticipated date of the resumption of production;

(d) the measures to be taken to comply with reclamation requirements and/or other activities related to the performance standards of Rule 3.1 including, but not limited to, any permit requirements for environmental monitoring and water treatment if required;

(e) demonstration that the existing Financial Warranty is adequate to cover the reclamation liability; and

(f) any resumption of mining activities must be legitimate in nature and the Office and / or Board may reject any notice of resumption of mining operations if such activity is reasonably characterized as token or minimal activity.

1.13.7~~6~~ Board/Office Procedure

106(1)(d) 109(8)

(1) Upon receipt of the above submission as outlined in Rule 1.13.5~~(2)~~ or 1.13.6, the Office will place the Notice of Temporary Cessation or Notice of Resumption of Mining on the tentative agenda of the next regular Board meeting and give notice to the Operator, the county, any federal jurisdiction, and any municipalities within two (2) miles of the proposed operation, by mail or electronic notification.

Commented [MR20]: The following edits are to codify the process created in 2012 for TC notices.

(2) The Board, at said meeting and in consultation with the Operator and any other person who demonstrates that they are directly and adversely affected or aggrieved and whose interest is entitled to legal protection under the Act, may take whatever action(s) it deems necessary and are authorized by law, including but not necessarily limited to:

(a) acceptance of the Notice of Temporary Cessation or Notice of Resumption of Mining as submitted;

(b) acceptance of the Notice of Temporary Cessation or Notice of Resumption of Mining with modifications and other necessary activities as established by the Board;

(c) a determination that the mining operation is not in a state of temporary cessation or has not resumed mining operations;

(d) continuance of the matter for another month or more to allow the Operator to revise the Notice of Temporary Cessation and/or to allow the Office staff to conduct a site inspection or otherwise review the matter as necessary; or

(e) order the Operator of an in situ leach mining operation to begin groundwater reclamation as set forth in Rule 1.13.5.

106(1)(d) 109(8)

(3) (a) Except as to any in situ leach mining operation, when no reclamation or performance standard issues or problems are indicated in the Notice of Temporary Cessation or Notice of Resumption of Mining or by field or file inspection, and no concerns are expressed by interested persons, the Notice ~~shall not be placed on the agenda or heard by the Board. In such cases, the county and appropriate municipality will be notified and the fact of the receipt of the Notice by the Office~~

~~will be acknowledged in the monthly activity report attached to the monthly agenda.~~for an initial period of Temporary Cessation or any Notice of Resumption of Mining may be moved from the tentative agenda to the consent agenda of the final agenda for Board consideration;

(b) any objections to a Notice of initial period of Temporary Cessation or Resumption of Mining must be received no later than three (3) working days prior to the scheduled Board meeting;

(c) all Notices for a second consecutive period of Temporary Cessation or where timely objections have been received shall be noticed and scheduled for Board consideration at the next regularly scheduled Board meeting following receipt of the Notice and timely objection.

(d~~b~~) In the case of any in situ leach mining operation seeking temporary cessation, or a second five (5) year period of temporary cessation, the matter will be set for the next regularly scheduled Board meeting that is at least twenty (20) days after the Office receives the notice. At the hearing the Board will determine whether groundwater reclamation should commence pursuant to C.R.S. 34-32-112.5 (5)(d)(ii). The Office will participate at the hearing as staff to the Board and may provide a recommendation regarding groundwater reclamation. Any person who demonstrates that they are directly and adversely affected or aggrieved by the Board's determination regarding groundwater reclamation and whose interest is entitled to legal protection under the Act may be a party to the formal hearing.

1.13.8~~7~~ Application Requirements – Substitute for Notice of Temporary Cessation

103(6)(a)(III)

Where certain mining operations have periods of inactivity exceeding one hundred and eighty (180) days, a permit applicant may include in the permit application, amendment or technical revision, the information otherwise required when filing a Notice of Temporary Cessation. (Please see Rules 6.3.3(a) or 6.4.4(e)). If approved by the Board or Office, such Notice in the permit shall serve as a substitute for the Notice of Temporary Cessation with the following conditions:

(a) The Operator must report to the Board through the Annual Report:

(i) the condition of the operation at the time of cessation;

(ii) what specific measures have been and will be implemented to comply with reclamation, performance standards and Environmental Protection Plan requirements; ~~and~~

(iii) plans for resumption of mining; and~~.~~

(iv) any two consecutive annual reports that indicate no mining operations and/or production shall require the mining operation to be placed into Temporary Cessation.

(b) This Rule shall not apply to in situ leach mining operations.

Commented [MR21]: Intermittent operations are required to be active annually, but less than 180 days. This edit closes a loophole as there are no current limitations on inactivity that should be reviewed for TC status

1.13.~~9~~8 Five Year Term of Temporary Cessation

103(6)(a)(III)

(1) A permit granted pursuant to these Rules shall continue in effect as long as:

(a) the mining operation and production ~~is~~ are resumed within five (5) years of the beginning of Temporary Cessation; or

(b) the Operator files a request for an extension of the period of Temporary Cessation with the Board meeting the requirements of Rule 1.13.5(3) and secures Board approval of that request.

(c) the operator is conducting reclamation pursuant to an approved reclamation plan or Board order.

(2) The Board shall, when necessary, establish the commencement of Temporary Cessation to determine the start of the five (5) year period described in Rule 1.13.~~9~~8. Regardless of a request by the operator or the Office, a five (5) year period of Temporary Cessation is a factual determination as set by the Act.

1.13.~~10~~9 Ten Year Limitation for Temporary Cessation

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

1.13.1~~1~~0 Permanent Cessation of Mining Operations – In Situ Leach Mining Operations

(1) An Operator conducting any in situ leach mining operation, regardless of designated mining operation status, shall file a notice of permanent cessation at least thirty (30) days prior to ceasing production operations; such Notice shall set forth the reasons for the permanent cessation of production operations.

(2) In the case of an in situ leach mining operation, if it is determined by the Office or the Board, regardless of whether notice has been provided by the Operator, that production operations have permanently ceased the Operator must immediately commence groundwater reclamation in accordance with the approved reclamation plan.

1.14 TERMINATION

1.14.1 Permit Termination

103(6)(a)(IV)

(1) A permit granted pursuant to these Rules shall continue in effect as long as:

(a) the Board does not take action to declare termination of the life of the mine, which action shall require a sixty (60) day notice to the Operator alleging a violation of the permit, the Act or Rules; or

(b) there is a discontinuance of the mining operation with a Temporary Cessation filing as provided in Rule 1.13.5 or 1.13.8~~7~~ for ten (10) or less consecutive years; or

(c) there is no failure to submit the reports required under Rules 1.13.5 and 1.13.8~~7~~; or

(d) there is no failure to comply with the requirements of Rule 1.13.9~~8~~.

(2) In the event the Operator is not in compliance with the provisions of Rule 1.14.1(1), the Board shall provide a reasonable opportunity for the Operator to meet with the Board to present the full case and further provide reasonable time for the Operator to bring violations into compliance. Such hearings and procedures shall be in compliance with the requirements of Rule 3.3.2; or at such hearings the Board may:

(a) declare termination of the life of the mine according to the provisions of this Rule and after finding a violation in accordance with Rule 3.3.2, set forth reclamation timetables and other provisions leading to termination of the permit; or

(b) declare that a mining operation is in a state of Temporary Cessation, establishing a commencement date and any additional permit conditions, as necessary, according to a review of the facts.

1.15 ANNUAL RECLAMATION REPORT INCLUSIONS

(1) The Annual Reclamation Report shall include all information specified on the Annual Report Form, in the format required by the Office, and specifically:

(a) the Operator shall submit, together with the Annual Report, an updated statement regarding the sufficiency of the value of the Financial Warranty. Additional reasonable data to substantiate the value of the existing Financial Warranty shall be provided if requested by the Office or Board; and

(b) for any Financial Warranty which is submitted in the form of a Deed of Trust or a Security Agreement, the Operator shall submit, together with the Annual Report, an update by a qualified appraiser indicating any changes in property value, and a statement summarizing any circumstances which may affect the adequacy of the Deed of Trust or Security Agreement, or the value of the property subject thereto.

(c) The Operator shall provide all monitoring information required as part of the approved Reclamation Plan, and if required, Environmental Protection Plan.

(d) a map showing the extent of current disturbances to affected lands;

(e) changes over the preceding year regarding any disturbances to the prevailing hydrologic balance;

Commented [MR22]: Reclamation is being added to clarify that this report is different than the "Annual Production Report Required in January of each year.

Commented [MR23]: These edits codify what is already required of permittees and addresses HB19-1113

(f) changes over the preceding year regarding any disturbances to the quality and quantity of water in surface and groundwater systems;

(g) reclamation accomplished to date and during preceding year;

(h) new disturbances that are anticipated to occur during the upcoming year; and

(i) anticipated reclamation that will be performed during the upcoming year.

(2) An Operator may request a one-time change to a date other than the anniversary date of the permit for the purpose of submitting Annual Reclamation Reports.

(3) Reserved

1.16 ADDRESS CHANGE, SALE OF PROPERTY BY AN OPERATOR, CHANGE IN PROPERTY LEASE, OR BUSINESS NAME OR OWNERSHIP CHANGE, AND NOTICE OF FILING OF A PETITION IN BANKRUPTCY

(1) It shall be the duty of the Operator to keep the Office notified of any mailing address change by promptly sending written notice or filing an electronic notice of such change to the Office. The Office is entitled to assume, in the absence of such Notice, that it may proceed with the last previous address provided by the Operator, and the Operator will be bound by such Notice as if actually received.

(2) Where an Operator is the owner of the lands to be mined and the Operator sells such lands, the Operator shall promptly notify the Office of such sale. Where an Operator leases the lands, the Operator shall promptly notify the Office of any substantial changes that affect right of legal entry upon the lands to be mined.

(3) Where an Operator's official business name changes or there is a change in business ownership or business form, the Operator shall contact the Office within thirty (30) days of such change in order to revise performance and financial warranty documents and complete the Succession of Operator forms.

(4) Where an Operator files a petition in bankruptcy, the Operator shall immediately notify the Office via certified mail of such filing.

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

2.1 BOARD MEETINGS

2.1.1 General Provisions

Except for Executive Sessions of the Board, all meetings shall be open to the public and any member of the public may, at the discretion of the Board, address the Board on any subject within the Board's jurisdiction. In the event the item is not on the agenda, no formal action may be taken by the Board until the full notice provisions in these Rules are met.

2.2 NOTICE PROCEDURES FOR MEETINGS OF THE BOARD

106(1)(d)

2.2.1 Regular Board Meetings

Except as otherwise provided by law or these Rules, Public Notice of regular meetings shall be provided by the Board as follows:

(a) A minimum of ten (10) days prior to the meeting, Notice of its date, time, place, format, and agenda by:

(i) mailing or e-mailing to all persons having requested Notice of Board meetings and prepaid costs of the service, unless costs are waived for good cause, and to Operators whose Permit(s) or operation(s) may be the specific subject of consideration at the meeting;

(ii) publishing at least once in a newspaper of general circulation in the state, listing each Applicant's name, local address and the location of the affected land by section, township and range and by street address, if applicable;

(iii) posting in a conspicuous, publicly accessible location at the offices of the Office of Mined Land Reclamation, the Office Website, and in all Press Rooms of the State Legislature; and

(iv) mailing a copy of the agenda to the local newspaper in the locality of the proposed mining operation.

(b) All parties entitled to notice of the hearing, including the Applicant or Operator, shall be given notice of the time, place, format, and nature thereof, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted. Such hearing shall be conducted pursuant to these Rules and the provisions of Section 24-4-105, C.R.S.

2.2.2 Other Meetings

Public Notice of all other meetings shall be provided by the Board as prescribed in Rule(s) 2.2.1 and/or 1.12.2 except upon a Board finding that an emergency condition exists, whereupon notice shall be provided as much in advance of the meeting as possible.

2.2.3 Agenda Changes or Additions

Additions or changes to the agenda after the 10-day notification may be made regarding emergency situations, and informational items. In this event, the Board will endeavor to give notification, if possible, as outlined above, and will be required to notify any Operator or individual scheduled to be heard.

2.3 BOARD QUORUM

105(2) (1) Four (4) Board members shall constitute a quorum.

(2) The Board shall act by majority vote of members present, except that four (4) affirmative votes are required for any amendment of these Rules.

2.4 RESERVED

2.5 DECLARATORY ORDERS (Section 24-4-105, C.R.S.)

2.5.1 Cause for Seeking a Declaratory Order

Any person who is or may be directly and adversely affected or aggrieved and whose interests are entitled to legal protection under the Act may petition the Board for declaratory order to terminate controversies or to remove uncertainties as to the applicability to the Petitioner of any statutory provision of or any rule or order of the Board made pursuant to the Mined Land Reclamation Act (Section 34-32-101, C.R.S. et seq.).

2.5.2 Petition Submission

(1) The petition must be submitted electronically to the Board, and is served on the Office, at a minimum, ten (10) days prior to the Board meeting at which it is to be considered.

(a) At the regularly scheduled Board meeting, the Board will determine in its discretion and without notice to Petitioner, whether to rule upon any such petition.

(b) If the Board determines that it will not rule upon such a petition, the Board shall promptly notify the Petitioner of its action and state the reasons for such action.

(2) Any petition filed pursuant to this rule shall set forth the following:

(a) the name, e-mail address and physical address of the Petitioner and whether the Petitioner is a Permittee pursuant to the Colorado Mined Land Reclamation Act;

(b) the statute, rule or order to which the petition relates;

(c) a concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the Petitioner.

2.5.3 Consideration of Petition

In determining whether to rule upon a petition filed pursuant to this Rule, the Board will consider the following matters, among others:

(a) whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to Petitioner of any statutory provision or rule or order of the Board.

(b) whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court involving one or more of the Petitioners.

(c) whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Board or a court, but not involving any Petitioner.

(d) whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

(e) whether the Petitioner has some adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colorado Rules of Civil Procedure, which will terminate the controversy or remove any uncertainty as to the applicability to the Petitioner of the statute, rule or other in question.

2.5.4 Procedure for Consideration

If the Board determines that it will rule on the petition the following procedures shall apply:

(a) The Board may~~, without further notice,~~ rule upon the petition based solely upon the facts presented in the petition. In such a case, any ruling of the Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.

(b) The Board may order the petitioner to file a written brief, memorandum or statement of position.

(c) The Board may set the petition, upon due notice to Petitioner, for a non evidentiary hearing.

(d) The Board may request the petitioner to submit additional facts, in writing. In such event, such additional facts will be considered as an amendment to the petition.

(e) The Board may take administrative notice of facts pursuant to the administrative procedure act (Section 24-4-105(8), C.R.S.) and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.

(f) If the Board rules upon the petition without a hearing, it shall within ten (10) working days notify the petitioner of its decision by deposit in the mail.

(g) The Board may, in its discretion, set the petition for hearing upon due notice to Petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the Petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Board intends to inquire. For the purpose of such a hearing, to the extent necessary, the Petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the Petitioner and any other facts the Petitioner desires the Board to consider.

2.5.5 Party Status and Petition to Intervene

(1) The Office shall be granted party status upon request.

(2) Any other person may seek leave of the Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Board based upon the interest of the person and whether that interest is entitled to legal protection under the Act and how that person is affected or aggrieved by the petition for Declaratory Order.

(3) A petition to intervene shall set forth a concise statement of the facts necessary to demonstrate the nature of its position, and the manner in which the statute, rule or order in question does or does not apply to the Petitioner.

2.5.6 Effect of a Declaratory Order

Any declaratory order or other order disposing of a petition pursuant to this Rule shall constitute agency action subject to judicial review pursuant to Section 24-4-106, C.R.S.

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

The provisions of this Rule 2.6 shall apply to the Applicant and any entity that has party status for any 112, 112d, 110 ISL or 112 ISL application.

(1) All motions, except those made during a hearing, or when the Board deems an oral motion to be appropriate, shall be in writing and shall state the grounds for the motion. Motions shall be received electronically by the Board no later than two (2) Working Days following the pre-hearing conference. Any written response to a motion must be received electronically by the Board no later than three (3) Working Days prior to the date of the Formal Board Hearing.

(2) A party to a Formal Board Hearing may use witnesses or exhibits at the Formal Board Hearing. Parties shall provide a written list of all potential witnesses and exhibits at the Pre-hearing Conference in accordance with the following:

(a) The list of potential witnesses must include each witness' name, current address, e-mail, and phone number, area of expertise (if expert witness), and the subject matter of the testimony. Parties are not obligated to use any witness even if listed, but parties may not, without express permission from the Board at the Formal Board Hearing, introduce testimony from a witness that was not listed in accordance with this Rule.

(b) Information on exhibits shall be exchanged as follows:

(i) For any materials not already in the Office public files, each party to the Hearing shall provide all other parties to the Hearing and the Office with copies of any materials to be used as exhibits at the Formal Board Hearing before, at or by close of business the day of the pre-hearing conference ~~before the Pre-hearing Conference~~via electronic means. Where an item cannot ~~practicably~~ practically be reproduced, the exhibit must be made available to the parties and the Office for inspection upon request.

(ii) For any materials that are already in the Office public files, and for any materials not provided to the other parties pursuant to the exception set out in Rule 2.6(2)(b)(i), each party shall provide all other parties and the Office with a list of the materials to be used with sufficient specificity to describe the exhibit, including but not limited to the specific title or description of each exhibit, such as maps, reports, adequacy responses, correspondence, agreements, data printouts, photographs, and drawings. The list must also specify where the other parties to the Formal Board Hearing and the Office may review and obtain a copy of, or inspect, each exhibit.

(3) All motions, responses, replies, witness lists, and exhibit lists shall identify the names, e-mails, physical address and phone number of the submitting party, and the file number assigned to the case by the Office. If a party is represented by an attorney or other representative, the name, address and phone number of the attorney or other representative shall be provided on all documents submitted to the Board. All motions and lists shall be served on all parties and the Office at the same time and manner they are filed with~~served on~~ the Board. ~~The Board shall be served through the Office of Mined Land Reclamation.~~ Service on the Office shall not constitute filing with the Board.

2.7 PRE-HEARING CONFERENCES

2.7.1 General Provisions

Prior to the Formal Board Hearing on any ~~matter~~application, the Board may hold a Pre-hearing Conference in accordance with the following procedures:

(1) The Pre-hearing Conference will be held to describe the Office's review process, to explain the rights and responsibilities of parties, to discuss and resolve issues to the extent possible, to describe the Board Hearing processes, to propose a list of issues under the Board's jurisdiction, to simplify that list, and to identify parties.

(2) The Pre-hearing Conference shall be conducted by a Pre-hearing Conference Officer appointed by the Board.

(3) The Pre-hearing Conference Officer shall prepare a proposed Pre-hearing order. The proposed Pre-hearing Order shall be made available to all parties prior to the Formal Board Hearing. In no instance shall the Pre-hearing Conference Officer's recommendations to the Board be considered final agency Office action for the purposes of judicial review under Section 24-4-106, C.R.S.

(4) The proposed Pre-hearing Order shall include:

(a) a recommended list of the parties and their names, e-mails, mailing addresses and phone numbers;

(b) a recommended list of issues to be considered by the Board at the Formal Board Hearing; and

(c) a recommended schedule for the hearing with time allotments set for presentation by each party and the Office.

(5) In the case of a Pre-hearing Conference held on the matter of a 112 or 112d Reclamation Permit application, the Pre-hearing Conference shall be held after the Office has issued its written recommendation and at least ten (10) calendar days prior to the Formal Board Hearing.

2.7.2 Board Consideration of the Proposed Pre-hearing Order

At the Formal Board Hearing on a matter for which a Pre-hearing Conference was held, the Pre-hearing Conference Officer or a representative of the Pre-hearing Conference Officer shall present the proposed Pre-hearing Order to the Board for its consideration. The Board shall consider any objection to the proposed Pre-hearing Order submitted by a party, as well as any changed circumstances related to the Formal Board Hearing arising subsequent to the Pre-hearing Conference, and shall subsequently adopt, amend and adopt, or reject the proposed Pre-hearing Order. If the proposed Pre-hearing Order is rejected by the Board, the Chair of the Board shall direct the Formal Board Hearing on the matter.

2.7.3 Parties Rights and Responsibilities

(1) All parties have the right to present evidence, call witnesses, and cross-examine all other parties' witnesses. All parties are entitled to be represented by an attorney, or may designate a proxy, by way of a written proxy authorization, to attend the Pre-hearing Conference on behalf of the party. The proxy authorization must be on a form approved by

the Board and presented to the Pre-hearing Conference Officer on or before the date of the Pre-hearing Conference.

(2) In order for a person to seek judicial review of the Board's decision, that person must have been a party to the Formal Board Hearing that considered the issue. However, all parties to the Formal Board Hearing on a matter, that do not file for judicial review are required by Section 24-4-106, C.R.S., to be named as defendants in any judicial review action.

(3) Any person who is a party to a matter before the Board and who wishes to withdraw as a party must do so in writing prior to the commencement of or on the record during the Formal Board Hearing on the matter.

(4) Any party who does not attend the Pre-hearing Conference forfeits its party status and all associated rights and privileges, unless such party provides a fully executed proxy authorization form to the Pre-hearing Conference Officer and the party's authorized representative is present. A party may attend the Pre-hearing Conference via telephone, or if applicable via video conference, if such a request is made to the Pre-hearing Conference Officer, or a representative, at least five (5) working days, or less for good cause shown, prior to the scheduled Pre-hearing Conference date, and facilities at the site of the Pre-hearing Conference allow for a conference call.

(5) If all parties to a 112 or 112d Reclamation Permit application that is to be considered at a Formal Board Hearing withdraw, the Board directs the Office to act on behalf of the Board and to timely approve or deny the application, unless the Office determines that a Formal Board Hearing should be held.

2.8 HEARINGS

2.8.1 General Provisions – Board Hearings

(1) Except as otherwise provided by statute, the proponent of an order shall have the burden of proof and every party to the proceeding shall have the right to present its case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be substantially prejudiced thereby, a person conducting a hearing may receive all or part of the evidence in written form. Any party, other than an Operator, who does not attend the Board Hearing forfeits its party status and all associated rights and privileges. A party may not appear at a Formal Board Hearing by proxy. A party may file a motion to attend the hearing via telephone or video conference pursuant to the following requirements:

(a) A party may file an e-mail request for telephonic or video appearance with the Board Chair no later than fourteen (14) calendar days prior to the Hearing. The motion shall state the reason(s) for requesting to participate at the hearing by phone or video. The motion shall be served by mail or electronic attachment on all parties.

(b) Any party may file with the Board Chair a response to the request for telephonic or video appearance. The response must be filed by e-mail no later than ten (10) calendar days prior to the hearing.

(c) The Board Chair will rule on the request for telephonic or video appearance at least seven (7) calendar days prior to the hearing. In the event the Board Chair does not issue a ruling on the request no later than seven (7) calendar days prior to the hearing, the request for telephonic or video appearance shall be deemed denied.

(2) The rules of evidence and requirements of proof shall conform to the extent practicable, with those in civil non-injury cases in district courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the Board may receive and consider evidence not admissible under such rules, if such evidence possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.

(a) Objections to evidentiary offers may be made and shall be noted in the record.

(b) The Board shall give effect to the rules of privilege recognized by law.

(c) The Board may exclude incompetent and unduly repetitious evidence.

(d) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available; but, upon request, the party shall be given the opportunity to compare the copy with the original.

(3) The Board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

(4) The Board may take notice of general, technical, or scientific fact, but only if the fact so noticed is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.

(5) The Board and Office shall proceed with reasonable dispatch to conclude any matter presented to it with due regard for the convenience of the parties or their representatives.

2.8.2 Board Decision

(1) In any case on which the Board has conducted a hearing, the Board shall prepare, file and serve upon each party, its decision in the form of a written order.

(2) Every such decision rendered by the Board at a hearing shall thereupon become the final decision on such matter.

(3) Each written order shall include a statement of findings and conclusions upon all the material issue of fact, law or discretion presented by the record and the appropriate order, sanction, relief, or denial thereof.

(5) Unless otherwise provided by law, the Final Board Order shall be served on each party and the Office by personal service or by mailing by First Class mail to the last address furnished to the Office by such party and shall be effective on the date mailed or such later date as may be stated in the Final Board Order.

2.9 RECONSIDERATION OF BOARD DECISIONS

2.9.1 Cause for Seeking Reconsideration

(1) Any party to a hearing may petition the Board to reconsider its decision.

(2) Such petitions must set forth a clear and thorough explanation of the grounds justifying reconsideration, and must include ~~including but not limited to~~ new and relevant facts that were not known at the time of the hearing and the explanation why such facts were not known at the time of the hearing.

2.9.2 Petition Submission

Petitions for reconsideration must be received by the Office within twenty (20) calendar days of the effective date of the Board's written decision. The effective date of the Board's Order is the date of mailing as set forth in the Order's Certification of Service.~~decision is the date the Board Order signed, or such other date as may be stated in the Final Board Order.~~

2.9.3 Consideration of Petition

The Board may grant or deny the petition based solely on the written submittal in support of the petition or written opposition thereto, or the Board may, in its discretion, grant the parties, as defined in Rules 1.1(50) and 1.7.1, an opportunity to present oral arguments. The Office staff shall act as staff to the Board, except on matters related to enforcement.

2.9.4 Automatic Denial of Petition

The petition shall be deemed denied unless it is granted, or the Board takes other action on the petition, within sixty (60) days of receipt of the petition.

2.9.5 Time Limitations

The timely filing of a petition for reconsideration shall not toll the time in which the Parties to the hearing may seek judicial review of the Board's decision.

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

3.1 RECLAMATION PERFORMANCE STANDARDS

These performance standards shall be applicable to all mining operations. Prospecting operations are subject to the relevant performance standards of this Rule as determined by the Office.

3.1.1 Establishing Post-Mining Use

(1) In consultation with the Landowner, where possible, and subject to the approval of the Board or Office, the Operator shall choose how the affected lands shall be reclaimed. These decisions can be for forest, rangeland, cropland, general agriculture, residential, recreational, industrial/commercial, developed water resources, wildlife, or other uses.

(2) The results of these decisions shall be formulated into a Reclamation Plan, as specified in Rule 6.3.4 or 6.4.5, as required for the size and type of operation.

3.1.2 Reclaiming Substituted Land

116(7)(q)(III) Reclamation shall be required on all the affected land except that the Operator may substitute land previously mined and owned by the Operator but not otherwise subject to the Mined Land Reclamation Act, or the Operator may reclaim an equal number of acres of any land previously mined, but not owned by the Operator, if the Operator has not previously abandoned unreclaimed mining lands. Such exchanges can be done only with the approval of the Board and the Owner of the land to be reclaimed. The Board and Office shall not approve such an exchange for lands affected by any 110 or 112 uranium or in situ leach mining operation.

3.1.3 Time Limit and Phased Reclamation

(1) For any in situ leach mining operations, reclamation of groundwater in accordance with the approved reclamation plan shall begin immediately upon:

(a) The detection pursuant to the baseline site characterization and monitoring plan of any subsurface excursion of groundwater outside of the affected area containing chemicals used in or mobilized by such operation or the groundwater outside the affected land otherwise fails to meet groundwater standards applicable to in situ leach mining operations; or

(b) The cessation of production operations, unless the operator has filed a Notice of Temporary Cessation as required by Rule 1.13.5(1) and the Board has not ordered reclamation of groundwater to commence under Rule 1.13.

116(7)(q) 116(7)(q)(IV) (2) All reclamation shall be carried to completion by the Operator with all reasonable diligence, and each phase of reclamation shall be completed within five (5) years from the date the Operator informs the Board or Office that such phase has commenced, or from the date the Office has evidence that mining or prospecting has ceased or the end of life of mine

has been declared, unless extended by the Board or Office. The 5-year period may be applied separately to each phase as it is commenced throughout the life of the mine.

(3) Upon determination and notice by the Office that all reclamation is completed, the operator is encouraged to request a release of the permit within sixty (60) days, or demonstrate to the Office or Board plans for future mining and that mineral reserves still exist.

Commented [MR24]: Sites that are fully reclaimed should be released. A permit shown as active, but is fully reclaimed, must be inspected and financial warranties maintained which is a burden to the Office and Operator.

3.1.4 Public Use

116(7)(m) On lands owned by the Operator, the Operator may permit the public to use the same for recreational purposes, in accordance with the Limited Landowner Liability Law contained in Article 41 of Title 33, C.R.S. 1984, as amended, except in areas where such use is found by the Operator to be hazardous or objectionable.

3.1.5 Reclamation Measures – Materials Handling

The Operator shall set forth the measures that will be taken to meet all the following requirements:

116(7)(a) (1) Grading shall be carried on so as to create a final topography appropriate to the final land use selected in the Reclamation Plan.

116(7)(i) (2) When backfilling is a part of the plan, the Operator shall replace overburden and waste materials in the mined area and shall ensure adequate compaction for stability and to prevent leaching of toxic or acid-forming materials.

116(7)(h) (3) All grading shall be done in a manner to control erosion and siltation of the affected lands, to protect areas outside the affected land from slides and other damage. If not eliminated, all highwalls shall be stabilized.

116(7)(q) (4) All backfilling and grading shall be completed as soon as feasible after the mining process. The Operator shall establish reasonable timetables consistent with good mining and reclamation procedures.

116(7)(c) 116(7)(d) (5) All refuse and acid forming or toxic producing materials that have been mined shall be handled and disposed of in a manner that will control unsightliness and protect the drainage system from pollution.

(6) Any drill or auger holes that are part of the mining operation shall be plugged with non-combustible material, which shall prevent harmful or polluting drainage. Adits and shafts should be closed, and where practicable, backfilled and graded in a manner consistent with the post mine land use and shall comply with the provisions of the Act, Mineral Rules and Regulation.

116(7)(a) (7) Maximum slopes and slope combinations shall be compatible with the configuration of surrounding conditions and selected land use. In all cases where a lake or pond is produced as a portion of the Reclamation Plan, all slopes, unless otherwise approved by the Board or Office, shall be no steeper than a ratio of 2:1 (horizontal to vertical ratio), except from 5 feet above to 10 feet below the expected water line where slopes shall be

not steeper than 3:1. If a swimming area is proposed as a portion of the Reclamation Plan, the slope, unless otherwise approved by the Board or Office, shall be no steeper than 5:1 throughout the area proposed for swimming, and a slope no steeper than 2:1 elsewhere in the pond.

116(7)(o) (8) If the Operator's choice of reclamation is for agricultural or horticultural crops which normally require the use of farm equipment, the Operator shall grade so that the area can be traversed with farm machinery.

(9) An Operator may backfill structural fill material generated within the MLRB permitted area into an excavated pit within the permit area as provided for in the MLRB Permit. If an Operator intends to backfill inert structural fill generated outside of the approved permit area, it is the Operator's responsibility to provide the Office notice of any proposed backfill activity not identified in the approved Reclamation Plan. If the Office does not respond to the Operator's notice within thirty (30) days after receipt of such Notice by the Office, the Operator may proceed in accordance with the provisions of this Rule. The Operator shall maintain a Financial Warranty at all times adequate to cover the cost to stabilize and cover any exposed backfilled material. The Notice to the Office shall include but is not limited to:

(a) a narrative that describes the approximate location of the proposed activity;

(b) the approximate volume of inert material to be backfilled;

(c) a signed affidavit certifying that the material is clean and inert, as defined in Rule 1.1(31);

(d) the approximate dates the proposed activity will commence and end, however, such dates shall not be an enforceable condition;

(e) an explanation of how the backfilled site will result in a post-mining configuration that is compatible with the approved post-mining land use; and

(f) a general engineering plan stating how the material will be placed and stabilized in a manner to avoid unacceptable settling and voids.

(10) All mined material to be disposed of within the affected area must be handled in such a manner so as to prevent any unauthorized release of pollutants to the surface drainage system.

(11) No unauthorized release of pollutants to groundwater shall occur from any materials mined, handled or disposed of within the permit area.

(12) No permit shall be approved where perpetual water treatment is proposed as final reclamation.

Commented [MR25]: HB19-1113 requirement.

116 **3.1.6 Water – General Requirements**

116(7)(g) (1) Hydrology and Water Quality: Disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quantity or quality of water in surface

and groundwater systems both during and after the mining operation and during reclamation shall be minimized by measures, including, but not limited to:

(a) compliance with applicable Colorado water laws and regulations governing injury to existing water rights;

(b) compliance with applicable federal and Colorado water quality laws and regulations, including statewide water quality standards and site-specific classifications and standards adopted by the Water Quality Control Commission;

(c) compliance with applicable federal and Colorado dredge and fill requirements; and

(d) removing temporary or large siltation structures from drainage ways after disturbed areas are revegetated and stabilized, if required by the Reclamation Plan.

(e) demonstrate, by substantial evidence, a reasonably foreseeable end date for any water quality treatment necessary to ensure compliance with applicable water quality standards.

Commented [MR26]: Required by HB19-1113

(f) the board may approve a reclamation plan that lacks substantial evidence of a reasonably foreseeable end date for any necessary water treatment if the new or amended permit includes an environmental protection plan and reclamation plan adequate to ensure compliance with applicable water quality standards and upon making a written determination:

(i) for an amended application, except as provided in Rule 3.1.6(1)(f)(ii), that the water quality impacts that have occurred or are occurring for which no reasonably foreseeable end date for water quality treatment can be established were either unforeseen at the time of approval of the reclamation plan or existing at the mine site permitted on or before January 1, 2019; or

(ii) for a new or amended reclamation plan for a permit involving a site that was previously mined but not permitted as of January 1, 2019, that existing water quality conditions do not meet applicable water quality standards and no reasonably foreseeable end date for water quality treatment can be established.

(g) the board may approve a new reclamation plan that lacks substantial evidence of a reasonably foreseeable end date for any necessary water quality treatment if a permit application is submitted and the reclamation plan is limited to reclamation of already-mined ore or other waste materials, including mine drainage runoff, as part of a clean up.

116(7)(b)

(2) Earth dams, if necessary to impound water, may be constructed if the formation of such impoundments will not damage adjoining property or conflict with water pollution laws, rules or regulations of the federal government, the state of Colorado or with any local government pollution ordinances.

(3) All surface areas of the affected land, including spoil piles, shall be stabilized and protected so as to effectively control erosion.

(4) The Office may require the submission of baseline site characterization data, sufficient to ensure that impacts from prospecting will be detected, prior to the initiation of prospecting or mining, including but not limited to, ambient groundwater and surface water quality data sufficient to characterize potentially impacted waters.

(5) Drilling pits used during prospecting or mining shall be constructed and operated to minimize impacts to public health, safety, welfare and the environment, including soil, waters of the State, including groundwater, and wildlife. In its discretion, the Office may require the use of pit liners, fencing, netting or other measures to minimize impacts to the public health, safety, welfare and the environment.

116 **3.1.7 Groundwater – Specific Requirements**

(1) Standards and conditions applicable to classified and unclassified groundwater.

(a) State-wide groundwater quality standards: Operations that may affect groundwater quality shall comply with all state-wide groundwater quality standards established by the Water Quality Control Commission (hereafter, the WQCC).

(b) Classified areas: Operations that may affect the quality of groundwater in a specified area that has been classified by the WQCC shall comply with the standards applicable to such specified area.

(c) Unclassified areas: Operations that may affect the quality of groundwater which has not been classified by the WQCC shall protect the existing and reasonably potential future uses of such groundwater.

(d) Water quality standards applicable to groundwater that has been classified, state-wide standards for certain pollutants, and interim narrative standards set by the WQCC shall supersede any numeric protection levels established for the subject pollutants pursuant to this Rule 3.1.7.

116(8) (e) For any in situ leach mining operations: Operators of all uranium extraction operations using in situ leach mining or recovery methods shall reclaim all affected groundwater for all water quality parameters that are specifically identified in the baseline site characterization and monitoring plan required by Rule 1.4.4, or in the statewide radioactive materials standards or tables 1 through 4 of the Basic Standards for Groundwater as established by the Colorado Water Quality Control Commission, to either of the following:

(i) pre-mining baseline water quality or better, as established by the baseline site characterization and monitoring plan required by Rule 1.4.4; or

(ii) that quality which meets the statewide radioactive materials standards and the most stringent criteria set forth in tables 1 through 4 of the basic standards for groundwater as established by the Colorado Water Quality Control Commission.

(f) Also, in establishing, designing and implementing a groundwater reclamation plan, in situ leach mining operators shall use best available technology.

(g) In addition, in situ leach mining operators shall take all necessary steps to prevent and remediate any degradation of preexisting groundwater uses during the prospecting, development, extraction and reclamation phases of the in situ leach mining operation.

(2) Establishing permit, or notice of intent to conduct prospecting (NOI), conditions, including numeric protection levels, protective of unclassified groundwater uses.

(a) Pursuant to the procedures specified in Rule 3.1.7(3), permit or NOI conditions shall be established for each operation that may have a reasonable potential to adversely affect the quality of a specified area that has not been classified by the WQCC. Such permit or NOI conditions may be in the form of numeric protection levels, practice-based permit or NOI conditions, or both.

(b) Points of compliance for numeric protection levels shall be set pursuant to Rule 3.1.7(6).

(c) Permit or NOI conditions, whether practice-based or numeric protection levels, shall be established as follows:

(i) The permit or NOI conditions shall be protective of the existing and reasonably potential future uses of the groundwater that may be affected. The WQCC's groundwater quality table values (The Basic Standards For Ground Water CCR 1002-41), shall be used as a guide in establishing the permit or NOI conditions.

(ii) Where ambient groundwater quality exceeds values for protection of existing and reasonably potential future uses of groundwater, such as groundwater table values or other numeric criteria, permit or NOI conditions shall be established to protect those uses against further lowering of groundwater quality.

(3) Procedures for establishing permit or NOI conditions to protect the quality of unclassified groundwater.

(a) New operations and modifications of existing permits or NOIs: Any application or NOI for a new operation, or an application for a modification of an existing permit or NOI which modification has reasonable potential to adversely affect the quality of unclassified groundwater, that is approved by the Office or the Board on or after Rule 3.1.7(2).

(b) Existing operations: For operations subject to a permit or NOI issued before September 1, 1993, which permit or NOI is not the subject of an application or a modification as described in Rule 3.1.7(3)(a), permit or NOI conditions shall be established as follows:

(i) Upon a determination that a violation of a permit or NOI provision affecting groundwater quality has occurred, the Board may order the Operator to submit an application or NOI to modify the permit or NOI to comply with Rule 3.1.7(2), and may set reasonable schedule for submittal of such application or NOI. Nothing in this Rule shall be construed to limit the Board's authority under Section 34-32-124, C.R.S. 1984, as amended.

(ii) The Office shall follow the pre-enforcement procedure set out below before requiring an Operator who is in compliance with all permit or NOI provisions and regulation requirements related to groundwater quality to modify the permit or NOI. The Office may bring an enforcement action under Section 34-32-116(7), C.R.S. 1984, as amended, or earlier version thereof. Such enforcement action may result in a finding of a violation of that statutory provision upon finding that there is or may be a reasonable potential for degradation of groundwater quality that adversely affects existing or reasonable potential future uses of such groundwater. The Office shall follow the pre-enforcement procedure outlined below before bringing such an enforcement action:

(A) When the Office has reason to believe, based on evidence, that there is or may be a reasonable potential for degradation of groundwater quality that adversely affects uses, the Office shall notify the Operator of the evidence and of the possible need to modify the permit or NOI to include permit or NOI conditions that comply with Rule 3.1.7(2), necessary information, and shall allow a minimum of ninety (90) days for the Operator to respond. Following a response from an Operator provided with notice under this Rule 3.1, the Office shall allow a reasonable period to negotiate appropriate permit or NOI conditions with the Operator pursuant to Rule 3.1.7(2).

(B) The Office may bring an enforcement action if the Operator fails to respond within the time specified, or the Office and the Operator do not negotiate appropriate permit or NOI conditions within a reasonable period of time, pursuant to Rule 3.1.7(3)(b)(ii)(A). Upon finding a violation of the Act, or Rules promulgated thereunder, the Board may modify the permit or NOI to include groundwater protection provisions in compliance with Rule 3.1.7(2).

(C) The pre-enforcement procedures described in this Rule 3.1.7(3)(b)(ii) shall not apply if there is an imminent danger to the health, safety, and general welfare of the people of this state. In such a case, the Office may immediately initiate an enforcement action and may seek a cease and desist order. This provision shall not be construed to prevent the Water Quality Control Division from pursuing its remedies under Section 25-8-307, C.R.S. (1989).

(4) Procedures for establishing compliance with standards promulgated by the WQCC.

(a) Existing permits or NOIs affecting groundwater, subject to existing groundwater quality standards. The Office shall provide notice to operations subject to a permit or NOI issued prior to January 31, 1994 if such operation has a reasonable potential to exceed groundwater quality standards promulgated by the WQCC. Such existing groundwater quality standards may include standards applicable to groundwater that has been classified by the WQCC, interim narrative standards and state-wide standards for certain pollutants. The notice shall provide the Operator with a reasonable opportunity to respond and modify the permit or NOI if necessary, to establish permit or NOI conditions adequate to implement such groundwater standards.

(b) WQCC standards promulgated after a permit or NOI is issued: If there is a reasonable potential to exceed groundwater quality standards promulgated after the permit or NOI is issued the Office shall provide the Operator with notice of the applicable groundwater quality standards. The Operator shall be afforded a reasonable opportunity to submit an application to modify the permit or NOI as necessary to implement such groundwater quality standards.

(c) Permit or NOI conditions established pursuant to Rules 3.1.7(4)(a) and (b) shall include a reasonable schedule of compliance. Such permit or NOI conditions may be in the form of numeric protection levels, practice-based permit or NOI conditions, or both.

(d) If an Operator has a reasonable potential to exceed groundwater quality standards promulgated by the WQCC, the Operator shall modify the permit or NOI as necessary to implement such standards in compliance with this Rule 3.1.7, within a reasonable period of time after receiving a Notice issued pursuant to Rules 3.1.7(4)(a) and (b). If the Operator fails to do so the Office may initiate an enforcement action to enforce compliance with this Rule and establish any necessary permit or NOI conditions.

(e) Permits, NOIs or applications to modify a permit or a NOI shall not be approved unless such permit, NOI, or modification includes conditions adequate to implement all groundwater quality standards promulgated by the WQCC applicable to such permit**,** NOI, or modification.

(5) Any Operator, on a voluntary basis, may submit information concerning the protection of the quality of groundwater affected by the operation to the Office. The Operator may submit such information and a plan for monitoring, where appropriate, including monitoring at points of compliance, for the Office's consideration. The information submitted must satisfy the requirements of Rules 3.1.7(6) and (7). Such voluntary submission by an Operator shall be considered a Technical Revision provided the submittal satisfies Rule 1.8, or NOI modification.

(6) Points of Compliance:

(a) In order to evaluate protection afforded groundwater quality, comply with groundwater standards, or to demonstrate compliance with permit or NOI conditions established by the Office to protect groundwater quality, one or more points of compliance shall be established. Through incorporation into a permit or NOI and on a schedule approved by the Office, an Operator shall comply with groundwater quality standards established by the Water Quality Control Commission at points of compliance.

(i) Where the Water Quality Control Commission has not established standards, then any permit or NOI condition established by the Board or Office to protect groundwater quality shall be demonstrated to be met at points of compliance or as specified in the issued NOI or approved permit.

(b) Where groundwater quality standards have been established, the point of compliance shall be established according to the following criteria:

(i) for existing facilities at which an adverse impact to groundwater quality could occur, the point of compliance will be set as follows:

(A) at some distance hydrologically down-gradient from the facility or activity that is causing, or which has the potential to cause, the contamination, and selecting that distance closest to the facility or activity, considering the technological feasibility of meeting the requirements for protecting water quality:

(I) a specified distance, as determined by Rule 3.1.7(6)(i)(B) below;

(II) the hydrologically down-gradient limit of the area in which contamination has been identified; or

(III) the facility permit boundary.

(B) In determining a specified distance the Office shall take into consideration the following factors;

(I) the classified use, established by the Water Quality Control Commission, for any groundwater or surface water which could be impacted by contamination from the facility;

(II) the geologic and hydrologic characteristics of the site, such as depth to groundwater, groundwater flow direction and velocity, soil types, surface water impacts, and climate;

(III) the toxicity, mobility, and persistence in the environment of the contaminants used or stored at the facility and

which could reasonably be expected to be discharged from the facility;

(IV) the potential of the site as an aquifer recharge area; and

(V) recommendations submitted by the facility owner or Operator, including technical and economic feasibility.

(ii) For any new facility or new activity which may cause an adverse impact on groundwater quality, the point of compliance will be set as follows:

(A) unless modified by the Office as specified in Rule 3.1.7(6)(ii)(B) below, the point of compliance will be set at the hydrologically down-gradient limit of the area below the facility or activity potentially impacting groundwater quality.

(B) The point of compliance determined in Rule 3.1.7(6)(ii)(A) above may be modified by the Office on a case-by-case basis with consideration of the following factors:

(I) the classified use, established by the Water Quality Control Commission, for any groundwater or surface water which could be impacted by contamination from the facility;

(II) the geologic and hydrologic characteristics of the site, such as depth to groundwater, groundwater flow direction and velocity, soil types, surface water impacts, and climate;

(III) the toxicity, mobility, and persistence in the environment of contaminants used or stored at the facility which could reasonably be expected to be discharged from the facility;

(IV) the potential of the site as an aquifer recharge area; and

(V) recommendations submitted by the facility owner or Operators including technical and economic feasibility.

(7) Groundwater Monitoring:

(a) For existing operations through permit or NOI modifications, and for new permit applications or NOIs, a groundwater monitoring program shall be required on a case-by-case basis where an adverse impact on groundwater quality may reasonably be expected.

(b) If groundwater monitoring is required, the Operator shall include the following information as part of a permit application, NOI, or permit or NOI modification:

(i) a map that accurately locates all proposed groundwater sample points and any locations that are proposed as a point of compliance;

(ii) the method of monitoring well completion where monitoring wells are required;

(iii) method of sampling, frequency of sampling and reporting to the Office;

(iv) parameters analyzed, water quality analysis methods, and quality control and quality assurance methods;

(v) formations, aquifers or strata to be sampled;

(vi) identify the potential sources of groundwater contamination that will be monitored by each point of compliance monitoring point;

(vii) a time-schedule for implementation; and

(viii) ambient groundwater quality data sufficient to characterize potentially impacted groundwater quality.

(8) Release of Reclamation Liability: An Operator shall demonstrate, to the satisfaction of the Office, that reclamation has been achieved so that existing and reasonably potential future uses of groundwater are protected. In addition, Operators of any in situ leach mining operations shall reclaim groundwater as required in Rule 3.1.7(1)(e).

(9) An Operator must provide the Office a written report within five (5) working days when there is evidence of groundwater discharges exceeding applicable groundwater standards or permit or NOI conditions imposed to protect groundwater quality when these other conditions are explicitly identified in the permit or NOI as requiring such notice.

For additional performance standards related to water, see Rules 3.1.5 and 3.1.6.

3.1.8 Wildlife

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116(7)(j)

(1) All aspects of the mining and reclamation plan shall take into account the safety and protection of wildlife on the mine site, at processing sites, and along all access roads to the mine site with special attention given to critical periods in the life cycle of those species which require special consideration (e.g., elk calving, migration routes, peregrine falcon nesting, grouse strutting grounds).

(2) Habitat management and creation, if part of the Reclamation Plan, shall be directed toward encouraging the diversity of both game and non-game species, and shall provide protection, rehabilitation or improvement of wildlife habitat. Operators are encouraged to contact Colorado Parks and Wildlife and/or federal agencies with wildlife responsibilities to see if any unique opportunities are available to enhance habitat and/or benefit wildlife which could be accomplished within the framework of the Reclamation Plan and costs.

116(7)(f) **3.1.9 Topsoiling**

(1) Where it is necessary to remove overburden in order to mine the mineral, topsoil shall be removed and segregated from other spoil. If such topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that the topsoil is preserved from wind and water erosion, remains free of any contamination by toxic or acid-forming material, and is in a usable condition for reclamation.

(2) Where practicable, woody vegetation present at the site shall be removed from or appropriately incorporated into the existing topsoil prior to excavation within the affected areas. The Operator should make a reasonable effort to ensure that existing vegetation is put to a beneficial use such as firewood, mulching, lumber, etc.

116(7)(i) (3) Topsoil stockpiles shall be stored in places and configurations to minimize erosion and located in areas where disturbance by ongoing mining operations will be minimized. Such stockpile areas must be included in the affected areas and subject to all reclamation requirements. The Board may require immediate planting of an annual and/or perennial on topsoil stockpiles for the purpose of stabilization.

(4) Once stockpiled, the topsoil shall be rehandled as little as possible until replacement on the regraded, disturbed area. Relocations of topsoil stockpiles on the affected land require Board or Office approval. Approval in most cases would be granted by way of technical revision.

(5) The Operator shall take measures necessary to assure the stability of replaced topsoil on graded slopes such as roughing in final grading to eliminate slippage zones that may develop between the deposited topsoil and heavy textured spoil surfaces.

116(7)(f) (6) If, in the discretion of the Board or Office, such existent topsoil is of insufficient quantity or of poor quality for sustaining vegetation, and if other materials can be shown to be more suitable for vegetation requirements, then the Operator shall remove, segregate, and preserve in a like manner such other materials which are best able to support vegetation.

(7) When growing media is replaced, it shall be done in as even a manner as possible. Fertilizer or other soil amendments shall be added, if required in the Reclamation Plan or as the soil tests indicate.

(8) Vegetative piles shall be removed from the area or utilized in accordance with the Reclamation Plan.

116(7)(e) **3.1.10 Revegetation**

(1) In those areas where revegetation is part of the Reclamation Plan, land shall be revegetated in such a way as to establish a diverse, effective, and long lasting vegetative cover that is capable of self-regeneration without continued dependence on irrigation, soil amendments or fertilizer, and is at least equal in extent of cover to the natural vegetation of the surrounding area. Except for certain post mining land uses approved by the Board

or Office, the use of species native to the region shall be emphasized. Greater emphasis on non-native species may be proposed for intensively managed forestry and range uses.

116(7)(k) (2) If the Operator's choice of reclamation is forest planting, they may, with the approval of the department, select the type of trees to be planted. If the Operator is unable to acquire sufficient planting stock of desired tree species from the state or elsewhere at a reasonable cost, they may defer planting until planting stock is available to plant such land as originally planned, or they may select an alternate method of reclamation.

116(7)(n) (3) If the Operator's choice of reclamation is for rangeland, the land shall be restored to slopes commensurate with the proposed land use and shall not be too steep to be traversed by livestock. The area may be seeded either by hand, or power, or by the aerial method.

(4) The revegetation plan shall provide for the greatest probability of success in plant establishment and vegetation development by considering environmental factors such as seasonal patterns of precipitation, temperature and wind; soil texture and fertility; slope stability; and direction of slope faces. Similar attention shall be given to biological factors such as proper inoculation of legume seed, appropriate seeding and transplanting practices, care of forest planting stock, and restriction of grazing during initial establishment. The Board or Office, in consultation with the Landowner and the local Conservation District, if any, shall determine when grazing may start.

(5) To ensure ~~insure~~ the establishment of a diverse and long lasting vegetative cover, the Operator shall employ appropriate techniques of site preparation and protection such as mechanical soil conditioning by discing and ripping; mulching; soil amendments and fertilizers; and irrigation.

(6) Methods of weed control shall be employed for all prohibited noxious weed species, and whenever invasion of a reclaimed area by other weed species seriously threatens the continued development of the desired vegetation. Weed control methods shall also be used whenever the inhabitation of the reclaimed area by weeds threaten further spread of serious weed pests to nearby areas.

116(7)(l) (7) When necessary, fire lanes or access roads shall be constructed through the area to be planted. These lanes or roads shall provide access for planting crews, supervision and inspection.

116(7)(q)(I) (8) Planting required for reclamation may be delayed, through the period of use related to places of refuse disposal, haulage roads and road cuts. Normal stabilization of surfaces is required. No planting is required:

(a) on any affected land being used or proposed to be used by the Operator for the deposit or disposal of refuse until after the cessation of operations productive of such refuse;

(b) on lands proposed for future mining;

116(7)(q)(II) (c) within depressed haulage roads or final cuts while such roads or final cuts are being used or made;

(d) where permanent pools or lakes have been formed; and

(e) on any affected land so long as the chemical and physical characteristics of the surface and immediately underlying material of such affected land are toxic, deficient in plant nutrients, or composed of sand, gravel, shale, or stone to such an extent as to seriously inhibit plant growth and such condition cannot feasibly be remedied by chemical treatment, fertilization, replacement of overburden, or like measures.

116(7)(q)(III) (9) Where adverse characteristics of the surface, not feasibly remedied by artificial measures, would seriously inhibit plant growth, planting may be delayed or provided on substitute acres, depending upon natural corrective processes over a ten (10) year period.

116(7)(r) **3.1.11 Buildings and Structures**

If the affected land is owned by a legal entity other than any local, state, or federal entity, any buildings or structures including those constructed or placed on the affected lands in conjunction with the mining operations or which are historic structures as determined by the State Historic Preservation Office may, at the option of the Operator and Landowner and with the approval of the Board, remain on the affected land after reclamation if such buildings or structures will not conflict with the post-mining land use and the structures conform to local building and zoning codes.

3.1.12 Signs and Markers

(1) At the entrance of the mine site the Operator shall post a sign, which shall be clearly visible from the access road, with a minimum size equaling one hundred and eighty-seven (187) square inches, such as eleven (11) inches in height and seventeen (17) inches in width, with appropriate font size, with the following:

(a) the name of the Operator and the operation name;

(b) a statement that a reclamation permit for the operation has been issued by the Colorado Mined Land Reclamation Board; and

(c) the permit number.

(2) The boundaries of the affected area will be marked by monuments or other markers that are clearly visible and adequate to delineate such boundaries.

(a) for 110 Limited Impact Operations and Limited Impact 110 Designated Mining Operations the permit boundary for the purposes of this Rule shall be considered the affected area;

(b) for 112 Regular Operations and 112 Designated Mining Operations the area proposed to be disturbed by mining operations for which a Financial Warranty and Performance Warranty have been posted shall be the affected area.

(3) The Office may approve an alternative plan for identifying the boundaries of the affected land if the Operator includes such a plan in the permit application or through a technical revision.

3.1.13 Spill Reporting

The Operator shall notify the Office of a spill of any toxic or hazardous substance, including spills of petroleum products, that occurs within the mined land permit area or area encompassed by a Notice of Intent and which would be required to be reported to any Division of the Colorado Department of Public Health and the Environment, the National Response Center, the Colorado Emergency Planning Commission, any local Emergency Planning Commission, local Emergency Planning Committee, or the State Oil Inspector. The Operator shall:

(1) within twenty-four (24) hours of the time the spill is reported to any other agency(ies) with jurisdiction over the spill, notify the Division of Reclamation, Mining and Safety, via phone or email;

(2) include in the notice any relevant information known at the time contact is made with the Office that would assist the Office in assessing spill seriousness, such as:

(a) operation name, DRMS permit number and name of person reporting the spill,

(b) telephone number of a responsible company official for the Office staff to use as a contact,

(c) date and time of spill,

(d) type of material spilled (CAS number if applicable, from the material safety data sheet (MSDS) form),

(e) estimate of the amount spilled, whether any material has left the permit area, and where the spilled material went, and

(f) initial measures taken to contain and clean up spill.

(3) copy the Office on any correspondence and/or written reports provided to other agencies. Supplement those reports if necessary to include the information outlined in Rule 3.1.13(2).

(4) For permits approved prior to the effective date of these Rules, the requirements of Rule 3.13 shall supersede stipulations to permits regarding spill reporting.

121 **3.2 INSPECTION AND MONITORING**

(1) Entry upon lands for inspection: the Board or Office may enter upon the lands of the Operator at all reasonable times for the purpose of inspection to determine whether the provisions of the Act and these Rules have been complied with.

(2) Persons authorized under the Act and these Rules to conduct inspections shall, prior to entry onto any lands, notify the Operator of their intent to enter and inspectors shall comply with all federal, state, local and company safety rules.

(3) Any state official or employee of the Office shall promptly report to the Board any possible violation of a permit, law or these Rules of which they have knowledge, whether obtained from personal inspection or from written reports on mining operations.

(4) Upon an Office determination of a possible violation, the Office shall issue a Notice of Possible Violation(s), and shall mail such notice by certified mail, return receipt to the last known address of the Permittee. The Office shall schedule the matter of possible violation(s) for a Board Hearing according to the provisions of Rules 3.3.1 or 3.3.2.

(5) All inspections shall include a written report which:

(a) describes every possible violation of the permit, law, or these Rules;

(b) is personally signed by the Inspector; and

(c) is mailed within a reasonable time to the mine office, or other suitable location designated by the Operator.

(6) A report of how and when a violation is resolved and a report of any subsequent inspection to verify compliance shall be filed.

(7) All operations applying for a regular permit, conversion, or amendment thereto shall be inspected after the application is filed and prior to Board consideration. Other Applicants shall be so inspected as time and staff resources permit.

(8) Mining operations shall be inspected a sufficient number of times each year to ensure compliance with the permit, law, and these Rules. The frequency of inspection shall be determined by the extent of the operation, rate of mining, degree of actual or potential environmental impact, ~~and~~ the Operator's past record of compliance, and by Board Policy.

113(8) (9) The Board or Office is authorized to inspect any ongoing Prospecting Operation or any Prospecting Operation prior to the request for release of Performance and Financial Warranties, in order to determine compliance with these Rules.

123 **3.3 ENFORCEMENT AND PROCEDURES**

3.3.1 Operating Without a Permit or Prospecting Without a Notice of Intent Penalty

(1) Whenever the Office issues an immediate Cease and Desist Order to an Operator or Prospector for failing to obtain a valid Mined Land Reclamation Board permit or filing a Notice of Intent, the Operator or Prospector shall be afforded an opportunity for a hearing before the Board. The Office shall schedule the matter for a hearing before the Board no sooner than thirty (30) days after issuance of such Cease and Desist Order; except that an

earlier date for a hearing may be requested by the alleged violator and the hearing must be set no later than the next succeeding Board meeting if requested by the alleged violator.

(2) Operators who mine substantial acreage beyond their approved permit boundary may be found to be operating without a permit and shall be afforded an opportunity for a hearing before any Cease and Desist Order may issue.

123(2) (3) Except as provided in Rule 3.3.1(4) below, any Operator who operates without a permit shall be subject to a Civil Penalty of not less than one thousand dollars ($1,000.00) per day, nor more than five thousand dollars ($5,000.00) per day, for each day the land has been affected. Such penalties shall be assessed for a period not to exceed sixty (60) days.

123(3) (4) Any Operator eligible for, but operating without a permit under Section 34-32-110, C.R.S et seq., 1984, as amended, and any Prospector who operates without filing a Notice of Intent, shall be subject to a Civil Penalty of not less than fifty dollars ($50.00), nor more than two hundred dollars ($200.00) per day for each day the land has been affected. Such penalties shall be assessed for not less than one (1) day and not more than sixty (60) days.

124 **3.3.2 Operating With a Permit or Prospecting With a Notice of Intent – Failure to Comply**

124(1) (1) Whenever the Board or Office has a reason to believe that there has occurred a violation of an Order, Permit, Notice of Intent, or regulation issued under the authority of the Act or these Rules, written Notice shall be given to the Operator or Prospector of the possible violation at least thirty (30) days prior to the scheduled Board hearing date, unless such Notice is waived, in writing, by the Operator. Such Notice shall be served personally or by Certified Mail, Return Receipt Requested, upon the possible violator or the possible violator's agent, for service of process. The Notice shall state the provision alleged to be violated and the facts alleged to constitute the violation, and may include the nature of any corrective action proposed to be required. The Notice shall state the date, time and place of the Formal Hearing where the Board will consider the possible violation.

124(6)(a) (2) Following a determination, by the Office, of reason to believe a violation exists, the Board shall hold a hearing on whether or not there is a violation.

(a) At the hearing, if the Board determines that a violation of the provisions of a Permit, a Notice of Intent, the Act, or these Rules has occurred, the Board may order the modification, suspension or revocation of the Permit. If the Board suspends or revokes the Permit of an Operator, the Operator may continue mining operations only for the purpose of bringing the mining operations into satisfactory compliance with the provisions of the Operator's Permit and all applicable safety regulations. Once such operations are complete to the satisfaction of the Board, the Board shall reinstate the Permit of the Operator.

124(7) (b) At the hearing, if the Board determines that a violation of the provisions of a permit, the Act, or these Rules has occurred, the Board shall assess a Civil Penalty of not less than one hundred dollars ($100.00) per day nor more than one thousand dollars ($1,000.00) per day for each day during which such violation occurs; except that any Operator who operates under a permit issued under Section 34-32-110, C.R.S., as amended shall be subject to a Civil Penalty of not less than fifty dollars

($50.00) nor more than two hundred dollars ($200.00) per day. Operators who affect substantial acreage beyond their approved permit boundary may be found to be operating without a permit and, in such case, the Civil Penalty shall be assessed according to the schedule in Rules 3.3.1(3) or (4).

(c) At the hearing, if the Board determines that a violation of the provisions of a permit, a Notice of Intent, the Act, or these Rules has occurred, the Board may issue a Cease and Desist Order. The order shall:

(i) specify the provisions(s) violated;

(ii) specify the facts which constitute the violation(s);

(iii) set forth the time by which the violations(s), act(s), or practices(s) must be terminated;

(iv) include, at the Board's discretion, any corrective action; and

(v) be served personally or by Certified Mail, return receipt requested, upon the Operator or their agent for service of process.

(3) After a finding by the Board of a failure to comply, pursuant to Rule 3.2, any expenses incurred by the Board or Office in carrying out corrective actions, including administrative costs, may be assessed against the violator.

124(3)

3.3.3 Injunctive Relief

(1) In the event any Operator fails to comply with a Cease and Desist Order, the Board may request the Attorney General to bring suit for a temporary restraining order, a preliminary injunction, or a permanent injunction to prevent any further or continued violation of such order.

(2) If the Board determines that the situation is an emergency, the emergency shall be given precedence over all other matters pending in such court.

3.3.4 Violation of a Cease and Desist Order – Surety Forfeiture

118(1)(a)

The Board shall institute proceedings to have the surety of the Operator forfeited for violation by the Operator of a Cease and Desist Order entered pursuant to Rule 3.3. Such proceedings shall be conducted in accordance with Rule 4.20.

RULE 4: PERFORMANCE WARRANTIES AND FINANCIAL WARRANTIES

4.1 GENERAL PROVISIONS

109(6) (1) No governmental office of the state, other than the Board, nor any political subdivision of the state shall have the authority to require a Performance or Financial Warranty of any kind for any mining operation.

115(4)(a) 117(1) 117(3)(f) (2) No permit may be issued pursuant to the Act until the Board or Office receives and approves the Performance and Financial Warranties required herein. If these Warranties are not received within one (1) calendar year of approval of an application for any new permit, amendment or conversion, the Board shall hold a hearing, in accordance with the notification and comment provisions of Rule 1.6, to reconsider the previous approval. If the Board affirms the original application approval, the Board shall establish a new deadline for submittal of the Financial and Performance Warranties. If the required Warranties are not posted by the date set by the Board, the application shall be denied.

117(2) (3) Whenever two or more persons or entities are named as Operators in a single permit, the Operators may limit the scope of their individual Performance Warranties so long as the warranties, in the aggregate, warrant performance of all requirements of the Act.

117(3) (4) Whenever two or more persons or entities act as Financial Warrantors, they may limit the scope of their individual warranties so long as all Financial Warranties, in the aggregate, equal the amount required by the Board.

117(3)(a) (5) Financial Warranties may be provided by the Operator, by any Third-party, or by any combination of persons or entities.

117(3)(b) (6) Financial Warrantors who provide proof of financial responsibility of any type or types described in Rules 4.3.2, ~~4.3.7,~~ 4.3.8, or 4.3.9 shall not be required to secure the same by the posting of Third party sureties or otherwise pledging or encumbering property for the benefit of the state.

117(6)(a) (7) Financial Warranties shall be maintained in good standing for the entire life of any permit issued under the Act and these Rules. Financial Warrantors shall immediately notify the Board of any event which may impair their warranties.

119 (8) Where one Operator succeeds another at any uncompleted operation, the Office shall release the first Operator from all liability as to that particular reclamation operation and shall release all applicable Performance and Financial Warranties as to such operation if the successor Operator assumes, as part of the obligation under the Act, all liability for the Reclamation of the affected land, and the obligation is covered by replacement Performance and Financial Warranties as to such affected land.

118(5) (9) 95% of the proceeds of all Financial Warranties forfeited under the provisions of Section 34-32-118, C.R.S., shall be deposited in a special account established by the Board for the purposes of reclaiming lands which were obligated to be reclaimed under the permits upon which such Financial Warranties have been forfeited.

117(3)(b) 117(4) 117(4)(a)

(10) Proof of financial responsibility may be of any type and in such amount authorized herein, subject to approval by the Board or Office.

4.1.1 General Requirements – Performance Warranties

117(1)

Each application for any Permit or amendments thereto shall be accompanied by a Performance Warranty.

(a) The Performance Warranty shall be in a form approved and prescribed by the Board.

(b) A Performance Warranty shall be signed by the Operator and/or by a person or persons authorized to bind the Operator.

4.1.2 General Requirements – Financial Warranties

(1) A Financial Warranty shall be signed by a person or persons authorized to sign a Financial Warranty.

110(8) 111(7) 117(3)(f)(VII)

(2) No Financial Warranty shall be required where the Operator is a unit of municipal or county government or the State Department of Transportation and the Operator submits a written guarantee, in lieu of a financial warranty, stating that the affected lands will be reclaimed in accordance with the terms of the permit, these Rules, and Section 34-32-116, C.R.S.

117(3)(g)

(3) Any proof of financial responsibility submitted or revised on or after July 1, 1993, shall be in compliance with Rules 4.2.1(1) through (7), and 4.1.2(6) and (7).

117(3)(b)

(4) If the Board or Office has reason to believe that any proposed Financial Warranty does not fully and accurately reflect the current financial condition of the Financial Warrantor, the Board or Office may decline to accept the Financial Warranty as submitted.

117(6)(b)

(5) Each Financial Warrantor providing proof of financial responsibility in a form described in Rules 4.3.6, ~~4.3.7,~~ 4.3.8, 4.3.9, or 4.3.10 shall annually cause to be filed with the Board or Office a certification by an independent auditor that, as of the close of the Financial Warrantor's most recent fiscal year, the Financial Warrantor continued to meet all applicable requirements of Rule 4. Financial Warrantors who no longer meet said requirements shall comply with Rule 4.15.

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117(4)(c)(B)

(6) The Board or Office may by permit condition require proof of value on a periodic basis of any Warranty held by the Board.

117(4)(b) 117(4)(c)

(7) The Board or Office may by permit condition limit certain types of Warranties to specific purposes only or require a designated percentage of the total Warranty be held in easily valued and convertible instruments.

117(3)(c) 117(3)(c)(I)

(8) The Board or Office may refuse to accept any type of Financial Warranty if:

(a) the value of the Financial Warranty offered is dependent upon the success, profitability, or continued operation, of the mine;

117(3)(c)(II) (b) for Deeds of Trust, First Priority Liens or Salvage Credit, the Operator has not complied with Rule 4.9; or

(c) the Board determines that the Financial Warranty offered cannot reasonably be converted to cash within one hundred and eighty (180) days of forfeiture.

(9) Any Operator/Applicant that desires to utilize a Financial Warranty described in Rules 4.3.6, ~~4.3.7,~~ 4.3.8, 4.3.9, or 4.3.10 shall pay to the Office an Annual Fee for the reasonable and necessary cost of establishing and reviewing the Financial Warranty.

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(a) No costs may be charged hereunder unless and until the Operator/Applicant signs written fee agreements with the Office. Said agreements shall be in such form as the Board may prescribe. Invoices pursuant to said agreements shall include a statement for services and expenses included in the total amount;

(b) rates charged by the Office hereunder may not exceed prevailing rates for similar services, and shall reflect the actual cost of establishing and reviewing the Financial Warranty;

(c) the Operator/Applicant shall be responsible for all costs properly charged hereunder, even if no permit issues from the Board; and

(d) funds paid to the Office are to be made available for the use of outside legal and financial advice for the purpose of reviewing the Financial Warranty of Operators/Applicants desiring to use the Self-Insurance provision.

(10) The original bond documents shall be submitted to the Office and held in safekeeping by the State Treasurer's Office.

4.1.3 Provisions for Recovery of Costs

117(3)(e) Any instruments offered as a Financial Warranty pursuant to this Rule 4, shall provide that the Board or Office may recover the necessary costs, including attorney's fees or fees incurred in foreclosing on or realizing the collateral used to secure such Financial Warranty in the event such Financial Warranty is forfeited, in the following manner:

(a) for any Corporate Surety Bond issued by a corporate surety company authorized to do business in this state, the face amount of the bond shall be increased by five hundred dollars ($500);

(b) for any irrevocable Letter of Credit issued by a bank authorized to do business in the United States, the face amount of the Letter of Credit shall be increased by five hundred dollars ($500);

(c) for any Certificate of Deposit, the face amount of the Certificate of Deposit shall not be increased;

(d) for any Individual Reclamation Fund, the amount of the trust fund required to be maintained shall be increased by five hundred dollars ($500);

(e) for any Cash Escrow Account, the amount of the Cash Escrow Account required to be maintained shall not be increased; and

(f) for any Deed of Trust or Security Agreement encumbering real or personal property creating a first priority lien in favor of the state, the value of the real or personal property available to secure the amount of the Financial Warranty attributable to costs of reclamation shall be reduced by an amount to be determined by the Board or Office, but in any case, a minimum of five thousand dollars ($5,000) and up to a maximum amount of two percent (2%) of reclamation costs;

(g) any monies collected and not used to fulfill the requirements of this Rule 4.1.3, shall be returned to the Financial Warrantor upon completion of reclamation and liability release by the Board or Office.

4.2 FINANCIAL WARRANTY LIABILITY AMOUNT

4.2.1 Adequacy of Financial Warranties

117(4)(b) (1) All Financial Warranties shall be set and maintained at a level which reflects the actual current cost of fulfilling the requirements of the Reclamation Plan; and for Designated Mining Operations, fulfilling the applicable requirements of the reclamation and Environmental Protection Plans during site closure and reclamation.

117(4)(b)
117(4)(c)(II) (2) Financial Warranty Review - the Office or Board may, in its discretion, review any Financial Warranty for adequacy at any time. In the event the Office or Board determine that the Financial Warranty is insufficient to perform reclamation, the Permittee shall have up to sixty (60) days to post additional Financial Warranty from the date of written notice from the Office or Board of such insufficiency. If the Permittee disagrees with the Office Notice to Increase the Financial Warranty, the Office shall schedule the matter for a hearing before the Board. The Permittee may be scheduled for a Formal Board Hearing for possible revocation of the permit after sixty (60) days, from the date of notice of any such adjustment, if the amount of any increased Financial Warranty has not been provided.

117(4)(a) (3) The Board or Office shall prescribe the amount and duration of Financial Warranties, taking into account the nature, extent, and duration of the proposed mining operation, the magnitude, type and estimated cost of planned reclamation, and the requirements of the Act.

117(4)(b) (4) In any single year during the life of the permit, the amount of required Financial Warranties shall not exceed the estimated cost of fully reclaiming all lands to be affected in said year, plus all lands affected in previous permit years and not yet fully reclaimed. For the purpose of this Rule, reclamation costs shall be computed with reference to current reclamation costs. The amount of the Financial Warranty shall be sufficient to assure the completion of

reclamation of affected lands if the Office has to complete such reclamation due to forfeiture. Reclamation includes all measures taken to assure the protection of water resources, including costs to cover necessary water quality protection, treatment and monitoring as may be required by Permit, these Rules or the Act.

117(4)(b)(I)

(5) The Financial Warranty amount shall include an amount equal to five percent (5%) of the amount of the cost of reclamation to defray the administrative costs incurred by the Office in conducting the reclamation.

(6) When mining on federal land and the federal land management agency requires that a Financial Warranty be posted with their agency, the amount of Financial Warranty posted with the state shall be the difference between the amount required to be posted by the federal land management agency, and the amount required by the Mined Land Reclamation Board. In no event shall the amount of Financial Warranty posted with the state be less than one hundred dollars ($100). In addition, the application shall contain a provision that in the event the federal land management agency reduces the Financial Warranty, the Permittee must post an acceptable replacement Warranty with the state prior to any release by the federal land management agency. The replacement Warranty shall be sufficient to cover the cost of reclamation liability unless the state conducts an inspection and concurs with the federal land management agency finding.

4.2.2 Specific Provisions – 110(1), 110(2) and Non-In Situ Leach Mining 110d Limited Impact Operations

(1) Except for in situ leach mining permits, the Financial Warranty for any 110 Limited Impact Permit which is filed pursuant to Section 34-32-110(1)(a)(III) or (2), C.R.S., including those which are automatically issued as a result of Office inaction within thirty (30) days pursuant to Section 34-32-110(6), C.R.S., shall be in an amount determined by the Office pursuant to Section 34-32-117(4), C.R.S. to be equal to the estimated cost of reclamation. By July 1, 2015, any Operator issued a two acre limited impact permit must comply with the financial warranty requirements set forth in Section 34-32-117(4), C.R.S. and Rule 4.

(2) Divisions of state government and units of municipal and county government are exempt from submitting Financial Warranties and are not required to provide reclamation costs.

4.2.3 Permit Conversion

110(7)
117(4)

The conversion of any 110 Permit into any 112 Permit shall require a Financial Warranty in an amount equal to the estimated cost of reclamation.

4.2.4 Reserved

4.2.5 Specific Provisions – 112, 112d, 110 ISL and 112 ISL Reclamation Permit Operations

117(4)

(1) The Financial Warranty for any 112, 112d, 110 ISL and 112 ISL Reclamation Permit shall be in an amount to be determined by the Board in accordance with the guidelines set forth herein.

115(3) (2) The Financial Warranty for any 112, 112d, 110 ISL and 112 ISL Reclamation Permit which is automatically issued as a result of Board inaction within two hundred and forty (240) days for any in situ leach mining application and within the one hundred and twenty (120) day period for non in situ leach mining 112 and 112d permit applications pursuant to the Act shall be in an amount equal to two thousand dollars ($2,000.00) for each acre of Affected Land, or other such amount as the Board may determine at a subsequent hearing.

(3) If, at a hearing, the Board determines that the Financial Warranty is not adequate, the Operator shall have sixty (60) days to post the additional Financial Warranty in a form and amount acceptable to the Board.

4.2.6 Specific Provisions – Prospecting Notice

113(4) (1) Upon filing the Notice of Intent to Conduct Prospecting, the person shall provide Financial Warranty in the amount of two thousand dollars ($2,000.00) per acre of the land to be disturbed, or such other amount as determined by the Office, based on the projected costs of reclamation.

113(4) (2) Statewide Warranties may be submitted for prospecting, provided such warranties are in an amount equal to the estimated cost of reclamation per acre of affected land.

4.3 TYPES OF FINANCIAL WARRANTIES

Proof of financial responsibility may consist of any one or more of the following, subject to approval by the Board:

4.3.1 Cash Bond

Cash or Certified funds assigned to the Board.

4.3.2 Cash Escrow Account

A fund of cash or cash invested in

(i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof, including treasury bills, discount notes of the Federal Home Loan Bank, Federal National Mortgage Association, and Federal Farm Credit System (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one hundred and eighty (180) days from the date of acquisition;

(ii) time deposits, certificates of deposit and banker's acceptances with maturities of not more than one hundred and eighty (180) days from the date of acquisition by such person of a commercial bank having, or which is the principal banking subsidiary of a bank holding company having, a long-term unsecured debt rating of at least "AAA" or the equivalent thereof from Standard & Poor's;

(iii) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications specified in clause (ii) above;

(iv) investments in money market funds substantially all assets of which are comprised of securities of the types described in clauses (i) through (iii) above; or

(v) other instruments as approved by the Board established in the form of an escrow account.

4.3.3 Corporate Surety Bonds

117(3)(f)(I) A Surety Bond issued by a corporate surety authorized to do business in this state.

4.3.4 Irrevocable Letters of Credit

117(3)(f)(II) An Irrevocable Letter of Credit issued by a bank authorized to do business in the United States; the Operator/Applicant must provide evidence that the bank issuing the Letter of Credit is in good financial standing and condition, as may be evidenced by its rating by an appropriate rating system.

4.3.5 Certificates of Deposit

117(3)(f)(III) A Certificate of Deposit assigned to the Board.

4.3.6 Deeds of Trust and Security Agreements

117(3)(f)(IV) A Deed of Trust or security agreement encumbering real or personal property and creating a first lien in favor of the State.

4.3.7 ~~Self-Insurance~~ Reserved

~~117(3)(f)(VI)~~
~~117(3)(f)(VII)~~ ~~Self-insurance through credit rating or net worth, as further described in Rules 4.10.1 and 4.10.2, respectively.~~

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4.3.8 Individual Reclamation Fund

117(3)(f)(V)(A) A trust fund which shall be funded by periodic cash payments representing a fraction of total receipts, providing assurance that the funds required for reclamation will be available.

4.3.9 Salvage Credit

117(3)(f)(V)(C) Credit for the Salvage Value of project-related fixtures and equipment (excluding rolling stock) owned or to be owned by the Financial Warrantor within the permit area, represented by a security agreement creating an equipment lien, less the value of any encumbrances of higher priority, which encumbrances shall be limited to government encumbrances.

4.3.10 First Priority Lien on Project-related Fixtures and Equipment

117(8) A Deed of Trust or security agreement encumbering specific project-related fixtures and equipment that must remain on-site upon completion of mining operations, or that must be demolished or removed in order for the Reclamation Plan to be performed, creating a first priority lien in favor of the State.

4.3.11 Negotiable Bonds of the United States Government

A Treasury note backed by the full-faith and credit of the United States Government.

4.4 SPECIFIC REQUIREMENTS FOR CASH BONDS

Cash or Certified funds shall be held in trust by the State Treasurer's Office. All interest shall accrue to the benefit of the Financial Warrantor except where a permit is revoked and the Financial Warranty is forfeited, the interest shall accrue to the Division of Reclamation, Mining and Safety. The accrued interest shall be used for reclamation of the site.

4.5 SPECIFIC REQUIREMENTS FOR CASH ESCROW ACCOUNTS

(1) Cash Escrow Accounts shall be administered by an independent escrow agent other than the Office and shall consist of cash and/or cash invested in financial instruments as described in Rule 4.3.2. If the Escrow Agent is a bank, the bank shall be rated as well-capitalized as defined in the Uniform Bank Performance Report.

(2) The Escrow Agent shall be a United States bank or other financial institution, company, corporation, business or firm.

(3) Investment of the Cash Escrow Account(s) shall be proportioned as follows:

(i) not less than fifty percent (50%) of the Cash Escrow Account(s) shall be convertible into cash or other immediately available funds within twenty-four (24) hours; and

(ii) the balances of the Cash Escrow Account(s) shall be convertible into cash or other immediately available funds within one hundred and eighty (180) days.

(4) All interest shall accrue for the benefit of the Operator.

(5) All maintenance fees for the Cash Escrow Account(s) shall be paid for by the Operator.

(6) The Escrow Agent shall provide to both the Operator and the Board monthly account statement detailing the activities and interests earned on the Cash Escrow Account(s), the cost and market value of the Cash Escrow Account(s), and the balances of the various types of instruments into which the Cash Escrow Account(s) are invested.

(7) On the anniversary of the Cash Escrow Account(s), the Operator shall report to the Board the status of its activities under the Permit, including, but not limited to, the estimated reclamation costs for the area disturbed to date and the estimated amount of reclamation

costs for the additional area to be disturbed during the following twelve (12) months. Based upon this annual report, the Board may require the balance of the Cash Escrow Account(s) be increased to an amount that is not less than the total amount of estimated reclamation costs. The Board shall notify the Operator in writing of any required increase in the amount of Cash Escrow Account(s) and, within sixty (60) days of the receipt of such notice, the Operator shall deposit the amount of the increase with the Escrow Agent. The Operator shall submit to the Board the corporation's annual report, which lists the Cash Escrow Account(s) in the report footnotes. The Operator shall also submit an annual report of the Escrow Agent.

(8) In addition to the above requirements, any agreement establishing the Cash Escrow Account(s) shall provide the following:

(a) Upon order of forfeiture of the Cash Escrow Account(s) by the Board, the Escrow Agent shall release the principal of the Cash Escrow Account(s) to the Board within five (5) days after presentment of the Board forfeiture order to the Escrow Agent. The Operator agrees not to contest or otherwise challenge the Escrow Agent's disbursement of the Cash Escrow Account(s) in accordance with this Rule.

(b) The Operator may not use the Cash Escrow Account(s) as collateral for any loan, mortgage or other obligation or as a guarantee or security interest for any obligation of the Operator, including any security interest which may be filed under Article 9 of the Uniform Commercial Code as in effect in Colorado.

(c) The Board may file a security interest and lien upon the Cash Escrow Account(s) in accordance with Article 9 of the Uniform Commercial Code in effect in Colorado.

(d) The Board is not responsible for and is not indemnifying, insuring, or otherwise holding harmless the Escrow Agent or the Operator with respect to the agreement for any loss, liability, cost damage or expense including attorney's fees, the Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought by or against the Escrow Agent arising out of or relating in any way to the agreement or the Cash Escrow Account(s).

4.6 SPECIFIC REQUIREMENTS FOR CORPORATE SURETY BONDS

(1) The Operator/Applicant shall submit a fully executed Corporate Surety on a form provided by the Office.

(2) A Power of Attorney authorizing the party signing on behalf of the insurance company shall be submitted with the Corporate Surety.

4.7 SPECIFIC REQUIREMENTS FOR IRREVOCABLE LETTERS OF CREDIT

(1) The Irrevocable Letter of Credit shall be executed on the issuing bank's letterhead using the language provided by the Office.

(2) The Irrevocable Letter of Credit shall be automatically renewable. The Letter of Credit shall provide that, in case of non-renewal, the bank must notify the Office and the Operator, by Certified Mail, at least ninety (90) days prior to the expiration date of the Letter of Credit.

(3) The bank shall provide documentation in the form of a balance sheet certified by a Certified Public Accountant demonstrating that the Letter of Credit does not exceed ten percent (10%) of the bank's capital surplus accounts. This documentation shall be provided by the Operator, annually, as part of the Operator's Annual Report.

4.8 SPECIFIC REQUIREMENTS FOR CERTIFICATES OF DEPOSIT

(1) The Certificate of Deposit shall be assigned to the State of Colorado/Mined Land Reclamation Board.

(2) The Certificate of Deposit shall be automatically renewed.

(3) The account shall be a public funds account.

(4) The Certificate of Deposit shall be issued by an eligible public depository under the Public Deposit Protection Act (PDPA), as required by Section 11-10.5-101, C.R.S.

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

4.9.1 General Provisions

117(3)(b)

(1) The Board or Office may accept interests in real and personal property as Financial Warranties of not more than eighty-five percent (85%) of the estimated value of any such property.

(2) Any person offering such Financial Warranty shall:

(a) submit current information necessary to show clear title to the property and the current appraised value of such property. This information shall contain a completed appraisal in a form approved by the Board.

(b) Submit together with the Annual Report as required by Rule 1.15, the following:

(i) an update by a qualified independent appraiser indicating any changes in property value;

(ii) a statement summarizing any circumstances which may affect the adequacy of the Deed if it is a Trust or security agreement; and

(iii) proof that there are no past-due property taxes.

(3) The Board or Office may refuse to accept any Deed of Trust or security agreement if the property or equipment offered is necessary in the functioning of any Environmental Protection Facility at the site of the mining operation, or the completion of the approved Reclamation Plan.

4.9.2 Deed of Trust – Real Estate

117(3) (1) Rules 4.1.2(8)(a) and (c), shall be applicable for new Non-designated Mining Operations on July 1, 1993, and existing Non-designated Mining Operations on January 1, 1996, to Deeds of Trust existing as of July 1, 1993 and subsequent updates of these same Deeds of Trust used as collateral for Financial Warranties; and to any Financial Warranty completed before July 1, 1993 if the value of any such Financial Warranty includes any mineral value or if mineral value is used to update any such Financial Warranty. The value of any Financial Warranty described in this Rule shall include mineral value for the life of the Warranty. Updates shall mean only those changes that adjust the mineral or property value of an existing Deed of Trust, and does not include submissions of new properties.

(2) Failure to provide the documents required by Rule 4.9.1(2) shall indicate a reason to believe the Financial Warranty is not being maintained in good standing as required by Rule 4.1(7).

(3) A request for an increase in the bond by the Office shall require a reappraisal of any real property used as security for the bond. Such reappraisal shall be timely, provided by the Operator and shall be completed by an independent appraiser, acceptable to the Office.

4.9.3 First Priority Lien – Fixtures and Equipment

With respect to first priority liens on project-related fixtures and equipment described in Rule 4.3.10, above:

117(8)(a) (a) the Board or Office may, in its discretion, accept a first priority lien, in the amount of the Financial Warranty prescribed pursuant to Rule 4.2.1, on any project-related fixtures and equipment that must remain on-site in order for the Reclamation Plan to be performed, in lieu of including the cost of acquiring and installing such fixtures and equipment;

117(8)(a) 117(8)(b) (b) the Board or Office may accept a first priority lien on any project-related fixtures and equipment that must be demolished or removed from the site under the Reclamation Plan. The Board or Office may, in its discretion, accept such a lien as a portion of the proof of financial responsibility if the amount credited for such lien does not exceed the cost of demolishing or removing the subject fixtures and equipment or the market value of such fixtures and equipment, whichever is less; and

117(6)(g) 117(8)(b) 117(8)(c) (c) any fixtures and equipment accepted pursuant to this Rule shall be insured, with the MLRB named as the additional insured, and maintained in good operating condition and shall not be removed from the permit area without the prior consent of the Board or Office. Each Operator/Permittee or Applicant providing a lien on such equipment and fixtures shall file an Annual Report with the Office in sufficient detail to fully describe the condition, value

and location of all pledged fixtures and equipment. Such Financial Warrantor shall not pledge such equipment and fixtures to secure any other obligation and shall immediately notify the Office of any other interest that arises in the pledged property, and shall comply with the requirements of Rule 4.15.

4.10 Reserved~~SPECIFIC REQUIREMENTS FOR SELF-INSURANCE~~

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~~117(3)(f)(VI)~~

~~**4.10.1 Self-Insurance – Credit Rating**~~

~~The Operator/Permittee or Applicant shall submit to the Office a certified financial statement for the most recent fiscal year and a certification by an independent auditor, which shows:~~

~~(a) the Financial Warrantor is the issuer of one or more currently outstanding senior credit obligations that have been rated by a nationally recognized rating organization;~~

~~(b) said obligations enjoy a rating of "A" or better; and~~

~~(c) at the close of the Financial Warrantor's most recent fiscal year, its net worth was equal to or greater than two (2) times the amount of all Financial Warranties.~~

~~**4.10.2 Self-Insurance – Net Worth**~~

~~The Operator/Permittee or Applicant shall submit to the Office a certified financial statement for the most recent fiscal year and a certification by an independent auditor, which shows that as of the close of said year:~~

~~(a) the Financial Warrantor's net worth was at least ten million dollars ($10,000,000.00) and was equal to or greater than two (2) times the amount of all Financial Warranties;~~

~~(b) the Financial Warrantor's tangible fixed assets in the United States were worth at least twenty million dollars ($20,000,000.00);~~

~~(c) the Financial Warrantor's total liabilities to net worth ratio was not more than two to one; and~~

~~(d) the Financial Warrantor's net income, excluding non-recurring items, was positive. Non-recurring items which affect net income shall be stated in order to determine if they materially affect self-bonding capacity.~~

~~**4.10.3 Board or Office Right to Deny Self-Insurance**~~

~~The Board or Office may deny self insurance if the Operator/Permittee or Applicant has non-recurring items that affect self-bonding capacity.~~

4.11 SPECIFIC REQUIREMENTS FOR INDIVIDUAL RECLAMATION FUND

4.11.1 Establishment of Fund

117(3)(a)

(1) Upon commencement of production, the Operator may establish an individual reclamation fund, to be held by an independent trustee for the Board, upon such terms and conditions as the Board may prescribe, which trust fund shall be funded by periodic cash payments representing such fraction of receipts as will, in the opinion of the Board, provide assurance that funds will be available for reclamation.

(2) Prior to issuance of a permit, the Operator will provide another form of Financial Warranty as described herein. As the reclamation fund increases in value, this form of Financial Warranty may be decreased in value so long as the sum of Financial Warranties is that amount specified by the Board or required by the Act.

(3) In approving the Individual Reclamation Fund as a Financial Warranty, the Board or Office shall:

(a) approve the form of the initial Financial Warranty;

(b) fix the fraction of receipts to be held in trust;

(c) identify the trustee to hold said funds for the Board;

(d) prescribe the terms and conditions applicable to the Operator or Warrantor's payment of funds into said trust; and

(e) prescribe the terms and conditions governing the trustee's handling of said funds.

4.12 SPECIFIC REQUIREMENTS FOR SALVAGE CREDIT

117(3)(a)(VII)

4.12.1 Requirements for Salvage Credit

A Financial Warranty based on Salvage Credit must meet the following requirements:

117(3)(f)(V)(C)

(a) Project-related fixtures and equipment (excluding Rolling Stock) owned or to be owned by the Operator/Permittee or Applicant within the permit area will have a Salvage Value at least equal to the amount of the Financial Warranty, or the appropriate portion thereof;

118(4)(b)
118(4)(c)

(b) Existing liens and encumbrances applicable to said fixtures and equipment, other than liens in favor of the United States or the State of Colorado, any other state, and any political subdivisions, will be subordinated to the lien described in Section 34-32-118(4)(b) and (c), C.R.S. and Rule 4.20(6).

117(3)(f)(V)(E)

(c) Said fixtures and equipment will be maintained in good operating condition, be properly insured against theft, loss, fire and vandalism, and will not be removed from the permit area without the prior consent of the Board. In addition, the Warrantor shall ensure that insurance premiums are always paid two (2) years in advance on said fixtures and equipment.

4.12.2 Determination of Salvage Credit

(1) The Operator/Permittee or Financial Warrantor shall provide the Office with appraisals, information regarding invoice price, current value, cost of demolition and/or removal, and any other information as is necessary to establish the Salvage Value of the particular Project-related fixtures and/or equipment for which Salvage Credit is sought as all or part of the Financial Warranty for a Permit.

(2) The Operator/Permittee or Financial Warrantor shall provide the Office with a list of all encumbrances, and shall affirm that no other encumbrances exist to the best of the Operator's or Financial Warrantor's knowledge and belief.

(3) The Office may request the Operator/Permittee or Financial Warrantor to provide additional reasonable information to support the claimed Salvage Value and/or costs associated with any Project-related fixture or equipment for which Salvage Credit is sought.

(4) Ten (10) days prior to any Board hearing regarding a Permit application for which Salvage Credit is offered as all or part of the Financial Warranty, the Office shall inform the Operator/Permittee or Financial Warrantor of its opinion as to the amount or estimate of the amount of the Salvage Value attributable to the Project-related fixtures and equipment for which Salvage Credit is sought.

(5) At the hearing before the Board, the Office shall recommend an amount for Salvage Credit value.

(6) The Board shall, after considering the Office's recommendation, testimony offered by the Operator, Warrantor, or any other person, and facts adduced at the hearing, fix the amount of the Salvage Credit for the Project-related fixtures and equipment, and attach conditions, as may be appropriate, to annually verify the value of the Salvage Credit.

4.13 SPECIFIC REQUIREMENTS FOR NEGOTIABLE BONDS OF THE UNITED STATES GOVERNMENT

(1) The Treasury note shall be purchased from a U.S. bank or broker.

(2) The Treasury note shall be for a period of five (5) years.

(3) The Treasury note shall be registered to the custody agent (bank or broker) and pledged to the Board and held in a joint account with the bank or broker.

(4) All interest shall be paid to the operator.

(5) The Board shall accept the value of the Treasury note at ninety percent (90%) of face value.

(6) The only authorized signatory on the account is that of the Board.

(7) The operator shall provide to the Board:

(a) Book Entry receipt.

(b) An Assignment of U.S. Treasury Note to the Board.

(8) Fees associated with the purchase and maintenance of Treasury Notes are the responsibility of the Permittee.

(9) The custody agent shall provide monthly statements of the account to the Board.

(10) If the market value of the U.S. Treasury Note drops below the required ninety percent (90%) of face value, the Permittee will supply the Board with additional funds or post an additional or replacement bond up to the required bond amount.

4.14 REDUCTION OF WARRANTY AMOUNT

117(4)(a)
117(4)(c)

4.14.1 Operator's Request for Reduction

(1) An Operator may request that the Office reduce the amount of the Financial Warranty required.

(2) Such a request must:

(a) be made in writing or via electronic submission, per the Office designation, separate from other correspondence;

(b) include an estimate of the actual cost to reclaim the site based on what it would cost an independent contractor to complete reclamation, including unit costs for reclamation activities as appropriate to the operation to comply with the provisions of Rule 3.1 and the Permit's Reclamation Plan.

(3) Such request shall be processed as described in Rule 4.16, for Prospecting operations, or Rule 4.17, for all other operations.

4.15 IMPAIRMENT OF FINANCIAL WARRANTIES

117(6)(a)

(1) Each Financial Warrantor providing proof of financial responsibility in a form described in Rules 4.3.6, ~~4.3.7,~~ 4.3.8, 4.3.9, and 4.3.10 shall notify the Board within sixty (60) days of any net loss incurred in any quarterly period.

Commented [MR31]: Rule 4.3.7 is being struck as required by HB19-1113

117(6)(d)

(2) Whenever the Board receives a notice under Rule 4.15(1) or fails to receive a certification or a substitute Warranty as required by Rule 4.1.2(5), or otherwise has reason to believe that a Financial Warranty has been materially impaired, it may convene a hearing for the purpose of determining whether impairment has in fact occurred.

117(6)(e) (3) Whenever the Board elects to convene a hearing pursuant to Rule 4.15(2), it may hire an independent consultant to provide expert advice at the hearing. The fees for any such consultant shall be paid by the Financial Warrantor, and no consultant shall be hired until the Financial Warrantor signs a written fee agreement in such form as the Board may prescribe. In the event that a Financial Warrantor refuses to sign such an agreement, the Board may, without hearing, order the Financial Warrantor to provide an alternate form of Financial Warrant.

117(6)(f) (4) At any such hearing, if the Board finds that a Financial Warranty has been materially impaired, it may order the Financial Warrantor to provide an alternate form of Financial Warranty.

117(6)(g) (5) A Financial Warrantor shall have ninety (90) days to provide an alternate warranty required under Rule 4.15(4).

4.16 RELEASE OF WARRANTIES – PROSPECTING OPERATIONS

113(5)
117(5)

4.16.1 Prospector Application for Release of Warranties

(1) Upon the completion of reclamation, any person that filed with the Board or Office a Prospecting Notice and Financial Warranties shall submit to the Office via electronic form ~~by Certified Mail~~ and separate from other types of communication to the Board or Office a Reclamation Report and request for reclamation responsibility release stating that reclamation is finished.

(2) Such report shall contain, at a minimum:

(a) the name of the operation, the name of the Prospector, file number of the Prospecting Notice of Intent and the name, mailing address, e-mail address and phone number of the contact person;

(b) a signed statement by the Prospector that all reclamation requirements of the prospecting notice have been satisfied;

(c) a narrative describing site grading, topsoil replacement, successful revegetation and other stabilization activities, as appropriate;

(d) suitable photographs of the reclaimed area; and

(e) a map of sufficient detail to determine the location of the prospecting activity.

113(6) (3) The Office shall, within thirty (30) days after receiving said report, or as soon thereafter as weather conditions permit, inspect the lands and reclamation described in the notice to determine if the Prospector has complied with all applicable requirements.

113(7) (4) If the Office finds the reclamation to be in compliance with the requirements of the Notice of Intent, Rules and Regulations, and the Statute, the Office shall release all applicable

performance and financial warranties. The financial warranty shall not be held for more than thirty (30) calendar days after the Office finds that the Prospector has successfully completed reclamation. However, an appeal to the release of the Financial Warranties shall stay the release on the thirtieth (30) day pending a Formal Board Hearing.

4.17 RELEASE OF PERFORMANCE AND FINANCIAL WARRANTIES FOR MINING OPERATIONS

4.17.1 Operator Requirements

110(4)
117(5)

(1) The Operator of any mining operation may file a written notice of completion of reclamation and request for release of reclamation responsibility with the Office whenever an Operator believes any or all requirements of the Act, the Rules and Regulations, and the approved reclamation plan have been completed with respect to any or all of the Affected Lands.

(2) The Operator shall include in the notice to the Office the names and addresses and phone numbers of all owners of record to the affected land.

(3) The written notice requesting release shall be sent by Certified Mail and be separate from other types of communication to the Office.

(4) Such notice shall contain a signed statement by the Operator or their agent that all applicable portions of the Reclamation Plan requirements have been satisfied in accordance with these Rules and all applicable requirements under the Act.

4.17.2 Office Requirements

(1) The Office, upon receipt of said notice of completion of reclamation, shall immediately provide notice to all owners of record to the affected land and to the county(s).

117(5)(a)

(2) The Office shall, within sixty (60) calendar days after receiving said notice, or as soon thereafter as weather conditions permit, inspect the lands and reclamation described in the notice to determine if the Permittee has complied with all applicable requirements.

117(5)(c)

(3) If the Office fails to conduct an inspection within the time specified in Rule 4.17.2(2), or fails to advise the Permittee of deficiencies within the time specified in Rule 4.17.2(4), then all Financial Warranties applicable to reclamation described in the notice shall be deemed released as a matter of law.

(4) Where the Office finds that a Permittee has not complied with the applicable requirements of the Act, Rules and Regulations, or the approved reclamation plan, it shall advise the Permittee of such non-compliance not more than sixty (60) calendar days after the date of the inspection.

(5) Where the Office finds that a Permittee has successfully complied with the requirements of the Act, Rules and Regulations, and the approved reclamation plan, the Office shall release all applicable performance and financial warranties. Release (pending an appeal)

shall be in writing and mailed within thirty (30) calendar days to the Permittee after the date of such findings. However, an appeal to the release of the financial and performance warranties shall stay the release on the thirtieth (30th) day pending a Formal Board Hearing.

4.17.3 Reserved

4.17.4 Specific Provisions – Designated Mining Operations

(1) Public Notice Requirements – Request for Release of Financial Warranty

113(6) (a) Upon filing an electronic ~~written~~ Notice of Completion and a Request to Release Financial Warranty for a Designated Mining Operation, the Operator shall publish a Public Notice according to the following guidelines.

(b) At the time of filing a written Notice of Completion or Request for Release of Financial Warranty, the Operator shall publish once in a newspaper of general circulation in the area of the mining operation for which a reduction or release of Performance and Financial Warranties is sought. The Notice shall specify the following:

(i) the name of the mining operation;

(ii) the location of the mining operation in relation to the nearest municipality, giving direction and miles;

(iii) a brief statement of what is being requested and that public comments concerning the appropriateness of the requested release should be sent within thirty (30) days of the date of publication to the Office to the address for the Division of Reclamation, Mining and Safety, listed on the cover of these Rules.

(iv) the Operator shall submit proof of publication as provided for in Rule 1.6.2(1)(a)(ii).

117(5.5) (2) Partial and Final Release of Financial Warranty

(a) The Operator shall request release of any remaining reclamation bond funds at or after such time as is prescribed by the Board or Office which shall be no more than five (5) years after submitting the initial Request for Release of Financial Warranty, and subsequent Office inspection, as per the following:

117(5.5)(a)(I) (i) upon completion of the performance requirements of the Permit and Reclamation Plan, the Operator may file a written Notice of Completion with the Office;

117(5.5)(a)(II) (ii) the Office shall inspect the affected land within sixty (60) days after receiving such notice, or as soon thereafter as weather permits to

determine if the affected land has been reclaimed for a beneficial use and is in compliance with all applicable Performance Standards;

117(5.5)(b) (iii) upon a finding by the Board or Office that the Operator has complied with all the Permit performance requirements, the Office shall deliver a written release of all, or portion of, the Financial Warranty, as appropriate, for the applicable Permit area. This release shall be according to a schedule prescribed by the Board;

117(5.5)(c)(I) (iv) if the Office or Board finds that the performance requirements have not been met, the Office shall advise the Operator, in writing, of such finding and noted deficiencies within sixty (60) days of the inspection conducted pursuant to Paragraph Rule 4.17.4(2)(a)(ii);

117(5.5)(c)(II) (v) if the Operator is not entitled to release, or a portion thereof, of the Financial Warranty, the Board or Office may specify a reclamation schedule and adjust the amount of the bond and Financial Warranty, accordingly;

117(5.5)(d) (vi) if the Office fails to conduct an inspection, pursuant to Rule 4.17.4(2)(a)(ii), or fails to notify the Operator of any deficiencies within sixty (60) days of the inspection conducted pursuant to Rule 4.17.4(2)(a)(iv); then that portion of the Financial Warranty applicable to the reclamation described in the Notice of Completion or Request for Release shall be deemed released as a matter of law;

117(5.5)(e) (vii) within five (5) years after the release of a portion of the Financial Warranty, pursuant to Rule 4.17.4(2)(a)(iii) the Operator may file, in writing, a Request for Financial Warranty Release for release of the balance of the Financial Warranty according to the provisions of Rule 4.17.4(2). The Office shall inspect the affected land within sixty (60) days of such request, or as soon thereafter as weather permits, to determine if the affected land has been reclaimed for a beneficial use and is in compliance with all applicable Performance Standards.

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

(1) Any person who demonstrates that they are directly and adversely affected or aggrieved and whose interest is entitled to legal protection under the Act may submit written objections on the request for reclamation responsibility release so long as such comments are received by the Office no more than fifteen (15) days after notice by the Office to the county(s) and all owners of record to the affected land.

(2) Notice of the Office's decision to release the Permittee from further reclamation responsibility shall be published in the next monthly agenda of the Board.

4.19 GENERAL PROVISIONS – APPEALS TO DECISION – RELEASE OF FINANCIAL WARRANTY

(1) Any person directly and adversely affected or aggrieved by an Office decision to approve or deny the request for reclamation responsibility release and whose interest is entitled to protection under the Act may appeal the decision to the Board by submitting a request for Administrative Appeal to the Office according to the provisions of Rule 1.4.11. The request for Administrative Appeal must specify the basis for being directly and adversely affected or aggrieved, a statement of why the person's interest is protected by the Act, the permit number assigned by the Office and include a statement of the factual and legal issues presented by the appeal.

(2) If the Office decision to release a Permittee from reclamation liability is reversed by the Board on appeal, all outstanding obligations under the permit the financial warranty, and the performance warranty shall remain in effect.

118 **4.20 FORFEITURE OF FINANCIAL WARRANTY**

118(1) (1) A Financial Warranty shall be subject to forfeiture whenever the Board shall determine at a hearing that any one or more of the following circumstances exist:

118(1)(a) (a) the Operator has violated a Cease and Desist order entered pursuant to Section 34-32-124, C.R.S. 1984, as amended, and, if corrective action was proposed in such order, has failed to complete such corrective action although ample time to have done so has elapsed; or

118(1)(b) (b) the Operator is in default under the Performance Warranty and has failed to cure such default although they have been given written notice thereof and has had ample time to cure such default;

118(1)(c) (c) the Financial Warrantor has failed to maintain the Financial Warranty in good standing as required by Section 34-32-117, C.R.S. 1984, as amended; or

118(1)(d) (d) the Financial Warrantor no longer has the financial ability to carry out the obligations under the Act.

118(2) (2) Whenever the Board, based on information and belief, has reason to believe that a Financial Warranty is subject to forfeiture, the Board shall so notify the Operator and all Financial Warrantors. The Board shall afford the Operator and all Financial Warrantors the right to appear before the Board at a hearing to be held not less than thirty (30) days after the parties' receipt of said Notice.

118(3)(a) (3) At any such hearing, the Board shall be empowered to:

118(3)(a)(I) (a) withdraw or modify any determination that the Financial Warranty is subject to forfeiture;

118(3)(a)(II) (b) settle or compromise the determination; or

118(3)(a)(III) (c) confirm its determination that the Financial Warranty should be forfeited.

118(3)(b) (4) Upon finding that a Financial Warranty should be forfeited, the Board shall issue written findings of fact and conclusions of law to support its decision and shall issue an order directing affected Financial Warrantors to immediately deliver to the Board all amounts warranted by applicable Financial Warranties.

118(3)(a) (5) The Board, upon issuing any order pursuant to Rule 4.20(3), may request the Attorney General to institute proceedings to secure or recover amounts warranted by forfeited Financial Warranties. The Attorney General shall have the power, inter alia, to:

118(3)(a)(I) (a) foreclose upon any real and personal property encumbered for the benefit of the state;

118(3)(a)(II) (b) collect, present for payment, take possession of, and otherwise reduce to cash any property held as security by the Board;

118(3)(a)(III) (c) dispose of pledged property.

117(3)(a)
118(4)(b) (6) The amount of any forfeited Financial Warranty shall be a lien in favor of this state upon any project related fixtures or equipment offered as proof of financial responsibility pursuant to Section 34-32-117(3)(f)(V)(C)-(E), C.R.S. 1984, as amended.

118(4)(c) (7) Said lien shall have priority over all other liens and encumbrances irrespective of the date of recordation, except liens of record on the effective date of this Act and liens of the United States, the state, and political subdivisions thereof for unpaid taxes, and shall attach and be deemed perfected as of the date the Board approves issuance of the Permit.

118(5) (8) Funds recovered by the Attorney General in proceedings brought pursuant to Rule 4.20 shall be held in the account described in Section 34-32-122, C.R.S 1984, as amended, and shall be used to reclaim lands covered by the forfeited warranties, except that, five percent (5%) of the amount of the Financial Warranty forfeited and recovered shall be deposited in the Mined Land Reclamation Fund, created in Section 34-32-127, C.R.S. 1984, as amended, to cover the administrative costs incurred by the Office in performing reclamation.

(9) The Board shall have a right of entry to reclaim said lands. Upon completion of such reclamation, the Board shall present to the Financial Warrantor a full accounting and shall refund all unspent moneys.

118(6) (10) Defaulting Operators/Permittees shall remain liable for the actual cost of reclaiming Affected Lands, less any amounts expended by the Board pursuant to Rule 4.20(8), notwithstanding any discharge of applicable Financial Warranties.

118(7) (11) Notwithstanding any provision of this Rule 4.20 to the contrary, a corporate surety may elect to reclaim Affected Lands in accordance with an approved plan in lieu of forfeiting a

bond penalty, or in accordance with the approved Plan acceptable to the Board or Office, otherwise the Board may forfeit the fund and perform reclamation.

RULE 5: PROSPECTING OPERATIONS

113

5.1 NOTICE OF INTENT TO CONDUCT PROSPECTING OPERATIONS

5.1.1 General Provisions

113(1) (1) Any person or organization desiring to conduct prospecting, as defined in Rule 1.1(57~~56~~), shall, prior to entry upon the prospecting lands, file with the Office a Notice of Intent to Conduct Prospecting (NOI) on a form provided by the Board. A separate prospecting notice shall be filed with the Office for each non-contiguous Land Survey Quarter Section in which a proposed prospecting activity is to occur. The requirement for separate notices may be waived by the Office for good cause.

103(4) (2) If the Office determines that the prospecting proposed in the NOI is instead "mining," the Office shall notify the person or organization in writing. Any appeal of this determination shall follow the procedures set forth in Rule 1.4.11.

(3) Modifications to an existing NOI must be submitted in writing and approved in advance of such activity. Modifications shall be reviewed by the Board or Office in the same manner as new NOIs.

5.1.2 Application Requirements

The NOI form (Rule 5.1.1(1)) shall, at a minimum, contain the following:

(a) date of filing of the Notice of Intent;

113(2)(a) (b) the name, address, and telephone number of person or organization responsible for the prospecting (the "Prospector");

(c) the name, address, and telephone number of a person to contact concerning the information in the NOI and reclamation of lands affected by prospecting;

113(2)(d) (d) a description of lands, including:

(i) the site name, if applicable;

(ii) the location, by each quarter section, section, township and range;

(iii) where Public Land is involved, specify the land management agency, mailing address and telephone number;

(iv) the estimated acreage of land surface to be affected by the prospecting activities to include areas affected by access along routes for which reclamation is the responsibility of the Prospector; and

(v) a U.S.G.S. 7.5-minute quadrangle, or similar map of adequate scale, that

(A) identifies the proposed prospecting site(s) or activity areas involving surface disturbance. Activity areas may include all drill holes, mud pits, excavations, trenches, adits, shafts, tunnels, rock dumps and prospecting roads; and

(B) includes sufficient detail to identify and locate known prospecting features and facilities that may be affected and those that are not anticipated to be affected. This includes the location of all drill holes, mud pits, excavations, trenches, adits, shafts, tunnels, rock dumps and prospecting roads;

(vi) provide documentation of the legal right to enter to conduct prospecting and reclamation, for Owners of Record described in Rule 1.6.2(1)(e)(i). This may include a copy of a lease, deed, abstract of title, a current tax receipt, or a signed statement by the Landowner(s) and acknowledged by a Notary Public stating that the Prospector has legal right to enter to conduct prospecting and reclamation.

113(2)(e) (e) the approximate date of anticipated commencement and the date of completion of the above described prospecting activity. Such activity must be completed within five (5) years of the NOI approval unless otherwise approved by the Office or Board;

113(2)(c) (f) a narrative description of the methods to be used to conduct the prospecting operation, including, but not limited to, the types and uses of equipment, drilling, surface blasting, road or other access route construction, excavations, and other site disturbance activities;

113(2)(f) 116(7) (g) the measures to be taken to reclaim any affected land consistent with the applicable requirements of Rule 3.1. Such reclamation must be completed within five (5) years of the completion of prospecting activities notice provided for in Rule 5.7; and

113(2)(b) (h) (i) Designation of information believed by the applicant to be confidential including information relating to the mineral deposit location, size or nature, and information believed by the applicant to be proprietary or trade secret or that would cause substantial harm to the competitive position of the applicant. The applicant may designate its identity as confidential if the applicant believes that disclosing its identity would cause substantial harm to its competitive position. The requirements and provisions of Rule 1.3(4)(c) shall apply to any designation as to identity. The applicant shall distinguish in the submittal between those portions of the NOI that are confidential because they relate to mineral deposit location, size or nature and those portions of the NOI the applicant believes are proprietary, trade secret or harmful to its competitive position. Those portions of the NOI that are not designated as confidential will be available as public record.

(ii) The applicant must submit two (2) separate forms. One form will contain all information, including both public and confidential information (with confidential information designated as such). This complete form will be used by the Office for review and will be held confidential. The second form will contain only the information the applicant believes is public with the applicant redacting all information to be held as confidential.

113(9) (i) The applicant must submit the NOI in both paper and electronic form. The Office shall

post on its website the NOI within five (5) days of submittal except those portions of the submittal designated by the applicant as confidential.

(j) Modifications to an existing NOI must be submitted in writing and approved in advance of such activity. Modifications shall be reviewed by the Board or Office in the same manner as new NOIs, use the same NOI form, and include confidentiality designations. Prospectors must fill out sections of the NOI form that will change and indicate the sections that will not change. Prospectors must designate each portion of the modified NOI they believe are to remain confidential. Please note that under Section 34-32-113, C.R.S., all information provided to the Board in an NOI or a modification of an NOI is a matter of public record including, in the case of a modification, the original notice of intent, unless that information relates to the mineral deposit location, size, or nature or is designated by the Prospector as proprietary or trade secrets or that would cause substantial harm to the competitive position of the Prospector. Accordingly, the Prospector must also designate the information in the original NOI that it believes is confidential if it has not already done so.

113(3) (k) Any dispute concerning whether information in a NOI is confidential or public shall be resolved by following the procedures set forth in Rule 1.3.

113(2)(b) (l) a statement that prospecting will be conducted pursuant to the terms and conditions listed on the approved NOI form.

(m) Concurrent with submitting the NOI to the Office, the prospector shall send a notice to the local Boards of County Commissioners in the counties where the proposed prospecting activities occur.

(i) The Prospector shall certify that such notice was submitted.

(ii) Such notice shall state that non-confidential information regarding the proposed prospecting activities will be available for review at the Office's website.

113(9) **5.1.3 Office Review**

Upon receipt by the Office of a NOI to Conduct Prospecting, the Office shall timely notify the prospector, in writing, of receipt of the NOI. The Office shall post on its website the NOI within five (5) days of submittal except those portions of the submittal designated by the applicant as confidential. Any public comment or request for disclosure of information designated as confidential filed pursuant to Rule 1.3(4)(f) regarding the NOI must be received by the Office no later than ten (10) working days after the notice is posted on the Office website.

(a) Review of a NOI and associated Financial Warranty information is required by the Office within twenty (20) working days of receipt by the Office. If the Prospector has not been notified of any deficiencies of the NOI form, including notice of a dispute regarding confidentiality pursuant to Rule 1.3 which will be treated as a deficiency of the NOI, or Financial Warranty by the Office within twenty (20) working days of receipt by the Office of the NOI, prospecting operations may commence. For activities on BLM or USFS lands, the twenty (20) working day period begins when the Office has received notification from the appropriate federal land management agency that they have received the notice of proposed activities, or the Office has otherwise determined that the appropriate federal land management agency has received the notice.

(b) If a challenge to confidentiality has occurred pursuant to the process set forth in Rule 1.3, and the Board has determined that certain information is public rather than confidential, upon the expiration of the thirty (30) day delay period under Rule 1.3 (4)(a)(v)(b)(ii), the Office shall post the newly released information on the Office website within five (5) working days. Any public comment regarding the newly released information must be received by the Office no later than ten (10) working days after the new information is posted on the Office website.

(c) If the Office has notified a Prospector within twenty (20) working days of receipt of a NOI that it has not been filed in accordance with Rule 5.3, has been deemed complex, or of deficiencies in the Financial Warranty, the Prospector shall address all identified deficiencies or complexities within sixty (60) days of the Office notification. If the NOI deficiencies or complexities are not addressed within sixty (60) days, the Office may terminate the NOI file. The Office shall notify the person who submitted the NOI of such termination.

(d) (I) The Office shall send notice of its decision on a NOI to the prospector and any person who filed a timely comment.

(II) Any prospective prospector or person who filed a timely comment and who meets the definition of party may appeal an Office determination within five (5) business days from the date the Office sends notice of its decision.

(III) The Board shall hear any such appeal at its next regularly scheduled meeting that is at least ten (10) calendar days from the date of such appeal.

(IV) The Office's determination shall not take effect until the expiration of the five (5) business days allowed for an appeal, or, in the case of an appeal, until the Board issues its decision.

5.2 CONFIDENTIALITY

113(3) **5.2.1 NOI Information**

(1) For NOIs submitted or approved on or before June 2, 2008, all information provided to the Office in a NOI shall be protected as confidential information by the Board and not be a matter of public record in the absence of written release from the Prospector or upon a finding by the Board that reclamation is satisfactory, or the site has been abandoned as set forth in Rule 5.6(2). If the site is abandoned, the information in the NOI not subject to the provisions of Rule 5.2.2 may be used by the Office to ensure that the reclamation requirements of the NOI have been met. Notice of a Board determination that a prospect site under a NOI has been abandoned will be sent by certified mail to the prospector at the last known address.

(2) For Notices of Intent to Conduct Prospecting or modifications thereof submitted or approved on or after June 2, 2008, all information in a notice of intent or modification of such notice is a matter of public record including, in the case of a modification, the original

notice of intent; except that, information relating to the mineral deposit location, size or nature, and other information designated by the applicant or prospector and determined by the Board as proprietary or trade secrets or that would cause substantial harm to the competitive position of the applicant or prospector shall be protected as confidential and shall not be a matter of public record in the absence of a written release from the applicant or prospector, until a finding by the Board that reclamation is satisfactory, or until the Board releases the information pursuant to the provisions of Rule 1.3.

113(5.5(d)
113(5.5)(e)

5.2.2 Portions of NOI File to Remain Permanently Confidential

(1) For NOIs filed before June 2, 2008, the following drillhole information remains permanently confidential:

(a) all drillhole information contained within the temporary abandonment reports, required in accordance with Rule 5.4.3;

(b) all drillhole information contained in the final reports in accordance with Rule 5.7(1);

(c) all drillhole information contained in the annual reports in accordance with Rule 5.6; and

(d) all drillhole information contained in inspection reports.

(2) For NOIs or modifications thereof filed on or after June 2, 2008, the information described in this Rule 5.2.2, including in the case of a modification, the information in the original NOI, shall be publicly available unless designated by the prospector as confidential. The provisions of Rule 1.3 shall apply for a requested Board determination as to whether information designated by the prospector as confidential should remain confidential.

5.3 TERMS AND CONDITIONS FOR PROSPECTING

5.3.1 Protection of Surface Areas

Prospecting will be conducted in such a manner as to minimize surface disturbances and protect public health, safety, and the environment. The Prospector shall:

(a) address the standards required in Rule 5;

(b) address all relevant reclamation performance standards of Rule 3.1;

(c) confine prospecting to areas near existing roads or trails where practicable. Any new road used for prospecting, or any existing road which is significantly upgraded must be included as part of the affected acreage. A road is significantly upgraded if it is significantly widened, or the route or gradient are significantly altered;

(d) conduct drilling in such a way as to prevent cuttings and fluids from entering any drainage way;

(e) timely abandon drill holes upon completion as required by Rule 5.4;

(f) safeguard mine entries, trenches and excavations from unauthorized entry at all times as necessary to provide for public safety;

(g) timely reclaim affected lands upon completion of prospecting operations or phases of the prospecting operation. Prospecting activities must be completed within five (5) years of the NOI approval unless otherwise approved by the Office or Board, and reclamation must be completed within five (5) years of the completion of prospecting activities; and

(h) backfill and revegetate trenches and other excavations upon completion of the prospecting activities.

5.3.2 Protection of Wildlife

Prospecting shall be conducted to minimize adverse effects on wildlife, including, where appropriate, escape ways, fencing, or other acceptable wildlife barriers.

113(4) **5.3.3 Financial Warranty**

(1) Upon filing NOI, the Prospector shall provide Financial Warranty in the amount of two thousand dollars ($2,000.00) per acre of the land to be disturbed, or such other amount as determined by the Office, based on the projected costs of reclamation, taking into account the nature, extent, and duration of the prospecting operation and the magnitude, type and estimated cost of the planned reclamation.

(2) A Prospector may submit statewide Financial Warranties for prospecting if Financial Warranties are in an amount fixed by the Office, based on the projected costs of reclamation, and such Prospector otherwise complies with the provisions of this Rule for every area to be prospected. (Further information on Performance and Financial Warranty procedures may be found in Rule 4.)

(3) The Board or Office shall take reasonable measures to ensure the continued adequacy of any Financial Warranty.

113(5) **5.3.4 Notice of Completion of Prospecting Prior to Initiating Reclamation**

Upon completion of the prospecting, the Prospector shall submit to the Office a Notice of Completion of Prospecting Operations (“Notice of Completion”). Such notice shall be sent certified mail separate from all other correspondence.

113(6) **5.3.5 Post-Reclamation – Inspection and Release of Warranties**

(1) The Office shall inspect the lands prospected within thirty (30) days, or as soon thereafter as weather conditions permit, after the person prospecting the lands submits a

Reclamation Report and requests a reclamation responsibility release that meets the requirements of Rule 4.16.1(2), including permanent abandonment of all prospecting drill holes as required by Rule 5.4.2 or 5.4.5. If the Office finds the reclamation satisfactory, the Office shall release the applicable Financial Warranty.

113(7) (2) The Financial Warranty shall not be held for more than thirty (30) days after the date the Office determines that reclamation has been completed satisfactorily (including permanent abandonment of all prospecting drill holes).

5.3.6 Compliance with State and Federal Laws

All Prospecting shall be conducted in such a manner as to comply with all applicable local, state and federal laws, including but not limited to air and water quality laws and regulations, the Act, and these Rules and Regulations.

5.4 ABANDONMENT OF PROSPECTING DRILL HOLES

5.4.1 General Provisions

103(12) 113(5.5) (1) Without regard to the one thousand six hundred (1,600) square foot limitation in Section 34-32-103(12), all prospecting drill holes shall be permanently plugged, sealed or capped pursuant to the requirements of these Rules immediately following the drilling of the hole and the collection of drill hole information; unless provision is made to temporarily abandon the hole, pursuant to Rule 5.4.3 to maintain the hole for purposes of monitoring pursuant to Rule 5.4.4, or to convert the hole to a water well pursuant to Rule 5.4.5.

(2) This Rule shall not apply to holes drilled within the affected area in conjunction with a mining operation for which the Board or Office has issued a permit, nor to wells or holes drilled for the purposes of coal exploration, exploration or removal of oil and gas, nor to geothermal wells or water wells, nor to holes drilled from within underground mine workings. For purposes of this Rule, "permanent abandonment" of a prospecting drill hole shall be defined as abandonment in conformance with the requirements of Rules 5.4.2 or 5.4.5, or inclusion within the permit boundary of a mining operation for which the Board or Office has issued a Permit.

113(5.5)(e) (3) Permanent abandonment shall be attested by the submission of a final report, as described in Rule 5.7.

5.4.2 Permanent Abandonment of Prospecting Drill Holes

113(5.5)(b)(I) (1) Any drill hole which evidences artesian flow of groundwater to the surface shall be plugged with neat cement grout, or a similar material sufficient to prevent such artesian flow, as approved by the Office. The Prospector shall exercise care in evaluating the existence of artesian flow in fluid, cuttings, rock flour, or mud drilled holes, in which artesian flow may be temporarily inhibited by the presence of the drilling fluid or mud.

113(5.5)(b)(I) (2) Any drill hole which encounters an aquifer in consolidated rock formations, shall be sealed, utilizing a high quality sodium bentonite type gel, specifically developed for use as an abandonment fluid, or an equivalent material or technique as approved by the Office.

113(5.5)(b)(II) (3) Any drill hole limited to unconsolidated material and penetrating less than ten (10) feet into bedrock, shall be backfilled with materials removed from the drill hole, or an equivalent material or technique as approved by the Office. If the materials removed from the hole during drilling are inadequate to backfill the drill hole, materials representative of the undisturbed unconsolidated materials shall be backfilled into the drill hole.

113(5.5)(b)(III) (4) Any drill hole that penetrates saturated unconsolidated materials and continues more than ten (10) feet into bedrock shall be abandoned in a manner sufficient to prevent inter mixture of aquifers.

113(5.5)(b)(III) (5) Any drill hole that penetrates unsaturated unconsolidated materials and continues deeper than ten (10) feet into bedrock, but does not encounter an aquifer, shall be securely capped, as approved by the Office.

113(5.5)(d)
113(5.5)(e) (6) The Prospector shall submit to the Office a copy of the final report required under Rule 5.7.

5.4.3 Temporary Abandonment of Prospecting Drill Holes

113(5.5)(a) A prospecting drill hole may be temporarily abandoned without being permanently plugged or sealed. However, no drill hole which is to be temporarily abandoned without being plugged or sealed shall be left in such a condition as to allow fluid communication between aquifers, consistent with the Rules and Regulation for Water Well Construction, Pump Installation, and Monitoring and Observation Hole/Well Construction ("Water Well Construction Rules"), 2 CCR 402-2, and specifically Rules 10.1 and 10.4.5 of the Water Well Construction Rules, and their applicable subparagraphs therein. Such temporarily abandoned drilled holes shall be securely capped in a manner that prevents unauthorized entry and injury to persons and animals. (Copies of the above-referenced Rules may be reviewed at the Division of Water Resources.)

5.4.4 Conversions to a Monitoring Well

113(5.5)(b)(IV) A prospecting drill hole may be converted to a monitoring well for the purpose of groundwater or geophysical monitoring, if the Prospector conducting the prospecting:

(a) has obtained the necessary permit from the State Engineer (Division of Water Resources);

(b) cases and seals the drill hole in accordance with the requirements of the Water Well Construction;

(c) caps the drill hole to prevent unauthorized entry and injury to persons and animals; and

(d) submits to the Office a copy of the "Well Construction and Test Report" submitted to the Division of Water Resources describing the method and materials used in casing and sealing the drill hole to prevent commingling of aquifer waters.

113(5.5)(b)(IV)

5.4.5 Use as, or Conversion to, a Water Well

(1) If any prospecting drill hole or monitoring well will ultimately be used as, or converted to, a water well:

(a) the user of the water well must have obtained an approved well permit from the Colorado Division of Water Resources, in accordance with Articles 90, 91 and 92 of Title 37, C.R.S., prior to drilling and construction of the well; and

(b) the Prospector shall submit to the Office the permanent abandonment report required by Rule 5.7 with an attached copy of the completely executed "Well Construction and Test Report," submitted to the Colorado Division of Water Resources as required by the Board of Examiners of the Water Well Construction and Pump Installation Contractors.

(i) The Prospector need not complete those portions of the permanent abandonment report duplicating information contained on the "Well Construction and Test Report."

(2) The user of the water well may assume the Prospector's responsibility for maintenance of the temporary abandonment and completion of the permanent abandonment of a prospecting drill hole or monitoring well proposed to be converted to a water well, if the following requirements are satisfied:

(a) the user of the water well submits a copy of the completely executed well permit to the Mined Land Reclamation Office; and

(b) the user of the water well and the Prospector submit a completely executed "Request for Transfer of Responsibility for Abandonment of a Exploration Drill Hole Converted to a Water Well" to the Office.

5.5 SURFACE RECLAMATION

5.5.1 General Requirements

113(1)(f)

All lands affected by drilling must be reclaimed to a condition appropriate for the land use existing prior to prospecting, or other beneficial use, upon completion of prospecting.

5.5.2 Specific Requirements

Reclamation shall be completed consistent with all applicable requirements of Rule 3.1 and the following:

(a) trash must be removed from the site;

(b) vegetation cleared from the site must be properly disposed of or dispersed;

(c) drill cuttings must be spread to a depth no greater than one half (1/2) inch or buried in an approved disposal pit;

(d) mud pits, excavations, trenches, or other disturbance shall be backfilled and graded to blend with the surrounding land surface;

(e) if vegetative cover was destroyed, an appropriate seed mix shall be used in the first normal period favorable for planting;

(f) if necessary to assure successful revegetation, the drill site area shall be scarified, mulched and the seed covered;

(g) noxious weeds shall be controlled within the area affected by the prospector; and

(h) existing roads which are to remain as permanent roads after prospecting activities are completed, shall be left in a condition equal to or better than the pre-prospecting condition.

117(6)(a)

5.6 ANNUAL REPORT

(1) An annual report must be submitted by the anniversary date of the Notice of Intent (NOI) approval for each year until a reclamation responsibility release is granted. The Annual Report shall include all information specified on the Annual Report Form, in the format required by the Office, and specifically:

(a) the prospector and contact person's name, address and telephone number, as set forth in Rules 5.1.2(b) and (c);

(b) the name, address and telephone number of the surface landowner where prospecting has occurred;

(c) a description of the prospecting activity that has occurred during the preceding year, to include the location of new surface drill holes, mud pits, excavations, rock dumps, adits, shafts, trenches, pits, roads and structures;

(i) if applicable, a description of the manner in which shafts, adits and other mine openings are safeguarded from unauthorized entry both during and after prospecting;

(d) a description of reclamation that has occurred during the year and during the preceding years;

(e) the date that the prospecting activity has ended or will end;

(f) an updated map showing the location of all holes drilled, mine openings, any roads constructed, areas disturbed and areas reclaimed to date, including identification of disturbance and reclamation activities which have occurred in the preceding year. Prospecting disturbance and reclamation must be identified on a site map of adequate scale to field locate these areas, which may include;

(i) coordinates reported in latitude and longitude in degrees, minutes and seconds or in decimal degrees to an accuracy of at least five (5) decimal places (e.g., latitude 37.12345 N, longitude 104.45678 W); or

(ii) coordinates based on the Universal Transverse Mercator (UTM) North American Datum (NAD). For UTM, the Prospector will need to specify NAD 1927, NAD 1983 or WGS 84, and the applicable zone, measured in meters.

117(6)(a) (g) documentation, in a manner acceptable to the Office, showing that the Financial Warranty remains in place and is adequate to fully reclaim the approved prospecting site disturbance.

(h) signature(s) and signature date(s) of the person or organization responsible for prospecting, as set forth in Rule 5.1.2(b), attesting to the accuracy of the information contained therein.

(2) Failure to submit an annual report for two (2) consecutive years shall constitute evidence of abandonment of the prospecting activities. The Office may issue a letter stating its reason(s) to believe a site has been abandoned where the annual report has not been received within sixty (60) days following the due date of the second annual report. Any appeal of this determination shall follow the procedures set forth in Rule 1.4.11.

(3) Annual reports filed before June 2, 2008, shall be confidential. Annual reports filed on or after June 2, 2008, shall be a matter of public record unless designated by the prospector as confidential pursuant to the provisions of Rule 1.3. The provisions of Rule 1.3 shall apply to a request for a Board determination as to whether information designated by the prospector as confidential should remain confidential.

(4) On the anniversary date of the Notice of Intent approval, the Prospector shall submit to the Office an annual fee as specified in Section 34-32-127(2)(a)(IV)(G), C.R.S.

113(5.5)(d) **5.7 FINAL REPORT**

(1) No later than sixty (60) days after the completion of the abandonment of any drill hole which has artesian flow at the surface, or no later than twelve (12) months after the completion of the abandonment of any other drill holes, the Prospector shall submit to the Office a final report containing:

(a) the date of completion of prospecting activity;

(b) the location of prospecting disturbance and reclamation at a scale adequate to accurately field locate these areas, as provided for in Rule 5.6(f);

(c) for holes having artesian flow at the surface, the estimated rate of flow (if such is known); and

(d) a description of the plugging, sealing, and capping techniques used, including the following information when applicable:

(i) When mud is used for abandonment, the description shall include the viscosity (marsh funnel viscosity) of the mud when the drill hole reached bottom, the trade name of the abandonment mud utilized, and the final viscosity (marsh funnel viscosity) of the abandonment mixture; or

(ii) When cement is used to abandon the drill hole, the description shall include a description of the cement grout mixture utilized to seal and plug the hole.

(2) In the case of closely spaced drill holes having similar geologic and hydrologic characteristics, the Prospector may, with the approval of the Office, submit a single consolidated final report including the locations of all drill holes, and the abandonment technique.

113(5.5)(d)

(3) As to final reports filed before June 2, 2008, the final report and all information contained therein shall be confidential in nature and shall not be matter of public record. As to final reports filed on or after June 2, 2008, the final report and all information contained therein shall be a matter of public record unless designated by the prospector as confidential pursuant to the provisions of Rule 1.3. The provisions of Rule 1.3 shall apply to a request for a Board determination as to whether information designated by the prospector as confidential should remain confidential.

113(5.5)(e)

(4) The final report shall be signed by the Prospector or the prospector's authorized contact, as set forth in Rule 5.1.2(c), attesting to the accuracy of the information contained therein.

113(5)(f)

5.8 NO WAIVER OF ADMINISTRATIVE REQUIREMENTS

The Director of the Office may not waive any of the administrative reporting provisions of this Rule 5.

RULE 6: PERMIT APPLICATION EXHIBIT REQUIREMENTS

6.1 REQUIREMENTS FOR SPECIFIC OPERATIONS

6.1.1 General Provisions

This Rule provides for the specification of Exhibits required to be submitted along with each type of Permit application.

112.5

6.1.2 110 or Non-In Situ Leach Mining 110d Limited Impact and 112, 112d, 110 ISL or 112 ISL Reclamation Operations

These operations shall provide all the Exhibits, as described in Rules 6.3 and 6.4, as applicable to the operation type. However, such operations may also be required to comply with Rules 6.5 (Geotechnical Stability Exhibit) and 7.3 (Environmental Protection Facilities - Design and Construction Requirements) on a case-by-case basis. Where such compliance may be required, such operations shall not be Designated Mining Operations nor be required to submit an Environmental Protection Plan, however, the provisions of Rules 6.5 and 7.3, required to be submitted, shall be incorporated into the operation's Permit as enforceable Permit conditions.

6.1.3 Reserved

112.5

6.1.4 Requirements for All Designated Mining Operations and Requirements for All In Situ Leach Mining Operations

In addition to all other required Exhibits, as described in Rules 6.3 and 6.4, all Designated Mining Operations shall also provide an Exhibit U - Environmental Protection Plan pursuant to Rule 6.4.21. Exhibit U may be modified as provided in Rule 7.2.5. Also, in addition to the Exhibits described in Rules 6.3, 6.4 and 6.4.21, all In Situ Leach Mining Operations shall also provide the Exhibits in Rules 6.4.22, 6.4.23, 6.4.24 and 6.4.25.

6.2 GENERAL REQUIREMENTS OF EXHIBITS

6.2.1 General Requirements

(1) This Rule provides for the guidelines for, and information requirements of, each Exhibit required to be submitted with the permit application, as specified according to Rule 6.1.

112

(2) Maps and Exhibits
Maps, except the index map, must conform to the following criteria:

112(4)

(a) show name of Applicant;

112(4)(a)

(b) must be prepared and signed by a registered land surveyor, professional engineer, or other qualified person;

(c) give date prepared;

(d) identify and outline the area that corresponds with the application;

112(4)(b)

(e) with the exception of the map of the affected lands required in Section 34-32-112(3)(e), C.R.S. 1984, as amended, shall be prepared at a scale that is appropriate to clearly show all elements that are required to be delineated by the Act and these Rules. The acceptable range of map scales shall not be larger than 1 inch = 50 feet nor smaller than 1 inch = 660 feet. Also, that a map scale, appropriate legend, map title, date and a north arrow shall be included.

6.3 SPECIFIC PERMIT APPLICATION EXHIBIT REQUIREMENTS – 110(1), 110(2), AND NON IN SITU LEACH MINING OPERATIONS 110d LIMITED IMPACT OPERATIONS

110

(a) The following exhibits may be required for 110(1) Limited Impact Permits based on consideration of site-specific conditions.

(b) The following exhibits shall be required for 110(2) and Non In Situ Leach Mining 110d Limited Impact Operations; 110 in situ leach mining permit applications shall comply with 112d permit applications including complying with the requirements of Rule 6.4. If an in situ leach mining operation has been exempted from designated mining operation status, it still must comply with all exhibits required for in situ leach mining operations.

112(2)(a)

6.3.1 EXHIBIT A – Legal Description and Location Map

(1) The legal description must identify the affected land, specify affected areas and be adequate to field locate the property. Description shall be by (A) township, range, and section, to at least the nearest quarter quarter section, and (B), location of the main entrance to the mine site reported as latitude and longitude, or the Universal Transverse Mercator (UTM) Grid as determined from a USGS topographic map. A metes and bounds survey description is acceptable in lieu of township, range, and section. Where available, the street address or lot number(s) shall be given. This information may be available from the County Assessor's office or U.S. Geological Survey (USGS) maps.

(2) The main entrance to the mine site shall be located based on a USGS topographic map showing latitude and longitude or Universal Transverse Mercator (UTM). The operator will need to specify coordinates of latitude and longitude in degrees, minutes and seconds or in decimal degrees to an accuracy of at least five (5) decimal places (e.g., latitude 37.12345 N, longitude 104.45678 W). For UTM, the operator will need to specify North American Datum (NAD) 1927, NAD 1983, or WGS 84, and the applicable zone, measured in meters.

(3) A map showing information sufficient to determine the location of the affected land on the ground and existing and proposed roads or access routes to be used in connection with the mining operation. Names of all immediately adjacent surface owners of record shall also be shown. A standard U.S. Geological Survey topographic quadrangle or equivalent is acceptable. The location of the proposed operation shall be shown and labeled with the mine site name.

6.3.2 EXHIBIT B – Site Description

Items (a)-(c) below must be addressed to the extent necessary to demonstrate compliance with the applicable performance standard requirements of Rule 3. At a minimum, the Operator/Applicant shall include the following information:

(a) a description of the vegetation and soil characteristics in the area of the proposed operation. The local office of the Natural Resources Conservation Service (NRCS) may provide you with this information as well as recommendations for Exhibit D - Reclamation Plan;

(b) identify any permanent man-made structures within two hundred (200) feet of the affected area and the owner of each structure. Each structure should be located on Exhibit E - Map;

(c) a description of the water resources in the area of the proposed operation. Identify any streams, springs, lakes, stock water ponds, ditches, reservoirs, and aquifers that would receive drainage directly from the affected area. Provide any information available from publications or monitoring data on flow rates, water table elevations and water quality conditions; and

(d) a wildlife statement prepared by Colorado Parks and Wildlife (CPW) is not required for 110 Limited Impact Operations. However, such a statement is required for 110d Limited Impact Operations. The Operator/Applicant may contact the local CPW representative to verify that no critical or important wildlife habitats or wildlife species will be impacted by the proposed operation.

112(2)(f)

6.3.3 EXHIBIT C – Mining Plan

(1) The purpose of the mining plan is to describe how mining will affect the permit area for the duration of the operation. This plan must be correlated to Exhibit E - Map. The description of the mining plan must be adequate to satisfy the requirements of Rule 3.1 and demonstrate compliance with Rule 3. At a minimum, the Operator/Applicant must include the following information:

(a) specify the estimated dates that mining will commence and end. If the operation is intended to be an intermittent operation as defined in C.R.S. 34-32-103(6)(a)(II), the Applicant should include in this exhibit a statement that conforms to the provisions of Section 34-32-103(6)(a)(II), C.R.S.;

(b) the estimated depth to which soil, suitable as a plant growth medium, will be salvaged for use in the reclamation process. This description must be consistent with information provided in Exhibit B. Sufficient soil must be salvaged to meet the vegetation establishment criteria of Rule 3.1.10. If plant growth medium is not reapplied on a graded area immediately after salvage, then the Operator/Applicant must specify how the topsoil will be stockpiled and stabilized with a vegetative cover or other means until used in reclamation. Plant growth medium stockpiles must be located separate from other stockpiles, out of the way of mine traffic and out of stream channels or drainage ways. The location of plant growth medium stockpiles must be shown on Exhibit E - Map;

(c) specify the thickness of overburden or quantity of waste rock, if any, to be

removed to reach the deposit. The location of any overburden stockpiles or waste rock fills must be shown on Exhibit E- Map;

(d) specify the thickness of the deposit to be mined;

(e) describe the major components of the mining operation such as: roads and access routes, pit, office, shop/maintenance buildings, plant, processing facilities, and any underground openings such as adits or ventilation facilities. These components must be located on Exhibit E- Map;

(f) specify the dimensions of any significant disturbances to the land surface such as pit excavations, mine benches, impoundments, stockpiles, waste rock disposal areas, etc.;

(g) specify the dimensions of any existing or proposed roads that will be used for the mining operation. Describe any improvements necessary on existing roads and the specifications to be used in the construction of new roads. New or improved roads must be included as part of the affected lands and permitted acreage. Affected land shall not include off-site roads which existed prior to the date on which notice was given or permit application was made to the office and which were constructed for purposes unrelated to the proposed mining operation and which will not be substantially upgraded to support the mining operation. Describe any associated drainage and runoff conveyance structures to include sufficient information to evaluate structure sizing;

(h) specify how much water will be used in conjunction with the operation, and the source of this water;

(i) if groundwater will be encountered and/or surface water intercepted or disturbed, describe how mining will affect the quantity and quality of the surface or groundwater and the methods to be used to minimize disturbance to the surface and groundwater systems including proposed dewatering, sediment-containment or chemical treatment systems, storm water runoff controls, and groundwater points of compliance;

(j) specify how you will comply with applicable Colorado water laws and regulations governing injury to existing water rights;

(k) regardless of DMO status, if refuse and acid or toxic producing materials are exposed during mining, describe how they shall be handled and disposed of in a manner that will control unsightliness and protect the drainage system from pollution;

(l) describe what measures will be taken to minimize disturbance to the hydrologic balance, prevent off-site damage, and provide for a stable configuration of the reclaimed area consistent with the proposed future land use; and

(m) specify whether the deposit/ore will be processed on site. Processing includes crushing, screening, washing, concrete or asphalt mixing, leaching or milling. If the deposit/ore will be processed, then describe the nature of the process, facilities and chemicals utilized. The process area and any structures must be described on Exhibit E - Map.

(n) identify the primary, and if applicable, secondary and incidental commodities to be mined/extracted by the proposed operation; and if not to be used as construction material, describe the intended use.

(o) Specify if explosives will be used in conjunction with the mining or reclamation operation. In consultation with the Office the Applicant must demonstrate, pursuant to Rule 6.5(4) under the Geotechnical Stability Exhibit, that off-site areas will not be adversely affected by blasting during mining or reclamation operations.

(2) If tailing ponds are part of the milling process, the mine plan description should address the following:

(a) Plant Facilities: Describe the chemical types and quantities to be utilized, chemical storage and spill containment and emergency response plans for on-site spills. Plant operation details should include tank capacities and operating solution volumes.

(b) Tailings: Describe the geochemical constituents of the tailing or leached ore, the chemistry of any leachate, anticipated impacts to ground or surface waters and design details such as liners, ponds and embankments, diversions or chemical treatment facilities to be used to control these impacts, and ground and surface water monitoring systems, to include proposed groundwater points of compliance.

(c) Drainage Control: Describe the measures used to divert upland drainage away from the site both during and after operation. This must include design details demonstrating the capacity of ditches and impoundment structures to contain operating solutions and the volume of water generated by a one hundred (100) year 24-hour rainfall event.

(d) Maps and Plans: Design drawings must be prepared by a professional engineer or other qualified professional, and at a minimum~~,~~ meet the requirements of Rule 7.3, as well as describe specific design details for tailing ponds and embankments, ponds and ditches, ore and tail transport systems, and ground and surface water monitoring systems.

112(3) **6.3.4 EXHIBIT D – Reclamation Plan**

(1) The purpose of the Reclamation Plan is to describe the timing, procedures, criteria and materials that will be used to reclaim the affected land to the proposed future land use. This plan must be correlated to Exhibit E - Map. The description of the Reclamation Plan must be adequate to satisfy the requirements of Rule 3.1 and demonstrate compliance with Rule 3. At a minimum, the Application shall include the following information:

(a) specify at what point in the mining plan and to what depth(s) overburden will be replaced in relation to ongoing extraction.

(b) specify the maximum gradient of reclaimed slopes (horizontal: vertical). If the Application proposes slopes steeper than 3:1, the Operator/Applicant must include a justification that supports steeper slopes for the proposed post mining land use, and demonstrates compliance with the applicable performance standards of Rule 3.1.

(c) specify the measures that will be taken to revegetate the site, if applicable, including:

(i) state the thickness of plant growth medium to be replaced. Sample and analyze available soils sufficiently to establish quantity and quality;

(ii) state at what point in the mining plan the site will be seeded. Explain how the seedbed will be prepared to eliminate compacted conditions (e.g., plowed, chiseled, disced). State the type, application rate, and soil incorporation methods of fertilizer application, if any. NOTE: Soil amendments shall only be applied where soil tests indicate nutrient deficiencies for the plant species to be established;

(iii) state the grass, forb, shrub and tree species to be planted and the applicable quantities. Specify the quantity of each grass and forb species as pounds of pure live seed per acre;

(iv) specify the application method for grass and forb seeding. If the seed is to be broadcast, the application rate shall be twice the rate required for seed drilling. If the seedbed has not been adequately roughened prior to seeding, the seed shall be raked or harrowed after broadcast application;

(v) if a mulch is needed, specify the kind to be used, the crimping method, and rate of application; and

(vi) explain the establishment methods for each species of shrub and/or tree, and state the number of each to be established per acre.

(d) Specify which ponds, streams, roads and buildings, if any, will remain after reclamation. These features must be shown on the Exhibit E - Map. If ponds are part of the Reclamation Plan, slopes from five (5) vertical feet above to ten (10) vertical feet below the expected average water level cannot be steeper than 3H:1V; remaining slope lengths may not be steeper than 2H:1V. Where wildlife habitat is the proposed future land use, shorelines should be irregularly shaped to promote a diverse wildlife habitat. Colorado Parks and Wildlife (CPW) must be consulted where wildlife use is the proposed future land use.

(e) Specify the reclamation treatment of any waste rock dumps, tailing impoundments, underground mine openings, ditches, sediment control facilities, buildings and other features specified in your mine plan but not previously addressed in the Reclamation Plan narrative. These features must be shown on Exhibit E - Map. This should describe the measures taken to minimize disturbance to the hydrologic balance, prevent off-site damage, and provide for a stable configuration consistent with the proposed future land use.

(f) Demonstrate, by substantial evidence, a reasonably foreseeable end date for any water quality treatment necessary to ensure compliance with applicable water quality standards.

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(2) All 110 or Non In Situ Leach Mining 110d Limited Impact applications must provide an estimate of the actual costs to reclaim the site based on what it would cost the State of Colorado using an independent contractor to complete reclamation. (Such estimates are

not required for activities contemplated by the operator and approved by the Office to be outside the scope of the proposed reclamation plan.) The unit costs should include estimates for the following activities as appropriate to the operation: backfilling, grading, topsoil application, seeding, mulching, fertilization, and labor to complete reclamation. Determine and specify the point during the operation when the site has reached a point of maximum disturbance. The cost to reclaim the site to the specifications of the Reclamation Plan at this point must be estimated. Unit costs (cost per cubic yard), volumes, haul or push distances, and grades must be included when backfilling and grading are part of the Reclamation Plan. Volume and unit costs for finish grading, subsoil and topsoil application must be provided in terms of cost per cubic yard. The estimated cost for fertilizer, seed and mulch acquisition and application must be provided as cost per acre.

(a) Equipment costs must include such factors as equipment operator wages and benefits, fuel and lubricant consumption and depreciation. The cost to mobilize and demobilize the equipment from the nearest population center known to have the required equipment availability should be estimated.

(b) All items referenced in the Reclamation Plan must be included in the cost calculation. These items in addition to earthwork, such as building demolition, fencing, monitoring well sealing or stream channel reconstruction must also be included in the reclamation cost estimate.

(c) After the direct costs noted above have been estimated, the Office may add up to an additional maximum eighteen and one-half percent (18.5%) of that total, which includes private contract, typical overhead costs. This additional cost is required to cover indirect costs that an independent contractor would incur when performing reclamation of the site. Five percent (5%) additional cost shall be added to cover Office administration cost in the event of bond forfeiture and permit revocation.

6.3.5 EXHIBIT E – Map

(1) In addition to the requirements of Rule 6.2.1(2), the Operator/Applicant must provide a map that clearly describes the features associated with the mining plan and the components of the Reclamation Plan. Include one (1) map for the mine plan and one (1) map for the Reclamation Plan. The map(s) must be drawn to a scale no smaller than appropriate to clearly show all elements that are required to be delineated by the Act and these Rules; show a north arrow, note any section corners adjacent to the proposed operation, and indicate the date illustrated. At a minimum, maps must include the following information:

(2) Mining Plan Map

(a) outline and label the permit boundaries, described in Exhibit A - Legal Description; for all 110 and Non In Situ Leach Mining 110d Limited Impact Operations, the Office considers the area bounded by the permit boundary to be analogous to the affected area;

(b) label the names of owner(s) of record of the surface of the affected area and of the land within two hundred (200) feet of the affected area, identify the owner of the substance to be mined, and the type of structure and owners of record of any

permanent or man-made structures within two hundred (200) feet of the affected area;

(c) outline and label all major surface features to be used in connection with the proposed operation such as: existing and proposed roads, pit boundary, topsoil stockpiles, overburden stockpiles, product stockpiles, waste rock fills, stream channels, buildings, processing plant, underground openings such as adits or ventilation facilities, ponds, impoundments, dewatering pumps, diversions, tail or waste disposal areas;

(d) indicate the direction that mineral extraction will proceed;

(e) note the location of any significant, valuable, and permanent man-made structures within two hundred (200) feet of the affected area. A narrative description must be provided in Exhibit–B - Site Description; and

(f) outline and label existing disturbance within and/or adjacent to the permit boundary (e.g., previously mined areas, roads or excavations resulting from utility construction). Re-disturbance of previously disturbed areas, by the proposed mining operation, must be included in the permit area and addressed in Exhibit–D - Reclamation Plan.

112(1)(b)
112(3)

(3) Reclamation Plan Map

(a) show the gradient of all reclaimed slopes (horizontal: vertical) sufficient to describe the post mine topography;

(b) indicate where vegetation will not be established and the general area(s) for shrub or tree planting;

(c) if ponds are a part of the Reclamation Plan, outline the final shore configuration of the ponds and shallow areas if the future land use is for wildlife;

(d) state the average thickness of replaced overburden by reclamation area or phase; and

(e) state the average thickness of replaced topsoil by reclamation area or phase.

6.3.6 EXHIBIT F – List of Other Permits and Licenses Required

Provide a statement identifying which of the following permits, licenses and approvals which are held or will be sought in order to conduct the proposed mining and reclamation operations: effluent discharge permits, air quality emissions permits, radioactive source materials licenses, disposal of dredge and fill material (404) permits, permit to construct a dam, well permits, explosives permits, State Historic Preservation Office clearance, highway access permits, U.S. Forest Service permits, Bureau of Land Management permits, county zoning and land use permits, and city zoning and land use permits.

112(2)(d)

6.3.7 EXHIBIT G – Source of Legal Right to Enter

Provide documentation of the legal right to enter to conduct mining and reclamation for Owners of Record described in Rule 1.6.2(1)(e)(i). This may include a copy of a lease, deed, abstract of title, a current tax receipt, or a signed statement by the Landowner(s) and acknowledged by a Notary Public stating that the Operator/Applicant has legal right to enter to conduct mining and reclamation.

6.3.8 EXHIBIT H – Municipalities within a Two Mile Radius

List the mailing address and telephone number of the governing body for all municipalities within a two (2) mile radius of the proposed mining operation.

112(10)(a)

6.3.9 EXHIBIT I – Proof of Filing with County Clerk

An affidavit or receipt indicating the date on which the application was placed with the local County Clerk and Recorder for public review, pursuant to Rule 1.6.2(1)(c).

112(10)(a)

6.3.10 EXHIBIT J – Proof of Mailing of Notices to Board of County Commissioners and Conservation District

Proof that notice of the permit application was sent to the Board of County Commissioners and, if the mining operation is within the boundaries of a Conservation District, to the Board of Supervisors of the local Conservation District, pursuant to Rule 1.6.2(1)(a)(ii).

6.3.11 EXHIBIT K – Reserved

6.3.12 EXHIBIT L – Permanent Man-Made Structures

Where the affected lands are within two hundred (200) feet of any significant, valuable and permanent man-made structure, the applicant shall:

(a) provide a notarized agreement between the applicant and the person(s) having an interest in the structure, that the applicant is to provide compensation for any damage to the structure; or

(b) where such an agreement cannot be reached, the applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or

(c) where such structure is a utility, the applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have "no negative effect" on their utility.

6.4 SPECIFIC EXHIBIT REQUIREMENTS – 112, 112 ISL or 110 ISL RECLAMATION OPERATION AND 112d DESIGNATED MINING OPERATIONS

The following exhibits are required for all applications for any in situ leach mining operation, 112

mining operation and non in situ leach mining 112d designated mining operation. If any in situ leach mining operation is exempted from designated mining operation status, the application must still comply with this Rule:

112(2)(a)

6.4.1 EXHIBIT A – Legal Description

(1) The legal description must identify the affected land, specify affected areas and be adequate to field locate the property. Description shall be by (a), township, range, and section, to at least the nearest quarter-quarter section and (b), location of the main entrance to the site reported as latitude and longitude, or the Universal Transverse Mercator (UTM) Grid as determined from a USGS topographic map. A metes and bounds survey description is acceptable in lieu of township, range, and section. Where available, the street address or lot number(s) shall be given. This information may be available from the County Assessor's office or U.S. Geological Survey (USGS) maps.

(2) The main entrance to the mine site shall be located based on a USGS topographic map showing latitude and longitude or Universal Transverse Mercator (UTM). The operator will need to specify coordinates of latitude and longitude in degrees, minutes and seconds or in decimal degrees to an accuracy of at least five (5) decimal places (e.g., latitude 37.12345 N, longitude 104.45678 W). For UTM, the operator will need to specify North American Datum (NAD) 1927, NAD 1983, or WGS 84, and the applicable zone, measured in meters.

6.4.2 EXHIBIT B – Index Map

An index map showing the regional location of the affected land and all roads and other access to the area. A standard U.S. Geological Survey topographic quadrangle or equivalent is acceptable. Scale criteria need not be followed for this map.

6.4.3 EXHIBIT C – Pre-mining and Mining Plan Map(s) of Affected Lands

One or more maps may be necessary to legibly portray the following information:

112(4)(c)

(a) all immediately adjoining surface owners of record;

112(4)(e)

(b) the name and location of all creeks, roads, buildings, oil and gas wells and lines, and power and communication lines on the area of affected land and within two hundred (200) feet of all boundaries of such area;

112(4)(g)

(c) the existing topography of the area with contour lines of sufficient detail to portray the direction and rate of slope of the affected land;

112(4)(f)

(d) the total area to be involved in the operation, including the area to be mined and the area of affected lands (see definition of "Affected Land");

112(4)(i)

(e) the type of present vegetation covering the affected lands; and

(f) in conjunction with Exhibit G - Water Information, Rule 6.4.7, if required by the Office, further water resources information will be presented on a map in this section.

112(3)(c)
115(4)(e)

(g) Show the owner's name, type of structures, and location of all significant, valuable, and permanent man-made structures contained on the area of affected land and within two hundred (200) feet of the affected land.

(h) In conjunction with Exhibit I - Soils Information, Rule 6.4.9, soils information may be presented on a map in this section;

(i) Aerial photos, if available, may be included in this section.

6.4.4 EXHIBIT D – Mining Plan

The mining plan shall supply the following information, correlated with the affected lands, map(s) and timetables:

112(2)(f)

(a) description of the method(s) of mining to be employed in each stage of the operation as related to any surface disturbance on affected lands;

(b) earthmoving;

(c) all water diversions and impoundments; and

112(2)(g)

(d) the size of area(s) to be worked at any one time.

112(2)(h)

(e) An approximate timetable to describe the mining operation. The timetable is for the purpose of establishing the relationship between mining and reclamation during the different phases of a mining operation. An Operator/Applicant shall not be required to meet specific dates for initiation, or completion of mining in a phase as may be identified in the timetable. This does not exempt an Operator/Applicant from complying with the performance standards of Rule 3.1. If the operation is intended to be an intermittent operation as defined in Section 34-32-103(6)(a)(II), C.R.S., the applicant should include in this exhibit a statement that conforms to the provisions of Section 34-32-103(6)(a)(II), C.R.S. Such timetable should include:

(i) an estimate of the periods of time which will be required for the various stages or phases of the operation;

(ii) a description of the size and location of each area to be worked during each phase; and

(iii) outlining the sequence in which each stage or phase of the operation will be carried out.

(Timetables need not be separate and distinct from the mining plan, but may be incorporated therein.)

(f) A map (in Exhibit C - Pre-Mining and Mining Plan Maps(s) of Affected Lands, Rule 6.4.3) may be used along with a narrative to present the following information:

112(5)

(i) nature, depth and thickness of the ore body or deposit to be mined and the thickness and type of overburden to be removed (may be marked "CONFIDENTIAL," pursuant to Rule 1.3(3)); and

(ii) nature of the stratum immediately beneath the material to be mined in sedimentary deposits.

(g) Identify the primary and secondary commodities to be mined/extracted and describe the intended use; and

(h) name and describe the intended use of all expected incidental products to be mined/extracted by the proposed operation.

(i) Specify if explosives will be used in conjunction with the mining (or reclamation). In consultation with the Office, the Applicant must demonstrate, pursuant to Rule 6.5(4), Geotechnical Stability Exhibit, that off-site areas will not be adversely affected by blasting.

(j) Specify the dimensions of any existing or proposed roads that will be used for the mining operation. Describe any improvements necessary on existing roads and the specifications to be used in the construction of new roads. New or improved roads must be included as part of the affected lands and permitted acreage. Affected land shall not include off-site roads which existed prior to the date on which notice was given or permit application was made to the office and which were constructed for purposes unrelated to the proposed mining operation and which will not be substantially upgraded to support the mining operation. Describe any associated drainage and runoff conveyance structures to include sufficient information to evaluate structure sizing.

112(3)

6.4.5 EXHIBIT E – Reclamation Plan

(1) In preparing the Reclamation Plan, the Operator/Applicant should be specific in terms of addressing such items as final grading (including drainage), seeding, fertilizing, revegetation (trees, shrubs, etc.), and topsoiling. Operators/Applicants are encouraged to allow flexibility in their plans by committing themselves to ranges of numbers (e.g., 6"-12" of topsoil) rather than specific figures.

(2) The Reclamation Plan shall include provisions for, or satisfactory explanation of, all general requirements for the type of reclamation proposed to be implemented by the Operator/Applicant. Reclamation shall be required on all the affected land. The Reclamation Plans shall include:

112(3)(a)

(a) A description of the type(s) of reclamation the Operator/Applicant proposes to achieve in the reclamation of the affected land, why each was chosen, the amount of acreage accorded to each, and a general discussion of methods of reclamation as related to the mechanics of earthmoving;

(b) A comparison of the proposed post mining land use to other land uses in the vicinity and to adopted state and local land use plans and programs. In those instances where the post mining land use is for industrial, residential, or commercial

purposes and such use is not reasonably assured, a plan for revegetation shall be submitted. Appropriate evidence supporting such reasonable assurance shall be submitted;

112(3)(b)

(c) A description of how the Reclamation Plan will be implemented to meet each applicable requirement of Rule 3.1;

(d) Where applicable, plans for topsoil segregation, preservation, and replacement; for stabilization, compaction, and grading of spoil; and for revegetation. The revegetation plan shall contain a list of the preferred species of grass, legumes, forbs, shrubs or trees to be planted, the method and rates of seeding and planting, the estimated availability of viable seeds in sufficient quantities of the species proposed to be used, and the proposed time of seeding and planting;

112(3)(c)

(e) A plan or schedule indicating how and when reclamation will be implemented. Such plan or schedule shall not be tied to any specific date but shall be tied to implementation or completion of different stages of the mining operation as described in Rule 6.4.4 (e). The plan or schedule shall include:

(i) An estimate of the periods of time which will be required for the various stages or phases of reclamation;

(ii) A description of the size and location of each area to be reclaimed during each phase; and

(iii) An outline of the sequence in which each stage or phase of reclamation will be carried out.

(iv) Demonstrate, by substantial evidence, a reasonably foreseeable end date for any water quality treatment necessary to ensure compliance with applicable water quality standards.

Commented [MR33]: Required by HB19-1113

(The schedule need not be separate and distinct from the Reclamation Plan, but may be incorporated therein.)

(f) A description of each of the following:

(i) Final grading - specify maximum anticipated slope gradient or expected ranges thereof;

(ii) Seeding - specify types, mixtures, quantities, and expected time(s) of seeding and planting;

(iii) Fertilization - if applicable, specify types, mixtures, quantities and time of application;

(iv) Revegetation - specify types of trees, shrubs, etc., quantities, size and location; and

(v) Topsoiling - specify anticipated minimum depth or range of depths for those areas where topsoil will be replaced.

112(3)(e) **6.4.6 EXHIBIT F – Reclamation Plan Map**

The map(s) of the proposed affected land, by all phases of the total scope of the mining operation, shall indicate the following:

(a) The expected physical appearance of the area of the affected land, correlated to the proposed mining and reclamation timetables. The map must show proposed topography of the area with contour lines of sufficient detail to portray the direction and rate of slope of all reclaimed lands; and

(b) Portrayal of the proposed final land use for each portion of the affected lands.

6.4.7 EXHIBIT G – Water Information

(1) If the operation is not expected to directly affect surface or groundwater systems, a statement and sufficient demonstration of that expectation shall be submitted.

(2) If the operation is expected to directly affect surface or groundwater systems, the Operator/Applicant shall:

(a) Locate on the map (in Exhibit C) tributary water courses, wells, springs, stock water ponds, reservoirs, and ditches on the affected land and on adjacent lands where such structures may be affected by the proposed mining operations;

(b) Demonstrate, by substantial evidence, a reasonably foreseeable end date for any water quality treatment necessary to ensure compliance with applicable water quality standards.

Commented [MR34]: Required by HB19-1113

(cb) Identify all known aquifers; and

(dc) Submit a brief statement or plan showing how water from dewatering operations or from runoff from disturbed areas, piled material and operating surfaces will be managed to protect against pollution of either surface or groundwater (and, where applicable, control pollution in a manner that is consistent with water quality discharge permits), both during and after the operation.

(3) The Operator/Applicant shall provide an estimate of the project water requirements including flow rates and annual volumes for the development, mining and reclamation phases of the project.

(4) The Operator/Applicant shall indicate the projected amount from each of the sources of water to supply the project water requirements for the mining operation and reclamation.

(5) The Operator/Applicant shall affirmatively state that the Operator/Applicant has acquired (or has applied for) a National Pollutant Discharge Elimination System (NPDES) permit

from the Water Quality Control Division at the Colorado Department of Health and Environment, if necessary.

6.4.8 EXHIBIT H – Wildlife Information

(1) In developing the wildlife information, the Operator/Applicant may wish to contact the local wildlife conservation officer. The Operator/Applicant shall include in this Exhibit, a description of the game and non-game resources on and in the vicinity of the application area, including:

(a) a description of the significant wildlife resources on the affected land;

(b) seasonal use of the area;

(c) the presence and estimated population of threatened or endangered species from either federal or state lists; and

(d) a description of the general effect during and after the proposed operation on the existing wildlife of the area, including but not limited to temporary and permanent loss of food and habitat, interference with migratory routes, and the general effect on the wildlife from increased human activity, including noise.

116.5(6) (2) All new Applicants for designated mining operations shall contact Colorado Parks and Wildlife (CPW) for their recommendations. CPW's recommendations shall be included into the application submitted to the Office for review. If the protection of wildlife is determined to be necessary by the Board for 112d Reclamation Permit Operations, or by the Office for 110d Limited Impact Permit operations, the Board or Office may incorporate such wildlife protection recommendations into the new permit as a condition for such permit.

112(4)(h) **6.4.9 EXHIBIT I – Soils Information**

(1) In consultation with the Natural Resources Conservation Service (NRCS) or other qualified person, the Operator/Applicant shall indicate on a map (in Exhibit C) or by a statement, the general type, thickness and distribution of soil over the affected land. Such description will address suitability of topsoil (or other material) for establishment and maintenance of plant growth. If necessary, at its discretion, the Board may require additional information on soils or other growth media to be stockpiled and used in revegetation.

112(4)(i) **6.4.10 EXHIBIT J – Vegetation Information**

(1) The Operator/Applicant shall include in this Exhibit a narrative of the following items:

(a) descriptions of present vegetation types, which include quantitative estimates of cover and height for the principal species in each life-form represented (i.e., trees, tall shrubs, low shrubs, grasses, forbs);

(b) the relationship of present vegetation types to soil types, or alternatively, the information may be presented on a map; and

(c) estimates of average annual production for hay meadows and croplands, and carrying capacity for range lands on or in the vicinity of the affected land, if the choice of reclamation is for range or agriculture.

(2) The Operator/Applicant shall show the relation of the types of vegetation to existing topography on a map in Exhibit C. In providing such information, the Operator/Applicant may want to contact the local Conservation District.

6.4.11 EXHIBIT K – Climate

Provide a description of the significant climatological factors for the locality, and where determined appropriate by the Office on a case-by-case basis provide the required information of Rule 6.4.21(13).

117(4)(a)

6.4.12 EXHIBIT L – Reclamation Costs

(1) All information necessary to calculate the costs of reclamation must be submitted and broken down into the various major phases of reclamation. The information provided by the Operator/Applicant must be sufficient to calculate the cost of reclamation that would be incurred by the state.

(2) The Office may request the Operator/Applicant to provide additional, reasonable data to substantiate said Operator/Applicant's estimate of the cost of reclamation for all Affected Lands.

6.4.13 EXHIBIT M – Other Permits and Licenses

A statement identifying which of the following permits, licenses and approvals the Operator/Applicant holds or will be seeking in order to conduct the proposed mining and reclamation operations: effluent discharge permits, air quality emissions permits, radioactive source material licenses, the State Historic Preservation Office clearance, disposal of dredge and fill material (404) permits, permit to construct a dam, well permits, explosives permits, highway access permits, U.S. Forest Service permits, Bureau of Land Management permits, county zoning and land use permits, and city zoning and land use permits.

112(2)(d)

6.4.14 EXHIBIT N – Source of Legal Right to Enter

Provide documentation of the legal right to enter to conduct mining and reclamation, for Owners of Record described in Rule 1.6.2(1)(e)(i). This may include a copy of a lease, deed, abstract of title, a current tax receipt, or a signed statement by the Landowner(s) and acknowledged by a Notary Public stating that the Operator/Applicant has legal right to enter to conduct mining and reclamation.

112(2)(b)
112(2)(c)

6.4.15 EXHIBIT O – Owner(s) of Record of Affected Land (Surface Area) and Owners of Substance to be Mined

The complete list of all owners can be submitted as a list or on a map in Exhibit C.

109(8)

6.4.16 EXHIBIT P – Municipalities within Two Miles

A list of any municipality(s) within two (2) miles of the proposed mining operation and address of the general office of each municipality.

6.4.17 EXHIBIT Q – Proof of Mailing of Notices to Board of County Commissioners and Conservation District

Proof that notice of the permit application was sent to the Board of County Commissioners and, if the mining operation is within the boundaries of a Conservation District, to the Board of Supervisors of the Conservation District, pursuant to Rule 1.6.2(1)(a)(ii).

112(10)(a)

6.4.18 EXHIBIT R – Proof of Filing with County Clerk and Recorder

An affidavit or receipt indicating the date on which the application was placed with the local County Clerk and Recorder for public review, pursuant to Rule 1.6.2(1)(c).

6.4.19 EXHIBIT S – Permanent Man-made Structures

Where the affected lands are within two hundred (200) feet of any significant, valuable and permanent man-made structure, the applicant shall:

(a) provide a notarized agreement between the applicant and the person(s) having an interest in the structure, that the applicant is to provide compensation for any damage to the structure; or

(b) where such an agreement cannot be reached, the applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or

(c) where such structure is a utility, the Applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have "no negative effect" on their utility.

103(4.9)
116.5(5)

6.4.21 EXHIBIT U – Designated Mining Operation Environmental Protection Plan

(1) The Environmental Protection Plan shall describe how the Operator/Applicant will assure compliance with the provisions of the Act and Rules in order to protect all areas that have the potential to be affected by designated chemicals, toxic or acid-forming materials or acid mine drainage, or that will be or have the potential to be affected by uranium mining. In addition, the plan shall include an Emergency Response Plan that complies with Sections 34-32-103(4.9) and 34-32-116.5(5), C.R.S. 1984, as amended, and Rule 8.3, for designated chemicals used on site, and appropriate measures recommended by Colorado Parks and Wildlife (CPW)for the protection of wildlife from damage from designated chemicals, toxic or acid-forming materials and acid mine drainage.

(a) An Environmental Protection Plan is not required to address proposed or permitted activities that do not involve, affect, or influence the storage, handling, or disposal

of the designated chemicals and that do not disturb toxic or acid-forming materials, and that do not cause, or have the potential to cause, generation of acid mine drainage unless such proposed or permitted activities involve uranium mining in which case an Environmental Protection Plan shall be required.

(b) In order to protect the public and the environment from the adverse effects of uranium mining, designated chemicals, acid or toxic producing materials or acid mine drainage, the Board may consider whether there is a potential for adverse impacts.

(c) Such a determination will evaluate, specifically, the potential for adverse impacts from any:

(i) leach facilities, or heap leach pad;

(ii) tailings storage or disposal areas;

(iii) impoundments;

(iv) waste rock piles;

(v) stock piles, temporary or permanent;

(vi) land application sites; or

(vii) in situ leach operations or conventional uranium operations.

(d) The Board shall consider economic reasonableness and technical feasibility when determining whether the proposed location adequately assures compliance with performance standards of the Act, or may require that an alternate location be evaluated.

(e) The Board shall also consider current or pre-existing conditions and the degree to which the proposed plan would provide for net improvements in the protection of human health, property or the environment.

(2) Maps - An Environmental Protection Plan shall identify on map(s), sketch(es), plan(s) or other equivalent representations, the locations where designated chemicals, toxic or acid-forming materials, which will be used, stored, handled, exposed, disturbed or disposed of within the permit area, and existing or potential sources of acid mine drainage. The Environmental Protection Plan shall also identify on maps, sketches, plans or other equivalent representations, the location of affected lands, surface water, and groundwater which will be or has the reasonable potential to be affected by uranium mining operations. The locations shall be shown in accurate relationship to topography and other project facilities within the permit areas. The Operator/Applicant may submit this information as a map accompanying this Exhibit or include the information on the maps required as Exhibit C in this Rule, 6.4.3.

(3) Identification of other agencies' environmental protection measures and monitoring - identify which environmental protection measures and monitoring are required by statute, regulation or permit by other agencies or jurisdictions.

(4) Other Permits and Licenses - The Environmental Protection Plan shall:

(a) list any air, water quality, solid and hazardous waste, and other federal, state permits or local licenses, or other formal authorizations which the Operator/Applicant holds or will be seeking applicable to the use, handling, storage, or disposal of designated chemicals and acid mine drainage-forming materials within the permit area.

(b) Where such permits have been obtained, the Environmental Protection Plan shall identify where copies of such authorization(s) may be obtained, and shall provide any information contained in, or a portion of, or a complete copy of the permit(s), if required by the Office or Board.

(c) When such permits, for uranium mining, or for the use, handling, storage or disposal of designated chemicals or acid mine drainage-forming materials within the permit area, are obtained after the submission of the Environmental Protection Plan, the Operator/Applicant will provide the Office the same information within thirty (30) days of receipt.

(d) The Board reserves the right to deny an application for a Permit or Modification to an existing Permit where there is substantial evidence that the operation is or may be contrary to the laws or regulations of this state, or the United States, including but not limited to all federal, state, and local permits, licenses and approvals. The Board may continue the consideration of the application, or condition approval, pending final resolution of the matter. In addition, as to any in situ leach mining applications, the Board may or shall, whichever is applicable, deny any such permit application in accordance with the provisions of Rule 1.4.10.

(5) Designated Chemical(s) Evaluation - an Environmental Protection Plan shall contain a presentation and discussion of the types, quantities, and concentrations of designated chemicals within the permit area, and to the degree such chemicals are present or used within the permit area, shall characterize the designated chemicals as to:

(a) their known potential to affect human health, property or the environment; and

(b) based on the best information available at the time of submittal of the Environmental Protection Plan, specify the expected concentrations, process solution volumes and fate of designated chemicals to be used in existing and proposed extractive metallurgical processes at the mine, and/or mill site, if applicable.

(c) Provide, to the extent reasonably available, material safety data sheets for designated chemicals.

(6) Designated Chemical(s) and Material(s) Handling –

(a) Fully describe the procedures for the disposal, decommissioning, detoxification or stabilization for all designated chemicals and toxic or acid-forming materials. Specifically describe measures to be taken to prevent any unauthorized release of pollutants to the environment. Include adequate reclamation and closure practices for such designated chemicals, toxic or acid-forming materials and how unauthorized discharge of acid mine drainage will be prevented.

(b) Submit a narrative description or plan that:

(i) describes how all designated chemicals used in the extractive metallurgical process will be handled during active mining operations, during periods of Temporary Cessation, and disposed or detoxified at the conclusion of operations so as to comply with all applicable environmental protection and reclamation standards and regulations;

(ii) describes how materials that have the potential to produce acid mine drainage or are toxic or acid-forming will be handled to ensure that the affected lands will be reclaimed and returned to the approved post-mining land use; and

(iii) describes how the Operator/Applicant will prevent adverse off-site impacts during periods of active mine site operations and periods of Temporary Cessation.

(c) Based upon acceptable site-specific analyses of site construction materials, waste rock, ore, product stockpiles, and mill tailings, if applicable, provide an assessment of the nature, concentrations and expected fate of potential acid mine drainage-forming materials.

(7) Facilities Evaluation—Provide an evaluation of the expected effectiveness of each proposed and existing Environmental Protection Plan facility, taking into consideration:

(a) site-specific conditions;

(b) designated chemicals, uranium, uranium by products and other radionuclides, acid mine drainage and toxic or acid-forming materials and associated by-products and sludges that will be retained, either temporarily or permanently, on site by each facility;

(c) naturally occurring geological and geochemical conditions, and alterations of these conditions by the mining and metallurgical process.

(d) Describe, with maps and narrative, the monitoring systems, monitoring site locations, sample designator, parameters sampled, frequency of sampling, report dates, media sampled, method of sampling and analysis employed or to be employed during mining and reclamation operations to evaluate the effectiveness of each Environmental Protection Plan facility and activity.

(e) Taking into consideration the nature of the chemicals and the risk to human health, property and the environment, describe any release response procedures, redundancies, and "backup" measures necessary, appropriate, and economically reasonable, to control, prevent and mitigate releases of the designated chemicals and toxic or acid-forming materials from the containment facility outside the permit area during mining and reclamation operations.

(f) Demonstrate that containment facilities shall be of adequate size to provide sufficient reserve capacity to prevent a release of designated chemicals or toxic or acid-forming materials from design storm events plus operational water volumes during worst case conditions as specified by the Office.

(8) Groundwater Information –

(a) locate on a map, in Exhibit C, all tributary water courses, wells, springs, stock water ponds, reservoirs and ditches, on the affected land and on adjacent lands where such structures or waters are within two (2) miles, of the existing or proposed affected lands. The required information may further be limited to that area which can also be demonstrated by the Operator to lie within the local ground and surface water regimes that include the affected lands. On a site-specific basis, the Office or Board may extend the distance beyond two (2) miles;

(b) identify all known aquifers and related subsurface water-bearing fracture systems within two (2) miles of the affected lands. The required information may further be limited to that area which can also be demonstrated by the Operator to lie within the local ground and surface water regimes that include the affected lands. In addition, using available data or information, when acceptable to the Office, provide the general direction and rate of flow of groundwater in these aquifers and fracture systems. On a case-by-case basis, the Office may require hydrologic testing and analysis, where available information is inadequate to describe or address potential impacts to groundwater resources;

(c) describe all geologic media down to and including the upper most aquifer under proposed sites of material storage, stockpiles, waste piles, disposal sites, solution containment facilities and other sites within the existing or proposed affected area where such subsurface materials and any associated waters have the potential to be contaminated by designated chemicals used in the extractive metallurgical process or by materials that are toxic or acid-forming, or that produce acid mine drainage;

(d) identify and locate on a map, in Exhibit C, known major fracture systems that affect rock formations under proposed sites of material storage, stockpiles, waste piles, disposal sites, solution containment facilities and other sites within the existing or proposed affected (land) area where such fractures and any associated waters have the potential to be contaminated by toxic or acid-forming materials or designated chemicals used in extractive metallurgical process or that produce acid mine drainage; and

(e) describe and illustrate the hydrogeology of the area where surface or groundwater may be impacted by the Designated Mining Operation activities. Include in the description and illustration, those geologic strata and fracture systems that have the potential to transmit groundwater.

(9) Groundwater Quality Data –

(a) Indicate the existing and reasonably potential future groundwater uses on and within two (2) miles down-gradient of the affected lands. The required information may further be limited to that area which can also be demonstrated by the Operator to lie within the local ground and surface water regimes that include the affected lands. On a site-specific basis the Office or Board may extend the distance beyond two (2) miles.

(b) Submit, at a minimum, groundwater quality data collected during five (5) successive calendar quarters, or as specified by the Office, as may be necessary to adequately characterize baseline conditions. This baseline data shall be sufficient to provide for the proper design of facilities, to serve as a basis for the evaluation of reclamation performance standards, and to ensure the adequacy of Environmental Protection Facility design, maintenance and operation. In the case of an in situ leach mining operation, a permit applicant must design and conduct a scientifically defensible groundwater, surface water and environmental baseline site characterization and monitoring plan for the proposed mining operation which, at a minimum, includes five (5) successive calendar quarters, or the period specified by the Office as necessary to adequately characterize the baseline conditions, of water quality data, prior to submitting the permit application.

(c) Analytical detection limits and groundwater quality parameters must be acceptable to the Office.

112.5(4)(a) (10) Surface Water Control and Containment Facilities Information

(a) Provide design specifications certified by a licensed professional engineer for all Environmental Protection Facilities intended to:

(i) hold, convey, contain, or transport designated chemicals used in the extractive metallurgical process;

(ii) convey, transport or divert surface water around or away from acid mine drainage or toxic or acid-forming material; or

(iii) capture and/or retain surface water run-off from areas affected by the Designated Mining Operation prior to its release from the mine-site into the natural water drainage system.

(b) Submit a Storm Water Management Plan, if required by the Water Quality Control Division, including a copy of such plan and a maintenance and inspection program to ensure all drainage control and containment facilities will be properly operated and maintained.

(11) Surface Water Quality Data –

(a) Indicate the existing surface water receiving stream standards, existing or reasonably potential future uses of surface water and, where receiving stream standards have not been determined, within two (2) miles, down-gradient of the affected lands. On a site-specific basis, the Board or Office may extend the distance beyond two (2) miles downstream.

(b) Submit surface water quality and flow data collected during a minimum of five (5) successive calendar quarters and such other additional data, or a period specified by the Office, as may be necessary to adequately characterize baseline conditions. This baseline data shall be sufficient to provide for the proper design of facilities, to serve as a basis for the evaluation of reclamation performance standards success, and to insure the adequacy of environmental protection facility design, maintenance and operation. Where surface water samples are not available during the specified time period due to climatic condition, the Office must be contacted so that other alternatives may be agreed upon, except that in the case of an in situ leach mining operation, a permit applicant must design and conduct a scientifically defensible groundwater, surface water and environmental baseline site characterization and monitoring plan for the proposed mining operation which, at a minimum, includes five (5) successive calendar quarters, or the period specified by the Office as necessary to adequately characterize the baseline conditions, of water quality data, prior to submitting the permit application.

(c) Analytical detection limits for surface water must be acceptable to the Office for surface water quality parameters in consultation with the Water Quality Control Division.

(12) Water Quality Monitoring Plan - where necessary to demonstrate that the Environmental Protection Plan requirements are being met a water quality monitoring plan shall be proposed for both surface and groundwater. The intent of the proposed water quality monitoring plan shall be to demonstrate that all environmental protection facilities designed to protect water quality are functioning as designed and whether the operation is in compliance with all applicable surface water and groundwater standards and Permit conditions. Where a Colorado Discharge Permit System (CDPS) discharge permit exists or has been applied for, such permit may be adequate to satisfy the requirements of Rule 6.4.21. In addition, for an in situ leach mining operation, the required groundwater, surface water and environmental baseline site characterization and monitoring plan must be designed to thoroughly characterize pre-mining conditions; detect any subsurface excursions of groundwater containing chemicals used in or mobilized by such operation; and evaluate the effectiveness of post-mining reclamation and groundwater reclamation.

(13) Climate - on a case-by-case basis, the Environmental Protection Plan shall:

(a) Provide adequate climatic data representative of the site to perform an acceptable "water balance" for all liquid containment systems open to the environment and intended to contain designated chemicals or acid mine drainage, and demonstrate that the amount of evaporation required to maintain reserve facility capacity will

occur, or that there is sufficient reserve capacity to compensate for the uncertainty associated with the data.

(b) Provide the following information regarding climatic factors, above six thousand five hundred (6,500) feet of elevation, (with the approval of the Office, data may be provided from existing stations within the vicinity of the Permit area):

(i) the mean annual precipitation for a minimum of five (5) years and, where available, one (1) set of data for the wettest year on record for the area;

(ii) the average direction and velocity of the prevailing winds;

(iii) the mean monthly temperature and temperature ranges for a minimum of five (5) years;

(iv) on a case-by-case, site-specific evaporation and sublimation rates for the proposed site.

(c) For operations below elevations of six thousand five hundred (6,500) feet, provide the above data covering a period of one (1) year.

(14) Geochemical Data and Analysis - include appropriate geochemical evaluations of any material that will be exposed by mining, placed in on-site solution containment systems or facilities, stockpiled, or disposed of on the affected land, and that involves uranium mining or has the potential to cause acid mine drainage or to release designated chemicals, or toxic or acid-forming materials.

(a) Such evaluations shall be site specific and appropriate for the types of materials exposed or to be exposed by the mining and reclamation operations.

(b) Such evaluations shall be conducted on materials that are representative of the composition of the mineral, rocks or materials that are exposed or to be exposed during the proposed life of the mining operations.

(c) Such evaluations shall be appropriate for the intended use or fate of the material exposed or to be exposed during the proposed life of the mining operations, and on a case-by-case basis shall include evaluation of weathering effects, shall simulate, to the extent reasonable, the conditions under which the material will be used, stockpiled or disposed and which shall reasonably be expected to prevail after mining and reclamation operations have ceased.

(d) Such evaluations shall be performed on both ore and overburden, and shall identify the most reasonable sources, probable fate, and transport mechanisms of metal and acid-producing minerals that may be mobilized by ordinary weathering reactions that are likely to prevail after mining and reclamation operations have ceased. Such analyses may include only those tests that are necessary to satisfy the conditions of Rule 6.4.21(14)(c), and such evaluations may be prioritized, in descending order of importance, as follows:

(i) mineralogical analyses;

(ii) trace element analyses;

(iii) major element analyses;

(iv) microprobe or other comparable analyses.

(e) Where a net neutralizing, metal adsorption or metal ion exchange potential over the long-term cannot be demonstrated, the Operator/Applicant shall fully describe measures to prevent unpermitted discharges, and how reclamation, sufficient to achieve the post-mine land use will be assured.

(15) Construction Schedule Information - provide a detailed construction schedule for the following:

(a) all facilities designed to contain or transport uranium, uranium by-products or other radionuclides, toxic or acid-forming materials or designated chemicals used in the extractive metallurgical process; and

(b) all facilities proposed to contain, hold, or for disposal of material that has the potential to cause acid mine drainage.

(16) Describe the Quality Assurance and Quality Control program and measures to be employed during construction of those Environmental Protection Facilities that typically warrant Quality Assurance and Quality Control.

(17) Plant Growth Medium (Soils) - where revegetation is part of the Reclamation Plan, and in order to assure that acceptable plant growth medium is preserved, and to determine what soil amendments may be necessary to promote reclamation, the Operator/Applicant shall:

(a) provide a soil survey map of the proposed affected area that delineates soil units, soil texture, estimated cubic yards of soil and subsoils available for reclamation and if saved, where such material will be stockpiled for reclamation;

(b) Such map shall be based on site specific soils investigations and shall be on such a scale as to provide a basis for soil management recommendations and be the same scale as the reclamation map; and

(c) provide, for each soil map unit, in tabular form, all data from analyses of representative samples of surface and subsurface soil units as to:

(i) soil pH, texture, electrical conductivity, sodium adsorption ratio and any other parameters that the Operator/Applicant or Office deems necessary for proper soils characterization;

(ii) indicate on a map, or in the soils narrative the location of each soil unit on the affected area where the above soil characteristics may be problematic as to suitability for a plant growth medium; and

(iii) type, form and amounts of any soil amendments that may be necessary or recommended by the local Soil Conservation Service, Conservation District, or other qualified special district, and standard soil laboratory analyses and fertilizer recommendations (if available) for the types of plant species proposed to be established; or

(iv) provide, as an alternative to Rule 6.4.21(17)(c), a plan of experiments to determine the type, form and amount of any soil amendments that may be necessary to fulfill the requirements of the Reclamation Plan.

(18) Wildlife protection - In addition to the performance requirements of Rule 3.1, the Office or Board shall require the Operator to describe measures to minimize or prevent harm or damage to wildlife species and habitat, including:

(a) adequately describe mitigation measures to ensure that there is no overall net loss of critical or important wildlife habitat consistent with Colorado Parks and Wildlife (CPW)and United States Fish and Wildlife Service (USFWS) recommendations, if any; and

(b) describe measures to prevent wildlife from coming into contact with uranium, uranium by-products or other radionuclides, designated chemicals, toxic or acid-forming chemicals or areas with acid mine drainage.

(19) Disposal of tailings and sludges in mine workings - In order to ensure the proper disposal of tailings and sludges in mine workings, an Applicant shall comply with the provisions of Rule 3.1.7.

112(j) **6.4.22 EXHIBIT V – Description of ISL Mines – Required for all In Situ Leach Mining Applications Regardless of Designated Mining Operation Status**

In addition to all other required exhibits, all in situ leach mining applications shall include this Exhibit V:

(1) The Description of ISL Mines shall describe at least five (5) in situ leach mining operations that demonstrate the applicant's ability to conduct the proposed mining operation without leakage, vertical or lateral migration, or excursion of any leaching solutions or groundwater containing minerals, radionuclides, or other constituents mobilized, liberated or introduced by the mining operation into any groundwater outside of the permitted in situ leach mining area. The applicant need not be involved with any of the five (5) operations. The Comparison of ISL Mines shall describe:

(a) the methods of mining employed in each stage of each of the five (5) referenced in situ leach mining operations specifically including the methods related to any potential effect on groundwater, and compare these methods to those proposed in the application;

(b) the groundwater monitoring and protection measures used at each of the five (5) referenced mining operations and compare those measures to the measures in the application;

(c) known accidents, failures, leaks, releases or spills that affected groundwater at each of the five (5) referenced mining operations.

(2) The information provided in the Description of ISL Mines may be obtained from publicly available or non-confidential sources. The applicant shall use reasonable efforts to obtain as much information as is possible including research and review of publicly available documents and contact with the operators of the five (5) referenced operations to request information.

6.4.23 EXHIBIT W – Baseline Site Characterization – All In Situ Leach Mining Operations, Regardless of Designated Mining Operation Status.

In addition to all other required exhibits, applications for in situ leach mining operations shall include this Exhibit W.

(1) An applicant for an in situ leach mining operation permit shall design and conduct a scientifically defensible Baseline Site Characterization for affected surface water and groundwater and the environment prior to filing a permit application for an in situ leach mining operation. Prior to conducting any activity under the Baseline Site Characterization, the prospective applicant shall confer with the Office and obtain the Office's approval of the applicant's proposed Baseline Site Characterization. The Baseline Site Characterization must, at a minimum, include five (5) successive calendar quarters, or the period specified by the Office as necessary to adequately characterize the baseline conditions, of monitoring data and must be included in the permit application in order for the application to be considered filed. At a minimum, the Baseline Site Characterization shall thoroughly characterize the pre-mining site conditions including:

(a) A description of the following aspects of the proposed mining operation:

(i) physiographic conditions;

(ii) geologic and hydrogeologic conditions;

(iii) surface water conditions; and

(iv) groundwater conditions.

(b) A site inspection report that includes:

(i) a narrative description of site observations;

(ii) interviews with regulatory agencies having jurisdiction over the site including the regulatory history of the site;

(iii) a narrative description of the results of a document review concerning the site; and

(iv) a synopsis of any previous environmental or enforcement investigations.

(c) Analysis of the results of the Baseline Site Characterization, including a description of factors or conditions that require further investigation in order to design appropriate reclamation measures.

112.5(5)(b)

6.4.24 EXHIBIT X – Monitoring Plan – All In Situ Leach Mining Operations Regardless of Designated Mining Operation Status

In addition to all other required exhibits, any applications for in situ leach mining applications shall include this Exhibit X.

(1) An Applicant for a permit for any in situ leach mining operation shall design and conduct a Monitoring Plan for affected lands and affected surface water and groundwater prior to submitting an application for such operation. Prior to conducting any activities in the Monitoring Plan, the prospective applicant shall confer with and obtain the approval of the Office of the proposed Monitoring Plan. The Monitoring Plan must be in the permit application in order for the application to be considered filed. The Monitoring Plan shall be sufficient to detect any subsurface excursions of groundwater containing chemicals used in or mobilized by the mining operation. In addition, the Monitoring Plan shall be sufficient to evaluate the effectiveness of the post-mining reclamation and groundwater reclamation plans.

112(i)

6.4.25 EXHIBIT Y – Certification of Prior and Current Violations – All In Situ Leach Mining Operations Regardless of Designated Mining Operation Status

In addition to all other required exhibits, any permit application for an in situ leach mining operation or any request for transfer of minerals permit and succession of operations of operators for any in situ leach mining operation shall include this Exhibit Y.

(1) Applicants for a permit for any in situ leach mining operations shall include in their application a Certification of Prior and Current Violations that includes:

(a) A certified statement by the Applicant that the applicant or an affiliate, officer, or director of the Applicant has not violated environmental protection requirements of the Act and these regulations, a permit issued under the Act, or any analogous law, rule or permit issued by another state or the United States within a period of ten (10) years prior to the date of the submission of the application;

(b) A certified statement by the Applicant that the Applicant or an affiliate, officer, or director of the applicant, the operator, or the claim holder has not committed a pattern of willful violations of the environmental protection requirements of the Act, regulations, a permit issued under the Act and regulations, or an analogous law, rule, or permit issued by another state or the United States.

(2) If the Applicant is not able to certify as required by Rule 6.4.25(1), the Applicant shall certify the circumstances of the violations or pattern of violations including:

(a) A description of the nature of the violation including the governmental agency that found the violation, where and when it took place, the type of mine involved, any corrective actions and fines imposed for such violation, the status of the violation and any corrective actions and fines imposed for such violation, and any pending administrative or judicial action related to the violation;

(b) A description of the pattern of violations including as to each violation in the pattern of violations, the governmental agency that found the violation, the type of mining operation involved, where and when the violation took place, the corrective actions and fines imposed for such violation, the status of the violation and any corrective actions and fines imposed for such violation, and any pending administrative or judicial action related to the violation;

(c) Contact information from each federal or state agency involved in each violation or each pattern of violations including the name of the agency, the name of a person in that agency that can confirm the violation or pattern of violation information the Applicant has submitted and the contact person's telephone number and address.

(d) Any other information requested by the Office or Board about the violations or pattern of violations.

(e) Any explanation of the circumstances of any violations, the relationship between the Applicant and the violator, and any other information the Applicant believes to be relevant.

(f) The Applicant has a continuing obligations to update the information required in this exhibit throughout the permit application process and, if the permit is granted, throughout the life of the permit if any changes to the information occurs.

(3) To constitute a certified statement the applicant must attest to the truthfulness of the statement in a form approved by the Board.

6.5 GEOTECHNICAL STABILITY EXHIBIT

(1) On a site-specific basis, an Applicant shall be required to provide a geotechnical evaluation of all geologic hazards that have the potential to affect any proposed impoundment, slope, embankment, highwall, or waste pile within the affected area. A geologic hazard is one of several types of adverse geologic conditions capable of causing damage or loss of property and life. The Applicant may also be required to provide a geotechnical evaluation of all geologic hazards, within or in the vicinity of the affected lands, which may be de-stabilized or exacerbated by mining or reclamation activities.

(2) On a site-specific basis, an Applicant shall be required to provide engineering stability analyses for proposed final reclaimed slopes, highwalls, waste piles, embankments, and ore leach facilities. An Applicant may also be required to provide engineering stability

analyses for certain slope configurations as they will occur during operations, including, but not limited to, embankments and ore leach facilities. Information for slope stability analyses may include, but would not be limited to, slope angles and configurations, compaction and density, physical characteristics of earthen materials, pore pressure information, slope height, post-placement use of site, and information on structures or facilities that could be adversely affected by slope failure.

(3) Where there is the potential for off-site impacts due to failure of any geologic structure or constructed earthen facility, which may be caused by mining or reclamation activities, the Applicant shall demonstrate through appropriate geotechnical and stability analyses that off-site areas will be protected with appropriate factors of safety incorporated into the analysis. The minimum acceptable safety factors will be subject to approval by the Office, on a case-by-case basis, depending upon the degree of certainty of soil or rock strength determinations utilized in the stability analysis, depending upon the consequences associated with a potential failure, and depending upon the potential for seismic activity at each site.

(4) At sites where blasting is part of the proposed mining or reclamation plan, the Applicant shall demonstrate through appropriate blasting, vibration, geotechnical, and structural engineering analyses, that off-site areas will not be adversely affected by blasting.

RULE 7: DESIGNATED MINING OPERATIONS

7.1 GENERAL PROVISIONS

7.1.1 Exemption from Rule

Mining operations that are not Designated Mining Operations are exempt from this Rule 7, except as provided for in Rule 6.1, of these Rules.

7.1.2 Effective Date and Applicability of Rule

Except for uranium mining operations, the effective date of this Rule 7.1 and all of its Subsections is July 1, 1994 (Section 34-32-116.5(3)(B), C.R.S. 1984, as amended). Any Operator/Applicant may voluntarily choose to comply with any part, or all, of this Rule at any time prior to July 1, 1994. As to uranium mining operations, all existing and future uranium mining operations are by law designated mining operations. Therefore, the procedure to determine whether a mining operation constitutes a designated mining operation is not applicable to uranium mining operations and such operations are subject to all designated mining operation requirements and regulations. However, such operations may request an exemption from designated mining operation status as provided in Rule 7.2.6. If such exemption is granted, an in situ leach mining operator shall only be exempt from designated mining operation requirements; all in situ leach mining operation requirements shall continue to apply.

7.1.3 Compliance Requirements

(1) The submission of an Environmental Protection Plan in conformance with Rule 6 and this Rule 7, does not relieve an Operator/Applicant of compliance with any other applicable Rule of the Board.

(2) In addition to submitting the Reclamation Plan required by Section 34-32-116, C.R.S. 1984, as amended, in compliance with Rule 6, all Designated Mining Operations, as determined pursuant to this Rule 7 or if an operation is a uranium mining operation, shall submit to the Office an Environmental Protection Plan, the content of which is specified by Rule 6, for Office review and approval. As to uranium mining operations, a permit applicant must include an Environmental Protection Plan in the application unless such applicant requests and obtains an exemption pursuant to Rule 7.2.6 at the time of submitting the application.

7.1.4 Environmental Protection Plan Requirements

(1) The Environmental Protection Plan shall be submitted as an additional Exhibit to the application.

(2) All information supplied to comply with this Rule 7 shall be of a scale or nature that is compatible with all other Exhibits required in Rule 6.4.

7.2 DETERMINATION OF DESIGNATED MINING OPERATIONS

7.2.1 General Provisions

103(3.5)(a)

(1) The Office's determination of a Designated Mining Operation is based on the criteria described in the definition for Designated Mining Operation in Rule (1.1(19~~20~~).

(2) For administrative purposes, such as Annual Fees and inspection schedules, the occurrence at a mine site of any activity that is a Designated Mining Operation activity will have the effect of making the entire mining operation a Designated Mining Operation, unless exempted under Rule 7.2.6.

(3) Such operations, so designated, must submit an Environmental Protection Plan as specified in Rule 6.4.21.

7.2.2 Notification of Designation or Pending Designation by Office

(1) Any time after the effective date of this Rule 7.2.2, the Office may notify an Operator of the Office's determination that an existing or proposed mining operation is, or has a reasonable potential to be, a Designated Mining Operation. The monthly Agenda shall Notice those operations for which the Office may have any pending Designated Mining Operation considerations, and upon a determination that an operation so considered, is or is not a Designated Mining Operation, the Office shall provide Notice in the next regular monthly agenda.

(2) The Office's notice to an Operator/Applicant of such a determination shall be accompanied by factual statements including a review of the permit application, approved permit application, proposed or existing metallurgical process, known site geology or geochemistry, and the most recent site inspection.

7.2.3 Operator/Applicant Concurs with Designation

(1) If an Operator, so notified, agrees with the Office that the existing operation is a Designated Mining Operation, the Operator shall notify the Office within thirty (30) days of the date of the notice by mail, of the Operator's concurrence.

(2) Upon receipt of the Office notice, the Operator of an existing mining operation shall:

(a) within sixty (60) days file a demonstration that the existing permit application for the operation contains the necessary elements of an Environmental Protection Plan, Rule 6.4.21. This showing by the Operator shall satisfy the applicable portions of Sections 34-32-116 and 116.5, C.R.S. 1984, as amended, and the applicable portions of Rules 3, 6 and 7. Upon notice that the existing permit application does not contain the elements of an Environmental Protection Plan, the Operator shall either:

(b) within one hundred and eighty (180) days submit an Environmental Protection Plan to the Office; or

(c) within thirty (30) days request a period longer than one hundred and eighty (180) days, not to exceed one (1) year, to file such plan based on a demonstration satisfactory to the Office that additional time is needed to prepare an Environmental Protection Plan.

(3) If an Operator/Applicant so notified agrees, the Operator/Applicant shall amend the application in accordance with Rule 7.2.

7.2.4 Designation Disputes

(1) If an Operator/Applicant so notified does not agree with the Office that the existing or proposed mining operation is a Designated Mining Operation, the Operator/Applicant shall appeal, in writing, to the Office within thirty (30) days of the Office notice**,** setting forth the specific reasons for the Operator/Applicant's disagreement. The Operator/Applicant's appeal shall include all factual evidence to support its arguments.

(a) The Office shall meet with the Operator/Applicant as soon after the notification described in Rule 7.2.4(1) as possible to discuss the pending designation. If the Operator/Applicant does not satisfactorily demonstrate to the Office that the operation is not a Designated Mining Operation, the Office shall make a final determination that the operation is a Designated Mining Operation. The monthly Agenda shall Notice the final decision of the Office.

(b) The Operator/Applicant may appeal the Office's determination to the Board within thirty (30) days of the notification to the Operator/Applicant of such determination, and request a hearing before the Board on the designation by the Office pursuant to Rule 1.4.11. Burden of proof to reverse the Office's determination shall be on the Operator/Applicant. Any person who demonstrates that they are directly and adversely affected or aggrieved by the Board's determination and whose interest is entitled to legal protection under the Act may participate as a party in the appeal of the Office's determination brought by the Operator/Applicant.

(2) If the Operator/Applicant appeals under Rule (1), above, the Office, after notice to the Operator/Applicant, shall schedule the matter for a Board Hearing.

(3) Any person who has relevant facts that were not known at the time of the initial Office determination that an operation is not a Designated Mining Operation, or where no such Office designation has occurred, may file a written complaint with the Office requesting a review of the operation to determine if it should be a designated mining operation. Based on the written request the Office may inspect the mining operation to determine Designated Mining Operation status. If the Office determines that the mining operation should be a designated Mining Operation, than the processes set forth in Rules 7.2.2., 7.2.3 and 7.2.4 shall apply.

7.2.5 Existing Permit – Adequate for an Environmental Protection Plan

(1) If an existing permit contains the necessary elements of an Environmental Protection Plan, the Office or the Board will deem the existing permit to be adequate to comply with the

Environmental Protection Plan requirement, (Section 34-32-116.5(4)(a), C.R.S. 1984, as amended).

(2) The Office may require that the Operator provide an Environmental Protection Plan, as an Exhibit separate from the existing Reclamation Plan and clearly marked as the Environmental Protection Plan. New information may not be required, provided the Plan complies with Rule 6.4.21 and Rule 7. The Environmental Protection Plan submission shall reference appropriate portions of the existing permit application, but shall be clear and concise and shall adequately address those issues that the Environmental Protection Plan is to address.

(3) If there are no substantive changes to approved on-site activities, the Office review shall be considered a Technical Revision to the Permit for the purpose of processing the Operator's request.

7.2.6 Exemption from Designation

(1) If an Operator or Applicant demonstrates to the satisfaction of the Office or the Board, at the time of applying for a permit, or at a subsequent hearing, or after notification given pursuant to Rule 7.2.2 of this Rule, that designated chemicals will not be stored or used on-site for extractive metallurgical processing, toxic or acid-forming materials will not be exposed or disturbed in quantities sufficient to adversely affect human health, property or the environment; and that acid mine drainage, as defined in Rule 1, will not occur as a result of mining operations, the Board shall exempt such existing operations from the requirements of this Rule 7, which Rule implements Section 34-32-116.5, C.R.S. 1984, as amended.

(a) The operator of an existing designated mining operation may seek exemption from Designated Mining Operation status by filing an amendment application pursuant to Rule 1.10. The amendment application must include the legal and factual basis for requesting the exemption.

(2) Nothing in the Board Exemption shall exempt an Operator where site conditions or circumstances change, or are not as presented by the Operator in an application or at a Board Hearing on the proposed or existing activities. In addition, an exemption under this Rule from designated mining operation requirements does not exempt the operation from any other applicable requirements. For example, an exemption shall not exempt an in situ leach mining operation from the requirements pertaining to in situ leach mining operations including but not limited to those contained in Rules 3.1.3, 3.1.7 and 6.4. If an in situ leach mining operation is granted an exemption, it shall be referred to as a “110 ISL” operation or “112 ISL” operation (as applicable) rather than as a 112d operation.

7.2.7 Appeal of Determination

Any person who demonstrates that they are directly and adversely affected or aggrieved by the Office determination of designation or non-designation and where such person’s interest is entitled to legal protection under the Act may appeal the Office’s determination to the Board pursuant to Rule 1.4.11. The operator/applicant may be a party to the appeal.

7.2.8 Plan Inadequacy

If the Office subsequently finds that the approved Environmental Protection Plan is not adequate to comply with the Act and these Rules for protection of human health or property or the environment in conformance with the duties of Operators as prescribed by the Act, the Office may direct the Operator/Applicant to propose a revision to the previously approved Plan within a reasonable time. Provided the Operator is operating in compliance with the approved permit, this Office directive to propose a change shall be considered a "possible problem" and not a "possible violation", unless the time period for submission of the revision is not met by the Operator.

7.2.9 Time Extension for Filing the Environmental Protection Plan

Any Operator not granted relief, upon appeal of a designation as a Designated Mining Operation, shall submit an Environmental Protection Plan to the Office within ninety (90) days of issuance of the Board Order denying the appeal, unless granted additional time by the Board based on all the following:

(a) the good faith efforts of the Operator to achieve compliance;

(b) the complexity of the mining operation; and

(c) a demonstration that harm would not occur to the human health, property or the environment if the additional time were granted.

7.3 ENVIRONMENTAL PROTECTION FACILITIES – DESIGN AND CONSTRUCTION REQUIREMENTS

7.3.1 Construction

(1) Unless otherwise specified by the Office or Board, construction work shall be done in phases. No construction work shall begin on any subsequent phase of the facility without first obtaining Office acceptance.

(2) No liner of any kind shall be installed where climatic conditions are not within design or manufacture recommendations, and accepted by the Office.

(3) Such facilities shall be appropriately designed for their intended purpose and shall consider site specific conditions and on or off-site impacts to human health, property and the environment. Design capacities shall be sufficient to handle the design storm event for the area. The design storm event may be the two (2) year, 24-hour storm event up to the Probable Maximum Precipitation (PMP) event plus the ten (10) year, 24-hour storm event.

(4) It will be the responsibility of the Operator or Applicant to provide adequate Quality Assurance/Quality Control (QA/QC) or certification for any construction activities that are identified in the approved Environmental Protection Plan as specifically requiring QA/QC.

(5) No chemicals used in the extractive metallurgical process or toxic or acid-forming materials, uranium, uranium by-products or radionuclides shall be placed in constructed facilities until the Board or Office accepts the certification of the facility, or phase thereof, that precedes placement.

7.3.2 Construction – Acceptance of Certification

(1) Written acceptance of certification for facilities under this Rule, shall be a separate acceptance from the approval granted a permit application or permit modification.

(2) Unless otherwise required by the Office, the Operator or Applicant must provide a certified verification by a professional engineer or other appropriately qualified professional that will confirm that the facility was constructed in accordance with the approved design plan.

(3) The Office shall review and accept or reject all such certifications.

7.3.3 Cessation of Construction

(1) Barring an action by the Board, Cessation will only apply to the activities that are directly affected by the site-specific engineering step(s) that do not yet have certification.

(2) For any phase of certifiable inspection established pursuant to Rule 7.3.1 for which certification is not provided, as required in the permit, the Operator shall cease the construction of the environmental protection facility and will postpone the execution of subsequent phases of construction or operation until any required inspections have been performed and the requisite certification has been provided to and accepted by the Office.

(3) Cessation of construction shall not be deemed to apply to corrective construction actions nor shall it apply to construction of facilities that are designed, and that will serve, to correct the lack of certification.

(4) The Office has discretion to allow construction to proceed upon determination by the Office that proceeding is the best remedy.

7.4 FACILITY REVIEW CERTIFICATION AND INSPECTION

7.4.1 General Provisions – Inspections and Certifications

(1) All construction work required to prepare a mine site facility to receive designated chemicals, toxic-forming or acid-forming materials that produce acid mine drainage as defined in these Rules, shall be subject to the following:

(a) the frequency and scheduling of Office inspections shall be determined by the Office based on a review of the permit application and in consultation with the Operator/Applicant; and

(b) the Office shall include a list of the required inspections in the approved permit.

(2) The Office may require the Operator to take corrective actions necessary to obtain and verify certification of a construction phase identified in the approved permit. The corrective actions so specified shall be those normally specified by a qualified professional.

7.4.2 Phased Construction Inspections

(1) The Office shall give inspections of phased facility construction priority over other inspections and shall conduct such inspections as soon as possible to:

(a) meet the agreed upon construction schedule;

(b) to protect, as necessary, structures or facilities; and

(c) to facilitate orderly and efficient construction and operation.

(2) At a minimum, general inspection phases shall include the following, as applicable:

(a) foundation preparation inspection shall occur when the vegetation, topsoil and subsoil have been salvaged and the foundation has been configured, compacted to design specifications, and dressed to receive underdrain systems where required;

(b) earthen construction inspection shall occur at appropriate phases in the completion of any excavated slopes or embankment construction for facilities designed to hold or contain toxic or acid-forming materials or designated chemicals used in the extractive metallurgical process or acid mine drainage-forming materials;

(c) identification of all wet or seep areas;

(d) any areas of structural instability;

(e) under-drains or groundwater interceptor systems, after drain materials (including any piping and required filters) have been installed, but prior to covering of drains with soil;

(f) all phases of primary and secondary liner installation, including material processing, placement, and compaction of earthen materials, and placement and testing of any fabric seams and repairs;

(g) all leak detection systems, including bedding materials, piping, fluid collection and removal systems, and monitoring systems prior to covering with any material in such a manner to deny inspection access; and

(h) the protective armor and drainage layers (including placement and compaction of armor and drainage material), prior to loading with ore, mining waste, or tailings.

7.4.3 Independent Reviews of Facility Design, Certification, and Inspections

(1) The Operator/Applicant may request, or the Board or Office may direct, that an Independent Reviewer conduct a review of facility design, certifications, and phased inspections of Environmental Protection Facilities ~~described in Rule 7.4.2~~.

(2) Where such a request is made, the Operator/Applicant is responsible for all costs associated with the review, inspections and reports to the Office. The Operator or Applicant shall provide such reports to any person who was part of the formal hearing process.

(3) Where an Independent Reviewer ~~inspections are~~is requested, the Operator or Applicant shall provide the Office a list of competent, private, Independent Reviewer candidates.

(a) The Office may choose or reject any or all Independent Reviewers based on their qualifications.

(b) The Office shall not be provided bid documents that specify the cost for requested services.

(c) The Independent Reviewer shall be a contractor to the Operator or Applicant, but shall be solely directed by the State of Colorado - Division of Reclamation, Mining and Safety - Office of Mined Land Reclamation.

(d) The Office shall have the responsibility of preparing that portion of the request for bid document that specifies the scope of work. The inspections and reviews shall be those identified in the Environmental Protection Plan.

(e) The Operator or Applicant shall have the responsibility of preparing the remaining sections of the request for bid document.

(f) The administration of the contract by the Office shall be through a Memorandum of Understanding between the Office and the Operator or Applicant.

(4) The Independent Reviewer shall be empowered to review and accept or reject quality assurance information generated by the QA/QC (Quality Assurance/Quality Control) entity, i.e., to perform Q/A on the QA/QC and certification (if generated) performed by the Operator's QA/QC representative.

(5) The Office or Board reserves the right to accept or reject the opinions of Independent Reviewers.

(6) The rejection of QA/QC based certifications by the Independent Reviewer shall be cause for requiring the Operator to undertake corrective action prior to continuing any additional construction activity on the facility being monitored that would jeopardize either the corrective action so specified or the planned purpose of the Environmental Protection Facility.

Commented [MR35]: This change is to ensure that "IF" third party review is necessary for designs, certifications and inspections beyond the Division's expertise, that the operator / applicant is responsible for covering said costs.

RULE 8: EMERGENCY NOTIFICATION BY ALL OPERATORS, EMERGENCY RESPONSE PLAN FOR DESIGNATED MINING OPERATIONS AND EMERGENCY RESPONSE AUTHORITY OF THE OFFICE

8.1 SITUATIONS THAT REQUIRE EMERGENCY NOTIFICATION BY THE OPERATOR

Operators shall notify the Office, as soon as reasonably practicable, but no later than twenty-four (24) hours, after the Operator has knowledge of a failure or imminent failure of any of the following:

(a) any impoundment, embankment, stockpile or slope that poses a reasonable potential for danger to human health, property or the environment;

(b) for a designated mining operation, any Environmental Protection Facility designed to contain or control designated chemicals or process solutions as identified in the permit;

(c) for in situ leach mining operations, any structure designed to prevent, minimize, or mitigate the adverse impacts to human health, wildlife, ground or surface water or the environment; and

(d) for in situ leach mining operations, any structure designed to detect, prevent, minimize, or mitigate adverse impacts on groundwater.

8.2 OPERATOR'S GENERAL NOTIFICATION RESPONSIBILITIES FOR REPORTING EMERGENCY CONDITIONS

8.2.1 Emergency Reporting Procedure

Telephone notice shall be given to the Office staff as follows:

(a) during regular business hours (8:00 am to 5:00 pm, on working days), the notice shall be given to the Office.

(b) outside regular business hours, or if the Office cannot be contacted, notice shall be given to the Colorado Department of Public Health and Environment 24 hour Colorado Emergency and Incident Reporting Line. Specify to this agency, that the emergency authority is coordinated through the Division of Reclamation, Mining and Safety, and to activate that Division's response network.

8.2.2 Emergency Notification Information Required

Notice required pursuant to this Rule 8 shall contain the following information (to the extent known at the time of the notice, and so long as no delay occurs in reporting results):

(a) that this is notification of an emergency condition as required by Rule 8;

(b) the nature of the condition including any chemicals and toxic or acid producing materials involved;

(c) an estimate of the quantity of any chemical, toxic or acid-forming material that has been or could be released;

(d) the time and duration of the occurrence and if it is on-going, or urgency of the pending situation;

(e) any known or anticipated impacts to human health, property or the environment;

(f) precautions and corrective actions taken by the Operator; and

(g) the Operator's name(s) and contact number(s) for persons to be contacted for further information and response by the Office.

8.2.3 Follow-up Notice Requirements

As soon as practicable after an emergency situation or condition is reported and addressed, but no later than five (5) working days, the Operator shall provide a written report of the event to the Office. The report shall provide a description of:

(a) actions taken to respond to and correct the emergency situation or condition;

(b) any known or anticipated adverse impacts to human health, property or the environment;

(c) name(s), address(s), telephone numbers and e-mail address of the Operator's contact person for additional information and follow-up by the Office;

(d) monitoring and analyses that are necessary to evaluate the situation and corrective actions, copies of all pertinent data; and

(e) results of the Operator's investigation to assess the conditions or circumstances that created the emergency situation, and what corrective or protective measures will be taken to prevent a similar event from occurring in the future.

8.3 EMERGENCY RESPONSE PLAN FOR DESIGNATED CHEMICALS AND URANIUM OR URANIUM BY-PRODUCTS

In compliance with Rule 6.4.21, describing the purpose of an Environmental Protection Plan, Operators/Applicants of Designated Mining Operations shall be required to have on file with the Office an up-to-date Emergency Response Plan for designated chemicals. It shall be the Operator's/Applicant's sole responsibility to provide timely updates of responsible personnel and their phone numbers to the Office.

8.3.1 Non-Designated Mining Operations Exempted

Operations that do not involve uranium mining or that do not have or will not use designated chemicals, as defined in Rule 1.1(18~~19~~), are specifically exempted from the requirements of this Rule 8.3.

8.3.2 Minimum Requirements – Submitting Other Agency Plans

Operators/Applicants that are required to submit an Emergency Response Plan, may submit all or portions of a plan required by another state, local or federal agency that has been required of the Operator if it substantially conforms to the following minimum requirements:

(a) designation of personnel, such as mine manager, shift foreman or safety officer, who will be on site and in charge in case of an emergency. Also, a minimum of two (2) key response individuals, with up-to-date phone numbers, who can be contacted by the Office on a 24-hour basis;

(b) an outline of response procedures to be followed by mine or plant personnel in the event of an emergency involving designated chemicals, acidic or toxic materials, or uranium or uranium by-products;

(c) a list of designated chemicals and maximum quantities to be stored or used on site at any one time;

(d) a list and location map of materials, supplies and equipment stored on the property and readily available for containing, controlling and cleaning up excursions or releases of designated chemicals.

8.3.3 Post-Emergency Event Monitoring Plan

The Office may require the Operator to provide a post-emergency event monitoring and analysis plan, specific to an emergency, in addition to Board Ordered Corrective Action requirements.

8.4 EMERGENCY RESPONSE AUTHORITY OF THE OFFICE

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8.4.1 Responsibilities of the Office

The Office may:

(a) establish an Emergency Response Team, which may include other Offices and Agencies;

(b) enter properties to take necessary emergency, safeguarding and corrective measures;

(c) after consultation with, and authorization from the Office, issue a written cease and desist order for the activity(ies) suspected of causing the emergency situation;

(d) apply to a district court for a temporary restraining order, temporary injunction, or permanent injunction to require cessation of the activity(ies) determined to be causing the emergency situation.

(e) as to Designated Mining Operations, operate the Environmental Protection Facility utilizing any or all portions of the Financial Warranty established for such purpose. Such funds shall be available for the state to operate any portion of the Environmental Protection Facilities, or other facilities as may be necessary, to terminate an emergency as defined by these Rules. In responding to an emergency, the Board or Office will first use funds available as appropriate from the Emergency Response Cash Fund prior to utilizing any or all portions of the Permittee's Financial Warranty.

8.4.2 Office's Determination that an Emergency Exists

The Office may exercise its emergency authority to respond to situations at mining or mineral processing facilities. The determination may be based upon the following:

(a) the Operator, or another person fails or refuses to stop engaging in any activity not permitted by, or which constitutes a possible violation of the Act, the Rules or permit conditions, and which is presenting an unwarranted risk of serious harm to human health, property or the environment;

(b) the Operator or another person, fails or refuses to take corrective actions necessary to contain, control, safeguard, or manage an emergency situation;

(c) an Operator fails or refuses to respond to a Board Order requiring corrective actions for:

(i) any failure or imminent failure of any impoundment, embankment, stockpile, or slope identified in the permit;

(ii) any Environmental Protection Facility or measure, identified in the Permit, designed for the control or containment of acid or toxic producing materials or designated chemicals;

(iii) any specific Permit condition which is intended to protect human health, property or the environment;

(iv) any structure for an in situ leach mining operation designed to detect, prevent, minimize or mitigate adverse impacts on groundwater;

(v) any structure used in connection with an in situ leach mining operation designed to detect, prevent, minimize, or mitigate adverse impacts on human health, wildlife, or the environment.

8.5 SPECIFIC RESPONSE AUTHORITY RELATED TO EMERGENCY SITUATIONS INVOLVING PHYSICAL MINE HAZARDS

After notification to the Operator, owner or other responsible person, or if a responsible person cannot readily be identified or located, the Board or Office may direct or authorize the Office of

Active and Inactive Mines to respond to emergency situations in which physical mine hazards are involved. Physical mine hazards may include, but are not limited to:

(a) failure or refusal to safeguard or maintain safeguarding of shafts, adits, portals, escapements, stopes opened to surface and subsidence areas;

(b) failure or refusal to safeguard or maintain safeguarding in a manner specified by the Office of Active and Inactive Mines in:

(i) the published bid specifications; or

(ii) according to another design specified or approved by the Board or Office.

8.6 FOLLOW-UP MONITORING AND REPORTING REQUIREMENTS

The Board or Office may require that a post-emergency situation inspection or monitoring program be performed to evaluate any possible adverse impacts, and to insure that the corrective actions taken are sufficient to address the circumstances creating the initial emergency situation.

8.7 EMERGENCY RESPONSE FUNDING

8.7.1 Cash Fund and Purpose

122 (1) The Board may transmit grants, donations, and other contributions to the State Treasurer for placement in the Executive Director's Emergency Response Cash Fund.

(2) This fund shall be accessible to the Executive Director for the following purposes:

(a) to conduct emergency response activities at permitted or illegal mining or illegal mineral processing operations; and

(b) to conduct emergency prevention, containment, control, safeguarding or reclamation activities at permitted or illegal mining or mineral processing facilities.

8.7.2 Public Contributions, Donations and Grants

The Board, Office or other interested persons may pursue and accept grants and contributions for inclusion in the Executive Director's Emergency Response Cash Fund.

8.8 EMERGENCY RESPONSE COST RECOVERY

122 The Executive Director may seek recovery of costs expended in carrying out the provisions of this Rule 8. The State shall bear the burden of proof for any violations or cost recovery actions brought against a party(ies) identified in this Rule 8.8. Recovery may be sought for funds expended from the cash fund from any and all of the following:

(a) the Permittee;

(b) the Operator, if different from the Permittee, conducting activities or allowing activities that caused the emergency situation; or

(c) the person controlling or owning the operation.

RULE 9: CHANGE OF NAME – LEGAL EFFECT

Any statute enacted prior to or on August 9, 2006 changing the name of the Division of Reclamation, Mining and Safety to the Division of Reclamation, Mining and Safety, shall not impair the legal status or effect of any and all permits, permit obligations, financial warranties, performance warranties, contracts, property rights and/or any other obligations or legal relationships that were entered into between any entity or individual and the Division of Reclamation, Mining and Safety prior to the name change. All such obligations will remain legally binding and shall not be impaired by any such name change. Any statute enacted after August 9, 2006 changing the name of the Division of Reclamation, Mining and Safety to any other name, shall not impair the legal status or effect of any and all permits, permit obligations, financial warranties, performance warranties, contracts, property rights and/or any other obligations or legal relationships that were entered into between an entity or individual and the Division of Reclamation, Mining and Safety prior to such name change. All such obligations will remain legally binding and shall not be impaired by any such name change.

February 18, 2021

Ginny Brannon, Director
Russ Means, Minerals Program Director
Jeff Fugate, Attorney General's Office
Colorado Division of Reclamation, Mining and Safety
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Via email to: Ginny.Brannon@state.co.us, Russ.Means@state.co.us, Jeff.Fugate@coag.gov
Submitted online

Re: Comments on Informal Process for 2021 Hard Rock Rulemaking

Dear Ms. Brannon, Mr. Means and Mr. Fugate,

These comments are submitted on behalf of Information Network for Responsible Mining, Sheep Mountain Alliance, San Juan Citizens Alliance, Earthworks and Conservation Colorado. The undersigned thank the Division for its thoughtful approach to this rulemaking, providing a process that allows all interested parties to be heard and provide comments to help frame the proposed Rules prior to initiation of the formal rulemaking process. Further, the undersigned appreciate the Division's decision to address not only the water quality protection and bonding reform aspects of HB 19-1113, but also the substantive and procedural issues involved in the implementation of temporary cessation.

The undersigned support the dual purposes of the Colorado Mined Land Reclamation Act (MLRA): 1) to foster and encourage the development of an economically sound and stable mining and minerals industry and to encourage the orderly development of the state's natural resources; and also 2) to require those persons involved in mining operations to reclaim land affected by such operations so that the affected land may be put to a use beneficial to the people of this state while also conserving natural resources to aid in the protection of wildlife and aquatic resources, to establish agricultural, recreational, residential, and industrial sites, and to protect and promote the health, safety, and general welfare of the people of this state.

We support much of the draft redline changes proposed by the Division during the informal rulemaking process that represent a faithful and workable implementation of the MLRA and should be adopted as proposed. In some respects, additional fine tuning is needed, particularly with regard to the definition of "production" and the temporary cessation process, to ensure clarity for the DRMS staff, MLRB members, regulated entities, impacted communities, and affected public. These proposed changes are discussed herein and incorporated into the enclosed redline version of proposed

alternative language. Regarding the HB 19-1113 implementation, the Division has largely incorporated the language from the amended statute, which should be sufficient for purposed of the Rules. However, given the complexities involved in determining water quality protection and treatment needs at each unique site, and in ensuring comprehensive bonding for water quality, the Division should consider embarking on the creation of a more technical guidance document that sets forth the principles from which the Division will work from in reviewing these issues on a site-specific basis going forward.

The undersigned have submitted comments independent of these, and the undersigned hereby incorporate by reference comments submitted elsewhere in this process by these entities.

We have the following comments on the proposed draft rules for temporary cessation:

1. Production entails the extraction and sale, processing, or off-site removal of ore, and is the controlling factor in determining whether a mine is in temporary cessation.

"Production" is not currently defined in the Rules, despite being a well-understood and accepted term that entails in a mining context at minimum the extraction of valuable minerals, coupled with sale, processing, or off-site removal. In the draft Rules as currently written, however, some confusion arises where the concept of production appears to be conflated with the concept of broader "mining operations." This overarching term – "mining operations" -- is appropriately defined to encompass all aspects of activities conducted at a mine site, including "development," which the Act defines specifically to exclude production activities. The proposed draft definition for production thus could contribute to the lack of clarity that has plagued the implementation of the temporary cessation concept.

Over the decades, reliance on the broad concept of "mining operations" to substitute for actual "production" has allowed the misinterpretation of statutory requirements and an unfortunate failure to achieve timely reclamation of hardrock mines in Colorado. A definition of "production" that is overly expansive or lacks precision is likely to continue to provide loophole opportunities for mine operators seeking to delay reclamation beyond the ten years allowed by statute. This prevents the public from benefitting from timely reclamation and the fiscal returns of mining because it can allow for unreclaimed, yet non-producing mines to perpetuate environmental impacts. This can also allow for the inappropriate delay of the costs and liabilities of reclamation until there is an opportunity to pass them along to someone else, such as taxpayers. The Act was written to prevent exactly that – stating that "in no case" shall production cease for longer than ten years -- and the Rules should be promulgated in such a way as to leave no doubt as to the requirements, such that the Division has full authority to enforce the law and a responsibility to achieve its mandate.

As currently proposed, the Division's draft redline definition of "production" states:

"Production" means the work performed in relation to the extraction and/or processing of a deposit. The term may include, stockpiling of ore, transportation of ore to processing facilities, onsite metallurgical extraction, sale of extracted materials, and disposal of mine wastes. Minimal or token activity does not constitute production.

This language does not provide sufficient clarity and appears to be a significant departure even from the much narrower scope for determining production the Division has traditionally relied upon, which (as testified to in a recent Board hearing) emphasized that production entailed the "recovery, transportation and processing of minerals." As proposed, the definition of production could perpetuate the status quo by allowing an operator to simply claim mere stockpiling or disposal of mine wastes alone constitutes production – despite the fact that there is no "product" associated with these activities. The proposed definition's reference to "[m]inimal or token activity does not constitute production," however, is highly appropriate, and provides the Division and the Board a tool when a mining operator might try to game the system and avoid prompt final reclamation and termination of the life of mine permit.

Instead, the following definition for "production" incorporates the Division's historic interpretation and the Rules' existing components (as expressed in the "indications" for and against temporary cessation) in a way that provides sufficient clarity, maintains fidelity to the statutory mandate, yet also recognizes the site-specific differences between mining operations of different types and sizes:

"Production" means the work performed in relation to the extraction and sale or processing of a mineral deposit or movement of extracted mineral material off site. Minimal or token activity, considered relative to historic production at the facility, does not constitute production. Work performed in relation to prospecting, exploration, development, stockpiling, disposal of mine wastes, or reclamation on affected lands does not constitute production.

Therefore, in lay terms, because the lack of "production" is the sole hallmark of temporary cessation, a mine enters temporary cessation when it stops extracting ore for the marketplace, and it comes off temporary cessation when it resumes ore extraction for the marketplace. During temporary cessation periods, however an operator should have the flexibility to proceed with additional prospecting, development, and reclamation – or keep the operation in simple maintenance status – as it sees fit in order to best position the operator for a return to production. The Rules should rightfully require the operator to detail the basis for halting production and the reasonable plans for resumption of production to the Division and/or Board as part of a temporary cessation application. By using a clear definition that distinguishes production from other work at a facility, determining when temporary cessation of production begins and production resumes is actually quite simple, while allowing some discretion for the Division and Board depending on the size of the operation. The Rules do not need to be overly complicated

or impose unnecessary restrictions on an operator's proposed prospecting, development, production, and reclamation plans.

2. Operators should be required to report production totals in their annual reports to the Division.

In order to provide the Division an objective and efficient method of determining whether production (or token production) is occurring, the Rules should provide for the annual report to include information from operators about the production of ore that occurs under a particular permit. The annual report that all mining operations must already file should include provision for operators to report to the Division the amount of mineral material produced (e.g., extracted and sold, processed, or removed from the mine site) each year.

The Division already requires this of coal mines and precedent is established. As required by C.R.S. § 34-24-101, coal mine operators in Colorado report on an annual basis the "capacity of the mine, the mineral resource being produced, the total tons mined, the mining methods employed, the number of employees," among other indicators. It is not unreasonable to ask hardrock mines in Colorado to provide enough information about the extraction and sale, processing, or haulage of ore for the Division to properly and fairly ensure mining operations remain in compliance with the Mined Land Reclamation Act.

3. Permit applications should include a description of the orderly development of the mine and interim management plans for periods of temporary cessation.

The Mined Land Reclamation Act requires the "orderly development" of mines and their return to "beneficial public use" after mining has ceased at C.R.S. § 34-32-102. During the permitting of a mine, operators should be required to submit a description of how and when the orderly development of the mine is expected to occur, including plans to go into, and complete, production. Specifically, operators should submit a timeline – which can be modified at any time to incorporate delays, changes and periods of temporary cessation – that describes how the operator expects to advance the mine through the various stages of the mine life; from exploration, construction and development, to production and, finally, into reclamation and closure.

It may also be necessary to clarify in the Rules that development activities occur independently of all other activities at a mine, including production, and can occur simultaneously with other phases of mining, including production. Development activities and temporary cessation are not exclusive states; temporary cessation status does not prevent the continuation of development (or prospecting) activities and, in fact, those activities may sometimes be necessary in order to take a mine out of temporary cessation and back into production if it remains idle for a long period. Temporary cessation only occurs when a mine has ceased producing ore. Production is not the same as "development," which is already defined in the Rules as "the work performed in relation to a deposit, following the prospecting to prove minerals are in existence in

commercial quantities but prior to production activities, aimed at, but not limited to, preparing the site for mining, defining further the ore deposit by drilling or other means, conducting pilot plant operations, constructing roads or ancillary facilities, and other related activities."

Mine operators should also anticipate periods of temporary cessation as a possibility over the life of the mine during permitting and submit an interim management plan that describes how the mine will be maintained if it enters temporary cessation in the future. No mine should be allowed to deteriorate to such a state of neglect while on temporary cessation that a major rehabilitation of infrastructure is required to return the mine to productivity. It is imperative that mines on temporary cessation continue to operate and maintain all environmental protection facilities, including water treatment systems and stormwater management controls, and uphold good housekeeping practices. Mine pools should not be allowed to significantly increase in volume or significantly deteriorate in water quality during periods of non-production, and the integrity of waste piles should be maintained. A decline in infrastructure and environmental conditions during long periods of non-production are strong indicators that an operator does not have serious plans to resume production and does not fulfill the law's requirement that mining be conducted in an orderly way.

As a mechanism to ensure these common-sense protections, when an operator applies to, or does, enter temporary cessation, then the operator should submit to the Division a sufficiently detailed, and reasonable, description of the prospecting, development, and other activities that will take place during the period of temporary cessation or production such that returning to production within the five-year temporary cessation term is realistic. In this way, the mine plan stays consistent with the Act's requirement that operators maintain an "orderly development" plan, including prompt reclamation when the mine is no longer productive.

4. The indications for and against temporary cessation as currently listed in Rule 1.13 should be eliminated.

The amended Rules should eliminate the "indications" for and against temporary cessation. With clarity embodied into the definition of "production" as proposed herein, these sections only serve to confuse the issue and are thus unnecessary. If more clarity on what kinds of indicators can contribute to a determination of whether production has occurred or whether a mine on temporary cessation is in compliance with any of the Rules, then perhaps a guidance document is more appropriate, flexible and useful.

Neither the Division nor the Mined Land Reclamation Board have discretion to determine that a mine is in a state of temporary cessation of production by any other indicator than the last date when "production" occurred; this was the ruling of the Colorado Court of Appeals in the July 2019 decision in the case *Information Network et al v. Colo Mined Land*, CV2019COA114. The entire question of whether a mine is in temporary cessation of production or not relies exclusively on a factual determination as to whether production has occurred. Therefore, the inclusion of other indicators in order

to decode what level of activity might be occurring at any particular mine site is more often confusing than useful and is no longer necessary in the Rules.

5. How production is defined and determined is already established in Colorado law.

Again, "production" in the context of mining means the extraction of ore and its delivery into the marketplace in a plain language sense. Our proposed definition of production as requiring the extraction of ore fits the context and other provisions of the Mined Land Reclamation Act. For instance, the "extraction of minerals" is required for a permit to remain in effect and that a permit may remain in effect for a limited time after the operator "ceases production" if the operator follows the proper procedure to demonstrate "temporary cessation" of "production." C.R.S. §§ 34-32-103(6)(a)(1) and (2). Thus, production is inextricably linked to the extraction of minerals.

Colorado courts have also applied the plain language interpretation canon to mineral royalty agreements and have "defined production in this context to mean the actual and physical extraction of the minerals." [*Westerman v. Rogers*, No. 98CA0400, 1999 Colo. App. LEXIS 221 (App. Aug. 5, 1999.)] Similar definitions of "extraction" and "production" are used within Colorado tax assessment system. [*Huddleston v. Grand Cty. Bd. of Equalization*, 913 P.2d 15, 19 (Colo. 1996).] Colorado defines a "producing mine" for tax purposes as a mine with "gross proceeds" from the sale of ore. [C.R.S. § 39-6-105.] Colorado statues and case law have already clearly established a plain and consistent interpretation of what production entails within the broader context of mineral extraction. A redefinition of production – especially one that expands the definition so much as to allow mines to delay reclamation requirements – is not legally supportable in the Rules.

We have the following comments on the proposed draft rules to implement HB 19-1113:

1. We support the incorporation of the statutory language directly into the Rules.

The proposed draft Rule accurately incorporates the statutory language so that the legislative intent will remain clear in the future. We agree that this is how the Rule should be promulgated. This is an important step forward in ensuring that the Board has the ability to fully protect mining-influenced waters, ensure adequate financial guarantees, and to align current established practices at the Division with the Rules.

2. Improve requirements for geochemical characterization and hydrological analysis in the Rules that will guarantee the end date provision of HB19-1113 is fulfilled when mines are permitted in the future.

The best practices for adequately characterizing the geochemistry of a mine site and the long-term impacts to hydrological conditions and balance are discussed in detail in an Aug. 1, 2020, memo to the Division submitted by Dr. Ann Maest of Buka

Environmental. As noted in the memo, the existing Rules and Regulations are "exceptionally weak" with regards to requirements for geochemical characterization. [Ann Maest, Buka Environmental, Oct. 13, 2020, Memorandum on technical elements needs for implementing Colorado statute, submitted to DRMS by San Juan Citizens Alliance. See discussion p. 6.] The Rules should require a thorough and robust geochemical analysis of all mined materials and wastes along with a thorough analysis of a site's water balance and baseline water quality conditions. These are the most important elements in order to predict how mine water quality will be impacted and how long treatment will be needed in order to restore baseline conditions**.**

The task of predicting mining-influenced water quality over long time periods and the complexity of analysis required for appropriate geochemical characterization are difficult tasks and we recognize that specific requirements for how these requirements are to be regulated may be appropriately incorporated in a formal guidance document for the Division. The Board should promulgate Rules that allow the Division enough flexibility to implement best-management practices and technologies in evaluating and approving mine permits. We urge the Division to propose a Rule that will incorporate the recommendation in Dr. Maest's memo and fulfill the legislative intent to prevent the creation of new mines in Colorado that require water treatment into perpetuity.

We request that the Division incorporate the recommendations included in the memo into the proposed Rules and partially summarize them here:

• Increased specificity in geochemical characterization requirements in order to guarantee the reliability of models and estimates of for how long water treatment will be needed to meet established water quality standards.

• Consider requiring two years of water and climate monitoring data to establish baseline characteristics and understand water balance over multiple seasons and years.

• Include uncertainty as a factor in all models and estimates of water balance and site hydrology that span over large periods of time.

• Require specific water quality parameters with relevant standards in Rule 6.4 to be measured, and include additional parameters to be measured as a water quality control check.

• Require the use of best available technologies in order to conduct mitigations measures or minimize releases at mines at all hardrock mines, not just in-situ mines.

• Add specificity to the requirement to demonstrate by substantial evidence an end date for water treatment that requires the development of a prediction plan, including the methodology for how water quality will be predicted and how estimates will be developed. The study should also describe what kind of treatment will be needed and under what conditions, in order to allow for accurate assessments of how water quality will be impacted and restored.

• Require an adaptive management plan that outlines mitigations to be taken at mines should water resources or water balance be impacted by mining.

• Provide clear opportunities in the Rules for how the public will participate in reviewing any predictions of end dates or water quality restoration, and ensure that the process is transparent and open. Provide independent analysis of submitted prediction studies as a quality check on studies prepared by operators.

Additionally, we look forward to participating further and submitting supplemental comments as the rulemaking process continues and the Division releases its proposed statement for Basis, Purpose and Statutory Authority, as well as developing any guidance as a result of this rulemaking.

Thank you again for the opportunity to comment.

Respectfully submitted,

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2021 Hardrock Mining Rulemaking Update

Updates to the rulemaking timeline and public materials are located here:
https://www.colorado.gov/pacific/drms/2021-hard-rock-rulemaking

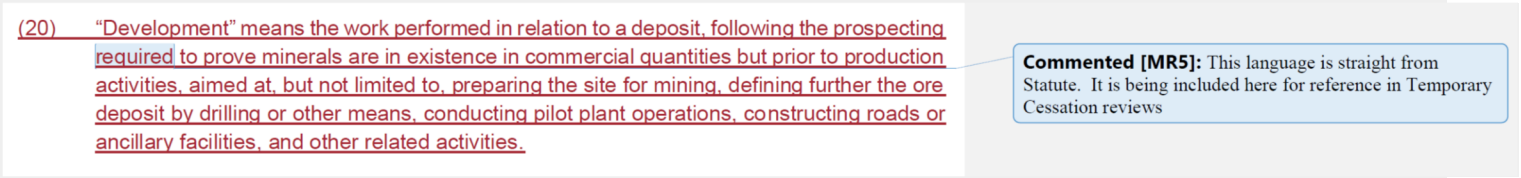
Purpose of the Rulemaking:

- The Minerals Program has initiated the process to conduct formal rulemaking to revise the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations (redline draft: Proposed Rules Redline/Strikeout).

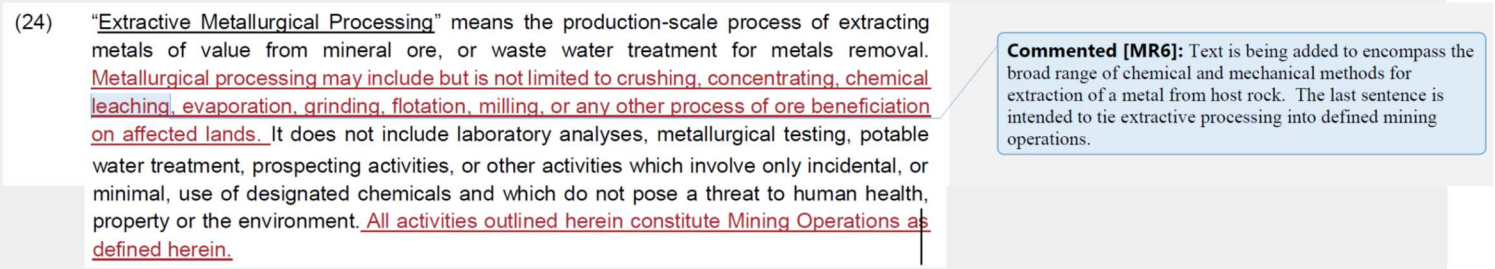
- The proposed rulemaking is pursuant to CRS 34-32-108 of the Colorado Mined Land Reclamation Act to address the requirements of HB19-1113 for perpetual water treatment, certain annual water quality reporting and the elimination of self-bonding. Additionally, the Division will be redrafting Rules and Regulations related to temporary cessation (TC) to address inconsistencies and ambiguities and create a clearer administrative process for regulation of TC.

Sections of the redline document of particular interest are the possible changes that are NOT directly specified by HB19-1113.

The definition of "Development" is specified in HB19-1113, but is important to know for offering input into a new definition for Temporary Cessation.



The topics that GANR has flagged of importance for SMC BOCC to consider commenting on include:



(41) "Mining Operation" means the activities associated with development, production and / or extraction of a mineral from its natural occurrences on affected land. The term includes, but is not limited to, open mining, in situ mining, in situ leach mining, surface operations and the disposal of refuse from underground mining, in situ mining, and in situ leach mining. The term also includes the following operations on affected lands: transportation; concentrating; milling; evaporation; and other processing. The term does not include: the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipe; the development or extraction of coal; the extraction of geothermal resources; smelting, refining, cleaning, preparation, transportation, and other off-site operations not conducted on affected land; or extraction of construction material where there is no development or extraction of any construction material as that term is defined in Section 34-32.5-103(3), C.R.S.

(56) "Production" means the work performed in relation to the extraction and/or processing of a mineral deposit. The term may include, stockpiling of ore, transportation of ore to processing facilities, onsite metallurgical extraction, sale of extracted materials, and disposal of mine wastes. Minimal or token activity does not constitute production.

Commented [MR7]: This language is a starting point for discussion. It is intended to encompass activities that should be considered in the total aspect of production as it relates to the Act and other definitions and Rules.

(66) "Temporary Cessation" means those limited periods of non-production as specified according to Rule 1.13.

Proposed Rules Redline/Strikeout PDF-Pages 50-57 contain the proposed language that would govern how Temporary Cessation is determined and implemented.

GANR NOTE: PAGES 50-51 (ATTACHED BELOW) SHOW "INDICATIONS" OF TEMPORARY CESSATION AND "AGAINST" TEMPORARY CESSATION.

1.13.2 Indications of Temporary Cessation

(1) there are no personnel working at the site for one hundred and eighty (180) consecutive days as may be determined through annual reports, inspections and / or operator submissions;

Commented [MR17]: Language is being added to clarify some of the methods that may be used to determine TC if not requested correctly by an operator.

(2) there are only security personnel at the site;

(3) ~~there are personnel other than security people at the site, but they are engaged in activities which can be described as maintenance or housekeeping, or related activity~~activity at the site is limited to general maintenance, housekeeping or similar related activity;

(4) ~~there are personnel at the site, but they are engaged in activities which are~~activity at the site is not significantly moving the site towards completion of the mining operation. The Board will judge these activities in relation to the size of the operation, the nature of the ore body and other relevant facts;

(5) there is no sale or processing of material or movement of stockpiled material off site;

(6) there is only minimal or token excavation of mineral or other material, and such activity is not legitimate Mining Operations, as determined by the Office or Board; ~~or~~

(7) mine development has ceased and mining has not recommenced; or~~.~~

(8) the permit has not exhausted ten (10) consecutive years of non-production.

1.13.3 Indications Against Temporary Cessation

(1) Extraction of minerals has been completed, production has ceased and only final reclamation and related activities ~~occurring~~ remain at the site ~~are part of the "life of the mine" (see Definition or see Section 34-32-103(6)(b), C.R.S.)~~; or

(2) production has ceased for more than 10 consecutive years; or

(3~~2~~) a permit has been issued, but the mining operation has not commenced on the affected lands.

~~**1.13.4 Temporary Cessation for a Portion of a Mining Operation**~~Reserved

~~There may be Temporary Cessation for part of the mining operation when one or more operations of several separable types within a permit have been discontinued. Movement of portable equipment between permitted sites shall not be construed to be Temporary Cessation.~~

Commented [MR18]: There are no known situations where a portion of a permitted site has ever been placed in TC

AGENDA ITEM - 5.d.

TITLE:

Discussion on the Wilson Mesa Trust parcel of land, citation (4)(b).

Presented by: Mike Bordogna, County Manager
Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

AGENDA ITEM - 7.a.

TITLE:

12:45 pm Discussion and update with the San Miguel County Stakeholders concerning the COVID 19 outbreak.

Presented by: Grace Franklin, Public Health Director
Time needed: 90 mins

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

AGENDA ITEM - 7.b.

TITLE:

Potential Executive Session: Concerning Public Health, Meeting with an Attorney, citation (4)(b).

Presented by:
Time needed:

PREPARED BY:

RECOMMENDED ACTION/MOTION:

INTRODUCTION/BACKGROUND:

FISCAL IMPACT:

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			