

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

IN THE MATTER OF CHANGES TO THE MINERAL RULES AND REGULATIONS OF
THE COLORADO MINED LAND RECLAMATION BOARD FOR HARDROCK, METAL
AND DESIGNATED MINING OPERATIONS, 2 CCR 407-1

**JOINT EXPLANATORY STATEMENT IN SUPPORT OF ALTERNATIVE AND
ADDITIONAL RULE LANGUAGE**

Pursuant to the Mined Land Reclamation Board's Order of July 19, 2010, the parties represented in these proceedings by Jeffrey C. Parsons of Western Mining Action Project and/or Travis E. Stills of Energy Minerals Law Center ("the parties"), hereby submit this Explanatory Statement in the above referenced rulemaking proceeding before the Colorado Mined Land Reclamation Board ("Board" or "MLRB").

1. Items 1 and 3: Pit Liners for drilling-related activities (including prospecting) and collection of baseline water quality information related to prospecting.

The parties appreciate the Division's effort to propose language that fits into the existing Division discretion to determine what measures are necessary for the protection of groundwater and surface water. The explicit requirements for drill pit regulation and collection of baseline water quality information for prospecting are consistent with and properly implement the Mined Land Reclamation Act (MLRA) mandate that prospectors "reclaim any affected land consistent with the requirements of section 34-32-116." C.R.S. § 34-32-113(2)(f). In turn, Section 34-32-116(7) specifically requires, among other things, that "disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and groundwater systems both during and after the mining operation and during reclamation shall be minimized." C.R.S. § 34-32-116(7)(g). Thus, by explicitly addressing drill pits and collection of baseline data for prospecting, the Division's proposal complies with the MLRA and is consistent with existing Rules. See Rule 5.1.2(g)(recognizing the general application of the reclamation standards at Rule 3.1. to prospecting).

The parties propose minor changes to the Division's proposed language at Rule 3.1 to clarify that the statutory reclamation requirements of Section 113(f) and 116(7) are mandatory during and after prospecting. Thus, the phrase, "as determined by the Office" raises confusion as to the applicability of the Rule 3.1 reclamation requirements to prospecting whereas the MLRA leaves no doubt that prospecting must "reclaim any affected land consistent with the requirements of section 34-32-116." C.R.S. § 34-32-113(2)(f).

Similarly, the Division's proposed language at Rule 3.1.6(4) should be changed to require submission of baseline site characterization data as standard practice. An exemption is proposed which recognizes the Division's ability to provide an exemption for those prospecting activities where the NOI demonstrates to the satisfaction of the Division that the proposed activities will not impact the prevailing hydrological balance, nor the quantity or quality of surface or ground water systems.

The Division's proposed Rule 3.1.6(5), dealing with drilling pits should be revised to track the existing statutory and regulatory provisions which state the relevant performance-based standard which is used throughout the MLRA: "minimize impacts to public health, safety, welfare and the environment." The Division's proposal uses new language which could imply a new performance standard, which is to "*protect*" "*from significant adverse* environmental, public health, or welfare impacts." The parties do not see the need to stray from the existing statutory and regulatory mandate to "*minimize*" impacts. *See e.g.* C.R.S. § 34-32-116(7)(g) ("minimize" disturbances to hydrologic balance and water quality and quantity); Rule 5.3.1 ("Prospecting will be conducted in such a manner as to minimize surface disturbances and protect public health, safety, and the environment."); Rule 5.3.2 ("Prospecting shall be conducted to minimize adverse effects on wildlife"); C.R.S. § 34-32-103(13) and Rule 1.1 (46) (definition of "Reclamation" uses "to minimize").

2. Providing copies and or notices of Notices of Intent to Conduct Prospecting to local governments (Proposed Rule 5).

The parties support the proposed Division language as consistent with current practice of sending notice of mining applications to local governments. Importantly, the proposal requires submission to county governments prior to submittal to the Division. This requirement would not jeopardize any confidentiality, as the proposal becomes public immediately upon submission to the Division and there need not be any significant gap between the time the county government receives the notice and when the notice is publicly filed with the Division. Without this timing requirement, there is no assurance that a county government would be given practical and effective notice of the proposal.

4. The issue of *de minimis* amounts of uranium recovered incidental in situ leach mining for other minerals (Proposed Rule 1.1(25)).

The parties do not oppose the Division's proposal. It is worth noting, however, that the plain language and the purpose of the MLRA demonstrate that the Act applies to any person who seeks to produce uranium for sale as a valuable mineral. By contrast, Proposed Rule 1.1(25) would not apply where a *de minimis* amount of uranium is extracted as part of the overburden, waste rock, mill tailings, waste water treatment sludge, or other similar materials created by a in situ leach mine where such uranium is not a valuable mineral.

The Division's proposed language is consistent with the broad language used in the MLRA and rightly includes notice provisions so that the Division and the public may be alerted to the special problems which could emerge when uranium is involved with a non-uranium mining operation.

5. A deadline for the Division receiving a written request regarding confidential information in Proposed Rule 1.3(4)(IV).

The parties support the Division's Proposal

6. Changes to Exhibit S in Proposed Rule 6.4.19

The parties suggest that instead of eliminating proof of service altogether, the Rules should retain the proof of service requirement. This proof of service can easily be submitted in the form of a supplemental filing within 5 days of submitting the application. This change would give the Division and the public a verifiable means of assuring that the notice law is complied with, while avoiding practical difficulties associated with submitting an application.

Respectfully Submitted,

s/Jeffrey C. Parsons

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