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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

MULTICULTURAL ALLIANCE FOR A SAFE ENVIRONMENT,
and
AMIGOS BRAVOS,

Appellants,

v.

No. D-101-CV-2018-02492
Mathew, Francis J.

NEW MEXICO MINING COMMISSION

Appellee.

NOTICE OF APPEAL

The Multicultural Alliance for a Safe Environment ("MASE") and its members, and Amigos Bravos and its members, hereby appeal the New Mexico Mining Commission's ("Commission") July 27, 2018 Decision and Order in *In the Matter of Rio Grande Resources Corporation's Permit Revision to Permit No. CI002RE*, Petition No. 18-01, affirming a decision of the Director of the New Mexico Mining and Minerals Division ("Director"). The Director's decision granted a permit revision to Rio Grande Resources Corporation ("RGR") for its Mt. Taylor uranium mine, pursuant to the New Mexico Mining Act, allowing the Mt. Taylor Mine ("Mine") to return to "active" or "operational" status, despite the fact the Mine will not produce any minerals indefinitely.

The Commission's Decision and Order is arbitrary, capricious, unsupported by substantial evidence in the record and not in accordance with law. Further, the process by which the Commission heard and considered Appellants' petition for review of the Director's decision was arbitrary, capricious and contrary to law.

MASE and Amigos Bravos submit this Notice of Appeal pursuant to NMSA, 1978 §§ 69-36-16(C), 39-3-1.1 and NMRA Rule 1-074.

A copy of the Commission's Decision and Order is attached to this Notice of Appeal as Exhibit 1.

Respectfully submitted this 24th day of August, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August, 2018, copies of the foregoing pleading were sent via electronic mail or U.S. Postal Service, first class, to the following:

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By: 

BEFORE THE NEW MEXICO MINING COMMISSION

IN THE MATTER OF RIO GRANDE RESOURCES CORPORATION'S PERMIT REVISION 13-2 TO PERMIT NO. CI002RE

Petition No. 18-01

THE MULTICULTURAL ALLIANCE FOR A SAFE ENVIRONMENT and AMIGOS BRAVOS,

Petitioners.

DECISION AND ORDER

THIS MATTER came before the New Mexico Mining Commission (the "Commission") upon a petition filed by The Multicultural Alliance for a Safe Environment and Amigos Bravos (collectively the "Petitioners" or "MASE/Amigos Bravos") for review of the Mining and Minerals Division ("MMD") Director's decision to grant Rio Grande Resources Corporation's ("RGR") application to come off standby status and return to active status. Petition 18-01, Petition for Review of the Director's Action, dated December 29, 2017, Permit Revision 13-2 to Permit No. CI002RE (the "Petition"). The Petition asks the Commission to consider: (1) whether the Mining Act authorizes the Director to approve Permit Revision 13-2, in the absence of actual mineral production; (2) whether the Mining Act clearly indicates what activities constitute active mining – the production of minerals – and what activities are standby and preparatory; (3) whether, even if the Mining Act affords the Director discretion to determine what constitutes mining, the Director abused his discretion in approving Permit Revision 13-2. Petition, p. 1.

Exhibit 1

Summary of the Proceedings

On February 28, 2018, Petitioners filed a petition to review MMD Director's approval of Permit Revision 13-2 with the Commission. On April 13, 2018, MMD filed its Response to the Petition for Review. On the same date, RGR filed its Response to the Petition for Review and Request for Summary Disposition. On April 23, 2018, Petitioners filed their Response to RGR's Request for Summary Disposition, and on May 2, 2018, RGR filed its Reply in support of its Request for Summary Disposition. In addition, the New Mexico Environment Department ("NMED") moved to intervene as a matter of right on April 16, 2018, and the New Mexico Mining Association ("NMMA") filed a statement of intent to present evidence.

In accordance with the Commission's regulations, the Commission held a public hearing on May 7 and 8, 2018. MASE/Amigos Bravos, MMD, RGR, NMED, and NMMA entered appearances. At the outset, the Commission heard RGR's Request for Summary Disposition and took it under advisement. During the course of the hearing, MASE/Amigos Bravos, MMD, and RGR offered technical testimony; NMMA offered non-technical testimony through its executive director, Michael Bowen. A motion to exclude testimony and submittals regarding the economics of the Mount Taylor Mine and uranium mining in general was made by counsel for MMD and supported by RGR. After considerable discussion, the Commission sustained the motion. At the end of the second day of hearing, the Commission adjourned the hearing and left the hearing record open until May 29, 2018 for the purpose of receiving additional public comment. It also directed the parties to submit written closing statements and proposed findings of fact and conclusions of law three weeks after the transcript of the hearing became available. The parties did so on June 9, 2018.

On July 2, 2018, the Commission reconvened in an open meeting. Before the Commission voted to go into closed session to review and deliberate on the record, Chairman John Heaton announced his decision to recuse himself from further participation in the proceedings, stating he did not want his continued participation to impugn the Commission or its decision in this matter after members of the public asserted that Commissioner Heaton had a conflict of interest and did not represent environmental interests as was supposed to be his role as the Environmental Representative on the Commission. 2018 Tr. at 356: 1 to 357: 3; 418: 22 to 419: 8. Petitioners also asserted those claims in their closing statement. Chairman Heaton appointed Environmental Alternate, Roderick Ventura, as the hearing officer for the remainder of the proceedings. Following Commissioner Heaton's recusal, Petitioners objected to Commissioner Heaton's earlier ruling not to allow testimony regarding the economic viability of the Mount Taylor Mine and moved that the Commission conduct a new hearing. Commissioner Roderick Ventura overruled Petitioners' objection and denied their motion for a new hearing.

The Commission, being familiar with the hearing record, which consists of a certified hearing transcript, the exhibits admitted during the hearing, including RGR Exhibit 10 which is the administrative record as it appears on MMD's website[1] under CI002RE Mount Taylor Regular Existing Mine, Revision 13-2, Standby to Active Status, as well as the oral and written public comment offered before, during and after the hearing, unanimously voted to deny RGR's request for summary disposition; and by a vote of 4 to 3 announced its decision to deny Petitioners' petition to reverse the Director's decision granting Revision 13-2 to RGR. The Commission now hereby makes the following findings of fact and conclusions of law:

[1] Exhibit 10 may be found at http://www.emnrd.state.nm.us/MMD/MARP/CI002RERev13-2.html.

Findings of Fact

Summary of Hearing

1. MMD's first witness was Mr. David O'Hori. Mr. O'Hori is the permit lead for the Mount Taylor Mine permit. 2018 Transcript of Hearing at 43: 15-23.[2] Mr. O'Hori offered testimony regarding the permitting history for the Mount Taylor Mine permit and the history for Permit Revision 13-2. 2018 Tr. at 44: 15-25; 45-48; 49: 1-20; 64: 3-20. Mr. O'Hori presented testimony regarding the reactivation activities and MMD's ability to track RGR's reactivation progress. 2018 Tr. at 49: 21-25; 50-56; 27: 1-22.

2. MMD's second witness was Mr. Holland Shepherd, the program manager of the Mining Act Reclamation Program ("MARP"). 2018 Tr. at 68: 20-21. Mr. Shepherd offered expert testimony regarding regulatory review and application of mine development and production, temporary cessation of mining operations, reclamation and closure. Mr. Shepherd testified that he was involved in the Commission's development of the Commission's regulations. 2018 Tr. at 101: 23-25; 201: 1-3. Mr. Shepherd also testified that his duties include interpreting and applying the Commission's regulations, which he has been doing since 1994. 2018 Tr. at 102: 4-14. Mr. Shepherd was admitted as an expert witness in the interpretation and application of the New Mexico Mining Act and the Commission's regulations. 2018 Tr. at 102: 15-18; 104: 13.

3. Mr. Shepherd testified regarding the Commission's regulations for governing coming off of standby status and returning to active status and specifically indicated that there is an absence of specific guidance for this process, including no indication of what constitutes "operating status." 2018 Tr. at 104: 17-25; 105: 1-25; 106: 1-9. Mr. Shepherd offered testimony indicating that the MMD interprets "operating status" as mining and further testified regarding the definition of

[2] References to transcript of the May 7-8 hearing are noted as "2018 Tr. at [page] ____: [lines] _____."

"mining" and why the MMD interprets the term broadly so as to be more protective of human health and the environment. 2018 Tr. at 106: 6-25; 107-112: lines 1-7. Mr. Shepherd testified that "mining" does not just mean the production of minerals; rather it includes a variety of non-ore activities. 2018 Tr. at 106: 6-25; 107-112: 1-7. Mr. Shepherd testified as to all the requirements and conditions in Permit Revision 13-2 designed to ensure that actual mining takes place at the Mount Taylor Mine. 2018 Tr. at 112: 8-25; 113-115; 116: 1-11. Mr. Shepherd also testified that there is no requirement for an economic analysis or review to come off of standby status. 2018 Tr. at 121: 1-5.

4. MASE/Amigos Bravos presented one witness, Jim Kuipers, who was admitted to testify as an expert in mine design, mine development and production, temporary cessation of mining operations, reclamation and closure. 2018 Tr. at 202: 4-8; 205: 17-20. Mr. Kuipers offered testimony regarding how to interpret terms found in the New Mexico Mining Act and the Commission's regulations related to Permit Revision 13-2. 2018 Tr. at 206: 5-25; 207-214; p. 215: 1-11. Specifically, Mr. Kuipers testified as to what "active" versus "inactive" status means in mine parlance. 2018 Tr. at 206: 5-25. Mr. Kuipers also testified regarding what "operational" versus "nonoperational" means, stating that nonoperational is essentially everything but mining and producing ore through a mill. 2018 Tr. at 207: 3-20.

5. Michael Bowen offered testimony on behalf of the New Mexico Mining Association. 2018 Tr. at 185: 22-25; 186-190. Mr. Bowen offered testimony in support of the issuance of Permit Revision 13-2. 2018 Tr. at 186: 22-25. Mr. Bowen offered testimony that there is a 13-16 year timeline associated with exploration through production in mining. 2018 Tr. at 189: 6-14. Mr. Bowen also testified that MMD's interpretation and construction of the definition of "mining" is consistent with the realities of the mining industry. 2018 Tr. at 190: 1-13.

6. RGR's first of three witnesses, Mr. Joe Lister, started working in the uranium industry in approximately 1969 and has held the position of mine manager of the Mount Taylor Mine since approximately 1988, with responsibility for the safe operation of all operating systems at the mine, including ore production, ventilation systems, pumping systems, the water treatment system and all sampling required under the permits for the Mount Taylor Mine. 2018 Tr. at 257: 4-9; 265: 13-20; 269: 1-25; 270: 1-20.

7. Mr. Lister was admitted as an expert on uranium mining. 2018 Tr. at 293: 13-23. Mr. Lister testified to the history of the Mount Taylor mine from exploration and discovery to development and operation to standby status. 2018 Tr. at 255: 12-25; 256-339: 1. Mr. Lister provided detailed testimony regarding the steps taken when Chevron made the decision to place the Mount Taylor Mine on wet standby status. 2018 Tr. at 264: 24-25: 265-277; 278:1-19. He testified that this included removing all equipment from the underground workings including sixteen 500 horsepower pumps from 3,200 feet below the surface, safely removing switchgear and fans while storing 4,500 gallons of water per minute. 2018 Tr. at 277: 1-12. Additionally, he testified as to the construction and placement of crib sets (ground support) at key intersections throughout the mine. 2018 Tr. at 278: 1-7.

8. Mr. Lister offered additional testimony about maintaining the Mount Taylor Mine Site on "standby" status, including providing testimony about a variety of things RGR did at the Mount Taylor Mine while on standby status. 2018 Tr. at 281: 6-25; 282-283; 284: 15-25; 285-286; 287: 1-20. Mr. Lister offered testimony about what activities RGR will need to accomplish before the Mount Taylor Mine will be capable of producing ore and why these activities were not and could not be pursued while the mine was on standby status. 2018 Tr. at 287: 10-25; 288-292; 293: 1-12: 311: 17-25; 312: 1-25; 313, lines 1-9.

9. RGR's second witness, Dr. Alan Kuhn, is senior principal consulting engineer of Alan Kuhn Associates, LLC; he has a bachelor's of science in geology from Duke University, a master's of science in geohydrology from Colorado State University, and a Ph.D. in engineering geology from the University of Illinois. Dr. Kuhn has spent a considerable part of his over 40 year career in the profession working with the uranium industry, including significant experience with environmental compliance for uranium mines in New Mexico and other states. 2018 Tr. at 358: 11-25; 359: 1-4. Dr. Kuhn was admitted to testify as an expert in geological engineering. 2018 Tr. at 359: 9-25. Dr. Kuhn offered detailed testimony about the phased reactivation activities that are currently occurring and are schedules to occur at the Mount Taylor Mine. 2018 Tr. at 368: 21-25; 369-392; 393: 1-2.

10. Dr. Kuhn's testimony included an introduction and overview to the Mount Taylor Mine, including the mine's layout and a brief overview of all of the permits associated with the mine. Dr. Kuhn offered testimony about the specific phases of the schedule and why it is necessary for the reactivation activities to be completed in phases, since the completion of many of the reactivation activities are prerequisites to begin others. 2018 Tr. at 362: 4-25; 368: 21-25; 369-392; 393: 1-2. Dr. Kuhn also offered testimony regarding his history and experience with developing the 1993 Mining Act and implementing regulations and offered his testimony regarding how to construe the definition of mining broadly so as to protect water, air and the environment. 2018 Tr. at 360: 15-25; 361:1-25; 362: 1-3: 395: 5-18.

11. At the hearing various members of the public provided comment. 2018 Tr. at 70-99; 242: 10-25; 243-246; 274: 1-10; 342: 8-25: 343-356; 357: 1-5; 418-420: 13.

Definition of Mining

12. The Commission's regulations define "mining" as "the process of obtaining useful minerals from the earth's crust or from previously disposed or abandoned mining wastes, including exploration, open-cut mining and surface operation, the disposal of refuse from underground and in situ mining, mineral transportation, concentrating, milling, evaporation, leaching and other processing." MMD Exhibit 5, p. 10.

13. Under the same regulations, the definition of "mining" excludes "the exploration of potash, sand, gravel, caliche, borrow dirt and quarry rock used as aggregate in construction, the exploration and extraction of petroleum in a liquid or gaseous state by means of wells or pipes, the development or extraction of coal, the extraction of geothermal resources, smelting, refining, cleaning, preparation, transportation or other off-site operations not conducted in the permit areas or the extraction, processing or disposal of commodities, byproduct materials or wastes or other activities regulated by the Nuclear Regulatory Commission." MMD Exhibit 5, p. 11.

14. The definition of "mining" is identical in both the Mining Act and the Commission's regulations. 2018 Tr. at 108:16-17.

15. Holland Shepherd, program manager of the Mining Act Reclamation Program, testified that to interpret what activities fall under the definition of "mining," MMD looks to the purposes of the Mining Act. 2018 Tr. at 106: 20 to 107: 15. MMD Exhibit 5, p. 6.

16. The purposes of the Act include promoting the responsible utilization and reclaiming of lands affected by exploration, mining, or the extraction of minerals. Tr. 2018 at 107: 2-11 and 19-20; MMD Exhibit 5, p. 6 and 7.

17. MMD believes it promotes the responsible utilization of land affected by mining by including in the permit of an operation that is mining or causing disturbances conditions that address impacts to the environment, as well as financial assurance. 2018 Tr. at 107:7-11; MMD Exhibit 5, p. 7.

18. MMD understands the reclamation of lands affected by mining to mean that lands disturbed by mining are to be reclaimed to a beneficial use and impacts to the environment are to be remediated. 2018 Tr. at 107: 12-15.

19. MMD understands "mining" occurs in phases, such as development of mining operations, exploration up to mineral extraction, and reclamation. 2018 Tr. at 107: 19 to 108: 1.

20. MMD understands and agrees that there are a number of activities it considers to be mining that do not specifically involve extracting minerals from the earth. 2018 Tr. at 109: 14-20; 161: 3-15.

21. Throughout the Mining Act and the Commission's regulations, such terms as "activities," "process," "operating," "operations," "development" are not defined, but MMD generally includes these activities to fall within the definition of "mining," which the industry also considers as mining. 2018 Tr. at 108: 2-8; 109: 3-9; 189: 25 to 190: 7; 398: 5-18; MMD Exhibit 5, p. 8.

22. On cross-examination, Mr. Kuipers testified that no state, including New Mexico, legally defines terms like "operations" and that his interpretation of these terms is based on a variety of non-specific sources. 2018 Tr. at 227: 6-25; 228: 1-25; 229: 1-7.

23. MMD interprets these terms broadly to ensure that the purposes of the Mining Act are followed. 2018 Tr. at 108: 11-15; MMD Exhibit 5, p. 8-9.

24. In doing so, MMD believes that it is being more protective of the state and ensuring that a closeout plan or a reclamation plan and associated financial assurance is required for all those activities that occur prior to actual extraction, such as activities related to the development of a mining property. 2018 Tr. at 108: 17-23; 109: 14-19; MMD Exhibit 5, p. 9.

25. "Exploration" is part of the definition of "mining" and is part of the process of getting to the point of extracting useful minerals; it occurs in phases. 2018 Tr. at 109: 24 to 110: 9; MMD Exhibit 5, p. 12-14.

26. The Act and the Commission's regulations define "exploration" as the "act of searching for or investigating deposit, including sinking shafts, tunneling, drilling core and bore holes, digging pits, making cuts and other works for the purpose of extracting samples prior to the commencement of development or extraction operations and the building of roads, access ways and other facilities to such work[.]" MMD Exhibit 5, p. 13.

27. While the term "development" is not defined in the Act or the Commission's regulations, MMD interprets "development" to mean activities that are necessary in planning and site management, construction of infrastructure, establishing environmental controls, and other activities conducted prior to actual mineral extraction. 2018 Tr. at 110: 9-14: MMD Exhibit 5, p. 14.

28. As such, MMD believes "development" falls under the definition of "mining." 2018 Tr. at 110: 15-17; MMD Exhibit 5, p. 14

29. The Commission's regulations define "disturbed area" as "an area where the earth's surface is disturbed as a result of mining or activities facilitating mining." It is part of the process of mining. 2018 Tr. at 110: 21 to 111: 3; MMD Exhibit 5, p. 15.

30. MMD interprets "activities facilitating mining," like "development," as those activities that are necessary in planning and site management, construction of infrastructure, establishing environmental controls and other activities conducted prior to actual mineral extraction. 2018 Tr. at 111: 3-8; MMD Exhibit 5, p. 15.

Standby Status

31. Under the Commission's regulations, "standby status" means the temporary cessation of mining operations exceeding 180 days. It allows a mine upon application to MMD to cease operations without proceeding to final reclamation. 2018 Tr. at 126: 4-10.

32. Temporary cessation is a very common phenomena in the mining industry and is used to address mine maintenance and stabilization. 2018 Tr. 203: 24 to 204:17; 136: 14-21.

33. The Commission's regulations require an applicant for standby status to describe the measures that will be taken to reduce the formation of acid and other toxic drainage and to prevent releases that cause federal or state environmental standards to be exceeded. 2018 Tr. at 152: 2 to 153: 16.

34. An applicant for standby status also is required to describe how waste and storage units, leach piles, impoundments and pits will be stabilized during the duration of standby status. 2018 Tr. at 153:18-22.

35. The requirement for an analysis of economic viability arises only in the context of an application for standby status. 2018 Tr. at 168: 7-14.

36. By definition, a mine on standby status is inactive; it is not engaged in mining or final reclamation. 2018 Tr. at 126: 11-15; 169: 8-9.

37. Under the Commission's regulations, standby status ends upon revision or modification of the permit to return to operating status or expiration of the permit term or renewal period. 2018 Tr. at 104: 20-23; MMD Exhibit 5, p. 16.

38. While it is not the same process, coming off standby status is similar to permitting a new mine, in that there are a certain number of steps, many of which cause disturbances, which need to be taken at the mine site before mineral extraction can occur. 2018 Tr. at 176: 13-19.

39. There is very little guidance in the Commission's regulations regarding returning a mine from standby to active status. 2018 Tr. at 50: 20-22.

40. In the absence of guidance for coming off standby, Mr. Shepherd testified that MMD analyzed Permit Revision 13-2 in accordance with the regulatory requirements set forth in 19.10.5 NMAC, specifically the requirements for permit revisions and closeout plans, and that Permit Revision 13-2 met those regulatory requirements. 2018 Tr. at 155: 2 to 156: 22.

41. Unlike the Commission's regulation for going on standby status, the regulation for coming off standby status and returning to operating status does not require any type of economic analysis or review. 2018 Tr. at 121: 1-5.

Mount Taylor Mine

42. The Mount Taylor Mine is an underground uranium mine located 20 miles north of Grants, near the Village of San Mateo, in Cibola County, New Mexico. Transcript of May 7-8, 2018 hearing (2018 Tr.) at p. 45: 9-11.

43. The entire permitted mine area is approximately 148 acres and contains support buildings, a covered ore stockpile, a mine water treatment system, a waste rock pile, and various other support buildings surrounding the mine shafts. 2018 Tr. at 46:4-10; 111: 16-19; 289: 20-25; 290:1 to 293: 11; 368:21-25; RGR Exhibit 1, p. 16-20 and RGR Exhibit 4, p. 7, 9-17; MMD Exhibit 4, p. 6.

44. The underground features of the mine include two mine shafts – a 14-foot wide shaft and a 24-foot wide shaft – and extensive underground tunnels, ventilation systems and drifts. 2018 Tr. at 260: 5-13; 310: 14-21; 345: 1-25; and 325: 1-13.

45. In MMD's view, the entire permitted mine area is a "disturbed area" that must be stabilized during development, mining and reclaimed after mining. 2018 Tr. at 111: 14 to 112: 7; MMD Exhibit 4, p. 6.

46. If MMD's interpretation of "mining" were limited to actual mineral extraction only, RGR's permit would cover the five-acre area around the two mine shafts, leaving the remaining 143 acres not subject to reclamation. 2018 Tr. at 112: 8-21 MMD Exhibit 4, p. 6

47. The Mount Taylor Mine is a unique and complex mine in that it is a lot deeper, has more water, and contains higher grade uranium than other uranium mines remaining in the Grants Mining District. 2018 Tr. at 50: 24-25; 64: 23 to 65: 6; 262: 13-17; 326: 24 to 327: 4.

48. Gulf Minerals originally acquired the Mount Taylor Mine in the 1970s; Chevron Resources acquired the mine in 1985 and subsequently sold it to RGR in 1991, after the mine was allowed to flood. 2018 Tr. at 258: 3-11; 267: 24-25; 2018 Tr. at 278: 17-19.

49. The mine began producing uranium in 1978, ceased production in 1982, resumed production in 1985, and ceased again in 1990. 2018 Tr. at 264: 4-5; 268: 17-25; 269: 1-4.

50. Following a 1983 study completed by Dames & Moore designed to evaluate the long-term strength and durability of rocks present in the mine and the stability of the underground workings under a flooded condition, Chevron Resources placed the mine on wet standby in 1989 and allowed it to flood with water after removing all underground equipment. 2018 Tr. at 44:25 to 45:2; 273: 9-19; and RGR Exhibit 2.

51. In December 1994, RGR applied for an existing mine permit for the Mount Taylor mine, which permit MMD issued on July 28, 1995 as Permit No. CI002RE. 2018 Tr. at 46: 14-15; 278: 7-9; MMD Exhibit 3, p. 7; RGR Exhibit 1, p. 6 and RGR Exhibit 4, p. 4.

52. MMD approved Revision 98-1 to Permit No. CI002RE that incorporated a closeout plan for the mine and included financial assurance in the form of a surety bond valued at approximately $725,000. 2018 Tr. at 46: 16-21.

53. MMD approved the mine for standby status on October 12, 1999 for an initial term of 5 years. 2018 Tr. at 284:10-14; 364: 3-9; RGR Exhibit 1, p. 6 and RGR Exhibit 4, p. 4.

54. Since obtaining its initial permit for standby status in 1999, RGR has renewed the permit for standby status two times and its financial assurance has increased from $725,000 to over $7 million. 2018 Tr. at 67: 4-7; 2018 Tr. at 284: 10-14; 364: 3-9: 364: 19 to 365: 1.

55. While on standby status, RGR generally maintained the mine site status quo. 2018 Tr. at 284: 15-23; 364: 3-9.

56. While on standby status, RGR also increased its uranium reserves, maintained certain federal and state permits, designed and maintained water treatment facilities and looked at water treatment technologies, built and maintained certain infrastructure, and abated groundwater contamination. Transcript of December 4, 2015 public hearing ("2015 Transcript") at 19:15-21; 55:11- to 56: 14; 2018 Tr. at 284:24-25; 285: 1-21; 386: 4-25; 287: 1-9; 365: 9-25; 366: 1-25; 367: 1-9, 19-25; 368: 1-20: RGR Exhibit 1, p. 7.

Permit Revision 13-2

57. In April 2013, RGR submitted to MMD an application for permit revision to allow the mine to go off standby status and return to operating status. 2018 Tr. at 46:25 to 47: 1-2; RGR Exhibit 10, 04-2013, Application for Revision 13-2.

58. RGR's application for permit revision included an updated closure/closeout plan. 2018 Tr. at 364:19-25; 365: 1-8; RGR Exhibit 10, 04-2013, Closeout/Closure Plan.

59. MMD assigned Revision 13-2 to Permit No. CI002RE to RGR's application, which was deemed administratively complete in July 2013. 2018 Tr. at 47:3-11; MMD Exhibit 4, p. 8.

60. On December 4, 2015, MMD held a public hearing in Grants, New Mexico regarding RGR's application for Permit Revision 13-2. 2018 Tr. at 47: 4-15; 367: 10-12; MMD Exhibit 4, p. 9; RGR Exhibit 10 02-2016, Public Hearing.

61. As required by 19.10.5.506 NMAC, on July 29, 2016, the New Mexico Environment Department provided its determination that Permit Revision 13-2 "will be expected to achieve compliance with all applicable air, water quality, and other environmental standards" if carried out as described in the closure/closeout plan. 2018 Tr. at 18: 1- to 19:3; 47:16-17; MMD Exhibit 3, p. 3; and RGR Exhibit 10, 07-2016 NMED Environmental Determination.

62. MMD informed RGR in March 2017 that its revised closeout plan for Permit Revision 13-2 was approvable and required RGR to post additional financial assurance for the estimated cost to implement the revised closeout plan. 2018 Tr. at 48: 12-25; 49: 1-7; 364: 3- to 365: 9; MMD Exhibit 4, p. 9.

63. In May 2017, MMD approved the financial assurance posted by RGR in the form of a $7,606,477 irrevocable letter of credit in connection with Permit Revision 13-2. 2018 Tr. at 47: 22-24; MMD Exhibit 4, p. 9.

64. The State of New Mexico holds and will continue to hold RGR's irrevocable letter of credit for the reclamation of the Mount Taylor Mine to ensure future reclamation is conducted in accordance with the closeout plan. 2018 Tr. at 67: 7-11; MMD Exhibit 4, p. 9.

65. MMD approved Permit Revision 13-2 on December 29, 2017. 2018 Tr. at 48: 1-2; MMD Exhibit 4, p. 9

66. Permit Revision 13-2 sets forth a number of general obligations and conditions for the Mount Taylor Mine. RGR Exhibit 10, 12-2017, Approval, Section 9; MMD Exhibit 3, Section 9. These requirements set forth the specific conditions for the Mount Taylor Mine to achieve its Post Mining

Land Use, and include requirements for the Mine Water Treatment Area, the South Waste Rock Pile, the Borrow Areas, the Ore Pad Area, the Service and Support Area, and ancillary facilities. Id.

67. Permit Revision 13-2 also requires RGR to comply with and secure all other permits as may be required by local, state or federal agencies. MMD Exhibit 3, p. 4.

68. Permit Revision 13-2 incorporates MMD's broad definition of "mining" and addresses the many activities that fall under the Act. 2018 Tr. at 113: 3-12; 115: 2-16.

69. Because the Act and Commission's regulations do not provide much guidance for coming off standby status, MMD asked RGR to supplement its application for Permit Revision 13-2 by including a Reactivation Plan to help explain RGR's proposed return to active status. 2018 Tr. at 50: 12-23; MMD Exhibit 3, p. 19 and Appendix C; MMD Exhibit 4, p. 16-17.

70. MMD reviewed Permit Revision 13-2 in accordance with the requirements set forth in 19.10.5 NMAC for permit revisions and closeout plans. 2018 Tr. at 154: 7 to 159: 15.

71. The Reactivation Plan includes a Gantt chart, which depicts phased project development components, tasks, upgrades, designed and implementation schedules, their relative sequence, and the projected duration of actions and activities necessary to accomplish the reopening, reactivation and upgrade of the mine. 2018 Tr. at 50: -12 to 55: 23; MMD Exhibit 3, p. 19 and Appendix C.

72. Year One of the Gantt chart corresponds to the year 2017, Year Two to 2018 and so on. 2018 Tr. at 52: 14-14. RGR is currently in the second quarter of Year Two. 2018 Tr. at 52: 22-23; MMD Exhibit 3, p. 19 and Appendix C.

73. As set forth in the Gantt chart and in testimony, before production of ore from the mine can be expected to resume, RGR must upgrade its service and support units, i.e., activities which are considered development. 2018 Tr. 386: 13-25; 287: 1-21; MMD Exhibit 3, Appendix C.

74. As set forth in the Gantt chart and in testimony, before production of ore from the mine can be expected to resume, RGR must rehabilitate depressurization wells. 2018 Tr. at 382: 4-25; 385: 1-25; 286: 1-3; MMD Exhibit 3, Appendix C.

75. As set forth in the Gantt chart and in testimony, before production of ore from the mine can be expected to resume, RGR must complete work on its mine treatment area, which includes removing contaminated pond sediments to a disposal cell, grading all pond basins, refurbishing hydraulic control structures; installing high density polyethylene ("HDPE") pond liners, installing pond bypass piping, upgrading the ion exchange plant, constructing the molybdenum/selenium ("Mo/Se") treatment plant, and rehabilitating the discharge pipe line. 2018 Tr. at 383: 4-25; 384: 1-25; 286: 1-10; MMD Exhibit 3, Appendix C.

76. As set forth in the Gantt chart and in testimony, before production of ore from the mine can be expected to resume, RGR must include upgrades to its waste pile, which includes reshaping slopes, constructing a clay-lined disposal cell and covering the contaminated sediments, placing ore in an ore storage chamber, and conducting test plots for cover design validation and vegetation plan. 2018 Tr. at 372: 3-25; 273: 1-25; 374-375; 376: 1-17; 378: 4-25; 379-380; 381: 1-13; MMD Exhibit 3, Appendix C.

77. As set forth in the Gantt chart and in testimony, before production of ore from the mine can be expected to resume, RGR must complete ore pad and runoff retention pond updates. 2018 Tr. at 375: 18-25; 377: 14-18; 278: 1-21; 385: 11-25; 386: 1-2; MMD Exhibit 3, Appendix C.

78. As set forth in the Gantt chart and in testimony, before production of ore from the mine can be expected to resume, RGR must complete upgrades to the storm water retention pond, which includes removing sediments to a disposal cell; constructing a clay liner and hydraulic control

structures, and installing a pumping system for transferring water to the mine water treatment unit. 2018 Tr. 385: 11-21; MMD Exhibit 3, Appendix C.

79. As set forth in the Gantt chart and in testimony, before production of ore from the mine can be expected to resume, RGR must upgrade its site drainage, including redirecting runoff, installing new manholes, catch basins and the culverts, separating oil from sediment and transferring water from the south storm water retention pond to the mine water treatment unit. 2018 Tr. at 54: 8-11; 375: 18; 379: 9-25; 380: 1-25; 381: 1-21; MMD Exhibit 3, Appendix C.

80. As set forth in the Gantt chart and in testimony, before production of ore from the mine can be expected to resume, water must be pumped out of the flooded mine workings. 2018 Tr. at 54: 12-15; 312: 5-25; 313: 1-9; 387: 10-21; MMD Exhibit 3, Appendix C.

81. The majority of the activities included in the Reactivation Plan, some of which may occur during standby status or during active phases of mining, are indicative of an active mine. 2018 Tr. at 64: 11-15; 65: 4-5.

82. Section 9(Q) of Permit Revision 13-2 requires RGR to provide quarterly progress reports that will enable MMD to review the progress of the mine reactivation as compared to the Reactivation Plan. 2018 Tr. at 51: 8-13; 55: 7-15; MMD Exhibit 3, p. 19 and Appendix C.

83. Section 9 (Q) of Permit Revision 13-2 also requires MMD to conduct inspections to confirm which activities are being undertaken and compare those activities to those indicated on the Reactivation Plan. 2018 Tr. at 51: 14-17; MMD Exhibit 3, p. 19 and Appendix C.

84. RGR has submitted two status reports dated January 31, 2018 and April 17, 2018, respectively. 2018 Tr. at 56: 1-13; MMD Exhibit 4, p. 18-19.

85. The January 31, 2018 quarterly status report shows that RGR has complied with Phase 1, Task 1D, Construction, by awarding bids as scheduled in the Reactivation Plan. 2018 Tr. at 56: 17-22; MMD Exhibit 4, p. 18.

86. The April 17, 2018 quarterly status report shows that RGR has complied with Phase 1, Task 1D, Construction, by preparing the waste rock pile for construction as was scheduled in the Reactivation Plan. 2018 Tr. at 56: 17-22; MMD Exhibit 4, p. 19.

87. Permit Revision 13-2 contains a number of provisions that are designed to protect air quality, water quality, and the environment by requiring pond liners, waste rock liners, construction of a water treatment system, abatement, reactivation and removal of contaminants. 2018 Tr. at 59: 6-14.

88. The Little Rock mine and the Continental mine, both open-pit mines located in Grant County, are examples of mines that have moved from standby status to operating status. 2018 Tr. at 116: 12-17; 177: 5-8.

89. Approximately one year passed from the time the Little Rock mine returned to operating status to the time it began mineral production. Actual mineral production began relatively quickly at the Little Rock mine, in part, because it was close to the Tyrone Mine, an active, shovel-ready mining operation. 2018 Tr. at 117: 9-21.

90. Similarly, the Continental Mine is expected to produce ore within one year of returning to operating status because of its proximity to the Chino Mine, another shovel-ready operation where the ore will be processed. 2018 Tr. at 118: 12 to 119: 2.

91. Unlike the Little Rock mine or the Continental mine, the Mount Taylor Mine is an underground mine; underground mining requires much more complex infrastructure to be built before the production of ore can occur. 2018 Tr. at 64: 23 to 65: 4; 225: 2-11.

92. If any provision of Permit Revision 13-2 is not followed, MMD will work with the mine operator to modify the permit and/or revisit the closeout plan. In the absence of a resolution, MMD may initiate an enforcement action, as authorized by the Mining Act and the Commission's regulations. 2018 Tr. at 119: 10-25.

Conclusions of Law

1. Pursuant to 19.10.14 NMAC, the New Mexico Mining Commission has jurisdiction to conduct an adjudicatory review of Director's decision to grant Permit Revision 13-2 to Permit No. CI 002RE.
2. Under the Commission's regulations, "each matter of controversy raised by the Petition shall be determined by a preponderance of the evidence." 19.10.14.1431 NMAC.
3. The purpose of the New Mexico Mining Act is "promoting responsible utilization and reclamation of lands affected by exploration, mining, or the extraction of minerals that are vital to the welfare of New Mexico." NMSA 1978, § 69-36-2.
4. The Mining Act confers on the MMD Director broad discretion to implement the purposes of the Act, and administer and enforce the Commission's regulations. See *Rio Grande Chapter of the Sierra Club v. New Mexico Mining Commission*, 2001-NMCA-047, ¶ 20, 130 N.M. 497, 501.
5. The Mining Act and the Commission's regulations define "mining" as "the process of obtaining useful minerals from the earth's crust or from previously disposed or abandoned mining wastes, including exploration, open-cut mining and surface operation, the disposal of refuse from underground and in situ mining, mineral transportation, concentrating, milling, evaporation, leaching and other processing. "Mining" does not mean the exploration of potash, sand, gravel, caliche, borrow dirt and quarry rock used as aggregate in construction, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipes, the development or extraction of coal, the extraction of geothermal resources, smelting, refining,

cleaning, preparation, transportation or other off-site operations not conducted on permit areas or the extraction, processing or disposal of commodities, byproduct materials or wastes or other activities regulated by the federal Nuclear Regulatory Commission." NMSA 1978, § 69-36-3(H); 19.10.1.7(M)(3) NMAC.

6. The Mining Act and the Commission's regulations define "exploration" as "the act of searching for or investigating a mineral deposit, including sinking shafts, tunneling, drilling core and bore holes, digging pits, making cuts and other works for the purpose of extracting samples prior to the commencement of development or extraction operations and the building of roads, access ways and other facilities to such work; however, activities that cause little or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices that are hand carried or otherwise transported over the surface to perform magnetic, radioactive or other tests and measurements, boundary or claim surveying, location work or other work that causes no greater disturbance that is caused by ordinary lawful use of the area by persons not engaged in exploration are excluded from the meaning of "exploration"". NMSA 1978, § 69-36-3(F); 19.10.1.7(E)(3) NMAC.

7. The Mining Act and the Commission's regulations do not make extraction of minerals a necessary component of mining or the conduct of mining operations. NMSA 1978, § 69-36-3.

8. The Mining Act and the Commission's regulations do not require that a mine produce ore for it to be on active or operating status. NMSA 1978, § 69-36-1 *et seq.*; 19.10.5 NMAC.

9. The Mining Act and the Commission's regulations consider exploration, development, and non-ore producing activities to be mining, for which a mine permit is required. NMSA 1978, § 69-36-2 and -3; 19.10.5 NMAC; 19.10.7 NMAC.

10. Interpreting and applying the Mining Act and Commission's regulations are within MMD's scope of duties and expertise. *Gila Resources Information Project v. NM Water Quality Control Commission*, Nos. S-1-SC-35279, -35289, and -35290 slip op. (N.M. S. Ct. March 8, 2018), ¶ 35.

11. MMD's broad interpretation of mining to include many activities which precede, occur during, and follow the actual extraction of minerals from the earth is reasonable and consistent with the stated purpose of the Mining Act, ensuring that lands are adequately protected and reclaimed after mining activities occur.

12. MMD's long-standing practice of addressing all land disturbances associated with mining is in the public's interest, as it affords a greater degree of protection to the public health and the environment.

13. To narrow MMD's long-standing practice and interpretation of what constitutes mining, as Petitioners suggest, would undo decades of environmental protection.

14. RGR's application for Permit Revision 13-2 was administratively complete and complied with the requirements of the Mining Act and the Commission's regulation governing permit modifications and revisions, 19.10.5.505 NMAC.

15. Neither 19.10.7.701(H) NMAC, the Commission's regulation for returning to operating status after a period of standby status, nor any other regulation or provision of the Mining Act require the Director to consider or a mine operator to submit an analysis of the economic viability of the mine with its application for permit revision to return to operating status.

16. The reactivation activities outlined in RGR's Permit Revision 13-2, Appendix C, are mining activities which cannot be conducted during standby status and for which an active status mine permit is required. NMAC 19.10.5 NMAC.

17. The Director acted within his authority and properly followed the Commission's regulations when considering RGR's application for a permit revision to return to operating status: in holding public hearings, receiving public comment, determining the adequacy of financial assurance, and issuing Permit Revision 13-2 to Permit CI002RE.

18. The Director properly reviewed RGR's application for a permit revision in accordance with the Commission's regulation governing permit modifications and revisions, 19.10.5.505 NMAC.

19. The Director properly determined that the activities outlined in RGR's Permit Revision 13-2, Appendix C, are mining activities required to be permitted under active status.

20. The Director did not abuse his discretion in determining that "mining" is not limited to the extraction of minerals and includes development and other non-ore producing activities. 19.10.5 NMAC.

21. The Director acted properly and within his discretion in deciding not to consider or conduct an analysis of the Mount Taylor Mine's economic viability. 19.10.5 NMAC; 19.10.7 NMAC.

22. The Director did not abuse his discretion in approving Permit Revision 13-2. 19.10.5 NMAC.

23. Permit Revision 13-2 contains a number of enforceable requirements that will improve the site conditions at the Mount Taylor Mine and increase the level of protection for public health and environment.

ORDER

BASED on the foregoing Findings of Fact and Conclusions of Law, the New Mexico Mining Commission hereby:

(1) denies Rio Grande Resources' Request for Summary Disposition;

(2) denies Petitioners Multicultural Alliance for a Safe Environment and Amigos Bravos' petition for review of the Mining and Minerals Division Director's decision to approve Rio Grande Resources Corporation's application for Permit Revision 13-2 to Permit CI002RE; and

(3) upholds the Mining and Minerals Division Director's decision to approve Rio Grande Resources Corporation's application for Permit Revision 13-2 to Permit CI002RE.

NEW MEXICO MINING COMMISSION

Dated: July 27, 2018

By: Dennis McQuillan
Commissioner Dennis McQuillan