

BEFORE THE NEW MEXICO MINING COMMISSION

**IN THE MATTER OF THE PETITION FOR
REVIEW OF THE DIRECTOR'S ACTION
DATED NOVEMBER 13, 2023, PERMIT MODIFICATION 23-1
TO PERMIT NO. CA027EM**

STANLEY E. KING and "MOGOLLON CONCERNED CITIZENS," Petitioners

**SUMMA SILVER CORPORATION'S MOTION TO DISMISS
AND JOINDER IN MINING AND MINERALS DIVISION'S RESPONSE**

Summa Silver Corporation ("Summa Silver"), by and through its undersigned counsel of record (Stuart R. Butzier of Modrall Sperling Roehl Harris & Sisk, PA) hereby submits this Motion to Dismiss and Joinder In Mining and Minerals Division's Response ("Motion"). As grounds for this Motion, Summa Silver states as follows:

1. Summa Silver is the permittee under Permit No. CA027EM, as modified by Permit Modification 23-1, and amended by Amendment to Section 3.A of Permit Modification 23-1.
2. This Motion is timely made as a motion herein under 19.10.14.1421.B NMAC.
3. Petitioners' Petition, however, is untimely under NMSA 1978, 69-36-15(A), inasmuch as the only matters complained of in the Petition which may fall within the topical permitting jurisdiction of the Mining and Minerals Division ("MMD"), i.e., whether Summa Silver's project qualified for permitting or should be "re-evaluat[ed]" as a "minimal impact exploration permit," were the subject of a "final" permitting decision in 2021, when MMD initially issued Summa Silver its minimal impact exploration permit. *See* MMD's Response, which Summa Silver hereby joins in its entirety, at pages 6-7. Accordingly, the Petitioners' Petition should be dismissed in its entirety as untimely.

4. Petitioners' Petition also fails to state a claim for which relief can be granted under the New Mexico Rules of Civil Procedure 1-012(B)(6), for various reasons described in MMD's Response. These reasons include: (a) the lack of any statement of factual bases for the assertions that there is a "potential" for a taking of a threatened or endangered species; (b) the lack of any statement of factual bases for asserting that there is a "proximity to historical sites" or any potential for cultural resources to be impacted; (c) the lack of any statement of factual bases for asserting there is a potential "threat" of pollution to nearby waters; (d) the lack of any statement of factual bases that Permit Modification 23-1 itself conflicts with the requirements of 19.10.1.7.M(2); and (e) the fact that many of Petitioners' claims or assertions—including those related to traffic, traffic safety conditions, noise, and the like—relate to matters entirely outside the subject matter and permitting jurisdiction of MMD and this Commission.

5. Finally, Petitioner's assertions relating to MMD's description of the permit or project area due to a typographical error in one instance, while the permit or project area is correctly identified and described in detail elsewhere in the permit materials, fail to state a claim upon which relief may be granted and in any event are mooted by the Amendment to Section 3.A of Permit Modification 23-1 to Permit Number CA027EM.

Conclusion and Relief Requested

For all of the above reasons, and for the further reasons spelled out more fully in MMD's Response, which Summa Silver fully embraces and joins herein, Petitioners' Petition should be dismissed in its entirety as a matter of law.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2024, a true and correct copy of the foregoing filing
was electronically transmitted to:


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