

BEFORE THE DIRECTOR OF THE MINING AND MINERALS DIVISION

**IN THE MATTER OF
SOUTHWEST RESOURCES INC.'S
SECTION 12 MINE**

**DIRECTOR'S ORDER OF ABATEMENT ON CONSENT
WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW**

THIS MATTER comes before the Director ("the Director") of the Mining and Minerals Division of the Energy Minerals and Natural Resources Department ("MMD") of the State of New Mexico upon the consent of Southwest Resources, Inc. ("SRI") and George Lotspeich ("Lotspeich"), its majority shareholder and President (together the "Responsible Parties") for the purpose of abatement and Reclamation of hazards to human health and the environment at the Section 12 Mine site, T14N, R10W, in McKinley County, New Mexico, near Ambrosia Lake ("the Mine Property").

The Director, having considered the relevant MMD files and otherwise being fully advised on the premises, now enters the following Finding of Fact, Conclusions of Law, and Order of Abatement on Consent with the consent and concurrence of the Responsible Parties:

FINDINGS OF FACT

1. All capitalized terms not otherwise specified in this in this Order of Abatement on Consent are defined as provided in the Mining Act NMSA 1978 §§ 69-36-1 through 69-36-20 ("the Mining Act"), and its implementing rules Title 19, Chapter 10 NMAC, ("the Mining Act Rules").
2. SRI, business ID No. 1024082, is a closely held New Mexico corporation with a principal address of 4011 Mesa Verde NE, Albuquerque, New Mexico. George Lotspeich is the President and holds controlling interest in SRI.

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3. The New Mexico Secretary of State revoked SRI's status as a corporation in good standing.
4. Notwithstanding the forgoing, SRI warrants and represents that it has legal capacity to undertake all of the warranties, representations, agreement, consents, and obligations described in this Order of Abatement on Consent.
5. SRI warrants and represents that the undersigned is authorized to bind SRI.
6. SRI is the sole owner the surface estates where the Mine Property is located and where the abatement and Reclamation activities that are the subject of this Order of Abatement on Consent shall occur. SRI is also the sole owner of the mineral estates associated or appurtenant to the Mine Property.
7. On January 29, 2017, SRI submitted to MMD for approval an application for a permit ("the Permit Application") as an Existing Mining Operation including a closeout plan as required by 19.10.5.501 NMAC.
8. The Mine Property which is the subject of this Order of Abatement on Consent is as described in the Permit Application and is located T14N, R10W, McKinley County, New Mexico in the Ambrosia Lake Mining District.
9. The Mine Property was operated by Cobb Resources, the predecessor in interest to SRI, from 1974 to 1982. During that time, uranium minerals and waste rock were extracted from the mines for a period that exceeds a total of at least two years.
10. The Mineral Property was operated solely as an underground mine. There is no open pit located on the Mineral Property.

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11. The Mine Property was operated as a "dry mine" that did not discharge effluent from the mine workings containing uranium mineralization or radionuclides.
12. A video survey conducted October 17, 2019, demonstrated that the main shaft is dry from the shaft collar to the bottom of the shaft sump.
13. The surface disturbance at the Mine Property exceeds 10 acres, excluding permanent roads.
14. A mine building, a hoist house, a main shaft, and two subsidiary vent shafts with or without headframes, piles of waste rock that contains low grade uranium mineralization, piles of rock mineralized with uranium that were intended for milling, and soils contaminated by uranium mineralization exist on the Mine Property. The Mine Property also contains, roads, drainage ditches, and miscellaneous mining equipment.

CONCLUSIONS OF LAW

15. The New Mexico Mining Act and the Mining Act Rules authorize the Director to order abatement of conditions that are caused by or are attributable to violations of the Mining Act. NMSA 1978 § 69-36-7(S)(4); 19.10.11.1102 (B) NMAC.
16. The Mining Act and the Mining Act Rules, specifically NMAC 19.10.11, authorize enforcement of this Order of Abatement on Consent, including but not limited to the provisions for inspection, enforcement, and assessment of penalties.
17. The Responsible Parties waive all objections to the jurisdiction of MMD over the Mine Property and acknowledge that the Responsible Parties are subject to the Mining Act and Mining

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Act Rules as an "Existing Mining Operation" pursuant to 19.10.1.7 (E)(2) NMAC for the Mine Property.

18. The Mining Act and the Mining Act Rules require the owner of an Existing Mining Operation to have submitted for approval an application for a permit including a closeout plan by no later than December 31, 1995.

19. The Responsible Parties are in violation of the Mining Act and the Mining Act Rules because they have not yet obtained an approved permit for the Mine Property including a closeout plan as required by the Mining Act Rule NMAC 19.10.5.

20. The Mining Act Rules that are applicable to Existing Mining Operation, NMAC 19.10.5, require the mine facilities described in paragraph 14, above, be demolished, removed, sealed, plugged, regraded and otherwise reclaimed.

21. NMAC 19.10.5.506 (B) requires that the Mine Property be subject to a closeout plan which "shall include a detailed description of how the permit area will be reclaimed to meet the requirements of Section 69-36-11(B)(3) of the [Mining] Act and the performance and reclamation standards and requirements of 19.10.5 NMAC."

22. In lieu of a permit and closeout plan, the Director is authorized to accept a technically sufficient and approvable Reclamation Plan that satisfies the reclamation standards set forth in NMAC 19.10.5.506 (A), (B) and (J)(3), (J)(5)(closeout plans) and 19.10.5.507 (A)(reclamation standards and requirements).

23. NMAC 19.10.5.506 (C) specifies that reclamation of an Existing Mining Operation obligates the Responsible Parties to take "measures . . . to ensure that the [mine] or waste unit

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will meet all applicable federal and state laws, regulations and standards for air, surface water and ground water protection following closure and will not pose a current or future hazard to public health or safety.”

24. The Mine Property is subject to and shall be reclaimed to comply with state laws and regulations administered by the New Mexico Environment Department (“NMED”). The Operator may request in writing an extension of deadlines set forth in this Order in advance for good cause. NMED shall exercise good faith when reviewing a request for an extension of any deadline by the Operator.

25. Accordingly, the Mine Property shall be reclaimed such that the contamination attributable to dumping or release of radionuclides on the Mine Property and adjacent lands is reduced to levels that meet environmental standards. Section 2.0 (State of New Mexico Radiation Cleanup Criteria) of the Joint Guidance for the Cleanup and Reclamation of Existing Uranium Mining in New Mexico, dated March 2016 (“the Joint Guidance Document”)¹ shall serve as the source of the environmental standards for Reclamation of radioactive contamination for the Mine Property.

26. The Responsible Parties waive their right to receive a notice of violation and order and the right to appeal such notice and order to the New Mexico Mining Commission set forth in 19.10.11.1102 (B) NMAC for any violations that may have occurred prior to the effective date of this Order of Abatement on Consent.

¹ Available at:
<http://www.emnrd.state.nm.us/MMD/MARP/documents/March2016JointGuidelinesforExistingMinesandRadiationCleanup.pdf>

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27. The Responsible Parties waive their right to seek operational status for the Mine Property and agree to comply with this Order of Abatement on Consent and otherwise Reclaim and abate conditions at the Mine Property in accordance with the Final Reclamation Plan that is the subject of this Order of Abatement on Consent.

28. For the purposes of preserving limited SRI resources for Reclamation of the Mine Property, the Director declines to assess penalties for violations of the Mining Act and the Mining Act Rules for failure by the Responsible Parties to permit, closeout or Reclaim the Mine Property prior to the date of issuance of this Order of Abatement on Consent.

29. The Responsible Parties need not provide Financial Assurance for Reclamation and abatement under this enforcement action as long as they comply with the terms of this Order of Abatement on Consent including the terms, provisions, and schedule set forth in a technically sufficient and approvable Final Reclamation Plan. In the event that the Responsible Parties fail to abide by the terms and schedule set forth in this Order of Abatement on Consent and the Final Reclamation Plan, the Director may require the Responsible Parties to provide financial assurance in accordance with the Mining Act Rules.

ORDER OF ABATEMENT ON CONSENT

IT IS THEREFORE ORDERED as follows:

30. The Director orders and Responsible Parties agree to complete the items described in paragraphs 30 through 36 within the applicable deadlines in order to abate violations of the Mining Act:

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31. The Director orders and the Responsible Parties agree to provide to MMD the results of a video survey of the Section 12 Mine shaft by the end of the business day, November 30, 2019.

32. The Director orders and the Responsible Parties agree, except for good cause shown, to submit to MMD by no later than February 1, 2020, a Final Draft Reclamation Plan that satisfies the requirements of NMAC 19.10.5.506 (A), (B) and (J)(3), (J)(5), 19.10.5.507 (A), and the Section 4.0 (reclamation considerations) of the Joint Guidance Document that addresses the following work items for the Section 12 Mine:.

- a. A detailed property description of lands disturbed;
- b. Identification of affected areas that may exist outside of property owned by SRI.
- c. Demolition and removal of all head frames from the Mine Property;
- d. Backfill, sealing, and closure of the main shaft;
- e. Safeguarding and closure the two ventilation shafts and other mine workings that are open to the air;
- f. Demolition and removal from the Mine Property all mine buildings including their foundations and equipment;
- g. Removal or burial, containment, and capping of contaminated materials such as waste rock, other rock mineralized with uranium or other radioactive minerals, and contaminated soil such that all expressions of radio nuclear activity are reduced to levels below applicable standards including those set forth in the Joint Guidance Document;

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- h. Capping and grading of buried and contained contaminated materials in a manner and with materials that meet Sections 2.0 and 4.0 of the Joint Guidance Document (Cover material must be of sufficient thickness and texture to remain in place, and not allow for the re-exposure of buried TENORM material);
- i. Removal and regrading and Reclamation of all temporary roads;
- j. Regrading of areas where contaminated materials were removed to prevent erosion;
- k. Resoiling of all disturbed and reclaimed areas as necessary to promote revegetation;
- l. Revegetating all disturbed and reclaimed and abated areas including but not limited to locations of mine buildings, rock piles, areas where contaminated materials are buried and contained;
- m. In the event of uncovering or discovery of any cultural resources in the course of Reclamation activities, all work shall cease in the discovery area, remains shall be protected in place, and the Department of Cultural Affairs shall be notified;
- n. Verification of completion of Reclamation and abatement in accordance with NMAC 19.10.5.506 (closeout plans for Existing Mining Operations) and 19.10.5.507 (A) (Performance and Reclamation Standards for Existing Mining Operations) and applicable radiological standards set forth in the Section 2.0 of the Joint Guidance Document;
- o. Description of measures to protect the Revegetation from cattle for at least three full growing seasons after seeding;

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- p. Revegetation of areas that have not become established by the end of the growing season (October 1) shall be treated (mulching, contouring, waterbars) to prevent erosion, site degradation, and adverse effects of cattle grazing;
 - q. Monitoring of Reclaimed areas for five years after seeding, and undertaking remedial measures as necessary to correct areas exhibiting signs of erosion, instability or inadequate plant growth;
 - r. Submittal to MMD within 60 days of the effective date of this Order, a schedule for completion of all action items in the Reclamation Plan, excluding achievement of revegetative success, to be completed by no later than two years after approval of the Reclamation Plan by MMD; and,
 - s. Until release by the Director from the requirements of this Order of Abatement on Consent, submittal of monthly progress reports to MMD upon approval of the Final Reclamation Plan that addresses progress on: (1) demolition of structures; (2) earthwork; (3) cover placement; (4) revegetation; (5) post reclamation maintenance.
33. The Director orders and the Responsible Parties agree to submit an approvable Final Reclamation Plan to MMD within 60 days, except for good cause shown, after the date of MMD's comments to the Final Draft Reclamation Plan.
34. The Director orders and the Responsible Parties agree that approval by the Director of the Reclamation Plan shall be contingent on review and issuance of a written decision or other acknowledgement of compliance by NMED.

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35. The Director orders and the Responsible Parties agree that except for good cause shown, they shall Reclaim the Mine Property in accordance with the terms and schedule of Reclamation Plan approved by the Director.

36. The Director orders and the Responsible Parties agree to provide a Reclamation Summary Report to MMD within 30 days of completion all activities described in the Reclamation Plan (with the exception of monitoring the success of revegetation) that summarizes the remedial actions taken at the Mine Property, provides a Quality Assurance/Quality Control assessment, and demonstrates compliance with applicable requirements of the Mining Act, the Mining Act Rules the standards contained in the Sections 2.0 and 4.0 of the Joint Guidance Document and any other applicable environmental standards, and that includes the results of a post-reclamation radiological survey.

37. This Order of Abatement on Consent does not relieve the Responsible Parties from complying with other applicable state requirements and standards.

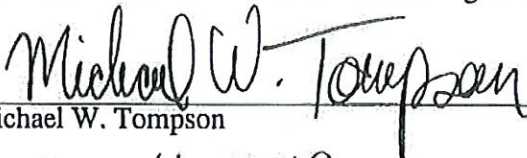
38. Upon determination by the Director that the Responsible Parties have successfully completed the Reclamation Plan including monitoring the success of revegetation, the Director shall notify the Responsible Parties in writing that they have completely satisfied their duties and obligations under this Order of Abatement on Consent.

39. The Responsible Parties acknowledge that in the event that the Director determines that the Responsible Parties have failed to abide by the terms and schedule in the Reclamation Plan the Director may proceed with appropriate proceedings under the Mining Act and the Mining Act Rules against the Responsible Parties or any other responsible party.

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40. In the event that the Director initiates enforcement action for violation of this Order of Abatement on Consent, no term of this Order of Abatement on Consent shall be understood or construed as waiver of the notice and appeal rights specified in 19.10.11 NMAC for any such alleged violation.


By Order of the Interim Director of Mining and Minerals Division



Michael W. Tompson
Dec. 16, 2019

Date

The undersigned on behalf of
Southwest Resources Inc., consents to
and otherwise agrees to abide by the
terms of this Order of Abatement on
Consent,



~~Skylor Wildenstein, Trustee~~
EMPIRE TRUST, INC., Trustee
January 14, 2020

Date

