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HOLME ROBERTS & OWEN LLP
A. John Davis, Utah Bar No. 0825
Christopher R. Hogle, Utah Bar No. 7223
M. Benjamin Machlis, Utah Bar No. 12585
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: (801) 521-5800
Facsimile: (801) 521-9639

Attorneys for Respondent,
Earth Energy Resources, Inc.

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

LIVING RIVERS, Petitioner, v. DIVISION OF OIL, GAS AND MINING, Respondent, EARTH ENERGY RESOURCES, INC., Intervenor/Respondent.	**EARTH ENERGY RESOURCES, INC.'S RESPONSE TO PETITIONER'S REQUESTS FOR PRODUCTION OF DOCUMENTS** Docket No. 2010-027 Cause No. M/047/0090 A

Intervenor/Respondent Earth Energy Resources, Inc. ("Earth Energy"), hereby responds to Petitioner Living Rivers Request for Production of Documents ("Requests").

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. Earth Energy objects to the Requests and to the Definitions and Instructions contained therein to the extent that they seek to alter, vary, expand, or enhance Earth Energy's obligations with regard to discovery as established and provided in the Board of Oil Gas and Mining's (the "Board") Rules of Practice and Procedure and is beyond the scope of discovery agreed to by the parties in the Stipulation of the Parties Governing Discovery and Other Pre-hearing Matters. Earth Energy did not agree to respond to requests of the type Living Rivers has propounded, and Living Rivers has failed to make a showing of good cause that discovery of the materials it requests is necessary, as required by the Board's Rules of Practice and Procedure, including UTAH ADMIN. CODE r. 641-108-900. Each response is qualified by, limited in accordance with, and is expressly made subject to the requirements of the Board's Rules of Practice and Procedure, and Earth Energy assumes no additional obligation or burden.

2. Earth Energy objects to the Requests to the extent that they seek documents protected by the attorney-client privilege, the work product doctrine, or any other privilege or protection according to law. No such information will be provided. Correspondence, including e-mail, between Earth Energy and its counsel are all covered by the attorney-client privilege and will not be produced or identified.

3. Earth Energy objects to the Requests to the extent that they seek information already provided or publicly available to Living Rivers, including the data presented in Earth Energy's Notice of Intent to Commence Mining Operations ("NOI") and the appendices thereto, during the informal conference held November 23, 2009, and all other documents available

through the Utah Division of Oil Gas and Mining's ("DOGM") and the Utah Division of Water Quality ("DWQ").

4. Earth Energy objects to the Requests to the extent that they seek documents that are irrelevant and beyond the scope of the issues raised by Living Rivers in the informal decision making process and in its Request for Agency Action. Nothing contained in any response herein shall be deemed to be an admission, concession, or waiver by Earth Energy as to the relevance, materiality, or admissibility of any document provided by either Earth Energy or DOGM.

5. Earth Energy objects to the Requests to the extent that they fail to identify the documents sought with reasonable specificity.

6. Earth Energy responds to the Requests on the basis of information available to Earth Energy on the date hereof. Earth Energy reserves the right to supplement or amend its responses, if necessary, at any time as it may hereafter deem appropriate.

7. Earth Energy objects to the Requests to the extent the documents sought are not in the custody, possession, or control of Earth Energy and/or are in the custody, possession, or control of the DOGM, DWQ, or other public agencies, and discovery from these other sources is more convenient, less burdensome, and less expensive than discovery from Earth Energy.

8. The responses herein are made without in any way waiving or intending to waive, but rather preserving and with the intent to preserve:

(a) All questions as to the foundation, relevance, materiality, privilege, and admissibility of each response and of the documents provided or the subject matter

thereof as evidence for any purpose, whether in any stage of this litigation or in any other proceeding;

(b) The right to object on any ground to any further or future demand for discovery involving or relating to any response, document, or subject matter; and

(c) The right at any time to revise, correct, add to, or clarify any of these responses.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Without waiving the above general objections and reservations of rights, but instead preserving and asserting them in response to each Request, Earth Energy responds to each Request as follows:

REQUEST FOR PRODUCTION NO. 1: Please provide all documents that show results of all analysis of surface water runoff under existing conditions and projected post-mining conditions, including but not limited to model used, inputs, data, maps, and model results for entire mine site.

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy responds that because applicable statutes and rules require no such data beyond the information that Earth Energy presented with its NOI, it possesses no documents responsive to this Request that are not already available as part of the DOGM's public records. UTAH ADMIN. CODE r. 647-4-109 only requires "a general narrative description" of the project's potential impacts and proposed mitigation measures. Earth Energy's NOI more than satisfies the requirements of Rule 109. It provides a *detailed* narrative description of the surface water runoff from the site and includes a Storm Water Pollution Prevention Plan. As described in the NOI surface water runoff is effectively mitigated by the

unique geographic location of the mine site, the closed system design of the pit and processing facilities, and the design of the overburden/interburden storage area.

REQUEST FOR PRODUCTION NO. 2: Please provide all documents that show results of all analysis of sediment yield under existing conditions and projected post-mining conditions, including but not limited to model used, inputs, data, maps, and model results for the overburden/interburden storage areas.

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy responds that because applicable statutes and rules require no such data beyond the information that Earth Energy presented with its NOI, it possesses no documents responsive to this Request that are not already available as part of the DOGM's public records. UTAH ADMIN. CODE r. 647-4-109 only requires "a general narrative description" of the project's potential impacts and proposed mitigation measures. Earth Energy's NOI more than satisfies the requirements of Rule 109. It provides a *detailed* narrative description of the sediment yield from the site and mitigation measures that will be used to prevent sediment from the overburden/interburden area from impacting surface water and includes a Storm Water Pollution Prevention Plan. As described in the NOI sediment yield in surface water runoff is effectively mitigated by the unique geographic location of the mine site, the closed system design of the pit and processing facilities, and the design of the overburden/interburden storage area.

REQUEST FOR PRODUCTION NO. 3: Please provide all documents that show data on surface water quantity collected in the permit and adjacent areas including, but not limited to, sample locations, sample dates and times, estimated flows, and discussion of sampling technique.

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy responds that because applicable statutes and rules require no such data beyond the information that Earth Energy presented with its NOI, it possesses no documents responsive to this Request that are not already available as part of the Division's public records.

REQUEST FOR PRODUCTION NO. 4: Please provide all documents that show data on surface water quality collected from samples in the permit and adjacent areas including, but not limited to, sample locations, sample dates and times, estimated flows, discussion of sampling technique, results of water quality analysis including field parameters and laboratory data sheets, and quality assurance / quality control plan and samples.

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy responds that because applicable statutes and rules require no such data beyond the information that Earth Energy presented with its NOI, it possesses no documents responsive to this Request that are not already available as part of the DOGM's public records.

REQUEST FOR PRODUCTION NO. 5: Please provide all documents that show data on ground water quantity collected from wells and from seeps and springs in the permit and adjacent areas including, but not limited to, sample locations, sample dates and times, estimated flows, and discussion of sampling technique.

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy responds that because applicable statutes and rules require no such data beyond the information that Earth Energy presented with its NOI, it

possesses no documents responsive to this Request that are not publicly available from DOGM, DWQ, or the Department of Natural Resources, Division of Water Rights ("DWR").

REQUEST FOR PRODUCTION NO. 6: Please provide all documents that show data on ground water quality collected from wells and from seeps and springs in the permit and adjacent areas including, but not limited to, sample locations, sample depths/elevations, sample dates and times, estimated flows or water surface elevation, discussion of sampling technique, results of water quality analysis including field parameters and laboratory data sheets, and quality assurance / quality control plan and samples.

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy responds that because applicable statutes and rules require no such data beyond the information that Earth Energy presented with its NOI, it possesses no documents responsive to this Request that are not publicly available from DOGM, DWQ, or DWR. Earth Energy has been granted a Groundwater Discharge Permit By Rule by DWQ, which was attached to the NOI submitted to DOGM, in which DWQ has determined that, as designed, Earth Energy's operation will have a *de minimis* effect on groundwater quality.

REQUEST FOR PRODUCTION NO. 7: Please provide all documents that show geologic logs and driller's reports (including but not limited to reports of drilling methods, recovery, drilling fluids, casing, completion records) for all wells drilled at the site.

RESPONSE: Earth Energy objects to this Request on the basis that it seeks documents that are irrelevant, it exceeds the permissible scope of discovery, and it is vague. The geologic logs and drillers reports that are outside DOGM's public records are irrelevant because they bear on none of the issues raised in Living Rivers' Request for Agency Action. Moreover, much of

the data in such materials is proprietary in nature, and disclosure of such data not only lacks any tendency to prove or disprove any fact in issue, but it could also harm Earth Energy.

REQUEST FOR PRODUCTION NO. 8: Please provide all documents that show geologic cross-sections, transects, or profiles generated from geologic maps and from well and seep and spring data.

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy responds that because applicable statutes and rules require no such data beyond the information that Earth Energy presented with its NOI, it possesses no documents responsive to this Request that are not publicly available from DOGM, DWQ, or DWR.

REQUEST FOR PRODUCTION NO. 9: Please provide any documentation of seep and spring inventory including but not limited to maps showing area surveyed and notes.

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy responds that because applicable statutes and rules require no such data beyond the information that Earth Energy presented with its NOI, it possesses no documents responsive to this Request that are not publicly available from DOGM, DWQ, or DWR.

REQUEST FOR PRODUCTION NO. 10: Please provide any documentation of existing surface water features including but not limited to identification on maps of reaches of streams that are perennial, intermittent, and/or ephemeral.

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy responds that because applicable statutes and rules require no such data beyond the information that Earth Energy presented with its NOI, it

possesses no documents responsive to this Request that are not publicly available from DOGM, DWQ, or DWR.

REQUEST FOR PRODUCTION NO. 11: Please provide any documentation that includes a detailed description of the full stratigraphic section that will be mined and processed, from which the variations in ore can be determined.

RESPONSE: Earth Energy objects to this Request on the basis that it seeks documents that are irrelevant, it exceeds the permissible scope of discovery, and it is vague. The requested materials, to the extent they are outside DOGM's public records, are irrelevant because they bear on none of the issues raised in Living Rivers' Request for Agency Action. Moreover, much of the data in such materials is proprietary in nature, and disclosure of such data not only lacks any tendency to prove or disprove any fact in issue, but it could also harm Earth Energy.

REQUEST FOR PRODUCTION NO. 12: Please provide any documentation that includes a detailed description of the ore rock for each of the variable strata identified in the detailed description of the stratigraphy, including: elemental analyses of the ore (combined rock and organic matter); elemental analyses of the organic matter; mineralogical analyses of the ore (combined rock and organic matter); mineralogical analyses of the organic matter; analyzes of sulfur partitioning (total sulfur, sulfate, sulfite, elemental sulfur, and sulfide) of ore (combined rock and organic matter); analyzes of sulfur partitioning (total sulfur, sulfate, sulfite, elemental sulfur, and sulfide) of organic matter.

RESPONSE: Earth Energy objects to this Request on the basis that it seeks documents that are irrelevant, it exceeds the permissible scope of discovery, and it is vague. The requested materials, to the extent they are outside DOGM's public records, are irrelevant because they bear on none of the issues raised in Living Rivers' Request for Agency Action. Moreover, much of

the data in such materials is proprietary in nature, and disclosure of such data not only lacks any tendency to prove or disprove any fact in issue, but it could also harm Earth Energy.

REQUEST FOR PRODUCTION NO. 13: Please provide any documentation that includes a detailed description of waste rock analyses, including: elemental analyses of the waste rock; mineralogical analyses of the organic waste; analyzes of sulfur partitioning (total sulfur, sulfate, sulfite, elemental sulfur, and sulfide) of waste rock.

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy responds that because applicable statutes and rules require no such "detailed description of waste rock analyses" beyond the information that Earth Energy presented with its NOI, Earth Energy possesses no documents responsive to this Request that are not already available as part of the DOGM's public records.

REQUEST FOR PRODUCTION NO. 14: Please provide any documentation that includes a detailed description of any leaching tests conducted, including: test protocols and leaching results of all column leaching tests performed on ore rock; test protocols and leaching results of all column leaching tests performed on waste rock; test protocols and leaching results of all high solid:liquid ratio leaching tests performed on ore rock; test protocols and leaching results of all high solid:liquid ratio leaching tests performed on waste rock; test protocols and leaching results of all long-duration leaching tests performed on ore rock; test protocols and leaching results of all long duration leaching tests performed on waste rock; test protocols and leaching results of all other leaching tests performed on waste rock and ore rock except those presented as part of the application materials; the discussion for each of the above leaching protocols relating the leaching results relative to the quality of leachate that will form at the mine upon disposal.

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy responds that because applicable statutes and rules require no such "detailed description of ... leaching tests" beyond the information that Earth Energy presented with its NOI, Earth Energy possesses no documents responsive to this Request that are not publicly available from DOGM or DWQ. Information derived from leaching tests' relevance is limited to potential groundwater impacts of the operation, and as shown in the NOI, DWQ has determined that the mine will have a *de minimis* impact on groundwater.

REQUEST FOR PRODUCTION NO. 15: Please provide any documentation that includes Material Safety Data Sheets for each of the chemicals/materials used in the chemical mix and sequence used to extract the organic matter or recover the process chemical(s).

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy has already provided the Material Safety Data Sheets it has for chemicals/materials used in the Ophus process. The NOI describes a cleaning emulsion as part of the Ophus process, but Earth Energy has determined it is unnecessary and will not be used as part of the Ophus Process. Accordingly, the Material Safety Data Sheet for such cleaning emulsion is not being provided at this time.

REQUEST FOR PRODUCTION NO. 16: Please provide any documentation that includes results of any toxicity testing done on each of the chemicals/materials used in the chemical mix and sequence used to extract the organic matter or recover the process chemical(s).

RESPONSE: Earth Energy objects to this Request on the basis that it is vague. Subject to and without waiving its objections, Earth Energy responds that because applicable statutes and rules require no data regarding Earth Energy's Ophus Process beyond the information that Earth

Energy presented with its NOI, Earth Energy possesses no documents responsive to this Request that are not publicly available from DOGM or DWQ.

DATED this 3rd day of January, 2011.

HOLME ROBERTS & OWEN LLP

A. John Davis
Christopher R. Hogle
M. Benjamin Machlis
Attorneys for Earth Energy Resources, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of January, 2011, a true and correct copy of the foregoing EARTH ENERGY RESOURCES, INC.'S RESPONSE TO PETITIONER'S REQUEST FOR PRODUCTION OF DOCUMENTS was served via email, as follows:

Joro Walker
Charles R. Dubuc
Western Resource Advocates
Attorneys for Petitioners
150 South 600 East, Ste 2A
Salt Lake City, Utah 84102
jwalker@westernresources.org
rdubuc@westernresources.org

Steven F. Alder
Assistants Attorney General
1594 West North Temple, Ste 300
Salt Lake City, Utah 84116
stevealder@utah.gov

Mike Johnson
Assistant Attorney General
Counsel for Board of Oil, Gas and Mining
1594 West North Temple, Ste 300
Salt Lake City, Utah 84116
mikejohnson@utah.gov

HOLME ROBERTS & OWEN LLP

Christopher R. Hogle

#277366 v1A slc