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Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES

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Division of Oil, Gas and Mining

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September 13, 2010

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Subject: Informal Conference for PR Springs Mine M/047/0090

Gentlemen:

On July 27, 2010, the Division of Oil, Gas, and Mining ("the Division") held an informal conference regarding the Division's approval of the Notice of Intention to Commence Large Mining Operations ("NOI") for the referenced mine. Living Rivers on behalf of itself and Center for Biological Diversity, Peaceful Uprising, and Red Rock Forests ("the Petitioners") requested the informal conference by letter dated April 26, 2010, addressed to Ms. Dana Dean, Associate Director of Mining for the Division. As the hearing officer for the July 27th informal conference, I am providing this letter to the parties in order to communicate my decision from the conference.

The informal conference proceeded as follows:

1. The conference commenced at 2:03 p.m. Mr. John Baza, Director of the Division acted as hearing officer. Mr. Baza indicated that the hearing was being transcribed by a court reporter. Mr. Baza introduced the parties, described the type of conference being held, and presented the procedure for the conference.
2. Mr. Steven Alder, as attorney for the Division provided an overview of the legal responsibilities of the Division in approving the NOI. Mr. Paul Baker, Minerals

Program Manager for the Division, provided information pertaining to the Division's processing of the application, the intended plan for mining, and the requirement for reclamation upon completion of operations.

3. Mr. John Weisheit, Ms. Juliana Williams, and Mr. Ashley Anderson, representing the Petitioners, stated their concerns and objections to the Division's issuance of the mining permit.
4. Members of the public interjected questions during and after the comments of both the Division and the Petitioners. Mr. Baza allowed such questions to be posed and answered.
5. Mr. John Davis of Holme, Roberts & Owen, LLP, counsel for the mining applicant Earth Energy Resources ("the Applicant"), responded. He introduced Mr. Barclay Cuthbert of Earth Energy Resources to provide information on the intents of the Applicant. Ms. Karla Knoop of JBR Environmental Consultants appeared as a technical witness for the Applicant and discussed water issues related to the NOI. She also discussed the reclamation of the mine and salvaging of topsoil.
6. Upon questioning by Mr. Baza, Mr. Tom Munson, Environmental Scientist for the Division, discussed erosion control, storm water protection, drainage, mine plan requirements and permit requirements of other agencies within state government.
7. Mr. Baker, Mr. Alder, and Mr. Cuthbert responded to additional questions from Mr. Baza.
8. Mr. Baza then allowed several questions from members of the public attending the meeting. Members of the Division, the Applicant, and Mr. Alder replied to those questions.
9. Mr. Baza then directed each of the Division, the Petitioners, and the Applicant to offer concluding remarks. Following those concluding remarks, Mr. Baza adjourned the informal conference at 4:21 p.m.

The Petitioners expressed numerous concerns at the hearing and in writing, including the following:

1. The Petitioners expressed some general concerns. They indicated they think the Notice of Intention is inadequate because it does not consider all of the possible impacts to water, air, and health in the region, including, for example, the impacts from refining, and the impacts from increased road traffic. They expressed the general concern that petroleum-based energy should be abandoned and that the project will produce carbon dioxide thereby contributing to climate change. They also indicated that the NOI focused on the West Pit, but not the North Pit, even though the North Pit was described in the NOI.
2. The Petitioners expressed specific concerns related to reclamation. They said the waste rock could be vulnerable to debris flows, sediments from storage piles could reach surface water without preventive measures, that storage areas may not be adequate in size, that it will be difficult to achieve desired post-reclamation topsoil depth with

existing soil, that reclaiming to original contours may not be possible, and that non-native plants should not be used for revegetation.

3. The Petitioners stated concerns relating to water quality. They said the drainage design may not be adequate, and, therefore, downstream surface water and groundwater resources, such as Willow Creek, the Colorado River, and/or the Green River could be polluted by the mining operation or related activities such as dust suppression. They said they were worried that waters could become polluted by sediments or become salty. They indicated a belief that data on total dissolved solids (TDS) could be inaccurate and that more data would be helpful. They asked the Division to consult with Colorado River management agencies and consider long-term monitoring of Willow Creek. They expressed a concern that hydrocarbons, heavy metals, or volatile organic compounds may have already leached into water resources in the mine.
4. The Petitioners were concerned about water quantity including whether surface water or groundwater resources may be diminished and whether there would be adequate water for the operation including dust control.
5. The Petitioners said they were concerned that the operation would encourage water right speculation, conflict with Indian water rights, or create water rights conflicts.
6. The Petitioners indicated concerns related to local and regional air quality. They said the impacts to air quality from the operation and related activities are unknown or have not been fully disclosed or considered (e.g. road dust, light pollution). They requested the Division to require data for a study on ozone, and indicated a desire to see a regional air quality model developed. They requested the operator consult with the Counties on dust-minimization strategies.
7. The Petitioners expressed concerns related to the chemical that is used in the operation including any chemical residue. They said D-limonene has not been evaluated for toxicity by any major health organization and alkylbenzene sulfonate has been proven toxic to aquatic fauna.
8. The Petitioners were concerned about possible impacts to wildlife. They indicated that wildlife habitat including fish habitat, Mexican spotted owl habitat, and/or sage grouse habitat could be affected, threatened, or impaired.
9. The Petitioners stated their concerns that the economic benefits such as job production and profits will not materialize.

The Division responded to some of the concerns at the hearing, stating the following:

1. The Division indicated that some of the comments and concerns are more appropriately directed at other agencies or political subdivisions of the State of Utah such as the State Engineer, the Utah Division of Air Quality, the Utah Division of Water Quality, Grand County, or Uintah County.
2. The Division stated that after a permit is received it would continue to inspect the operations to ensure compliance with the Division's regulations.
3. The Division stated that a significant revision will be noticed when the operation expands to the West Pit.

4. The Division stated that the area receives approximately 12 inches of rainfall annually.
5. The Division said the mining facility is designed to be self-contained with no discharge of runoff from the pit or processing area.

Earth Energy also responded to some of the concerns at the hearing, stating the following:

1. The Applicant stated that the company has obtained clearance from the EPA with regard to air quality and the necessary permits from the Utah Division of Water Quality, and they have provided a Storm Water Pollution Prevention Plan to the Division. The Applicant said the hydrological resources in the area are mainly ephemeral washes and Main Canyon is an intermittent body with some perennial reaches. The Applicant said structures are in place to capture potential runoff and treat it before it may be discharged and the runoff, if any, may contain sediments, but it would not be salty.
2. The Applicant indicated a belief that it is unlikely that water from the operation would impact Willow Creek which is located 25 miles downstream. The Applicant agreed with the Division that runoff is designed to be contained and the operation will not have tailings ponds like some Canadian operations.
3. The Applicant said refineries are regulated separately from mining operations.
4. The Applicant said the interburden storage is designed to prevent mass wasting.
5. The Applicant stated there is a Spill Prevention Control and Countermeasures Plan designed to control and prevent chemical spills, and the chemical wash the Applicant plans to use is reusable, biodegradable, organic, and citrus-based.
6. The Applicant said there are plans to encourage topsoil health and successful reclamation
7. The Applicant indicated the company is seeking land use permits from Uinta County and Grand County.
8. The Applicant said they believe the project will be beneficial to Utah's economy.

Based on all of the information submitted, and arguments presented at the informal conference, I have concluded as follows:

1. The Division has correctly reviewed the NOI to assure compliance with the Mined Land Reclamation Act and regulations as required to proceed with mining operations. The Division has analyzed the NOI in accordance with the statutory intents of minimizing undesirable effects of mining, preventing conditions detrimental to the general safety and welfare of the citizens of the state, and providing for subsequent use of the lands affected.
2. Specifically, the Division has correctly determined that the NOI:
    a. Provides for adequate drainage control to prevent damage from drainage by preventing any discharge of waters from the site;

b. Includes a storm water protection plan that provides for monitoring, control, and actions to protect the surrounding area from storm runoff during mining and reclamation;
c. Includes a plan for reclamation and re-vegetation that will return the site to the approximate contours and will re-vegetate the site;
d. Ensures that an appropriate reclamation bond will be presented to the Division prior to commencing mining operations; and
e. Is subject to the Earth Energy Resources full compliance with air and water permitting requirements for the operations prior to commencement of mining operations.

3. The NOI for the PR Springs Mine meets the applicable challenges as presented by the Petitioners in their written and verbal comments.

Therefore, it is my decision to uphold the Division's approval of the NOI.

Any party has the right to appeal this decision to the Board of Oil, Gas, and Mining as a formal adjudicative proceeding in accordance with Rule R647-5-106.17 and Rules R641-100 et seq., by filing an appeal with the Board Secretary, Ms. Julie Ann Carter within ten (10) days of receipt of this letter. You are advised to contact Ms. Carter at the Division's address and telephone number if you have questions regarding the procedures for filing an appeal to this decision.

Sincerely,

John R. Baza
Director

c: John Davis
Steve Alder
Dana Dean
Paul Baker