



September 1, 2011

Mr. Fernando Martinez  
Interim Division Director  
Mining and Minerals Division  
New Mexico Environment, Minerals and Natural Resources Department  
220 South St. Francis Drive  
Santa Fe, New Mexico 87505

Re: Multicultural Alliance for a Safe Environment's and Amigos Bravos' Post Hearing Submission; Rio Grande Resources, Application for Renewal of Standby Permit, Permit Revision 10-1, Mt. Taylor Mine, Permit No. CI002RE

Dear Director Martinez:

On behalf of the Multicultural Alliance for a Safe Environment ("MASE") and Amigos Bravos, please consider the following post hearing submission in the above matter outlining concerns about Rio Grande Resources' standby permit application and the public hearing conducted on that permit application.

## **I. BACKGROUND**

On June 16, 2010, Rio Grande Resources ("RGR") submitted an application to the Mining and Minerals Division ("Division" or "MMD") for renewal of its standby permit for the Mt. Taylor Mine. The Division began processing this standby permit application as a revision of RGR's Permit No. CI002RE, under the number Permit Revision 10-1. *See*, Sept. 29, 2010 letter from David Ohori to Joe Lister, available at [http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/20100929\\_ReviewofApplicationforRenewalofStandbyStatus\\_Rev10-1\\_CI002RE.pdf](http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/20100929_ReviewofApplicationforRenewalofStandbyStatus_Rev10-1_CI002RE.pdf). As part of the review process, MMD solicited comments from other agencies on RGR's permit revision application. *See*, July 22, 2010 letters from David Ohori to the New

Mexico Environment Department (“NMED”), Office of the State Engineer, New Mexico Department of Game and Fish, the Historic Preservation Division, and the State Forestry Division, available at [http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/20100722\\_RequestforreviewComments\\_MtTaylorMineStandbyStatus\\_CI002RE.pdf](http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/20100722_RequestforreviewComments_MtTaylorMineStandbyStatus_CI002RE.pdf).

NMED provided comments in a letter dated September 1, 2010, where NMED expressed concerns about uranium contamination in the alluvium near the existing waste rock pile at the Mt. Taylor Mine. A copy of that letter is attached as Exhibit A. Because of those concerns and the fact that the source of the contamination had not yet been identified, NMED recommended that RGR’s standby period be granted for two, rather than the standard five, years. *Id.*

Nevertheless, NMED issued a determination on May 27, 2011 that RGR would meet all groundwater standards at the Mt. Taylor Mine for the entire five year standby permit period. A copy of that determination is available at: [http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/20110527\\_NMEDSupportof5YearStandbyRenewal\\_CI002RE.PDF](http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/20110527_NMEDSupportof5YearStandbyRenewal_CI002RE.PDF).

MASE and Amigos Bravos requested a public hearing on RGR’s standby permit renewal application. The Division scheduled a public hearing for August 17, 2011 in Grants. *See*, Public Notice: Mt. Taylor Mine Public Hearing, available at: [http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/Mt\\_Taylor\\_PublicNotices\\_StandbyRenewal.pdf](http://www.emnrd.state.nm.us/MMD/MARP/permits/documents/Mt_Taylor_PublicNotices_StandbyRenewal.pdf).

Amigos Bravos and MASE appeared at the August 17 hearing through their representatives and legal counsel. The Division presented testimony about the standby permit process and RGR presented testimony in favor of its standby permit application. Amigos Bravos and MASE attempted to present evidence concerning the undisputed groundwater contamination at the Mt. Taylor Mine. However, Rio Grande Resources objected, arguing that the Mining Act and its regulations only allowed the Division to accept, without question, NMED’s determination

that the Mt. Taylor Mine would meet groundwater standards during the standby permit period. Audio Transcript of August 17 Public Hearing, STE-000 at 2:51:31 – 2:51:49 (“Tr.”). Any question as to the source of the groundwater contamination or how it would be remediated was, according to RGR’s argument, a challenge to the NMED’s determination, which could only be challenged through a petition for a writ of certiorari pursuant to New Mexico Rule of Civil Procedure 75. Tr. at 3:07:45 – 3:08:10. The Hearing Officer upheld RGR’s objection, and MASE and Amigos Bravos were prohibited from presenting any evidence on the issue of groundwater contamination or RGR’s technical or financial ability to remediate that contamination. Tr. at 2:52:20 – 2:53:00.

Further, MASE and Amigos Bravos attempted to present testimony concerning RGR’s willingness to conduct interim reclamation measures on the likely source of the alluvial contamination, i.e, the waste rock pile. RGR’s attorney again objected, claiming that MASE and Amigos Bravos were attempting to challenge RGR’s close out plan, which MMD approved in 1998. Tr. at 2:50:59 – 2:51:22. Again, the Hearing Officer upheld RGR’s objection and MASE and Amigos Bravos were prohibited from presenting any evidence about interim reclamation measures that would be appropriate to address the alluvial contamination. Tr. at 2:51:54 – 2:52:19.

Finally, MASE and Amigos Bravos attempted to present testimony that RGR’s financial assurance was outdated and would be insufficient to cover any interim reclamation of the waste rock pile or groundwater remediation. However, RGR’s attorney also objected to this testimony, arguing that evidence about the sufficiency of RGR’s financial assurance was beyond the scope of the standby proceeding. Tr. at 2:34:26 – 2:35:58. The Hearing Officer again agreed with

RGR, deciding that MASE and Amigos Bravos must pursue any concerns about RGR's financial assurance in a separate proceeding. Tr. at 2:36:07 – 2:37:54.

## **II. STATUORY AND REGULATORY FRAMEWORK**

### **A. The New Mexico Mining Act.**

The purposes of the New Mexico Mining Act (“Act” or “Mining Act”) “include 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. In order to realize the Mining Act's purposes, the New Mexico legislature delegated authority for its implementation to the New Mexico Mining Commission (“Commission”) and Director of the Mining and Minerals Division (“Director”). *Id.*, §§ 69-36-7, 69-36-9; *see also, Rio Grande Chpt. of the Sierra Club v. Mining and Minerals Div.*, 130 N.M. 497, 501, 27 P.3d 984, 988 (Ct. App. 2001).

Among the responsibilities delegated to the Commission is the requirement that it adopt regulations for standby permits that at a minimum insure that a mining operation on standby status meet applicable federal and state environmental standards and regulations for the duration of the standby period. *Id.* at § 69-36-7(E)(3). The Commission's regulations must also insure that a permittee comply with the application requirements of the Mining Act and its regulations. *Id.* at § 69-36-7(E)(5).

Further, the Act places a particular emphasis on public notice and participation. The Act requires the Commission to promulgate regulations that give “all interested persons ... a reasonable chance to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing.” *Id.* at § 69-36-7(K).

The Legislature also delegated specific duties to the Director. Under the Mining Act the Director is required to exercise all powers of enforcement and administration under the Act not delegated to the Commission, and execute and administer the Commission's regulations. *Id.* at § 69-36-9(A). Additionally, the Director is required to “confer and cooperate with the secretary of the environment in administering the New Mexico Mining Act, in developing proposed regulations and obtain the concurrence of the secretary of the environment regarding areas of the regulations that have an impact upon programs administered by the department of the environment.” *Id.* at §69-36-9(D).

Finally, the Mining Act provides for both administrative and judicial review. Any “order, penalty assessment or issuance or denial of a permit by the director” pursuant to the Act may be appealed to the Commission by an adversely affected person within sixty days of its issuance. *Id.* at § 69-36-15(A). A final action of the Commission may be appealed to the district court. *Id.* at § 69-36-16(C).

#### **B. Mining and Minerals Division Regulations.**

Pursuant to its responsibilities under the Act, in 1996 the Commission promulgated regulations implementing the Mining Act. These regulations set the boundaries for the Director's implementation of the Act.

The primary regulation governing standby permit applications is 19.10.7.701 NMAC. That regulation requires, in relevant part, that the permit applicant provide, at a minimum, a description of how applicable federal and state environmental standards and regulations will be met during the standby status. 19.10.7.701.B.(3) NMAC. The applicant's submission must include a written determination from the Secretary of the Environment stating that the permittee has demonstrated that the operation will be expected to achieve compliance with applicable state

environmental standards. *Id.* Further, the applicant must describe how it will meet the requirements of the Act and Part 19.10 regulations. *Id.* at §701.B.(5). A standby permit application must be approved if the Director finds the applicant has met the requirements of § 701.B. *Id.* at § 701.F.

Pursuant to the Act, the Commission adopted regulations encouraging public participation. Those public participation procedures include procedures for public hearings, where any interested person may testify or submit written statements containing data, views or arguments. 19.10.9.905.C, E NMAC.

### **III. ARGUMENT**

#### **A. The Hearing Officer Improperly Prohibited Testimony on Rio Grande Resources' Financial Assurance.**

As a matter of law, the Hearing Officer improperly prohibited MASE and Amigos Bravos from presenting evidence on the sufficiency of RGR's financial assurance. The regulations implementing the New Mexico Mining Act clearly require that the Mining and Minerals Division evaluate whether a permittee's financial assurance is sufficient when it applies for a standby permit.

Section 1206 of the Mining Act regulations provides, “[i]n the event that the approved permit is revised or modified, the director shall review the financial assurance for adequacy, and if necessary, shall require adjustment of the financial assurance to conform to the permit as revised or modified.” 19.10.12.1206.D NMAC, emphasis added. The regulations further provide, “[i]f, due to a temporary cessation of mining operations exceeding 180 days, a permittee desires to suspend reclamation pursuant to a permit for an existing or new mining operation, the permittee shall submit an application for a permit revision for standby status ... “. 19.10.7.701.A

NMAC, emphasis added. Thus, RGR's application for a standby permit is a permit revision<sup>1</sup>, and under § 1206.D the Director is required to review RGR's financial assurance for adequacy and adjust it if necessary. The Hearing Officer's decision to uphold RGR's objection is clearly contrary to the Mining Act regulations' mandate.

The Hearing Officer should have allowed MASE and Amigos Bravos to submit testimony regarding the sufficiency of RGR's surety. Moreover, the record of the administrative proceeding contains no evidence whatsoever that MMD considered the adequacy of RGR's financial assurance. Because the Mining Act regulations require that MMD review RGR's financial assurance in the course of evaluating its standby permit application, MASE and Amigos Bravos request that MMD hold a public hearing on the issue of RGR's financial assurance and allow MASE and Amigos Bravos to submit testimony and other evidence on the sufficiency of RGR's financial assurance.

**B. The Hearing Officer Improperly Prohibited Testimony on Rio Grande Resources' Ability to Meet Environmental Standards.**

The Mining Act is clear that before a standby permit application is approved, the applicant must demonstrate that it will meet all state environmental standards. NMSA 1978, § 69-36-7(E)(3). It is equally clear that the public must be given the opportunity to submit testimony and other evidence about the adequacy of any permit application, prior to any action being taken on the permit application. *Id.* § 69-36-7(K). These requirements advance the Mining Act's purposes of responsible use of state resources and meaningful public participation in the decisions affecting those resources. The Hearing Officer's decision to prohibit MASE and Amigos Bravos from presenting evidence concerning RGR's ability to meet groundwater

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<sup>1</sup> As noted in Section I, above, the Division is processing RGR's application as Permit Revision 10-1.

standards during the standby period defeats both these purposes and is contrary to the Mining Act in two ways.

1. The Hearing Officer's Determination Renders the Public Participation Provision of the Mining Act and Its Regulations Meaningless.

The Hearing Officer's determination that Amigos Bravos and MASE were prohibited from presenting any evidence on the issue of groundwater contamination at the public hearing renders the Mining Act regulations encouraging public participation meaningless, and directly contradicts the mandate of the Act itself. The Act requires the Commission to promulgate regulations that give "all interested persons ... a reasonable chance to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing." NMSA 1978, § 69-36-7(K). The Commission promulgated regulations further defining the boundaries of public participation, but still seeking to maximize public input on regulatory decision-making by mandating that all interested persons have a reasonable opportunity to present testimony, data, views or arguments. 19.10.9.905.C, E NMAC. Moreover, both the Act and the regulations have extensive notice requirements to ensure that the public can take advantage of the public participation processes. NMSA 1978, § 69-36-7(K)(1)-(6); 19.10.902, 903 NMAC. Based on these extensive statutory and regulatory notice and hearing requirements, the Legislature's intent to promote broad and meaningful public participation is clear.

In this case, as described in Section I, Amigos Bravos and MASE were prevented from presenting any evidence on groundwater contamination at the Mt. Taylor Mine or RGR's ability to address the contamination and its source<sup>2</sup>. By prohibiting MASE and Amigos Bravos from

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<sup>2</sup> It is noteworthy that NMED's process for making a determination that a permittee will meet all applicable environmental standards has no mechanism for public input. In this case, NMED did not seek public input on its determination, provided no public notice of its determination process, and provided no public notice of the determination itself.

meaningfully participating in the public hearing, the Hearing Officer undermined the Legislature's intent to promote public participation.

The New Mexico Supreme Court decision in *Colonias Development Council v. Rhino Environmental Services, Inc.* ("Rhino") is instructive in this case. *Id.*, 138 N.M. 133, 117 P.3d 939 (N.M. 2005). In *Rhino*, the petitioner community group appealed a decision by the New Mexico Environment Department approving a landfill in their community pursuant to the New Mexico Solid Waste Act. *Id.*, 117 P.3d at 942. On appeal, the community group argued that although the hearing officer conducting the public hearing on the solid waste permit application had allowed community members to speak, NMED violated the Solid Waste Act's public participation provisions by failing to consider the community group's "quality of life" testimony. *Id.* The Supreme Court agreed. *Id.* at 945. The Court reasoned that the extensive public notice and hearing provisions in the Solid Waste Act demonstrated the Legislature's intent to foster broad and meaningful public participation in solid waste permit proceedings. *Id.* at 944-946. The Environment Department's failure to consider "quality of life" public testimony violated these provisions and NMED's decision was set aside and remanded for further proceedings. *Id.* at 949-950.

In this case, the Mining Act's public notice and hearing provisions are nearly identical to those in the Solid Waste Act. *See, e.g.*, NMSA, 1978 § 74-9-29 (ensuring all interested persons "a reasonable opportunity" to be heard at a public hearing); *compare with* NMSA, 1978 § 69-36-7(K) (ensuring all interested persons shall be given "a reasonable chance" to submit data, views or arguments). Unlike the *Rhino* case, however, in this case MASE and Amigos Bravos were not even given the opportunity to submit data, views or arguments on the groundwater contamination at the Mt. Taylor Mine site, much less have their data, views and arguments considered. By

prohibiting MASE and Amigos Bravos from presenting any information on the groundwater contamination at the Mt. Taylor Mine site, the Hearing Officer violated the public participation requirements of the Mining Act and its implementing regulations. The record in this case should remain open and MASE and Amigos Bravos should be allowed to submit testimony and data on the alluvial groundwater contamination at the Mt. Taylor Mine site.

2. The Hearing Officer's Interpretation of the Mining Act and Regulations Eliminates MMD's Statutorily Mandated Role in Regulating Mining's Environmental Impacts.

In addition to violating the public participation requirements of the Mining Act and its implementing regulations, if the Hearing Officer's interpretation of MMD's regulations is accepted, MMD's role in regulating environmental impacts of mines on standby status is virtually eliminated in violation of the mandate of the Act that the Director ensure that a permittee abides by all applicable environmental laws and standards. By prohibiting MASE and Amigos Bravos from challenging MMD's acceptance of NMED's determination, the Hearing Officer effectively made the standby permit evaluation and review process one in which MMD checks off boxes on a list of required documents. This interpretation not only undermines the Division's responsibility to ensure that all environmental laws, regulations and standards are met during the standby period, it also virtually eliminates any consultation and coordination function the MMD has under the Mining Act by forcing MMD to accept as valid any determination by NMED, irrespective of whether it is based on legally or technically supportable grounds.

In this case, based on documentation and cross examination of an NMED representative, MASE and Amigos Bravos established that NMED had no technical basis for making a determination that RGR would meet groundwater standards for the term of its standby permit. The administrative record indicates that on September 1, 2010, NMED sent a letter to RGR

indicating that NMED could not determine that RGR would be in compliance with New Mexico groundwater standards for more than two years. Exhibit A. NMED cited evidence of uranium contamination of the alluvium at the Mt. Taylor Mine and the fact the contamination's source had not been identified as the basis for the two-year limit on its determination. *Id.* At the time of that letter, according to NMED's representative at the public hearing, NMED had not approved RGR's Stage 2 abatement plan. Testimony of Mary Ann Menetrey ("Menetrey Testimony"), Audio Transcript of August 17, 2011 Hearing, STE-003 at 8:24 – 8:55 ("Tr.-3"). Ms. Menetrey also stated that between the time of the September 2010 letter in which NMED refused to make a determination for more than two years and May 27, 2011, when NMED determined that RGR would be able to meet groundwater standards for five years, no circumstances had changed except that RGR's Stage 2 abatement plan had been approved. *Id.*

Significantly, however, NMED's approval of RGR's Stage 2 abatement plan does not address the presumed source of the alluvial contamination, i.e., the waste rock pile. May 2, 2011 letter from NMED to RGR giving conditional approval of RGR's Stage 2 abatement plan, attached as Exhibit B at p. 2; Menetrey Testimony at Tr-3, 6:19 – 6:45. Indeed, the conditions placed on the abatement plan require that the abatement plan be revised if groundwater sampling and waste characterization studies show that the waste rock pile or storm water retention pond are the source of the alluvial contamination. Based on NMED's own documents, the source of the uranium contamination in the alluvium remains unidentified and the Stage 2 abatement plan does not address the uranium contamination. Therefore, the NMED had no apparent technical basis whatsoever to change its determination from a two year to a five year term.

Given the lack of basis for NMED's conclusion, the Division had an obligation to question the NMED's determination in order to insure that RGR would, in fact, be able to

comply with all applicable environmental laws, standards and regulations during the permit period. The Hearing Officer's conclusion that the Division must accept NMED's determination without question, irrespective of whether that determination has a legitimate technical basis, subverts the Act's requirements that permitted operations meet all applicable environmental laws, regulations and standards<sup>3</sup>. NMSA 1978, §§ 69-36-7(A)(1), (E)(3), (N), (P)(2), (S)(3),(4); 19.10.701.B.3. Moreover, the Hearing Officer's conclusion that any public challenge to the Division's acceptance of NMED's determination is beyond the scope of a standby permit proceeding, likewise violates the Act's and regulations' mandate to ensure that permittees comply with all applicable environmental laws and standards. *Id.*

The Hearing Officer's determination also undermines the consultation provisions of the Act and its regulations. *See*, NMSA 1978, § 69-36-7(J); 19.10.5.505.B.3 NMAC. The consultation requirements evince the Legislature's clear intent for MMD and the Director to consult with, but not be beholden to, other agencies that also have responsibility for regulating environmental matters. Moreover, while the Act explicitly provides that the Director may not implement environmental statutes which are the responsibility of other agencies, reclaiming the purported source or sources of contamination, i.e., the waste rock pile and storm water lagoon, are activities that lie squarely within the Director's regulatory authority. Thus, the Hearing Officer's interpretation of the Act and regulations subverts the Legislature's intent and improperly deprived MASE and Amigos Bravos of the opportunity to challenge MMD's acceptance of NMED's determination.

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<sup>3</sup> Conversely, there is no provision in the Act that prohibits the Division from questioning the comments or determinations from other agencies.

**C. Rio Grande Resources Failed to Demonstrate that the Mt. Taylor Mine Will be Economically Viable During the Standby Period.**

The Act and MMD regulations require a standby permit applicant to demonstrate that the mine proposed for standby status will be economically viable during the standby period. NMSA 1978, 69-26-7(E)(6); 19.10.7.701.B.6 NMAC. In this case, RGR failed to demonstrate with any credibility that the Mt. Taylor Mine will be economically viable between now and 2016, when the current standby permit would expire.

In its standby application that it submitted to MMD, RGR asserts, without support, that:

RGR has the largest uranium deposit in the United States, which is well over 100,000,000 pounds of U<sub>3</sub>O<sub>8</sub> in the Mt. Taylor Mine ore body. The market price now does not permit a viable mining operation, primarily because of the availability of uranium from weapons decommissioning in the world and U.S. markets. However, such material will be used up after a period of time, after which the market demand for new uranium oxide should increase. Additionally, in the future the demand for clean [sic] nuclear power generating plants will increase as low-cost coal reserves are depleted and demand for electric power increases. These conditions and the high grade ore reserves at Mt. Taylor will increase the value of the Mt. Taylor Mine and lead to the resumption of operations in the relatively near future.

Standby Application at 3, § 1.6<sup>4</sup>.

1. RGR Fails to Analyze Uranium Demand.

RGR has provided no substantive demonstration that the Mt. Taylor Mine will be economically viable during the standby permit period. Most significantly, neither RGR's written or verbal statements give any meaningful analysis of global demand for uranium.

RGR's written statement gives no meaningful analysis of uranium demand, asserting only that the supply of uranium from decommissioned weapons will fall "after a period of time" and

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<sup>4</sup> At the public hearing on RGR's standby permit application, MMD's witness, on cross-examination, testified that RGR had submitted an economic analysis to MMD in June, 2011, but that it was confidential and unavailable for public review. Since the hearing, counsel for MASE and Amigos Bravos has made several requests, both in writing and telephonically, for MMD to make a determination whether all portions of RGR's economic analysis are confidential, but has not received a response from MMD.

that increased demand for nuclear power will fuel demand for uranium. However, RGR does not indicate when the uranium supply from decommissioned weapons will be depleted. Further, as explained in Section C.2, below, RGR fails to analyze global energy demand in support of its assertion that demand for nuclear energy will increase. RGR's written statement regarding the Mt. Taylor Mine's economic viability over the next five years lacks any specific information, data or analysis and is insufficient to support its standby permit application.

RGR also failed to provide adequate economic analysis in its testimony at the August 17, 2011 public hearing. There, RGR's witness, Mr. Doug Irving, simply touted RGR's position relative to other potential uranium operations that do not have existing mine infrastructure or permits. Testimony of Doug Irving ("Irving Testimony"), Tr. at 45:00 – 47:40.

Moreover, in his direct testimony, Mr. Irving offered no meaningful analysis of domestic or global uranium demand. He simply asserted, without support or analysis, that worldwide demand for uranium was increasing, that uranium prices are increasing, and uranium stockpiles from decommissioned weapons are decreasing. Irving Testimony, Tr. at 51:20 – 53:30.

On cross-examination, Mr. Irving was presented with data from the International Atomic Energy Agency ("IAEA"), Nuclear Energy Agency ("NEA") and Organization for Economic Cooperation and Development ("OECD") annual report on uranium supply and demand ("Uranium Red Book") showing that existing uranium mining capacity could fulfill global uranium demand until 2025. However, Mr. Irving was unable to rebut these data or provide data that contradicts the IAEA, NEA, and OECD data. Irving Testimony, Tr. at 1:39:04 – 1:42:30. A copy of the Uranium Red Book data is attached hereto as Exhibit C. Because IAEA data show that projected demand for the next 16 years can be satisfied with existing uranium mining capacity and RGR offered no evidence to contradict those data, RGR has not satisfied its burden

of showing that the Mt. Taylor Mine will be economically viable for the term of its standby permit.

2. RGR Fails to Analyze Energy Demand.

Additionally, RGR's permit application fails to analyze global energy demand during the permit period. RGR offered no testimony on this issue at hearing. Because of its failure to consider global energy demand – other than the cursory statement that demand for nuclear power will rise – RGR's analysis of the Mt. Taylor Mine is inadequate.

Indeed, had RGR provided, or the Division required, such an analysis it would have shown that global energy demand trends do not favor nuclear power in the long term and a surge in demand in the short term, i.e., in the next five years, is highly unlikely. For example, RGR does not provide any analysis about how the worldwide and domestic economic downturn affects electric power demand. According to the United States Energy Information Administration ("EIA"), the global economic downturn slowed energy consumption in 2008 and energy consumption contracted in 2009. United States Energy Information Administration, *World Energy Demand and Economic Outlook*, Report #:DOE/EIA-0484(2010), Chpt. 1 at 9 (July 27, 2010), attached as Exhibit D. The EIA's World Energy Demand and Economic Outlook report does not assume global economic recovery and energy demand growth until 2015. *Id.*

RGR also fails to consider how improvements in energy efficiency and demand for renewable energy sources will affect demand for nuclear power<sup>5</sup>. As indicated in the EIA world energy demand report, global demand for renewable sources of energy (and all other sources of

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<sup>5</sup> Interestingly, although not a renewable resource, EIA projects that the percentage of electricity generated by coal will remain largely unchanged through 2035, directly contradicting RGR's statement that diminishing reserves of low-cost coal will increase demand for uranium. *World Energy Demand and Economic Outlook* at 12, Fig. 18.

energy) is projected to far outstrip demand for nuclear power. *World Energy Demand and Economic Outlook* at 11, Fig. 16.

Finally, RGR fails to account for the effect on worldwide energy demand due to countries such as Germany, Italy, Switzerland and Japan phasing out nuclear power. Mr. Lister's flat assertion that demand for uranium will grow despite the Fukushima disaster is insufficient. *See*, Testimony of Joe Lister ("Lister Testimony"), Tr. at 1:02:19. Because RGR has failed to analyze energy demand, it has no basis for asserting that the Mt. Taylor Mine will be economically viable during the standby permit period.

### 3. RGR Fails to Consider the Lack of Uranium Ore Milling Capacity.

Finally, in order for uranium ore to be economically viable, it must be milled so that it can be further processed into fuel for nuclear power plants. Lister Testimony, Tr. at 1:03:02. In its written permit application, RGR fails completely to mention where Mt. Taylor Mine ore might be milled and whether the proposed mill has the capacity to receive RGR's ore.

At the August 17 public hearing, Mr. Lister provided some insight into how vague RGR's plans for securing a place to mill Mt. Taylor Mine ore are. Mr. Lister conceded that the only operating uranium mill in the United States is the White Mesa Mill in Blanding, Utah, owned by Denison Mines. Lister Testimony, Tr. at 1:03:09. Mr. Lister further testified that while Denison Mines was likely to use ore from its own mines for feed at White Mesa, it could accept ore from other mines. *Id.*, Tr. at 1:03:10 – 1:03:32. When asked whether the White Mesa Mill would accept Mt. Taylor ore, Mr. Lister stated that RGR had "talked" to Denison about milling. *Id.*, Tr. at 1:03:33. Mr. Lister did not offer any information to indicate that any agreements to mill Mt. Taylor ore had been made or were pending with Denison.

Further, Mr. Lister was vague about whether transportation costs to Blanding were prohibitive. *Id.*, Tr. at 1:04:30-31. However, Mr. Lister did concede that it was prohibitive to transport ore to Blanding at the current spot price of \$50.00/lb. *Id.*, Tr. at 1:05:19. Significantly, this is the price for uranium that Mr. Lister indicated would be the price at which the Mt. Taylor Mine would be profitable. *See*, Mining and Minerals Division, March 25, 2009 Annual Inspection Report, an excerpt of which is attached as Exhibit E. Mr. Lister's inconsistent statements cast further doubt on the Mt. Taylor Mine's economic viability during the standby permit period.

Finally, RGR indicated that it is planning a mill near the mine site. However, since notifying the U.S. Nuclear Regulatory Commission ("NRC") in 2008 of its intent to build a mill near the Mt. Taylor Mine, RGR has delayed submission of required archaeological and radiological surveys twice. Copies of RGR's correspondence to the NRC is attached as Exhibit F and Exhibit G. Moreover, Mr. Lister testified that RGR had not yet completed the archaeological survey for the proposed mill site, nor had it begun the required radiological survey. Lister Testimony, Tr. at 1:09:50-51, 56-58. Because RGR failed to demonstrate that there will be any milling capacity for Mt. Taylor Mine ore during the standby permit period, the Mt. Taylor Mine will not be economically viable during that time<sup>6</sup>.

#### **IV. CONCLUSION**

RGR's standby permit renewal application has several significant deficiencies that should prohibit it from being granted. In addition to uranium contamination of the alluvium whose

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<sup>6</sup> Various public statements by RGR employees have indicated that Mt. Taylor Mine ore could be heap leached at the Cotter Mill in Canyon City, Colorado. However, RGR's permit application contains no mention of this possibility and RGR's witnesses did not discuss it during the public hearing. Therefore, that information is not part of the administrative record and should not be considered. In any event, the Cotter Mill's radioactive materials license prohibits it from accepting ore from any place except the Western Slope of the Colorado Rockies. See attached Exhibit H.

cause has not been addressed, RGR has also failed to demonstrate that the Mt. Taylor Mine will be economically viable in the period of its standby permit. Perhaps equally important, the public participation process for RGR's permit revision was so flawed that the Director cannot and should not reach a decision without further public input.

For these reasons, MASE and Amigos Bravos oppose issuing RGR a standby permit for five years without substantial conditions to address the source of the uranium contamination in the alluvium, interim reclamation measures to abate the alluvial contamination, and an assurance that RGR has adequate financial resources to guarantee that interim reclamation measures will be conducted. Additionally, MASE and Amigos Bravos request additional public hearings or other opportunities to address the significant shortcomings identified in these comments. Alternatively, if these or substantially similar permit conditions are not placed on RGR's standby permit and further opportunities for public input are not provided, MASE and Amigos Bravos urge the Director to deny RGR's permit revision 10-1 and order RGR to begin close out activities immediately.

Thank you for your consideration of these concerns and please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eric Jantz', with a long horizontal flourish extending to the right.

Eric Jantz  
Staff Attorney

Counsel for MASE and Amigos Bravos

cc: Stuart Butzier