

MEMORANDUM OF AGREEMENT
FOR THE IMPLEMENTATION OF SB 181 AMENDMENTS
TO THE COLORADO WATER QUALITY CONTROL ACT (25-8-101, et seq)
PERTAINING TO THE REGULATION OF MINERAL MINES

THIS MEMORANDUM OF AGREEMENT (MOA) is entered into this 14th day of December, 2010, by and between the Colorado Department of Public Health and Environment (CDPHE), the Water Quality Control Commission (WQCC), the Water Quality Control Division (WQCD), the Colorado Department of Natural Resources (DNR), the Mined Land Reclamation Board (MLRB) and the Division of Reclamation, Mining and Safety (DRMS).

Section 1. BACKGROUND

1.1 For many years there has been a spirit of cooperation between WQCD and DRMS. The staffs of each agency have frequently met to discuss issues where their responsibilities to the people of Colorado coincide. The WQCD administers and enforces the water quality programs adopted by WQCC with respect to surface water discharges. DRMS's responsibility is to encourage the orderly development of the state's natural resources while requiring mined land to be reclaimed to a beneficial use. The parties entered into an MOA in 1990. The parties now wish to update and revise the MOA.

The DRMS Minerals Program administers the Colorado Mined Land Reclamation Act, § 34-32-101, et seq. (Hard Rock/Metal Mining Act) C.R.S. (2009) and the Colorado Land Reclamation Act for the Extraction of Construction Materials § 34-32.5-101, et seq. (Construction Materials Act) C.R.S. (2009).

The Hard Rock/Metal Mining Act and the Construction Materials Act apply to all mines in the state, except coal mines. Coal mines are regulated under the Colorado Surface Coal Mining Reclamation Act, § 34-33-101 to 137, C.R.S. (2009). The DRMS has interacted cooperatively with the WQCD in insuring compliance with the Colorado Water Quality Control Act of 1973.

Subsection 25-8-202(7) of the 1989 amendments to the state Water Quality Control Act (SB 181) restates and clarifies existing law, and provides a procedure for implementation of ground water quality protection programs to protect water quality standards adopted by the Water Quality Control Commission. Key among the provisions is the requirement that WQCC and WQCD recognize the ground water quality responsibilities of the following entities, referred to in the subsection as the "implementing agencies": the Mined Land Reclamation Division (currently the Division of Reclamation, Mining and Safety); the State Engineer; the Oil and Gas Conservation Commission; and the state agency responsible for activities related to the federal "Resource Conservation and Recovery Act of 1976" as amended. Currently, this latter reference involves the Hazardous Material and Waste Management Division (HMWMD) located in the state Health Department and the Division of Labor and Employment for underground storage tanks.

The WQCC is solely responsible for the adoption of water quality standards and classifications for state waters. Each implementing agency is required to adopt and implement approaches to

protect water quality standards and classifications adopted by the WQCC through their own programs after consultation with the WQCC and the WQCD. Generally, application of the standards and classifications would be limited to nonpoint surface discharges and to ground water discharges as the WQCD remains solely responsible for the issuance and enforcement of permits for point source discharges into state surface waters. The implementing agencies are to specify applicable points of compliance for groundwater discharges. The points of compliance are to be adopted in accordance with criteria established through public rulemaking following consultation with the WQCC and the WQCD.

By requiring the implementing agencies to apply the standards and classifications established by the WQCC, the legislature has clarified the primary regulatory authorities responsible for assuring uniform water quality protection for all waters of the state. Ensuring that the statute is implemented in an efficient and effective manner requires significant coordination between state agencies vested with responsibilities to implement programs for the protection of the quality of state waters.

In acknowledging the water quality responsibilities of the implementing agencies cited in Section 207(7) of the act, the amendments further specify that the WQCC and the WQCD shall not require permits for, or otherwise regulate, activities subject to the jurisdiction of the implementing agencies unless the WQCC finds, pursuant to § 25-8-202(7)(b)(II), after public notice and hearing, that such regulation is necessary to assure compliance with the federal Clean Water Act, the water quality requirements contained in the Colorado water rights statutes, or water quality classifications and standards; to protect present and future beneficial uses of water; to avoid the imposition of a disproportionate burden on other dischargers, or classes of dischargers; or in the event an implementing agency fails to provide reasonable assurance that compliance has been obtained through its own programs.

In the event the WQCC must take regulatory action to ensure compliance, WQCC action shall be undertaken solely through the adoption of control regulations under § 25-8-205, or through the permit regulations under § 25-8-501. In that case, the WQCD may enforce such regulations.

Section 2. PURPOSE

This agreement is being entered into by the above-mentioned parties for the following purposes:

- 2.1 To recognize the responsibilities of each agency for protecting water quality within the State of Colorado;
- 2.2 To continue a cooperative working relationship between the parties; and
- 2.3 To provide procedures for communication, exchange of information, and resolution of problems as necessary to carry out the provisions of Senate Bill 181.

Section 3. AUTHORITY

The principal authority for this agreement is contained in the Water Quality Control Act, § 25-8-101, et seq., C.R.S. (2009) as amended by S.B. 181, the Colorado Mined Land Reclamation Act, and the Colorado Land Reclamation Act for the Extraction of Construction Materials.

Section 4. DEFINITIONS

4.1 “Designated Official” means a person representing one of the parties to this agreement appointed to implement this agreement and to negotiate on behalf of that party. The designated official for the MLRB shall be the Chairman of the MLRB or the Director of the DRMS; the designated official for the DRMS shall be the Director of the DRMS; the designated official for the WQCC shall be its Administrator, and the designated official for the WQCD shall be the Director of the WQCD.

4.2 “Implementing Agency” means the Division of Reclamation, Mining, and Safety which is referred to in § 25-8-202(7), and whose water quality responsibilities the WQCC and the WQCD are to recognize.

4.3 “Points of Compliance” means one or more points or locations at which compliance with applicable groundwater standards must be achieved.

4.4 “Mineral” has the same meaning as that found in § 34-32-103(7).

Section 5. RESPONSIBILITIES

The responsibilities under this MOA of the WQCC, the WQCD, the MLRB and the DRMS, as they relate to the mandates of § 25-8-202(7), are presented below. Nothing in this MOA shall alter or amend the statutory or regulatory authority, duties or responsibilities of the signing agencies. The WQCC, the MLRB, the DRMS, and the WQCD agree to meet periodically (at least twice per year) to coordinate activities and assess the status of the DRMS’s implementation of its responsibility under § 25-8-202(7).

5.1 The Division of Reclamation, Mining and Safety:

a. Recognizes that the WQCC is solely responsible for the adoption of water quality standards and classifications for state waters in accordance with § 25-8-202(7).

b. Recognizes that the WQCD is solely responsible for issuance and enforcement of permits authorizing all point source discharges to surface waters of the state as well as enforcing any control or permit regulation adopted by WQCC under § 25-8-202(7)(b)(III).

c. Has been designated an implementing agency through the provisions of § 25-8-202(7). As such, the DRMS is responsible for implementing standards and classifications for discharges, other than point source discharges to surface water, through its own regulatory programs after consultation with the WQCC and the WQCD. The DRMS is also specifically by statute and

regulation mandated to ensure that “disturbances to the prevailing hydrologic balance of the affected land and surrounding area and to the quality and quantity of water in surface and ground water systems both during and after mining operations (are) minimized.” § 34-32-116(7)(g), and § 34-32.5-116(4)(h).

d. Is responsible for adopting applicable points of compliance for statewide and site-specific standards and classifications for discharges into state waters, other than surface waters, in accordance with criteria established through rulemaking after public hearing and consultation with the WQCC and the WQCD. Such points of compliance shall be established so as to protect present and future beneficial uses of water.

e. Will provide reasonable assurance to the WQCC and the WQCD that compliance with § 25-8-202(7) has been obtained through the Minerals Program. Reasonable assurance will be provided through utilization of the WQCC established ground water standards and classifications as the basis for setting enforceable performance standards; the adoption of rules and regulations to establish points of compliance for discharges to state waters other than point source discharges to surface waters; the establishment of adequate monitoring requirements to confirm compliance with applicable surface and ground water classifications and standards; the reporting of DRMS activity as described in § 5.1 h. of this subsection; and providing upon CDPHE or WQCD request or making available for review at DRMS offices the records associated with each reclamation permit.

With respect to in-situ uranium mines, the DRMS will provide reasonable assurance of compliance with the requirements of § 25-8-202(7) by ensuring that such operations meet the standards of § 34-32-116(8) requiring reclamation to pre-mining baseline water quality or WQCC established standards and classifications.

f. In the event that DRMS receives written notice from the WQCC or the WQCD that circumstances exist which may result in a basis for WQCC action in accordance with § 25-8-202(7)(b)(II)(A), (B) or (C), DRMS shall respond, in writing, to the notice within 15 working days. DRMS, through its designated official, will meet informally with the designated officials at the WQCC and the WQCD through one or more meetings to attempt to resolve the concern.

g. In the event that the DRMS receives notification from the WQCC of its intent to publish a Notice of Public Hearing to consider the adoption of control regulations or permit regulations for one or more of the water quality responsibilities currently within the jurisdiction of the DRMS, the DRMS shall respond to such notification within 30 days. The response from the DRMS will provide information to the WQCC that demonstrates that there is no basis for WQCC action in accordance with § 25-8-202(7)(b)(II)(A), (B), and (C) or, if such a basis may exist, that it identifies the action(s), if any, to be undertaken by the DRMS to remedy the situation.

h. DRMS has provided, to the WQCC and the WQCD, a written report that describes how its programs will assure compliance with water quality standards and classifications for activities subject to DRMS jurisdiction including identification of any relevant proposed or existing regulations. This written report shall be updated annually by DRMS. The annual update shall

provide documentation and supporting justification for any changes made by DRMS to its programs for implementing the requirements of § 25-8-202(7) during the course of the year and will include an annual summary of the activities and concerns of DRMS relative to the implementation of standards and classifications. The DRMS will present the report to the WQCC at a time to be set in cooperation with the WQCC administrator.

5.2 Water Quality Control Division:

- a. The WQCD shall recognize the water quality responsibilities of the DRMS and its designation as an implementing agency in accordance with § 25-8-202(7).
- b. The WQCD shall be solely responsible for the issuance and enforcement of permits authorizing point source discharges into surface waters of the State. See § 25-8-501, 503 and 504.
- c. The WQCD shall not require permits for, or otherwise regulate, activities subject to the jurisdiction of the DRMS unless such regulation is promulgated by the WQCC as provided under § 5.3 e. and f. below.
- d. In the event that the WQCD has reason to believe that circumstances exist which may result in a basis for WQCC action in accordance with § 25-8-202(7)(b)(II)(A), (B) or (C), the designated official from the WQCD shall notify the Director of the DRMS, in writing, of such circumstances. The notice shall provide an explanation of the basis for the the WQCD's concern(s) and specify the circumstances which may result in a basis for WQCC action, including any supporting documentation. Copies of this correspondence shall be forwarded to the WQCC. The designated official of the WQCD will attempt to resolve the concern(s) informally with the designated officials of the WQCC and the DRMS through one or more meetings and shall consider any response DRMS submits pursuant to § 5.1f above. All reasonable efforts will be made, at the agency level, to resolve the concern(s) identified.
- e. In the event that the WQCD determines that the circumstances identified in accordance with subsection (d) above cannot be remedied through informal discussions at the agency level, it shall so notify the WQCC and the DRMS.
- f. The Director of the WQCD shall annually report to the MLRB at a regular MLRB meeting on the activities and concerns of WQCD and WQCC relative to the implementation of the provisions of § 25-8-202(7). The date of such report shall coincide as nearly as possible to the date that the DRMS reports to the WQCC.

5.3 Water Quality Control Commission:

- a. The WQCC shall recognize the water quality responsibilities of the DRMS and its designation as an implementing agency in accordance with § 25-8-202(7).
- b. The WQCC is solely responsible for adoption of water quality standards and classifications for all state waters.

c. In adopting water quality standards and classifications for state waters other than surface waters, the WQCC shall not specify points of compliance applicable to discharges regulated by DRMS unless such specification is done pursuant to § 25-8-202(7)(b)(III). Otherwise, such points of compliance shall be adopted by the DRMS in accordance with criteria established through rulemaking as provided under § 5.1.d of this agreement.

d. In the event that the WQCC has reason to believe that circumstances exist which may result in a basis for WQCC action in accordance with § 25-8-202(7)(b)(II)(A), (B) or (C), it shall proceed in the following manner:

i. Unless the WQCC has previously provided such notice as specified under § 5.2d. of this agreement, the WQCC, or its designated official, shall notify the Director of the DRMS, in writing, of such circumstances. A copy of such notice shall be provided to the WQCD. The notice shall specify the circumstances which may result in a basis for WQCC action and provide an explanation of the basis for the WQCC's concern(s), including supporting documentation.

ii. The WQCC designated official shall meet with the designated officials of the DRMS and WQCD to attempt to resolve the concern(s) informally. All reasonable efforts will be made to resolve the concern(s) at the agency level. Any such resolution shall be presented to the full WQCC for its approval.

iii. If the DRMS, the WQCC and the WQCD are unable to reach agreement regarding the implementation of water quality responsibilities as outlined in § 25-8-207(7)(a), the Executive Directors of the Department of Public Health and Environment and the Department of Natural Resources will address issues in dispute, after consultation with the Attorney General's Office as necessary and, if possible, recommend a resolution to the WQCC and the DRMS for their consideration.

e. In the event that the WQCC determines that the circumstances identified in accordance with section (d) above cannot be remedied through informal discussions it shall notify the DRMS of its intent to publish a Notice of Public Hearing to consider the adoption of control regulations or permit regulations for the activities subject to the jurisdiction of the DRMS which are the subject of concern. Such notification to the DRMS shall precede the publication of the WQCC's Notice of a Public Hearing by no less than forty-five (45) days, unless the WQCC determines that an emergency rulemaking must be initiated to assure compliance with either the federal Clean Water Act or the Colorado Water Quality Control Act. In such event, the WQCC shall give the DRMS as much advance notice as possible. If the WQCC receives information from the DRMS pursuant to § 5.1g. of this agreement, the WQCC shall not proceed with the Notice of Public Hearing unless the WQCC has determined that the proposed rulemaking is still necessary after it has reviewed the information at the next WQCC public meeting.

f. The WQCC shall adopt appropriate control regulations or permit regulations to address one or more of the water quality responsibilities within the jurisdiction of the DRMS only if it makes a written finding, after a public hearing that:

i. Such regulation is necessary to assure compliance with the Federal Clean Water Act, the provisions of Articles 80 to 93 of Title 37, C.R.S., or water quality standards and classifications adopted for state waters, or to protect present and future beneficial uses of water; or

ii. Such regulation is necessary to avoid the imposition of a disproportionate burden on other dischargers or classes of dischargers to the affected state waters who are subject to the requirements of this article; or

iii. the DRMS fails to provide a reasonable assurance that compliance with standards and classifications has been obtained through its own programs.

g. The WQCC shall provide to the DRMS rulemaking and informational hearing notices and agendas and allow participation in formal proceedings addressing the establishment of standards and classifications, and any other matter which could have an impact on DRMS operations, and informal proceedings in which the DRMS has expressed an interest.

h. The WQCC shall discuss the annual report prepared and submitted by DRMS at a regular public meeting, and shall provide the public with notice and an opportunity to comment on such report.

5.4 Responsibilities of the Mined Land Reclamation Board:

a. The MLRB shall promulgate rules to establish criteria for the selection of points of compliance pursuant to § 25-8-202(a). Prior to adoption of any water quality related regulation, the MLRB shall notify the WQCC and the WQCD and allow their participation in MLRB meetings where such proposals are to be discussed.

b. The MLRB shall promulgate any rule changes necessary to ensure the proper implementation of water quality standards and classifications through the administration of the Colorado Mined Land Reclamation Act and the Colorado Land Reclamation Act for the Extraction of Construction Materials. Prior to the adoption of any water quality regulations by the MLRB, the MLRB shall notify the WQCC and the WQCD and allow their participation in any MLRB meetings or hearings where such proposals are to be discussed.

Section 6. SPECIAL PROVISIONS

6.1 Access to Records:

Each agency shall, to the extent allowed by law, make available to the other, information within its possession. Requests for information shall not impose an unreasonable resource burden on either agency.

6.2 Effect on Prior Agreement:

When executed, this agreement shall supersede any prior agreement on the implementation of § 25-8-202(7) whether written or implied.

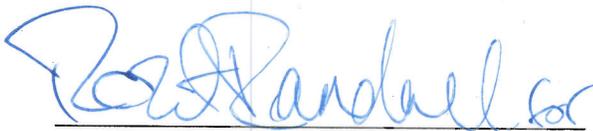
6.3 Effective Date and Termination:

This agreement shall become effective on the date of execution by the last signatory party. It may be amended upon the mutual agreement of the WQCC, the WQCD and the DRMS, or it may be terminated upon 30 days written notice to the other parties by the WQCC, the WQCD or the DRMS.

Section 7. APPROVALS

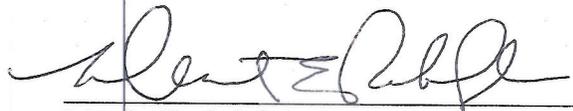
Department of Natural Resources
Environment
Mined Land Reclamation Board
Division of Reclamation, Mining and Safety

Colorado Department of Public Health and
Water Quality Control Commission
Water Quality Control Division



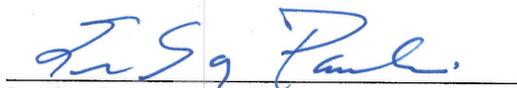
Mike King
Executive Director
Colorado Department of Natural Resources
Environment

Date: 12/14/10



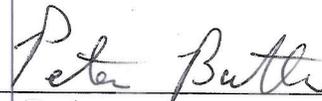
Martha Rudolph
Executive Director
Colorado Department of Public Health and

Date: 12/14/10



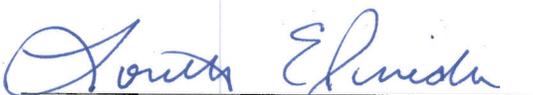
Ira Paulin
Chairman
Mined Land Reclamation Board

Date: 12-14-10



Peter Butler
Chairperson
Water Quality Control Commission

Date: 12/14/10



Loretta Pineda
Director
Division of Reclamation, Mining and Safety

Date: 12-14-10



Steven Gunderson
Director
Water Quality Control Division

Date: 12/14/10