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WATER RIGHTS
PROGRAM

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July 24, 2018

Talbot J. Wieczorek
Email: tjw@gpna.com
Direct Dial: (605) 719-3424

Jeanne Goodman
Department of Environment and Natural Resources
Water Rights Program
Foss Building
523 East Capitol
Pierre, SD 57501-3182

Re: Mineral Mountain Resources LTD - Water Rights
GPNA File No. 14089.0002

Dear Ms. Goodman:

Our firm has been retained by Mineral Mountain Resources SD (Mineral Mountain). As part of that representation, we have reviewed the history of water use for exploration purposes.

As you know, the Department of Environment and Natural Resources (DENR), without objection or need for a hearing, granted Mineral Mountain a temporary permit to appropriate water from Rapid Creek, at a maximum diversion rate of 200 gallons per minute, between January 1, 2018, and May 1, 2018. The temporary permit stated that "Mineral Mountain Resources may apply for a temporary permit for the period following May 1, at which time DENR will evaluate the hydrologic conditions to determine impacts to prior appropriations or vested rights." Mineral Mountain complied with all of the qualifications contained in the temporary permit. On April 5, Mineral Mountain applied to extend its temporary permit.

At that time, it was our understanding DENR had not received any information that showed an impact on any prior appropriations or vested rights and no impact has been shown since. The temporary permit included numerous qualifications. Mineral Mountain complied with all of these qualifications. Even absent any showing of adverse impact, change of conditions, or failure to meet the qualifications, the Water Rights Division refused to renew the permit. Rather, it decided not to extend the permit without a hearing before the Water Management Board. After this determination was made, Mineral Mountain withdrew its application for the temporary permit to appropriate from Rapid Creek.

While the Chief Engineer has the authority to defer applications for temporary permits to the Water Management Board pursuant to ARSD 74:02:01:34, the standard for issuance of the temporary permit is found in SDCL § 46-5-40.1. The relevant consideration in the statute authorizing temporary use of water is whether the permit would adversely affect prior

appropriations or vested rights. SDCL § 46-5-40.1. Qualifications can be included to protect the public interest but not as a bar to the issuance. *Id.*

While the right to refer the permit for decision to the Water Management Board exists, we are unfamiliar with it being done in the past where a renewal is being requested and there is no evidence of harm from the use of the existing temporary permit. Such a policy of deferral becomes especially damaging to ongoing operations where it essentially can shut down an ongoing project since it takes six months to have an item placed before the Board. When the decision to refer the application to the Water Management Board was made, the Board's next meeting agenda included only the scheduling of a hearing, not the actual hearing on the application. In other words, it appeared the matter would not be decided at the next regularly scheduled hearing. Unless Mineral Mountain is being subjected to a different standard than is applied to other applicants for temporary use of water, certainly DENR can appreciate that these delays impact not only Mineral Mountain but will be detrimental to innumerable construction projects that rely on these temporary permits.

This year has brought an abundance of rain to the area. Current data regarding storage at Pactola Reservoir and flow on Rapid Creek indicate an abundance of water. With these abundant flows, Mineral Mountain has decided it will use the pre-1907 water right for the Standby Mill site it has as part of an agreement and option on the land. A September 1, 1898, deed includes the following grant: "Also that certain mill site of the party of the first part, (formerly the mill site of the Standby Gold Mining Company) situate on Little Rapid Creek in Rochford Mining District, in Pennington County, South Dakota; and that certain sixty stamp quartz mill and mill building situate on said mill site, and also all the fixtures and all appurtenances thereof and the water-right on Little Rapid Creek which was and is appurtenant to said mill[.]" A copy of this document, as well as a February 17, 1899, deed referencing the water right are attached to this letter. As specifically stated in the deed, the water right is appurtenant to the Mill Site patent.

This water right existed prior to 1907 and was used at the historic Standby Mill before that year. Mineral Mountain has entered into an agreement and option with the owners of the Standby Mill site. As the water right for the mill is appurtenant to the Mill site property, Mineral Mountain is currently the appropriate holder of this water right.

As you know, uses of water prior to 1907, not subsequently abandoned or forfeited, were vested by SDCL § 46-1-9(5). Such water rights cannot be abandoned or forfeited without a due process hearing before the Water Management Board. *See In re Cancellation of Stabio Ditch Water Right on Spearfish Creek*, 417 N.W.2d 391 (S.D. 1987). SDCL § 46-1-10 validated those vested rights acquired before July 1, 1955. Because the Standby Mill water right was acquired and put to beneficial use prior to 1907 and has not been found to be abandoned at a required due process hearing, it was validated by operation of SDCL § 46-1-10. Therefore, Mineral Mountain will begin utilizing this validated water right appurtenant to the Standby Mill site patent for its exploration needs.

Mineral Mountain will divert this water from Rapid Creek, at the historic site of the Standby Mill. With the significant rainfall in the area this summer, use of this historic right will not be adverse to other water rights in the area. Still, at this time, Mineral Mountain plans to limit its diversion amount to a rate and quantity similar to that granted in the 2018 Temporary Permit to Use Public Waters. Diversion of this quantity of water does not approach the quantity that would have been diverted to operate the Standby quartz stamp mill and Mineral Mountain reserves the right to exceed that previously permitted amount if it is later deemed necessary. Mineral Mountain intends to begin diverting water under the Standby Mill water right when it is staged to begin drilling its next exploration hole. Because Mineral Mountain intends on curtailing operations during the annual motorcycle rally, this will likely occur in about three weeks.

Mineral Mountain appreciates that DENR follows water usage in these areas. Should there be any questions about this correspondence, please contact Matt Naasz or myself.

Sincerely,



Talbot J. Wieczorek

TJW
Enclosures

76793.

Deed to Receiver.

Consolidated Apex Mining Company,

To

William H. La Rue, Receiver.

Deed to Receiver.

This Indenture, made this first day of September A. D. 1898, between the consolidated Apex Mining Company, a corporation organized and existing under the laws of South Dakota, and transacting business in Pennington county, South Dakota, party of the first part, and William H. La Rue, a receiver appointed by the Circuit Court of Pennington county, South Dakota, party of the second part. Witnesseth,

That whereas, in and by a judgment and decree of the said Circuit Court of the seventh judicial circuit of the State of South Dakota, in and for Pennington County, made by the Honorable Levi McJannet, the Judge of said court, on the 22nd day of August A. D. 1898, in a certain action in said court pending, in which George A. Sutton and others are plaintiffs and the said Consolidated Apex Mining Company and others are defendants, it was ordered, among other things, that the said William H. La Rue be appointed receiver of the said Consolidated Apex Mining Company, with the usual powers of receivers in equity, upon his giving bond in the penal sum of Five Thousand Dollars, with sufficient sureties to be approved by the judge of said circuit court, and taking the oath prescribed by law, and that upon the approval and filing of such bond, the said William H. La Rue should be vested with all his rights and powers as such receiver.

And whereas, on the 31st day of August, A. D. 1898, the bond of said receiver was duly approved and filed in said court in accordance with said decree and order, and said William H. La Rue took and subscribed the oath as such receiver.

Now therefore, the said party of the first part, in consideration of the premises, and of one dollar in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, in obedience with said judgment and decree of the court and for the purpose of giving effect thereto, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey unto the said party of the second part, his successors and assigns, the following described parcels or pieces of lands and premises, situated in Pennington county, South Dakota, viz:

The Old Standby lode or mining claim, as fully designated and described in that certain patent from the United States to William C. Riggs, dated January 24, 1885, and duly recorded in the office of the register of deeds of Pennington County, South Dakota, in Book 16 at pages 50, 51, 52, 53, 54 and 55 of the Warranted Deed Records of said county, reference is hereby made thereto for a more perfect description of said mining claim.

Also the Continental lode mining claim as fully designated and described in that certain patent from the United States to William C. Riggs, dated January 24, 1885, and duly recorded in the

office of the Office of the register of deeds of Pennington county, South Dakota, in Book 16 at pages 53, 56, 57, 58, 59 and 60 of the Warranty Deed Records of said County, reference to which patent is hereby made for a more perfect description of said mining claim.

Also that certain mill site of the party of the first part, (formerly the mill site of the Standby Gold Mining Company) situate on Little Rapid Creek in Rockford Mining District, in Pennington county, South Dakota; and that certain sixty stamp quartz mill and mill building situate on said mill site, and also all the fixtures and all appurtenances thereof and the water right on Little Rapid Creek which was and is appurtenant to said mill, together with about four miles of flume also appurtenant to said mill.

Also the Independent lode or mining claim; also the Champion lode or mining claim; also the Confidence lode or mining claim; also the Excelsior lode or mining claim; also the Eureka lode or mining claim; also the World's Fair lode or mining claim, together with all the improvements and appurtenances belonging or in any way appertaining to said lode or mining claims, together with all dips, spurs, angles and also all metals, gold or silver bearing rock and earth therein, and all rents, issues and profits arising therefrom.

All said mining claims and premises above mentioned and described are situated along the line of the Burlington & Missouri River Railroad in said Rockford Mining District, in Pennington county, South Dakota, about a quarter of a mile southerly from the town of Rockford.

Also the following described personal property is hereby sold, bargained and conveyed by the party of the first part to the party of the second part herein, to wit:

All dishes, table linen, knives and forks, cooking utensils, stoves, ranges, table furniture of all kinds used in and about that certain boarding house of the said party of the first part situate upon the mining premises above described, and all supplies, materials and appurtenances used in connection with said boarding house; also that certain assay outfit consisting of chemicals, tools, weights, crucibles, embers, hammers, and each and every article used in connection with said outfit, the same being situate upon said mining premises above mentioned; also all mining tools, implements, supplies, stone powder, caps, fuses, iron bars, and tools and implements of every kind and character belonging to said party of the first part and heretofore used in and about its mines; also all blacksmith tools, materials and appurtenances located at or near said boarding house above mentioned; and that certain building known and used as the blacksmith's shop upon or near said mines aforesaid; also all plumbing tools, pipes, paint and supplies of all kinds, also that

certain boiler and smoke stacks on the premises above described; also all amalgams, bullion, concentrates, ore, both in the dumps and in and about said mining claims; and all personal property of whatever kind or character not above specified, which is owned by said party of the first part, and which is kept or used in or about said mining premises, mill and buildings aforesaid, including all stamps, dies, shoes, extra materials, bolts, pulleys, castings and machinery of all kinds for use or used in the mill and about said premises above described.

To Have and To Hold the same unto the said party of the second part as such receiver as aforesaid, and to his successors and assigns forever, subject only to the order, direction and control of said court.

In Witness Whereof the party of the first part hath caused this instrument to be signed by its President and Secretary, and sealed with its corporate seal, This day and year first above written.

The Consolidated Apex Mining Company
Fred B. Rugg Secretary
By James B. Baker President

State of South Dakota
County of Lawrence } On this first day of September, A. D. 1898, before me, the undersigned, a notary public within and for said County and State, personally appeared James B. Baker, well known to me to be the President of the Consolidated Apex Mining Company, a corporation, described in and which executed the above foregoing instrument, and he acknowledged to me that said corporation executed the same.

James S. Cull
Notary Public
South Dakota

1066 series
7 1898
documentary

Ironis S. Cull
Notary Public.

State of South Dakota
County of Pennington } On this second day of September, A. D. 1898, before me, the undersigned, a notary public in and for said county and state, personally appeared Fred B. Rugg, well known to me to be the secretary of the Consolidated Apex Mining Company, a corporation, which is described in and which executed the foregoing instrument, and he acknowledged to me that said corporation executed the same; and he further acknowledged to me that as such secretary of said corporation he affixed the corporate seal thereto.

Consolidated Apex
Corporate Seal
Mining Co.

Fred H. Whitfield
Notary Public
South Dakota

1066 series
7 1898
documentary

Fred B. Whitfield
Notary Public

Filed for record this 18th day of Feb. A. D. 1899 at 8 o'clock A. M. and Recorded in Book 16 on Page 123 of Deed Records.

F. W. Lockhart, Register.

16797

Receiver's Deed:

William H. La Rue Receiver
To
Charles R. Price, Trustee.

Receiver's Deed:

This Indenture made this 17th day of
February, A.D. 1899, by and between William
H. La Rue, receiver appointed by the Circuit
Court of the seventh judicial circuit in and

for Pennington county, South Dakota, party of the first part, and Charles
R. Price, Trustee, party of the second part, Witnesseth:

That whereas, in and by a judgment and decree of the said
Court, made by the Honorable Lewis McFee, Judge of said
Court, on the 22nd day of August A.D. 1898, in a certain action
in which George A. Sutton, and others, are plaintiffs and the Consoli-
dated Apex Mining Company, and others are defendants, it was
ordered (among other things), that the said William H. La Rue be
appointed receiver of the said defendant, The Consolidated Apex
Mining Company, with the usual powers of receivers in
equity, upon his giving bond in the penal sum of Five thousand
Dollars, with sufficient surety to be approved by the said Court
or the Judge thereof and taking the oath of such officer, and that
upon the approval and filing of such bond the said William
H. La Rue should be vested with all his rights and powers as such receiver;

And whereas on the 31st day of August A.D. 1898, the bond of
said receiver was duly approved and filed in said Court in
accordance with said decree, and on that day said receiver duly
qualified by taking and subscribing the oath prescribed by law;

And whereas by said decree of said Circuit Court dated
August 22, 1898 in the cause aforesaid, it was further ordered
that said receiver (after ninety days from said August 22, 1898)
should advertise for sixty successive days in the Rapid
City Daily Journal, a newspaper printed and published in
Rapid City in said county of Pennington, and also in the
Pioneer Times, a newspaper of general circulation printed and
published in the city of Deadwood, the county of Lawrence
and state of South Dakota, notice of the time and place of public
sale of the real property of said defendant, the Consolidated Apex
Mining Company, being the premises hereinafter described:

And whereas said receiver in accordance with said last named
order, did advertise said notice of public sale for sixty successive
days in each of said Rapid City Daily Journal and Pioneer Times
beginning in each of said papers with the issue of November 27,
1898, and ending with the issue on the 27th day of January 1899, both
days inclusive;

And whereas the said party of the second part has bid at
public auction for said real estate hereinafter mentioned, being
the premises described in said judgment and decree, of August

23, 1898, the sum of Thirty-seven thousand dollars, which is the highest and best bid received therefor.

And whereas, by another order of said court, made and entered in the cause aforesaid, on the 17th day of February A.D. 1899, it was ordered that said bids be approved and accepted, and that said receiver should sell, assign, transfer and set over, unto the said party of the second part said real estate, being the premises hereinafter described, for said sum of Thirty-seven thousand dollars, being the aggregate amount of the bids therefor of the party of the second part as aforesaid:

Now therefore, in consideration of the premises, and in obedience to said last mentioned order and for the purpose of giving effect to the same, and in consideration of the sum of thirty-seven thousand dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the party of the first part, as such receiver, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, his heirs, successors and assigns forever, those certain pieces or parcels of mining premises and real property situated in the Rockford Mining District, Pennington County, South Dakota, which are described as follows, to wit:

The Old Standby Lode Mining claim, as fully designated and described in that certain patent from the United States to William C. Riggs, dated January 24, 1885, and duly recorded in the office of the register of deeds of said Pennington County, South Dakota, in Book "C" at pages 50, 51, 52, 53, 54 and 55 of Warranty Deed Records of said county, and reference to said patent and record thereof is hereby made for a more perfect and complete description of said mining claim, also

The Continental Lode Mining claim as fully described in that certain patent from the United States to William C. Riggs, dated January 24, 1885, and duly recorded in the office of the Register of Deeds of Pennington County, South Dakota, in Book "C" at pages 55, 56, 57, 58, 59 and 60 of Warranty Deed Records of said county, reference to which said patent and the record thereof is hereby made for a more perfect and complete description of said mining claim, also

That certain mill site of the Consolidated Apex Mining Company (formerly the mill site of the Standby Gold Mining Company) situated on Little Rapid creek in Rockford Mining District, of Pennington County, South Dakota, and that certain sixty stamp quartz mill and mill building situated on said mill site; also all the fixtures and all appurtenances thereof and the water-right on Little Rapid creek which was and is appurtenant to said mill and mill site, together with about four miles of flume also appurtenant to said mill and mill site; also

The Independent Lode or Mining Claim; also the Champion Lode or Mining Claim; also the Confidence Lode or mining claim; also the Excelsior lode or mining claim; also the Quake lode or mining claim; and also the World's Fair lode or mining claim, together with all the improvements and appurtenances belonging or in any wise appertaining to each of said last named several lodes or mining claims; and also all dips, spurs, angles, and all metals, gold and silver bearing rock and earth therein; and all rents, issues and profits arising therefrom.

All of said above described lodes or mining claims, patented and unpatented, are situated along the line of the Burlington & Missouri River Railroad in said Pennington County, South Dakota, in said Rockford Mining District, about one quarter of a mile southwesterly from the town of Rockford.

To have and to hold the same unto the said party of the second part, his heirs, successors and assigns, to his and their only use and benefit forever: hereby conveying all and singular the hereditaments and appurtenances belonging unto said above mentioned premises or in any wise appertaining thereto, and all revenues, remainder, rents issues and profits thereon, and all the estate, right, title, interest claim and demand whatsoever, either in law or in equity, of the party of the first part or such receiver aforesaid, or of the said Consolidated Apex Mining Company, of in and to the above described premises, with the hereditaments and appurtenances.

In Witness Whereof, the party of the first part, as such receiver aforesaid, has hereunto set his hand and seal the day and year first above written.

Done in presence of:
 Wm. H. Smith
 Fred. H. Whitfield

*37th Series
 21878
 Documentary
 Revenue.

William H. LaRue (Recr.)
 Receiver of the Consolidated Apex Mining
 Company.

Acknowledgment.

State of South Dakota }
 County of Pennington }

On this 17th day of February A.D. 1899, before me, the undersigned, a notary public within and for said County and State, personally appeared William H. LaRue receiver of the Consolidated Apex Mining Company, a corporation, who is described in and who executed the above and foregoing instrument, and he acknowledged to me that as such receiver and officer he executed the same.

Fred. H. Whitfield
 Notary Public
 South Dakota

Fred. H. Whitfield.
 Notary Public

Filed for record this 18th day of Febr. A.D. 1899 at 1 o'clock and 40 minutes P.M. and recorded in Book 16 page 126 of Warranty deed Tracts F.M.C. Lockhart Register.