

**Proposed Statement of Basis, Specific Statutory Authority, and Purpose for  
New Rules and Amendments Proposed by the  
Division of Reclamation, Mining and Safety to the Mineral Rules and  
Regulations of the Colorado Mined Land Reclamation Board for Hard Rock,  
Metal and Designated Mining Operations, 2 CCR 407-1.**

Consistent with § 24-4-103(4), C.R.S., of the Administrative Procedure Act, this statement sets forth the proposed basis, specific statutory authority, and purpose for new rules and amendments (“rules”) proposed by the Division of Reclamation, Mining and Safety (“Division”) for consideration by the Mined Land Reclamation Board’s (“Board”) to the current rules of the Board. The proposed rules implement new statutory requirements and authority as well as update existing regulations. The proposed rules are intended to protect the public health, safety and welfare as required by the Mined Land Reclamation Act (“Act”). They also are intended to foster and encourage the development of the State’s natural resources and the development of a sound and stable mining and minerals industry, and require mining operators to reclaim land affected by such operations so that the affected land can be put to a use beneficial to the people of this State. *See* § 34-32-102, C.R.S.

If adopted, the new rules would become effective on a date specified by the Board.

In proposing these rules, the Division considered the Act’s statutory requirements and the Board’s and Division’s regulatory authority including new provisions the General Assembly enacted in 2008. The Division also considered extensive written comment, oral discussion, and legal argument, which occurred during eight months of informal stakeholder meetings held by the Division.

**Statutory Authority**

The General Assembly delegated broad rulemaking authority to the Board respecting the administration of the Act at § 34-32-108, C.R.S. In addition, the General Assembly passed several pieces of legislation in 2008, which set forth new statutory requirements and increased the regulatory authority of the Board and the Division. Specifically, the Legislature passed Senate Bill (“SB”) 08-228 concerning prospecting, codified at § 34-32-113, C.R.S; House Bill (“HB”) 08-1161 concerning uranium mining, codified at §§ 34-32-103, 110, 112, 112.5, 115, 116, and 121.5, C.R.S; and SB 08-169 concerning fees, codified at § 34-32-127, C.R.S. In addition, the General Assembly set new fee amounts in 2007 in SB 07-185, codified at § 34-32-127, C.R.S. Further authority for the proposed new rules and amendments resides in §§ 34-32-112.5 and 116.5, C.R.S., which concern designated mining operations.

## **Purpose**

The primary reason for adopting the proposed rules is to implement legislation the General Assembly passed in 2008. In addition, the proposed rules update the existing rules to correspond to the changes required for the implementation of the legislation and also amend areas of the existing rules that need clarification, correction or to reflect new information or current practice or procedure.

The proposed new rules and amendments include edits and additions to numerous sections of the current rules, and include, among other amendments and additions, new definitions; changes to existing definitions; new application, reclamation and temporary cessation requirements for uranium mining; provisions regarding confidentiality and public disclosure of prospecting information, including a process to request hearings before the Board regarding confidentiality disputes; provisions concerning permit fees and costs of third party experts; changes to the designated mining operation process; and changes to the spill reporting requirements.

## **Stakeholder Process and Rulemaking Hearing**

In May 2009, the Division began an informal stakeholder process. The Division held its first stakeholder meeting on May 27, 2009 at which the Division provided an overview of its proposed draft set of rules. The Division posted proposed regulations on its website on May 28, 2009. Throughout the stakeholder process, interested persons were given opportunities to submit written comments on each version of the draft and to orally discuss the draft and comments thereto at stakeholder meetings.

For the most part, the Division discussed the rules sequentially, with participants having an opportunity after each stakeholder meeting to submit written comments and then discuss their comments at the next stakeholder meeting. In total, the Division held eight stakeholder meetings: May 27, June 11, July 9, July 30, August 19, September 16, September 30; the Division posted a complete set of the proposed regulations with all edits indicated on the draft on October 20, set November 10 as the deadline for comments on that draft set, then held the final stakeholder meeting on December 3.

During the stakeholder process the Division received extensive written comments and heard oral comments during the stakeholder meetings. In addition, during stakeholder meetings frank discussion took place between the Division and the participants. In response to discussions and comments, the Division amended the proposed rules.

## **Legislation and Rules**

In 2008, the General Assembly passed three bills that affected the Act: SB 228 concerning prospecting, HB 1161 concerning uranium mining, and SB 169 concerning fees. In addition, the General Assembly set fees in 2007 in SB 07-185. The proposed rules implement all of these pieces of legislation.

### Senate Bill 228

Prior to this bill, all information concerning a notice of intent to conduct prospecting was confidential unless the prospector filed a written release or the Board found that reclamation had been satisfactorily completed. With the passage of SB 228, all information in a notice or a modification of a notice filed on or after the effective date of this bill is public with the exception of information about mineral deposit location, size, or nature, and proprietary information, trade secrets and information that may cause harm to the competitive position of the prospector.

SB 228 provides that information that is designated by the prospector as exempt from disclosure shall remain confidential until a final determination is made by the Board. This bill requires the Board to promulgate rules to implement the bill, and requires the Board to consider the timing of disclosure of the prospector's identity.

This bill requires the Division to post on its website all information in a notice except that information exempt from disclosure.

### Rules to implement SB 228

The proposed rules at Proposed Rule 1.3 and Proposed Rule 5 implement SB 228. Proposed Rule 1.3 requires an applicant for a notice of intent to conduct prospecting to designate what the applicant believes is confidential information in the notice, in modifications of the notice and in subsequently submitted documents such as annual reports. A prospector may designate its identity as confidential but must file quarterly reports with the Division justifying continued confidentiality of its identity. Rule 1.3 also sets forth the process for a person to request disclosure of information designated by a prospector as confidential and to request a hearing before the Board on the confidentiality issue.

Proposed Rule 1.3 provides that any dispute as to whether information is properly designated as exempt from public disclosure is a deficiency issue concerning the notice. Accordingly, the Division will not approve a notice, and prospecting activities may not begin, until the Board resolves the designation issue and the applicant has met all other requirements applicable to a notice of intent.

Proposed Rule 5 distinguishes between notices filed before June 2, 2008 (when SB 228 was signed into law) and those filed after that date. For those notices filed before

June 2, 2008, the information in the notice is confidential. However, if the prospector modifies the notice, the modification as well as the underlying notice may be public.

Applicants must file two separate forms: (1) one that contains all information including confidential information; this form will only be used internally by the Division and will not be made public; and (2) one form with the information designated as confidential redacted. The Division must post on its website the notice with any confidential information redacted.

The Division received a number of comments and had extensive discussions at stakeholder meetings about the process that should be involved concerning a notice of intent. Environmental entities believed that the Division's approval of a prospecting notice should be subject to an appeal to the Board, with the Board's decision being subject to judicial review. Industry representatives asserted that, unlike the sections of the Act dealing with permit applications, section 34-32-113 of the Act, which specifically concerns prospecting, does not provide for any process concerning a notice, including allowing public comment or an appeal to the Board.

Given the Board's broad rulemaking authority and in response to comments from both sides of this issue, the rules proposed by the Division allow for public comment on notices of intent to conduct prospecting. Specifically, the proposed rules provide that once a notice of intent to conduct prospecting is posted on the Division's website, the public has ten working days to submit comments to the Division.

As to the issue of appeals to the Board of Division prospecting determinations, the Division's proposed rules leave unchanged current language in the rules that refers to appeals of Office determinations. Specifically, current Rule 5.1.3(c) states that "Any appeal of an Office determination shall follow the procedures set forth in Rule 1.4.11." However, this current language was written prior to enactment of SB 228 and therefore, has only applied to, and allowed for, appeals by prospectors, since pre-SB 228 notices were entirely confidential. The Division's decision to let this language stand allows the Board to determine in its discretion whether the current rule's language should apply to appeals of the Division's determinations by entities other than prospectors.

Please note that if a prospector uses or intends to use prospecting information for a baseline site characterization and monitoring plan required for in situ leach mining application, such activities will be regulated as baseline activities, not prospecting, and therefore the information obtained would be public.

### House Bill 1161

This bill provided new requirements for uranium mining operations including, but not limited to:

- (1) Making every uranium mining operation a designated mining operation (which subjects such operations to additional application and permitting requirements);
- (2) Imposing new and additional application requirements for in situ leach mining operations such as (a) conducting a thorough baseline site characterization prior to submitting an application, (b) describing five similar operations that demonstrate the applicant's ability to conduct the proposed operation without causing leakage into groundwater, and (c) submitting a certification of past and present violations of environmental protection requirements;
- (3) Setting specific water quality standards for reclamation of in situ leach mining operations; and
- (4) Increasing the Board's authority to deny applications for in situ leach uranium mining operations if the applicant fails to demonstrate by substantial evidence that it will reclaim affected groundwater to standards or if the applicant has past or present violations or a pattern of willful violations of environmental protection requirements of the Act or similar state and federal law.

#### Rules to Implement HB 1161

The proposed new rules and amendments mirror the requirements of the Act. Much comment and discussion during the stakeholder meetings centered on the process concerning the baseline site characterization and monitoring plan required for applications for in situ leach uranium mining operations. Environmental groups asserted that the rules should allow for comment to the Division and appeal to the Board from Division's decisions concerning baseline site characterization and monitoring plan issues. Industry members argued that the Act does not provide or allow for any process as to the baseline site characterization and monitoring plan. Industry asserted that decisions related to baseline site characterization and monitoring plans are not final actions subject to appeal since the Act requires the characterization to be conducted prior to submittal of the application and a prospective applicant may never file an application. In addition, industry representatives submitted that the appropriate time for public comment and participation is when a permit application is filed, which is when the Act explicitly provides for public participation.

Given the Board's broad rulemaking authority and the statutory language in the Act, the proposed rules allow for public comment on baseline site characterization and monitoring plans for in situ leach mining operations but do not allow for appeals to the Board of Division's decisions concerning the plans. Specifically, the proposed regulations require the Division to post on its website notice that such a plan has been submitted. The public may request review of the plan and may submit comments within ten working days of the posting of the notice on the Division's website. The Division believes that the Division's work on baseline site characterization and

monitoring plans is not final agency action that is subject to appeal to the Board. Objections or comments regarding these plans may be submitted by parties to a permit application proceeding if and when a prospective applicant actually files a permit application.

At stakeholder meetings, industry members raised concerns about potential confusion that the proposed rules require a baseline site characterization to be conducted prior to conducting pure prospecting activities. To be clear, the baseline site characterization plan required by § 34-32-112.5(5)(b), C,R,S. for in situ leach mining operations is only required when submitting a permit application for such an operation; the baseline site characterization plan is not required for prospecting as that term is defined by the Act.

Please note that if prospecting activities are combined with baseline site characterization and monitoring plan activities, or information obtained from prospecting activities will or may be used in the baseline site characterization and monitoring plan required for a proposed in situ leach mining operation, then the prospecting activities will be regulated as baseline site characterization and monitoring plan activities and not prospecting activities. HB 1161 authorizes the Division or a third party expert to monitor field operations. Thus, the Division may monitor (or may hire a third party expert to monitor) any activities that concern a baseline site characterization and monitoring plan.

As stated above, HB 1161, among other things, made all uranium mines designated mining operations (DMOs). However, the bill allows the operators of these mines to seek exemption from DMO status. Importantly, any exemption from DMO status does not relieve an operator from its obligation to comply with in situ leach application, mining and reclamation requirements.

In an effort to simplify DMO status in the context of uranium mining operations, these rules provide that all uranium mining operations, regardless of whether they are filed under section 110 or 112 of the Act, are DMOs which must follow the procedures for, and will be considered, 112d-3 applications and operations. These operations are entitled 112d applications and operations; they are not given a separate name from other 112d applications. The proposed rules provide that any uranium mining operation may seek exemption from DMO status.

If an in situ leach mining operation obtains an exemption from DMO status, such operations are named 110 ISL or 112 ISL. Operations or applications involving 110 ISL or 112 ISL operations must still comply with all in situ leach mining and application requirements (*e.g.*, baseline site characterization, specified water quality standards, 240-day deadline for decision on application). These applications and operations will follow regular 112 operation procedures, rather than 112d-3 DMO procedures. Thus, an in situ leach mining operation will never follow section 110 procedures regardless of its size. In addition, the 240-day deadline for a decision on

an application applies to all in situ leach mining operations - the 240-day deadline is not based on DMO status but on in situ leach mining status. Consequently, given this, the 112 procedures provide a better structure for such applications.

#### Senate Bill 08-169

This bill set fees for applications and amendments. In addition, the bill requires an applicant for an in situ leach uranium mining permit, amendment or revision to pay the costs of the Division if the cost to review and process an in situ leach permit application, amendment or revision exceeds twice the fee for a permit application, amendment or revision. The costs include those of the Division, another division in the Department of Natural Resources and any consultant or other nongovernmental agents that have specific expertise on the issue in question. The bill requires the Division to inform the applicant that the actual fee will exceed twice the value of the listed fee and to provide the applicant with a cost estimate of the actual charges for the review within ten (10) days after receipt of the application. The applicant may appeal the Division's estimate to the Board within ten (10) days after the applicant's receipt of the estimate.

The proposed rules mirror the above summarized changes at Proposed Rule 1.5.

#### Senate Bill 07-185

In 2007, the Legislature enacted changes to the fee schedule for permit applications, amendments and revisions. In addition, the bill requires an applicant for an oil shale mining permit, amendment or revision to pay the costs of the Division if the cost to review and process an oil shale permit application, amendment or revision exceeds twice the fee for a permit application, amendment or revision. The costs include those of the Division, another division in the Department of Natural Resources and any consultant or other nongovernmental agents that have specific expertise on the issue in question. The bill requires the Division to inform the applicant that the actual fee will exceed twice the value of the listed fee and to provide the applicant with a cost estimate of the actual charges for the review within ten (10) days after receipt of the application. The applicant may appeal the Division's estimate to the Board within ten (10) days after the applicant's receipt of the estimate.

The proposed rules reflect the provisions of SB 07-185 at Proposed Rule 1.5.

#### Other Important Proposed Changes

Conversions: In existing Rule 1.11, conversions include changing 110 permits to 112 permits and also changing designated mining operations to non DMOs. The proposed rules and amendments parallel the Act by stating that conversions only cover increases in acreage included in a permit. § 34-32-110(7), C.R.S. The proposed rules require any operator who wishes to be a non DMO to comply with the provisions of

Rule 7, rather than conversion requirements. In addition, the proposed rules require operators who seek a conversion to file a permit application. Again, this proposed requirement is based on the Act. § 34-32-110(7), C.R.S.

### Permit Transfers and Successions of Operators

Based on the requirements of HB 1161 at § 34-32-115(5), C.R.S., proposed rule 1.12 requires entities who wish to succeed to an in situ leach mining permit to comply with the requirement of filing Exhibit Y, Certification of Prior and Current Violations, in Rule 6.4.25. The proposed rule also provides that the Board may deny the transfer request based on prior or current violations or a pattern of willful violations as set forth in § 34-32-115(5) regarding in situ leach permit applications. In addition, the proposed rules allow those individuals who are directly and adversely affected or aggrieved and whose interest is entitled to protection under the Act to appeal the Division's decision to the Board regarding a transfer.

### Temporary and Permanent Cessation of Operations

HB 1161 at § 34-32-112.5, C.R.S. requires an operator to commence ground water reclamation upon permanent cessation of mining operations and allows the Board to order the operator to commence ground water reclamation upon temporary cessation based on the expected duration of the cessation. Proposed Rule 1.13 implements these provisions. In addition, this proposed rule allows those individuals who are directly and adversely affected or aggrieved and whose interest is entitled to protection under the Act to participate in Board hearings concerning temporary cessation.

Below is a summary of the specific changes as to each rule. **Please note that in situ leach mining operations and permits may be referred to as “ISL operations” or “ISL permits”; designated mining operations may be referred to as “DMOs”; and notices of intent to conduct prospecting may be referred to as “NOIs.”**

## **Rule 1: General Provisions and Requirements – Permit Process**

### **Rule 1.1 Definitions**

Rule 1.1: Adds new definitions of “Affected Surface Water and Ground Water”, “Analogous Law, Rule or Permit”, “Baseline Site Characterization and Monitoring Plan”, “Best Available Technology”, “Description of ISL Mines”, “In Situ Leach Mining”, “In Situ Mining”, “110 ISL Operation or 112 ISL Operation”, and “Pattern of Willful Violations”. These new definitions reflect terms and requirements set forth in HB 1161.

Rule 1.1(14): Amends the definition of “Designated Mining Operation”:

(a) To reflect that, as required by HB 1161, all uranium mines are DMOs unless the operation is granted an exemption from such status; states that when an in situ leach mining operation obtains such an exemption, it shall be referred to as an “110 ISL” or “112 ISL” operation, whichever is applicable;

(b) To provide for the exclusion from Designated Mining Operation status of those operations that do not use toxic or acidic chemicals in processing for purposes of extractive metallurgy and that will not cause acid mine drainage but states that this exclusion does not apply to uranium mines;

(c) Clarifies that 110 mining operations which do not use or store designated chemicals are excepted from the requirements applicable to Designated Mining Operations unless they have a potential to produce acid or toxic mine drainage in quantities sufficient to adversely affect any person, property or the environment; sets forth that this exception from Designated Mining Operations requirements does not apply to section 110 uranium mining operations, but states that such uranium operators may seek an exemption from Designated Mining Operation status pursuant to Rule 7;

(d) Clarifies how Designated Mining Operations will be identified by a “d” suffix and provides that in situ leach mining operations shall be treated as 112d-3 operations unless they obtain an exemption under Rule 7, in which case such operation will be referred to as a “110 ISL” or a “112 ISL” operation, as appropriate.

Rule 1.1(15): Amends “Environmental Protection Facility” to include structures identified in an environmental protection plan that are designed, constructed or operated for control or containment of uranium, uranium by-products and other radionuclides.

Rule 1.1(20): Amends the definition of “Failure or Imminent Failure:

(a) To make it consistent with the statutory language in § 34-32-121.5, C.R.S.;

(b) To add language required by HB 1161 concerning in situ leach mining operations.

Rule 1.1(20.1): Amends the definition of “Filed” to add language to cover in situ leach mining operations.

Rule 1.1(22): Amends the definition of “Financial Warranty” by clarifying that a financial warranty is a promise to be responsible for reclamation costs, together with proof of financial responsibility consistent with § 34-32-117(3)(a), C.R.S..

Rule 1.1(23): Amends the definition of “Independent Reviewer” to include the authority granted by HB 1161 to the Division to have an independent reviewer review baseline site characterization and monitoring plans and to monitor field operations.

Rule 1.1(29): Amends the definition of “Limited Impact Operation” to exclude in situ leach mining operations consistent with the provisions of HB 1161.

Rule 1.1(33): Amends the definition of “Mining Operation” to include in situ mining and in situ leach mining, and to clarify that this term does not include extraction of construction materials where there is no development or extraction of any construction material as that term is defined in § 34-32.5-103(3), C.R.S.

Rule 1.1(57): Amends the definition of “Two Acre Limited Impact Operation” to specify that for this type of operation, the permit application must have been submitted prior to July 1, 1993, consistent with the language in § 34-32-110(1)(a), C.R.S.

### **Rule 1.2 Scope of Rules And Activities That Do Not Require A Reclamation Permit**

Adds new proposed Rule 1.2.3, which states that nothing in the rules supplants, alters, impairs or negates the regulatory authority of the Colorado Department of Public Health and Environment in relation to mining operations, nor the regulatory authority of any other federal or state agency.

### **Rule 1.3 Public Inspection of Documents**

Amends this rule to implement the provisions of SB 228 as follows:

Rule 1.3(1): Specifies that except as otherwise stated in this rule or as provided by law, permit applications, notices of intent to conduct prospecting, and other documents are available for inspection upon the submittal of a written request.

Rule 1.3(3): Provides that as to mining operations, an operator may mark certain information confidential and that information shall not be made available unless the operator gives written consent to release the information.

Rule 1.3(4)(a)(i): Specifies that as to notices of intent to conduct prospecting, notices submitted and approved prior to June 2, 2008, when SB 228 became law, are confidential. This proposed rule also specifies, however, that if a NOI is used to conduct the baseline site characterization required for an ISL mining permit application, the design and operation of the baseline site characterization and the monitoring plan and any information collected in accordance with the NOI are matters of public record.

Rule 1.3(4)(a)(ii)(a): States that for NOIs or modifications submitted or approved on or after June 2, 2008, all information in the NOI is public, with the exception of information concerning the location, size or nature of the mineral deposit, and other

information the prospector designates and the Board determines to be proprietary, trade secret or information that would cause substantial harm to the competitive position of the prospector. This proposed rule, however, provides that if a NOI is used to conduct the baseline site characterization required for an ISL mining permit application, the design and operation of the baseline site characterization and the monitoring plan and any information collected in accordance with the NOI are matters of public record.

Rule 1.3(4)(a)(ii)(b)(i): Provides that an applicant or prospector may designate its identity as confidential and describes the circumstances under which its identity would be released.

Rule 1.3(4)(a)(ii)(b)(ii): States that if identity is designated as confidential, the prospector must submit quarterly reports justifying the continuance of confidentiality for the prospector's identity. Likewise, once the prospector no longer believes that confidentiality is necessary it shall notify the Office and the Office will treat the identity as a matter of public record.

Rule 1.3(4)(a)(iii)(a): Provides that a prospector must designate any information it considers to be confidential at the time it submits a NOI or a modification to an existing NOI. The proposed rule states that the Office will post on its website any information not designated as confidential within five (5) days of submittal.

Rule 1.3(4)(a)(iii)(b): Provides that any written materials submitted by a prospector, including annual reports and final reports must designate which materials are confidential.

Rule 1.3(4)(a)(iv): H.B. 1161 states that information designated as confidential "shall remain confidential until a final determination by the board." § 34-32-113(3), C.R.S.

Rule 1.3(4)(a)(iv)(a): Provides a process by which any person may request that information designated as confidential be made public. Pursuant to that process the Board can make the final determination required by the Act. Any person challenging a confidentiality designation may submit a written request with the basis for the challenge to the Office. Within the time frame laid out in the rule, the Office shall inform the prospector. If the prospector does not consent to release of the information, the person bringing the challenge may request a hearing before the Board. Rule 1.3(4)(a)(iv)(b): Provides a process by which the Office may seek a hearing before the Board if it believes that a prospector has improperly designated certain information as confidential. During the period of any challenge the designated information shall be kept confidential.

Rule 1.3(4)(a)(v): Sets out how the Board will conduct hearings on challenges to confidentiality designations. Rule 1.3(4)(a)(v)(a): States that the Board shall hold such hearings in executive session. Under Rule 1.3(4)(a)(v)(b)(i) the Board may allow an opportunity for oral argument on the issues prior to going into executive

session. In addition, the Board may require the parties to submit written materials on the issues. Rule 1.3(4)(a)(v)(b)(ii): States that any information that the Board determines should be released will be held confidential for 30 days after the date of the Board's written order to allow an opportunity for appeal.

Rule 1.3(5): States that unresolved issues concerning confidentiality shall be considered deficiency issues and that prospecting activities shall not commence until the designation issue has been resolved.

#### **Rule 1.4 Application Review and Consideration Process**

Rule 1.4.1(1): States that ISL operations will be required to submit certain exhibits as part of a permit application.

Rule 1.4.1(7): Allows the Office to extend the decision date for all complex permit applications except for ISL mining applications, which have a two hundred forty (240) day deadline. *See* § C.R.S. 34-32-115(2).

Rule 1.4.1(9): Clarifies the Office's process for allowing extensions of time to meet adequacy requirements for a permit application. The proposed rule states that if adequacy issues remain unresolved after 365 days and there are no timely objections to the application, the Office may issue a decision or set it for a Board hearing.

Rule 1.4.1(13): Sets out the timeline for when an Office or Board decision must be made when there is a failure to publish required notice by the Operator.

Rule 1.4.2(1): Provides that applications for 110 ISL mines shall be treated as 112d-3 permit applications consistent with the Act's requirement that all uranium mining operations are Designated Mining Operations. § 34-32-103(3.5)(a)(III) C.R.S. If the applicant, however, obtains an exemption to Designated Mining Operation status, the DMO requirements shall not apply. Because ISL operations are subject to additional requirements unrelated to DMO status, Rule 1.4.4 will apply to any ISL mine regardless of DMO status.

Rule 1.4.2(2)(b)(v): Makes a numbering change so that a cross reference cites the appropriate subsection in the proposed rules.

Rule 1.4.3(1)(a): Explains how ISL mining operation applicants should submit the required baseline site characterization and on-going monitoring plan required by the Act. Applicant must confer with the office prior to conducting any activities and may not conduct any activities without office approval. Rule 1.4.3(1)(b): Provides a time line for the posting of, and public comment on, baseline site characterization plan and monitoring plan. Rule 1.4.3(1)(c): Provides that data for baseline site characterization obtained prior to the effective date of the rules may be utilized with the Office's approval.

Rule 1.4.3(2): Provides that the Office may retain a third-party expert to oversee the baseline site characterization, monitor field operations and review the information collected pursuant to § 34-32-112.5, C.R.S. The remainder of this proposed rule describes the process for defining the scope of work and explains how payment to the expert will be addressed.

Rule 1.4.4: Provides the requirements for ISL mining operation applications. Rule 1.4.4(2) references the various exhibits which must be submitted with an ISL application. Each exhibit corresponds to statutory requirements enacted by H.B. 1161. As previously noted, such applications must include the materials required for DMO applications, unless the operation is exempted from such status.

Rule 1.4.5: States that all applications for ISL mining operations must meet the requirements of this section unless granted a DMO exemption.

Rule 1.4.6: Provides the timelines for office consideration of 110 ISL mining operation applications. Proposed Rule 1.4.6(2) also provides that in the event of an objection to a 110 ISL application, the matter shall be set for a hearing before the Board.

Rule 1.4.8: Provides that the Office shall issue a decision on ISL applications no more than two hundred forty (240) days after the application is filed. The Act mandates this deadline. § 34-32-115(2), C.R.S.

Rule 1.4.9: Sets out the timeline for Office and Board consideration of 112 ISL permit applications.

Rule 1.4.10(1): Provides that the Board or Office may deny a permit application for any ISL mining operation based on the following grounds: scientific uncertainty, if the ground water potentially affected by the operation may be used for domestic or agricultural purposes and the Board or Office determine that the operation will adversely affect the water for such uses, or if the applicant has a history of violations as described in the proposed rule. This rule draws directly on the Act's provisions regarding discretionary grounds for denial. § 34-32-115(5)(a),(c),(d), C.R.S.

Rule 1.4.10(2): States that the Board or Office shall deny a permit if the applicant fails to demonstrate that reclamation will be accomplished in compliance with the Act or if the Applicant fails to demonstrate that it will reclaim all affected ground water to the standards identified in the Act and rules. This proposed rule draws directly from the Act's provisions regarding mandatory denial of the application. § 34-32-115(5)(a),(b), C.R.S.

Rule 1.4.11(1): States that an applicant may appeal the Office's cost estimate for the review of the application for an ISL or oil shale mining operation permit. *See* § 34-32-127(2)(a)(I)(N), (O), C.R.S.

Rule 1.4.11(3): Provides the requirements for filing an appeal of the cost estimate. It also states that the applicant and the Office may consult and attempt to resolve any dispute prior to the expiration of the appeal period.

Rule 1.4.12: Adds references to ISL mining operation applications and proposed rules.

### **Rule 1.5 Fees**

Rule 1.5.1: States that fees for DMOs must be submitted at the time the environmental protection plan is submitted. Other changes incorporate the new fee provisions contained in the Act at § 34-32-127, C.R.S.

Rule 1.5.2(1): States the fees that will apply to ISL and oil shale mining operations.

Rule 1.5.2(2): States that if the cost of review for oil shale or ISL mining permit applications exceeds twice the fee, applicants will be required to pay the additional costs. This requirement corresponds to the statutory provisions at § 34-32-127(2)(a)(I)(N),(O), C.R.S. Rule 1.5.2(2)(b) places conflict of interest limitations on consultants or agents used in the review of ISL or oil shale mining applications.

Rule 1.5.3, 1.5.4, 1.5.5, 1.5.6, and Rule 1.5.7: Incorporate the new fee provisions contained in the Act at § 34-32-127, C.R.S.

### **Rule 1.6: Public Notice Procedures**

Rule 1.6.1 (1): This rule adds language to clarify that the notice the Office will provide is regarding the Office decision date for applications for all types of mining operations. Rule 1.6.1 (1)(a) adds conforming language clarifying that notice of the Office decision date will be provided for 110 and non-ISL 110d permit applications. Rule 1.6.1 (1)(c) is added to include both 110 ISL and 112 ISL mining operations to the list of types of mining operations that the Office will provide notice regarding the Office decision date.

Rule 1.6.2 (1)(b): Makes a conforming change to include 110 ISL and 112 ISL mining operations to the types of permit application for which an applicant must follow the pre-submittal requirements under Rule 1.6. This rule is related to the requirement to post signs at the proposed mine site. This rule also includes new language clarifying that the pre-submittal requirements for 110 permit applications do not apply to 110 ISL mining operations. 110 ISL mining operations must follow the process for 112 mining operations.

Rule 1.6.2 (1)(c): Conforming language is included to add non-ISL 110d operations, 110 ISL operations and 112 ISL operations to the requirement that, prior to submitting the application to the Office, the applicant must place a copy of the application with the clerk and recorder's office in the county where the proposed mine is located.

Rule 1.6.2 (1)(e)(iii): This rule incorporates the language from § 34-32-112(10)(c), C.R.S. requiring that, if the proposed operations is an ISL operation, notice must be provided to all owners of record of all land within three (3) miles of the boundary of the affected land.

Rule 1.6.3: Language was added to the section heading to clarify that Rule 1.6.3 applies only to 110 and non-ISL 110 mining operations. 110 ISL mining operations are regulated under Rule 1.6.5.

Rule 1.6.3 (1)(a): Conforming language is added to clarify that this rule applies to 110 and non-ISL 110d limited impact mining operations and does not apply to 110 ISL operations. Rule 1.6.3 (1)(b): Conforming language was added to clarify that this rule applies to 110 and non-ISL 110d limited impact mining operations and does not apply to 110 ISL operations.

Rule 1.6.3 (4): Subsection (4) was added to explain that, procedurally, this rule is not applicable to permit applications under § 34-32-110 that are for ISL mining operations. Pursuant to § 34-32-110 (2)(a), all ISL permit applications must be filed pursuant to § 34-32-112.5 (3)(d). Therefore, the added language clarifies that all ISL permit applications must be filed as a 112 permit and must follow the notice requirements for 112d-3 permit applications under Rule 1.6.5. The new language further clarifies that even if a 110 ISL permit application is granted an exemption from DMO status under Rule 7, the applicant must still follow the notice and permitting requirements that apply to a 112 permit.

Rule 1.6.5: Language was added to the section heading to clarify that Rule 1.6.5 applies to all 112 permit applications and 110 ISL permit applications. Pursuant to § 34-32-110 (2)(a) all ISL permit applications must be filed pursuant to § 34-32-112.5 (3)(d). Therefore, a 110 ISL permit application must follow the notice and permitting requirements of a 112 permit application.

## **Rule 1.7: Submission of Comments and Petitions for Hearing**

Rule 1.7.1 (2)(a): This rule applies to public comment regarding 112 and 112d permit applications. Conforming language has been added to include 110 ISL and 112 ISL mining operations to the list of permit applications for which written comments and objections may be submitted. Additional language was added to conform Rule 1.7.1 (2)(a) with Rule 1.7.1 (2)(b) clarifying that comments on all types of 112 permit

applications and 110 ISL permit applications must be received by the Office not more than twenty (20) days after the last day of publications.

Rule 1.7.1 (2)(b): Language was added explaining that 110 ISL permit applications are excepted out of this rule and must follow the 112 permit application and review process. Clarifying language was added that explains that Rule 1.7.1(2)(b) applies to public comment on all 110 and non-ISL 110 permit applications. Additional conforming language was added to clarify that, if the matter is not set for a formal hearing after the Office receives written comment, any person meeting the definition of party under Rule 1.1 may file an appeal of the Office's decision pursuant to Rule 1.4.11.

Rule 1.7.2: Added conforming language to the section heading indicating it covers only 110 and non-ISL 110d limited impact DMO permit applications.

Rule 1.7.2 (1): Adds language excepting 110 ISL mining operation permit applications from this Rule and clarifies that 110 ISL mining operations permit applications must follow the 112d permit application process.

Rule 1.7.4: Added conforming language to the section heading indicating it covers 112, 112d, 110 ISL and 112 ISL reclamation permit applications.

### **Rule 1.8: Amendments and Technical Revisions to a Permit Application**

Rule 1.8.1: Added conforming language to the section heading indicating it covers 110 and 110d limited impact or 112 and 112d or 110 ISL and 112 ISL permit applications. This Rule applies to all types of reclamation permit operations.

Rule 1.8.1 (3): Clarifying language has been added to explain that provisions of Rule 1.8.2 shall apply to technical revisions for 110 and non-ISL 110d mining operations and provisions of Rule 1.8.4 shall apply to technical revisions for all ISL mining operations and 112 and 112d permit applications.

Rule 1.8.2: Conforming language was added to the section heading indicating this Rule covers only 110 and non-ISL 110d permit applications. Further language was added clarifying that Rule 1.8.2 does not apply to technical revisions for ISL permit applications. Technical revisions to an ISL permit application must follow the procedural requirements for 112d permit applications under Rule 1.8.4.

Rule 1.8.4: Added conforming language to the section heading indicating it covers 112, 112d, 110 ISL and 112 ISL reclamation permit applications.

Rule 1.8.4 (1): Added conforming language to include 110 ISL and 112 ISL to the list of applications which will be set for formal hearing upon receipt of a written comment. Also clarifies that a hearing cannot be set any earlier than twenty (20) days

after the technical revision has been filed unless the applicant, the Office and all parties agree to setting the matter for hearing earlier than twenty (20) days.

### **Rule 1.10: Amendment to a Permit**

Rule 1.10 (1): Added conforming language making Rule 1.10 (1) applicable to 110 ISL and 112 ISL permit amendments. Rule 1.10 (2): Added conforming language making Rule 1.10 (2) applicable to only 110 and non in situ leach mining operation 110d limited impact permit amendments. Rule 1.10 (3): Language has been added clarifying that, because all ISL permit applications must follow the 112d permit review process, the fee for all ISL permit amendment applications is the basic fee for 112d permit applications or for 112 permit applications if the ISL operation has been granted an exemption from DMO status.

### **Rule 1.11: Conversions**

Rule 1.11.1(1): This rule was revised to clarify that a conversion is an application to change an existing permit to another type of permit based on an increase in acreage. Because it is an increase in acreage, a proper conversion scenario is going from a 110 type permit to a 112 type permit. A reduction in acreage is not a conversion; a reduction of acreage would be completed through a bond reduction or bond release process based on completion of reclamation. Language has also been added to clarify that, pursuant to § 34-32-110 (7)(a), operators requesting a conversion of a permit must file a new permit application. A conversion to a 112 type permit, regardless of DMO or ISL status, requires the submittal of a new 112 permit application.

Rule 1.11.2 (2): This rule clarifies that all warranty and permit processing requirements shall apply as though the conversion application were a new permit application. The statutory provision that requires a new permit application to be filed for all conversion of permit requests is § 34-32-110(7)(a), C.R.S. If an ISL operator wants to convert from a 110 ISL to a 112 ISL, this rule requires that a new baseline and site characterization plan be submitted in accordance with § 32-34-112.5 and Rule 1.4.3. The purpose for the submittal of a new plan is to account for the affected land, and affected surface water and ground water in the new acreage. However, if the operator believes the original 110 ISL permit contains relevant baseline and site characterization information, that information may be incorporated into the conversion application, subject to Office discretion.

Rule 1.10.2 (4): This rule was amended to clarify that a request to change the status of a mining operation from a DMO to a non-DMO is not a conversion and, therefore, the provisions of Rule 1.10 do not apply. The language added to the rule makes it clear that an operator seeking to change from a DMO to a non-DMO must follow the DMO exemption requirements and procedures of Rule 7.2.6. Text was deleted from this rule because it was no longer relevant to the conversion process.

## **Rule 1.12: Permit Transfers and Succession of Operators**

Rule 1.12.1(2): Language was added to this rule clarify that a request for transfer of minerals permit is not considered filed until there is an executed performance warranty and an acceptable financial warranty submitted to the Office. In addition, to be considered filed, this rule now has language that all requests for transfer of mineral permits for ISL mining operations must comply with Rule 6.4.25 and exhibit Y.

Rule 1.12.1(3): This rule clarifies that not only permits applicants but successor operators must comply with the requirements of HB 1161 concerning certifications of violations, and provides that the Board and Office may deny a permit transfer based on failure to meet these requirements. Specifically, this rule implements HB 1161's requirement that in situ leach mining permit applicants certify in applications that the applicant or an affiliate, officer or director of the applicant has not violated within ten (10) years prior to the date of submission of the application or committed a pattern of willful violations of the environmental protection requirements of the Act, these regulations, a permit issued under the Act or any analogous law, rule or permit issued by another state or the United States.

The Rule provides that if the successor operator cannot so certify, the successor operator must set forth the specified information about violations or patterns of willful violations. In addition, this rule allows the successor operator to explain the circumstances of violations or patterns of willful violations, the relationship it has with the violator and any other information the successor operator believes is relevant.

The rule also allows the Board or Office to conditionally grant the transfer of permit if the violation is in the process of being resolved and corrected or if the violation is the subject of appeal or judicial review.

Rule 1.12.2 (1): Non-ISL Appeal--The denial and appeal process has been modified to differentiate between a transfer of permit for a non-ISL mining operation and an ISL mining operation. Subsection (1) of this rule is applicable to non-ISL mining permit transfers and clarifies that if the Office denies a permit transfer in a non-ISL mining operation that only the applicant has standing to appeal the Office decision to the Board.

Rule 1.12.2(2): ISL Appeal--This subsection has been created to cover the appeals process for all ISL mining operation permit transfers. It allows for the Office, the applicant and any other person that meets the definition of a party under Rule 1.1 to appeal the Office's decision regarding a permit transfer to the Board. Unlike subsection (1) which allows for only an appeal of an Office decision of denial by the applicant, subsection (2) allows anyone that meets the statutory and regulatory requirements of a party to appeal either a denial or an approval of a permit transfer of an ISL permit to the Board.

**Rule 1.13: Cessation of Operations—Temporary for all Mining Operations or Permanent for all ISL Operations**

The heading of Rule 1.13 was amended to clarify that this section now covers both temporary cessation for all mining operations and permanent cessation for ISL mining operations.

Rule 1.13.5: This Rule covers temporary cessation for both ISL and non-ISL mining operations. It implements HB 1161’s requirement that an operator conducting any ISL mining operation shall file the notice of temporary cessation at least thirty (30) days prior to ceasing operations. The notice shall include the reasons for the temporary cessation and the expected duration of the temporary cessation.

As proposed, Rule 1.13.5(1)(a) and Rule 1.13.5(2) are applicable to the initial period of temporary cessation and Rule 1.13.5 (1)(b) and Rule 1.13.5(3) are applicable to the second five year period of temporary cessation. The proposed language states that, in the case of ISL mining operations, the Board has been granted discretion under § 34-32-112.5 (5)(d)(II) to determine if the expected duration of the temporary cessation will be of such length that that the Board believes that ground water reclamation should commence. Additional language has been added requiring that, for ISL mining operations, the notice of temporary cessation shall include a description of the ground water monitoring and pumping regime that will be maintained during the period of cessation pursuant to § 34-32-112.5(5)(d)(II), C.R.S.

Rule 1.13.5(6): ISL mining operators have been excepted out of this rule because the provisions of HB 1161 provide that any period of temporary cessation for an ISL mining operation requires notification to the Board at least thirty (30) days prior to the commencement of temporary cessation. Therefore, HB 1161 requires that notice always be provided for ISL operations even if the operator will resume mining operations within one (1) year.

1.13.6(2): This section has been amended to provide clarification to the text “interested parties” which exists in the current regulation. This text has been deleted and replaced with conforming language from the definition of party under Rule 1.1.

1.13.6(2)(e): This subsection was added to implement the Board’s authority to order, during a regularly scheduled formal hearing, the operator of an ISL mining operation to begin groundwater reclamation pursuant to Rule 1.13.5. This authority was granted to the Board under HB 1161.

Rule 1.13(3)(a) & (b): This subsection was amended to require that all notices for temporary cessation for ISL mining operations will be set for a formal hearing. At the hearing the Board will determine whether ground water reclamation should commence pursuant to § 34-32-112.5(5)(d)(II), C.R.S.

The rule contains additional language regarding the hearing process and who may participate at the hearing. The language used conforms to the definition of party under Rule 1.1 and allows for any person who meets the definition of party to participate at the formal hearing before the Board. The Office will participate as staff to the Board.

Rule 1.13.7: Clarifying language was added changing “the operator” to “the permit applicant” since this rule applies to substitute notice which occurs in the original permit application. There is no operator because the application would be under review. If the permit is approved, this substitute notice serves as notice of temporary cessation pursuant to Rule 1.13.5. Rule 1.13.7(b) states that this rule does not apply to ISL mining operations. This inapplicability is based on § 34-32-112.5(5)(d)(II), which requires that the operator of an ISL mining operation file a notice of temporary cessation with the Board at least thirty (30) days prior to the commencement of temporary cessation. This notice of temporary cessation triggers a hearing before the Board to determine whether groundwater reclamation should commence and such a notice cannot be provided at the time of the original permit application.

Rule 1.13.8(1)(c): Language was added to clarify that the liabilities and obligations that exist under a reclamation permit continue in effect as long as the operator of an ISL mining operation is conducting reclamation pursuant to an approved reclamation plan or Board order. The proposed language clarifies that even though the mining activity at the site has concluded the permit obligations and reclamation liabilities remain in effect until the site is fully reclaimed and has achieved bond release from the Office or Board.

Rule 1.13.10: This rule was added to implement the provisions of HB 1161 that require an operator of an ISL mining operation to immediately begin reclamation of groundwater in accordance with the approved reclamation plan when there is a permanent cessation of production operations. The provisions of permanent cessation only apply to ISL mining operations.

Rule 1.13.10(1): This rule was added to require an operator of an ISL mining operation to provide the Board at least thirty (30) days notice prior to permanent cessation of production operations. This thirty day time period was incorporated from the notice requirement for temporary cessation provided in § 34-32-112.5(5)(d)(II), C.R.S.

Rule 1.13.10(2): This rule was added to allow either the Board or the Office, in the absence of notice from the operator, the authority to determine if permanent cessation of production operations at an ISL site has occurred and final reclamation of ground water must immediately begin.

### **Rule 1.14: Termination**

Rule 1.14.1(2)(b): Language was added to this subsection to allow the Board to add additional permit conditions to a permit that is not in compliance with the provision of Rule 1.14.1. This Rule is intended to allow the operator to bring the permit back into compliance prior to termination and final reclamation.

## **Rule 2: Board Meetings—Permit Application Hearings, Decisions and Appeals**

### **Rule 2.6: Prehearing Procedures—Motions, Witnesses and Exhibit Lists**

Specifies that the prehearing process provisions of Rule 2.6 apply to the applicant and those with party status in all 112, 112d, 110 ISL, and 112 ISL applications.

Rule 2.6 (3): Modifies the existing number of copies of motions, responses, replies, witness lists, and exhibit list that must be submitted to the Board from thirteen (13) to fifteen (15).

### **Rule 2.8: Hearings**

Rule 2.8.1: Changes the title of the rule to clarify that this rule also covers the process for filing a request for telephonic appearances at a formal Board hearing.

Rule 2.8.1 (1): This rule clarifies that a party may not appear at a formal Board hearing by proxy. Proxy representation is allowed only at a prehearing conference. Party attendance at the formal hearing is required, unless otherwise ruled on by the Board. This rule also creates a process that allows parties to file a request for telephonic appearance at a formal Board hearing with the Board Chairman. It sets forth time periods in which the original telephonic appearance request shall be filed and allows for other parties to file a response to the telephonic appearance request. It states the Board Chairman will rule on the motions at least seven (7) calendar days prior to the hearing.

Rule 2.8.2 (2): Clarifies that every decision rendered by the Board after a formal public hearing, and after issuance of a formal written order pursuant to Rule 2.8.2 (1), becomes a final decision on that matter. Removes language that the Office can make a final decision on a matter at a formal hearing.

### **Rule 2.9: Reconsideration of Board Decisions**

Rule 2.9.3: Makes a conforming change to reference a term defined in Rule 1.1 definition section.

## **Rule 3: Reclamation Performance Standards, Inspection, Monitoring, and Enforcement**

### **Rule 3.1 Reclamation Performance Standards**

Rule 3.1.2: States that the Board and Office may not approve an exchange of lands for reclamation for lands affected by uranium mining. This provision is based on § 34-32-116(7)(q)(III)(B) which bars uranium and in situ leach mining operations from reclaiming substitute land.

Rule 3.1.3: Sets out when reclamation of ground water must begin for in situ leach mining operations pursuant to § 34-32-113(5)(d)(I)(A),(B), C.R.S.

Rule 3.1.7(1)(e): Provides the reclamation standards for reclamation of ground water at ISL mining operations. The rule uses the same standard set out in the Act at § 34-32-116.5(8), C.R.S. Rule 3.1.7(1)(f) and (g) provide further statutory requirements related to the reclamation of ground water. Rule 3.1.7(1)(f) requires operators to use “best available technology” when establishing, designing and implementing a ground water reclamation plan. Rule 3.1.7(1)(g) provides the further requirement that ISL mining operators must protect pre-existing groundwater uses during prospecting, development, extraction and reclamation. This requirement may pertain to both water quantity and quality protections.

Rule 3.1.7(8): states that in addition to conducting reclamation so that existing and reasonably potential future uses of ground water are protected, ISL operators must reclaim ground water as required by Rule 3.1.7(1)(e).

## **Rule 4: Performance Warranties and Financial Warranties**

### **Rule 4.2: Financial Warranty Liability Amount**

Rule 4.2.2: Changes the section heading to include language that clarifies that this rule applies to 110 and non-ISL 110d mining operations. This rule does not apply to 110 ISL mining operations as these application and operations must be filed and are treated as 112 ISL operations. Financial Warranty rules specific to 112, 112d and all ISL mining operations are included under Rule 4.2.5.

Rule 4.2.2 (2): This rule clarifies that Rule 4.2.2, which is applicable to 110 and non-ISL 110d operations, does not apply to 110 ISL mining operations and permits. It creates an exemption for ISL permits because, pursuant to § 34-32-110(2)(a) all ISL permit applications must be filed pursuant to section § 34-32-112.5 (3)(d). Therefore, a 110 ISL permit application cannot be filed pursuant to section § 34-32-110 (2) and is not subject to automatic approval after office inaction for 30 days.

Rule 4.2.3: Removes language that is repetitive. Clarifies that a conversion from any 110 permit to any 112 permit requires a financial warranty to cover the increased reclamation liability.

Rule 4.2.5: Changes the language of the section heading to include language that clarifies that this rule applies to all 112 mining operations and all 110 mining operations involving in situ leach mining. Pursuant to § 34-32-110 (2)(a), all 110 mining operations involving in situ leach mining must file for a permit application pursuant to § 34-32-112.5(3)(d), C.R.S. Therefore, all 110 permits involving in situ leach mining shall be filed and treated as 112d permit applications.

Rule 4.2.5 (1): Makes a conforming change to include 110 ISL and 112 ISL mining operations. This section clarifies that a financial warranty for 112, 112d, 110 ISL and 112 ISL mining operations shall be in an amount determined by the Board.

Rule 4.2.5 (2): Makes a conforming change to include 110 ISL and 112 ISL mining operations in the requirement to submit a financial warranty in the event a permit is automatically issued due to Board inaction. It modifies the current language regarding automatic approval of application due to Board inaction. It states that the Board must take action within two hundred and forty (240) days on an ISL application or within one hundred and twenty (120) days for all non-ISL mining applications or the permit will be automatically issued. In such an event, the financial warranty for both ISL and non-ISL operations will be either \$2,000 per acre of affected land or an amount as the Board may determine at a subsequent hearing.

### **Rule 4.17: Release of Performance and Financial Warranties for Mining Operations**

Rule 4.17.1(1): Eliminates unnecessary and duplicative language regarding which operators must file a notice of completion of reclamation and request for release of financial warranty. This rule clarifies that all operators possessing any permit must comply with the requirements of Rule 4.17.

### **Rule 4.18: Public Notice and Filing of Written Objections Regarding a Request for Release of Financial Warranty.**

Rule 4.18(1): Added language to the existing rule to conform to the definition of party contained in Rule 1.1. Clarifies that comments regarding a request for release of financial warranty must be received no more than fifteen (15) days after the notice of the request has been sent to the counties and owners of record of affected land.

### **Rule 5: Prospecting Operations**

#### **Rule 5.1: Notice of Intent to Conduct Prospecting Operations**

Rule 5.1.1(1): Makes a numbering change so that a cross reference cites the appropriate subsection in the proposed rules.

Rule 5.1.2(h): Provides that NOI applicants must designate which portions of the application are confidential. The rule requires the applicant to submit two NOI forms; one containing both the public and confidential information, and one containing only the public information. As noted above, S.B. 228 modified § 34-32-113 to make information contained in an NOI public, but permitted an applicant to designate certain information as confidential.

Rule 5.1.2(i): Requires NOI applicants to submit an NOI in both paper and electronic form. The electronic submittal will allow the Office to post the NOI to its website promptly.

Rule 5.1.2(j): Provides that modifications to an existing NOI will be reviewed in the same manner as a new NOI application. Applicant of modifications to existing NOIs must designate which information, if any, the applicant believes should be confidential.

Rule 5.1.3: States that the Office will post the NOI on its website within five (5) days of submittal. The posting will be followed by a ten (10) day public comment period. As government agencies the Division and Board routinely receive public comment regarding the matters before them. In addition, each month at the Board hearing, the MLRB allots time for general public comment which may pertain to any matter before the Board. The Division believes providing structure to govern the receipt of public comment is a reasonable rule respecting the administration of the Act. The Rule states that disputes regarding confidentiality will be treated as a deficiency of the NOI which means prospecting activities may not commence until the confidentiality dispute is resolved and other applicable requirements are met. Rule 5.1.3(b) states that if the Board has determined after a hearing that certain information designated as confidential should be treated as public, the Office will post the information on its website after the expiration of a thirty (30) day delay period. The posting of newly released information will trigger a ten (10) day public comment period pertaining to only the newly released information.

## **Rule: 5.2: Confidentiality**

Rule 5.2.1(1): States that for NOIs submitted prior to the enactment of S.B. 228 all information will be treated as confidential.

Rule 5.2.1(2): Provides that for NOIs filed after the enactment of S.B. 228, all information contained in the NOI will be public, except that certain information may be designated as confidential. Once designated as confidential the information will remain confidential until the Board orders otherwise.

Rule 5.2.2(1): States that for NOIs submitted prior to the enactment of S.B. 228 drill hole information contained in various reports will remain confidential. Rule 5.2.2(2): States that this same information will be public for NOIs filed after June 2, 2008 unless designated as confidential by the Prospector.

### **Rule 5.6: Annual Report.**

Rule 5.6(1): States that annual reports shall be submitted on the anniversary date of the approval of the NOI rather than on December 31. This will allow for more efficient processing by the Office. The new proposed rule also deletes an obsolete reference to a due date for NOI annual reports.

Rule 5.6(3): Provides that annual reports for NOIs filed after the enactment of S.B. 228 shall be public information unless designated as confidential pursuant to Rule 1.3.

### **Rule 5.7: Final Report**

Rule 5.7(3): Provides that final reports filed after the enactment of S.B. 228 will be public information unless designated as confidential.

### **Rule 5.8: No Waiver of Administrative Requirements**

Rule 5.8: States that the Director may not waive administrative reporting requirements.

### **Rule 6: Permit Application Requirements**

#### **Rule 6.1: Requirements for Specific Operations**

Rule 6.1.2: Provides in the title of this rule that the rule applies to 110, non in situ leach 110d mining operations, 112 and 112d, 110 ISL and 112 ISL mining operations.

Rule 6.1.4: Specifies in the title of the rule that it applies to all in situ leach mining operations. States that in addition to the exhibits required in this rule, in situ leach operations must also provide exhibits set forth in Rules 6.4.22, 6.4.23, 6.4.24 and 6.4.25.

#### **Rule 6.3: Specific Permit Application Exhibit Requirements – 110 and Non In situ Leach Mining Operations 110d Limited Impact Operations**

Specifies that this rule applies only to 110 and non in situ leach 110d mining operations. Makes clear that 110 in situ leach mining operations must comply with 112d application requirements, and if exempted from designated mining operation status, the in situ leach mining operation application must still comply with in situ leach mining exhibit requirements.

Rule 6.3.4(2): Adds that this rule applies to non in situ leach 110d limited impact operations.

Rule 6.3.5(2)(a): Conforming change to specify that this rule applies to non in situ leach 110d limited impact operations.

**Rule 6.4: Specific Exhibit Requirements – 112, 112 ISL or 110 ISL Reclamation Operation and 112d Designation Mining Operations**

Provides that the exhibit requirements set forth in this rule are required for all applications for any in situ leach mining operation, 112 operation, and non in situ leach 112d operation. If any in situ leach operation is exempted from designated mining operation status, the applicant must still comply with this rule.

Rule 6.4.11: Makes conforming change to a paragraph reference.

Rule 6.4.19: This rule creates a new exhibit required for all permit applications. The exhibit requires proof from the applicant of complying with the requirement that the applicant send notice to affected owners of the filing of the permit application.

Rule 6.4.20: Makes a conforming change to a paragraph reference.

Rule 6.4.21(1): Adds language that requires an environmental protection plan to cover areas that will be or have the potential to be affected by uranium mining.

Rule 6.4.21(1)(a): Exempts uranium mining operations from the rule that states an environmental protection plan need not be filed under certain situations, thus requiring all uranium mining operators to file an environmental protection plan.

Rule 6.4.21(1)(b) and (c): Provides that the Board may consider whether there is a potential for adverse impacts from uranium mining, among other conditions, such impacts to include adverse impacts from any in situ leach mining operation.

Rule 6.4.21(2): Requires that environmental protection plan for uranium mining operations include maps that show location of affected land, surface water and ground water which will be or has the reasonable potential to be affected by such operations.

Rule 6.4.21(4)(c): Adds requirement that an applicant/operator provide the Division with information about permits obtained for uranium mining after submission of an environmental protection plan.

Rule 6.4.21(4)(d): Sets forth language that in addition to the existing reasons the Board may or shall deny a permit application, as to any in situ leach operation, the

Board may or shall, whichever is applicable, deny any such permit application pursuant to Rule 1.4.10.

Rule 6.4.21(7)(b): Adds “uranium, uranium by-products and other radionuclides” to the required evaluation of the effectiveness of proposed or existing facilities set forth in the environmental protection plan.

Rule 6.4.21(9)(b): Provides that as to in situ leach mining operations, an applicant must design and conduct a scientifically defensible ground water, surface water and environmental baseline site characterization and monitoring plan, which at a minimum includes five successive calendar quarters, or a period specified by the Division as necessary to adequately characterize baseline conditions, of water quality data, prior to submittal of a permit application.

Rule 6.4.21(11)(b): Provides that as to in situ leach mining operations, an applicant must design and conduct a scientifically defensible ground water, surface water and environmental baseline site characterization and monitoring plan, which at a minimum includes five successive calendar quarters, or a period specified by the Division as necessary to adequately characterize baseline conditions, of water quality data, prior to submittal of a permit application.

Rule 6.4.21(12): Specifies that in addition to other monitoring plan requirements, in situ leach operations must design a plan to thoroughly characterize pre-mining conditions, detect subsurface excursions of ground water containing chemicals used in or mobilized by such operations, and evaluate the effectiveness of post mining reclamation and ground water reclamation.

Rule 6.4.21(12): Provides that geochemical data and analysis must cover uranium mining.

Rule 6.4.21(12)(b): Adds “mineral” to geochemical evaluations.

Rule 6.4.21(12)(d): Makes a conforming change to reference a subsection of another rule.

Rule 6.4.21(15)(a): Adds “uranium, uranium by-products and other radionuclides” in required construction schedule information.

Rule 6.4.21(17)(c)(iv): Makes a conforming change to reference a subsection of another rule.

Rule 6.4.21(18)(b): Adds “uranium, uranium by-products and other radionuclides” in required measures to prevent wildlife from coming into contact with such material.

Rule 6.4.22: Creates a new Exhibit V as a requirement for in situ leach mining permit applications regardless of designated mining operation status. This exhibit implements HB 1161's requirement that in situ leach mining applicants provide a description of at least five in situ leach mining operations that demonstrate the applicant's ability to conduct the proposed mining operation without leakage, vertical or lateral migration, or excursion of any leaching solutions or ground water containing minerals, radionuclides, or other constituents mobilized, liberated or introduced by the mining operation into any ground water outside of the permitted area.

Sets forth the information required to be in the exhibit and requires the applicant to use reasonable efforts to obtain as much information as possible regarding the five in situ leach mining operations including researching and reviewing public documents and contacting the operators of such operations.

The rule provides that the applicant need not have been involved in any of the five operations.

Rule 6.4.23: Creates a new Exhibit W as a requirement for in situ leach mining permit applications regardless of designated mining operation status. This rule implements HB 1161's requirement that in situ leach mining applicants design and conduct a scientifically defensible baseline site characterization for affected surface water and ground water, and the environment prior to filing an application. Requires these applicants to confer with the Division and to obtain the Division's approval of the proposed baseline site characterization. Specifies that the baseline site characterization must include at least five successive calendar quarters or such period as the Division requires as necessary to adequately characterize baseline conditions, of monitoring data, and must be included in the application for the application to be considered filed.

Sets forth the information, data and analysis required to be in this exhibit.

Rule 6.4.24: Creates a new Exhibit X as a requirement for in situ leach mining permit applications regardless of designated mining operation status. Implements HB 1161's requirement that in situ leach mining applicants design and conduct a monitoring plan prior to submitting an application. Provides that the applicant must obtain the Division's approval of the proposed plan. Specifies that the plan must be sufficient to detect any subsurface excursions of ground water containing chemicals used in or mobilized by such operations, and sufficient to evaluate the effectiveness of post mining reclamation and ground water reclamation.

Rule 6.4.25: Creates a new Exhibit Y as a requirement for in situ leach mining permit applications regardless of designated mining operation status. The requirement for this exhibit applies to all in situ leach mining permit applications as well as requests for transfer of mineral permit and succession of operator for any in situ leach mining

operation. This rule implements HB 1161's requirement that in situ leach mining permit applicants certify in applications that the applicant or an affiliate, officer or director of the applicant has not violated within ten (10) years prior to the date of submission of the application or committed a pattern of willful violations of the environmental protection requirements of the Act, these regulations, a permit issued under the Act or any analogous law, rule or permit issued by another state or the United States.

The Rule provides that if the applicant cannot so certify, the applicant must set forth the specified information about violations or patterns of willful violations. Allows the applicant to explain the circumstances of violations or patterns of willful violations, the relationship it has with the violator and any other information the applicant believes is relevant.

Specifies that the applicant has a continuing obligation to update the information required in this exhibit throughout the permit application process and, if granted, throughout the life of the permit if any changes to the information occurs. Also provides that to constitute a certified statement the applicant must attest to the truthfulness of the statement in a form approved by the Board.

## **Rule 7: Designated Mining Operations**

### **Rule 7.1: General Provisions**

Rule 7.1.2: States all uranium mining operations are designated mining operations. HB 1161 changed the definition of designated mining operation to include mining operations at which "uranium is being developed or extracted, either by in situ leach mining methods or by conventional underground or open mining techniques." This rule also provides that if an ISL operation is exempted from designated mining operation status it will still remain subject to requirements applicable to ISL mines. The proposed language recognizes that HB 1161 imposed a number of requirements specific to ISL mining operations that are not dependent on whether the ISL operation is a designated mining operation. The title of 7.1.2 is altered to read Effective Date and Applicability of Rule.

Rule 7.1.3: States that ISL mining operations must submit an Environmental Protection Plan unless exempted from designated mining operation status.

### **Rule 7.2: Determination of Designation of Designated Mining Operations**

Rule 7.2.1(2): Replaces a reference to Rule 1.1(12) with a reference to Rule 7.2.6. Rules regarding exemption from designated mining operation status are now under Rule 7.2.6 as noted in this rule.

Rule 7.2.1(3): Makes a conforming change to cross-reference the appropriate rule.

Rule 7.2.1(4): Deletes subsection (4) of the current Rule 7.2.1. The existing rule permits any person with evidence that an operation should be a designated mining operation to petition for a hearing through the declaratory order process in Rule 2.5. At the same time, the existing Rule 7.2.7, permits any party to appeal the Office's determination of Designated Mining Operation status. These overlapping process rights for third parties were difficult to implement and created confusion. The proposed rules reorganized the process for third parties to challenge determinations of designated mining operation status as described below.

Rule 7.2.4: The title of this rule is changed to read "Designation Disputes."

Rule 7.2.4(1): States that when an operator or applicant disputes the Office's determination of designated mining operation status it may submit a written appeal to the Office setting out the reasons and evidence for disputing the determination. Rule 7.2.4(1)(b) deletes a reference to notice being provided through the "monthly agenda, or otherwise" and a duplicative reference to the applicant having the burden of proof. This rule also provides that any person meeting the definition of party may participate as a party to an appeal of the office's determination. The existing version of the rules permitted any party to appeal the Office's determination of designated mining operation status. The new proposed rule placed that appeal right within Rule 7.2.4(1).

Rule 7.2.4(3): Provides that any person who has facts that were not known when the Office made a determination regarding designated mining status for an operation, or where no determination has been made, may file a complaint requesting that the Office review the status of a mining operation. Based on that review the Office may make a determination that the mining operation should be a designated mining operation. This rule is intended to replace, in part, current Rule 7.2.1(4) which allows any party to seek a declaratory order regarding an operation's status as a designated mining operation. By using the complaint process to initiate Office review, the proposed rules create a uniform process for review of status determinations of mine sites.

Rule 7.2.5: Makes a conforming change to cross-reference the appropriate rule.

Rule 7.2.6(1)(A): Sets out the process for seeking an exemption from designated mining operation status. In the existing rules, the process for seeking exemption appeared in multiple rules including Rule 1.1 and 1.11. Proposed Rule 7.2.6 places the exemption process in a single rule with a single standard.

Rule 7.2.6(2): States that if an in situ leach mining operation is exempted from designated mining operation status under Rule 7.2.6 the requirements applicable to in situ leach mines will still apply to the operation. The proposed rule also states that if an in situ leach mining operation is granted an exemption from designated mining operation status it will be referred to as a 110 ISL or a 112 ISL operation rather than a 112d operation.

Rule 7.2.7: Deleted the text of the existing rule and replaced it with language conforming to the definition of party contained in Rule 1.1.

**Rule 7.3: Environmental Protection Facilities – Design and Construction Requirements**

Rule 7.3.1: Added references to uranium, uranium by products or radionuclides as materials that may not be placed in an environmental protection facility until the Board accepts certification of the facility. The existing rule places a similar limitation on the materials used by non-uranium producing designated mining operations. That definition includes not just toxic or acid-forming materials, but also the related category of any chemicals “used in the extractive metallurgical process.” Because H.B. 1161 changed the definition of designated mining operations to include any operations at which uranium is developed or extracted it is appropriate that this rule on environmental protection facilities applies to uranium, uranium by-products and other radionuclides.

**Rule 8: Emergency Notification by all Operators, Emergency Response Plan For Designated Mining Operations and Emergency Response Authority of the Office**

**Rule 8.1: Situations that Require Emergency Notification by the Operator**

Applies the requirement that the operator notify the Division as soon as practicable but no later than 24 hours for a failure or imminent failure of: (a) for designated mining operations, any environmental protection facility designed to contain or control designated chemicals or process solutions; (b) for in situ leach mining operations, any structure designed to prevent, minimize, or mitigate the adverse impacts to human health, wildlife, ground or surface water or the environment; and (c) for in situ leach mining operations, any structure designed to detect, prevent, minimize or mitigate adverse impacts to ground water.

**Rule 8.2: Operator’s General Notification Responsibilities for Reporting Emergency Conditions**

Rule 8.2.3: Requires operators to submit a written report concerning an emergency situation or condition as soon as practicable but no later than five (5) working days.

**Rule 8.3: Emergency Response Plan for Designated Chemicals and Uranium or Uranium By-Products**

Makes a conforming amendment in referring to a subsection.

Rule 8.3.1: Includes in the exemption from the requirements of Rule 8.3 operations that do not involve uranium.

Rule 8.3.2: Includes in the requirement that operators who are required to submit emergency response plans include an outline of response procedures in the event of an emergency involving acidic or toxic materials, or uranium or uranium by-products.

**Rule 8.4: Emergency Response Authority of the Office**

Rule 8.4.1(e): Provides that as to designated mining operations, the Division may operate the environmental protection facility using any or all portions of the financial warranty established for such purpose.

Rule 8.4.2: Provides that circumstances considered in determining the Division's exercise of its emergency authority include an operator failing or refusing to respond to a Board order requiring corrective actions for (1) any structure for an in situ leach mining operation designed to detect, prevent, minimize or mitigate adverse impacts on ground water and (2) any structure for an in situ leach mining operation designed to detect, prevent, minimize or mitigate adverse impacts on human health, wildlife or the environment.

**Rule 8.8: Emergency Response Cost Recovery**

Clarifies that recovery of response costs may be sought from the operator, if different from the permit holder.