

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In re:)	
)	
Excelsior Mining Arizona, Inc.)	
Gunnison Copper Project)	Appeal No. UIC 18-04
)	
UIC Permit No. R9UIC-AZ3-FY16-1)	
)	
_____)	

**REGION IX's UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
RESPONSES AND REPLIES**

The United States Environmental Protection Agency ("EPA") Region 9 ("Region") respectfully files this Unopposed Motion for Extension of Time to File Responses and Replies ("Unopposed Motion"). The Region requests a forty-five (45) day extension of time to Friday, October 12, 2018 to file a response to Petition for Review ("Petition") of Underground Injection Control ("UIC") Permit No. R9UIC-AZ3-FY16-1 (the "Permit") filed by Dragoon Conservation Alliance, Arizona Mining Reform Coalition, Grand Canyon Chapter of the Sierra Club, Center for Biological Diversity, and Patagonia Area Resource Alliance (collectively, "Petitioners"). In addition, the Unopposed Motion requests the same extension of time for Excelsior Mining Arizona Inc. ("Excelsior"), the permittee of the UIC Permit at issue, to respond on or before October 12, 2018, and a seven (7) day extension of time for Petitioners to reply on or before Monday, November 5, 2018. Counsel for the Region, Excelsior, and the Petitioners agree to the extensions requested in this Motion (*see* attached Exhibits 1 and 2).

Background and Cause for Motion

On July 25, 2018, the Petition was timely filed with the Board (Docket No. UIC-18-04) by Mr. Jeffrey C. Parsons, Senior Attorney with Western Mining Action Project, on behalf of Petitioners. The Petition was served on the Region by mail on July 26, 2018.

The regulations for appeals of UIC permits requires the Region to file a response to a petition, along with a certified index of the administrative record, and relevant portions of the administrative record within 30 days after the service of a petition, plus three days added when service is made by U.S. Mail. *See* 40 C.F.R. §§ 124.19(b)(2), 124.20(d). Service of the Petition was completed upon its mailing on July 26, 2018, thus, without an extension of time, the Region's response to the Petition would need to be filed by August 28, 2018.

Good cause exists for the granting of the extension of time. Petitioners have raised issues outside of the UIC Program under the National Historic Preservation Act, 16 U.S.C. §§ 470, *et seq.* ("NHPA"), and the National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.* ("NEPA"), which will require careful coordination and deliberation with relevant EPA Headquarter offices. Also, Petitioners have raised issues with EPA Region 9's evaluation of the UIC Permit's cumulative effects under 40 C.F.R. § 144.33(c)(3), and drawn comparisons to EPA Region 8's evaluation of cumulative effects in another UIC matter, which will require time for staff from Region 8 and 9 staff to coordinate and consider Petitioners' claims. In addition, with summer vacation schedules rendering some key Region 9 staff unavailable, and with the relatively recent arrival of a new EPA Region 9 Regional Administrator on May 18, 2018, review and briefing of these matters will require additional time for the Region's response to the Board. For these reasons, the Region requests an extension of time to October 12, 2018 for filing its response to the Petition with the Board. For similar reasons the Region expects Excelsior,

which filed its Notice of Appearance with the EAB on August 9, 2018, will also need additional time to October 12, 2018 to provide its response to the Petition. EPA has conferred with counsel for Petitioners and the Petitioners agree to this extension of time for the Region's and Excelsior's responses (*see* Exhibit 1)

In light of the comprehensive and detailed discussion of the issues expected in the Region's and Excelsior's responses to the Petition, the Region agrees that Petitioners should also be provided a seven (7) day extension of time to November 5, 2018 to reply to the responses. Counsel for the Region and Excelsior do not oppose this extension (*see* Exhibit 2).

The Region would also like to inform the Board that all parties to this matter have agreed to accept service of filings by electronic mail only, with no hard copy service by mail or similar means.

Concurrences

EPA Region 9 initiated consultation with EPA's Office of General Counsel on July 26, 2018, immediately after receiving an informal copy of the Petition. Consultations between EPA Region 9 and EPA's Office of Water were initiated shortly thereafter, but in no event later than August 3, 2018. EPA Region 9 will be continuing to consult and coordinate with the Office of General Counsel and the Office of Water regarding the positions of the Agency. The Office of General Counsel and the Office of Water have specifically concurred with the dates agreed to by the parties and proposed in the Unopposed Motion.

In conclusion, the Region requests the Board allow for a forty-five (45) day extension of time to October 12, 2018 for the Region and Excelsior to file responses to the Petition for Review for the reasons outlined above, and for similar reasons to also allow seven (7) additional

days to November 5, 2018 for Petitioners to file a reply to the Region's and Excelsior's responses.

Date: August 10, 2018

Respectfully submitted,

/s/ Rich Campbell

Rich Campbell
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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the attached **MOTION FOR EXTENSIONS OF TIME TO FILE RESPONSES AND REPLIES** to be served upon the following persons listed below in the manner indicated:

By Electronic Submission: Eurika Durr
Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Ave, N.W.
Mail Code 1103M
Washington, DC 20460-0001

By electronic mail: Jeffrey C. Parsons
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Western Mining Action Project
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Counsel for Petitioner

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Counsel for Excelsior Mining Arizona, Inc.

Dated: August 10, 2018

/s/ Rich Campbell

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EXHIBIT 1

From: Jeffrey C. Parsons
To: [Campbell, Rich](mailto:Campbell.Rich)
Subject: RE: EAB Docket No. UIC 18-04 (Excelsior Mining Arizona)
Date: Thursday, August 9, 2018 1:32:54 PM

Thank you, Rich. Petitioners do not oppose the motion.

Jeffrey C. Parsons
Senior Attorney
Western Mining Action Project
P.O. Box 349
Lyons, CO 80540
(303) 823-5738

From: Campbell, Rich <Campbell.Rich@epa.gov>
Sent: Thursday, August 9, 2018 2:19 PM
To: Jeffrey C. Parsons <wmap@igc.org>
Subject: EAB Docket No. UIC 18-04 (Excelsior Mining Arizona)

Dear Mr. Parsons,

Can you please confirm that Petitioners would not oppose filing of an Unopposed Motion for Extension of Time by USEPA Region 9 that requests the following:

- A 45-day deadline extension for both USEPA Region 9 and the permit applicant (Excelsior Mining Arizona, Inc.) to respond to the Petition (Docket UIC-18-04).
- A 7-day extension of time for Petitioners to reply to all responses filed in the matter.

I anticipate attaching this email exchange to the Motion. Please do not hesitate to call if you would like to discuss further. Thank you!

Sincerely,

Rich

Rich Campbell
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USEPA Region 9
75 Hawthorne Street
San Francisco, CA 94105
Ph 415.972.3870

EXHIBIT 2

From: Owens, Steve
To: [Campbell, Rich](#)
Subject: Extension of Time to Respond to Petition for Review
Date: Thursday, August 9, 2018 1:17:30 PM
Attachments: [ATT00001.txt](#)

Rich:

I am representing Excelsior Mining Corporation in connection with the Petition for Review of Excelsior's UIC Permit.

Excelsior has authorized me to advise you that Excelsior will not oppose a 45-day extension of time for EPA to compile the administrative record and respond to the Petition for Review, provided that Excelsior also receives the same 45-day extension of time to respond to the Petition. Excelsior also will not oppose Petitioners' request for an additional 7 days to file their reply.

Best,

Steve



Stephen A. Owens

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