

**RESOLUTION OF SUPPORT FOR LEGISLATIVE CHANGES TO THE  
COLORADO MINED LAND RECLAMATION ACT TO PROTECT THE  
ENVIRONMENT AND REDUCE PUBLIC LIABILITIES**

**Resolution #2018-001**

**WHEREAS**, the San Miguel County Board of County Commissioners agree that water bodies, streams, and rivers should be adequately protected; and that the local communities benefit from the protection of the watershed and the environment; and

**WHEREAS**, Colorado's rivers and streams have been impacted by historic mining activities that were not conducted in an environmentally protective manner, including the San Miguel River; and

**WHEREAS**, San Miguel County has participated actively and cooperatively through the years with many partners to protect water quality and promote the health and integrity of the San Miguel River watershed through reclamation, restoration, monitoring, evaluation and other activities; and

**WHEREAS**, sound and reasonable mining regulations that protect the public interest and require future mines to conduct operations in a manner that does not cause a public fiscal burden is in the best interests of local economies; and

**WHEREAS**, the State of Colorado should have all reasonable authorities and powers to require adequate financial assurances and guarantees from mining operators so that the costs of reclamation and protecting water quality do not fall on the public; and

**WHEREAS**, mines that cannot operate in a manner that will not permanently impair water supplies, rivers and streams should not be permitted in the future; and

**WHEREAS**, the Colorado General Assembly should pass a bill that will provide the State of Colorado with the authority to require adequate financial assurances to protect both water quality and the public, and provide for the treatment of mine water and maintenance of water treatment plants; and

**WHEREAS**, the San Miguel County Board of County Commissioners has shown a draft (Attachment A) bill text containing potential changes to the Colorado Mined Land Reclamation Act that appears to:

- Eliminate the practice of corporate self-bonding to guarantee mine reclamation;
- Increase the state's authority to require adequate financial assurances for water quality protection and treatment that would be needed to mitigate future mining activities;
- Prevent future mines that pollute water in perpetuity by requiring a defined endpoint for water treatment after closure;
- Not impede bona-fide Good Samaritans with no connection to or financial responsibility for historical mining activities from improving water quality at abandoned draining mine sites.

**WHEREAS**, the proponents of the draft (Attachment A) bill text have been actively vetting the potential changes with stakeholders in several Colorado Mineral Belt counties in the last several months; and

**WHEREAS**, the proponents of the draft (Attachment A) bill text have stated that this text has also been shared, vetted and modified through input received from active mine representatives and Division of Reclamation, Mining, and Safety; and

**NOW, THEREFORE, BE IT RESOLVED**, that the San Miguel County Board of County Commissioners, hereby expresses its support of legislative changes to the Colorado Mined Land Reclamation Act that would:


- Eliminate the practice of corporate self-bonding to guarantee mine reclamation; and
- Increase the state's authority to require adequate financial assurances for water quality protection and treatment that would be needed to mitigate future mining activities; and
- Prevent future mines that pollute water in perpetuity by requiring a defined endpoint for water treatment after closure; and
- Not impede bona-fide Good Samaritans with no connection to or financial responsibility for historical mining activities from improving water quality at abandoned draining mine sites.

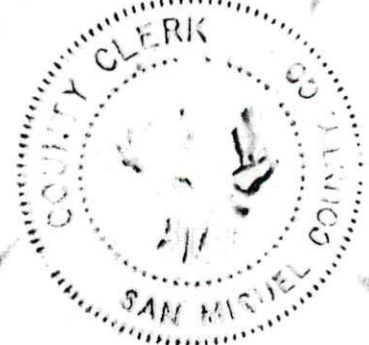
**DONE AND APPROVED** by the Board of Commissioners of San Miguel County, Colorado, at a duly noticed public meeting held in Telluride, Colorado, on January 3, 2018.

**BOARD OF COUNTY COMMISSIONERS  
SAN MIGUEL COUNTY, COLORADO**

  
Kris Holstrom, Chair

ATTEST:

  
Carmen Warfield, Chief Deputy Clerk to the Board



VOTE:

Hilary Cooper	<u>Aye</u>	Nay	Abstain	Absent
Kris Holstrom	<u>Aye</u>	Nay	Abstain	Absent
Joan May	<u>Aye</u>	Nay	Abstain	Absent

ATTACHMENT A: DRAFT BILL TEXT DATED DECEMBER 5, 2017 PROVIDED BY EARTHWORKS

DRAFT

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A BILL FOR AN ACT

101 CONCERNING THE PROTECTION OF WATER QUALITY FROM ADVERSE  
102 IMPACTS CAUSED BY MINERAL MINING.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 SECTION 1. In Colorado Revised Statutes, 34-32-116, **amend**

3 (3) and (7)(g) as follows:

4 **34-32-116. Duties of operators - reclamation plans.** (3) On the  
5 anniversary date of the permit each year, the operator shall submit:

6 ~~a report~~ and (a) a map showing

7 ~~(a) T~~ the extent of current disturbances to:

8 ~~(I) A~~affected land; AND

9 (b) A REPORT DESCRIBING THE AFFECTED LAND AND THE SURROUNDING AREA,

10 INCLUDING:

11 (H) CHANGES OVER THE PRECEDING YEAR REGARDING ANY

12 DISTURBANCES TO THE PREVAILING HYDROLOGICAL BALANCE;

13 (IH) CHANGES OVER THE PRECEDING YEAR REGARDING ANY

14 DISTURBANCES TO THE QUALITY AND QUANTITY OF WATER

15 IN SURFACE AND GROUNDWATER SYSTEMS;

16 (bIII) Reclamation accomplished to date and during the preceding  
17 year;

18 (eIV) New disturbances that are anticipated to occur during the  
19 upcoming year; and

20 (dV) Reclamation that will be performed during the upcoming year.

21 (7) Reclamation plans and the implementation thereof shall  
22 conform to the following general requirements:

23 (g) Disturbances to the prevailing hydrologic balance of the  
24 affected land and of the surrounding area and to the quality and quantity

25 of water in surface and groundwater systems both during and after the  
1 mining operation and during reclamation shall be minimized.

2 (I) A RECLAMATION PLAN FOR ANY NEW OR AMENDED PERMIT MUST  
DEMONSTRATE BY SUBSTANTIAL EVIDENCE AN END DATE FOR ANY WATER QUALITY  
TREATMENT NECESSARY TO ENSURE COMPLIANCE WITH APPLICABLE WATER QUALITY  
STANDARDS.

3 (II) THE BOARD MAY APPROVE A RECLAMATION PLAN ABSENT SUBSTANTIAL EVIDENCE  
OF AN END DATE FOR ANY NECESSARY WATER QUALITY TREATMENT ONLY UPON  
MAKING A WRITTEN DETERMINATION:

(A) FOR A RECLAMATION PLAN AMENDMENT, THAT THE WATER QUALITY  
IMPACTS THAT HAVE OCCURRED OR ARE OCCURRING FOR WHICH NO  
REASONABLE END DATE FOR WATER QUALITY TREATMENT CAN BE ESTABLISHED  
WERE EITHER UNFORESEEN AT THE TIME OF APPROVAL OF THE RECLAMATION  
PLAN OR EXISTING AT A PERMITTED MINE SITE PRIOR TO JANUARY 1, 2018;

(B) FOR A NEW OR AMENDED RECLAMATION PLAN FOR A PERMIT INVOLVING A  
PREVIOUSLY MINED BUT NOT CURRENTLY PERMITTED MINE SITE, THAT  
EXISTING WATER QUALITY CONDITIONS DO NOT MEET APPLICABLE WATER  
QUALITY STANDARDS AND NO REASONABLE END DATE FOR WATER QUALITY  
TREATMENT CAN BE ESTABLISHED.

(C) ALL NEW OR AMENDED PERMITS THAT THE BOARD APPROVES ABSENT  
SUBSTANTIAL EVIDENCE OF AN END DATE FOR ANY WATER QUALITY  
TREATMENT MUST INCLUDE AN ENVIRONMENTAL PROTECTION PLAN AND  
RECLAMATION PLAN ADEQUATE TO ENSURE COMPLIANCE WITH APPLICABLE  
WATER QUALITY STANDARDS.

4 Nothing in this ~~paragraph (g)~~  
5 SUBSECTION (7)(g) shall be construed to allow the operator to avoid  
6 compliance with other statutory provisions governing well permits and  
7 augmentation requirements and replacement plans when applicable.

8 **SECTION 2.** In Colorado Revised Statutes, 34-32-117, **amend**  
11 (4)(b)(I), (6)(b), and (6)(c); and **repeal** (3)(f)(VI) and (3)(f)(VII) as  
12 follows:

13 **34-32-117. Warranties of performance - warranties of**  
14 **financial responsibility - release of warranties - applicability.**

15 (3) (f) Proof of financial responsibility may consist of any one or more  
16 of the following, subject to approval by the board:

17           (VI) ~~A certified financial statement for the financial warrantor's~~  
18 ~~most recent fiscal year and a certification by an independent auditor that:~~

19           ~~(A) The financial warrantor is the issuer of one or more currently~~  
20 ~~outstanding senior credit obligations that have been rated by a nationally~~  
21 ~~recognized rating organization;~~

22           ~~(B) Said obligations enjoy a rating of 'A' or better; and~~

23           ~~(C) At the close of the financial warrantor's most recent fiscal~~  
24 ~~year, his or her net worth was equal to or greater than two times the~~  
25 ~~amount of all financial warranties;~~

26           (VII) ~~A certified financial statement for the financial warrantor's~~  
27 ~~most recent fiscal year and a certification by an independent auditor that~~

1 ~~as of the close of said year:~~

2 ~~(A) The financial warrantor's net worth was at least ten million~~  
3 ~~dollars and was equal to or greater than two times the amount of all~~  
4 ~~financial warranties;~~

5 ~~(B) The financial warrantor's tangible fixed assets in the United~~  
6 ~~States were worth at least twenty million dollars;~~

7 ~~(C) The financial warrantor's total liabilities to net worth ratio~~  
8 ~~was not more than two to one; and~~

9 ~~(D) The financial warrantor's net income, excluding nonrecurring~~  
10 ~~items, was positive. Nonrecurring items which affect net income should~~  
11 ~~be stated in order to determine if they materially affect self-bonding~~  
12 ~~capacity.~~

13 (4)(b)(I) In any single year during the life of a permit, the amount  
14 of required financial warranties ~~shall~~MUST not exceed the estimated cost  
15 of fully reclaiming all lands to be affected in said year, plus all lands  
16 affected in previous permit years and not yet fully reclaimed. For the  
17 purpose of this ~~paragraph (b)~~-SUBSECTION (4)(b)(I), reclamation costs  
18 shall be computed with reference to current reclamation costs. The  
19 amount of the financial warranty ~~shall~~MUST be sufficient to assure the  
20 completion of reclamation of affected lands if the office has to complete  
21 ~~such~~THE reclamation due to forfeiture, ~~Such~~INCLUDING ALL MEASURES  
22 COMMENCED OR REASONABLY FORESEEN TO ASSURE THE PROTECTION OF  
23 WATER RESOURCES, INCLUDING COSTS TO COVER NECESSARY WATER  
24 QUALITY PROTECTION, TREATMENT, AND MONITORING AS MAY BE  
25 REQUIRED BY PERMIT. THE financial warranty ~~shall~~MUST include an  
26 additional amount equal to five percent of the amount of the financial  
27 warranty to defray the administrative costs incurred by the office in

1 conducting the reclamation.

2 (6) (b) Each financial warrantor providing proof of financial  
3 responsibility in a form described in ~~subparagraphs (IV) to (VII) of~~  
4 ~~paragraph (f) of subsection (3)~~ SUBSECTION (3)(f)(IV), (3)(f)(V), or in  
5 ~~subsection (8)~~ of this section shall annually cause to be filed with the  
6 board a certification by an independent auditor that, as of the close of the  
7 financial warrantor's most recent fiscal year, the financial warrantor  
8 continued to meet all applicable requirements of said ~~subparagraphs~~  
9 SUBSECTIONS. Financial warrantors who no longer meetsaid requirements  
10 shall instead cause to be filed an alternate form of financial warranty.

11 (c) Each financial warrantor providing proof of financial  
12 responsibility in a form described in ~~subparagraphs (IV) to (VII) of~~  
13 ~~paragraph (f) of subsection (3)~~ SUBSECTION (3)(f)(IV), (3)(f)(V), or in  
14 ~~subsection (8)~~ of this section shall notify the board within sixty days of  
15 any net loss incurred in any quarterly period.

16 SECTION 3. In Colorado Revised Statutes, 34-32-122, amend  
17 (2) as follows:

18 34-32-122. Fees, civil penalties, and forfeitures - deposit -  
19 emergency response cash fund - created. (2) Any applicant that desires  
20 to utilize the self-insurance provisions listed in section 34-32-117  
21 (3)(f)(IV), ~~to (3)(f)(VII)~~ (3)(f)(V), or (8) shall pay an annual fee to the  
22 office sufficient to defray the actual cost to the office of establishing and  
23 reviewing the financial warranty of the applicant. These funds are hereby  
24 annually made available to the office, which shall utilize outside financial  
25 and legal services for this purpose.

26 SECTION 4. Act subject to petition - effective date -  
27 applicability. (1) This act takes effect at 12:01 a.m. on the day following

1 the expiration of the ninety-day period after final adjournment of the  
2 general assembly (August 9, 2018, if adjournment sine die is on May 10,  
3 2018); except that, if a referendum petition is filed pursuant to section 1  
4 (3) of article V of the state constitution against this act or an item, section,  
5 or part of this act within such period, then the act, item, section, or part  
6 will not take effect unless approved by the people at the general election  
7 to be held in November 2018 and, in such case, will take effect on the  
8 date of the official declaration of the vote thereon by the governor.  
9 (2) This act applies to conduct occurring on or after the applicable  
10 effective date of this act.