

C. Edward Hayes  
Special Assistant Attorney General  
1520 East Sixth Avenue  
P.O. Box 200901  
Helena, MT 59620-0901  
(406)444-1425

Attorney for the Department of Environmental Quality

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

IN THE MATTER OF:  
VIOLATIONS OF METAL MINE  
RECLAMATION ACT BY SATURDAY  
SUNDAY, L.L.C., DEER LODGE COUNTY,  
MONTANA, [FID 31711, DOCKET NO. MM-  
09-01]

Case No. BER 2009-02 MM

**DEQ'S MOTION FOR SUMMARY  
JUDGMENT**

On January 13, 2009, the Department of Environmental Quality issued a Notice of Violation and Administrative Compliance and Penalty Order against Saturday Sunday, L.L.C., (Saturday Sunday). DEQ asserted that Saturday Sunday had violated Section 82-4-331(1), MCA, by conducting mineral exploration activities in Montana without first obtaining an exploration license and assessed an administrative penalty in the amount of \$1,262. DEQ respectfully requests summary judgment in its favor regarding the occurrence of the violation and assessed penalty.

**Factual Background**

On December 21, 2007, DEQ received a Small Miner Exclusion Statement (SMES) from Harley Whitney (Whitney). Section 82-4-303(16)(a), MCA, defines a "small miner" as a person that conducts mining activity disturbing no more than 5 acres of the earth's surface. Pursuant to Section 82-4-305, MCA, small miners are exempt from the provisions of the Metal Mine Reclamation Act.

On March 14, 2008, the DEQ received an application for an exploration license from Whitney. (Exhibit A) In submitting the application, Whitney sought authorization to explore for minerals in Montana under the Metal Mine Reclamation Act as required by Section 82-4-331, MCA.

In conjunction with the application for an exploration license, Whitney submitted a Plan of Operations to DEQ. (Exhibit B) The Plan of Operations describes the proposed activity as follows:

B. Type of Operation: This first phase is exploratory in nature. We intend to apply weed control then excavate an area identified in attached drawings. Excavation operation will remove top soil and mound in a designated area away from any expected exploratory ground. After the top soil has been removed, the overburden . . . will be excavated and piled away from any expected exploratory ground. This is expected to expose leads, veins, ore deposits which will be removed and placed in an area away from any expected exploratory ground until a weighted amount equal to 100 tons has been excavated. . . . [Ore] then will be removed from the site and taken to a mill for removal of all metals and assay. We also wish to re-open the old Lucky Sunday adit with the use of the excavator and hand operations. . . We will enter the old adit and, with the use of lanterns, head lamps and flash lights explore the adit as far back as is deemed safe . . . This will complete the exploratory or first phase of the operation. Only then will we know if the plan needs to be amended to a full mining operation or we begin immediate reclamation of the exploratory area. Under this plan, reclamation will not take place until all exploratory operations have ceased and we are unable to extract economically recoverable minerals. If we are impressed with assay results and request mining permit's [sic] the reclamation plan will be amended to all mining [sic] the area and reclaiming after all ore has been removed from an area . . .

\* \* \*

E. The expected duration of the exploratory operation is 3 (three) weeks. This includes the weed control measures and excavation work. The transportation of the ore and subsequent processing and assay may take as long as 5 (five) weeks to complete at which time operations at the exploratory site may or may not be placed on hold. This is dependent on what the initial examination of the ore reveals or what can be assumed of the ore's content by looking at and measuring certain aspects of the ore. If the ore turns out to be worthless and cannot be economically removed and milled the operation will immediately proceed to reclamation and all exploratory operations will cease. Thus the totality or duration of the operation will be no less than 6 (six) weeks and hopefully no more than 9 (nine) weeks. This again is dependent on the ore assays and if we go to reclamation or request the plan be amended to allow a full mining operation. (Plan of Operations, pp. 1 and 2.)

Both the SMES and the application for an exploration license cover the same site. That property is located in Deer Lodge County and is owned by the State of Montana. Because it is on State Trust property, any mining activity needs to be conducted under a Metalliferous Mining Lease issued by the Department of Natural Resources and Conservation (DNRC).

Based on the Plan of Operations' reference to an L.L.C., and other representations Whitney made to DEQ, DEQ determined that the SMES and the application for an exploration license had been submitted on behalf of Saturday Sunday, L.L.C. The Plan of Operations lists Tim Ware (Ware) as a principal for Saturday Sunday.

DEQ has had prior dealings with Ware. Ware previously had filed two SMESs for placer mining operations in Powell County and also had been issued an exploration license. When Ware failed to reclaim the two placer operations, DEQ revoked the two SMESs and forfeited the associated reclamation bonds in 2006, and is reclaiming the sites. These revocations and bond forfeitures render Ware ineligible for a SMES or an exploration license. Section 82-4-360(1), MCA. Because Ware was a principal of Saturday Sunday and is no longer eligible to conduct mineral exploration or mining in Montana, DEQ voided the SMES submitted in December of 2007 and voided the application for an exploration license submitted in March of 2008. (Exhibit C).

On April 9, 2008, Saturday Sunday filed an affidavit with DEQ. It attested that Ware had divested himself of all membership interest and equitable interest in Saturday Sunday and no longer served as a manager of Saturday Sunday. (Exhibit D) A Statement of Dissociation was also filed with the Secretary of State's Office to the same effect and Ware was removed as a principal on the corporate records maintained by the State. (Exhibit E)

With Ware removed as a principal, Saturday Sunday was eligible to conduct exploration and mining in Montana. By letter dated April 10, 2008, DEQ requested Saturday Sunday to submit a new application for an exploration license. (Exhibit F) DEQ received a new application for an exploration license from Saturday Sunday on July 10, 2008. (Exhibit G)

Before an exploration license can be issued under Section 82-4-332, MCA, an applicant must submit a reclamation bond in an amount determined by DEQ. On July 30, 2008, Spence Willet (Willett), a SMES/Exploration License Program field inspector for DEQ, conducted an inspection of the site for the purpose of calculating a reclamation bond. She was accompanied by Teresa Kinley, a geologist/hydrologist with DNRC, who was preparing an environmental review prior to DNRC's approval of the Plan of Operations.

They discovered that Saturday Sunday had already excavated a pit approximately 20 feet deep. The disturbed area, including the pit and overburden pile, was approximately 98 feet long and 66 feet wide. No topsoil had been salvaged. Whitney was with two other men at the bottom of the pit working with hand tools on an altered, silicified fracture zone. Whitney had loaded two sample tubs in his pickup truck. (Exhibit H & I)

Whitney told the agency personnel that he had hired the operator who dug the pit during the week of July 21, 2008. He told the agency personnel on at least two occasions that he could not remember the name of the operator he had hired to excavate the pit the week before. In its response to DEQ's discovery requests, however, Saturday Sunday has indicated that Whitney and Ware were the operators of the excavator that dug the pit. (Exhibit J) Whitney and the associates advised agency personnel that Ware had dowsed the location of the vein with two bent coat hangers. Whitney and his associates were advised to leave the site because neither DEQ nor the DNRC had approved the activities. (Exhibit H & I)

On January 13, 2009, DEQ issued a Notice of Violation and Administrative Compliance and Penalty Order (NOV) to Saturday Sunday. The NOV alleged that Saturday Sunday had violated Section 82-4-331(1), MCA, by engaging in mineral exploration within the State of Montana without first obtaining an exploration license from DEQ. DEQ assessed an administrative penalty of \$1,262 for the violation. Saturday Sunday L.L.C. has requested a contested case hearing on the alleged violation and the administrative penalty.

### Legal Argument

The Metal Mine Reclamation Act regulates mineral exploration activities separate from mineral mining activities. Section 82-4-303(7), MCA, defines “exploration” as “all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation.” Pursuant to Section 82-4-331(1), MCA, “[a] person may not engage in exploration in the state of Montana without first obtaining an exploration license from the department.” Before DEQ may issue an exploration license, the person applying for an exploration license must submit to DEQ a reclamation bond in the amount determined by DEQ pursuant to Section 82-4-332(3), MCA.

Conversely, Section 82-4-303(9), MCA, defines “mining” as commencing “when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of the aggregate of 10,000 short tons.” Pursuant to Section 82-4-335, MCA, a person may not engage in mining without first obtaining an operating permit from DEQ. Section 82-4-303(16)(a), MCA, defines a “small miner” as a person that engages in **mining activity** and that

conducts an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed. Under Section 82-4-305, MCA, a small miner is exempt from the Metal Mine Reclamation Act if the small miner files a Small Miner Exclusion Statement with DEQ agreeing to four enumerated conditions set forth in that statute.

ARM 17.24.101 implements the exploration license requirements of Section 82-4-331, MCA, and the operating permit and small miner exclusion provisions of Section 82-4-335 and 305, MCA. It draws a clear distinction between exploration and mining. Subsection (4) of that administrative rule provides as follows:

**A small miner** who signs an agreement described in 82-4-305, MCA, and does not violate the Act and this subchapter, **is excluded from certain requirements of the Act as they relate to mining**, except as noted in 82-4-305, MCA. See definition of "small miner" in ARM 17.24.102. **All exploration operations, regardless of size, must comply with the requirements of 82-4-331 and 82-4-332, MCA, and ARM 17.24.103 through 17.24.107.** See definitions of "exploration" and "mining" in ARM 17.24.102. (Emphasis added.)

There is no genuine issue of material fact as to whether Saturday Sunday was engaged in mineral exploration. First, it conducted activity on or beneath the surface of land that resulted in material disturbance of the surface. Saturday Sunday excavated a pit approximately 20 feet deep. The total area disturbed by excavation of the pit, including the overburden stockpile was approximately 98 feet long and 66 feet wide. (See photos in Exhibit H)

Second, the activity was for the purpose of determining the presence, location, extent, grade and economic viability of mineralization in those lands. Saturday Sunday excavated the pit to expose a vein of ore. According to the Plan of Operations, Saturday Sunday planned to excavate up to 100 tons of ore and take the ore to a mill or assay lab. Saturday Sunday was to have the ore assayed to "look at the ores content by looking at and measuring certain aspects of the ore."

The Plan of Operations expressly states that the first phase of Saturday Sunday's operation is exploration in nature. Indeed, the Plan of Operations uses the terms "explore," "exploring," "exploratory," and "exploration," no fewer than thirty-eight times. Furthermore, the Plan of Operations expressly describes Saturday Sunday's excavation of the pit and sampling of the ore for assaying purposes as nonmining activity. The Plan of Operations indicates that if the ore assays indicate that the ore "is worthless or cannot be economically removed and milled," then the "exploratory operations will cease" and "the operation will immediately proceed to reclamation." Only if the ore assay indicates that the ore could be economically mined does the Plan of Operations contemplate an amendment to Saturday Sunday's reclamation plan "to allow mining of the area."

Prior to its mineral exploration activities, Saturday Sunday did not first obtain an exploration license from DEQ. Saturday Sunday, therefore, is in violation of Section 82-4-331, MCA.

Saturday Sunday may argue that its activity was authorized by its Small Miner Exclusion Statement. However, if Saturday Sunday had not previously located the ore, does not even know the character of the ore it is sampling, or whether the ore is of such a quality that it can be economically mined, it can hardly claim that it has begun mining ore in commercial quantities for sale, beneficiation, refining, or other processing or disposition. Therefore, Saturday Sunday is not mining as that term is defined in the Metal Mine Reclamation Act. As a result, Saturday Sunday's excavation of the pit to obtain samples of ore to assay is not authorized by its Small Miner Exclusion Statement, which as indicated above, exempts only mining activity resulting in no more than 5 acres of disturbance from the Metal Mine Reclamation Act.

**Conclusion**

Summary judgment is appropriate where there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), M.R.Civ.P. There is no genuine issue of material fact in this contested case. Saturday Sunday excavated a pit to expose ore of unknown character for the purpose of having the ore assayed to determine the presence, extent, grade, and/or economic viability of mineralization. This activity constitutes “exploration” as that term is defined in the Metal Mine Reclamation Act. Saturday Sunday had not obtained an exploration license from DEQ prior to engaging in this mineral exploration activity. Therefore, Saturday Sunday violated Section 82-4-331, MCA, which requires a person to obtain an exploration license from DEQ prior to engaging in mineral exploration within Montana. DEQ, therefore, is entitled to judgment as a matter of law, and respectfully requests summary judgment to be entered in its favor.

DATED this 22<sup>nd</sup> day of May, 2009.

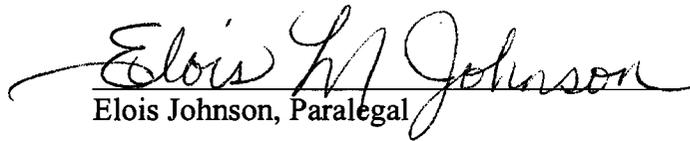
Department of Environmental Quality

  
\_\_\_\_\_  
EDWARD HAYES  
Attorney for the Department of Environmental Quality

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of May, 2009, I caused a true and accurate copy of the foregoing First Discovery Requests to be mailed, postage prepaid, to:

David Rodli  
David Rodli Law Offices  
2001 South Russell  
P.O. Box 2190  
Missoula, MT 59806

  
Elois Johnson, Paralegal

STATE OF MONTANA  
 DEPARTMENT OF ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL MANAGEMENT BUREAU  
 PO BOX 200901  
 HELENA, MONTANA 59620-0901  
 PHONE: (406) 444-2461 FAX: (406) 444-1499

EXPLORATION LICENSE  
 Pursuant to Title 82, Chapter 4,  
 Part 3, MCA; requiring the  
 licensing of persons engaged in mineral  
 exploration and related activities.

RECEIVED

MAR 14 2008

LICENSE NO. 00687

DEQ / EMB

This license, when executed by the Department of Environmental Quality (DEQ) and the Licensee, shall authorize the Licensee to explore for minerals in the State of Montana, in accordance with and subject to the exploration plan of operations and exploration map submitted with the application for this Exploration License to the extent that the Licensee's exploration activities have been approved by DEQ and with any modifications or conditions agreed upon by DEQ and the Licensee. The Licensee certifies that he shall reclaim any surface area disturbed by mineral exploration activities in accordance with the Montana Metal Mine Reclamation Act and Rules and Regulations pursuant to the Act. The Licensee certifies that he/she is not in default of any reclamation obligations under Title 82, Chapter 4, Part 3, MCA. **As of May 1, 2001, the fee for a new Exploration License is \$100 USD; the fee for annual Exploration License renewals is \$25 USD.**

Please be advised that any information provided to the Department in conjunction with this Exploration License may be open to public disclosure. Submission of information that you wish to remain confidential must clearly request confidentiality, specifically identify the confidential information, and state why the information qualifies for protection from disclosure.

Subscribed and sworn to me this <u>13</u> day of <u>March</u> , 2008.		<u>Harley W. Whitney</u> NAME OF LICENSEE	
<u>Heather Morrison</u> Notary Signature		<u>P.O. Box 261</u> ADDRESS	
<u>Deer Lodge, MT</u> Residency (City & State or Province)		<u>Deer Lodge Mont 59722</u> CITY, STATE/PROVINCE, ZIP/POSTAL CODE	
Notary Public for the State/Province of: <u>Montana</u>		<u>498-4647</u> PHONE	
My Commission Expires: <u>Dec 15, 2010</u>		<u>Harley W. Whitney</u> SIGNATURE	
		TITLE: <u>Manager</u> DATE: <u>3/13/08</u>	
Partial App. <u>1308</u> Date Received: <u>03-11-08</u>		License issued by: Hard Rock & Placer Exploration Section, Permitting & Compliance Division	
Fee Received: <u>03-13-08</u>		Date:	
This License is Valid from _____ to _____			

VOID

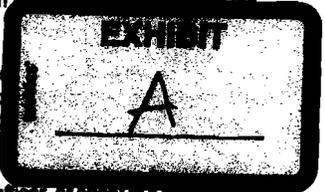
Excerpts from Title 82, Chapter 4, Part 3, MCA:

"Exploration" means all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and all roads made for the purpose of facilitating exploration...

"Mineral" means any ore, rock, or substance (other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium) that is taken from beneath the surface of the earth...

A person may not engage in exploration in the state without first obtaining an exploration license from the department. A license must be issued for a period of one year and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and the fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to the terms and conditions provided by this part.

...a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit...[or]...any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit [is subject to] a civil penalty of not less than \$100 or more than \$1,000 for each of the following violations, an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which the violation continues, and an injunction from continuing the violation. If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is \$5,000 for each day of violation. In addition, if any provisions of the Montana Water Quality Act, and any rules and regulations adopted pursuant to the Act, are violated as a result of the exploration operation, the operator is subject to penalties of up to \$25,000 for each day of violation.



DECLINED APPROVAL  
 4-1-08

Application 00687

PLAN OF OPERATIONS FOR MINING ACTIVITIES ON MONTANA STATE OWNED LANDS

Submitted by: Harley Whitney manager  
Signature Title

Plan received by: Spencer Willett DEQ Environ. Science Specialist  
Signature Title  
3-18-08  
11:05 am

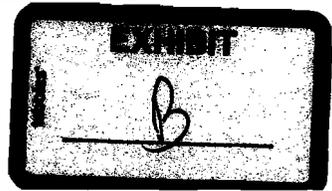
I. GENERAL INFORMATION

A. Mine Name/Project: Harley's Lode .

B. Type Operation: This first phase is exploratory in nature. We intend to apply weed control then excavate an area identified in attached drawings. Excavation operation will remove top soil and mound in a designated area away from any expected exploratory ground. After the top soil has been removed, the overburden, hereafter referred to as O.B., will be excavated and piled away from any expected exploratory ground. This is expected to expose leads, veins, ore deposits which will be removed and placed in an area away from any expected exploratory ground until a weighted amount equal to 100 (one hundred )tons has been excavated. As we have no idea of how large a pile this will amount to we cannot speculate to the size of the hole we will make in the exploratory area. It will depend on the amount of ore in the exploratory hole. Until we start exploration we cannot reasonably or with any accuracy address the amount of O.B. to be removed. If required we will burn the locations where top soil, O.B. and ore are staged to prevent any storm runoff to erode the stock piles and enter into Dry Cottonwood Creek or endanger the Forest Service Road. This then will be removed from the site and taken to a mill for removal of all metals and assay. We also wish to re-open the old Lucky Sunday adit with the use of the excavator and hand operations. The topsoil will be handled as afore mentioned and the O.B. will also be removed and placed as previously discussed. We will enter the old adit and, with the use of lanterns, head lamps and flash lights explore the adit as far back as is deemed safe. Our knowledge as to the interior of the old adit is limited to Mr. Whitney's recollection. He seems to believe the tunnel goes back into the hill and makes some turns. We plan to take samples inside at different locations and, contingent on the safety factors, explore the entire length. However if we encounter any danger we will leave the adit and cease exploration of it. No attempt will be made to remove any cave-in debris, rock, or soil. This is the only adit we are aware of in the exploratory area. This will complete the exploratory or first phase of the operation. Only then will we know if the plan needs to be amended to a full mining operation or we begin immediate reclamation of the exploratory area. Under this plan, reclamation will not take place until all exploratory operations have ceased and we are unable to extract economically recoverable minerals. If we are impressed with the assay results and request mining permit's the reclamation plan will be amended to allow mining the area and reclaiming after all ore has been removed from an area, We will reclaim as directed by the Department of Environmental Quality , State Minerals Management and Federal authorities direct. We will reclaim to the strictest requirements. This entire plan will be amended as conditions change. It is our fervent wish to abide by any and all direction the State and Federal Authorities give us. We in no way wish to circumvent any requirements, cut corners, pull the wool over anyone's eyes, hood wink or in any way try to evade our responsibilities as assigned by State Or Federal Directives. We wish to cooperate fully with any other mandates the State or Federal Government want us to adhere to. We consider this venture as a privilege granted by State and Federal Authorities whom have the right to terminate our exploration if we do not comply with their directives and suggestions.

C. New Operation. This is a new operation on ground which Mr. Whitney's father and uncles worked many years ago as weekend miners.

D. Proposed start-up date. On or about 1 May 2008. This date is dependent on when the plan is finalized and approved by all interested agencies of State and Federal Government. As of the writing of this plan there appeared to be a specific requirement of the US Mine Safety and Health Administration which is not allowed by the State of Montana Minerals



## Management Bureau.

E. The expected duration of the exploratory operation is 3 (three) weeks. This includes the weed control measures and excavation work. The transportation of the ore and subsequent processing and assay may take as long as 5 (five) weeks to complete at which time operations at the exploratory site may or may not be placed on hold. This is dependent on what the initial examination of the ore reveals or what can be assumed of the ore's content by looking at and measuring certain aspects of the ore. If the ore turns out to be worthless or cannot be economically removed and milled the operation will immediately proceed to reclamation and all exploratory operations will cease. Thus the totality or duration of the operation will be no less than 6 (six) weeks and hopefully no more than 9(nine) weeks. This again is dependent on what the ore assays and if we go to reclamation or request the plan be amended to allow a full mining operation.

F. This phase of the operation is not seasonal however the transportation of ore from the exploratory site to the place of assay and processing is dependent on stable road surfaces and weather conditions. We cannot transport ore if the road is too slick or travel to the ore pile cannot be accomplished by standard ore transporting vehicles.

G. The exploratory phase and first assay and ore processing should be completed within 6 (six) weeks. If the findings are not promising the reclamation of the area will commence immediately and should be completed within another week. A poor assay of the ore would have the completion of reclamation on or about 15 June 2008. However if the ore proves out to be of significant value and economically mineable, the LLC will ask for an amendment to the lease to include a full blown mining operation. This then would mean an indefinite date for reclamation because it would depend entirely on the amount of ore and the scale of the operation to remove it. Our intent is to make money. If the money is there then we intend to stay as long as it is economical. When it is no longer economical we will close up all mining operations and proceed to the reclamation phase understanding of course that we would ask that this plan be amended to include mining and a new approximate date for reclamation.

## II. PRINCIPALS

### A. Name, address and phone number of Managing Operator.

Harley Whitney, Box 261, Deer Lodge, Montana, 59722, tel # 406-498-4647

### B. Name, address and phone number of authorized resident agent for the LLC.

David Rodli, Attorney at Law; 2001 South Russell, P.O. Box 2190, Missoula, Montana, 59806; tel # 406-721-0368

### C. Authorized field representative.

Michael L. Green, 353 Beth Drive, Great Falls, Montana, 59405; tel # 406-761-5845

### D. Names, addresses and phone numbers of owners of the lease:

1. Steve Pengra; P.O. Box 7362, Helena, Montana, 59604; tel # 406-459-3538
2. Timothy Ware; 623 Kentucky, Deer Lodge, Montana, 59722; tel # 406-846-1264
3. Tim Ware% Tim Ware, 623 Kentucky, Deer Lodge, Montana, 59722; tel # 406-846-1264
4. Harley Whitney, Box 261, Deer Lodge, Montana, 59722, tel # 406-498-4647

### D. Names, addresses and phone numbers of lessees, assigns, agents, etc.

Not applicable.

## III. PROPERTY OF AREA

Name of claim and legal land description where the operation will be located

Harley's Lode mining claim, located at Township 6 North, Range 9 West, section 34; N1/2NE1/4SE1/4, SE1/4NE1/4se1/4; total acreage; 30 acres.

#### IV. DESCRIPTION OF OPERATION

A. Access. Access to the lease location is by US Forest Service Road # LR 85 to a location where a previously traveled salt track or trail exists which leads to the actual exploratory site approximately 85 yards off the Forest Service Road. All site access other than the rental excavator will be by foot or four wheeler owned by the LLC. At time of this application only one piece of heavy equipment, hereafter referred to as the excavator, is anticipated to be put in use. The excavator will traverse from a haul trailer to the Forest Service Road and up the salt track to the exploratory site. Civilian traffic will be prohibited from accessing the exploratory area and signs to that affect will be conspicuously displayed in several areas. At the close of each operating day, access by vehicle traffic to the salt track will be barred by a chain across the trail.

B. Map Of Area. Maps, sketches and drawings are attached at the end of this application.

C. Project Description and Personnel Activities. The project will begin with a survey of the entire lease with the object of mapping out all areas of weed infestation on the lease. This survey will include the amount of and identification of each noxious weed present on the lease. A comprehensive weed control plan is included with this application as an attachment. Once weed control measures have been affected the salt track or trail will be made safely accessible to exploratory equipment and personnel. The project is now ready to proceed with the exploratory operation. We expect to remove the top soil and place it as mentioned earlier in this application. After the top soil is removed, the o.b. will be excavated and placed elsewhere as mentioned before. This should expose the raw ore we are interested in. Depending on the hardness of the ore we may require the use of an excavator accessory hydraulic hammer to break it into small enough pieces as to be able to load it into a transport vehicle. This being said the excavator operation will recover approximately 100(one hundred) tons of ore to transport to the mill (which mill is yet to be determined). Once the bulk sample has been removed from the exploratory area the area will be cordoned off with orange construction fence and steel posts. We intend to slope the excavation as we remove O.B. and ore. All care will be taken to keep civilians from accessing any part of the sampling area and entire exploratory area to include the adit. The US Mine Safety And Health Administration, hereafter referred to as MSHA, requires all mining operations, (this constitutes a mining operation even though it is exploratory in nature) in the United States , regardless of location, to maintain an office at the mine site. As we are anticipating finding economically mineable quantities of valuable metal minerals, we feel the need for a security presence at the start of the salt track or trail leading to the ore pile and exploratory site. Not only do we need security to protect the LLC's assets, we are also in need of protecting the States assets as the state gets 5 % of everything we uncover and process. With the prices of precious metals sky rocketing and the price of our equipment very high we need to be allowed to place a guard at the entrance to the salt track or trail to protect our exposed valuable assets and exploratory ore pile. As a fledgling start up company we cannot afford to loose any of our assets and must be allowed to guard them on a 24/7 monitoring program. This would require a security presence at or next to the site. As we may be on site for as little as six weeks we ask that we be allowed to park a trailer across the Forest Service Road from the entrance of the salt track or trail to the exploratory site to qualify as an office for MSHA purposes and as a monitoring location for our security personnel.

D. Exploratory personnel. Manpower will consist of an equipment operator/manager Harley Whitney, and Safety Manager, Michael Green. One person will be on site at all times. From time to time, personnel strength will fluctuate from 1 to 5 people will be on site during the day. All personnel are involved as owner/operators at some leveling Saturday Sunday LLC. Hours of active exploratory operations will be roughly from dawn (0600 hrs. or 6AM) till dusk(1800 hrs or 6PM) These hours may change but basically we will operate when weather and daylight permit a safe operating climate, 10 (ten) to 12 (twelve) hours per day. We will operate on at least a 6 (six) day work week. As previously mentioned MSHA requires an on site office to keep all records on site communications, and to be used for meetings with MSHA personnel, display of workers rights, personnel files, hazard assessment reports, Safety meetings , posting of notices and information, Material Safety Data Sheets (hereafter referred to as MSDS's), fire or injury evacuation map/plan, posting of emergency phone numbers. All of these are MSHA requirements. We also need the area for training and certifying personnel, another requirement of MSHA. We also have the added need of utilizing this for a shelter for our night time security person.

E. Equipment and vehicles. The following is a list of required equipment and vehicles.

I. Office/motor home. 27(twenty seven) ft company owned and self contained.

2. Travel trailer/shed, 30 (thirty) ft., company owned and self contained.
3. Two wheeled pick-up box trailer, 8(eight)ft. company owned
4. One 4(four)wheeler. 4WD, company owned.
5. Four wheel drive pick-ups. One tan/brown 1987 Ford, company owned. One or more employee owned pick-ups.
6. One 4500 watt gas generator, company owned.
7. One rental 120 Komatsu Excavator with ¾ yard bucket and hydraulic hammer attachment.
8. When needed, a rented driver and over the road haul truck, 15(fifteen) to 20 (twenty)yard capacity; miscellaneous picks, shovels, sample bags, buckets, safety equipment, tubs, steel posts and driver , cable and or chain and locks for posted entrance gate, power washer and assorted tools and equipment washing brushes, warning signs and posters.

NOTE. Any time there is an accumulation of waste in the motor home and or travel trailer, the units will be pressure washed to remove any and all vegetation and seed material, driven off site to a community trailer waste disposal point and waste will be discharged, tanks flushed and then returned to site immediately.

F. Structures. No permanent structures are anticipated at this juncture of operation. We have no need for temporary structures at this time. If the ore proves to be economically mineable we will readdress this issue.

## V. ENVIRONMENTAL PROTECTION MEASURES AND CONSIDERATIONS

A. Air Quality. We do not anticipate any problem with road dust or any hazardous materials being dispersed in air. No gases will be dispersed in this operation and no silica dusts will be produced with the very minimal use of the haul truck or company and employee vehicles.

B. Water Quality. We do not anticipate any issues involving water quality. The small creek in the area is well away from the exploratory site. No discharges of waste will be performed on or near the site or any other waterway. Petroleum products will be brought to the site as needed and only as much as is needed will be brought on site. If the operation changes do to feasibility of opening an active mine, this issue will again be addressed and all permits and or approvals will be applied for prior to commencing commercial production. All piles of topsoil, O.B. and ore will be surrounded with material (either certified weed free straw bails or silt fence) to preclude erosion from storm runoff or melting snow. Any certification statements furnished with commercially purchased straw bails will be provided to the State for approval.

C. Solid Waste Management. This initial operation should not generate any solid wastes. We do not intend to bring material to the site other than routine maintenance items, which will be removed by the person performing the maintenance. Trash will be disposed of as needed. A receptacle will be provided by the LLC to collect and store trash until ready for removal. Solid waste management of the office and trailer has already been discussed in para IV; E; Note.

D. Scenic Values. Our equipment will be located in an area that is not a scenic wonder. The area which we want to park the motor home and trailer is inconspicuous as well. There seems to be no scenic values disturbed by our presence.

E. Fish and Wildlife. As discussed earlier in this application, the local water source, Dry Cottonwood Creek will not be disturbed. We have in the past, operated a 100 yard per hour trammel in the same type situation as we now find. Elk, deer, bear and badgers came right through our camp. They were more curious than frightened. We encountered deer living within 100(one hundred) yards of our camp, observed elk herds on a routine basis, bears on sometimes a daily basis, and all the lesser animals all the time. We operated in an area which was also used as a very expensive guided bow hunting area for elk. We do not anticipate any negative response from animal populations. This area is also home to an active sheep ranch which is very close to bordering this lease. We have no intention nor do we anticipate any hazing of wildlife.

F. Cultural Resources. No visible Cultural resources. If any cultural artifact is encountered while we are digging or at any time we are exploring we will cease operations until the State can evaluate the find and determine if we may continue operations.

H. Hazardous Substances. The following is a list of hazardous substances we will be using. All of these substances are

common substances used by any person owning a vehicle. Use of these substances requires the posting of MSDS's. These MSDS's will be posted in the company motor home which serves as the on site company office. No substances will be stored on site.

1. Standard grade grease. Contained in tubes. Used as needed, normally weekly for lubing excavator
2. 10W40 Oil. 2 gal jugs. Used as needed when equipment is low on oil
3. Diesel Fuel. 100 gal tank used to fuel excavator when low on fuel
4. Regular Gasoline. 50 gal tank used to refuel 4 wheeler when needed
5. Hydraulic fluid. 2 gal jugs used as needed to refill reservoir on excavator

NOTE All these substances other than the fuels will come on site in their commercial packaging which will serve to identify the substance, amount, uses, and MSDS requirements. Empty containers will be removed from the site. A trash receptacle will be used for empty packaging of non petrol products. As no qualifying amount of petroleum product will be stored on site and no navigable water ways are in the vicinity of the operation, no State or federal discharge permits are required. As we do not intend to use the site for hazardous material storage no containment areas seem to be needed. Fuelers of equipment will use secondary catchment vessels to prevent spillage. Any soil that is contaminated by spilled petrol products will be removed from the site and disposed of in accordance with (IAW) all local, state and federal requirements. If for some reason a spill occurs which exceeds 5 gallons DEQ will be notified immediately. We will immediately burn the spill site and attempt cleanup to limit the contamination. All contaminated soil will be removed and disposed of IAW local, state and federal requirements. Again, we do not intend to keep any hazardous material on the site.

1. Reclamation. From the time we start this exploratory operation to the time we have the assay and bulk sample results back should not exceed 60(sixty) days. Then we will know if we are going to explore and test sample further, put in changes to this operations plan or submit a new plan to allow a full production mode or start reclamation operations. In the 1960's when the ground was worked by Mr. Whitney, his father and uncles the assays were 4-5 oz. AU, 4-5 oz PT, 300-900oz (300oz top of vein, 900oz bottom of vein at the 12 ft. depth) per ton of ore. There were also 8(eight) different metals found but were unidentified. We believe these to be in the platinum group metals (here after referred to as PGM) No assays were taken in the adit. We will attempt to open the adit to explore and see if the previous mining activity crossed any vein material. If so we will take one gallon bag samples. They as well as all other grab samples will be logged, mapped and weighed. If we find the adit is collapsed, other unsafe conditions, or no sign of ore veins we will close it and reclaim the entrance. Total time, if not penetrable, from open to close will be three hours. If it is safe to enter we intend securing the entrance with anchored frame and lockable door. If our test results of the exploratory area continue to indicate high levels of mineralization we will apply for permission to amend all permits to allow production. If the results do not meet our expectations and show too small amounts of precious metals we will commence the final stages of the exploratory phase and start the reclamation process. The pit area will be the beginning point of reclamation. We will pull the O.B. back into the test pit using the same excavator, compacting to remove any voids. After sufficient O.B. has been compacted, the top soil will be replaced and contoured to match the local topography. The existing trail will be put back to its original slope and the mound will be rebuilt. We will use all existing O.B. and purchase additional soil if necessary. All trails will be restored to their previous condition unless mine our activity actually improved the condition and the State approves. As the exploratory pit, adit entrance and trails are filled in and reconstructed, the ground fill will again be treated for weed control and reseeded with State approved certified weed free seed. We will acquire any type seed, saplings or tree seedlings recommended by the DEQ. Planting will be IAW DEQ requirements or as directed by State authority. The staging area for the office, trailer, materials storage and vehicle parking area will be restored to its original state in the same manner as we restored the exploratory site. The equipment wash area berm or ditch (whichever we may use) will be restored to its previous state, raked, sprayed and reseeded as needed. All trash from the reclamation will be bagged and carted off. All trash generated from the use of the exploratory site or by company activity in the area will be bagged and stored in the 30 ft. trailer until someone needs to go to town, then it will be hauled off to the Deer Lodge Dump Or Great Falls. At no time will trash accumulation be allowed to stay in storage more than three days or if odor requires it be removed sooner. All privately owned vehicles and company owned or rented vehicles and equipment will be removed once recontouring and reclamation work, thus far, has been approved and the OK by DEQ or other State authority given to strike camp. Weed spraying, erosion control, reseeded and tree seedling planting will occur each spring and fall until DEQ or other competent State authority deems the area has been adequately restored and reclaimed. No trees, which presently could be used for lumber, will be disturbed or cut. Any small trees removed, will be replaced IAW DEQ instructions and guidance. All roads and trails will be kept graded to prevent rutting and erosion. We intend to make our presence as inconspicuous as possible. We intend our departure to leave a scene that appears as though we were never there.

**J. Weed Control Plan. Initially we will identify what weeds are present in the area of the proposed exploration and adit area as well as on and around the present salt track or trail. After weed inventory we will either (1) acquire appropriate herbicide or other weed control product approved for use on State owned property and recommended by DEQ, or a multitude of control products which will eradicate and control all weeds identified, and by following manufacturers recommendations for strength and coverage amount proceed to apply to infested areas or (2) hire a professional to perform the work IAW DEQ and Federal guidelines**

## **Pressure Washing**

- 1. A wash area will be designated for power washing all equipment, tools and vehicles used off road. This area will be burned to prevent any material, washed off the machinery from entering the forest service road or Dry Cottonwood Creek. All equipment will be power sprayed to free material caught on the undercarriage and wheel wells, tires, tracks, and any areas which may hide vegetation or seeds of noxious weeds. All equipment will be cleaned before use on the lease and cleaned after it is no longer being used on the lease or if it is taken off the lease for any reason. Any vehicle parked on lease ground will be power washed before it leaves lease area and traveling on the forest service road or anywhere beyond lease boundaries. Since the lease has a major problem with noxious weeds, all care will be taken to insure no noxious weeds or seeds will be transported off lease ground.**
- 2. Water for washing will be contained in a tank transported on the bed of a pick-up truck or trailer.**
- 3. Washing will be by power washer owned by the LLC.**
- 4. Visiting vehicle parking will be across the forest service road and will not be allowed on the lease. In case this policy is violated the vehicle entering onto lease land will be power washed before being allowed to leave.**



Montana Department of ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.mt.gov

Whitney  
EXPL  
# Pending

EXPL APP  
DECLINES

April 1, 2008

Harley W. Whitney  
P.O. Box 261  
Deer Lodge, MT 59722

Re: Small Miner Exclusion Statement and Exploration License Application

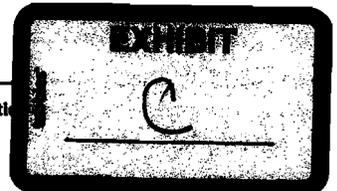
Dear Mr. Whitney,

You have submitted a Small Miner Exclusion Statement (SMES) that was received by the Department of Environmental Quality (DEQ) on December 21, 2007, and an application for an exploration license that was received on March 14, 2008. The SMES is ostensibly in your name. You signed the exploration license application as "manager," although you do not state the corporate entity for which you are a manager.

The Department believes that you signed the SMES and exploration license in your capacity as a principal of Saturday Sunday, LLC. On March 17, 2008, DEQ received a phone call from Mike Green inquiring as to the SMES. He identified himself as being with Saturday Sunday, LLC. In addition, when I indicated to you that we needed a plan of operation and map in conjunction with the exploration license application, you indicated that you would be meeting with your "partners" to provide both items. The plan of operations you submitted is for an unnamed LLC. In addition, the SMES and plan of operations are for the same location as the mineral interest that is subject to a mineral lease assignment recently submitted to the Department of Natural Resources and Conservation. The assignment assigns the state mineral lease from R&D Exploration and Development, LLC, to Saturday Sunday, LLC.

Records maintained by the Montana Secretary of State indicate that Tim Ware is a principal of Saturday Sunday, LLC. In addition, the plan of operations submitted by you lists Tim Ware as a principal of Saturday Sunday, LLC.

DEQ has had previous dealings with Ware. Ware previously filed SMES Nos. 28-100 and 28-100B with DEQ for placer operations in American Gulch and the Nevada Creek drainage in Powell County. DEQ also issued Exploration License No. 00649 to Ware.



ed meets. Same as signed.

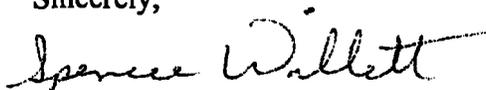
On December 6, 2005, [redacted] advised Ware that it would revoke [redacted] Nos. 28-100 and 28-100B and forfeit the associated reclamation bond if Ware did not commence and diligently complete reclamation of the two placer operations. The notification was sent pursuant to the requirement under the Montana Metal Mine Reclamation Act that disturbances caused under a SMES be reclaimed within 6 months after cessation of mining. DEQ gave Ware until July 30, 2006, to complete the reclamation. Ware did not perform any reclamation prior to that date.

By letter dated August 14, 2006, DEQ notified Ware that SMES Nos. 28-100 and 28-100B were revoked and that the bond would be forfeited. Additional correspondence was sent to Ware on September 25, 2006, expressly stating that Ware could not conduct exploration or mining in Montana in light of the revocation and bond forfeiture. DEQ also indicated to Ware the remedial steps required to resume mining operations. Ware, however, did not subsequently contact DEQ in that regard.

In October of 2007, Ware submitted to DEQ an annual report and renewal form for SMES 28-100 and 28-100B. In these documents, Ware indicated that he was doing business as Saturday Sunday, LLC. In addition, Ware submitted a renewal form for Exploration License No. 00649, again indicating that he was doing business as Saturday Sunday, LLC. DEQ returned the forms to Ware, indicating that SMES 28-100 and 28-100B had been revoked and that revocation of the bond precluded renewal of the exploration license.

Based on the revocation and bond forfeiture, Ware is no longer eligible for a SMES under Section 82-4-305(9), MCA, or an exploration license under Section 82-4-331(3), MCA. Therefore, DEQ is voiding the SMES and denying the application for exploration license that you filed on behalf of Saturday Sunday, LLC.

Sincerely,



Spencee Willett

Title

cc: Warren McCullough

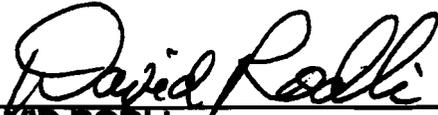
AFFIDAVIT

STATE OF MONTANA )  
  : ss.  
County of Missoula )

DAVID RODLI, of Missoula, Montana, after first being duly sworn upon his oath,  
deposes and says:

1. I am a member, a manager and legal counsel for Saturday Sunday, LLC.
2. From personal knowledge, I attest to the fact that Timothy W. Ware has divested himself of all membership interest in Saturday Sunday, LLC, and has no equitable interest in the company, whatsoever, his interest having been transferred to Harley Whitney, an existing manager and member of the Company.
3. I further confirm that Timothy Ware does not serve in any capacity as a manager of Saturday Sunday, LLC, either.

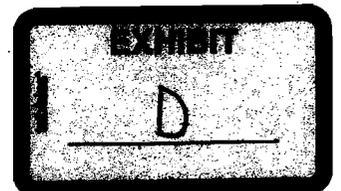
DATED this 9<sup>th</sup> day of April, 2008.

  
\_\_\_\_\_  
DAVID RODLI

SUBSCRIBED AND SWORN to before me by DAVID RODLI, in his individual capacity this 9<sup>th</sup> day of April, 2008.



  
\_\_\_\_\_  
Name Printed: Shirley A. Stevens  
Notary Public for the State of Montana  
Residing at Missoula  
My Commission Expires: August 1, 2011





877773  
STATE OF MONTANA  
**FILED**

MAY 27 2008

SECRETARY OF STATE

STATEMENT OF DISSOCIATION  
SATURDAY SUNDAY, LLC

STATE OF MONTANA )  
  : ss.  
County of Missoula    )

174828

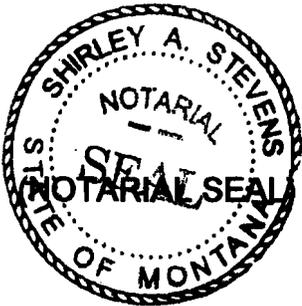
DAVID RODLI, of Missoula, Montana, after first being duly sworn upon his oath,  
deposes and says:

1. I am a member, a manager and legal counsel for Saturday Sunday, LLC.
2. From personal knowledge, I attest to the fact that Timothy W. Ware has divested himself of all membership interest in Saturday Sunday, LLC, and has no equitable interest in the company. He is now dissociated from the Company.
3. I further confirm that Timothy Ware does not serve in any capacity as a manager of Saturday Sunday, LLC, either.

DATED this 28<sup>th</sup> day of April, 2008.

*David Rodli*  
\_\_\_\_\_  
DAVID RODLI

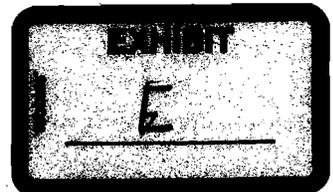
SUBSCRIBED AND SWORN to before me by DAVID RODLI, in his individual capacity this 28<sup>th</sup> day of April, 2008.



*Shirley A. Stevens*  
\_\_\_\_\_  
Name Printed: Shirley A. Stevens  
Notary Public for the State of Montana  
Residing at Missoula  
My Commission Expires: August 1, 2011

RECEIVED  
HELEN MONTANA  
MAY 27 2008

RECEIVED  
HELEN MONTANA  
MAY 27 2008  
SECRETARY OF STATE  
ERIN JOHNSON





Montana Department of  
**ENVIRONMENTAL QUALITY**

Brian Schweitzer, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • [www.deq.mt.gov](http://www.deq.mt.gov)

April 10, 2008

Harley Whitney  
PO Box 261  
Deer Lodge, MT 59722

RE: Continuation of Exploration License Application – Need New Application Form

Hello Harley,

Please complete the enclosed form and return it to DEQ-EMB at the address below to indicate your desire to continue the application process for an Exploration License. Once our office receives this form, a site inspection by DEQ and DNRC will be required. Then a bond calculation will be completed and sent to you.

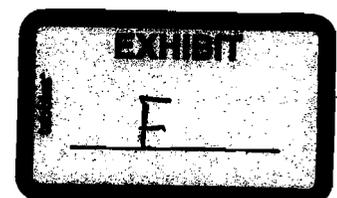
Spencee Willett will be the DEQ representative to schedule that site inspection. She is scheduled to be in the office next Tuesday – Friday. They the entire EMB office will be closed the following week due to a conference. It would be best to contact Spencee (406-444-4962) next week and perhaps get something scheduled for the 1<sup>st</sup> week in May.

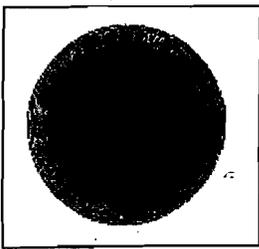
Once you receive the joint bond calculation and decide what type of bond you wish to post (i.e. cash, check, CD, Letter of Credit, or Surety), then call me to get an electronic copy of the correct Assignment Form to be completed and returned to DEQ along with the original bond instrument. If you know the e-mail address of the bank representative that will be processing your bond instrument, we can send the e-form directly to them for completion, since they will need to sign it as well. Till then, we await the enclosed form.

Sincerely,

Jacqueline L. Windon  
DEQ-EMB  
PO Box 200901  
Helena, MT 59620-0901  
(406) 444-2461  
[jwindon@mt.gov](mailto:jwindon@mt.gov)

Enclosure





STATE OF MONTANA  
 DEPARTMENT OF ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL MANAGEMENT BUREAU  
 PO BOX 200901  
 HELENA, MONTANA 59620-0901  
 PHONE:(406) 444-2461 FAX:(406)444-1499

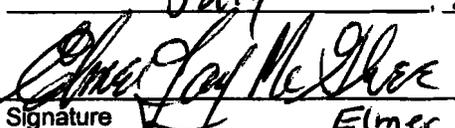
*Payed 3 moth ago #2*

EXPLORATION LICENSE  
 Pursuant to Title 82, Chapter 4,  
 Part 3, MCA; requiring the  
 licensing of persons engaged in mineral  
 exploration and related activities.

LICENSE NO. 00687

This license, when executed by the Department of Environmental Quality (DEQ) and the Licensee, shall authorize the Licensee to explore for minerals in the State of Montana, in accordance with and subject to the exploration plan of operations and exploration map submitted with the application for this Exploration License to the extent that the Licensee's exploration activities have been approved by DEQ and with any modifications or conditions agreed upon by DEQ and the Licensee. The Licensee certifies that he shall reclaim any surface area disturbed by mineral exploration activities in accordance with the Montana Metal Mine Reclamation Act and Rules and Regulations pursuant to the Act. The Licensee certifies that he/she is not in default of any reclamation obligations under Title 82, Chapter 4, Part 3, MCA. **As of May 1, 2001, the fee for a new Exploration License is \$100 USD; the fee for annual Exploration License renewals is \$25 USD.**

Please be advised that any information provided to the Department in conjunction with this Exploration License may be open to public disclosure. Submission of information that you wish to remain confidential must clearly request confidentiality, specifically identify the confidential information, and state why the information qualifies for protection from disclosure.

Subscribed and sworn to me this <u>8</u> day of <u>July</u> , 2008.  Signature <u>Elmer Jay McGhee</u> Notary <u>Deer Lodge MT</u> Residency (City & State or Province) Notary Public for the State/Province of: <u>MT</u> My Commission expires: <u>12-3-2010</u>	<u>Harley W. Whitney</u> NAME OF LICENSEE <u>P.O. Box 261</u> ADDRESS <u>Deer Lodge Mont. 59722</u> CITY, STATE/PROVINCE, ZIP/POSTAL CODE <u>(406) 498 4647</u> PHONE <u>Harley W. Whitney</u> SIGNATURE: TITLE: <u>Manager</u> DATE: <u>7-8-08</u>
Date Received: <u>7-10-08</u> Fee Received: <u>3-13-08</u> ✓	License issued by: Hard Rock & Placer Exploration Section, Permitting & Compliance Division Date: _____
This License is Valid from _____ to _____	

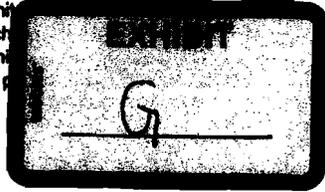
Excerpts from Title 82, Chapter 4, Part 3, MCA:

"Exploration" means all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and all roads made for the purpose of facilitating exploration...=

"Mineral" means any ore, rock, or substance (other than oil, gas, bentonite, clay, coal, sand, gravel, peat, soil materials, or uranium) that is taken from below the surface or from the surface of the earth...=

AA person may not engage in exploration in the state without first obtaining an exploration license from the department. A license must be issued for a period of 1 year from date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and be accompanied by payment of a fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part. =

A...a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit ...[or]...any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit... not less than \$100 or more than \$1,000 for each of the following violations, an additional civil penalty of not less than \$100 or more than \$1,000 for each day the violation continues, and an injunction from continuing the violation. If the violation created an imminent danger to the health or safety of the public or caused significant damage to the environment, the maximum penalty is \$5,000 for each day of violation. In addition, if any provisions of the Montana Water Quality Act, and/or rules and regulations adopted pursuant to that Act, as a result of the exploration operation, the operator is subject to penalties of up to \$25,000 for each day of violation.



DEPARTMENT OF ENVIRONMENTAL QUALITY  
SMES/EXPLORATION FIELD INSPECTION REPORT

Date: 07/30/08 SMES No./Exploration License: 30-036  
Company/Individual: Harley Whitney Priority: H  
County: Deer Lodge Legal Location: T6N R9W Sec34  
Quadrangle: Lockhart Meadows Mine/Project: Underground & Open Pit  
Mineral: Gold, Silver, & Platinum Map Area: Dry Cottonwood Creek

Mining / Exploration Methods:

Underground \_\_\_\_\_  Trench \_\_\_\_\_  
 Open Pit \_\_\_\_\_  Road \_\_\_\_\_  
 Placer \_\_\_\_\_  Drill Pad/Hole \_\_\_\_\_

Purpose for Inspection:

Regular  
 Complaint \_\_\_\_\_  
 Follow-up Bond Calculation

Acres Disturbed:

\_\_\_\_\_ Access Roads/Trails  
0.12 Project/Mine Site (Trimble map)  
\_\_\_\_\_ Other \_\_\_\_\_  
\_\_\_\_\_ Acre(s) Reclaimed  
\_\_\_\_\_ Total Acres Disturbed

Problems:

Road not Reclaimed  
 No Bulkhead on Portal  
 Weeds  
 NoBond Posted for Exploration License  
 Drill Hole not Reclaimed  
 Stream Reclamation  
 Refuse & Equipment  
 Contamination or Pollution of Streams

Status of Mine:  Active  Shut-down  Inactive Retention 10 or 20 years (circle one)

Surface Owner: DNRC

Company Representative: Teresa Kinley & Fred Staedler

Access, Description of the site, Conversations, Equipment, and Follow-up Comments:

I met Teresa Kinley at DEQ and followed her to the Galen exit. We met Fred Staedler of DNRC and Robin McCullough at the beginning of USFS Road #85. The site is accessed by driving up USFS Road #85 approximately 5 miles to a parking spot below site. From the parking spot on the right side of the road, it is a short hike up a steep side road.

At the site, we discovered that Harley and two young guys were working in a pit that had been excavated. They were apparently working with a hand drill and other tools that were lying in the bottom of the hole. Harley made a cell phone call right after we arrived and told the other person (Tim Ware?) the State was on site. Teresa told Harley she was disappointed because he had used an excavator to dig the pit when he did not have an approved Operating Plan through DNRC and an EA has not been completed. DNRC has approved a lease assignment for Saturday/Sunday LLC and there is a \$2500 bond in place for the lease. Mr. Whitney does not have a bond in place with DEQ for the exploration license and, consequently, it has not been signed by Warren. The pit was about 20 feet deep. Harley was asked when the pit was excavated and he said a week ago. He was asked a

least twice who did the excavating and he said he did not remember. He was asked the type of excavator and he said it was done with Komatsu 120. (We thought the operator was most likely Tim Ware.) Harley told us that Dave Rodli had told him it was okay to proceed. Also during the course of the conversation, he was asked if Tim Ware was his partner and he said "yes". Knapweed and Leafy Spurge were all over the place and Teresa asked him whether he had done anything about weed control and he said "No".

Down in the bottom of the excavation there was a foot-wide trench along the altered, silicified fracture zone they are pursuing. The host rock is Boulder Batholith and the altered fracture zone shows silicification and oxidation. Apparently, he/they are hoping to intercept an old raise associated with the caved adit on the road below. Jarosite and slickensides were noted on the hanging and foot walls of the fracture zone.

Teresa told Harley they needed to stop work and we waited until they packed up the truck and drove down the road. Several problems/violations were noted and DEQ and DNRC will collaborate to move to the next step in dealing with this matter.

Field Inspector: Spence Willett

Photographs taken







DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION  
TRUST LAND MANAGEMENT DIVISION



BRIAN SCHWEITZER, GOVERNOR

1525 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-2074  
TELEFAX NUMBER (406) 444-2684

PO BOX 201601  
HELENA, MONTANA 59620-1601

August 11, 2008

**MEMORANDUM**

To: Monte Mason, Chief, Minerals Management Bureau

From: Teresa Kinley, Geologist/Hydrologist, Minerals Management Bureau *T.K.*

Re: Trespass Operations on M-1980-07, Saturday Sunday, LLC.  
Section 34 N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$   
T6N, R9W, Deer Lodge County, MT

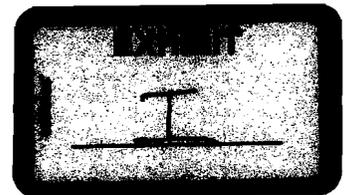
**Site Visit July 29, 2008**

Teresa Kinley, Minerals Management Bureau; MT-DNRC; Fred Staedler, Anaconda Unit Manager, MT-DNRC, Spencee Willett, EMB, MT-DEQ; Robin McCulloch, MBMG; and Sharon Scognamiglio, Deer Lodge County Weed Coordinator visited this lease on July 29, 2008. They found Saturday Sunday, LLC conducting unapproved operations on this lease.

Unapproved mechanical exploration resulted in reopening of the 4X4 trail road, and emplacement of a pit and associated overburden piles covering about 0.1 acre in the SE $\frac{1}{4}$  of Section 34 (see Figures 1-5). The lessee disturbed an area (pit and overburden piles) approximately 98 feet long, 66 feet wide, and 20 feet deep. With the assignment of lease M-1980-07 to Saturday Sunday, LLC in June 2008, Minerals Management Bureau, TLMD, MT-DNRC did not grant permission for mechanized exploration on the lease. TLMD has not authorized road opening, building or use of motorized vehicles on the 4x4 trail in on M-1980-07 in Section 34, T6N, R9W.

Neither the Anaconda Unit Manager, nor the Minerals Leasing Section Supervisor or Geologist have been contacted by Saturday Sunday, LLC about any activities on the lease premises. MT-DEQ does not have a bond in place for any activities on this lease (see MT-DEQ inspection report).

On July 29, 2008, the field personnel noted above found Mr. Harley Whitney and two other associates had driven a pickup truck on the opened 4x4 trail to the unapproved disturbance for sampling. Mr. Whitney had loaded two sample tubs in his truck by the time we arrived. Other samples have probably been collected and removed.



I advised Mr. Whitney of my disappointment that he had emplaced a pit without MT-DNRC approval. I advised that we have to do an environmental review of the exploration plan prior to any mechanized work being done.

Mr. Harley Whitney advised field personnel on July 29, 2008 that he had been advised by David Rodli that they had permission to dig. Mr. Whitney indicated to field personnel that operations have been ongoing for about a week. He told us that he had rented a 120 Komatsu excavator and hired an operator. According to Mr. Whitney, the week of July 21, 2008, the operator came out, opened up the 4x4 road and dug the pit in about a day. Robin McCulloch commented that the operator must have really been banging on the hard rock to get as much disturbance as is present that quickly. Mr. Whitney advised that the operator did not do the work in the manner that he wanted. I indicated that Mr. Whitney has the responsibility for supervision of his employees. We asked the name of the operator several times, but Mr. Whitney did not remember the operator's name.

We asked Mr. Whitney if they had done any weed control. He responded, no.

Field personnel noted that the fence along the top of the hill had a sag in it and there is danger that part of the former pit fill could slough into the new pit, and extend the disturbance onto private ground. Fred Staedler had concern that the unauthorized excavation had already crossed the eastern property boundary. Fred thought that the boundary occurred west of the fence line. Robin McCulloch explained to Harley Whitney that the minerals on the eastern side of the property boundary would not belong to the state, so they could not continue their excavation to the northeast. We had some discussion on who owns the adjoining land. Mr. Whitney indicated that Saturday Sunday LLC had not secured a lease or agreement with the adjoining landowner. He thought the Montana (Clark Fork) Coalition Group owns the land to the east of the state boundary. Brian Robbins informed me on July 31, 2008 that the boundary occurs east of the fence. Saturday Sunday LLC, (Harley Whitney) had not marked the boundary per M-1980-07, Section 17, Attachment A, Item L.

The steep slope of the pit appeared to pose a hazard to the surface lessee's cattle that are grazing in the area. Fred Stadler talked to the surface lessee, Mr. Rodgers during the week of July 28-August 1, 2008. Mr. Rodgers did not have concerns that the cattle would fall into the pit.

Field personnel did not find any salvaged topsoil stockpiles. We questioned Mr. Whitney about this and he advised that the operator did not salvage topsoil. Mr. Whitney indicated they would bring in topsoil for reclamation. We advised that we would want weed free topsoil.

The excavator had piled overburden around the pit and in the path of the planned extension of the pit. No erosion-control best management practices have been emplaced for the overburden stockpiles or the road reopening.

We asked about the stakes that we saw down the hill from the pit area. They had been placed about 10 feet apart along approximate SW trend of the fracture/vein exposed in the pit. Mr. Whitney and associates advised that Tim Ware had dowsed the location of the vein. The youngest appearing associate brought out two bent coat hangers to show us how.

I asked Robin McCulloch about the best exploration method for this area in the presence of Mr. Whitney. Robin advised Mr. Whitney that a soil sampling program with a 10 foot grid spacing over the area of interest and areas that overburden would cover would be appropriate. Robin indicated he thought that a 40 element geochemical analyses would be best and cost effective (~\$7.00 each sample at Chemex). This approach would help the company identify the mineralized target(s). Robin concurred with my thinking that the next steps after substantiation of mineralization by soil sampling and geochemical analyses could be exploration drilling or small trenches.

We advised Mr. Whitney and associates to pack up their tools and leave the site, since the work had not been authorized/approved by DNRC and MT-DEQ did not have an exploration license or bond for Saturday Sunday LLC or Harley Whitney.

#### **Lease Violations**

The information above points to violations of the following portions of the lease (see attached copy of lease M-1980-07):

- **Section 2, Attachment A, Operating Plan** of the lease clearly states in Paragraph 1 that: "No activities shall occur on the tract until an operating plan or amendments have been approved in writing by the "Minerals Management Bureau" of Montana DNRC.
- **Section 2, Paragraph 2 (after bulleted item E): Operating Plan** states: "Submittal of plans of operation to other departments and Divisions of State Government including but not limited to the Environmental Management Bureau of the Department of Environmental Quality does not satisfy this provision.
- **Section 10 Attachment A: Waste Prohibited**
- **Section 13, Attachment A: Notification**
- **Section 17, Attachment A, Item H, Vehicles on roads:**
- **Section 17, Attachment A, Item I, Vehicle and equipment wash and inspection**
- **Section 17 Attachment A, Item L, Property Boundary**

**Section 3, MM-1980-07 states:** The lessee shall prospect and explore with minimum disturbance to the surface of the land which is required to adequately explore the property. All mining operations shall be conducted in such a manner as to protect property and resources from disturbance which is not reasonably necessary (see attached copy of lease M-1980-07)

### **Exploration Plan**

The exploration plan that Saturday Sunday, LLC (Harley Whitney) submitted to us (March 18, 2008) prior to the approved assignment of State of Montana Metalliferous Lease M-1980-07 needed clarification and modification/revision.

No geochemical, assay, or geophysical information has been provided to substantiate a mineralized target in the area proposed for the 120' X 60' 20' pit in the exploration plan. Moreover, the area proposed for soil and overburden stockpiles have not been cleared as potential targets. The vein exposed in the unauthorized pit appears to be decreasing in width to the southwest. Saturday Sunday LLC has not substantiated a mineralized target to the southwest of the unauthorized pit or a lack of mineralization in the ground covered by overburden. The exploration plan anticipated taking a 100 ton bulk sample of vein material

Mr. Mike Green with Saturday Sunday LLC advised after submitting the exploration plan, that Saturday Sunday, LLC wanted to change it to no longer include opening of the former Lucky Sunday Mine adit. We did not receive a revised plan. A large area of ground disturbance without an identified mineralized target does not fit the characteristics of unnecessary ground disturbance outlined in Section 3, MM-1980-07.

The Saturday Sunday LLC exploration plan did not contain steps to prevent access by livestock, and other animals, etc, to the pit prior to emplacement of orange construction fence and steel posts. I did not find that the plan addressed reopening and widening the 4X4 trail, other than a note on a diagram mentioning using the adit tailings for fill. The plan did not provide details on best management practices for these procedures and erosion control.

Mr. Green included overnight 24/7 site occupation and a security presence in the exploration plan. As I previously mentioned to Mr. Green, in March 2008, we will not allow overnight stay at the exploration site. Robin McCullough, mining engineer with the Montana Bureau of Mines and Geology checked with MSHA in July 2008. He advised that there is no requirement for an office or even MSHA participation until production is commenced.

Section H in the plan discusses hazardous materials and indicates no fuel storage on the site. However, the diagrams show fuel storage. Fuel and lubricants could easily be transported by truck to the site without the need for storage on site.

Saturday Sunday's plan included a vehicle wash site near Dry Cottonwood Creek. The plan does not address a water source or water rights, or the weed seed bed produced by washing vehicles and equipment in this location. MT-DNRC has concerns with this proposal.

Timothy W. Ware's name has been listed as a principal on the March 2008 exploration plan. This needed to be revised to match the current status of the company. Saturday Sunday submitted this plan in March 2008, prior to finalization of the lease assignment. Section D in the plan indicates that "All personnel are involved as owner/operator at some-leveling Saturday Sunday LLC."

I recommend that since unauthorized operations have been conducted on state, that we require an accounting for our records. This accounting should include, type, number, and description of the samples taken and the geochemical and/or assay results of analyses of these samples removed to date.

### **Considerations for Lease Cancellation**

#### *Reclamation cost*

Minerals Management Bureau, TLMD, MT-DNRC has a \$2,500 bond on the lease. MT-DEQ does not have a bond for reclamation. Robin, Fred, Spencee, and I had a generalized discussion on July 29, 2008 regarding an estimated cost of reclaiming the disturbed area as it currently exists. The bond amount that we have on the lease may be slightly less than the possible cost of reclamation. Fred Staedler estimates the weed-free topsoil needed to cover the area to a depth of 4 inches could be pricy ~\$1,000. Finding a topsoil source could pose some challenges. Fred Staedler, MT-DNRC raised the question, during conversation with me on August 7, 2008, if we do not have enough bond to complete the reclamation, what are our options? He does not want a hole left in the ground.

Weed management plan specifics need to be worked out for the state ownership in the whole section per Anaconda Deer Lodge Weed Coordinator's recommendation. We discussed the possibility of a coordinated group contribution to cover the cost of aerial spraying with responsibilities for on the ground follow-up for each lessee.

#### *Implementation*

Spencee Willett indicated that if MT-DEQ pulls a bond, then they have to bid out the contract to get the work done. This would not likely happen right away. The MT-DEQ does not have a bond for this site.

Robin and/or Fred pointed out that (good) contractors often do not bid on small jobs. These would decrease the amount of time that they could spend making more money on larger better paying ventures.

I will investigate reclamation options and specifications with MT-DEQ and Fred Staedler.

**INTERROGATORY NO. 10:** Please identify the two other men that were working in the pit with Harley Whitney on July 30, 2008.

**ANSWER:** The two individuals who worked on the site on the day DNRC and DEQ are Reuben Heath (406-491-0423) and Mike Gangli (406-846-1461), Deer Lodge. Their addresses are not known.

**INTERROGATORY NO. 11:** Please identify the person who operated the excavator used to dig the pit.

**ANSWER:** The excavator was operated by two individuals: Harley Whitney and Tim Ware.

**REQUEST FOR ADMISSION NO. 9:** Please admit that when the inspectors arrived, Harley Whitney placed a call by cell phone to notify someone that inspectors were at the site.

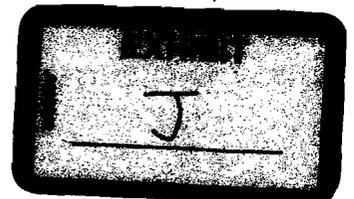
**RESPONSE:** Denied.

**INTERROGATORY NO. 12:** If your response to Request for Admission No. 9 is anything other than an unqualified admission, please state in detail the factual basis for your response.

**ANSWER:** Harley Whitney has stated that he called his daughter, Jana Whitney, returning her previous call, and that it was not to report the arrival of the DEQ and DNRC personnel.

**INTERROGATORY NO. 13:** Please identify the person to whom Harley Whitney placed the call.

**ANSWER:** See answer to Interrogatory No. 12.



1 David Rodli  
2 David Rodli Law Offices  
3 2001 S. Russell  
4 P. O. Box 2190  
5 Missoula, Montana 59806  
6 Tel: (406) 721-0368  
7 Attorney for Saturday Sunday, LLC

FILED this 11<sup>th</sup> day of  
June AD 2009  
at 10:09 o'clock A. M.  
MONTANA BOARD OF  
ENVIRONMENTAL REVIEW  
by M. Crable

8 BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
9 OF THE STATE OF MONTANA

10 IN THE MATTER OF:  
11 VIOLATIONS OF METAL MINE  
12 RECLAMATION ACT BY SATURDAY  
13 SUNDAY, LLC, DEER LODGE COUNTY  
14 MONTANA, [FID 31711, DOCKET NO. MM-  
15 09-01].

} Case No. BER 2009-02 MM

16 **OPPOSITION TO DEQ'S MOTION FOR SUMMARY JUDGMENT**  
17 **AND CROSS-MOTION FOR SUMMARY JUDGMENT**

18 COMES NOW, Saturday Sunday, LLC, and both opposes DEQ's  
19 Motion For Summary Judgment and moves for summary judgment in  
20 Saturday Sunday, LLC's favor, on the following grounds and for the  
21 following reasons.

22 **FACTUAL BACKGROUND**

23 Although Saturday Sunday, LLC reserves its rights to present factual  
24 evidence if the matters goes to hearing, for the purposes of this brief, it will  
25 not contradict any of the statements of fact made by DEQ in its motion.

26 Saturday Sunday, LLC wishes, however, to supplement the factual  
presentation made by DEQ by asserting that though its representatives did

1 not believe it was necessary to apply for an exploration license, they did so  
2 at the insistence of DEQ. In short, it was compelled, and Saturday Sunday  
3 believes wrongly so, by DEQ.

4 In addition, as disclosed in Saturday Sunday, LLC's responses to  
5 DEQ's discovery requests, it sought to sell the ore excavated from the pit  
6 described by DEQ.

### 7 LEGAL ARGUMENT

8 The clear and unambiguous language of the pertinent section of the  
9 Metal Mine Reclamation Act (hereinafter, "the Act") states, in pertinent part:

10 Except as provided in subsections (3) through (11), **the**  
11 **provisions of this part do not apply** to a small miner if the  
small miner annually agrees in writing . . . .

12 Section 82-4-305 (1), MCA. (emphasis added).

13 Accordingly, two issues and only two issues obtain. First, was  
14 Saturday Sunday, LLC a small miner? Second, did any of the provisions  
15 of the Act apply to Saturday Sunday, LLC.

16 Taking the second question first, it is curious that while DEQ gives lip  
17 service to the exemption for small miners, and even quotes the applicable  
18 statute, it tries to ignore the plain language of the statute. Clearly, when  
19 one is deemed a small miner, only those provisions of the Act found at  
20 Section 82-4-305, subsections (3) through (11) apply to that small miner.  
21 No other provisions of the Act apply, including the statutes dealing with  
22 requirements for exploration licenses and operating plans. The language  
23 could not be simpler, nor could it be clearer.

24 In fact, the plain language of the statute being what it is, the only  
25 provision of the Act that is instructive is the definition of "small miner" found  
26 at Section 82-4-303(16), MCA. DEQ's position, for instance, that a person

1 may not engage in mining without first obtaining an operating permit (DEQ  
2 Motion For Summary Judgment, p.5, Last paragraph) seeks to emasculate  
3 the small miner's exemption entirely, yet the language of the small miners  
4 exemption statute specifically states, by necessary effect, that Section 82-  
5 4-335 does not apply to small miners.

6 It can only be logically stated that once one is found to be a small  
7 miner, an exploration license is unnecessary, and an operating permit is  
8 unnecessary. They are, after all, "provisions" of the Act that are not  
9 included within subsections (3) through (11) of Section 82-4-305. What the  
10 DEQ wishes to assert, it would appear, is that small miners must obtain  
11 exploration licenses before they can become small miners exempt from the  
12 Act. That is not, however, stated anywhere within the Act, and it defies  
13 logic and proposes circular non-logic. Any person can submit a small  
14 miners exclusion statement, proceed to the specified ground, dig a whole  
15 without any exploration whatsoever, extract ore and offer it for sale, all in  
16 one day. Nothing in the Act states or suggests otherwise. Yet, DEQ  
17 suggests in its motion that the plain language of the Act be ignored and  
18 everyone who files an SMES must apply for and obtain an exploration  
19 license before one can become a small miner. Such a position, Saturday  
20 Sunday, LLC believes, is contrary to the statute, contrary to the historical  
21 practices of DEQ, and numerous examples of small miners conducting  
22 mining activities without having obtained exploration licenses have  
23 occurred. Saturday Sunday invites DEQ to deny this assertion in its reply  
24 to this pleading.

25 The final question, then, is whether or not Saturday Sunday, LLC, via  
26 the SMES of Mr. Whitney's was a small miner, and the excavation of the

1 pit from which ore was extracted was exempt activity. The answer can only  
2 be, "yes."

3 The pit opened up by Saturday Sunday has been described in DEQ's  
4 Motion. It was and is substantial, though it disturbed less than five acres.  
5 Several tons of ore were removed from it. Saturday Sunday considered it  
6 commercially saleable and has tried, though heretofore unsuccessfully, to  
7 have it processed and sold. While during the processing, it would have  
8 been assayed and evaluated, it clearly was saleable. Accordingly, mining  
9 occurred, both in the practical and normal sense of the word and in the  
10 technical definition provided in Section 82-4-303, MCA. The ores or  
11 minerals were mined in commercial quantities for sale, refining, processing  
12 and disposition. Saturday Sunday believed that, given the obvious  
13 richness of the ore, it would receive several thousands of dollars from the  
14 sale of the ore extracted from the pit. Who can contradict that several  
15 thousands of dollars in sales does not arise from "commercial quantities?"

16 Mr. Whitney properly submitted an SMES. It was clearly attributable  
17 to the Saturday Sunday project, a fact that it is believed DEQ does not  
18 seek to contradict. Saturday Sunday engaged in mining activity. It  
19 disturbed fewer than five acres. It did not have an operating permit. It is  
20 entitled to the protection of the small miners' exemption.

21 From the foregoing, Saturday Sunday, LLC asks that the motion for  
22 summary judgment of DEQ be denied, and summary judgment be granted  
23 in favor of Saturday Sunday, LLC.

24 //

25 //

26 //

1 DATED this 10<sup>th</sup> day of June, 2009.

2 DAVID RODLI LAW OFFICES  
3 Attorneys for Saturday Sunday, LLC:

4 By: David Rodli  
5 David Rodli

6 **CERTIFICATE OF SERVICE**

7 I hereby certify that on the 22<sup>nd</sup> day of May, 2009, I caused a true and  
8 accurate copy of the foregoing pleading to be transmitted via e-mail and  
9 first class mail, postage prepaid, to:

10 C. Edward Hayes, Esq.  
11 P. O. Box 200901  
12 Helena, MT 59620-0901  
13 ehayes@mt.gov

14 David Rodli  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

C. Edward Hayes  
1520 East Sixth Avenue  
P.O. Box 200901  
Helena, MT 59620-0901  
(406)444-1425

Attorney for the Department of Environmental Quality

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

IN THE MATTER OF:  
VIOLATIONS OF METAL MINE  
RECLAMATION ACT BY SATURDAY  
SUNDAY, L.L.C., DEER LODGE COUNTY,  
MONTANA, [FID 31711, DOCKET NO. MM-  
09-01]

Case No. BER 2009-02 MM

DEQ's Reply Brief in Support of its  
Motion for Summary Judgment

DEQ respectfully submits this reply brief in support of its motion for summary judgment and in response to the cross-motion for summary judgment filed by Saturday Sunday, L.L.C. (Saturday Sunday) on June 10, 2009.

**Absence of Any Material Fact**

In its response brief, Saturday Sunday stated that it was not disputing the facts DEQ initially presented in this summary adjudication proceeding. These undisputed facts indicate that Saturday Sunday knew little of the mineralization underlying the tract of land for which it was obtaining a state mineral lease. It submitted to DEQ a plan of operations for an exploratory phase to determine the presence of any ore. In the plan of operations, Saturday Sunday indicated that the ore it may encounter may turn out to be "worthless" and uneconomical to remove and mill. (Plan of Operations, Section I.E.) The purpose of excavating the pit was to expose ore and to take a bulk sample of approximately 100 tons to take to a mill to obtain assay and bulk sample results. (Plan of Operations, Section IV.C. and V.I.). Saturday Sunday used two coat hangers to locate

the test pit and, in conformance with the submitted plan of operations, proceeded to excavate a pit 20 feet deep. The total disturbed area, including waste rock dumps, was approximately 98 feet long and 66 feet wide. Saturday Sunday admitted in its brief opposing summary judgment that the pit disturbance was substantial.

The factual development of this case need not go beyond this point. At this point, Saturday Sunday was not “mining” when it excavated the test pit. Rather, Saturday Sunday was engaged in exploration activity and, therefore, was required to submit a reclamation bond and obtain an exploration license prior to causing this material disturbance of the land’s surface.

Saturday Sunday asserts additional “facts” in opposing summary judgment as follows:

Several tons of ore were removed from [the pit]. Saturday Sunday considered it commercially saleable and has tried, though heretofore unsuccessfully, to have it processed and sold. While during the processing, it would have been assayed and evaluated, it clearly was saleable . . . Saturday Sunday believed that, given the obvious richness of the ore, it would receive several thousands of dollars from the sale of the ore extracted from the pit. Who can contradict that several thousands of dollars in sales does not arise from “commercial quantities.”

At this juncture, it is important to bear in mind the burdens of the parties in the context of a motion for summary judgment. Once the party moving for summary judgment has met its burden establishing the absence of material fact and entitlement to judgment as a matter of law, the party opposing summary judgment must present substantial evidence essential to one or more elements of its case to raise a genuine issue of material fact. *Tin Cup County Water and/or Sewer District v. Garden City Plumbing & Heating*, 2008 MT 434, ¶ 22, 347 Mont. 468, ¶ 22, 200 P.3d 60, ¶ 22. Conclusory statements and assertions do not constitute facts that are “material and of a substantial

nature.” The party opposing summary judgment must prove by more than mere denial and speculation that a genuine issue of material fact exists. The opposing party has an affirmative duty to respond by affidavit or other testimony containing material facts that raise genuine issues. Id., ¶ 54.

Saturday Sunday asserts that it has removed several tons of ore. It should be noted that when DEQ and DNRC inspected the site, they observed Saturday Sunday extracting ore from the exposed vein by the use of hand tools and loading the ore into sample tubs. In any event, Saturday Sunday does not establish by affidavit or otherwise the amount of ore it has extracted.

Saturday Sunday also asserts that ore was of “obvious richness.” Saturday Sunday does not identify who made this assessment, the method and criteria used to make the assessment, or support the assertion by affidavit or otherwise. Furthermore, Saturday Sunday states it has not been successful in having the ore processed and “during the processing, it would have been assayed and evaluated.” This statement infers the ore has not been assayed and evaluated. Indeed, Saturday Sunday did not provide any assay results to support its position that the ore was of commercial value. Without a proper assay, it is speculative for Saturday Sunday to assign any economic value to the ore.

Saturday Sunday admits it has tried, although unsuccessfully, to sell the ore. Saturday Sunday’s attempt and failure to market the ore for the past eleven months give a strong indication that it did not extract ore in commercial quantities.

To establish facts that are material and of a substantial nature regarding the commercial value of the ore, Saturday Sunday should have submitted evidence as to the cost it incurred in extracting the ore, the quantity of ore extracted, the estimated cost of

transporting the ore to a mill, the estimated cost of milling the ore, and an estimate of the value of the ore based on the quantity of minerals contained in the ore extrapolated by assay multiplied by current metal prices. Without this information, Saturday Sunday is in no position to acclaim the value of the ore. Saturday Sunday has offered only conclusory and speculative statements regarding whether it extracted ore in commercial quantities. Under Tin Cup, Saturday Sunday's conclusory and speculative statements are insufficient to raise a genuine issue of material fact as to whether Saturday Sunday was mining and not required to obtain an exploration license.

Even if the Board determines that Saturday Sunday has raised a genuine issue of fact regarding the commercial quantity of the ore extracted, that fact is not material in determining whether Saturday Sunday was required to obtain an exploration license. As indicated above, Saturday Sunday did not know the mineral characteristics or the economic viability of the ore prior to excavating the pit. Indeed, as indicated above, the purpose of excavating the test pit was to obtain a bulk ore sample for assay purposes to determine the economic viability of mining the ore. Therefore, Saturday Sunday was conducting exploration activity when it excavated the pit and was first required to obtain an exploration license prior to excavating the pit.

The results of Saturday Sunday's exploration activity does not alter the character of that activity. Taken to its logical conclusion, Saturday Sunday's position would require persons excavating an exploratory test pit that do not find ore in commercial quantities to obtain an exploration license while persons excavating an exploratory test pit that find ore in commercial quantities would not be required to obtain exploration licenses. This runs counter to Section 82-4-331, MCA, requiring persons to obtain an

exploration license from DEQ prior to engaging in exploration. It also leads to an absurd result. The necessity of obtaining an exploration license would only be determined after the exploration activity is completed which, by then, is too late to obtain an exploration license prior to conducting the exploration activity.

### **Entitlement to Judgment as a Matter of Law**

In its opposition to DEQ's Motion for Summary Judgment, Saturday Sunday makes a number of legal arguments and assertions that miss the mark. Saturday Sunday first asserts that DEQ seeks to "emasculate the small miner exemption" in the last paragraph on page 5 of its brief supporting summary judgment. In that paragraph, DEQ closely followed the language of Section 82-4-335(1), MCA, stating that a person may not engage in mining without first obtaining an operating permit. Section 82-4-335, MCA, does not contain a reference to the small miner exclusion statement, so no reference was included in DEQ's citation to that statute. In the same paragraph, however, DEQ recognized the exemption for small miners set forth in Section 82-4-305, MCA. Thus, DEQ sought to give full effect to both the general rule and the exception.

The remainder of Saturday Sunday's legal arguments and assertions fail to recognize the legal distinction between mineral exploration activity and mineral mining activity. As indicated in DEQ's brief supporting summary judgment, the Metal Mine Reclamation Act defines "exploration" as all activities that are conducted one or beneath the surface of lands that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade and economic viability of mineralization. Section 82-4-303(7), MCA. "Mining" is defined as commencing when

the operator first mines ores or minerals in commercial quantity for sale, beneficiation, refining, or other processing or disposition. Section 82-4-303(9), MCA.

Saturday Sunday first asserts that “once one is found to be a small miner, an exploration license is unnecessary.” The truth of this statement, of course, depends on the nature of the activity conducted. The small miner exclusion only applies to persons “engaged in mining.” The definition does not include persons that are conducting mineral exploration. Section 82-4-303(16)(a), MCA. If the small miner conducts only “mining” as that term is defined, then an exploration license is not required. However, if the small miner conducts exploration as that term is defined, the small miner is no longer conducting activity included in the definition of “small miner” and, therefore, the activity is not covered by a small miner exclusion statement. In that event, the small miner is required first to obtain an exploration license prior to conducting mineral exploration.

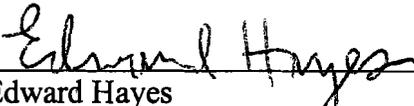
To give a concrete example, a small miner who is conducting mining activity and who also wants to excavate a test pit or drill hole to determine the location or economic viability of additional mineralization is required to obtain an exploration license prior to conducting those exploration activities. Only then are the definition of “small miner” set forth in Section 82-4-303(16), MCA and the distinction between “exploration” and “mining” set forth in Sections 82-4-303(7) and (9), MCA, given full effect. Indeed, Saturday Sunday complete ignores ARM 17.24.101(4), which expressly provides that “a small miner . . . is excluded from certain requirements of the Act **as they relate to mining**” and that “[**all**] **exploration operations, regardless of size, must comply**” with the provisions of the Act relating to exploration licenses. (Emphasis added.)

Saturday Sunday also characterizes DEQ's position as requiring all small miner's to obtain an exploration license before becoming a small miner. This is an inaccurate statement. Where the grade and economic viability of the mineralization is already known, the small miner may proceed to conduct mining activity without obtaining an exploration license. Where the grade and economic viability of the mineralization is not known but can be determined without materially disturbing the land's surface, such as hand sampling of waste dumps that may be reprocessed, the small miner may determine the mineralogy and then proceed to mining without obtaining an exploration license. However, where a person who has filed a small miner exclusion statement materially disturbs the land's surface to determine the presence of ore, that person is required to first obtain an exploration license. (See attached affidavit of Warren McCullough.)

Finally, Saturday Sunday asserts DEQ has historically allowed small miners to conduct mining without having obtained exploration licenses and invites DEQ to deny this assertion in this reply brief. DEQ does not deny this assertion. As indicated above, there are instances in which a small miner may conduct mining without first obtaining an exploration license. The small miner, however, may not conduct exploration without the required exploration license. It is not unusual for DEQ to accept a SMES and issue an exploration license for the same site where both exploration and mining occur. (See attached affidavit of Warren McCullough.)

DATED this 25<sup>th</sup> day of June, 2009.

Department of Environmental Quality

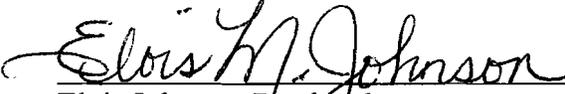
  
Edward Hayes

Attorney for the Department of Environmental Quality

Certificate of Service

I hereby certify that on the <sup>26<sup>th</sup></sup>~~25<sup>th</sup>~~ day of June, 2009, I caused a true and accurate copy of the foregoing First Discovery Requests to be mailed, postage prepaid, to:

David Rodli  
David Rodli Law Offices  
2001 South Russell  
P.O. Box 2190  
Missoula, MT 59806

  
Elois Johnson, Paralegal

Edward Hayes  
Special Assistant Attorney Generals  
Department of Environmental Quality  
P.O. Box 200901  
Helena, Montana 59620-0901  
(406) 444-1297

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

IN THE MATTER OF  
VIOLATIONS OF METAL MINE  
RECLAMATION ACT BY SATURDAY  
SUNDAY, L.L.C., DEER LODGE COUNTY,  
MONTANA, [FID 31711, DOCKET NO.  
MM-09-01

AFFIDAVIT OF  
WARREN MCCULLOUGH

STATE OF MONTANA )  
 )ss.  
County of Lewis and Clark )

Warren McCullough, being first duly sworn, says:

1. I have held the position of Chief of the Environmental Management Bureau (EMB) for the Montana Department of Environmental Quality since January of 1999. The EMB administers the Montana Metal Mine Reclamation Act (MMRA).
2. As part of its administration of the MMRA, the EMB accepts the filing of Small Miner Exclusion Statements (SMESs). SMESs generally apply to persons conducting mining activity that results in the disturbance of not more than 5 acres at any one time. The EMB also issues exploration licenses to persons conducting exploration activities.
3. It is not unusual for the EMB to accept a SMES and issue an exploration license for the same parcel of land where there are both ongoing or planned mining and exploration activities. I

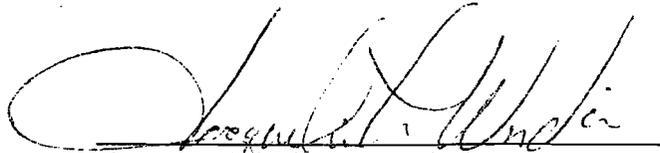
1 have attached a list of entities that hold both an SMES and an exploration license for the  
2 same parcel of land. This list is not exhaustive.

3 5. On the other hand, under some specific circumstances, an entity may file a SMES and  
4 commence mining activities without first obtaining an exploration license and conducting  
5 exploration. An example of this would be a rock product operator who produces stone for  
6 the building or landscaping trades, and opens a quarry on a visible outcrop of the type of rock  
7 desired. Another would be a person who extends existing workings on a mineral property  
8 with past production, where the location and grade of the resource is known, such as  
9 mineralized rock left unmined by an earlier operator because of unfavorable economics.

10 6. I have always tried to administer the MMRA in a manner that provides maximum protection  
11 to the environment and people of Montana, preferably through adequate reclamation bonding  
12 of all activities which disturb the surface with mechanical equipment. I employ the standard  
13 industry definition of "ore" as mineralized material which can be mined at a profit. If rock  
14 contains a potentially valuable commodity such as gold, copper, or platinum, it is only  
15 classifiable as "ore" if the quantity is sufficient to pay the costs of mining, milling or  
16 processing, transport, and marketing. If not, it is merely mineralized rock. In my opinion,  
17 anyone who drills holes, digs trenches, or excavates pits with mechanized equipment in an  
18 attempt to locate mineralized material to determine if it would be economic to mine is  
19 conducting exploration, not mining, and must have an approved plan, a bond, and an  
20 exploration license.

21 By Warren D. McCullough

22 SUBSCRIBED AND SWORN to before me this 25<sup>th</sup> day of June,  
23 2002.

24   
25 Notary Public for State of Montana  
Residing at Helena, Montana  
My commission expires August 02, 2010

DEQ-EMB  
27 ACTIVE OPERATORS WITH BOTH A SMES EXPL LICE E AC JF 06/11/09

COMPANY NAME	Explor. #	Issue Date	SMES #	SMES Date
BOLERO RESOURCES CORP	00653	05/18/07	05-208 05-208B	08/15/05
BUTTE ANACONDA CONSOLIDATED MINING CO	00329	01/29/86	46-041	02/06/86
C3 LLC	00628	03/01/00	46-119	05/14/01
CABOOSE MINING CO	00381	08/25/87	51-028	11/14/88
CORONADO RESOURCES USA LLC	00660	08/22/05	25-167	03/07/06
FREDRIKSEN ARTHUR M	00645	08/16/04	43-023	05/23/85
GOLDEN ARROW MINING CO	00594	11/12/96	08-047	04/19/79
GRANT HARTFORD CORP	00545	07/27/93	46-032	05/01/90
GRIFFETH ANCIEL A	00605	08/08/97	18-015	06/25/87
HAGE RUSSELL A	00599	06/03/97	51-166 54 085	03/12/97
HANLEY JERRY D	00503	09/13/91	08-039	08/17/92
HESS RAY	00636	07/18/01	46-130	06/16/03
HUNT MELVIN J	00586	09/04/96	25-140 25-140B	07/08/96
LODESTAR MINING & EXPLORATION LLC	00668	05/15/06	40-014B	01/07/99
MOEN ROY	00560	04/26/94	25-149	02/22/99
MPM MINING INC	00333	03/31/86	28-082	03/05/86
NATURES CALCIUM PRODUCTS CO	00467	03/22/90	51-108	05/04/87
O T MINING CORP	00371	07/15/87	51-180	07/09/99
PHOENIX GOLD INC	00600	06/16/97	36-069	09/22/95
ROBERTS MIKE	00546	07/27/05	36-003	05/24/85
RONCOR INC	00580	09/25/95	36-056	02/17/87
RX EXPLORATION INC	00674	11/22/06	05-225	10/02/07
SCHROEDER JOHN	00690	04/21/08	51-193	06/20/06
SOUTHERN CROSS CO LLC	00618	09/16/98	30-030	02/25/98
TOBACCO MOUNTAIN GOLD INC	00423	01/04/89	25-058	11/07/89
TREASURE STATE MINING CORP	00374	07/20/87	46-004	07/22/88
WHITE HOPE MINE INC	00517	05/06/92	05-120	07/17/72



1 from Mr. Whitney. Both the SMES and the application for an exploration license  
2 cover the same site which is located in Deer Lodge County and is owned by the  
3 State of Montana. The SMES and the application for an exploration license were  
4 submitted on behalf Saturday Sunday LLC. The Department voided the SMES  
5 submitted in December 2007 and voided the application for an exploration license  
6 submitted in March of 2008. By letter dated April 10, 2008, the Department  
7 requested Saturday Sunday to submit a new application for an exploration license.  
8 This license application was submitted by Mr. Whitney as manager ostensibly on  
9 behalf of Saturday Sunday on July 10, 2008. The Plan of Operations filed with the  
10 voided application for the exploration license dated March 14, 2008, was evaluated  
11 in connection with subsequent license application dated July 10, 2008. Before  
12 Saturday Sunday submitted a reclamation bond which is necessary before an  
13 exploration license can be issued under Mont. Code Ann § 82-4-332, on  
14 July 30, 2008, a field inspector for the Department conducted an inspection of the  
15 site for the purpose of calculating a reclamation bond along with a  
16 geologist/hydrologist with the Department of Natural Resources and Conservation  
17 (“DNRC”) who was preparing an environmental review prior to DNRC’s approval  
18 of the Plan of Operations. Saturday Sunday had already excavated a pit  
19 approximately 20 feet deep.

20       There is no dispute by either party that Saturday Sunday was engaged in  
21 mineral exploration. The disturbed area found by inspectors, including the pit and  
22 overburden pile, was approximately 98 feet long and 66 feet wide. No topsoil had  
23 been salvaged. As of July 30, 2008, Saturday Sunday conducted activity on or  
24 beneath the surface of land that resulted in material disturbance of the surface and  
25 was engaged in mineral exploration. The activity was for the purpose of  
26 determining the presence, location, extent, grade and economic viability of  
27 mineralization in those lands. Saturday Sunday excavated the pit to expose a vein of

1 ore. According to the Plan of Operations, Saturday Sunday planned to excavate up  
2 to 100 tons of ore and take the ore to a mill or assay lab. Saturday Sunday was to  
3 have the ore assayed to “look at the ores content by looking at and measuring certain  
4 aspects of the ore.” The Plan of Operations indicates that if the ore assays indicate  
5 that the ore “is worthless or cannot be economically removed and milled,” then the  
6 “exploratory operations will cease” and the “operation will immediately proceed to  
7 reclamation.”

8 Saturday Sunday did not first obtain an exploration license from the  
9 Department prior to conducting its mineral exploration activities discovered in  
10 July 2008.

11 There is no evidence in the record that Saturday Sunday, filed a SMES after  
12 the one sent on December 21, 2007, by Mr. Whitney that was subsequently voided  
13 by the Department. Also, there is no indication in the record that Saturday Sunday  
14 agreed in writing to the elements listed in Mont. Code Ann. § 82-4-305(1)(a) through  
15 (d).

16 Saturday Sunday, asserts in it Cross Motion that it does not contradict any of  
17 the statements of fact made by the Department in its motion but that it wishes to  
18 supplement the factual presentation made by the Department by arguing that it was  
19 not necessary to apply for an exploration license, that Saturday Sunday had a small  
20 miner’s exemption and therefore was not subject to the provisions concerning metal  
21 mine reclamation in Mont. Code Ann. §§ 82-4-301 through 82-4-390 pertaining to  
22 the necessity of getting an exploration permit or an operating permit except those  
23 found at Mont. Code Ann. § 82-4-305, subsections (3) through (11). Saturday  
24 Sunday asserts, without submission of a sworn affidavit establishing the facts, that  
25 Saturday Sunday considered the ores from the pit opened up by Saturday Sunday to  
26 be commercially saleable and while during the processing when it would have been  
27 assayed and evaluated it “clearly” was saleable. Saturday Sunday goes on to state

1 without sworn affidavit that the ores or mineral were mined in commercial  
2 quantities for sale, refining, processing and disposition.

### 3 STANDARD OF REVIEW

4 Summary judgment is appropriate if “there is no genuine issue as to any  
5 material fact and...the moving party is entitled to judgment as a matter of law. Rule  
6 56 (c) M.R. Civ. P. Once the moving party establishes that no genuine issue of  
7 material fact exists, the burden shifts to the non-moving party opposing summary  
8 judgment to prove otherwise. If the Board determines that no genuine issue exists,  
9 it may rule as a matter of law that a party is entitled to summary judgment. Jobe, V.  
10 City of Polson, 2004 MT 183, ¶ 10, 322 Mont 157, ¶10, 94 P.3d 743, ¶10.

### 11 DISCUSSION

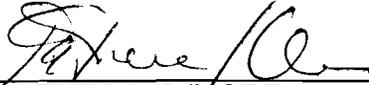
12 This case may be adjudicated on summary judgment because there is no  
13 dispute as to the material facts that Saturday Sunday engaged in “exploration” as  
14 that term is defined in Mont. Code Ann. § 82-4-303(a) by disturbing the surface to  
15 determine the presence, location, extent, and economic viability of mineralization on  
16 the site in question and did so without obtaining an exploration permit beforehand  
17 as required under Mont. Code Ann. § 82-4-331.

18 Saturday Sunday, does not dispute that it engaged in mineral exploration but  
19 deems itself outside of the coverage of the provisions governing mineral mining on  
20 the basis that it was a “small miner” as defined under Mont. Code Ann. § 82-4-302  
21 and, because of this, argues that it was not subject to any other metal mining  
22 requirements such as obtaining an exploration license. As a matter of law,  
23 regardless of whether Saturday Sunday was a small miner engaged in mining, (and  
24 the record presented does not indicate that Saturday Sunday was engaged in mining  
25 or that the required SMES or written agreement under Mont. Code Ann. § 82-4-305  
26 were submitted) it also engaged in exploration activities, and was obligated to  
27

1 obtain an exploration permit pursuant to ARM 17.24.101, and Mont. Code Ann.  
2 §§ 82-4-331 and 82-4-332.

3 Based upon the above, the Board hereby rules that the Department's Motion  
4 for Summary Judgment is GRANTED and the Cross Motion of Saturday Sunday is  
5 DENIED. Saturday Sunday violated Mont. Code Ann. § 82-4-331 and is liable for  
6 penalties to be correctly determined at an evidentiary hearing to resolve factual  
7 issues that might remain about whether the amount of penalty is appropriate.

8 DATED this 22<sup>nd</sup> day of September, 2009.

9  
10   
11 KATHERINE J. ORR  
12 Hearing Examiner  
13 Agency Legal Services Bureau  
14 1712 Ninth Avenue  
15 P.O. Box 201440  
16 Helena, MT 59620-1440  
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1 **CERTIFICATE OF SERVICE**

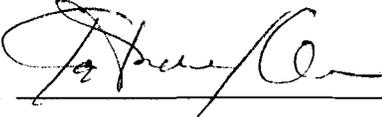
2 I hereby certify that I caused a true and accurate copy of the foregoing  
3 Proposed Order on Cross Motions for Summary Judgment to be mailed to:

4 Ms. Joyce Wittenberg  
5 Secretary, Board of Environmental Review  
6 Department of Environmental Quality  
7 1520 East Sixth Avenue  
8 P.O. Box 200901  
9 Helena, MT 59620-0901  
10 **(original)**

11 Mr. Edward Hayes  
12 Legal Counsel  
13 Department of Environmental Quality  
14 P.O. Box 200901  
15 Helena, MT 59620-0901

16 Mr. John Arrigo, Administrator  
17 Enforcement Division  
18 Department of Environmental Quality  
19 P.O. Box 200901  
20 Helena, MT 59620-0901

21 Mr. David Rodli  
22 David Rodli Law Offices  
23 2001 South Russell  
24 P.O. Box 2190  
25 Missoula, MT 59806

26 DATED: September 22, 2009  \_\_\_\_\_  
27

1                                   BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
2                                   STATE OF MONTANA

3                                   ) )  
4 **IN THE MATTER OF:** ) )  
5 **VIOLATIONS OF THE METAL MINE )** )  
6 **RECLAMATION ACT BY SATURDAY )** ) **CASE NO. BER 2009-02 MM**  
7 **SUNDAY, L.L.C., DEER LODGE )** )  
8 **COUNTY, MONTANA [FID #1711, )** )  
9 **DOCKET NO. MM-09-01] )** )

7                                   **ORDER OF THE BOARD**

9                                   On October 2, 2009, the Board of Environmental Review ("Board") reviewed and  
10 voted to adopt the proposal for decision, namely, the Proposed Order on Cross Motions for  
11 Summary Judgment. See attached. As explained at the Board hearing, pursuant to Mont.  
12 Code Ann. § 2-4-621, when in a contested case, a majority of the deciding entity, in this  
13 case, the Board, who renders a final decision has not heard the case, the decision, if  
14 adverse to a party to a proceeding may not be made until a proposal for decision is served  
15 upon the parties and an opportunity is afforded to each party adversely affected to file  
16 exceptions and present briefs and present oral argument to the officials who are to render  
17 the decision. The party, Saturday Sunday, LLC, may file exceptions to the Proposed Order  
18 on Cross Motions for Summary Judgment by November 16, 2009 and the Department of  
19 Environmental Quality may file a response to the exceptions by November 23, 2009. Oral  
20 argument may be held on the exceptions before the Board on December 11, 2009.

21                                   DATED THIS 2<sup>nd</sup> day of November, 2009.

22  
23                                     
24                                   \_\_\_\_\_  
JOSEPH W. RUSSELL, M.P.N.  
Chairman, Board of Environmental Review

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24 P.O. Box 2190  
Missoula, MT 59806

Ms. Katherine Orr  
Hearing Examiner  
1712 Ninth Ave.  
P.O. Box 201440  
Helena, MT 59620-1440

21 DATED: November 3, 2009

