



**Planning Department
168 North Edwards Street
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Independence, California 93526**

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AGENDA ITEM NO.: (Action Item – Public Hearing)

PLANNING COMMISSION MEETING DATE: September 23, 2020

SUBJECT: Hold a hearing regarding the Order Mandating Compliance for the Radcliff Mine.

EXECUTIVE SUMMARY

This hearing is being held pursuant to a Notice of Violation and proposed Order To Comply in regards to the **Radcliff Mine (ID 91-14-0064)**. This mine is located on the western flank of the Panamint Range in Pleasant Canyon, approximately 5 miles east of Ballarat.

Pursuant to Inyo County Code § 7.70.070(c) and Public Resources Code § 2774.1, a hearing is being held to determine whether the Planning Commission will / will not 1) find that these violations have occurred and 2) issue an order imposing the penalties and remedies as set out in the attached Order to Comply and in this staff report.

PROJECT INFORMATION

Supervisory District: 5

Project Applicant: Charles McLaughlin with Black Swan Advisor LLC.

Property Owner: Bush Management Company

Site Address: Pleasant Canyon

Community: Panamint, CA

A.P.N.: 039-240-01

General Plan: Rural Protection (RP)

Zoning: Open Space, 40 acre minimum (OS-40)

Size of Parcel: Approximately 137.52 Acres

Surrounding Land Use:

Location:	Use:	Gen. Plan Designation	Zoning
Site	Vacant	Rural Protection (RP)	Open Space – 40 acre minimum (OS-40)
North	Vacant	State and Federal Land (SFL)	Open Space – 40 acre minimum (OS-40)
East	Vacant	State and Federal Land (SFL)	Open Space – 40 acre minimum (OS-40)
South	Vacant	State and Federal Land (SFL)	Open Space – 40 acre minimum (OS-40)
West	Vacant	State and Federal Land (SFL)	Open Space – 40 acre minimum (OS-40)

Staff Recommended Action: 1) Find that these violations have occurred and issue an order imposing the penalties and remedies as set out in the Order to Comply and this staff report.

Alternatives:

- 1) Dismiss the violations.
- 2) Modify the Order to Comply as the Commission sees fit.
- 3) Continue the public hearing to a future date, and provide specific direction to staff regarding what additional information and analysis is needed.

Project Planner: Ryan Standridge, Associate Planner and SMARA Coordinator

STAFF ANALYSIS

The Radcliff / World Beater Mines were first permitted by the Inyo County Planning Commission in 1993 via Reclamation Plan 93-1 and Conditional Use Permit 93-10. In 2007, the mine changed hands, and due to various changes that the new owner, Pruett Ballarat, Inc. (“PBI”), wanted to make, the Planning Department required that the mine owner obtain new permits. Accordingly, in April 2008, the Planning Commission approved CUP 2007-05/Pruett Ballarat, Inc. and amended Reclamation Plan 93-1, changing the Reclamation Plan number to 2007-05/Pruett Ballarat, Inc.

In April 2018, the mine again changed hands. Bush Management, Inc. (“Bush”) acquired the property from PBI through bankruptcy. The Trustee’s Deed Upon Sale was executed by all

parties—and therefore effective to transfer the mine to Bush’s ownership—on October 18, 2018.

Pursuant to Public Resources Code § 2773.1, all mines must have a Financial Assurance Mechanism (“FAM”). A FAM consists of some sort of collateral that the owner must post and which the lead agency may access to cover reclamation costs in the event that the mine ceases operations and the operator does not comply with its reclamation responsibilities. Additionally, per section 2773.1(c), when a mine transfers ownership, the new owner is obligated to obtain a FAM in the new owner’s name within 90 days of the transfer. This new FAM may be in the form of a totally new FAM in the new owner’s name, or it may be in the form of the old FAM that has been transferred to the new owner. Finally, per 14 CCR § 3803.3, as of July 1, 2018, FAMs must be submitted on form CD-1, prepared by the California Department of Conservation. In June 2008, PBI obtained a FAM for the Radcliff Mine from Union Bank in the form of a bond (**Exhibit A**).

Former Inyo County SMARA Coordinator Tom Schaniel started working with Charlie McLaughlin of Black Swan Advisors (“Black Swan”), the authorized agent for Bush, in April of 2018. Beginning in April of 2018 and continuing through approximately late 2019, Mr. Schaniel, Mr. McLaughlin, Blair Will (an attorney for Mr. McLaughlin / Bush), and Lisa Holder (another attorney for Mr. McLaughlin / Bush), corresponded at regular intervals regarding the transfer of the FAM. On multiple occasions, it appeared that Bush was right on the brink of obtaining all of the necessary signatures and completing all of the necessary paperwork to transfer the FAM. However, each of these attempts to transfer the FAM encountered various complications, and for reasons unknown to the Planning Department, rather than resolving these complications and following through on the transfer, Mr. McLaughlin appeared to abandon the issue until he was again reminded by Planning Department staff that the FAM needed to be transferred.

In December 2019, current SMARA coordinator Ryan Smith-Standridge became involved in the process of transferring the FAM. In early December 2019, Ms. Smith-Standridge spoke with Ms. Holder on the phone regarding the status of the FAM transfer. In February 2020, Ms. Smith-Standridge again reminded Mr. McLaughlin about the need to transfer the FAM during her inspection of the mine. In May 2020, Ms. Smith-Standridge and Deputy County Counsel Grace Chuchla spoke with Mr. Will about various matters, including the need to transfer the FAM. Yet as before, the FAM remained in the name of PBI.

In July 2020, given that the FAM still had not been properly transferred, the Planning Department sent a Notice of Violation pursuant to Inyo County Code § 7.70.070(A) to Mr. McLaughlin that informed him that he had twenty-five days to correct the FAM or he would be subject to an order to comply (**Exhibit B**). Bush did not correct the issue within twenty-five days, so on August 21, 2020, the Planning Department sent an Order to Comply pursuant to Inyo County Code § 7.70.070(C) (**Exhibit C**). This Order to Comply informed Mr. McLaughlin that, if the FAM issue was not remedied on or before the date of this hearing,

[T]he County will be seeking an order to comply from the Planning Commission imposing administrative penalties in the amount of \$50 per

day, calculated from the date that the transfer of the FAM should have been completed per Public Resources Code § 2773.1(c). Per Public Resource Code § 2774.1(a)(3)(A), the County will further seek an order from the Planning Commission mandating a closure of the Radcliff Mine until the FAM is properly transferred.

Since the issuance of the Order to Comply, Mr. Will has sent various emails to Ms. Chuchla updating her regarding recent efforts to transfer the FAM and his conversations with Union Bank. From these emails, it appears that, while Mr. Will is working on the issue, the FAM has yet to be transferred.

RECOMMENDATION

Planning Department staff recognizes that Bush, Mr. McLaughlin, and Bush's attorneys have made efforts to transfer the FAM to Bush from PBI. However, none of these efforts have been seen through to completion. For reasons unknown to the Planning Department, whenever a complication arose in Bush's effort to transfer the FAM into its name, Bush did not take the follow-up steps necessary to resolve that complication. Instead, Bush has allowed the FAM to linger un-transferred for approximately two years. Throughout this time, the Planning Department has been working with Mr. McLaughlin and his attorneys and reminding them of the need to transfer the FAM, but to no avail. Additionally, while it appears that Mr. Will is now working to transfer the FAM, Bush has known of the need to transfer the FAM for over two years, but has inexplicably waited until the last minute to take additional action.

PRC § 2773.1(c) requires that a FAM be transferred to the new owner of a mine or a new FAM be obtained in the name of the new owner 90 days after a mining operation has been transferred. Given that the Radcliff Mine transferred on October 18, 2018, the FAM should have been transferred by January 16, 2019. To date, it has not been transferred, and the Planning Department therefore recommends that the Planning Commission find that Bush is in violation of section 2773.1(c) and impose penalties as described below.

The transfer of the FAM is not simply a ministerial issue. Should Inyo County need to exercise its right to access the FAM, the fact that it remains in the name of PBI, who is no longer involved with the Radcliff Mine, would hinder and greatly complicate Inyo County's ability to access the funds in the FAM. This would in turn hinder Inyo County's ability to reclaim the mine and protect the environment.

With respect to penalties, the Order to Comply stated that, should the Planning Commission find that Bush is in violation of section 2773.1(c), a penalty of \$50 per day will be imposed. Per Inyo County Code § 7.70.070(D), penalties are assessed from the original date of noncompliance. In this situation, the original date of noncompliance is 90 days after Bush acquired the mine, which is January 16, 2019. 616 days have elapsed between January 16, 2019 and September 23, 2020. At a rate of \$50 per day, this would entitle the Planning Department to request \$30,800 in penalties from Bush. While this

amount may seem high, it should be noted that SMARA permits penalties of up to \$5,000 per day for noncompliant mines (PRC § 2774.1(c)).

However, in the interest of encouraging compliance while also taking into account the economic health of local mines, the Planning Department is not requesting that the Planning Commission impose the full \$30,800 in penalties. Rather, the Planning Department is merely asking for penalties in an amount that reflect the time that staff has had to expend in its constant follow-up and back-and-forth with the various individuals associated with the Radcliff Mine on this FAM issue. Planning staff estimates that, over the past two years, Mr. Schaniel and Ms. Smith-Standridge have expended approximately 51.5 hours working with Radcliff mine personnel on this issue. Additionally, Deputy County Counsel Grace Chuchla has expended approximately 25 hours. The weighted rate for Planning Department staff is \$72.26 per hour. Per Inyo County Resolution No. 2017-53, County Counsel time is billed at \$151 per hour. This amounts to a total cost to the County of \$7,496.39.

Finally, the Planning Department is requesting that the Planning Commission order that all activity at the Radcliff Mine—except that which is necessary to avoid environmental harm—must cease until the FAM has been properly transferred. As explained above, the fact that the FAM has not been properly transferred makes it much more difficult for the County to access the funds in the FAM in the event it needs to reclaim the mine. Additional development or mining activity only increases the cost of reclamation, and therefore it would be prudent to pause such activity until the FAM has been properly transferred.

Findings

The Notice of Violation and Order to Comply were properly served on Mr. McLaughlin, as authorized agent for Bush.

[Evidence: Copies of the Notice and Order were sent to Mr. McLaughlin and his attorney, Mr. Will, via certified mail / Fed Ex and via email.]

This hearing was properly noticed.

[Evidence: Notice of the date of his hearing was provided in writing on August 21, 2020, which is more than 30 days before the date of this hearing.]

Bush Management is in violation Public Resources Code § 2773.1(c) due to its failure to effect a transfer of the FAM within 90 days of obtaining ownership of the mine.

[Evidence: The Radcliff Mine was transferred to Bush on October 18, 2018. However, to this date, the FAM has not been transferred to Bush.]

Orders

1. The Planning Commission is mandating a cessation of all activity at the Radcliff Mine—except that which is necessary to prevent damage to the environment—

until the FAM is properly transferred. "All activity" includes mining, construction / development work, and activity taken in preparation for future mining.

2. The Planning Commission is imposing administrative penalties in the amount of \$7,496.39.

ATTACHMENTS

- A. Copy of the 2008 Union Bank bond obtained by PBI
- B. July 2020 Notice of Violation
- C. August 2020 Order to Comply

Exhibit A

UNION BANK OF CALIFORNIA

PAYMENT BOND CERTIFICATE
Automatic Renewal, Non-Negotiable

Office of Account: RIDGECREST
Account Number: 3579034078

Certificate Serial Number: 3579034078

Amount Deposited \$85,250.00

On June 13, 2008, Eighty Five Thousand Two Hundred Fifty And 00/100 Dollars was deposited for 012 Months by PRUETT-BALLARAT, INC. (Depositor) and is payable to County of Inyo, The Department of Conservation on June 13, 2009 (the Maturity Date), upon presentation of this certificate, properly endorsed. This deposit will earn interest at the rate of 01.650% compounded daily using a 365-day year, for an annual percentage yield of 01.660%. Interest will be paid to the Depositor Monthly. If this Certificate is not presented for payment on the account's Maturity Date or within 10 days after that date, the deposit will be renewed for a like term at the interest rate in effect on the account's Maturity Date. This Certificate is transferable.

If all or any part of this deposit is withdrawn before the account's Maturity Date, the amount withdrawn may be subject to an early withdrawal or compensating fee.



AUTHORIZED SIGNATURE

FORM 03117-OASIS (F.REV.1/2001)

Exhibit B



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**Notice of Violation Pursuant to SMARA § 2774.1 and
Inyo County Code § 7.70.070**

July 22, 2020

Charles J. McLaughlin
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Newport Beach, CA 92658
cjm@blackswanadvisors.net

Blair Will
Pioneer Law Group
1122 S Street
Sacramento, CA 95811
blair@pioneerlawgroup.net

VIA CERTIFIED MAIL AND EMAIL

RE: Mine ID# 91-14-0064 / Radcliff

Dear Mr. McLaughlin:

This letter is to notify you that the Radcliff Mine is in violation of the California Surface Mining and Reclamation Act (SMARA) and the Inyo County Code (ICC). Please consider this letter to be a formal Notice of Violation pursuant to ICC § 7.70.070. Per ICC § 7.70.070(B), **all violations listed below must be remedied within twenty-five days** or the Inyo County Planning Department will issue an Order to Comply pursuant to ICC § 7.70.070.

The violations currently present with respect to the Radcliff Mine are as follows:

- Incomplete Statement of Responsibility – Pursuant to Inyo County’s written instructions regarding the completion of the Statement of Responsibility, you must submit a separate letter of authorization from John Hagestad stating that you are an employee or an individual authorized to sign the Statement of Responsibility on behalf of Bush Management. I have repeatedly asked you for this letter in the past,

but have yet to receive it. Specifically, on February 18, 2020, I verbally requested this letter. On June 12, 2020 I sent you a written request for such a letter. On July 7, 2020, I again verbally requested that you send me such a letter. I still have not received the letter.

- **Inadequate Financial Assurance Mechanism (FAM)** – Pursuant to Cal. Public Resources Code § 2773.1, all mines must have a FAM that is equal to or greater than the existing approved FAM. Additionally, per section 2773.1(c), when a mine transfers ownership, the new owner is obligated to obtain a FAM in the new owner's name within 90 days of the transfer. According to the Trustee's Deed Upon Sale (Inyo County Recorded Doc. No. 2018-0003067-00), the ownership of the Radcliff Mine transferred from Pruett Ballart to Bush Management on September 25, 2018. However, as of today, you have not provided us with the necessary documentation to demonstrate that the FAM has been transferred to the new operator or that a new FAM has been obtained in the name of the new operator.
- **Failure to provide a Financial Assurance Cost Estimate (FACE)** – Pursuant to Cal. Public Resources Code § 2773.4(d)(1)(A), "[w]ithin 30 days of an annual inspection being conducted pursuant to Section 2774, an operator shall provide an annual financial assurance cost estimate to the lead agency for review." The Radcliff Mine was inspected on February 18, 2020. On May 14, 2019, I emailed you stating that the Radcliff Mine was required to submit a FACE by May 29, 2020. However, to date, the Planning Department has not received a FACE for the Radcliff Mine. I understand that you are currently working on the issue of the two portals that you have discovered are located on BLM land. However, this issue does not permit you to delay in preparing a proper FACE.¹ Until those two portals are fully reclaimed, they must be accounted for in the FACE. While your attorney has indicated your desire to reclaim those portals, the reclamation has not yet occurred and Inyo County is unaware of any concrete plans for such reclamation to occur. These two portals therefore do not provide an excuse to delay the FACE process.
- **Lack of an idle plan** – Pursuant to ICC § 7.70.060, within 90 days of a mine becoming idle, the operator must submit an interim management plan. During the February 6, 2020 inspection and again during our meeting on July 7, 2020, you stated that you were currently preparing to begin mining. Additionally, the Radcliff Mine's annual operating reports for 2018 and 2019 state that the mine had zero production. Therefore, the Radcliff Mine has been idle for 5 months at the very least, yet the Planning Department has not received an idle plan.

The County, acting as Lead Agency for the implementation of SMARA, demands that all of the above violations be remedied within twenty-five days. If you have any questions, you may

¹ As a courtesy, during our July 7, 2020 meeting, I stated that the County would provide you with an additional 30 days to prepare your FACE in light of the issue with the two portals on BLM land. The deadline that this letter sets for FACE compliance is well beyond that one 30 day extension.

contact the County Planning Department at (760) 878-0405 or email me at rstandridge@inyocounty.us.

Sincerely,



Ryan Smith-Standridge

Associate Planner / SMARA Coordinator

cc: Grace Chuchla, Deputy County Counsel
Cathreen Richards, Inyo County Planning Director
Matt Kingsley, Inyo County Board of Supervisor
Paul Fry, Manager, Engineering and Geology Unit Division of Mine Reclamation
Randy Porter, BLM

Exhibit C



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**Order to Comply Pursuant to
Inyo County Code § 7.70.070(c) and Public Resources Code § 2774.1**

August 21, 2020

Charles J. McLaughlin
Black Swan Advisors
20 Salzburg
Newport Beach, CA 92660-6827
cjm@blackswanadvisors.net

Blair Will
Pioneer Law Group
1122 S Street
Sacramento, CA 95811
blair@pioneerlawgroup.net

VIA FED EX AND EMAIL

RE: Mine ID# 91-14-0064 / Radcliff

Dear Mr. McLaughlin:

On July 22, 2020, I sent you a Notice of Violation (the "Notice") that listed four violations present at the Radcliff Mine. The Notice required compliance within 25 days, or August 17, 2020. While you have made some progress on two of the violations listed in the Notice, two other violations remain unresolved. Therefore, please consider this letter to be an Order to Comply pursuant to Inyo County Code § 7.70.070(c) and Public Resources Code § 2774.1. This Order to Comply pertains to the following violations listed in the Notice:

- **Inadequate Financial Assurance Mechanism (FAM)** – The Notice explained that Radcliff's FAM was inadequate because it has not been properly transferred from the previous owner of the mine to Bush Management within the required timeframe. On July 31, Deputy County Counsel Grace Chuchla spoke with your attorney and provided further information about the transfer process—specifically, that you needed to have Union Bank complete form CD-1 and provide documentation from the bank recognizing the assignment of the FAM from Pruett Ballarat to Bush Management. Since then, you have not provided the necessary paperwork to

demonstrate that the FAM has been transferred from Pruett Ballarat to Bush Management. Therefore, the County will be seeking an order to comply from the Planning Commission imposing administrative penalties in the amount of \$50 per day, calculated from the date that the transfer of the FAM should have been completed per Public Resources Code § 2773.1(c). Per Public Resource Code § 2774.1(a)(3)(A), the County will further seek an order from the Planning Commission mandating a closure of the Radcliff Mine until the FAM is properly transferred.

- Failure to provide a Financial Assurance Cost Estimate (FACE) – The Notice explained that the Radcliff Mine was inspected on February 6, 2020 and that a FACE must be submitted within 30 days of inspection. Although I have received some emails from you indicating that a FACE will be sent soon, I still have yet to receive a FACE. Therefore, the County will be seeking an order to comply from the Planning Commission imposing administrative penalties in the amount of \$50 per day, calculated from the date that the FACE should have been submitted per Public Resources Code § 2773.4(d)(1)(A). To correct this violation, you must submit a FACE.

Pursuant to Inyo County Code § 7.70.070(c), a hearing to determine whether the Planning Commission will / will not 1) find that these violations have occurred and 2) issue an order imposing the penalties and remedies described above has been set for **September 23, 2020 at 10 a.m.** This letter serves as notice of this hearing. Given the COVID-19 pandemic, the hearing will occur via Zoom. A link to the Zoom video conference will be circulated to you and/or any representative who you have informed us will be appearing on your behalf before the hearing date. At this hearing, you and/or your representative will have the opportunity to present arguments and evidence regarding the above-listed violations and the penalties and remedies that the County is seeking to impose.

If you have any questions, you may contact the County Planning Department at (760) 878-0405 or email me at rstandridge@inyocounty.us.

Sincerely,



Ryan Smith-Standridge

Associate Planner / SMARA Coordinator

cc: Grace Chuchla, Deputy County Counsel
Cathreen Richards, Inyo County Planning Director
Matt Kingsley, District 5 Supervisor