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Re: Idaho-Maryland Mine Vested Rights Petition Disputes: Objectors' Rebuttal (Part 1) To The Vested Rights Petition of Rise Grass Valley, Inc. (herein, together, as applicable, with Rise Gold Corp., called "Rise")

Dear Board Members And Advisors:

1. **An Introduction To This And Other Coming Objections to "Idaho-Maryland Mine Vested Rights Petition dated September 1, 2023" (the "Rise Petition"), Regarding Rise's Disputed "Evidence" And Legal Framework.**

Attached to this letter is the first in a series of legal and factual rebuttals to the disputed Rise Petition, including by the application of the law of evidence to refute each material one of Rise Exhibits 1-307 within the framework of the applicable substantive law as properly interpreted by the whole of the relevant court decisions. Those disputed Rise Petition Exhibits purport to address the history before Rise's 2017 initial purchase of any Rise alleged "Vested Mine Property" that objectors call the "IMM." While much of that so-called Rise "proof" is not evidence at all (e.g., mere opinion or worse), or is legally inadmissible or otherwise objectionable, or is incredible (e.g., worse than implausible, such as because of its inconsistency

with, or contradictions by, other Rise claims or filings), some such Exhibits are also used by objectors as Rise admissions supporting our rebuttal counterarguments. The disputed Rise Petition is also a one-sided and incorrect presentation that ignores or misconstrues contrary laws, court decisions, and inconvenient truths. At the end of this document, objectors have attached a new Exhibit A that is not well-integrated into this objection because it is a commentary on the recent Rise SEC 10K filing dated October 30, 2023. While objectors had planned to use that Exhibit in another soon-to-be-filed objection, events have made it more important to attach that Exhibit A to this first-to-be-filed objection. That self-contained Exhibit A is focused on Rise's admissions in that SEC 10K filing that both (i) rebut contrary and conflicting Rise Petition claims and (ii) support objectors' opposition to the Rise Petition in this objection.

Readers most interested in factual and evidentiary disputes may wish to focus on the first half of our objection. Those most interested in legal disputes should study the last half of our objection and Attachment A (a comprehensive analysis of the *Hansen Case*, fragments of which are the foundation of the Rise Petition) and Attachment B (an explanation of how both **"SMARA,"** the Surface Mining And Reclamation Act of 1975: Pub. Resources Code #2710 *et seq*., and Rise's disputed judicial interpretations of SMARA, are limited to **surface** mining operations and **do not** include the **underground** gold mining at issue here.)

Toward the end of this objection, particularly in the "Table of Cases And Commentary on Applicable Legal Principles …" objectors explain applicable laws and court decisions that prove the most significant Rise Petition error of all: Rise attempts to satisfy its burden of proof by insisting on legally incorrect definitions or applications of, and requirements for, vested rights law. Even if the comprehensively disputed Rise Petition's "evidence" were somehow relevant, despite supporting only incorrect legal positions, Rise's claims would still fail because most of such purported "evidence" is deficient, inadmissible, and objectionable, often lacking relevance, credibility, and "weight."

As demonstrated by our objection's Table of Contents, objectors' comprehensive rebuttals begin by introducing and framing the correct disputes of law, fact, and evidence at issue, both countering Rise's claims and exposing the realities that Rise ignores because they doom the Rise Petition.

Next, this objection applies applicable laws of evidence and other authorities on a Rise Exhibit-by-Exhibit basis, focusing on the realities truly at issue. For example, the Rise Petition evaded the core of this dispute, which is about **underground mining situations and risks, especially those impacting objecting surface owners above and around the 2585-acre underground IMM**. **Contrary to the Rise Petition, incorrectly focusing too often only on the separate "surface" activities, the underground mining that has been discontinued since at least 1956 cannot possibly provide any vested rights for Rise as the 2017 and later successor**. The only reason for any gold miner to consider now doing any material mining-related activities on Rise-owned surface parcels would be to recreate the "component" infrastructure needed to access the potential gold ore in separate underground parcels below different surface parcels long owned by objectors and others for residential and non-mining "uses." The 2585-acre underground mine underneath such surface owners has been continuously closed, flooded, discontinued, dormant, and abandoned since at least 1956. No subsequent surface activities did anything material to qualify Rise predecessors for any such vested rights or to support any reopening of the underground mine. (Any occasional/non-continuous and minor drilling

"exploration" could not create or maintain any vested rights for actual mining, as explained below.)

The continuously impassible/inaccessible 2585-acre underground mine is below and surrounded by the "surface" (generally below 200 feet) owned by hundreds of residences and non-mining commercial businesses. The objections divided that underground mine for objectors' analysis between:

(i) the **"Flooded Mine,"** mapped as it has lain unused since at least 1956 (with 72 miles of tunnels and 150 miles of drifts and cross-cuts, all flooded, inaccessible, and unusable, requiring for any reopening massive dewatering, repair, and reconstruction, mainly from a distance, because Rise only owns about 155 surface acres for underground entry to the separate 2585-acre underground mine beyond the also closed and flooded Brunswick shaft that is the portal to the contemplated underground mining on other parcels); and

(ii) the "**Never Mined Parcels,**" described as the primary, future, gold mining target in the disputed EIR/DEIR, Rise Petition Exhibits, Rise SEC filings, and other Rise admissions, and which, Rise admits have not been the site of any previous underground mining operations, now contemplating expansion with at least 76 miles of new tunnels to begin the initial exploration into the rest of the parcels for any possible gold. As shown below, nothing in the Rise Petition overcomes the many bases for objectors defeating any vested rights claims for such "expansion" and "intensification" from any such prior mining before 1956 in the "Flooded Mine" parcels into the Never Mined Parcels that have been ineligible for any vested rights from the start.

Unless Rise has changed its such relevant plans without notifying the public (or Rise's investors as required in its SEC filings), objectors assume that Rise's mining and related plans remain what Rise deficiently (and often somewhat inconsistently) described in its disputed EIR/DEIR and other County presentations and SEC and other public filings. However, objectors urge the County to insist on confirmation, clarity, and detail from Rise. For example, **the disputed Rise Petition (at 58) has created legally objectionable uncertainty by incorrectly claiming the vested right to mine anywhere in the "Vested Mine Property" as Rise wishes "without limitation or restriction."** Since objectors' cited authorities prove that Rise has the burden of proof on all such issues [but has failed to satisfy it], Rise cannot claim any benefit from the many doubts that the Rise Petition has created by its deficient and objectionable "evidence" supporting its incorrect or worse legal theories.

Contrary to the disputed Rise Petition, this objection proves that the actual legal and factual realities contradict any such Rise vested rights. Indeed, Rise often does not even attempt to address objectors' such relevant, reality-based issues, especially by **applicable legal requirements for continuous compliance from each of Rise's predecessors since October 1954 on a parcel-by-parcel, use-by-use, and component-by-component basis as to each factor required by applicable law for vested rights. For example,** Rise does not address the ***Hardesty*** and other authorities' rulings that (i) **surface mining** "uses" are different than **underground mining** "uses" for such purposes, (ii) each type of mineral mining is a different "use" (e.g., gravel mining does not empower vested rights for gold mining), and (iii) one type of operational "use" cannot create any vested rights for any other type of "use;" e.g., rock crushing or sawmills, etc.

on some surface parcels cannot ever create or preserve vested rights on any other parcels where the required "use" did not continuously exist previously (e.g., the "Never Mined Parcels.")

Thus, as demonstrated in these objections concerning *Hardesty, Calvert*, and *Hansen*, for example, there is no possibility of any vested rights existing on the unmined **"Never Mined Parcels,**" even if there were vested rights possible elsewhere (which objectors dispute). (Throughout this objection and others, we reference "***Hansen*"** because the entire Rise Petition is crafted on only **fragments** of *Hansen*. However, when considered comprehensively, *Hansen* actually defeats Rise's vested rights claims, as shown below and in Attachment A, presenting a systematic analysis of the **entire** *Hansen* case.) Under such controlling law, any vested rights for any "Never Mined Parcels" could have never existed on or after 10/10/1954, or, in any event, after 1956 or, in the worst possible case, later during the ownership of Idaho-Maryland Industries, Inc. but before the IMM's cheap, auction sale to William Ghidotti in 1963. See the discussion below of how that initial 1954 owner-predecessor never had (and never claimed) any vested rights to pass up the chain of title toward Rise. Such Never Mined Parcels cannot even be called a "mine" or mining operation because (as far as Rise admissions reveal) those dormant underground parcels have remained virgin land that cannot be accessed from the surface above and around them long owned by residential and non-mining commercial "uses" and only accessible from the closed and flooded Brunswick shaft parcel and from there to the underground Flooded Mine portal. In this case, "abandonment" or "discontinuance" are incorrect terms for those unused underground parcels because they incorrectly imply the existence of an operating mine use that has never existed there.

These objections also, for many reasons, defeat vested rights to the underground **"Flooded Mine,"** including, among various other disqualifications and rebuttals explained in the legal briefing later in this objection, because of "discontinuance," "dormancy," and "abandonment."

Another objection filing before the December 13 Board hearing will rebut the remaining Rise Petition Exhibits 308-427 and any other purported Rise "evidence" it may add (whether filed or anticipated). Additional objections are also planned, such as the following:

(i) Objectors soon will also file a "companion," procedural petition/motion/objection (referred to below as **"Objectors Petition For Pre-Trial Relief, Etc."),** seeking greater clarity about Rise's claims and including or facilitating objectors' "offers of proof" and reserved rebuttals in anticipation of how Rise may again (as Rise did in the EIR/DEIR hearings, despite objections) exploit the County's hearing procedural rules. Having made objectors' contentions to the County and having done what we can to advocate to the County for our need for greater due process and other rights under *Calvert* and other authorities and about the problems of Rise again disproportionately and inappropriately expanding its record at the hearing after the cut off of objections (apart from the deficient three-minute rebuttals), objectors will focus on the record for addressing those disputes in the court process to come. For example, while the County may perceive this vested rights dispute as separate from the EIR/DEIR and prior Rise filings, objectors nevertheless incorporate such previous record objections as also relevant to our vested rights disputes because the law entitles us to use

them in our rebuttals to the Rise Petition, which is not consistent with (and is frequently contrary to) Rise's prior record of evidentiary admissions both in the County EIR/DEIR/permit process and in Rise's SEC filings. See objectors' evidentiary and legal arguments below.

(ii) However, that companion objection also suggests ways to mitigate such problems that Rise is creating, such as by our suggesting things the County could still do before the hearing to enable the County to help themselves and objectors understand what could better balance this conflict between (i) the competing, constitutional, legal, and property rights of objectors living on the surface (generally down 200 feet) above and around the 2585-acre, versus (i) Rise, seeking to become the disputed, underground miner beneath them (e.g., it is such surface owners' groundwater and existing and future well water that Rise would dewater 24/7/365 for 80 years).

For example, while objectors can try to anticipate and counter what objectionable things Rise may add at the hearing, again incorrectly claiming that Rise is just adding "clarifications" or "embellishments," there may not be time or opportunities allocated for objectors to counter any Rise additions. Consider that the most effective rebuttals will be exposing inconsistent admissions showing how Rise is now changing its disputed "story" from the history where neither Rise (until September 1, 2023) nor its predecessors ever claimed any vested rights to mine gold, especially underground, but instead exclusively relied on the permit process. The problem is that the Rise Petition "story" is too vague and general to make such counters as effective as we would wish, therefore inspiring our desire for more detail and clarity, to which Calvert due process and the rule of law entitle us. **For instance, someone should be able to compel Rise to reveal, now before the hearing (i.e., before it will be too late for our rebuttals), what the Rise Petition means when claiming (at 58) the right to mine as and where it wishes "without limitation or restriction."** That is legally preposterous, but where do we start rebuttals to such incorrect and overbroad claims?

2. Some Illustrative Procedural, Legal Framing, And Evidentiary Dispute Issues And Related Objections.

Our various objections' goals include preserving our record for court disputes to follow. However, to the extent possible to achieve that goal, we prefer to avoid provoking the County over objectors' disagreements with its chosen rules and procedures that objectors have challenged to preserve our enhanced rights to a multi-party, adjudicatory, *Calvert v. County of Yuba court* process in which we should be equal participants. Hopefully, the County will join objectors in our continuing opposition to the Rise Petition. However, in any case, objectors will offer our evidence and arguments to assure us that whatever may be excluded or prevented by the County process limitations will be included nevertheless in the court process as the law requires, as is demonstrated in our companion "**Objectors Petition For Pre-Trial Relief, Etc.**" Such due process rights are fundamental because objectors, for example, will be using such due process rights to confront and fully rebut everything Rise and its enablers add or claim at the Board hearing in the guise of "clarification" or "embellishment" (e.g., like Rise's disputed

excuses for not revising and recirculating the amended DEIR/EIR as our objections proved were required).

In any event, unlike different, two-party "ministerial processes" between the County and a routine, petitioning party, where the public is limited in its comments, *Calvert* and other cases require these vested rights disputes to be complete, "adjudicatory processes" with much more due process for impacted residents as equal participants in such multi-party vested rights disputes, just as objectors will be in court. Especially in these 2585-acre **underground** mining disputes, **objecting surface owners** can independently have no less equal, comprehensive opposition rights than the County has itself (e.g., its **objectors' groundwater and existing and future wells** at issue). These vested rights disputes between surface property owners and underground miners are not just about what Rise does with its claimed property rights beneath and around us but also about how Rise could harm objectors' competing constitutional, legal, and "surface" property rights (e.g., generally down 200 feet except for reserved mineral rights, which do not include our groundwater or wells), as demonstrated in many court decisions, such as *Keystone and Gray v. County of Madera.* See also *Varjabedian.*

Therefore, objectors file both this objection and (at least) that companion "Objectors Petition For Pre-Trial Relief, Etc." well in advance of the hearing to enable the County to have an opportunity to consider how best to deal with these unique situations (entirely ignored by the Rise Petition, so far), because surface owners above and around the 2585-acre underground mine also so assert in rebuttal our own, personal constitutional, legal, and property rights that are impacted or at risk and competing against Rise's disputed claims (e.g., surface owners' groundwater and existing and future well water should not be "dewatered" by Rise 24/7/365 for 80 years). *Hansen* also has confirmed (at 564) the County's inability to "waive or consent to violation of the zoning law." Other courts (e.g., *Varjabedian)* have expanded much further our related and competing rights as "surface" property owners. Neither Rise nor the County can "take" such objectors' property rights (including as to our groundwater and well water), which **are comprehensively immune from any Rise vested rights claims**, even if any Rise claims were mistakenly considered to have any merit.

In any case, objectors hope that this and other objections will inspire the County to reconsider how these unique dispute situations should still be addressed **before** the Board hearing for greater clarity and exposure about Rise's disputed claims, at least to focus the County on how Rise's objectionable "evidence" for its "alternative realities" cannot overcome the "actual realities" in dispute. For example, **due process would be enhanced if objectors were better able to understand Rise's obscure and ambiguous claims before the hearing, such as Rise Petition's disputed contention (at 58) that somehow Rise can mine anywhere and in any manner it wishes on the "Vested Mine Property" "without limitation or restriction. Thus, objectors seek greater clarity for our offers of proof to the contrary to be more focused and matching.** Objectors also remind the County that, as illustrated in hundreds of meritorious record objections to the disputed EIR/DEIR, surface-owning objectors are often **competent witnesses** with important rebuttal testimony in this vested rights dispute. If such witnesses cannot present their rebuttal evidence at the hearing, even to rebut and impeach new Rise "evidence" and claims added at the hearing, we should at least be better able to guess in advance what would make the best "offers of proof.

We need to be able to present such rebuttals and impeachment in the following court process, particularly to deal with Rise's ever-changing or "evolving" "story." **Compare** the disputed EIR/DEIR (and related Rise permit applications) **with** Rise's SEC filings and the Rise Petition and Exhibits, each somewhat inconsistent with or contrary to the others. Among many other things, such rebuttals should be lethal because Rise has told many such conflicting "stories" to different audiences and even to the same audience, such as with Rise's shift on September 1, 2023, from its permit process to this vested rights litigation. The inconsistencies and contradictions between such different Rise "stories" should defeat each of them. **For example, in contrast to Rise Petition's insistence (at 58) on its right to mine "without limitation or restriction," Rise's recent SEC Form 10K filing dated October 30, 2023 (like the earlier 10K's and previous Rise permit applications), that Rise 10K (after distinguishing "mineral exploration" at 33) still admits (at 34, emphasis added) states: "Subsurface mining, including ancillary surface uses, would require the following permits and approvals under a Use Permit process. [citing such permit and approval examples]" Evidence Code #623, for example, among other such rules shown to apply below, allows objectors to use that prior admission of the need for compliance with such permit and approval requirements to refute Rise's vested rights claims, stating (emphasis added): "#623. Estoppel by own statement or conduct. Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct permitted to contradict it."**

Thus, because objectors have ample cause for concern from Rise's previous, disputed hearing tactics, objectors wish to avoid more Rise "surprises" and to anticipate as best we can the many additions and changes that we should expect Rise to add at the hearing after our written objection cut off, leaving us only three-minute, insufficient rebuttal opportunities. We believe the law and due process allow us to rebut or impeach comprehensively everything Rise or its enablers present, such as to supplement or correct Rise's deficient "evidence" and record and for preventing Rise from evading our prior objections with new Rise claims; we would like our record to be as complete as possible, if only by offers of proof for the court process to follow. Stated simply, objectors request greater pre-trial clarity because the Rise Petition fails to satisfy its burden of proof with sufficient evidence, leaving massive gaps where the proof must be of continuous vested rights compliance by each predecessor from 1954 as to each parcel, use, and component.

3. Exposing Rise Petition's "Hiding the Ball" Tactics That Should Enhance Objectors' Rebuttal and Other Evidence For Key Disputes.

Consider further that earlier example objecting to Rise "hiding the ball" when the disputed Rise Petition claims (at 58) the right to mine as it wishes "**without limitation or restriction."** No objector knows (in the necessary detail required by law) the scope and meaning of that ambiguous Rise claim or how far objectors need to go in refuting such a broad and outrageously general Rise Petition claim. That mystery is especially perplexing given Rise's conflicting SEC filings', EIR/DEIR's, and permit applications' admissions. Must objectors imagine, list, and explain every possible way that the disputed EIR/DEIR "project" (if Rise is even still following that plan, another disputed issue hidden in Rise's "without limitation or restriction"

claim) would violate each of many laws and other "limitations" or "restrictions" of possible application? Do those include a Rise claim that vested rights somehow empower it to "take" groundwater and well water from us objecting surface owners above or around the 2585-acre underground mine, especially 24/7/365 for 80 years, "without limitation or restriction"?

Absent greater clarity, objectors expect to incorporate [or, if necessary, re-file] duplicates of our EIR/DEIR objections to preserve those rebuttals in this vested rights dispute process for whatever Rise later may claim its Rise Petition meant. See the companion Objectors Petition For Pre-Trial Relief, Etc.) Since objectors have already filed hundreds of meritorious DEIR/EIR objections identifying many legal challenges to such Rise-threatened mining and related activities, Rise should have at least recognized which of those Rise imagines that it can evade by such disputed vested rights claims. Without any **pre-hearing** clarity on the boundaries and scope (or even the imagined "principled theories" governing Rise's intended scope) of such disputed Rise general claims, how can objectors narrow our focus to the critical disputes at issue for this hearing and the record in the following court process?

For these and many other reasons explained in the following objections to such "hide-the-ball tactics," the court should insist on some clear boundaries for Rise and greater clarity. Otherwise, this dispute becomes what *Hardesty* called a "muddle" (in ruling against another miner causing such "alternate reality" confusion), where the miner broadly asserted, in effect, "I can do whatever I want on any of my parcels because I claim vested rights." Objectors then have to guess and dispute as best they can with examples of why that disputed miner's claim is wrong.

While Rise may prefer to argue vaguely about vested rights, objectors continue to insist on specificity because we know that Rise will fail its burden of proof in court on the parcel-by-parcel, use-by-use, and component-by-component) basis. Having asked the County for clarity required by due process and applicable laws, the courts should at least allow objectors to be as vague and ambiguous in our counters and rebuttals as Rise was in its disputed claims. (Note: that is another reason why the County should automatically add to this Rise Petition process record all of the record objections to the EIR/DEIR [i.e., ideally without objectors having to refile them] because those objections collectively already have demonstrated many of such applicable laws, limitations, restrictions, and other evidence and arguments for rebuttal against the Rise Petition claim that Rise may do whatever it wishes "without limitation or restriction," as well as many rebuttals using detailed Rise admissions that contradict, or conflict with, the disputed Rise Petition's purported "evidence" or claims.)

4. The County Must Consider the UNDERGROUND Mining Realities That Rise Ignores With Its Inapplicable SURFACE Mining Theories That Nevertheless Also Fail To Prove Any Vested Rights Even for Surface Work.

Furthermore, consider what is proven in the concluding legal sections of this objection below by illustrative authorities *(e.g., Keystone and Varjabedian)* as a prelude to further and more comprehensive briefing. Such due process and equal rights entitle objectors to rebut everything from or for Rise, and that is especially important for objectors who own "surface" parcels (generally down 200 feet and deeper for anything **not** reserved for mining minerals, such as groundwater) above and around the 2585-acre underground IMM. Since the Rise

Petition ignores such issues entirely in favor of those above, vague, Rise claims to do as Rise wishes, such as, apparently, to "dewater" as it desires "without limitation or restriction" 24/7/365 for 80 years. For instance, this objection begins the multi-phase objection process significantly before the hearing to protect surface owners' groundwater and existing and future wells that cannot be deferred for some future kind of disputed, Rise "reclamation plan" or "financial assurances" process mentioned by the County, even if Rise were to expressly admit (which Rise has not yet done) an exception to its "without limitation or restriction claim" by Rise agreeing to provide an enforceable commitment to a SMARA-type "reclamation plan" with "financial assurances."

See Attachment B demonstrating how SMARA is limited to **surface** mining operations, while this IMM dispute primarily is about **underground** mining not addressed in SMARA. Besides such, Rise caused confusion, which some worry is not accidental, and many other concerns addressed in this objection; this conflict is also existential for objectors because, for example:

(i) unlike protections from conditions in use permits and from competing legal and property rights of objecting surface owners above and around the 2585-acre underground IMM, Rise's possible SMARA-type reclamation and financial assurances could come too late, after much harm has already been suffered by objectors (e.g., more than a year of 24/7/365 dewatering and water treatment plant work is required before anything called a precursor to mining could even begin). See the discussion of similar concerns to ours by *Hansen* dissenters in Attachment A. See also Rise's SEC filings, admitting that Rise lacks the financial resources to accomplish any material protections for such objectors or the public and

(ii) In the absence of SMARA applying and considering the lack of clarity, much less any consensus among the disputing parties, about what rules apply in this **underground** mining dispute, everything becomes about test case-by-test case litigation for the courts to resolve those rules. At the same time, much harm could be done in the interim for which such Rise SEC filings admit Rise lacks the resources from which it could make objectors "whole." Even if Rise were enjoined (as would be appropriate) from such physical harms, objectors would still suffer simply from more depression in property values, especially for those living or working on the surface above or around the 2585-ace underground IMM. (Also note, as *Gray v. County of Madera* explained in rejecting a surface miner's similar, depleted, well water mitigation proposal. Also, even if Rise's disputed EIR/DEIR well mitigation proposal was not so deficient, consider Rise's financial issues admitted in its SEC filings. Rise's vested rights claims [e.g., to the right to evade use permits, etc.] provide Rise with no permission (from the law or anyone) to mine as Rise wishes and "take" objectors' groundwater and existing or future well water "without limitation or restriction." See *Varjabedian*. As the courts have clarified (if allowed over all objections), vested rights for nonconforming uses might excuse Rise from needing a use permit, but that "use" must still be "legal." Thus, such vested rights would not allow Rise to violate any competing property owner's property or other rights, especially the surface owners above and around the 2585-acre underground IMM).

In any event, this objection, and the others to come, expose and defeat the fundamental and incorrect premises and "alternative reality" on which the disputed Rise Petition is based. Attachment A comprehensively analyzes and proves how *Hansen* actually defeats the Rise Petition in this reality. However, those Rise-cited **surface** laws and cases do not empower Rise in this **underground mining dispute,** as this objection (see, e.g., the concluding Table of Cases And Commentaries…) and others prove, such as

(i) by quotes below from *Hardesty* (the critical case that Rise ignores, holding that the **underground** mining is a separate "use" for vested rights analysis from the **surface** mining "uses" cited by Rise), and

(ii) by the express terms of SMARA and the **surface** mining cases (like *Hansen*) limiting themselves to SMARA. See especially Attachments A and B to this objection that comprehensively analyze such disputes, respectively (i) applying the whole of *Hansen* to defeat the Rise Petition, and (ii) the many provisions of SMARA that by their terms cannot create vested rights to such **underground** mining, but that would still defeat the Rise Petition if they were applied to its project.

Among the many applications of this reality-based objection is that Rise must prove vested rights on a parcel-by-parcel, use-by-use, and component-by-component basis. The critical cases (e.g., *Hardesty, Calvert,* and even *Hansen*) **reject in this context Rise's unprecedented and disputed claim of "unitary vested rights," where (allegedly, but without any precedent) any operational "use" or "component" on any "parcel" of a multi-parcel mine somehow supposedly empowers the miner to operate any "uses" or "components" on any other "parcels," a theory expressly rejected by *Hardesty, Calvert, and Hansen.*** See the Table of Cases And Commentaries… below and Attachments A and B for that legal analysis. For example, this disputed Rise "misadventure" is about Rise seeking gold in the continuously flooded, inaccessible, dormant, discontinued, and abandoned (since at least 1956) 2585-acre underground IMM beneath surface owning objectors and others. Under all of the applicable case law (e.g., *Id.),* vested rights cannot exist there, especially in the "Never Minded Parcels" as to which there have never been any underground mining "uses" before or after 1954 that could qualify Rise for any vested rights. Likewise, even the rules of surface mining vested rights authorities defeat Rise's claims for any of the "Flooded Mine" parcels. In any event, any vested rights there would have also been eliminated during the years since October 1954 by, for example, continuous abandonment, dormancy, and discontinuance by each of the predecessors before Rise's initial acquisition in 2017.

Moreover, even *Hansen* defeats this "project" (where there has been no underground mining "business" since at least 1956) by preventing any vested rights for Rise's proposed water treatment plant "component" on the Brunswick surface site (parcels) that had no historical precedent. **Each such "component" (under *Hansen,* citing *Paramount Rock*) must have its own vested rights that cannot possibly exist under the facts** and circumstances of this IMM dispute. See Attachment A. Indeed, the Rise Petition has not even attempted to refute such reality-based objections, relying instead on its unprecedented and incorrect (especially in this context) general theory of "unitary vested rights." supported only by Rise's deficient, inadmissible, and otherwise objectionable "evidence" That disputed Rise theory cannot possibly satisfy Rise's burden of proof. Since the Rise Petition gambles everything on that incorrect, "unitary theory,"

failing even to attempt such required parcel-by-parcel, use-by-use, and component-by-component proof, Rise cannot possibly satisfy its burden of proving any vested rights for any "use" or "component" on any underground "parcel" anywhere at the IMM, or even for many unprecedented surface "components" (like the water treatment plant) or other new "uses" (like the cement paste with **toxic hexavalent chromium** [see the EPA and CalEPA website proof of toxicity when one types in that name: "hexavalent chromium"] that Rise plans to pipe down into the underground mine to construct shoring columns from mine waste for a replay of the fateful case study already suffered in reality [see www.hinkleygroundwater.com], as in the movie, *Erin Brockovich,* of such groundwater CR 6 pollution that still has not been possible to remediate, despite many years of massive efforts funded by the record settlement payments from that culpable utility.)

For example, our objections prove the "Never Mined Parcels" in the 2585-acre **underground** mine (beneath and around residential and non-mining commercial surface uses) could never have vested rights now. Among other things, there has never been any mining "uses" compliantly "expanded" to such dormant, underground mineral rights parcels, apart from possible, occasional, minor, and inapplicable exploration drilling or testing in a few uncertain places from a distance (which is necessary because objectors and others own the above entire surface above and around the 2585-acre underground mine). Rise has failed to prove sufficiently which underground parcels it claims were involved in such remote drilling exploration, and none of those obscure activities constitute the gold mining "uses" required for vested rights purposes. The indisputable facts defeat any such vested rights, especially for any such **underground** mining, such as that: (a) there has not even been any meaningful preparation for any underground mining (or even meaningful access) possible on any gold minable parcel of the 2585-acre underground mine at least since 1956, especially in the virgin Never Mined Parcels, and (b) surface parcel sales for non-mining uses gradually eliminated surface access above or around that underground mine, miner-predecessors to Rise (apart, perhaps, by or for a few, interim predecessors on a few occasions in a few isolated places, like Emgold, doing some minor, exploratory drilling) were not in a position to claim any such vested rights to such underground mining.

Although objectors already made most of such record legal and factual objections in disputing the EIR/DEIR (apart from disqualifying specific Rise Petition Exhibits as in this objection), the Rise Petition continues to ignore such core disputes entirely. That means Rise must fail its burden of proof on those grounds alone. While objectors appreciate any help the County may wish to provide in defense of such surface owners competing rights, the County cannot empower Rise against such objectors, as some seem to advocate, because many of objectors' independent and paramount rights are personal and not derived from the County. See, e.g., *Keystone* and *Varjbedian.* Unless and until it is rejected (as it must be), the mere existence of the Rise Petition will continue to harm surface owner property values (and cause other such property-rights disputes) in a "zero-sum game" where, for example, Rise "dewatering" groundwater and existing and future well water owned by surface residents would violate our **competing (and no less equal and compelling) constitutional, legal, and property rights that (1) Rise cannot lawfully defeat or evade even by such disputed vested rights claims if they existed, and (2) the County cannot "take" for Rise, or give away or concede to Rise, any**

such surface owner property rights without triggering all the consequences explained in Varjabedian and many other cases.

5. **Rise Petition's Disputed Exhibit History Fails To Prove Many Elements Of Any Vested Rights Claim For Any of Rise's Predecessors, And Rise Cannot Inherit Rights That Have Not Been Continuously Preserved By Each Predecessor For Rise's Later Succession On That Parcel-By-Parcel, Use-By-Use, And Component-By-Component Basis.**

The applicable laws and cases discussed in this objection require proof of **continuous** vested rights by each predecessor to attempt to pass any vested rights along to the next qualified successor. See, e.g., Table of Cases And Commentaries … Here, none of the many Rise predecessors since 1954 have had any such continuous vested rights to pass up the chain to Rise, and each (like Rise itself until September 1, 2023) applied for use permits for any IMM activity, never asserting vested rights and, indeed, at least implicitly admitting by contrary conduct that none existed and in the new Rise SEC 10K dated 10/30/2023 (at 34) admitting that many permits or approvals are required. Moreover, **Rise also fails that burden of proof, instead offering occasional, noncontinuous "snapshots" of predecessor conduct by disputed Exhibits, often inadmissible or objectionable as evidence and often involving less than all parcels and predecessor owners for each "use" and "component."**

One example of many demonstrated in our objection is that Idaho-Maryland Mines Corporation, aka Idaho-Maryland Industries, Inc. (the initial owner from 10/10/1954 until IMM's 1963 auction sale cheap to William Ghidotti) repeatedly lost any chance to have any vested rights. Besides closing, discontinuing, and abandoning that dormant and flooded IMM and liquidating all the marketable and moveable equipment and infrastructure, that company changed its trademark and name (to **Idaho-Maryland Industries, Inc.), moved to LA to become an aerospace contractor, then filed bankruptcy with a trustee who would never have been interested in assuming any such mining risk,** regardless of the imagined "lottery gamble" that seems to attract speculators like Rise (e.g., see the Rise SEC filings' admissions), and, ultimately, liquidated the IMM cheap in that auction to William Ghidotti. Whatever happened after that, the lack of vested rights at the start (whether by Idaho Maryland Mine Corporation Idaho Maryland Industries, Inc., or its bankruptcy trustee) should have ended any hopes by Rise that each successor could have had any vested rights for Rise to inherit.

The following objection also contests, on a parcel-by-parcel, use-by-use, and component-by-component basis, any possible such vested rights claims by each predecessor owner in the chain of title since 1954, such as by the rules against "expansion" or "intensification" of vested "uses" and many other factors ignored by Rise's incorrect, unitary theory of vested rights expressly rejected even in *Hansen*, which court allowed vested surface mining rights on some parcels, but not on others, based on the kind evidence not presented by, or available to, Rise. In any event, Rise rarely (and even then, deficiently) attempts to present any evidence on a parcel-by-parcel basis, failing its burden of proof by undifferentiated general references to any "use" or "component" anywhere on the disputed "Vested Mine Property" by reliance on its disputed and unprecedented unitary theory of vested rights. The County should focus on the facts demonstrated in the following objection, even from the Rise Petition's own Exhibits, that each of such surface parcel above or around the 2585-acre underground mine was

long ago eventually subdivided and/or sold by Rise predecessors (e.g., the BET Group) to non-miner buyers (thereafter presumably creating more subdivided parcels or, at least, what Rise's SEC 10K filings call "ten parcels" and "55 sub parcels") for such residential or non-mining commercial uses above and around all of that 2585-acre underground mine. Rise cannot now rewrite the history of these parcel issues. Instead, Rise must take and suffer whatever rights and burdens it may inherit from, and subject to the actions of each of its predecessors, including all inherited consequences of every prior act or omission, including the creation of the many surface parcels now existing above the 2585-acre underground IMM that also defined the underground parcels.

For example, when the BET Group subdivided parcels encompassing parts of the 2585-acre underground mine, that predecessor (and others) created the current situation that Rise inherited prior parcel creations by successive surface owners for the intended residential and commercial uses of that vast surface area. To be clear, **the BET Group predecessor owner intentionally deeded all that IMM property to non-mining surface buyers for such surface "uses" incompatible with underground mining beneath them, as demonstrated by massive, predictable objections to the EIR/DEIR** and those coming for the Rise Petition. Those predecessor deeds knowingly marketed and conveyed all rights, titles, and interests in each such parcel to such residential and non-mining business uses subject to the reservation of certain mining rights below the undisturbed surface (generally down 200 feet, plus everything deeper besides those minerals, such as groundwater and well water still owned by the surface buyers). Rise does not, as it implies, somehow own a different real estate parcel below 200 feet, as if that underground mine were a massive single parcel separate from the above surface parcels because that is neither the applicable law nor reality.

Rise's rights and burdens as a party with limited underground mining rights are fixed by the surface legal parcels above that underground mine from time to time in a system created by Rise's predecessors (like the BET Group) by which their eventual successors in the chain of title Rise are each bound, including the rights of surface owners to use and further subdivide their surface defined parcels and drill future wells as the law allows without regard to the mining rights. All that Rise has inherited is underground mining rights beneath each surface owner's property that now must be judged on that parcel-by-parcel analysis. That means, for example, if Rise claims vested rights for some surface mining gravel operation on its wholly owned Brunswick site or the North Star surface rock crushing-aggregate site when owned by Marian Ghidotti or the BET Group (which claim we demonstrate below is wrong as to North Star and other predecessors), Rise cannot "expand" or "intensify" that (or any other) "use" to the 2585-acre underground mine, especially because there have been **no underground gold mining uses** of those surface parcels (nor any underground or surface mining there) since such parcels were so-sold, for instance, by the BET Group. Thus, when Rise tries to "dewater" that underground mine and drains groundwater (and existing and future well water) from such surface owners' underground property, Rise is taking away what is owned by each objecting or nonconsenting owner of each residential or commercial parcel above and around the 2585-acre underground mine. That means a direct impact harms the owner of each such surface parcel, creating both due process and complete party legal "standing," plus competing legal and constitutional property rights. Rise has not satisfied, and cannot satisfy, its burden of proof on that parcel-by-parcel, use-by-use, and component-by-component basis as the law requires, especially since

Rise cites no case where (under these circumstances) an underground successor miner can claim vested rights to violate such competing rights of the surface buyer from such miner's predecessor.

6. **Objectors Request Urgent Rejection of the Rise Petition To Reduce The Problems Rise's Mining Risks Are Already Causing Our Local Community, Especially As To Depressing Property Values.**

Objectors again urge the County to act expeditiously in rejecting Rise's incorrect claims since even the doomed existence of such threats harms our local community, such as by depressing our local property values (and thereby, ultimately, County property tax revenue.) Rise, and some enablers may again try to exclude such issues, as they previously did in the disputed EIR/DEIR process, seeking to evade such issues as outside the County hearing "boundaries" that Rise often violated itself. That conduct should allow all objectors' rebuttal arguments and evidence since rebuttal evidence is always appropriate, as proven below. For example, when the disputes between us surface owners and the underground miners focus on the "objective intent" relevant to vested rights of a Rise predecessor (e.g., the BET Group), that debate must allow objecting surface owners to prove that subdivision and sale of the surface above and around part of the 2585-acre underground mine is incompatible with underground mining below or around that surface. **That incompatibility should be apparent, but one appropriate way to prove it is to demonstrate how underground mining depresses the surface property values.**

No court will deny surface objectors that kind of rebuttal on surface property values and other vested rights disputes, and the County should allow it as well, especially since the stigma of such mining is powerful and supported by the consistent history of miseries of the communities around the more than 40,000 abandoned or bankrupt mines in California on the EPA and CalEPA cleanup lists. Also, the insufficiency of financial assurances for reclamation plans is a chronic scandal about which most people are familiar and which will be a focus of offers of proof before the hearing, even though we regret that the County is accommodating Rise's deferral of the reclamation plan and financial assurances issues to another hearing, if applicable since the court will address these and other incorrectly excluded matters in the next stage of the process.

But ask yourselves, Board, given the legal duties of disclosure by sellers to buyers, what does a surface owner above or around the 2585-acre underground IMM tell a prospective buyer (or the appraiser for a mortgage lender) about these IMM risks and worse? Should sellers hand those interested buyer parties several thousands of pages of credible EIR/DEIR, Rise Petition, and other objections, plus multiples of more pages of the disputed Rise Petition, EIR/DEIR, and their massive, disputed exhibits that few impacted surface owners regard as correct or credible, and then say, "draw your own conclusions? Buyer beware?" (If the Board wonders why so many local realtors despair about the IMM, that is one reason. How could such an honest and neutral response to such inevitable buyer or lender questions fail to depress prices? Of course, that is not as depressing as the more candid seller (or borrower) answer, which is that the disputed Rise mining menace is so indefensible that the courts (and, hopefully, the County) would never

tolerate such an injustice, especially to us surface owners above and around the 2585-acre underground mine.

However, what buyer or lender wants to bet on the outcome of the kind of endless "test case" litigation to which Rise seems committed, even when the Rise case seems preposterous? In any case, Rise's record filings or reported public relations comments cannot reduce the stigma problems that Rise's proposals have created. Even if some buyer or lender were willing (a) to trust Rise's risk and threat assessments, comprehensively rebutted in hundreds of credible objections to the EIR/DEIR (and now more coming against the Rise Petition) from credible sources, and (b) to ignore the problematic Rise financial condition admitted in Rise's SEC filings with "going concern qualifications" in its financial statements, scaring many about the credibility of any Rise's reclamation plans, financial assurances, and other theoretical protections for impacted neighbors as being unaffordable for Rise and, therefore, illusory. The old saying one also hears from objectors seems to apply as well to potential buyers (and lenders): better to be safe than sorry.

While objectors could go on with many more examples, that introduction should be sufficient. Fortunately, objectors have the correct law and facts on our side and the political power for law reforms to correct any mistakes that Rise might somehow inspire. Objectors welcome any opportunities to meet and confer with any County representatives or counsel to answer any questions, to explain further what more objections are coming, and to seek mutually beneficial collaborations about our common problems regarding the IMM. Thank you for considering the objectors' positions.

Sincerely,

/s/ Larry Engel

_____

G. Larry Engel
Engel Law, PC.

IMM: Rebutting Rise Vested Rights Petition's Historical Exhibits 1-307, And Often Using Many Such Exhibits Both To Counter Rise's Claims And As A Foundation For Selected Objectors' Legal Rebuttals: The Rules of Evidence Matter (At Least In Court) And Doom Rise's Claims.

November 14, 2023

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I. Introductory Comments On Why the Rise Petition And Its Objectionable Exhibits Must Fail To Satisfy Rise's Burden of Proof As To The Pre-Rise History (generally, Exhibits 1-307), With Disputed Rise Period Exhibit (#'s308-429) Rebuttals And Objectors' Further Legal Briefing To Follow Separately.

Rise Petition Exhibits 1—307 do not provide any of the required, "substantial evidence" (i.e., competent, admissible, non-objectionable, and even minimally credible evidence) to prove Rise's disputed vested rights as to each "use," "parcel," or "component" of the IMM or "Vested Mine Property," especially as to the parcels in the 2585-acre (plus or minus, since Rise offers various numbers) underground mine that has been "dormant," discontinued, "abandoned," closed, and flooded since 1956 (or 1957, depending on which account one chooses). While that will be proven further by additional counter-evidence and briefing rebuttals, especially by those of us objectors living above and around the 2585-acre underground mine, many Rise Petition Exhibits themselves contradict or defeat Rise claims, as objectors' commentary demonstrates below. At the end of this document, objectors have attached a new Exhibit A that is not well-integrated into this objection because it is a commentary on the recent Rise SEC 10K filing dated October 30, 2023. While objectors had planned to use that Exhibit in another soon-to-be-filed objection, events have made it more important to attach that Exhibit A to this first-to-be-filed objection. That self-contained Exhibit A is focused on Rise's admissions in that SEC 10K filing that both (i) rebut contrary and conflicting Rise Petition claims and (ii) support objectors' opposition to the Rise Petition in this objection.

As *Calvert, Hardesty, Stokes,* and other judicial precedents demonstrate (see citations at the end of this document), this Rise Petition dispute must be a multi-party, adjudicative proceeding in which objectors have full, competing participant due process rights comprehensively to contest the Rise Petition, including by impeaching and cross-examining Rise's "witnesses" and "evidence" for its incorrect and worse claims. Those *Calvert* and even greater objection rights are especially applicable for the unique legal "standing" of those of us surface owners above and around the 2585-acre underground mine, each of whom has competing constitutional, legal, and property rights independent and separate from the County and that must prevail without regard to whatever the County may do or suffer unless the County wishes to pay "just compensation" for "taking" such local voters' surface property rights for Rise's benefit, particularly the groundwater and existing and future well water owned by such surface owners, as demonstrated in court decisions like *Varjabedian* and *Keystone.* Such distinctions are between such surface owners, more distant or general objectors, and the County because, even if the County were somehow unable to defeat the Rise Petition, such surface owners at least have many additional ways themselves independently to defeat the Rise Petition under applicable law and even, as shown herein, by using Rise's own Exhibits against that disputed Rise Petition.

In any case, Rise's comprehensively incorrect legal theories that objectors dispute as Rise Petition's "unitary theory of vested rights" are contrary even to *Hansen*, the primary authority on which the disputed Rise Petition is based. Instead, the Rise Petition must prove with sufficient admissible, competent, and credible evidence (and cannot do so) each element required for a valid vested rights' claim on the basis of (i) **use-by-use** (e.g., "exploration" uses are not "mining" "uses," and underground mining is not the same "use" as surface mining, etc.),

(i) **parcel-by-parcel (a major legal briefing issue to come later as to details, but as demonstrated by *Hansen* [which allowed some "parcels," but not others, to have vested rights], *Hardesty*, *Calvert,* and other authorities, Rise cannot reasonably dispute these objections requiring that each applicable "parcel" must have its own vested rights for each "use" and "component" thereon)**, and (iii) **component-by-component** (e.g., since a rock crusher is a "component" for vested rights claims under *Hansen* and its cited *Paramount Rock* authority, so is the disputed EIR water treatment plant contemplated by Rise in its EIR/DEIR, without which Rise cannot hope to deplete and dump the groundwater it wants to dewater 24/7/365 for 80 years into the Wolf Creek.) Also, each owner of each parcel must have its own **continuous** vested rights that it acquires from its predecessor in order to pass such vested rights along to its successor owner. Some of Rise's Exhibits demonstrate that there are many forbidden gaps even under Rise's disputed, general, "unitary theory of vested rights." Indeed, no surface activities by Rise or its predecessors can in any way ever create and maintain/continue for Rise any vested rights for any underground mining, as *Hardesty* explained.

Any activity on any one parcel (especially any Centennial parcel) cannot create vested rights for any other parcel. It is legally impossible for Rise to satisfy its burden of proving vested rights by generalizing (as Rise consistently attempts) from one use or component on one parcel to the rest of the "Vested Mine Property." For example, consider objectors' analysis herein (and more comprehensively in another objection to come) of Rise's deficient evidence on and after the October 10, 1954, vesting date regarding relevant miner conduct on each relevant parcel (or what Rise calls "sub parcels") during the miner's severe and progressive downsizing toward the expected discontinuance of all underground gold mining by the closing, dormancy, abandonment, and flooding of the IMM occurring by 1956. Whatever reduced underground gold mining may have happened between that starting date in 1954 and the closure by 1956, in what are herein later called the underground **"Flooded Mine"** parcels (i.e., the parts of the 2585-acre [approximately, since Rise also asserts lower numbers without explanation] that had been mined at that alleged vesting time) cannot create any vested rights in the rest of that underground mine that objectors call the "**Never Mined Parcels.**" Since the Rise Petition has not even tried to demonstrate vested rights for each contemplated "use" or "component" on each applicable parcel, Rise must fail as a matter of law to satisfy its burden of proof of anything as required continuously for each owner of each parcel and for each use and component. See the discussion below of Rise's deficient maps and proof on that required parcel-by-parcel basis and in the Table of Cases And Commentaries at the end.

All that must be considered in addressing each of the Rise Petition Exhibits analyzed herein because **none of the Rise Exhibits even pretend to address each individual use, parcel, and component, but instead seem to follow Rise's unprecedented, disputed, and incorrect "unitary theory" of vested rights under which the Rise Petition incorrectly claims (at 58) the right act as it wishes "without limitation or restriction") as to any "use" or "component" wherever it wants on any parcel or part of the "Vested Mine Property**" (i.e., the IMM, but see the **separate Centennial parcel** now included in that disputed Rise Petition claim, despite Rise previously insisting Centennial was separate from the IMM in the EIR/DEIR and elsewhere, as discussed below).

The Rise Petition also ignores the fundamental realities of it claiming vested rights for such 2585-acre **underground mining based on surface activities, surface mining precedents,**

and surface mining laws, like SMARA #2776, that do not apply to underground mining and to objecting surface owners above and around the underground mine, as *Hardesty* proves. See also *Calvert* and even *Hansen.* Rise Petition's attempt to apply SMARA and its authorities to such underground mining activity is not only unprecedented, but it is not even legally or practically possible to reconcile SMARA (or its court precedents, like *Hansen, Hardesty,* and *Calvert)* with such underground mining. For example, how can SMARA government regulators apply their surface mining rules to underground mining for which they have no statutory jurisdiction or powers? In any event, accessing for testing the underground mine on one surface parcel does not empower Rise or its predecessors (e.g., Emgold) with vested rights for its desired mining (especially underground) **as Rise so wishes "without limitation or restriction."** Indeed, because Rise incorrectly refuses to identify its activities on a parcel-by-parcel basis as required, Rise cannot prove (and did not even try to prove) its (or its predecessors') testing/exploration somehow applied to each relevant parcel. However, that Rise burden of proof will be impossible to satisfy because none of the parcels in the 2585-acre underground mine can be (or were proven to be) accessed from the surface above or around the IMM (which are owned mainly by objectors or at least owners unwilling to assist Rise to harm their community or to provoke their surface neighbors.) Since no one could use the toxic Centennial mine for anything besides (at most) a dump, the only surface area from which Rise (or its predecessors could prove it operated any such exploration or testing is from the closed and flooded Brunswick mine site owned by Rise.

Note that the Rise Petition historical Exhibits 1-307 (pre-Rise) ignore the many problems with the separate **Centennial** site that Rise's disputed EIR/DEIR claimed was NOT part of the Rise project but rather was entirely separate and, therefore, did not need to comply with CEQA as to the EIR/DEIR project. Suddenly however, the Rise Petition now incorrectly imagines the Centennial site (not meaningfully at all addressed in any of the Exhibits 1-307 addressed herein) somehow to support Rise's incorrect "unitary vested rights theory," especially since that toxic Centennial dump has long had no possible legal mining use, especially any underground use. Centennial cannot be so used in the future unless and until, if ever, it is fully remediated (a subject never addressed by the Rise Petition.) Rise's disputed, purported, old IMM or Centennial remediation plans are not only legally noncompliant and insufficient, but they are infeasible to the point of being illusory since Rise's financial resources are admitted in Rise's SEC filings to be insufficient to fund any satisfactory remediation or reclamation (or much of anything else needed to protect the community) from that Rise menace. See the many record objections to the EIR/DEIR and others to follow in this vested rights dispute regarding Centennial and rebutting the Rise Petition's attempt to misuse Centennial to create or maintain alleged vested rights throughout the Vested Mine Property, even though the only lawful activity on Centennial has long been clean-up or dumping and not any actual mining uses, especially not any underground mining uses, which *Hardesty* clearly held to be legally different uses than surface mining for vested rights purposes.

However, even if somehow Rise were allowed to use its unitary theory of vested rights, it still must face the uniquely competing constitutional, legal, and property rights of us surface owners above and around the underground mine on scores of legal and factual issues in unique dispute and never addressed at all in the disputed Rise Petition or even in the disputed EIR/DEIR (where objectors asserted many meritorious objections). For example, since Rise and its miner-

predecessors have admitted to having no continuous ownership of the surface above the 2585-acre underground mine between October 1954 and now, how could Rise (or its predecessors) possibly assert any rights to mine there underground, where such miners are not allowed to disturb the "surface" uses (200 feet down) with such underground uses, including with Rise admitting in its SEC filings that the "surface" extends down at least 200 feet and farther as to things other than minerals to be mined, such as groundwater and existing and future wells. See also *Keystone* and Exhibits discussed herein with deeds and other documents describing various depths of what is defined as the "surface," all of which create a required separation of the top surface from the underground mining.

At the end of this objection, there is a section explaining the basis for evidentiary objections made to the Exhibits and other Rise claims at issue in this dispute, and the Table of Exhibits links readers to each referenced Rise Petition Exhibit. That ending section also contains the full case citations to certain precedents and authorities occasionally mentioned in this document by a defined term.) See also below the **Table of Cases And Commentary on the Applicable Legal Principles Controlling What Evidence Is Relevant For Vested Rights Disputes Under The Correct Cases And Analysis of Authorities And Applicable Law that Frame The Evidence And Related Disputes, Followed By Attachments # A (a Comprehensive Discussion of *Hansen*) and # B (an Analysis of How SMARA Is Limited To SURFACE Mining, As Distinguished From UNDERGROUND Mining). That concluding legal analysis section also addresses and incorporates a companion counter-petition by objectors discussed and incorporated below called the "OBJECTORS PETITION FOR PRE-TRIAL RELIEF ETC." and further briefs various procedural, evidentiary, and legal issues in hopes of improving the due process afforded to objectors, especially on account of our unique standing as surface owners above and around the 2585-acre underground mine with our own, competing connotational, legal, and property rights against the Rise Petition, as illustrated by a brief discussion of *Calvert v. County of Yuba* (2006), 145 Cal. App.4th 613, assuring due process for the objecting public against vested rights claims by miners like Rise in such administrative processes (and, of course, in the court process to follow).**

There will be various uses for this document as an attachment to various objections made to the Rise Petition and to other Rise claims, including to the disputed EIR/DEIR, which is incorporated in these (and other) objections and still relevant in this vested rights dispute for many applications and rebuttals. While the County may incorrectly consider the disputed EIR/DEIR process separate from the Rise Petition dispute process, the objectors contend that all objectors' EIR/DEIR objections are also applicable as well to the Rise Petition (and incorporated herein and in each other Rise Petition objection to come), both because CEQA still applies to at least some aspects of what Rise is attempting by its Rise Petition and, in any event, the EIR/DEIR contains many inconsistencies, contrary assertions, and other bases for objectors disputing the Rise Petition. Indeed, many of the objections to the EIR/DEIR are equally rebuttals (and contrary evidence and authority) to the Rise Petition. It is not necessary or practical for objectors to separate them all, such as, for example, where such EIR/DEIR objections expose admissions by Rise in its SEC filings that contradict (or are inconsistent with or otherwise discredit) not just the EIR/DEIR, but also now the Rise Petition. **While other briefs will prove the relevance and applications of such incorporated EIR/DEIR objections, this point can be illustrated most broadly by the Rise Petition claim (at 58) that Rise has vested rights that allow it to mine as it**

wishes everywhere in the "Vested Mine Property" "without limitation or restriction." Not only do objectors dispute such Rise claims comprehensively already in those EIR/DEIR objections (with more to come to the Rise Petition and, as applicable, to the rest of the EIR process), but such objections to the EIR/DEIR prove those Rise errors, as well as demonstrate why applicable laws and competing surface owner property rights must impose many "limitations and restrictions" on Rise, regardless of the fate of the Rise Petition.

Consider this example of such an overlap between such EIR/DEIR objections and the disputed Rise Petition, which is explained in more detail as to evidentiary objections at the end of this document. Contrary to the Rise Petition, applicable laws prohibit Rise from using a dangerous and high-risk mining "use" technique (and "component") for which there was no historical precedent and for which no vested rights exist, but which is described in some detail in the EIR/DEIR. However, in critical ways Rise "hides the ball" by incorrectly disregarding specific objections thereto in objectionable ways that obscure the massive threat of such use and component. Our record objections to the EIR/DEIR reveal how the disputed EIR/DEIR and some objections thereto (see, e.g., DEIR objection Ind. 254 and the follow-up EIR objection to the EIR nonresponsive and worse "Responses" and "Master Responses" that are rebutted one-by-one, including by analysis of the admissions by Rise's consultants' pre-DEIR disputed reports added (obscurely) to the EIR as Exhibits Q, R, and S) explained Rise disputed plans for shoring up the 2585-acre underground mine. Rise plans to save money on underground waste rock removal by creating "shoring" columns with piped-down "cement paste," including the TOXIC HEXAVALENT CHROMIUM that is best known from the reality-based movie, *Erin Brockovich,* where that toxin leaked from a utility's settling ponds to poison the groundwater and kill the town of Hinkley, CA, and many of its people, a problem that, despite a record settlement by the polluter, what is left of the town still has not been able to remediate after many years of trying. See and the EPA and CalEPA website files on the hexavalent chromium menace. See also (a) the DEIR/DEIR's failure to even address this threat where required in the disputed DEIR "Hazards And Hazardous Materials" section, but instead just mentioned it in passing in another section discussing such mine shoring techniques, and (b) the disputed EIR's Response #1 to such detailed DEIR objections in Ind. 254 (i) with a disputed specific EIR dismissal in its obscure Response 1 to that individual objection Ind 254 (that no one probably read), (ii) without any correction or even identification of the threat about the hexavalent chromium menace in the amended EIR discussion of "clarifications" (disputed as actually EIR amendments that should have required the DEIR/DEIR to be better revised and recirculated) in the required "Hazards and Hazardous Materials" discussion, and (iii) the disputed EIR added Exhibits Q, R, and S (obscurely) at the EIR's end without any clear identification or alert for readers of the hexavalent chromium threat that could not be easily discovered unless one read everything looking for such "hide the ball" issues, and (iv) even then one would have had to read the detailed documents (lacking any helpful clues in their titles) to find the insufficient and still detailed admissions by consultants on the subject in reports that pre-dated the DEIR and should have been reported clearly therein with what *Gray* required as "common sense" and what *Banner, Vineyard, a*nd other authorities cited by objectors required as "good faith reasoned analysis." See the Table of Authorities at the end.

Rather than repeating all such EIR/DEIR related "evidence" rebutting this disputed Rise Petition (which also adds many new objections and issues), it is reasonable and appropriate to

incorporate the EIR/DEIR objections into the Rise Petition record "as is," because they demonstrate evidence not just of this Rise "hide the ball" tactic (which supports rebuttal evidence against the Rise Petition as well), but also because objectors wish to use many such inconsistent, contrarian, and otherwise conflicting Rise admissions (and our counter objections) to dispute Rise Petition's such claim (at 58) that it can somehow mine as it so wishes "without limitation or restriction." The courts will impose many such legal "limitations and restrictions," but objectors will need to present their EIR/DEIR objections to prove what all those limitations and restrictions must be to avoid Rise's predictable arguments attempting to limit us to the Rise Petition administrative record and other objections best for objectors to overcome now by making the entire EIR/DEIR record at issue in this Rise Petition dispute. Rise cannot possibly object because Rise has required us to rebut such disputed Rise Petition claims (at 58) to be entitled to so mine as Rise wishes "without limitation or restriction." In any case, every new mining technique applied to each "parcel" is a separate "use" with new "components" that have no vested rights on which Rise can rely since there were no historical counterparts and no continuous such "uses" or even intentions for future such "uses."

II. Some General Objections To (i) The Way the Rise Petition Purports To Rely On Disputed Exhibits Without Explaining What Or How Those Exhibits Are Supposed To Support the Rise Petition, (ii) The Way Rise Exhibits Fail To Support The Rise Petition They Sometimes Even Contradict, (iii) Rise Failing To Explain Noncompliance With Timing, Notice, And Other Legal Requirements That Undercut Rise's Vested Rights Claims In Many Ways, Including Even By Creating Counter "Inferences" To Rebut Rise Claims About Objective Intent of Predecessors Rise Must Prove (But Fails To Do So.)

As to the Rise Petition and its Exhibits themselves, objectors object to the general citation in that Petition to Exhibits without sufficient explanation as to what Rise claims in the Exhibits makes them relevant, admissible, and even probative evidence for some disputed claim in the Rise Petition purporting to rely on them. Sometimes, the Rise Petition may simply be purporting to add some kind of context or foundation for the Rise Petition generally. That might be tolerable in some contexts, but not when such a background document is cited as having proven something that is not so proven in the Exhibit. For example, many deeds, chain of title summaries, and similar documents are attached to the Rise Petition as Exhibits. However, objectors object when a particular vested right claim requirement, such as, for example, continuous mining or intent to mine in the future is claimed in the Rise Petition as being proven by such deeds or general documents that identify the owner but not such purported conduct of the owner creating or maintaining imagined vested rights. Objectors object to such wishful Rise thinking and mismatches between factual and legal claims in the Rise Petition and the Exhibits cited as proof of such claims. Stated another way, attaching a deed as an Exhibit to identify an owner does not enable the Rise Petition to add an unproven allegation about what Rise claims the owner did or intended (or did not do or intend) and then claim that Rise has proven vested rights. The application of that reality for purposes of objections and rebuttals seems to be both to the Rise Petition (as to which there will be more filed objections coming) and to the Exhibits themselves (as, for example, lack of foundation, inadmissibility, irrelevance, lack of competence, and other evidentiary objections, etc.)

Also, this document demonstrates below that many such Rise Petition Exhibits in some way contradict or discredit Rise Petition claims, especially when the correct legal analysis is applied instead of the incorrect Rise legal theory and when objectors' rebuttals include damning Rise admission evidence. See, e.g., Evidence Code ("EC") #'s 1220 et seq (confessions and admission generally), 1230 (declarations against interest), and 1235 (prior inconsistent statements). For example, Rise asserts an incorrect "unitary theory of vested rights" that an owner of a multi-parcel mine somehow can establish vested rights over every parcel of the mine (even those never mined or even accessed like many in the 2585-acre underground IMM) by how the miner conducts its "uses" (or uses "components") on any one parcel. Since the correct legal analysis is parcel-by-parcel and use-by-use (and component-by-component), the Rise Petition does not even attempt to be comprehensive. Relevant Rise Petition Exhibits are limited to less than all of the alleged "Vested Mine Property". They are an evidentiary admission of material "gaps" confirming that the Rise Petition has failed in its burden of proof as to all the other relevant parcels. **Many Rise admissions in the EIR/DEIR and the Rise SEC filings themselves are often in conflict, inconsistent, and contrary to each other, telling more cautious facts to Rise investors and the SEC in Rise's SEC filings than the even more disputed and unrealistic claims in the EIR/DEIR to the County and others), and they also conflict or are inconsistent with, or are contrary to, the Rise Petition, since this abrupt Rise switch in strategy to disputed vested rights seems to have not been fully anticipated by Rise in previously arranging disputed Rise allegations and "stories" to be more consistent.**

Furthermore, the last section herein summarizes the many evidentiary rules under the general law of evidence, as illustrated before, with examples throughout this document. Many Rise Petition Exhibits cannot be admissible or allowed over our such objections. If the County does not provide objectors a process for excluding such purported Rise "evidence," then it will be excluded in the court processes. That exclusion of such Rise alleged "evidence" will often result from a combination of objections to the disputed Rise Petition text asserting a disputed claim citing an objectionable Exhibit that is either inadmissible or otherwise disputed and/or which is unclear as to how the Exhibit is imagined supporting the Rise Petition. For example, as explained in that final evidentiary summary below, using an Exhibit for one purpose might sometimes be tolerable, but not for others. The Rise Petition is often unclear, such as by making a broad, disputed assertion and then citing an Exhibit that does not seem relevant or useful support for that disputed Rise assertion. However, because Rise has an "aggressive" imagination of what it thinks it is proving in that manner, objectors will assume the worst case and object to all such purported evidence to be "safe" from such Rise misuse or overgeneralization, etc. **For example, consider (as is often attempted by Rise, especially in the Lee Johnson Declaration) that the Rise Petition or Exhibits often rely on hearsay, especially "hidden hearsay," such as illustrated below when Mr. Johnson declares that he was "aware" or "knows" or "believes" or "understands" something, without any foundation or explanation as to how he acquired such knowledge, awareness, beliefs, or understanding. Objectors must object by assuming that it is just Mr. Johnson obscuring that his such foundational basis is NOT "personal knowledge" as alleged, but instead is just hearsay, for example, from his deceased mother-in-law, that should not be admissible for the truth of the matter he asserts.**

RISE ALSO FAILS TO PROVE TIMELY COMPLIANCE by each of its predecessors with applicable laws requiring action or notices, especially as to deadlines, even those at issue in

Hansen, especially regarding the question of a miner's intent to abandon particular mining or plans for expansion of mining. **E.g., *Hansen's*** discussion (at 569-571) of the effect of the "discontinuance of a nonconforming use" and its relationship to abandonment and statutory deadlines for resuming actions, such as:

> Although abandonment of a nonconforming use terminates it in all jurisdictions (8A McQuillin …25.191, p.68), ordinances or statutes which provide that discontinuance of a nonconforming use terminates it have not been uniformly construed. Some have been **held to create a presumption of abandonment by nonuse for the statutory period, others considered to be evidence of abandonment**. **In still other jurisdictions the nonconforming use is terminated** when the specified period of nonuse occurs, regardless of the intent of the landowner. (Id. at pp. 68-69) … [T]he parties have not offered any evidence of the legislative understanding or intent underlying the use of the term "discontinued" in Development Code 29.2(B). Id. at 569-570 (emphasis added)
> ***
> Since **we have concluded that the aggregate mining, production, and sales business was the land use for which the Hansen Brothers had a vested right in 1954,** the fact that rock quarrying may have been discontinued for 180 days or more [the deadline under Development Code 29.2(B)] is irrelevant. Hansen Brothers has a vested right to continue all aspects of its aggregate business at the Bear's Elbow Mine [because the *Hansen* majority (e.g., at 574) forbid treating the separate "components" of that integrated business "operated as a single entity since it was established in 1946" because that 180-day limit on discontinuance (at 570) only "applies to the nonconforming use itself, not to the various components of the business."] **This is not to say that future inactivity at the mine may not result in termination of that vested right or that the county might not conclude that the property is no longer being used for aggregate production and is currently in use only as a yard for storage and sales of stockpiled material**. Id. at 571. (emphasis added)

See Attachment A and in the Table of Cases And Commentary On Applicable Legal Principles… below, further discussing these issues.

None of that *Hansen* ruling helps Rise, among many other reasons discussed herein, because, as demonstrated below with Rise's own Exhibits and Rise Petition and other record admissions and unlike the facts in *Hansen*: (1) there was no "business" in which the initial predecessor was engaged on October 10, 1954, except the winding down of the underground gold mining in the "Flooded Mine" parcels of the 2585-acre underground mine (with nothing happening in the "Never Mined Area," where any "expansion" or "enlargement" was then unimaginable, because: (a) the $35 legal limit on gold prices made gold mining chronically unprofitable, forcing Idaho-Maryland Mine Corporation to "downsize," and (b) the brief shift to government-subsidized "tungsten" mining (which is a different "use" for vested rights than gold mining), ended before the whole IMM closed and flooded at least by 1956; (2) none of the later surface activities of that Corporation's successors at the IMM (all irrelevant, different "uses"

anyway) were ever part of that initial predecessor's "business," and underground gold mining was not ever part of anyone's business after the IMM closed, flooded, and discontinued all operations, ending any underground gold mining or other business at the IMM for all those years and leaving the gold mine discontinued, dormant, and abandoned (as it remains today); (3) that initial predecessor sold off the closed mine's equipment and salable fixtures/infrastructure, changed its name and trademark, moved to LA to become an aerospace contractor, filed bankruptcy, and the IMM was liquidated cheap at an auction sale to William Ghidotti in 1963; (4) William Ghidotti did not buy any business at the IMM auction, just abandoned mine real estate and whatever disputed plans Rise may have it could not have been to revive that underground gold mining as a part of any integrated surface business; (5) contrary to Rise's incorrect claims the mine was not closed pending changes in the "market conditions," but changes in the LAW (e.g., the $35 gold price cap effects that endured for another decade) that shut down the entire industry as mining costs kept rising, and Rise cites no cases where hoping for a change in the law (as distinct from changes in the market) can preserve any vested rights. (That is one reason why no specific proposals for reopening the IMM began to emerge until the 1980's from new, emerging speculators); (5) no one would have even planned any such massive investment to reopen that mine until after the $35 legal limit on gold prices ended, and, as the Exhibits below show, interest in such expensive underground gold mining still did not resume for years after the law changed to end the $35 cap until the whole US economy changed its investment model (e.g., using gold as an inflation hedge) raising the price of gold reliably above its mining costs; (6) no "business" has been possible for that included any part of that underground gold mine, whether for Mr. Ghidotti or any other Rise predecessor after him, among other things, because (a) for anyone to restart even the Flooded Mine (as distinguished from even more expensive, entirely new mining operations into the Never Mined Parcels) would have involved massive and expensive efforts (e.g., dewatering for more than a year; repair and reconstruction of all the infrastructure and support facilities; new equipment; legal compliance work still required despite any vested rights, although only Rise has tried to avoid full compliance with its incorrect vested rights arguments, etc., as admitted in the EIR/DEIR, other governmental applications by Rise or its later predecessors (Emgold), Rise's SEC filings, and other evidence addressed in objections to the EIR/DEIR or to this Rise Petition), (b) no Rise predecessor with gold mining aspirations has ever engaged in any material actions that could qualify as underground mining work (e.g., Emgold's test drilling and permits are not such mining "uses"), and all of them backed off from this imagined gold mining "opportunity" in favor of sales to more aggressive speculators, which brings us to Rise's conduct that will be addressed in a separate objection rebutting the remaining Rise Petition Exhibits after 307 and any other purported "evidence" from or for Rise; and (7) When the BET Group subdivided and sold for residential and non-mining commercial businesses the surface land (down 200 feet) above the 2585-acres of underground mining rights, it ended any possible gold mining related or other vested rights qualified business **on the surface of those parcels** besides that possible future underground mining. As *Hardesty* explained as quoted herein, speculative hopes for some better future opportunity where mining could be practical do not prevent abandonment. As a result, it is legally impossible for Rise to claim that it has any vested right to mine gold in any of the 2585-acre underground mine as a continuous "use" or even as part of any business on those parcels (and, objectors contend, anywhere else).

Besides proving those facts below and (below that) the applicable law, such as vested rights requiring continuous qualified "uses" (and location of "components," like the imagined Rise water treatment plant) on a parcel-by-parcel, use-by-use, and component-by-component basis for each predecessor owner, such predecessor conduct and matters also create **evidentiary "presumptions" (see Hansen's quote above) and also at least "reasonable inferences"** as evidence against any Rise vested rights. E.g., *Gerhardt v. Stephens* (1968), 52 Cal.2d 864, 890 (a property owner's conduct can enable the court to reasonably "infer" the intention to abandon); *Pickens v. Johnson* (1951), 107 Cal.App.2d 778, 788 (explaining that intent to abandon can be proven as inferences even from the owner's acts or conduct alone; a feature of the case that Rise overlooks when the Rise Petition (at 54) mischaracterizes that decision as proposing a clear and convincing evidence standard that does not apply to vested rights.) See **Attachment A and Table of Cases And Commentary On Applicable Legal Principles… below.** Those **"inferences"** disproving Rise vested rights claims are further demonstrated below, where this objection dissects each relevant Rise Petition Exhibit of any possible material consequence to prove either: (i) how such objectionable Exhibit is not admissible evidence or supportive of Rise's disputed claim for its use, (ii) how Rise's interpretation is incorrect or contrary to or inconsistent with some other purported Rise evidence or claim, or (iii) how such Exhibit actually supports this objection in some respect not addressed by Rise. For those purposes, among others, the legal context matters for what such "evidence" is trying to prove.

This objection demonstrates how Rise too often cites evidence to prove an incorrect legal theory, such as its incorrect and unprecedented "unitary theory of vested rights," where Rise incorrectly claims that any kind of mining-related surface or underground "use" on any parcel somehow creates vested rights for all uses and components of all parcels in the "Vested Mine Property." **However, to the contrary, the Table of Cases And Commentary On Applicable Legal Principles… below proves that for vested rights to exist, Rise must prove several elements of proof that Rise ignores (e.g., issues of enlargement, expansion, intensity, continuity, etc.). The analysis must be continuous for each parcel, each use. Each component, since each parcel and component must have its own vested rights, and each predecessor must have continuous vested rights to pass along to its successor. Also, each different kind of mining is a separate "use" for vested rights, such that as *Hardesty* proved (in quotes herein), surface mining and underground mining are different uses. *Hansen* proved (at 557 and by citing *Paramount Rock Co. v . County of San Diego*) that the scope of vested rights on a parcel is limited to the mining use for "the particular material" targeted, stating: "The right to expand mining or quarrying operations on the property is limited by the extent that the particular material is being excavated when the zoning law became effective." See, e.g., *Calvert v. County of Yuba* (2006), 145 Cal.App.4th 613, 625, distinguishing aggregate mining from gold mining as separate, so attempting to link them together did not prove the continuous use required for vested rights; *Hardesty v. State Mining And Geology Board* (2017), 11 Cal.App.5th 810, (the court separated surface mining from underground mining as different "uses" for vested rights ("Hardesty").**

Timing is also a factor where action is required and fails to occur, especially by a deadline. While the distinguishable facts of *Hansen* (according to its majority) did not address the impact of discontinuations of particular mining, the Rise Petition does not explain how Rise

and its predecessors managed to escape the statutory deadline for discontinuances or nonuse (or abandonment) of each parcel in the so-called "Vested Mine Property" on a parcel-by-parcel, use-by-use, and component-by-component basis. As demonstrated herein and in other objections, especially applying the required parcel-by-parcel, use-by-use, and component-by-component analysis, Idaho-Maryland Mines Corporation (aka later Idaho-Maryland Industries, Inc.) violated the deadline addressed in *Hansen* (at 569-571, see above quote) as "Development Code section 29.2(B)." Its successors likewise violated the similar evolving deadlines of each applicable version of that continuing law, also conditioning vested rights as to discontinued nonconforming uses. E.g., **Nevada County Land Use And Development Code** (the **"Development Code," "NCLUDC," or "LUDC**," depending on the citer) # L-II 5.19(B)(4) (one year or more "discontinuance" is fatal to vested rights), which even the Rise Petition and its Exhibits admit as demonstrated below and which admitted property conditions likewise show must be the case, such as all the admissions that no one has been able to operate or even access the flooded IMM since at least 1956. Accord *Stokes v. Board of Permit Appeals* (1997), 57 Cal. App. 4th 1348, 1354-56 and n. 4 ("**Stokes**"), which distinguished *Hansen* (including as we have done here and in Attachment A) because all relevant uses of that property stopped for seven years (here as to the entire underground 2585-acre underground mine, since at least 1956). Because, as **Hansen** ruled, the County lacks the right to waive or consent to violations of its own zoning laws, the County must reject this disputed Rise Petition. See more proof below, even using Rise's own Exhibits and admissions.

An even more serious Rise and predecessor governmental disclosure problem also exists because Rise and its predecessors have **not corrected the extended classification by the California Department of Toxic Substances of the "Vested Mine Property" (what is there called the "Idaho Maryland Mine Property") as an "abandoned mine" and Centennial as long dormant.** A future objection and declaration will deal with these issues more comprehensively, as part of briefing why Rise's project follows a problematic pattern that has resulted in over 40,000 abandoned mines ending up on the EPA and CalEPA lists, especially as to the chronic failures of miners deficient and worse "reclamation plans" and the almost invariable insufficiency of "financial assurances" to remediate the problems created by miners who too often have "taking the profits and run" or filed bankruptcy [or cross-border insolvency proceedings with US Chapter 15 cases] when the operation is no longer profitable," leaving a mess for the community. The pattern commonly (as here) includes a foreign-based mining parent company (often Canadian) using a US subsidiary (often incorporated in Nevada) with no material assets besides the mine and what financial funding is doled out by the parent depending on current needs and progress toward profits. Our community might try to tolerate a discontinued, dormant, and abandoned IMM, relying on the applicable government regulators to deal with the problems associated with such mines. But when a mining speculator announces its plans to open or reopen such a mine and publicly advances toward its disputed goal with media and permit events (or worse, vested rights claims) over the inevitable and persistent opposition of impacted locals, many problems arise that objectors wish to stop as soon as possible, such as depressed property values, as discussed herein and elsewhere.

Stokes also stated that long lapses are evidence of an intent to abandon, and this objection proves that and much more. Even more striking is what would be noncompliance with applicable state and local mine reporting laws by Rise and every predecessor since 1991, who

have **failed to file annual reports about any part of the IMM as either "active" or "idle" as required both by Pub. Res. Code # 2207(a)(6) and by County Development Code 3.22(M).** The legal inference and presumption from that inaction is that every predecessor failed to file such annual reports because they considered the entire "Vested Mine Property" and IMM to be abandoned, i.e., inactive or idle. *Stokes* is also notable as more illustration of prior inconsistent or contrary positions defeating later vested rights claims; in that case, previous owners showed an intent to abandon a nonconforming bathhouse use when they filed and applied for the alternate use as a senior center). There is a similar analysis below of how incompatible with the underground mining of the 2585-acre underground mine it was that the BET Group sold the surface above it (generally down 200 feet) for residential and non-mining commercial uses, including by our analyses of, and rebuttals from, the relevant Rise Petition Exhibits (e.g., 261, 263 and others). The same applies to Sierra Pacific Industries' rezoning efforts for non-mining uses (Rise Exhibits 281 and 282.)

In any case, these objections demonstrate how even the Rise Petition appears to admit that Rise and such predecessors failed to conduct themselves as required, and, among other things already argued in this and other objections (e.g., citing changes in the Rise "story" from the EIR/DEIR or other Rise applications or filings inconsistent or contrary to the Rise Petition), that **objectionable conduct enhances the other claims asserted by objectors to counter vested rights, especially by those objectors owning the surface above and around the 2585-acre underground IMM, asserting that Rise is estopped or otherwise prevented by law (e.g., by waiver or laches or unclean hands) from claiming vested rights.**

III. General Historical Orientation for the IMM And Some Other Rebuttals For What Rise Incorrectly Claims Is the Meaning or Effect of Disputed Rise Petition Exhibits.

A. Rise Maps And Related Exhibits With Location and Similar Data, Including Certain Proof of Some Facts Enabling Objectors To Defeat Rise Vested Rights Claims.

1. The Useful Maps Are Missing From the Rise Petition As They Were In The DEIR/EIR, Even Though More Exist, Creating A Presumption that Rise Is Avoiding Something By Such Omissions.

As discussed in this and another, more specific objection to come, the Rise Petition fails to make any serious effort to prove vested rights for each "use" and "component" as continuous on each parcel on the required parcel-by-parcel, use-by-use, and component-by-component basis. Instead, Rise asserts its deficient and insufficient "evidence" to attempt to prove its unprecedented unitary theory of vested rights that seems to claim that anything it does anywhere on the "Vested Mine Property" is sufficient for any "use" or "component" anywhere there, even when Rise's cited *Hansen* decision rejects such an idea (see Attachment A) as do the other authorities cited in the Table of Cases And Commentaries at the end of this objection. While that future objection on this subject will demonstrate more errors in that Rise claim and debate the relevant "parcels" in dispute, objectors frame those issues below. For the present, however, objectors focus on what **Rise's recent SEC 10K for the fiscal year(at 30) filing again admits** (as did the previous 10K filings) that the Rise Petition and other communications

obscured to “hide the ball” to avoid undercutting their “unitary theory” excuse (emphasis added):

> “Mineral Rights. The I-M Mine Property consists of **mineral rights on 10 parcels, including 55 sub parcels, totaling 2,560 acres … of full or partial interest**, as detailed in Table 2 and displayed in Figure 4. The mineral rights encompass the past producing I-M Mine Property, which includes the Idaho and Brunswick underground gold mines.
> ***
> The Quitclaim Deed [Rise identifies Document # 20170001985 from Idaho Maryland Industries Inc., to William Ghidotti and Marian Ghidotti in County Records vol. 337, pp.175-196 recorded on 6/12/1963] describes the mineral rights as follows:
>
> The I-M mine Property consists of all rights to minerals within, on, and under the land shown upon the **Subdivision Map of BET ACRES No. 85-7,** filed in the Office of the County Records, Nevada County, California, on February 24, 1987, in Book 7 of Subdivisions, at Page 75 et seq. [See **Rise Petition Exhibit 263** dated Feb. 23, 1987]
>
> The I-M Mine Property consists of all rights to minerals within, on, and under the land located in portions of Sections 23, 24, 25, 26, 35, and 36 in Township 16 North- Range 8 East MDM, Section 19, 29, 30, and 31 in Township 16 North- Range 9 East MDM, and Section 6 in Township 15 North- Range 9 East MDM and all other mineral rights associated with the Idaho-Maryland Mine.
> ***
> Mineral rights pertain to all minerals, gas, oil, and mineral deposits of every kind and nature beneath the surface of all such real property … subject to the express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land… [and] Mineral rights are severed from surface rights at a depth of 200 ft. (61 m) below surface ….

Notice that Rise admitted that there are at least 10 parcels and (what Rise calls 55 sub parcels), and objectors will address in a later objection how many more parcels may exist. Rise must prove continuous vested rights uses and components at least for each such parcel and sub-parcel, and Rise has not even attempted to satisfy its burden of proof by doing so. Moreover, because of the vested rights rules prohibiting expanding or transferring “uses” or “components” from one parcel (or what Rise calls a “sub parcel”) with a vested use or component to another parcel (or what Rise calls a sub parcel) without such a continuous vested use or component, even if Rise had vested rights to the Flooded Mine (which objectors’ dispute) that would not result in any vested rights for the Never Mined Parcel. Also, having so admitted such parcels (and sub parcels), Rise should be estopped from asserting its disputed and

unprecedented unitary theory of vested rights as if the Vested Mine Property were just one big parcel (which objectors dispute.) See objectors' Initial Evidentiary Objection, addressing various Evidence Code requirements for Rise (e.g., EC #623, 413, 356, etc.) and rebuttal opportunities for objectors.

As to what successive objections will demonstrate to such "hide the ball" tactics and the even less informative Rise Petition have obscured, here are some previews. **First**, notice that: (i) there is no chain of titles or useful maps for the required parcel-by-parcel, use-by-use, and component-by-component analysis, which means that when Rise's unitary theory is defeated as a matter of law, Rise cannot satisfy its burden of proof, since nothing material has happened underground since at least 1956 and none of the surface owners above the 2585-acre or (2560 acre) underground mine has been proven to do anything related to mining or creating or preserving vested rights; (2) contrary to the implication above from reliance on the 1963 quitclaim deed from the initial alleged vested rights miner to the Ghidotti's, Rise did not acquire the Vested Mine Property from the Ghidotti's but from their successors who conducted themselves in ways that prevented any such required continuity for Rise vested rights purposes; (3) contrary to such implications from such deed and 10K commentary, even Rise Petition Exhibits show sales of property by the Ghidotti's or their estates and by the BET Group inheriting what was left from widow Marian Ghidotti on her death; and (4) each buyer from those parties in turn could have further subdivided and resold such surface properties with adverse consequences to the Rise claims, but Rise never did any parcel-by-parcel analysis as required by the court decisions discussed below; e.g., that means there mad y be far more surface parcels above the "Vested Mine Property" than the 10 parcels and 55 sub parcels described by such Rise SEC 10K filing, each of which would impact any mining activities or rights below. **Second,** while Rise focuses attention on the Ghidotti-BET Group transfers, Rise Petition **Exhibits 281 and 282** cites without vested rights' justification the **Sierra Pacific Industries' rezoning** of parcels from M1 to less miner-compatible M1-SP for a business park and non-mining commercial uses. Indeed, the documentation discussed below for Idaho-Maryland Industries, Inc., and each successor frequently demonstrate conduct by surface sales inconsistent with any underground mining intent. **Third,** again, Rise never explains how there could be continuous Rise vested rights to such 2585-acre (or 2560) underground mine from 10/10/1954 until now when it has been discontinued, closed, flooded, dormant, and abandoned, especially as to the Never Mined Parcels, when such surface parcels above it have been so long in the ownership of residential and non-mining commercial users.

Rise Petition Exhibits contain many references to undisclosed maps and related descriptions. Still, the few offered are deficient in essential ways, such as failing to reveal the surface legal parcels above and around the 2585-acre underground mine and how those parcels relate to the "Flooded Mine" and "Never Mined Parcels." See, e.g., EXHIBITS 227 (the Lee Johnson Declaration describing a basement full of mine maps and documents) AND 276 (a Sacramento Bee story dated 4/4/1991 entitled "Canadian firm hoping to reopen old gold mine under Grass Valley"—referring to Consolidated Del Norte Ventures with a 10-year lease and purchase option from the BET Group about which Rise offers no follow-up, but describes with the often mentioned geologist, Ross Gunther, that they were "studying" "3000 maps" of what is

quoted as: “The Idaho Maryland is actually a complex of mines beneath 26 surface acres near the intersection of East Bennett and Brunswick roads in Grass Valley” plus about “2700 aces of mineral rights” involving about 150 miles of drifts and cross-cuts to a depth of 3280 feet” [off of what the DEIR/EIR called 72 miles of main tunnels].

MORE IMPORTANTLY, THAT LESSEE WANNABE PURCHASER POTENTIAL MINER SAID IN EXHIBIT 276: “IF IT IS REOPENED, MOST MINING IS EXPECTED TO TAKE PLACE AROUND THE NEW BRUNSWICK SHAFT.” THAT DIRECTLY CONFLICTS WITH THE EIR/DEIR PLANS OF RISE NOT TO MINE THERE BUT INSTEAD ONLY IN OTHER PARTS OF THE 2585-ACRE UNDERGROUND MINE NEVER PREVIOUSLY MINED OR ACCESSED AND WHICH WOULD REQUIRE 76 MILES OF NEW TUNNELS FOR ACCESS. THAT MEANS THERE IS A GAP FOR DEFEATING VESTED RIGHTS BECAUSE CONSOLIDATED DEL NORTE VENTURES ADMITTED THAT IT DID NOT INTEND TO MINE IN THE SAME PARCELS AS RISE PLANS TO DO. E.G., *HANSEN, CALVERT, AND HARDESTY.* Also see Exhibit 248, the Nevada County Superior Court 8/12/1983 “Order Settling Second And Final Account And Report of Executor; Petition For Settlement; Petition For Fees And extraordinary Fees And For Final Distribution” for Marian Ghidotti’s estate in which the court #9(1) distributes by deeds in undivided 1/3 interests to Mary Bouma, Erica Erickson, and Williams Toms (collectively often called the BET Group) ONLY the mining real property described in Exhibit A thereto, but then in # 9(2) distributes “the residue of the estate” to the “Trustees of the William And Mary Ghidotti Foundation [i.e., those three people, plus Stanley Halls, Frank D. Francis, and Bank of America, NT&SA] or their successors in trust under that certain Trust Agreement dated April 1, 1965,” WHICH MEANS THAT ALL THOSE MAPS, DOCUMENTS, SAMPLES, MONEY, AND OTHER PERSONAL PROPERTY HAVE BEEN OWNED BY THAT FOUNDATION NEVER OTHERWISE MENTIONED BY THE DISPUTED RISE PETITION OR ITS EXHIBITS [INCLUDING THE DISPUTED LEE JOHNSON DECLARATION—NOT BY THE BET GROUP.] THAT FINAL ORDER IS NOW “LAW OF THE CASE” AND CANNOT BE CHANGED BY OR FOR RISE. THAT MEANS THAT THERE COULD BE NO INTENT BY MARIAN TO HAVE HER BET GROUP DO ANY MINING OR OTHER ACTIONS ESSENTIAL FOR ANY VESTED RIGHTS SINCE THAT WOULD REQUIRE SUCH MAPS, DOCUMENTS, SAMPLES, MONEY, AND OTHER PERSONAL PROPERTY OWNED BY THE FOUNDATION, WHO THERE IS NO EVIDENCE EVER INTENDED TO DO ANY MINING OR ANYTHING ELSE REQUIRED FOR VESTED RIGHTS AT ANY OF THE SO-CALLED “VESTED MINE PROPERTY.”

2. Exhibit 263: Final Map #85-7 (January 1987) for BET Acres: Maps For Subdivision Lots 1-8, Failing To Reveal Those Boundaries Compared to the 2585-Acre Underground Mine.

Among the many issues is that the miner’s “objective intent” cannot be to conduct such incompatible Rise underground mining “uses” underneath that transferred surface property at the same time as the successor surface buyers expect to make surface uses incompatible with such mining. A reservation of mining rights by itself is not the same as an objective, present mining intent by the underground miner owner for vested rights purposes, as distinct, for example, for reserving an option to be able to flip or sell mining rights to some more aggressive miner or speculator, if and when they ever have any such “option value.” This is demonstrated many times below, where, for example, either (i) the miner has ceased mining (e.g., Idaho Maryland Mining Corp) or (ii) the speculator/explorer (e.g., Emgold) is just hoping to sell the

property to someone else who may or may not mine any or all of that property or may instead use it for other, non-mining uses like North Star gravel/aggregate crushing and sales (without mining but just using the mine waste dump rock and tailings).

Again, this is a parcel-by-parcel, use-by-use, component-by-component analysis for vested rights, and even if somehow Rise could prove a buyer could want to mine one of several parcels and would buy the others to avoid competing uses (e.g., conflicts over groundwater dewatering, etc.), such a party cannot buy all those parcels and claim the vested right to mine them all. See *Hansen, Calvert, and Hardesty.* In any event, a buyer may (like the Ghidotti's or BET Group below) buy such underground mining rights not because they intend to mine themselves but instead to have that option-to-mine-value to sell to someone else who may want to mine or flip it on to someone else who might want to mine or to speculate further, or to make some alternative use, such as the BET Group did when they sold off surface parcels incompatible with underground or adjacent mining. That cheap purchase of underground mining rights beneath suburban homes and businesses for sale to future speculators or miners does not create or preserve any vested rights that could be passed to the successor owner. Indeed, in each case discussed below, the successor buyers were not claiming vested rights but rather (like Rise itself initially) were applying for use permits, etc. without any apparent intention to try to preserve such vested rights that Rise now is attempting to claim by rewriting history as rebutted herein and elsewhere.

3. **Rise Petition Exhibit 1 ("Idaho-Maryland Mine Site"); Exhibit 2 ("Overview of Vested Area"), vaguely show both surface and underground boundaries as of both now in 2023 and on the vesting date in 1954, but not revealing the parcel-by-parcel information needed by objecting surface owners.**

Among the issues with this and all the other Rise maps, including Rise's EIR/DEIR maps, is that they are useless to prove anything material because they do not reveal anything on a parcel-by-parcel/use-by-use/component-by-component basis, especially by showing the APN parcels, above and around the IMM and with clear surface landmarks, like each street by name that enable surface owners to find their properties above and around the IMM. (None of the objectors can find their properties above or around the underground mine, and Rise has ignored their related objections, such as to the EIR/DEIR, despite that clear violation of CEQA and a fatal flaw in the Rise Petition's required burden of proof.)

4. **Exhibit 205 presents two 7/17/23 documents called "The ER 1940 Chain of Tile," which "tracks a line of successive owners [from June 1, 2023,] back to [January 1,] 1940 of a particular parcel of property", one for the Brunswick Site APN's 006-441-003-000) and one for the "Log Stacking Area" (APN 006-441-005-000).**

Why not do that comprehensively for all parcels in such alleged Vested Mine Property, especially those above and around the 2585-acre underground mine. Those reports attach a Grant Deed from Sierra Pacific Industries dated May 7, 2018, which also included parcels 3, 4, and 34 and BET Acres Subdivision Map Lot 8 (which excluded minerals below 200 feet) [as did the cited Brunswick APN 06-441-05 exclude some land and minerals below 200 feet]. What this

proves about vested rights does not seem material. As to the that Brunswick log deck parcel 006-441-005-000, it attached that same deed. However, again, what about the mineral rights 2585-acre individual parcels beneath objecting surface owners? Rise can hardly complain about surface owner parcels impacting Rise's ambitions, because Rise's predecessors are shown by Rise's own exhibits to have allowed the competing and complaining surface parcels to dominate and obstruct Rise on a parcel-by-parcel, use-by-use, and component-by-component basis. Also, note that the prior IMM owners reserving mining rights were as to certain minerals, not as to groundwater, existing or future well water, or anything else underground and that the "surface" is typically down 200 feet, as admitted in Rise's SEC 10K filings. (Objectors will not repeat this problem every time it appears in the maps, because no Rise map, even the EIR/DEIR maps, adequately describes the surface parcels in relation to the underground 2585 acres. While Rise has used various acreage numbers in its various documents, we use that EIR/DEIR 2585 acreage number because it is the largest of Rise's alternatives, and in due course we will discover why Rise uses different numbers now.)

5. **Exhibits 173, 174, 210, and 220 (unreadable IMM mining maps) and 274 ("Air Photo of Brunswick site-April 1997"), none of which actually prove anything material, and the dense tree cover prevents identification of surface landmarks that enable us surface owners to find our properties in relation to the IMM.**

6. **Exhibits 4, 5, 6, 7, 8, and 10 also show old maps that are hard to understand and prove nothing material to the vested rights dispute. See discussion elsewhere of Rise using "filler" in the Rise Petition.**

7. **Exhibit 279 is an article by Ross Guenther dated 7/31/1994 entitled "Historical Notes on the Idaho-Maryland Mine Grass Valley District Nevada County, California." But see Jack Clark, *Gold in Quartz: The Legendary Idaho Maryland Mine (2005).***

That article contains short descriptions of various mines he associated with the IMM, although he does not plot them on his attached map called "Mine Location-Surface And Mineral Rights." This appears to be done for Emgold [formerly known as Emperor Gold Corp.], which allowed its exploration lease and purchase option to expire as partly described in other Rise Petition Exhibits addressed below in a somewhat disputed manner. Because Emgold and Ross had no concept of Rise's disputed vested rights theory, little of what Ross alleges is material to that dispute. In fact, none of Rise's predecessors asserted any vested rights after Rise's 1954 claimed "vesting date" or appear to have considered the need to conform any conduct to the legal or factual limitations of such vested rights claims.

B. Some Early History from Rise Petition Exhibits Prior To William Ghidotti's Involvement, Although More Examples Of Objections Using Rise Exhibits Are Addressed Elsewhere Below For Particular Applications.

1. **Exhibits 216, 217, 218, and 219 Include Idaho Maryland Mines Corporation Board of Director Minutes of the March 13, 1959, Special Meeting, revealing in Exhibit 216 difficulties even paying property taxes and a debt owing to insider investor-director "Wm. L. Oliver."**

To solve both problems the Board decided (at 83) to proceed with a plan they had been considering "to sell or otherwise dispose of its [the Company's] properties in Nevada County … to sav[e]… more than $2000 per month in the way of property taxes, maintenance and other miscellaneous expenses" and to have "Mr. Richmond and the Oliver Investment Company taking over said properties in settlement of the $200,000 owed then." They then resolved unanimously (excluding the two conflicted directors) "to effect the transfer to Frederick W. Richmond and Oliver Investment Company of the surface (to a depth of 250 feet) of the properties of the Corporation in Nevada County, the Corporation reserving appropriate mill site areas, such transfer to be in settlement of the $200,000 principal account of the debt of the Corporation to Richmond and Oliver Investment Company." However, in Exhibit 217 for the June 2, 1959, Board Meeting the Board modified that earlier resolution and agreement with Oliver Investment Company and Frederick W. Richmond as follows (at 98-99): (1) the Corporation would sell "certain parcels of land in Nevada County" for $89,000 to pay Oliver Investment Company and Frederick W. Richmond for reconveying that land to the buyer; (2) the Corporation would convey the balance of the surface to a depth of 200 feet exclusive of 65 acres to be retained by the Corporation in satisfaction of that $200,000 debt to Oliver Investment Company and Frederick W. Richmond; (3) Oliver Investment Company would "endeavor to sell this property and would repay to Idaho Maryland the excess profit, if any, over $200,000, after the recovery of various costs incident to the maintenance and sale of the property; and (4) Oliver Investment Company would receive all "gravel contract" "proceeds." (Exhibit 218 is that Grant Deed dated August 3, 1959, from the Corporation to Oliver Investment Company, plus then a Grant Deed that same day from Oliver Investment Company to SUM-GOLD Corporation [not a miner, but "Sum" was short for one owner named Summers and "Gold" was for the other owner Goldberg. See Exhibit 219.) Then (in Exhibit 217) at the December 10, 1959, Board Meeting the Board decided (at 123) that in order to save on property taxes, they would abandon "certain mineral rights in Nevada County which are not contiguous to the bulk of its mineral rights in that area and that former President, Bert. C. Austin, has expressed the opinion such mineral rights have no potential value to the Corporation." (emphasis added) They executed quitclaim deeds to such properties and "filed [such deeds] with the Secretary of the Corporation." Then at the January 29, 1960, Board Meeting addressed "particular mineral rights [that] have been abandoned by non-payment of taxes" and that are not contiguous to the Corporation's other mining properties and are not accessible through the main mine shafts." The Board then authorized the sale of such abandoned mining rights on 2500 acres for $1500. This is all contrary to Rise's incorrect attempts to interpret the reservation of mineral rights as somehow proving an intent to mine. In fact, speculators often buy underground mining rights for their speculative option value with no intent to mine, as is true of Rise predecessors addressed herein. Also, what is more important here is the fact that sales of the surface parcels for incompatible residential and non-mining commercial business uses, like those subdivisions and sales by the BET Group, are more powerful proof of an intent not to mine.

While it is not clear why the Rise Petition attached **these exhibits, they do not prove any vested rights, but rather, to the contrary, are often evidence of the gap in any intention to mine such properties and to abandon or liquidate them cheaply to save taxes and expenses.** For example, the net result of that sale to Sum-Gold Corporation was reported in **Exhibit 219** as follows in a **Sacramento Bee story on August 8, 1959, Entitled, "Idaho-Maryland Tract Is Sold For Subdivision" stating the sale to Sum-Gold Corporation of: Eleven hundred acres of Idaho-Maryland Mines Corporation property here has been sold for residential-commercial, industrial, and recreational use."** (emphasis added) As discussed at various places herein, **there should be no vested mining rights underground beneath such residential and other business parcel uses, and such sales are inconsistent with such future mining intent at that time, since that would discourage sales to homeowners and businesses. Also, this is important evidence that Oliver Investment Company and Mr. Richmond did not having mining intentions in their acquisition for this flip for such subdivision and other non-mining businesses as discussed below. Also, the Idaho-Maryland Mines Corporation also would not have such future mining intentions for themselves at that time when the transferred this property to Oliver Investment Company and Mr. Richmond, presumably knowing that they intended to flip the property for uses incompatible with mining. Moreover, as described in the next paragraph below, Idaho-Maryland Mines Corporation was shifting from the mining business to change its name (to Idaho Maryland Industries, Inc), move to LA, and start aero-space businesses before filing bankruptcy. See Exhibits 221 and 223.**

2. **Idaho Maryland Mines Corporation reveals bankruptcy and other reasons for not having any continuous vested rights in Exhibits 221, 223, and 276. Exhibit 223 is an Arizona Daily Star article dated 2/08/1962 entitled "Idaho Maryland Case- Union Tank Car Will Take Over Operations," explaining that such former mining company was in old Chapter XI under the old Bankruptcy Act (later replaced by the current Bankruptcy Code) in the Los Angeles Central District/Bankruptcy Court.**

That story discussed the company's failed effort to become an LA aerospace contractor working on "missile contracts," such as a subcontractor for the Titan missile program. We are informed and believe that retrieving those bankruptcy documents, if possible, will reveal "objective intent" to move to LA and shift to that new business and not to continue any plans to reopen the IMM. Note Exhibit 221, where the Valley Times Today story dated 9/13/ 1960 and entitled, "Idaho Maryland Ind. Pictures Space Age," explained that Idaho-Maryland Industries Inc. changed its name (to Idaho-Maryland Industries, Inc.) and its trademark to reflect its business change to aero-space, explaining:

> "Historically a gold mining company, formerly Idaho-Maryland Mines Corporation, ceased operation of its mines in 1957 and initiated an ambitious expansion and development program. In the past three years it has grown into an industrial complex, with many diversified, but carefully related activities. These activities have brought the corporation into such as aircraft, missiles, space travel, and commercial food processing and transportation." (emphasis added)

This transition from mining did not happen overnight, but objectively evidenced a long-standing plan to abandon the mining business in favor of these new, non-mining businesses. Thus, what even such Rise Petition Exhibits, when properly explained, demonstrate is that the IMM was abandoned when the miner liquidated its mining personal property and salvageable fixtures, closed the mine in 1956, allowed it to flood, and did nothing reflecting any plan to continue mining themselves, since by their own admission in various Exhibits addressed herein as long as the price of gold was fixed at $35 or stayed low, mining was not economic. The fact that IMM changed is businesses and moved to LA evidenced that a possible future sale to some speculator in some distant era when gold prices soared is not a sufficient basis for a vested rights claim. See Exhibit 276, discussed above regarding a 1991 BET Group lease with the option to buy for Consolidated Del Norte Ventures, and explaining that the price of gold had then (after the elimination of the $35 cap) increased to $367 per ounce, but the "benchmark [gold] price for deciding whether a gold mine is viable" then $400 per ounce for gold mining to be profitable, considering the high mining costs. The point of such history and example is that costs often exceeded gold prices in those earlier days (but both before and, as here, after the $35 cap ended) before modern economic problems changed the cost vs value equation (e.g., when gold became so popular as a hedge against the increasing inflation menace that was of much less concern in such prior eras) and improved mining technology reducing comparative costs of production versus such gold pricing as an inflation hedge for investors.

3. Exhibits 224, 225, and 226 discuss the cheap Ghidotti auction purchase and related acquisition matters addressed herein.

These documents explain how William (Bill) Ghidotti acquired that part of the disputed Vested Mine Property (IMM minus the Rise now added Centennial and some other transferred properties); i.e., Exhibit 226 was a Sacramento Bee story dated 4/26/1963 entitled, "Mines With $200 Million Output Sell For $52,500, for the auction purchase of "78 surface acres and 2600 subsurface mineral rights acres." See the Exhibit 224 advertisement and remember the above Exhibits 223 and 221 stories about Idaho Maryland Industries' move to LA to become an aerospace player and its ultimate bankruptcy leading to this auction. The Quit Claim Deeds for William are in Exhibit 225. However, If Bill Ghidotti's predecessors had no vested rights, as proven by objectors, then neither Mr. Ghidotti, his wife, nor the BET Group could have vested rights, although their own acts and omissions should also prevent each of them from maintaining any vested rights to pass along to Rise. Instead of proving vested rights, those Exhibits demonstrate that Idaho Maryland Industries Inc dumped that IMM property for a small auction bid (the equivalent of an economic abandonment) without any apparent effort to improve its value as a mine.

In any event, Rise fails to prove (and Rise has the burden of proof) that when Bill Ghidotti bought such IMM assets cheap at that 1963 auction, that Idaho-Maryland Industries Inc (formerly known as Idaho-Maryland Mines Corporation) had any vested rights left to pass along by that time. Consider, for illustration, the following Rise Petition Exhibits during that period leading up to that 1963 auction, as that miner was liquidating mine-related assets and winding down its old business and winding up its new ones that ended in that LA bankruptcy as a failed aerospace contractor.

4. **Exhibit 199, 200-204 includes a Sacramento Bee story dated 10/22/1956, entitled "Grass Valley Mine Plant Is Purchased," stating:**

> The surface plant of the old Idaho shaft, a part of the Idaho-Maryland Mines, has been bought by the Ore Lumber Company, which recently purchased the plant sawmill …[as what the company president and general manager described as] part of a retrenchment program in the face of rising costs of labor and materials and a static price of gold. The official said the Idaho shaft, another entry to the operation, will be allowed to flood up to the 1450-foot level. The mine will continue to produce tungsten ore…

Exhibit 200-204 evidence more real estate sales that are added to the other asset liquidations discussed throughout this document. Also, note that some later historical documents also reflect back to even earlier times when such non-mining uses began in the years after the 1956 closing and flooding of the mine. For example, Rise Petition **Exhibit 249** is another incorrect effort by Rise to try (incorrectly) to claim vested rights for mining from incompatible non-mining uses such as this sawmill. Such work on a sawmill cannot create continued vested rights for mining, especially in the 2585-acre underground mine.

IV. None of the Successor Owners' Arrangements By Or For William and/or Marian Ghidotti Or the BET Group Began With Any Vested Rights, And Their Ownership Did Not End With Any Vested Rights That Could Pass Forward to Rise, Despite The Disputed Lee Johnson Declaration, Which Begins This Rebuttal's Deconstruction of Various Disputed Rise Petition Claims.

A. Before Reading Specific Objections To The Largely Inadmissible Lee Johnson Declaration (Like Other Rise Exhibit "Stories" About Events During The Ghidotti Ownership), Consider Some General Evidentiary Objections Illustrating A Failure To Prove Any Vested Rights, Such As For Lack of Any Continuous, Objective Intent To Mine Each Parcel And For No Actual Mining, Again Failing To Prove Anything Parcel-By-Parcel, Use-By-Use, And Component-By-Component In Compliance with the Evidence Code ("EC").

1. Introductory Comments And Some Evidentiary Context.

The evidentiary portion of objectors' rebuttal, both during the analysis of individual Rise Petition Exhibits herein and in the general summary at the end, is important, because not only is Rise's so-proof insufficient to satisfy its burden of proof with all its Exhibits, but also because many of Rise's Exhibits are not even admissible, competent, or credible evidence. See also the discussion at the end of this document of various general evidentiary rules and requirements Rise violates. For various reasons, including as an illustration of what is still to come in this process if the County accommodates objectors' due process rights as required in Calvert and other authorities, or otherwise certainly in the court process to follow, this portion

of the objection focuses on the many failures of Lee Johnson's Declaration under the law of evidence (and even by the "common sense" and "good faith reasoned analysis) required for minimum credibility, as discussed in *Gray, Banner, Vineyard*, etc.) Therefore, objectors may also focus on the Rise Petition itself, rather than just the Exhibits it cites, for some objectionable and disputed claims on which Rise incorrectly purports to rely for evidence. Thus, instead of merely reserving objectors' evidentiary disputes for our coming and more comprehensive Rise Petition objections, objectors also directly dispute the Lee Johnson Declaration as to its vulnerability to a host of evidentiary objections.

2. Evidence And The Deficient Administrative Process.

There are many discontinuities and objectionable denials of objections and objectors' rights in this administrative dispute process, as were also reported in the disputed EIR/DEIR process. When the courts consider whether there is "substantial evidence" to support such vested rights claims, even in such an administrative process, the courts mean substantial admissible, competent, and credible evidence, not just whatever the administrative process tolerated from Rise or its enablers, especially if us objectors living above and around the 2585-acre underground mine are denied our full due process rights to participate as equal parties with our own competing constitutional, legal, and property rights at issue. See *Calvert, Hardesty, Hansen, Keystone, Varjabedian*, and a summary of various Evidence Code ("EC") rules at the end of this document. Moreover, if this administrative process does not accommodate cases like *Calvert, Hardesty, and even Hansen* by allowing at least such surface owner objectors' to directly enforce their Constitutional, legal, and property rights in disputing Rise alleged "evidence" and claims in this Rise Petition (see also objectors' complaints about the disputed EIR/DEIR process so far), especially those of us objectors owning the surface above or around the 2585-acre underground mine, that is at least another reason for holding Rise and its enablers more strictly to the rules of evidence, especially since such objectors are not only denied discovery, but also the even more important right of confrontation and cross-examination in Evidence Code #711, especially to rebut what new things Rise again adds at the administrative hearing after the deadline on our objections, incorrectly calling such additions mere "clarifications." **Under those circumstances and contrary to Rise Petition's incorrect claims, the burdens of proof and rules of evidence must be more strictly applied against Rise and its enablers, as the courts will do as this dispute proceeds. Conversely, objectors must have more leeway because of the inappropriate limitations imposed on them disproportionately compared to Rise and its enablers in the administrative process. For example, the usual claim by miners that the aggrieved objectors failed to exhaust their administrative remedies was held inapplicable in *Calvert* because (citing CA Supreme Court authority in *Horn v. County of Ventura*) the court held (at 622): "[o]ne need not exhaust inadequate remedies in order to challenge their sufficiency."**

3. Some Illustrative Rules of Evidence To Defeat The Declaration And Other Exhibits As Inadmissible Evidence And Worse.

While this document does not yet present our more comprehensive evidentiary objections, we identify some illustrative evidentiary rules that this Lee Johnson Declaration violates, providing a context for the other evidentiary objections illustrated throughout objectors' rebuttals to Rise Petition Exhibits before the concluding evidentiary summary. For example, as to such later summary, objectors explain Evidence Code **("EC") #350, stating: "No evidence is admissible except relevant evidence."** Much of the Rise Petition Exhibit evidence is not sufficiently "relevant" to the vested rights issues in dispute, or, at least, Rise has made no case for how such Exhibits relate to its disputed vested rights claims. **However, as this objection document and others demonstrate, objectors can use Rise's failed Exhibit evidence against Rise, such as pursuant to EC # 356, stating: "Where part of an act, declaration, conversation, or writing is given in evidence by one party" (e.g., Rise), the entirety of the same can be used by the other party as evidence, such as in rebuttal. (This will be demonstrated in both rebuttal declarations and objections to come from objectors before the hearing.**) As in objectors' EIR/DEIR disputes, the Rise Petition and its Exhibits routinely violated such evidentiary rules in many ways already documented in some such record objections. More such objections will follow in the court trial to come, such as on account of any exclusions of such "full context" or other such rebuttal evidence that must be allowed, even if not part of the administrative record, such as if we have to make "offers of proof" or other objections as objectors successfully did in *Calvert* (see above; Id at p. 622) when denied their due process rights fairly to rebut anything and everything asserted by the vested rights claimant. That is especially important because, for example, Rise or its enablers have been allowed in the prior EIR/DEIR process to add disputed things to the record after the objection cut-off and despite *Calvert* and other contrary authorities cited by objectors, disabling any fair opportunity for objectors to dispute such objectionable evidence with our rebuttal evidence or for cross-examination. Objectors expect that Rise will do that again in this vested rights, administrative dispute process, so we object in advance and offer to prove appropriate rebuttals.

Most of this Rise Exhibit # 227 Johnson Declaration, like many of the Exhibits that also cannot prove what the Rise Petition claims, lack the required evidentiary "foundation" to be admissible (EC #'s 402, 403, and 405), such as by lacking the necessary "preliminary facts" (#400). That is especially true where what Rise asserts is often just "proffered evidence" (EC #401) whose admissibility is "dependent upon the existence or nonexistence of [such] a preliminary fact." But without any objector ability timely to object to Rise's failure to follow-up with such required foundation, the likely result will be objectors' motion to strike such evidence in the court process, because that lack of foundational understanding enables the rejection of most of the Lee Johnson declaration and much of Rise's other Exhibits' purported evidence applying the rule in EC #403(a) that states [with bracketed objectors' comments and often with emphasis added to illustrate the application of such rules to this dispute]:

> **The proponent of the proffered evidence has the burden of producing evidence [EC #110] as to the existence of the preliminary fact [EC #400], and the proffered evidence [EC #401] is inadmissible unless the court finds that there is evidence sufficient to sustain a finding of the existence of the preliminary fact, when [as is the case in most of the Johnson Declaration, as in other Rise Exhibit purported "evidence"]: (1) The relevance of the**

proffered evidence depends on the existence of the preliminary fact; (2) The preliminary fact is the personal knowledge of a witness concerning the subject matter of his testimony [see, e.g., but here inadmissible hearsay from Lee Johnson's mother-in-law or third parties, often now long dead, which is not as Mr. Johnson claims from his direct personal knowledge as required, i.e., if that Declaration were compliant and factual, the facts would appear to be more accurately stated in a manner such as, for example, "My mother-in- law told me that Marian Ghidotti told her that she and her husband intended [X] or believed [Y], or did [Z]," which is inadmissible hearsay.] (3) The preliminary fact is the authenticity of a writing; or (4) The proffered evidence is of a statement or other conduct of a particular person and the preliminary fact is whether that person made the statement or so conducted himself [see clause 2 herein]. [Also see EC #405 to extend that foundational requirement to other issues and circumstances.]

4. **The Johnson Declaration And Other Rise Petition Exhibits Are Doomed by the Applicable Burdens of Proof And Producing Evidence.**

Evidence Code ("EC") #'s 500, 550 should be rigorously applied, especially since the Rise Petition seeks to evade them. See EC #660 (all #660 et seq. presumptions and other # 605 authorized presumptions that effectuate the "burden of producing evidence"). Besides the cases imposing the burden of proof on Rise as the party claiming vested rights (e.g*., Calvert, Hardesty*, and even *Hansen discussed below)*, the general rule in EC #500 imposes that burden on Rise as the party who has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defenses that he is asserting." Likewise, in #550(b) the "burden of producing evidence" as to a particular fact is initially on the party with the burden of proof as to that fact," and under #550(a), as to a particular fact, is "on the party against whom a finding on that fact would be required in the absence in the absence of further evidence." Rise has such burdens and fails to satisfy them with this Lee Johnson Declaration, and that results, in part, from the noncompliance by that Johnson Declaration with those rules of evidence and other applicable laws. See, e.g., the general evidentiary discussion at the end of this document and the cases discussed thereafter in the Table of Cases.

5. **Disputed "Opinions" of Many Rise Witnesses, Including Lee Johnson, Are Not Admissible Evidence of "Facts" And Should Be Disregarded, Especially Since the County Process Again Does Not Seem To Allow Objectors Sufficient Opportunity For Due Process For Voir Dire, Evidentiary Objections, Etc.**

EC #'s 800-805 allows for objections to such opinions masquerading as "facts," as well as the right BEFORE ADMISSION OF EVIDENCE to test the admissibility of purported evidence by seeking voir dire of the witness, such as to the foundational basis of his or her "personal knowledge" and/or qualifications and/or sources of information to which the witness is testifying, as may be applicable as to any such witness testimony. This is a second level of

screening (besides the requirements for a legally sufficient foundation) and another barrier to allowing the Lee Johnson Declaration and various other Rise Petition Exhibits to be considered "evidence," since such disputed "evidence" can be disqualified as inadmissible opinions or other things. Consider that everyone (certainly all of us local objectors) has competing "opinions" against Rise's vested rights claims and other things, but not everyone has admissible evidence of relevant and compliant "facts" to which they could competently testify. Such "lay" (as distinct from "expert") opinions are limited for evidentiary purposes, but if the decisionmakers in this process tolerate such Rise witness opinions then the process should allow equal rebuttals by objectors as witnesses (or with their other witnesses) for a fair balance by the same standards. See EC #800. As EC #893 states: "The court may, and upon objection shall, exclude testimony in the form of an opinion that is based in whole or significant part on matter that is not a proper basis for such an opinion."

For example, Lee Johnson's opinions about Marian Ghidotti's (or BET Group's) intentions and plans for mining or about the specific contents of the mining memorability in her basement (mostly collected by her dead husband, William), must be excluded if such opinions are based (as they seem to be) upon Mr. Johnson's opinions about, or interpretations of, his mother-in-law's opinions or purported experiences with Marian or other third parties, which do NOT count as Mr. Johnson having the required "personal knowledge" about Marian or such other third parties. **Even when Mr. Johnson recounts things about or from his mother-in-law, Erica Erickson, only one of three members of the BET Group (each eventually acquiring after Marian's death only undivided one-third interests in the IMM without any proven decision-making documentation to the contrary of the legal requirement for unanimity among such partial interest owners), that does not empower Mr. Johnson to testify from his personal knowledge about the other two members of the BET Group from his mother-in-law purportedly speaking on their behalf or about their conduct or intentions.** "Experts" may have greater latitude as to some opinions within the narrow scope of their qualifications, but Mr. Johnson, like all of Rise's consultants and witnesses will be expected to be challenged in some ways for how Rise incorrectly purports to use their opinions, for example, either because they lack the required qualifications, expertise, or experience (or even familiarity with this particular mine or area) or because their expertise is narrower than the broader scope of their opinions. See, e.g., EC #801. **Objectors will address below some additional, specific, paragraph-by-paragraph evidentiary objections that apply to the Johnson Declaration, as well as more general objections to other Rise Petition Exhibits and purported evidence. However, objectors note here that most such opinions can be excluded upon analysis, because they "assume facts not in evidence" (either because such facts were not proven or not admissible or were not even "facts"), which makes such purported "evidence" inadmissible and noncredible.**

6. The "Hearsay Rule" (EC #1200) Seems to Defeat Much of the Lee Johnson Declaration And Other Rise Claims, And the Exceptions To That Hearsay Rule Do Not Save Such Hearsay Evidence Under the Circumstances.

In his Declaration, Lee Johnson begins by swearing that he is testifying from his "personal knowledge," but upon examination, most of his statements appear to be "hidden hearsay." He does not assert, much less prove, any exceptions to the rules barring such

hearsay, and no such exceptions appear to be applicable. As demonstrated in that following analysis of his Declaration, Mr. Johnson qualified many statements as "my understanding," "I know," "I believe," "I am aware," etc., which seems to be an evasive way of avoiding saying what seems to be the case: i.e., that he is basing that NOT from his direct, personal experience (e.g., if it were true, one would expect him to say something like "Marian Ghidotti told me X" under some explained circumstances, which Mr. Johnson does not do in that Declaration). If objectors were allowed to cross-examine Mr. Johnson, we would expect him to admit that the reason that he has such alleged "awareness," "knowledge," "beliefs" or "understandings" etc., which appears to be that his mother-in-law, now long dead, told him something that she claimed Marian Ghidotti, someone in the BET Group, or someone else told her, or did, or that she or someone else saw or did something, all of which result in inadmissible and objectionable hearsay in Mr. Johnson's Declaration. See EC # 1203, 403, 356.

In any case, Mr. Johnson's Declaration (like the disputed Rise Petition, EIR/DEIR, and many other Rise documents) can and will be rebutted in this Rise Petition dispute, among other things, based on **EC #1202, stating:**

> **Evidence of a statement or other conduct by a declarant that is inconsistent with a statement received in evidence as hearsay evidence is not inadmissible for the purpose of attacking the credibility of the declarant though he is not given and has not had an opportunity to explain or to deny such inconsistent statement or other conduct. Any other evidence offered to attack or support the credibility of the declarant is admissible if it would have been admissible had the declarant been a witness at the hearing. (**emphasis added)

That example of Mr. Johnson saying he has "personal knowledge" about his "awareness," or about what he somehow "understands" or "believes," creates such a credibility problem, because that evades, improperly, the need to explain the foundation of how he acquired that awareness, knowledge, understanding, or belief, etc. If, as seems likely, that is "hidden hearsay" based NOT on what Mr. Johnson says he directly heard Marian Ghidotti say, but instead just based on what Marian allegedly told his mother-in-law, who in turn told him, then that is inadmissible hearsay that is obscured by such lack of foundation.

7. The Disputed Johnson Declaration And Many Other Rise Petition Exhibits Lack Weight And Credibility.

Also, even if some Rise Petition purported evidence were allowed, objectors must then still be allowed to introduce counter-evidence and objections to demonstrate that such Rise "evidence" lacks "weight" or "credibility." See, e.g., EC #'s 406, 412, and 413. For example, as demonstrated herein, there is little "direct evidence" {EC # 410] in the Johnson Declaration, because it does not (as required) "directly prove a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact." First, most of the disputed Johnson Declaration statements are not ever "direct" or "conclusive" or even "facts" (as distinguished from indirect information or mere unsubstantiated opinions, "inferences," or conjectures, or/and, like most other Rise Petition Exhibits, are subject to many different

interpretations that cannot ever be considered "conclusive" or "direct" etc. For example, Rise and Mr. Johnson seem to argue that a sale of surface property with a reservation of rights to underground mineral rights is somehow proof of a direct or objective intent to mine underground when it is not that at all. (Indeed, if everyone who reserved mineral rights were allowed vested rights on that account, miners would rarely need a use permit anywhere, and much of our Northern California foothill towns would be uninhabitable, but that reservation of mining rights is not such proof.) For example, many owners of mineral rights underground never intend to mine at all but hold them simply for their "option value" to speculators like Rise or Emgold, NOT because they themselves intend to do any mining (which would not create or maintain vested rights). Such mining rights are cheap to acquire and maintain (as even the Rise Petition Exhibits prove), and there always seem to be speculators (like Rise or Emgold) or others addressed herein, who are willing to gamble on the *potential* for mining either themselves or (more commonly considering the expenses and controversies involved in such mining) by other, more aggressive speculator-buyers, sometimes after first seeking governmental approvals to enhance their pricing and then, perhaps someday, enabling a successor speculator to "flip" the property again to a real miner.

In any case, even if some part of the Johnson Declaration or other Rise Petition Exhibits were somehow admissible, they must lack "weight" or "credibility" and should be disregarded as such. For example, EC #412 is a common failing of both the Johnson Declaration and other Rise Petition Exhibits, which states: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust." (emphasis added) Rise violated that rule often in the EIR/DEIR disputes and now again is doing so in the Rise Petition disputes, as demonstrated in objections thereto that Rise and its enablers ignored or where they were proven in objections to be guilty of "hide the ball" or "bait and switch" tactics. The same objections are often true in Lee Johnson's Declaration, as shown below. In addition, and stated another way to that same effect and result, **EC #413 states that "the trier of fact may consider, among other things, the party's failure to explain or deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto…"**

B. Exhibit 227: The Disputed 8/30/23 Declaration of Lee Johnson Should Be Dismissed As Inadmissible And Otherwise Objectionable For Reasons Stated Herein And Others To Come In Further Briefing.

1. This Is A Paragraph-By-Paragraph Analysis of the Disputed Johnson Declaration And Matching Rebuttals, Preceding Discussion of the North Star Rock Crushing Business Started With Marian Ghidotti's License [Exhibit #250] And Continued By the BET Group After Her Death.

a. A Brief Introduction To Johnson Declaration Disputes.

This disputed Lee Johnson Declaration purports to describe the intentions of Marian Ghidotti and her BET Group successor in support of Rise's vested rights theories, which, even

ignoring the many evidentiary objections asserted by objectors that make each material statement inadmissible as evidence, that Declaration fails to do so (and, in due course, it will be countered with counter declarations and rebuttal evidence from others in any event.) Because of the importance of such rebuttals, objectors will briefly illustrate paragraph-by-paragraph some objections to the Johnson Declaration in the process of describing it. In particular, consider the illustrations described below among many incorrect opinions, claims, allegations, imaginings, beliefs, contentions, and other deficient substitutes for admissible evidence, as well as inappropriate tactics in the disputed Declaration's wording that are employed, perhaps in an effort by the lawyers who helped prepare the declaration and hoped to avoid not merely obvious hearsay, but also "hidden hearsay," from unsubstantiated opinions masquerading as "facts" and lacking any competent evidentiary foundation or otherwise inadmissible under the laws of evidence and common-sense credibility concerns, such as noted above. (Objectors are not accusing Mr. Johnson of intentional falsehoods, but rather his just stating such opinions that he incorrectly considered evidentiary facts and that should not qualify as facts or evidence under applicable law.) Objectors have (or have heard) many contrary opinions to those of Mr. Johnson that are at least as credible as his and much more plausible and consistent with the objective events. If Mr. Johnson's such disputed opinions-alleged-to-be-facts are to be allowed as evidence, then there are many objectors who will be eager to submit rebuttal declarations with such contrary opinions on that same, incorrect, evidentiary basis, so there is a level playing field.)

Note that there are many parcels and parts to the disputed "Vested Mine Property" involving many uses and components, likely resulting in a massive and grossly incorrect generalization by Mr. Johnson and those who he incorrectly attempts to speak for in the Declaration, i.e., (i) Bill Ghidotti and later his estate, (ii) Marian Ghidotti and later her estate, and (iii) the three BET Group individuals to whom Marian willed on her death those three people ONLY THE MINE REAL ESTATE (each with an undivided one-third interest), but nothing else. As discussed above regarding Rise Petition Exhibit 248 (the final probate court order resolving Marian's estate and distributing her property, giving all the residual of her estate to William's and Marian's foundation in trust), that Nevada County Superior Court 8/12/1983 "Order Settling Second And Final Account And Report of Executor; Petition For Settlement; Petition For Fees And extraordinary Fees And For Final Distribution" for Marian Ghidotti's estate in # 9(2) distributed "the residue of the estate" to the "Trustees of the William And Mary Ghidotti Foundation [i.e., those three people, plus Stanley Halls, Frank D. Francis, and Bank of America, NT&SA] or their successors in trust under that certain Trust Agreement dated April 1, 1965." That means that all those maps, documents, samples, money, and other personal property discussed by Mr. Johnson as property of the BET Group have been instead (as far as the Rise Petition Exhibits and evidence show) owned by that foundation never otherwise mentioned by the disputed Rise Petition or its Exhibits, including the disputed Lee Johnson Declaration—not by the Bet Group.] That final order is now "law of the case" and cannot be changed by or for Rise. That fact rebuts any claim in the Johnson Declaration that Marian (or William, who predeceased her) intended to have her Bet Group itself do any mining or other actions essential for any vested rights alleged by Rise, since that would require such maps, documents, samples, money, and other personal property owned by that

Foundation, which there is no evidence ever intended to do any mining or anything else required for vested rights at any of the so-called "vested mine property."

Among those over-generalizations are what Mr. Johnson and such persons mean when they refer to "the Mine," which Mr. Johnson does not define, but does not appear to be (at least continuously) the same as the Rise Petition's claimed, "Vested Mine Property" (e.g., Centennial was not part of this and the BET Group subdivided and sold surface parcels for residential and non-mining commercial uses as described herein). Thus, various parcels of what Mr. Johnson calls "the Mine" were sold, transferred, or lost during the long period discussed herein between when William Ghidotti bought the Mine cheap at auction (Rise Exhibits and when the BET Group sold what was left of "the Mine" at the end of their tenure there. [Part of the confusion is that Mr. Johnson seems to be following the Rise "playbook" incorrectly asserting a "unitary vested rights theory" that does not exist as a matter of law, where one mining use or operation of any kind on any parcel at a mine somehow allegedly creates vested rights everywhere on all parcels for all types of mining or operation uses with any components anywhere; whereas instead, the applicable law requires vested rights to be proven for each type of operation or use and component for each parcel.] See the Table of Cases at the end. Consider, for example, where, instead of quoting Marion or Bill Ghidotti as his source, Mr. Johnson obscures the source, often (unfortunately not always) implicitly admitting (by his qualifications like "I am aware," "I know," "I understand," or "It is my impression," etcetera) that he is just alleging (what objectors contend are legally inadmissible) opinions or even less his "impressions" (a term that Websters New Collegiate Dictionary defines as "a usu. indistinct or imprecise notion or remembrance.") (emphasis added).

b. Mr. Johnson's disputed Declaration makes the usual opening attestation under penalty of perjury that he "has personal knowledge of the facts contained in the declaration," that it is "true, correct, and complete, and that he could and would testify at to the truth of the facts stated."

That claim is comprehensively rebutted herein in material respects, not to accuse him of stating falsehoods, but rather asserting that he does not understand the law of evidence or what is "true", "personal knowledge," or a "fact," as distinct from an inadmissible "opinion" or something else objectionable. The paragraph-by-paragraph analysis herein demonstrates why that Johnson Declaration should be dismissed or at least disregarded as lacking any "weight" or "credibility" under EC #'s 406, 412, o 413. If the County allows that Declaration in such disregard of the laws of evidence, such as applying some lesser standard, objectors request the County timely to announce that decision and its alternative standard, so that objectors can then offer contrary declarations using that same easy standard and can make additional offers of proof to rebut that Johnson Declaration using the same incorrect standard applied by Mr. Johnson. More importantly, the declaration is flawed by failing to provide the correct foundation and context to make the facts relevant, important, and admissible as evidence.

c. Mr. Johnson's disputed Declaration states (at #2) that he "knew Marian Ghidotti from approximately 1971 until she passed away in 1980," but without providing the essentials and foundation as to the extent and nature of how that

knowledge that enable him to have the required "personal knowledge" needed to make such a declaration.

Various mine objectors "knew" Marian Ghidotti directly or, like Mr. Johnson as to his mother-in-law, knew others who knew her better, but the question is when the extent of that "knowledge" is sufficient to satisfy the requirements for such knowledge to qualify as meaningful evidence. Nothing in the Johnson Declaration provides any such foundation for why his such knowledge of Marian is sufficient to make his statements either "true, correct, or complete," "weighty," or "credible." Thus, objectors can fairly and correctly object (since Mr. Johnson has the burden of proof) that whatever direct (i.e., "personal") "knowledge" he might have was deficient, and likely was instead **hearsay** from his mother-in-law (Erica Erickson), who he describes as "a close friend" of Marian Ghidotti. Even if that were true and sufficient, it is unclear if his such Declaration "knowledge" from his mother-in-law was that **single hearsay** from what his mother-in-law repeated to him, or if this was **double hearsay or worse**, where, for example, his mother-in-law told his wife who, in turn, told Mr. Johnson or whether the mother-in-law gained her shared information indirectly, rather than from Erica Erickson's direct dealings with Marian herself. Such objections will be even worse if Mr. Johnson's Declaration claims are not only hearsay, but also mere "opinion" (or, worse, an even more unreliable "impression" or guess) by him or worse, by his mother-in-law (with or without his wife) in some chain of opinions of various people. For example, if someone else told the mother-in-law a "Marian story" and the mother-in-law asked what she thought Marian meant by a comment, then, when the mother-in-law passes that net third party "opinion" along in a conversation with Mr. Johnson, that result is not admissible evidence or credible. That is particularly clear when Mr. Johnson has not described his relationship with his mother-in-law, such as to enable us to know, for example, if he could and did question his mother-in-law to fully understand the context, foundation, and basis for her comment to him. Objectors note that the mother-in-law relationship is not one in which there is a common standard in which such mothers-in-law tolerate such cross-examination of their such apparent gossip. Also, as far as readers know, for example, Mr. Johnson could be asserting his "awareness," "knowledge," "impressions," "understanding" from what his wife deduced as an opinion or "translation" from what her mother said or did without the wife cross-examining her mother or Mr. Johnson cross-examining his wife. [e.g., If the mother-in-law said something like, "I think Marion wants to be a miner," that would not be a true "fact" but at most an inadmissible opinion but could also be an even less reliable "impression" or guess, in any case inadmissible to prove the truth of that alleged fact in this case.]

Why do objectors' surmise this flaw, besides the circumstances? Objectors do so because of what Mr. Johnson's Declaration did not say but would likely have wanted to say if he could have done so truthfully because he obviously supports Rise's mining ambitions. Consider the following illustrations: Mr. Johnson says Marian was a "close friend" of his mother-in-law, but he does not say that he (or even his wife) was a "close friend" of Marian or even his mother-in-law so that he could argue he was in a position where he could attempt to claim valid opinions about her opinions about Marion's views on the mining issues in dispute now in 2023 (but that were not, as far as Rise's evidence discloses, in dispute then years ago before her death, so Mr. Johnson seems to be "extrapolating.") For example, as noted below,

Mr. Johnson keeps saying "I am aware…" "I know…" my impression is…" or "I believe…" etc., none of which count as "evidence" of any "fact" of which he claims to be "aware" as to Marion's views and intentions or other "objective" matters. In real litigation disputes on such issues where there was discovery or cross-examination, it seems probable that little if any of the Johnson Declaration would survive, because there is no foundation or sufficient context to validate his statements, especially since there are so many actual facts and events that conflict with the Declaration, even in the Rise Petition Exhibits, as demonstrated herein.

d. That disputed Declaration tactic produces results that are worse (and even more inadmissible and objectionable) than the usual, objectionable hearsay.

Consider, for example, that if Mr. Johnson's opinions are permitted to count as evidence**,** then any of the many objectors with equivalent relationships or information may be able to say the opposite in their contrary such opinions. This is one reason why objectors wanted a pre-trial (i.e., pre-Board hearing) status conference and relief, so that objectors could counter using any same lower (and technically incorrect) standards applied by Rise and its enablers like Mr. Johnson. **Due process requires a level playing field, as Calvert explained. The County should not (and the courts that follow will not) allow Rise and its witnesses again (see the objections to the disputed EIR/DEIR on these issues) to say whatever they wish in disregard of the evidentiary rules, but then enforce the technical rules on objectors, even if objectors were allowed equal time and opportunities for their rebuttal cases (which does not seem likely to occur, adding more objections on that ground as well.) Indeed, as the party with the burden of proof, whatever Rise or its witnesses or enablers assert, objectors are entitled to rebut.** If Mr. Johnson heard Marion Ghidotti say something relevant like, "I love mining, and I can hardly wait for the price of gold to increase so I can personally restart the mining," Mr. Johnson could have said so, and we could then argue about hearsay exceptions. Instead, all Mr. Johnson's Declaration said, in effect, was that his claim (Declaration **at #11**) that he somehow became "aware" of her desires for mining or that he "believes" that both (i) Mr. Ghidotti [Note! There is nothing in the Declaration substantiating his "personal knowledge" about Bill Ghidotti to prove anything about Bill's conduct, intentions, or statements relative to this then-nonexistent dispute, so this seems to be another unsubstantiated opinion from triple or worse hearsay about someone else telling Mr. Johnson's mother-in-law, about something supporting what Mr. Johnson chooses to believe], and (ii) Mrs. Ghidotti, were each convinced that the Mine would be operational again in the future. Keep that in mind as we discuss specific illustrations that follow. There is no basis for Mr. Johnson's such "personal knowledge," unless he can say he personally can authenticate Bill or Marion signing some relevant document or saying something directly to him, but such things do not occur in this Declaration. [To illustrate, Mr. Johnson has not proven his basis to qualify as a character witness capable personally of knowing such attitudes or opinions of anyone here, not even his mother-in-law, who he implies is his ultimate source of direct (?) or indirect (? though his wife?) information that he somehow uses to form the disputed "opinions" incorrectly offered as if they were true "facts" (i.e., his "knowledge," "impressions," "beliefs" or "awareness") that he incorrectly calls "facts."

e. Mr. Johnson incorrectly generalizes by describing some of his irrelevant or immaterial "impressions" that he implies somehow support his claims about Mr. or Mrs. Ghidotti's intentions about IMM mining.

For example, **in Declaration #6** Mr. Johnson **describes his "awareness"** that Bill **Ghidotti was a "gold investor and gold enthusiast" and collector of specimens. See the discussion elsewhere regarding Rise Petition Exhibits that demonstrate that Bill Ghidotti bought (and widow Marian Ghidotti or her BET Group successors sold) many other mines as well, none of which any of them mined. That does not prove that William Ghidotti had an objective and continuous intention to reopen the IMM mine himself. In fact, objectors would counter this alleged evidence just shows that William was merely a history hobbyist who just liked owning gold-mining things or perhaps saw a chance to buy mining rights cheap to flip them to some more aggressive speculator willing to pay a higher price (e.g., like Rise or Emgold). That is entirely different than William planning to raise and risk the huge sums of money needed to dewater and reopen the long-closed and flooded (since 1956) IMM, battle for the permits, engage in all the other essential start-up work on a gamble that he might never find profitable gold, and then fund such an ongoing mining operation** that would provoke most of his locals where he lived (see Rise's SEC filing, where it highlights such huge risks for investors, and, contrary to the Rise Petition's predictions of gold reserves and discoveries, etc., the Rise SEC filings admit, to the contrary, that there are no such "proven reserves").

The nature and extent of the massive effort required to resurrect the IMM is described in the EIR/DEIR, and the cost and effort of even the pre-mining, minor exploration work was costly as described in the Emgold (cumulating on its financial statements a $50 Million plus loss during its lease-purchase option years when it never accomplished anything material) and other Exhibits. The Johnson Declaration does not prove even any desire or intention for Mr. or Mrs. Ghidotti (or any BET Group successors, which would have had to be a unanimous decision of the three 1/3 owners, as far as the Rise evidence shows) to become a mine operator-speculator like Rise or Emgold. Indeed, such a hobbyist like William Ghidotti should be disinclined to become such a mine operator because he and his wife would then become the least popular people in town were he to subject his neighbors to all the miseries like those predicted by the thousands of objectors now opposing Rise in hundreds of massive EIR/DEIR objections and more to come against the disputed Rise Petition.

f. Likewise, Mr. Johnson's Declaration states at #7 that was "aware" of Bill and Marian Ghidotti acquiring other mining properties around the Mine, including from Sum-Gold Corporation, but he needs to prove with an appropriate evidentiary foundation that the Ghidotti's made those acquisitions as Mr. Johnson alleges without any substantiation "for the purpose of eventually supporting the subsurface mining operations when the Mine resumed operating."

That disputed Johnson opinion is not a "fact," and, even if somehow it could incorrectly be tolerated as disputed circumstantial evidence, that circumstantial opinion is logically less likely than many other possible reasons for acquiring such adjacent mines, such as, for example,

a desire to package up mining properties cheap to sell to some aggressive speculator like Rise or Emgold either to do the mining or to flip the mines again to an even more aggressive miner. (While a mine owner might claim under the right facts and circumstances, not proven here, that he or she could delay the resumption of mining for some period of time and still claim vested rights, *Hansen,* and other relevant court decisions and SMARA do not allow such vested rights to collectors who buy dormant, discontinued, or abandoned mine parcels to 'flip' then to someone else with vested rights as to other parcels (as many suspect is Rise's game here.) And even *Hansen* would not allow a miner and its predecessors to allegedly harbor such mining ambitions that could qualify for vested rights all this time from 1956, while our community grew up to what now exists above and around the mine.)

g. Again, in Declaration #9, Mr. Johnson claims to be "aware" of Marian's alleged document collection, which the Exhibits suggest she inherited from her husband and which include documents and personal property from many different mines, without any evidence of how they were identified or stored (e.g., commingled, separated, etc.).

Mr. Johnson does not explain how he has the required "personal knowledge" of such documents or where they came from; i.e., what is the chain of custody? Were they purportedly a complete set of the mine's documents, or a fragment? Did someone cherry-pick them? If so, who, why, and what was their selection method and goal? If (as seems to be the case from the Exhibits) Mr. Ghidotti was buying such things at auctions, who authenticated them and how? If Mr. Johnson personally inspected all those documents (or any of them) why did he not state that and authenticate them if he could? Did he just hear about such documents and personal property from his mother-in-law? Did he just look at the room where they were stored and see massive stacks of paperwork of some kind? This is critical, because Rise has made much of their disputed attempt to claim comprehensive documentation, and nothing in this Johnson Declaration accomplishes that. That chain of custody problem is more complex because (as proven by the law of the case court order in Exhibit 248 discussed above) the William and Mary Ghidotti Foundation (referred to as the "BofA Trust" or "Ghidotti Foundation") owned all such maps, documents, and other personal property; not the BET Group which only inherited real estate.

However, that claim and many others that relate to the documents and other things regarding Marian's plans, conduct, and intentions are defeated by her own estate documentation described in Rise Petition **Exhibit 248** (the probate court's final distribution order discussed in more detail above and below, also in the analysis of what the BET Group inherited, intended, and was capable of doing and actually did and did not do.) Unlike, and contrary to, the claims of Mr. Johnson throughout this Exhibit 227 Declaration (and by the Rise Petition), that probate court order distributed only Marian's real property to the BET Group. Everything else, including all the maps, documents, and other records regarding the IMM property and other personal property was instead distributed as follows: (Order):"9.(2) To Mary Bouma, Erica Erickson, William Toms, Stanley Halls, Frank D. Francis, and Bank of America, NT&SA, as trustees of the William And Mary Ghidotti Foundation, or their successors in trust, under that certain Trust Agreement, dated April 1, 1965 (the "Marian Residual Trust," the

"Ghidotti Foundation," or the "BofA Trust"), the residue of the estate, consisting of the assets in Exhibit B, which is incorporated herein by reference." Note **that the Rise Petition does not: (i) attach, describe, or offer any proof regarding the Marian Residual Trust Agreement or that Foundation's plans, conduct, or intentions, which involved various trustees besides the three BET Group IMM realty owners or offer any proof as to what that trust intended to do with its mining personal property (e.g., the maps, books, records, documents, sample cores, financial assets, and other assets that would be needed to reopen the IMM); or (ii) explain what the Trust did with or about that mine related personal property that various other Rise Petition Exhibits both incorrectly treated as if was owned by the BET Group.**

Thus, Rise Petition fails to satisfy its burden of proof regarding vested rights, since it was that Marian Residual Trust (about which the Rise Petition and Johnson Declaration offer no evidence at all), and not the BET Group, which just acquired that realty (which was the only focus of the Rise Petition), that received the money and documentation needed for any reopening of the mine by the BET Group. As explained below rebutting the BET Group issues, the Rise Petition and this Johnson Declaration (Exhibit 227) both assert their vested rights claims as if the BET Group inherited everything needed for vested rights mining. However, the money, documentation, and personal property needed for any intention or capacity to do any vested rights mining, or even less expensive analysis or exploration all belonged to the Marian Residual Trust ignored by Rise, the Rise Petition, the Johnson Declaration, and the BET Group. If Marian had intended the BET Group themselves to mine (as distinct from subdividing and selling surface parcels and then the mine as the BET Group did as described below, by first subdividing and selling much of the surface for residential and commercial uses and then eventually selling the rest), as this disputed Johnson Declaration claims, Marian would have provided that BET Group with those essentials, i.e., money, maps, and other essential personal property willed to the Foundation. This may explain why the BET Group subdivided the mine surface in ways incompatible with resurrecting underground mining below or around such new residential and commercial surface owners thereby empowered by the BET Group to oppose mining as such surface owners or their successors are now doing against Rise.

h. In Declaration #10, Mr. Johnson again was "aware" that Marian continued acquiring properties adjacent to the Mine in the 1970's "because she thought it would be used in the future to support subsurface mining operations at the Mine." This is disputed for the same reasons that similar opinion is disputed about Declaration #7 above.

i. In Declaration #11, Mr. Johnson "believes" that neither Mr. nor Mrs. Ghidotti "thought the Property would be used for anything except for mining and were convinced that the Mine would be operational again in the future."

Not only was that prediction indisputably wrong, since various IMM owners (before and after them, including Marian's BET Group friends) sold off surface parcels and flipped the mining rights, as described in Rise Petition Exhibits addressed herein. Also, North Star's rock-crushing business, a sawmill, and others made non-mining uses of the retained surface

parcels, as demonstrated in Rise Exhibits. In any case, that incorrect Johnson opinion about Mr. Ghidotti's opinion has no demonstrated evidentiary foundation and is (as stated) sheer speculation, and various objectors could state their own opposite opinions by that standard with at least an equal basis if that were allowed to be admitted as evidence. (Objectors again ask the County for a ruling, and, if they allow that inadmissible evidence, then objectors will produce counter declarations under that same standard to rebut Mr. Johnson's Declaration.) The same is true for Mrs. Ghidotti, although Mr. Johnson did have an indirect source (his mother-in-law, who knew Marian Ghidotti to some extent), but there is no proof in the Declaration as to how that enables Mr. Johnson to prove his statement. The same objections apply here as to his other such unsubstantiated "opinions" masquerading as "facts."

j. In Declaration #12, Mr. Johnson incorrectly asserts this opinion as if it were an evidentiary "fact," without any foundation for how he claims to "know" such information: Marian "never allowed her cattle to graze the Mine property" because she "considered mining as the only appropriate use of the Mine Property."

That is inconsistent with other surface transfers, uses, and subdivisions for residential and non-mining commercial uses addressed even in Rise Petition Exhibits countered herein (e.g., Ex. #'s 261, 271, 272, 273, as well as her deeds to buyers in Ex #'s 237, 238, 239, 240, 241, 242), that are far more incompatible with mining than cattle grazing. For example, as illustrated below by Rise Petition Exhibits themselves relating to Mr. or Mrs. Ghidotti and BET successors, and, as addressed in later, objector rebuttal filings, allowed surface rock crushing, related uses, and aggregate/gravel sales (and later even imported materials crushing) with North Star and later subdivision for residential and non-mining commercial use and some annexations into Grass Valley, which seem far more inconsistent with the underground mining (where the gold was imagined to be) than grazing cattle. The sawmill also operated on the surface for many years. There also are many other possible reasons why someone would not graze cattle at the mine, including, for example, because it was not suitable "grazing land" (e.g., full of mine pollution, hazards, forested, etc.).

If Marian Ghidotti had directly told Mr. Johnson the opinion he stated, he presumably would have said that. So, was this disputed and unsubstantiated Johnson opinion just some "deduction" or surmise (better called a guess about) her motivation? Was this more hearsay or conjecture from his mother-in-law or someone else? Notice that, unlike a normal admissible declaration, Mr. Johnson never describes any such direct conversations in which he was a participant, but instead, without any evidentiary foundation that allows any reader to judge the credibility of his stated opinion (incorrectly called an evidentiary fact based on the direct "personal knowledge" required for admissibility), Mr. Johnson just announced his disputed conclusion, which in each such case is disputed on evidentiary grounds and often unsubstantiated, such as lacking "foundation" or "hidden hearsay" (i.e., that latter term is a description herein of such a tactic some lawyers use in preparing declarations for indirect witnesses, hoping to avoid hearsay and other objections.)

k. In Declaration #13, Mr. Johnson describes how he had assisted Marian in obtaining liability insurance for the mine property in 1977.

Although obtaining liability insurance is normally motivated by a desire to avoid personal liability as an owner for injury risks to all the invited and trespassing people visiting that potentially hazardous or dangerous mine property, Mr. Johnson asserts instead "my impression" (which in normal language is even weaker than a normal form of an opinion that most people would call a "guess;" and which term ["impression," emphasis added] Websters New Collegiate Dictionary defines as "a usu. indistinct or imprecise notion or remembrance") that such insurance was chosen because she "viewed it [the mine] as a valuable asset that contained a large amount of unextracted gold and would one day generate significant amounts of income when mining resumed."

First, as an insurance agent, Mr. Johnson should know that this such disputed, preserve-the-gold-mining-value reasoning would only apply to casualty insurance (which was not stated to be obtained), but would not apply to such "liability insurance" (emphasis added). Again, property owners only obtain liability insurance to protect themselves from claims by third parties injured on the property, but not to insure against injury to the property itself. (If Mr. Johnson means to imply that Marion Ghidotti was so afraid of such slip and fall liability cases that she obtained liability to save the mine from a bankrupting-size personal injury judgment that could lose her the mine, that needs to be proven, since those kinds of bankrupting size lawsuits (and consequent fears) were still rare in those days, especially in mining country. Moreover, the declaration does not describe any reported events that would suddenly trigger her anxiety about some insurable liability risk causing her to lose the mine, as distinct from the normal hassle and expenses affecting such owners in those days. Furthermore, **such liability would be a personal liability of the mine owner from which the injured judgment creditor could satisfy his or her claim from any Marian Ghidotti asset**, and the mine would be the least attractive target for such a creditor's collection effort, as objector bankruptcy lawyers can prove on rebuttal, especially considering the **Exhibit 248** court order closing her estate with ample liquid assets to pay creditors.) **Second,** she "licensed" North Star (i.e., like leasing, but for limited uses and nonexclusive possession, here not mining even on the surface, but just clearing the surface rock and tailing dump piles to make aggregate/gravel for sale) to engage in rock crushing and sales, surface activities (not involving the closed and flooded underground mine), all of which are much more likely illustrations of why a property owner would want liability insurance than the risks from long closed and "dormant" IMM. **Third,** the later BET Group subdivision (presumably planned with Marian before her death), and surface sales for surface owners, such as in the aforementioned deeds and as addressed elsewhere herein, would also make liability insurance a desirable idea whose time had come. Stated another way, that disputed Declaration claim is not only inadmissible evidence, but lacks credibility.

l. In Declarations #'s 14 and 15, Mr. Johnson again stated (in #14, emphasis added) that "I am aware" of Marian Ghidotti's will [see Rise Petition Exhibit 248] , and he then describes the "BET Group" who inherited the mine real estate (but not the documents, money or anything else besides that Exhibit A real estate) and who did various things discussed below, like surface

subdivisions and residential and non-mining commercial sales incompatible with reopening the IMM [see above discussions of Exhibit 248 and Rise Petition Exhibits 261, 271, 272, and 273].

In Declaration #15 he describes Marian's death in 1980 and her estate settling in 1983 per Rise Petition Exhibit 248. What he does not describe is why there are not disqualifying gaps for vested rights continuance from 1980 to 1983 or even from the date of Marian's death to the appointment of her Executors about a month later. Stated another way, the objective intentions of the owner's estate have not been proven during those periods. (The same is true for such gaps in the prior William Ghidotti estate discussed herein [Exhibit 235], but which Mr. Johnson does not address, perhaps because his obscure sources of his "awareness," "knowledge," "understanding," or etc. [most likely his mother-in-law] had much less to say about William than about Marian.]

m. **In Declaration #16, without any foundation or substantiation for his such "opinion" or "impression" or "guess" (since there is no proven basis to regard these Declaration statements as proving evidentiary "facts") about Marian Ghidotti's knowledge and intent as to her will and estate, Mr. Johnson opines as to why she "bequeathed the Mine to the BET Group" based on her alleged "knowledge" of the mine's value and the BET Group's capabilities (i.e., as "land use/title professionals and accountants") for "resurrecting the mine."**

The objectors' rebuttals demonstrate that, unless Marian was delusional or more unsophisticated than his declaration contends elsewhere (which no one has alleged or proven), that BET Group had no "mining" expertise or other qualifications themselves to "resurrect" (emphasis added**) the underground mine, which the disputed EIR/DEIR admits (but understates) would require years of expensive start-up work and enormous investments not then available to the BET Group, even using today's modern equipment, technology, and other things planned in the EIR/DEIR but not available at that earlier time.** Furthermore, as the discussion of Exhibit 248 proves, if Marian had wanted the BET Group to resurrect the Mine, why did she give the residue of her estate, i.e., all the maps, documents, money, and other property besides that real estate, instead to the William and Mary Ghidotti Foundation?

More importantly, the second sentence in Declaration #16 admits that Mr. Johnson used the wrong word, "resurrecting," when what he actually claims as his "understanding" (again a disputed opinion term without evidentiary foundation, probably based on hearsay, and not a proven evidentiary "fact") was the BET Group being capable of marketing and selling the Mine property to a mining company which could then resume mining operations at the Mine, as Emgold tried and failed to do. What objectors fear (and among the reasons they make this a major issue now and in the court process to follow) is that, following Rise's usual practices demonstrated in the disputed EIR/DEIR and other communications, Rise may incorrectly claim, citing Exhibit 227, that Bill, Marian, and the BET Group all had a continuous intention to "resurrect" the mine. However, that Rise claim would be massively disputed, incorrect, not proven with any admissible evidence, and not even (when analyzed correctly as here) what Mr. Johnson probably would admit if cross-examined about whether such

resurrection intention was for such mine reopening work (i) directly by BET Group or Ghidotti versus instead (ii) by some buyer to whom the BET Group might hope to sell then property who might choose to reopen the mine, despite the surface subdivision and sales for incompatible residential and non-mining commercial uses. That is a critical legal distinction for any vested rights analysis, and the ambiguity of Mr. Johnson's Declaration on that critical issue of whose intent was to do actual mining (as opposed to sales to some hopeful, speculator-buyer who might try to reopen the mine) should defeat that Declaration as proving anything material. Objectors contend, and will fully brief before the hearing that, among many other things, the owner of the mine itself needs to intend to resume mining itself, not merely to hold the closed mine in its discontinued, dormant, and abandoned state for sale to some future unknown buyer who may, they might allege they hoped (another factual dispute) would resume the mining in some future time.

n. **In Declaration #16 (continued about its last sentence), Mr. Johnson also declared, without any sufficient evidentiary foundation or substantiation, the related, disputed opinion claiming to be a "fact" that "Marian also knew that each of the individuals comprising the BET Group wanted the Mine to resume mining operations, and believed they could do so with their professional skills and training"[i.e., what was addressed and disputed in the preceding clause above (i.e., the preceding comments on the first part of #16) as "land use/title professionals and accountants," which obviously does *not* qualify them to restate and operate such a mine or to raise the necessary funds to do so.]**

Therefore, even if Mr. Johnson has some undisclosed way of "knowing" what he so claims (and objectors dispute) that Marian so "knew," that would have been an incorrect belief. Notice again, the first part of #16 above (and other Rise Petition Exhibits addressed herein) contemplates that the BET Group would (and did) just subdivide and sell the surface as discussed below, and that surface activity would be incompatible with any such reopening of the IMM. No such local surface resident or business would want such mining, for all the reasons demonstrated in the hundreds of record objections to the EIR/DEIR and more to come for the disputed Rise Petition. This disputed Declaration's claims will be also countered by objectors' rebuttal evidence in other briefings and evidence before the Board hearing on the disputed Rise Petition. More plausible may be for Marian Ghidotti or some BET Group person hoping to sell the mine to someone else who they may have hoped might reopen the mine it.

However, in the second part of the same Declaration paragraph #16, Mr. Johnson switches to a claim that Marian expected each BET Group individual to "resume mining activities." Again, that would mean either that Mr. Johnson's such opinion (not proven as a fact) is clearly wrong, or else that Marian was incorrect about what she "knew" about each of those three BET Group individuals and their respective intentions and capabilities, since those individuals not only failed to take any action *themselves* to reopen the mine but, to the contrary, took incompatible actions, such as subdividing and selling the surface for residential and non-mining commercial uses. In any case, Mr. Johnson's disputed opinion about what Marian "knew" does not prove Marian's "knowledge" to be correct about those three people's disputed intentions and capabilities. There is no admissible proof as to how Mr. Johnson knew

what Marian knew or about how Marian acquired her such alleged "knowledge," Even if there were any such evidence, Marian's such alleged belief does not prove the intention of the three BET Group individuals, and her alleged belief, if it existed, does not create any vested rights either for her or for the BET Group that could be passed to their respective successors. **Stated another way, even if everything Mr. Johnson claimed was true and proven (which we dispute), that would not satisfy the vested rights requirements for each of the three owners' continuous intentions after acquiring title to the Mine.** For example, objectors proving on rebuttal that even one of the three BET individuals did not have such a continuous intention to reopen the Mine should defeat the Rise Petition vested rights, claim regardless of Mr. Johnson's disputed Declaration opinions or what Marian allegedly may have "known" before she died and transferred the Mine (but nothing else) to the BER Group, especially since (as discussed above and elsewhere) the vested rights analysis is for each type of operational use and component on each parcel (i.e., not Rise's incorrect unitary fantasy theory.)

o. **In Declaration #17, Mr. Johnson claims: "I am aware that the BET Group was committed to restoring the Mine to an operational state." In the full context of the Declaration and reality, that appears to translate to a claim that they were somehow committed to selling the Mine to someone they might hope would "restore" the mine, but they took no actions to try to restore the Mine themselves (as this #17 literally states.)**

This is important because objectors fear Rise will misquote as incorrect and disputed proof that such owners of the mine themselves intended to reopen the Mine. **As demonstrated in the two rebuttals to Declaration #16, the BET Group did not act consistently with that disputed, alleged "commitment."** Note also that there is not only the usual lack of foundation in this Declaration for how he was "aware," but this failure is even worse here than in the other places because **there is also no reason or foundation stated in that Declaration as to how (besides his mother-in-law, the only one with whom he claims a relationship) he would have any basis to know what the other two BET Group members intended or committed to. He offers no documentation or evidence, and, again, this seems to be multi-level hearsay, as to what one BET Group member (presumably his mother-in-law) discussed with such other two. Worse, somehow Mr. Johnson then follows in that mysterious chain of communications as somehow becoming "aware" of some translation of what someone up the chain of communications supposedly discussed with such others.** This will be rebutted further in follow-up briefing and counter evidence, as will that so-called BET Group "commitment" in Mr. Johnson's inadmissible "awareness" that is not proven, lacks any evidentiary foundation, and, judged by such contrary objective events discussed herein and as illustrated in the Rise Petition's own cited Exhibits, either there was no such "commitment" or else the BET Group chose not to perform whatever commitment someone allegedly made.

In any case, there is no "objective intent" evidence to support such a claim, and Mr. Johnson's "awareness" cannot make that opinion or lesser "impression" into factual evidence. The BET Group took many actions contrary to any such commitment to restore the Mine to operation, as shown in the Rise Petition's own Exhibits, and they indisputably never tried themselves to reopen the mine; i.e., they had no mining reopening plan, and they never tried to

raise any of the massive funds that would have been required, they never applied for reopening permits, nor did they do anything else material to perform such an alleged "commitment" themselves. Instead, the BET Group did sell parcels, subdivide the surface for homes and non-mining businesses, and do other things inconsistent with mining, as described in the following section of this rebuttal discussing the BET Group activities. As proven by Rise's own Exhibit 307 discussed below, there was no documented requirement that any buyer of the residual Mine (what remained after surface subdivision and sales) commit to reopening it. Thus, even if there was somehow supposed to be a BET Group commitment to reopening the Mine, that commitment was never performed or even seriously attempted, except by a final sale of that residual part to the highest bidder for whatever, if anything, such buyer wanted to do, even if it were (as is the correct way to describe the BET Group's own approach) just to hold the mine parts to sell off from time to time for any use the buyer of that part would choose.

The closest Mr. Johnson comes to describing what he claims (and what objectors rebut below with Rise Petition Exhibits) relate to "leases with mining companies in the 1980's, 1990's, and 2000's for the sole purpose of conducting exploratory mining programs and eventually re-opening the Mine" "generating consistent and sizable income through royalty, lease, and option payments to the BET Group" as summarized in Attachment 1 to his Declaration for such income between 1993 to 2012 (none of which "exploration" uses are "mining" uses for vested rights purposes, and they neither preserve nor create any vested rights on any appliable parcel or even prove such explorations were done on all the relevant parcels, in what, for vested rights purposes, must require parcel-by-parcel proof.) Mr. Johnson's theory appears that an owner can preserve vested rights indefinitely just by leasing the Mine to speculators with an option to purchase who are willing to "explore" and gamble on some possible chance to do what Rise is attempting. But that assumes each Mine part seller had vested rights at the start to pass to the buyer, and any alleged vested rights were not lost by the buyer in the process, both of which incorrect assumptions objectors will be contesting in the briefing to come. **The indisputable fact is that there has been no continuous *mining* uses in each of the so-called "Vested Mine Property" since October 1954, as among the requirements for vested rights, and no sufficient or even credible attempts have been offered to prove vested rights for each use and component on each parcel of such property.**

p. In Declaration #18, Mr. Johnson again states" "I am aware that the BET Group had inherited the thousands of documents acquired by Marian Ghidotti regarding the mine." See our disputes about this similar contention above in rebuttal to his disputed Exhibit 248 Order #9.

However, for the first time in the Declaration, Mr. Johnson cites to one or more experiences (he is unclear and ambiguous on this key point as to when this "recalled" experience occurred and what was actually said by whom on what basis) as follows: "I recall my mother-in-law, Erica Erickson, and her husband both reviewing the old maps of the Mine and discussing their belief the Mine would one day again become operational again." But again, this statement could be about a hoped-for reopening by some wished-for future and unknown buyer, but this is not as stated support for any "commitment" by the three BET Group members themselves to reopen the Mine (since the Rise evidence so far required

unanimous action by all three.) Moreover, such a "belief" event by Mr. Johnson's in-laws (which, as far as the Declaration is concerned) could have been before his mother-in-law acquired her one-third interest and, therefore, would be legally irrelevant or no longer applicable in the future. But such a "belief" is not admissible evidence of anything establishing vested rights. **Consider this counter-example: most objectors did not believe the mine would ever reopen, when they acquired their property above and around the 2585-acre underground mine that closed, flooded, and lay dormant, discontinued, and abandoned since 1956 (and most objectors still believe that.) If somehow Mr. Johnson's in-laws' beliefs are permitted evidence, then objectors offer to provide their own contrary rebuttal declarations with the opposite beliefs and other rebuttal support.**

q. In Declaration #19, it appears that Mr. Johnson describes the Mine sale listing in Rise Petition Exhibit 307, which is described below in a general description of the BET Group's allegedly inherited document collection (actually owned according to the court order #9(2) by the William And Mary Foundation).

That proves no details, no chain of custody or other evidentiary support for Rise's claims of their completeness, sufficiency, relevance to vested rights, and no other requirements for their admission or use as evidence in this dispute. See the evidentiary requirements for such documents, which need to be proven one by one, and to which objectors will object one-by-one as simply a cherry-picked collection out of any business records context and lacking what is required for authentication in a reliable chain of custody. Moreover, while the Rise Petition offers its chosen selection of documents without attempting to authenticate them, Rise does not share what other documents accompanied those it has chosen that might be helpful for rebuttal. That is not speculation because this document illustrates how objectors can even use Rise Petition's selected Exhibits to rebut Rise's claims.

Mr. Johnson also describes Emgold drill core samples stored by his mother-in-law, but that "exploration" "evidence" is not material to the Rise claim for vested mining rights; i.e., despite Rise's more skeptical SEC filings warning investors about the lack of proven gold reserves and many other risks ignored in the disputed EIR/DEIR and disputed Rise Petition, the Rise Petition's Exhibits are full of fragmentary asserted bases for rich gold predictions by Rise predecessors or their consultants (what are often politely called "wishful thinking"). However, even if those fantasies were true (which objectors dispute as unproven), that does not prove any element required for vested rights. The dreams of gold miners and speculators for such riches are not proof of anything except that there are always speculators who will bet that either they will find gold or, if not, they will find some more aggressive speculator to whom they can flip the mine for a profit**. As Mark Twain was famously reported to have said (apparently from his experiences here in Nevada County): "A gold mine is a hole in the ground with a liar standing on top of it." Objectors are not accusing anyone of lying, but many Rise predecessors were incorrect and appear to be indulging in wishful thinking.**

r. In Declaration #20, Mr. Johnson concludes that: "based on the foregoing" (all material parts of which are disputed [as above], insufficient, inadmissible

evidence, and otherwise objectionable, as will be further rebutted by objectors in the briefing to come) "it is my understanding … that at all times these individuals aspired to re-open the Mine…" (Those individuals were "Marian Ghidotti" and her "BET Group" successors.)

Again, Mr. Johnson's claim of "understanding" is not admissible evidence or proof of anything, among many other things addressed at the end of this document summarizing some of the many evidentiary rules violated by this Exhibit 227, because Mr. Johnson has laid no evidentiary foundation of admissible proof for that to be possible. All we have are what seems to be his summarized account in his words of unrevealed or unexplained hearsay conversations with unknown persons (probably his mother-in-law, as the only one with whom he alleges a significant relationship, as distinct from at best a non-significant acquaintance), with unknown content "recalled" by Mr. Johnson for what he just states as a disputed opinion incorrectly masquerading as "fact" as to the meaning and effect of such mysterious matters and sources he calls creating for him an "awareness," "understanding," "impression," "belief," or etcetera. Those claims are all inadmissible and objectionable as purported "evidence" and prove nothing material about vested rights.

Likewise, Mr. Johnson there in Declaration #20 also asserts that "my understanding [is] based upon every interaction I had [How many? How significant?] with Marian Ghidotti and the BET Group, including my mother-in-law, Erica Erickson…" But he doesn't mention Bill Ghidotti here or the other two-thirds owners of the Mine in the BET Group needed for the required unanimous decisions (and rarely those elsewhere). Worse, Mr. Johnson never explains how he "knows," "believes," or "understands," or acquires his alleged "awareness," "impression," or other information from or about the other two BET Group members who were of his mother-in-law's generation and about whom he alleges no direct or meaningful relationship even though every action by the BET Group must be unanimous (as far as the Rise and Johnson Declaration "evidence" shows).

Stated another way, Mr. Johnson incorrectly claims credibility and foundation based on his alleged by implication (not proof) familiarity with these people he references. However, Mr. Johnson must actually prove not just sufficient such familiarity, especially beyond a single direct relationship (with his mother-in-law) and occasional mentioned interactions with referenced others that are insufficient to support even an inference of any meaningful relationship; i.e., Mr. Johnson claims that "my understanding [is] based upon every interaction I had with Marian Ghidotti and the BET Group," but he only even attempts to discuss a few nonmaterial interactions without any critical details. Thus, **when Mr. Johnson states that: "At no time did any of these individuals indicate that they believed the Mine should or would be used for anything but mining," why is that meaningful at all, if there was not (and there has not been proven to be, even with his mother-in-law), the kind of intense relationship of trust and confidence where such absence of comment would be meaningful. (As stated, literally any objector could say the opposite, i.e., no such individual ever told an objector they were committed personally to reopening the mine, but that would not be evidence of that fact, and for the same reason neither is Mr. Johnson's declaration such admissible evidence.)**

In any case, as demonstrated from even the Rise Petition's own Exhibits, the BET group did subdivide and sell off surface mine lands for residential and non-mining business uses

incompatible with reopening the mine, as Rise is itself discovering in this massive, disputed process, especially as us objectors living on the surface above and around the 2582-acre underground mine resolutely resist that reopening, including for all the reasons demonstrated in our and others' record objections to the EIR/DEIR and more to come in objections to the Rise Petition. Likewise, Mr. Johnson also claims: "Nor did they every display any behavior indicative of someone who intended to abandon the mine;" but, there again, that proves nothing because he cannot "prove such a negative." In any event, Mr. Johnson has not even attempted to prove enough of an intense and timely relationship for such information to have any evidentiary meaning. Any fair reading of this disputed and deficient Johnson Declaration causes the objectors to suspect that Mr. Johnson is offering us his single, double, or worse hearsay accounts of what he surmised from his interactions with his mother-in-law and perhaps occasionally from the widow Marion Ghidotti and perhaps rarely others. That indirect access by Mr. Johnson to such information, even if timely to be potentially relevant, is not admissible, competent, or credible evidence of anything. Such resulting opinions would not be evidentiary "facts" based on his "personal knowledge" sufficient to support such a Declaration. **Therefore, objectors move to dismiss the entire Declaration, and we will object to any such purported "evidence" and offer to rebut the same with counter-evidence and authority in the vested rights process to come before the Board (with whatever standard the Board applies) and in the court process to come in accordance with applicable law.**

2. Some Further Analysis And Rebuttal of the Rise Petition's Other Exhibits Also Rebutting the Johnson Declaration (Exhibit 227) As To William Or Marian Ghidotti Or the BET Group.

a. Exhibit 231. In # 13 of that Johnson Declaration disputed above, Mr. Johnson claimed his "impression" that the reason Marian Ghidotti bought liability insurance from him for the mine was to protect a valuable asset … [that] would one day generate significant amounts of income when mining resumed." However, the Rise Petition Exhibit 231 contains what objectors believe is (like the aforementioned North Star rock crushing and sales) the real for the liability insurance, which is that, in Marian Ghidotti's own signed words, trespassing "people have been coming in and taking rock without permission. That is why I am selling what rock is left." That is a powerful, defensive reason why any landowner would want liability insurance, without any regard or reference to protecting the value of the mine for reopening (which liability insurance does not help.)

b. Exhibits 229 and 228. What the Rise Petition and Mr. Johnson's Declaration both ignore, and as a consequence overstate in other claims, is this: William (Bill) Ghidotti was a gold collector and hobbyist (see below) who owned various separate mines that were never part of the IMM (see, e.g., those mines mentioned above that were sold by Marian after William's death (e.g., Exhibits 237-242, listing the names of many other mines, all of which presumably had more documentation and relics adding to William's same collection to which the Johnson Declaration refers in widow Marian's basement without any proof that Mr. Johnson or his other sources saw separate labels or identifiers, as distinct from a mass of paper, etc. that could have come from any of those many other mines, whose documentation

may have even more extensive than the Idaho Maryland Industries documents etc. that were sold to William at auction in 1963 as discussed above [Exhibits 224, 225, and 226] after that initial miner in the alleged vested rights chain of title from October 1954 (Idaho Maryland Industries, formerly Idaho Maryland Mines) disengaged from the gold mining business after closing the flooded IMM in 1956, moving to LA to begin an aerospace contracting business, and ultimately filing an old Chapter XI case under the former Bankruptcy Act, as described in Exhibits 221 and 223.) However, Rise and Mr. Johnson deficiently and objectionably describe such referenced maps, documents, artifacts, gold specimens, and everything else collected by William (apparently all commingled piled together in Marian's home basements and other depositories) were solely from and about the IMM. However, that is unproven in the Johnson Declaration or otherwise (and unlikely and, therefore, is disputed). [Also see above where Exhibit 248 proves that the William And Mary Ghidotti Foundation, not the BET Group, inherited all those maps, documents, samples, and other personal property as the residue of Marian's estate.) For example, Rise Petition Exhibit 229 is a 6/18/1965 newspaper article about William Ghidotti winning an auction to buy two collections of gold and quartz specimens from the 'original sixteen to one mine' near the town of Alleghany in Sierra County. Exhibit 228 is an article in the 6/13/1965 Oakland Tribune about the same story and event.

c. Exhibit 230. As so explained, William (Bill) and Marian Ghidotti also bought land from Sum-Gold Corporation, Inc. on October 5, 1964. Also, note objectors' discussion below about the purchase by Sum-Gold of IMM surface lands from the BET Group after they subdivided that land and began selling it for non-mining residential and commercial uses incompatible with the Rise type of mining beneath or around those residences and businesses.

d. Exhibit 307: "Historic California Gold Mine for Sale," a marketing description of the "Ghidotti"-BET offering to sell their IMM, including how the 146 acres +/- Brunswick site was described as (emphasis added) "configured in 18 PARCELS" and "2750 +/- Acres of mineral rights MOSTLY contiguous below 200'of surface.

The EIR/DEIR described the mineral rights as 2585-acres, and the Rise Petition cited them as 2560 acres. What accounts for those acreage differences?

The ad does not describe the mine in any way that sounds like it has any present objection intention or plan to reopen, but instead notes that the IMM "operated from 1862 until it shut down in 1956 because of the fixed price of gold at $35." The ad describes the sale as including some core samples and documents available on request, but never discusses the operational assets or potential for future mining. Instead, the ad notes that previous efforts to reopen the mine only resulted in those technical reports etc. As far as the Rise Petition Exhibit dispute "evidence" is concerned, as discussed further herein, none of that data demonstrates with competent, admissible, credible, and material evidence vested rights to any parcel and, in any case, in every parcel, especially for the underground mining uses at issue in these vested rights disputes. Nothing reflects the Johnson Declaration's alleged "commitment" by or for Marian or the BET Group to "resurrect" the mine.

C. Some Disputed, Historical Claims Regarding the Surface Rock Crushing Business [But No "Mining" Uses of the Surface Or Underground] of Certain Mine Parcels Where Rock Waste And Mill Sand Were Dumped Before the IMM Flooded And Closed by 1956, Including the BET Group Limited "License" to North Star Rock Products ("North Star"), Further Rebutting the Johnson Declaration (Exhibit 227) And Other Rise Petition Exhibits Alleging Disputed Vested Rights Claims.

1. Introductory Comments On Rebuttals To This Disputed Attempt To Confuse North Star's SURFACE Rock Crushing Business With Any Actual Mining Use Needed For Rise Even To Attempt To Claim Any Vested Rights, Especially for UNDERGROUND Mining.

a. Rise Petition Exhibit 232. Rise produced a letter signed by Marian Ghidotti dated October 12, 1979, that "certified" that "both mine rock wastes and mill sand has continuously been removed in small amounts from the above-named property [APN 09-550-13, 09-550-14, 09-550-15, 09-560-08, and 09-560-02] from 1961 to 1979. A rock crusher was operating on this property from 1967 to 1979." (emphasis added) This claim was used to justify a permit for the lease for surface rock and sand processing and sales on those parcels as described below by North Star Rock Products ("North Star") that evolved as described below in other Rise Exhibits. However, most of that is limited to those parcels that are not material for these IMM disputes (and involve a different history and significance), as shown below. These North Star matters are also subject to many legal and factual distinctions, making this irrelevant, inadmissible, and otherwise objectionable evidence for this Rise Petition dispute. For example, as shown on Rise Petition Exhibit 280, the BET Group sold much of that operation to North Star Rock Products Corporation Inc. on March 25, 1993, thus breaking any connection to the IMM and support for Rise Claims. Indeed, as discussed below, this was never about any actual, surface mining, because North Star never "mined" at all, but instead just salvaged rock and sand dumped and laying on the surface by the ancient, predecessor IMM miners (and much later for a time North Star used the crusher for some imported rock work). Since vested rights requires a continuous, use-by-use, component-by-component (a rock crusher is a "component" as ruled in the *Paramount Rock* decision discussed with approval in *Hansen*), and parcel-by-parcel, this gap in time and difference in use and parcels is fatal to the Rise claims. [Because Rise will likely attempt to make confusing arguments about how such North Star rock-crushing activities are one of many types of SMARA mining "operations" and (under Rise's incorrect and disputed "unitary theory of vested rights" where any such operation anywhere creates vested rights for all types of mining operations or uses everywhere, in this document objectors are using the term and concept of "mining" as a "use" as it is applied in vested rights law and case authority where the miner is either excavating the surface to extract minerals or digging and doing recovery work underground to extract minerals, each of which is a different "use" from each other (see *Hardesty, Calvert*, and even *Hansen, as well as SMARA)* and both of which types of "mining" are different "uses" for vested rights analysis both from each other and from than the North Star business here of taking rock and tailings from surface dumps and crushing them into gravel/aggregate for sale.

b. Rise Petition Exhibit 280 [the ending]. Most of that experience with North Star, surface, rock crushing work uses (without any surface or underground mining) ended March 25, 1993, with the BET Group Grant Deed to North Star Rock Products Corporation, Inc. of most of the aforementioned BET Group land on which old rock waste and sand was dumped from the IMM closed and flooded since 1956, which rock and sand North Star then processed and sold to customers without any mining. As a result, there was then a break in any alleged chain of title making this land and processing by this licensee (and then later a purchaser) of no benefit to the disputed Rise Petition claims. In any case, this gravel, non-mining business was never reconcilable, for the Johnson Declaration's disputed claims above about what either Marian Ghidotti or BET Group intended about reopening the mine.

c. Rise Petition Exhibit 250 [at the beginning]. From the Rise Petition Exhibits on this disputed subject, Rise begins with this License Agreement dated 9/14/1979, executed by Marian Ghidotti and North Star Rock Products Corporation (as amended and extended from time to time as discussed in other Rise exhibits, herein called the "North Star License"), which granted for two years to North Star the "exclusive right" (and access and egress) to "take and remove rock, mine rock, tailings, aggregate, and sawmill sand from mining and tailing dumps located on Licensor's [Ghidotti] real property" described as approximately 110 acres known as the "'Morehouse' Dump" and/or the "Idaho Maryland Mine' dumps." (Attached documents, like the reclamation plan, reveal that only 40 acres of that surface land was being worked and then to be remediated.) That agreement also allowed North Star to "erect structures and framework necessary to take and remove said materials therefrom, and to load trucks … for ingress and egress." (emphasis added). North Star had no surface or underground mining rights at all but was just clearing away the materials laid on those surface dumps. Thus, from the beginning there was no "use" for any actual mining operation (i.e., no disturbing the natural surface or going underground), just dump clearing of the natural surface (and only later by amendment importing rock from elsewhere for crushing on-site). BECAUSE VESTED RIGHTS ARE A CONTINUOUS USE-BY-USE AND PARCEL-BY-PARCEL MATTER, AND BECAUSE THIS NORTH STAR SALVAGE WORK IS CLEARLY A DIFFERENT "USE" THAN WHAT RISE SEEKS TO DO, ESPECIALLY UNDERGROUND, THIS (AND THE EXPANDED NORTH STAR SURFACE ACTIVITIES OVER TIME BEFORE ITS PURCHASE) CANNOT SUPPORT ANY VESTED *MINING* USES DESIRED BY RISE, ESPECIALLY ON THE SEPARATE UNDERGROUND 2585-ACRES FOR WHICH RISE INCORRECTLY CLAIMS VESTED RIGHTS TO MINE. Again, as in Exhibit 231 discussed above, Marian wanted someone like this operating to keep trespassers from stealing her dump rocks and sand. Nothing in the Rise Exhibits even suggested that somehow this was being done to facilitate any surface or underground mining for which Rise incorrectly claims vested rights. Of course, IT IS POSSIBLE THAT MARIAN OR HER BET GROUP PEOPLE CONSIDERED WHAT NORTH STAR DID AS WHAT THEY MIGHT CALL MINING IN A NONTECHNICAL-NONLEGAL SORT OF CASUAL WAY, AND THAT MIGHT EXPLAIN THE INCONSISTENCIES AND CONTRADICTIONS BETWEEN SOME OF THE DISPUTED JOHNSON DECLARATION ALLEGATIONS AND THE APPLICABLE REALITIES PROVEN HERE.

d. Rise Petition Exhibit 251. North Star applied for permission to conduct that surface-non-mining business with this Use Permit Application dated October 12, 1979. That business was described at 1 as: "A rock crushing and gravel retail sales business is proposed." That Application included various required environmental and other exhibits. As a matter of later relevance and rebuttal to Rise, consider the following excerpts from the attached Environmental Information Form: Idaho-Maryland Mine Rock Crushing Project: After "Historical Aspects" see (emphasis added): (i) "Existing Uses" (at 10): "The project site is unused except for the occasional removal of rock and sand wastes by the owner of the property. Lumber is also stored on the property." (at 21) (ii) "8. Air And Noise. Air pollutants created by this project would be primarily particulate matter (dust) and emissions from diesel-powered equipment. ASBESTOS DUST, rubber dust, and oxides of carbon, sulfur, and nitrogen would be produced." (emphasis added, because in those days the lethal menace of asbestos still did not enter into such environmental analysis, which explains why we have such continuing menaces on the IMM, especially at the Centennial site.) and (at 9) "…The EPA estimates that up to 100 lbs./day of particulate matter in the form of dust [so including asbestos] could be generated by a rock crushing and screening plant without dust control measures….And average of twenty dump trucks could visit the site each day." Also see the "Surface Mining Reclamation Plan For the Idaho-Maryland Mine Rock Crushing Project" focusing on dangers to adjacent Wolf Creek. The Exhibit also addresses the previous mining operations as former and historic with little remaining from the old mine.

i. Rise Petition Exhibit 252. This includes the Planning Department's: (i) comments dated 2/20/1980 on Use Permit Application U79-41, stating, for example, (at 3) (emphasis added) (a) # "A. 11. The use permit covers only removal of mine waste and processing to restore the site to its original contours, Earth excavation for a borrow pit is not included." (at 4) (b) # B.1.a "No material beyond the depth of rock waste materials shall be removed from the site"; (ii) Notice of Conditional Approval [of] Use Permit Application for Use Permit #1370, adding those same quoted limitations; (iii) Memorandum dated 1/10/1980; and (iv) Notice of Conditional Approval [of] Use Permit Application for Use Permit 1082, following the Planning Commission meeting 2/20/1980, including the foregoing conditions and many others such as at p2 (a) #8 that the hours of operation were limited to "from 8 a.m. to 5 p.m. Monday through Friday, except for emergencies …" But see the further limitation in Exhibit 254 on 2/28/1980 also limiting the operation to the season of May 1 to September 30. and (#12, following the renumbered # 11 limit to not disturbing the natural surface or excavating, "The permit covers only the processing of materials harvested from the subject property and does not include the processing of materials imported from outside of the property." [that was addressed by a later amendment] According to Exhibit 252, the historic mine was closed and no longer active.

The Rise Petition repeatedly exaggerates and incorrectly interprets the significance of some wording about rock processing, as if a passing reference to an existing, nonconforming use as a County admission of vested rights for one such non-mining activity (i.e., only rock crushing and aggregate making and sales from the surface dump [and later some imports], with no excavation of the surface much less underground mining), there is no significance to this because everything that matters for any meaningful vested rights is an entirely different

and irrelevant "use" (i.e., this is neither a surface mining use nor an underground use and is no more significant for this dispute than a claim about vested rights for the sawmill or other non-mining uses.) Also, what happens on that parcel is of no consequence for any other parcels, especially those in the 2585-acre underground IMM. This is just another disputed example of Rise's incorrect "unitary theory of vested rights" that is defeated throughout this objection, even by *Hansen*, which like other courts (e.g., *Hardesty, Paramount Rock, and Calvert*) insists on a parcel-by-parcel, use-by-use, and component-by-component analysis, where the North Star aggregate use is different than the gold "use." Furthermore, no such admission by the staff has any impact on such objecting surface owners above and around the underground IMM since objectors are not bound by what the County does about such vested rights and can independently defeat any such vested rights claim with our own, personal competing rights. In fact, this objection and others do exactly that, and for many reasons explained herein North Star neither had any relevant vested rights and even if North Star somehow did, they were not continuous and stopped being relevant to Rise when Rise's predecessors sold the land to North Star as described herein before Rise acquired the IMM.

ii. Rise Petition Exhibits 259 and 260. This #259 is North Star's Application 4/1/1885 for amendments to its U79-41 permit to move the rock crusher and allow imported materials to be imported, processed, and sold. #260 includes a Planning Commission Staff Report dated May 9, 1989, for Use Permit U79-25 reacting to a proposed amendment to allow (at 1) "the importation of off-site materials for on-site processing, to relocate the rock-crushing and processing plant, and to abandon the completion of the approved reclamation plan," and recommending that "a mitigated negative declaration by issued" (approval with conditions). That staff analysis reported that "the on-site deposits [of rock and sand in the dump for which permission was granted in 1979] are currently exhausted." Id. The proposal was to receive and process material "primarily" from the nearby Wolf Creek Plaza site for placing it in "an engineered fill" on the North Star site. Id. After that, a Notice of Conditional Approval was attached by the Planning Commission with many conditions and further permit requirements, consistent with mitigation and as required to satisfy the requirement reminder in the staff report that: "#3. The posed use will have no significant adverse effect on abutting property or the permitted use thereof." Many conditions were repeated from before, such as the limited operation for 5 years and 8 a.m. to 5 p.m. Monday-Friday, but there were many more requirements and permits, approvals, and conditions from other agencies. Overall, this does not support the Rise Petition in any material respect, and any attempted evidence for such a Rise claim is disputed, as is true for the entire North Star Exhibit package.

iii. Rise Petition Exhibit 253. This Agreement dated 11/24/1992 between the City of Grass Valley and North Star is nearer the conclusion of the North Star operation on the 12 acres known as the Morehouse Property and describes some of the interim history, including the rock crushing and recycling of asphalt and concrete lease that ended on December 19, 1992. This also involved an extension of that surface activity for a proposed borrow pit excavation into another five acres not owned by the BET Group (but by Bruce and Susan Nauslar) and inside the City boundary and related mitigations. The Agreement addresses various issues with North Star's intention to buy the BET Group property it uses, and the City's

desire to annex all such property. None of this supports the Rise Petition but ends the disputed, alleged support Rise incorrectly asserts. See the above discussion of the BET Group deed to North Star (Exhibit 280) contemplated by this Exhibit.

iv. Rise Petition Exhibit 278. This package relates to a further amendment to the existing uses permits as described in the October 22, 1992, Staff Report (at 2) as follows(emphasis added): "to expand an existing rock harvesting operation located in an existing quarry" on 11 acres already zoned as "M" (not "M1" like the IMM) as an amendment of U86-45 (approved 12/18/1986) as originally approved "under U79-41, amended under U85-25 and amended again under U86-45" for 10 years. However, this is of little evidence of anything for the Rise Petition because: "All existing factors of the operation, including the importation of material to be crushed, are proposed to remain as approved under the last permit." Id. The result is just to supply more offsite material for crushing as before, but this time there is a further complication that part of "the proposed expansion located within the City Limits of the City of Grass Valley." According to the staff report (at 6) this expansion will have no significant effect on abutting properties or the project area due to mitigation measures and conditions of approval attached… [and] the reclamation plan is consistent with the … General Plan…" See the related Planning Department Proposed Negative Declaration. That Exhibit 278 also included the Planning Department Memorandum dated 12/10/1992, which followed up on issues with the City of Grass Valley and other concerns that postponed earlier consideration by the Commission, reporting on the Agreement between the City and North Star discussed above in Exhibit 253. Following that was the Notice of Conditional Approval [of] Use Permit Application dated December 14, 1992, containing many conditions and other agency approvals, permits, and requirements. The point remains that none of this provides any material support or evidence for the Rise Petition, and (like all the Rise Petition Exhibits) materially proves nothing important for the Rise Petition's disputed claims.

2. Thus, North Star Activities Cannot Create or Maintain Any Vested Rights For Rise.

In conclusion, nothing in these (or any other North Star-related Exhibits that objectors did not bother to discuss) is material or relevant to any serious effort to prove the disputed Rise Petition. Not only was this not ever even surface mining (North Star never mined even the surface, as distinguished from crushing rock dumped on the surface), but no such surface use could create any vested rights for underground mining as described in *Hardesty.* Objectors consider them "filler" and "distractions" as part of a tactic to obscure the massive gaps in the evidence that Rise must have to accomplish its impossible burden of proving vested rights for the IMM on a continuous use-by-use, parcel-by-parcel, and component-by-component basis, which Rise never tried to do, relying instead on its disputed and unprecedented "unitary theory of vested rights." **Also, no North Star activities on the IMM in any way provide any basis, for example, to prove any such continuous vested right to any underground mining uses or components in any of the 2585-acre underground mine or anything on or beneath Centennial, or anywhere else, especially besides the small IMM surface parcel area on which North Star operated before it bought the property.**

D. The Ghidotti Estate Exhibits Rebut the Continuance of Mining Intentions to Counter Rise's Vested Rights Claims, And Follow-Up BET Group Conduct Is Inconsistent With "Mining Uses" And "Commitment" Intentions Alleged In the Disputed Johnson Declaration.

1. The Transition From William To Marian, Commencing with Exhibit 235 {William Ghidotti's Estate Wrap-Up.]

This Exhibit 235 "Decree Settling First And Final Account And For Distribution" by the Nevada County Superior Court filed March 11, 1974, reports on the result of the activities of the William (Bill) Ghidotti estate following his death on 10/23/1969. His widow, Marian Ghidotti, was appointed executrix on November 21, 1969, breaking for a month any owner of the IMM having any possible intention to continue mining uses for any vested rights on any "parcels" or for any "components." There is no proof submitted as to Marian's mining intentions during that time between 1969 and 1974 when, acting in the capacity as a fiduciary executor and not yet personally for herself, when Marian demonstrated any objective intent or conduct to continue mining. Indeed, not even the above-disputed Declaration of Mr. Johnson (Exhibit 227) can help Rise during this period, since in his Declaration #2 Mr. Johnson declares only that he "knew" "Marian" from 1971 until her death in 1980, leaving there no competent proof of her (or especially her husband's) intentions before 1971, even from his disputed and incorrect interpretation of his "personal knowledge." Also, even after 1971 Mr. Johnson made no attempt to distinguish the specific times when Marian had her alleged intentions or did the actions or expressed the opinions he claims in his disputed Declaration.

Note also that Mr. Ghidotti also left for Marian the Ancho-Erie Mine Property, adding more confusion about what comments, records, and intentions applied to the IMM versus that Ancho-Erie Mine, as well as the many other mines she inherited and sold as discussed above with respect to Rise Petition Exhibits 237-242. For example, when Mr. or Mrs. Ghidotti made a statement or other communication about a mine or mining or stuffed the basement with maps, documents, and other records, there is no proof in the Johnson Declaration or any other Rise Petition Exhibit as to which mine was the subject of what map or document, and specific maps, documents and other records are not authenticated and most are not even attached as Rise Petition Exhibits, creating a presumption that, if they were relevant and applicable, they would have been attached as Exhibits unless Rise excluded them as contrary to the disputed Rise Petition "story." There was also no proof of any segregation or specific identifications or index of any maps, records, or documents in the referenced basement record storage area or elsewhere of records for one mine versus the other or even other mines, since Mr. Ghidotti was a collector of things from many mines, as described above and below. In effect, what the Rise Petition incorrectly alleges is that such vested rights claims are somehow supported by: (i) its introduced (although often not authenticated) Exhibits that are rebutted herein, with more briefing objections to come, and (ii) an unproven, disputed, and inadmissible implication in the Johnson Declaration that somehow his and other Exhibit references to that large collection of maps, documents, and other records by the Ghidotti's or others is somehow "evidence" of Rise's vested rights. However, to the contrary, Rise's failure

to produce such maps, documents, and records must be presumed instead to mean that either: (i) they are irrelevant or inadmissible (even by Rise's excessively generous to itself and incorrect standards), or (ii) they are excluded from the Rise Petition Exhibits, despite Rise's desperate need for credible and admissible evidence it lacks, because Rise's exclusionary conduct implicitly admits that such maps, documents, and records are not helpful to Rise's vested rights claim. Stated another way, and as demonstrated herein, Rise offered many irrelevant, meaningless, or useless Rise Petition Exhibits as background "filler" (despite many being counterproductive, problematic, and objectionable), and Rise desperately needs more and better proof for its disputed claim. Therefore, Rise should be presumed to have produced more and better such Exhibits from that mass of maps, documents, or records, if Rise thought they would have supported the Rise Petition. Thus, Rise can be presumed to have kept those referenced unproduced maps, documents, and other records out of the administrative/trial record to avoid either (i) embarrassing itself further, or (ii) arming objectors with more rebuttal evidence for our comprehensive disputes against the Rise Petition and Rise's disputed and deficient "evidence."

2. Some Other Notable Actions By Marian After William's Death.

Exhibit 236 and 237. This Exhibit 236 shows a transfer of real estate by Marian in her capacity as executrix of her husband's estate which did not appear to be to miners. Exhibit 237 shows a transfer by her as executrix of mining properties that appear unrelated to the IMM. Neither advances any support for Rise vested rights.

Exhibit 238, 239, 240, 241, and 242. These Exhibits show transfers by Marian in her own right as owner after her inheritance of mining properties that appear unrelated to the IMM. None advances any support for Rise vested rights.

E. Wrapping Up Marian's Estate And Related Initial Issues Involving The BET Group.

Exhibit 248 [Marian Ghidotti's Estate Wrap-Up]. This is the Nevada County Superior Court's August 12, 1983, "Order Settling Second And Final Account And Report of Executor; Petition For Settlement; Petition for Fees And Extraordinary Fees And For Final Distribution," wrapping up Marion Ghidotti's estate following her death on May 12, 1980, and the appointment on June 2, 1980, of Mary Bouma and Erica Erickson as executors. Once again, as with William's estate discussed above, there was a month "gap" (contrary to continuous vested rights) with no possible IMM miner intentions between Marion's death and the appointment of her executors, as well as another long gap until the distribution of Marion's estate to the "BET Group" discussed above (with Mary Bouma, Erica Erickson, and William Toms then each receiving an undivided 1/3 interest in that IMM property and absent some undisclosed agreement among or for them to the contrary, requiring unanimous decisions for any vested rights claim to be possible and preventing, for example, Lee Johnson's mother-in-law's decisions or intentions to be the will or intent of such three BET Group owners).

However, unlike and contrary to the claims by Mr. Johnson in his Exhibit 227 Declaration and otherwise by Rise, **that probate court order distributed only Marian's specified real**

property to the BET Group, and everything else, including all the maps, documents, and other records regarding the IMM property and other personal property, was instead distributed as follows: Order "9.(2) To Mary Bouma, Erica Erickson, William Toms, Stanley Halls, Frank D. Francis, and Bank of America, NT&SA, as trustees of the William And Mary Ghidotti Foundation, or their successors in trust, under that certain Trust Agreement, dated April 1, 1965 [the "Marian Residual Trust," or "BofA Trust," or "William And Mary Ghidotti Foundation"], the residue of the estate, consisting of the assets in Exhibit B, which is incorporated herein by reference." Note **that the Rise Petition does not: (i) attach, describe, or offer any proof regarding that Trust Agreement or the Foundation decisionmakers' plans, conduct, or intentions, which involved various trustees besides the three BET Group IMM realty owners, or (ii) offer any proof as to what that Trust intended to do with its mining personal property (e.g., the maps, books, records, documents, sample cores, financial assets, and other "residual personal property" that would be needed to reopen the IMM cost effectively); or (iii) explain what the Trust or Foundation did with or about that mine related, "residual personal property" that various other Rise Petition Exhibits incorrectly treated as if was owned by the BET Group. In other words, there is no vested rights evidence that includes any such "residual personal property" or its owners or decisionmakers, and, Rise's own Exhibit admissions and evidence, as well as evidence coming from objectors in additional filings, demonstrate that that deficiency impairs any proof of vested rights for mining that requires use of that personal property. To the contrary, the failure by Marian to will that residual personal property to the BET Group itself is powerful evidence that Marian was not, and the BET Group could not be, committed to continuing mining on that real estate. Thus, Rise Petition's fails to satisfy its burden of proof regarding vested rights, since it was that Marian Residual Trust (about which the Rise Petition and Johnson Declaration offer no evidence at all), and not the BET Group, which only acquired that realty (the only focus of the Rise Petition and, since Lee Johnson limited himself to disputed opinions about Marian and [after her death] the BET Group and BET Group assets, Mr. Johnson's Declaration), that received the money and documentation needed for any reopening of the mine by the BET Group. Stated another way, the Rise Petition and Johnson Declaration (Exhibit 227) assert their vested rights claims as if the BET Group inherited everything needed for vested rights mining, including the "residual personal property" that the court order distributed to the Foundation. However, the money, documentation, and other residual personal property needed for any intention or capacity to do any vested rights mining, or even less expensive analysis or exploration, all belonged to the Marian Residual Trust entirely ignored by Rise, the Rise Petition, and the Johnson Declaration. If Marian had intended the BET Group themselves to mine as the disputed Johnson Declaration claims, she would have had to have provided that BET Group with those essentials, such as residual personal property. Instead, this undisclosed (until now) reality may be one more reason (besides zero operating money) explaining why the BET Group so subdivided and sold the mine surface in ways incompatible with underground mining below or around such new residential and commercial surface owners empowered by the BET Group to oppose mining as they or successors are now doing against Rise.**

Note that relevant Rise Petition Exhibits admit that the mining records are essential to reopening the mine, such as the BET Mine leasing and sale documents with purported miners such as Northern Mines and Emgold. (By analogy, no one buys a significant airplane at a

market price without its maintenance logs, and, likewise, the failure to include comprehensive mining records is a major obstacle for a would-be buyer.) That fact (as well as the incompleteness and objectionable nature of all such Rise records as a matter of evidence, plus their ownership by the Marian Residual Trust ignored by the Rise Petition and Johnson Declaration) will be proven in other rebuttal filings by objectors. See, e.g., the Rise SEC 10K filings' admissions describing the IMM-related evidence and information in ways materially inconsistent with the disputed Rise Petition and Exhibits and the disputed EIR/DEIR. Stated another way, if William or Marian Ghidotti had intended (much less "committed" according to the disputed Johnson Declaration) to reopen the mine themselves or through the BET Group, those owners would have given the BET Group (not a separate Marian Residual Trust with other trustees) the money, documentation, test data, and personal property needed for a cost-effective reopening. Instead, based on this evidence, the objective intent evidence is, to the contrary of the disputed Johnson Declaration and any vested rights claim in the disputed Rise Petition, that the BET Group was just going to do what they did: subdivide the property and sell the surface for residential and non-mining commercial uses and then rest of the IMM to buyers to do with whatever the buyers wanted, even though those subdivision surface sales to residential and commercial buyers were incompatible with the reopening of the mine. See Rise Petition Exhibits 261, 271, 272, and 273, involving the BET Group subdivision and sale of surface land that would conflict with any such mining. Even if such a disputed BET Group plan, action, or intention were nevertheless somehow proven as supporting any disputed claim in the Johnson Declaration or Rise Petition (which is not the case), a subjective desire by each of the three members of the BET Group (each owning a 1/3 undivided interest, and, thus, requiring unanimity for any effective action or intention) for a buyer who wanted to reopen the mine, that would be insufficient to create or preserve any vested rights for Rise. Moreover, a hope to sell the mine to an actual miner, as distinct from another speculator looking to flip the mine either to a real miner or a more aggressive speculator (as may be the case with Rise, since, like prior explorers of this IMM opportunity [e.g., Emgold], Rise's SEC filings admit it lacks the resources even to afford the preliminary start-up work, much less to provide "financial assurances" for any approvable "reclamation plan.")

That priority BET Group action to raise money from surface sales by actions contrary to such surface or underground mining operations cannot be overcome by merely reserving mineral rights. Instead, those BET Group actions are simply consistent with the desire to preserve for some future sale the "option value" from some nonspecific opportunity to sell the underground mining rights (or other IMM property) to some speculator like Northern Mines, Emgold, or Rise. That "option value" comes from the fact that all these predecessors had to invest comparatively little money to acquire and maintain the dormant IMM, especially William Ghidotti when he bought the IMM from Idaho Maryland Industries after it quit mining, moved to LA to become and aerospace contractor, and ended up in bankruptcy and that liquidation auction discussed above. If such bargain shopping speculators could somehow overcome all the local opposition, win permits or vested rights, and make a convincing gold value profit case to a serious mining company (none of whom have yet appeared to public view or Rise mention), the speculators could perhaps make a profit on the "flip." However, that speculation strategy does not create or preserve vested rights for more than half a century. That reality is self-evident, for example, because no rational and

nonbiased person could ever imagine such residential and commercial surface buyers above or around the 2585-acre underground mine (or other IMM property) tolerating such mining beneath and around them. Such surface owners in our community will always consider such Rise type mining incompatible with such surface uses and will predictably resist, just as us objectors and most impacted locals are now objecting to the disputed Rise Petition, the disputed EIR/DEIR, and related disputed permit applications, all for good causes proven both in the massive, meritorious, existing objections in the EIR/DEIR record and in those to come disputing the Rise Petition. Again, if the focus of any purported miner (and, here, non-miners like William and Marian Ghidotti and the BET Group and others who explored and requested permits but never did any real mining) were truly on such "resurrected" mining, as distinct from so speculating, they would not have sold the surface to homeowners and others who would certainly oppose such mining with all legally and politically appropriate means. More importantly, as demonstrated in record objections and cases like *Keystone* and *Varjabedian*, Rise's disputed vested rights and EIR/DEIR claims are based on surface mining and SMARA authorities, none of which overcome the competing constitutional, legal, and property rights of the surface owners above and around the 2585-acre underground mine, and the absence of use permits and other governmental approvals leaves such vested rights claimants exposed to those surface owners' rights that prevail regardless of what the County does or does not do.

F. The BET Group Studies And Planning And Implementation of Surface Subdivisions And Sales For Residential And Non-mining Commercial Uses.

Exhibit 261 is the "geotechnical investigation" report dated 5/13/1986 obtained by the BET Group from Anderson Geotechnical Consultants, Inc., whose purpose was stated (at 1) as follows (emphasis added):

> **An additional geotechnical investigation of 5 proposed residential lots on the north side of East Bennett Street near Brunswick Road has been completed. The purpose of our investigation was to locate any possible geological hazards due to the past mining activity at the old Brunswick Mine. This investigation was performed in conjunction with our previous Geotechnical Reconnaissance (dated 26 February 1986) in which we recommended additional studies take place to locate buried shafts, tunnels, and drifts and find buildable areas on each residential lot. No additional work was performed on lots 6, 7, and 8. These lots are to have geotechnical investigations performed on an individual basis at a later date.**

The result of the study (at 2-3, emphasis added**) was: "we found no evidence of near-surface tunnels or voids within the depths drilled (20 to 30 feet). The "Results And Conclusions" included that: (i) "The results of our study indicate that single-family residences can be built on select areas on each of the five lots…", (ii) "We recommend that residential construction be avoided on the tailing piles on lots 2 and 4," and (iii) to avoid risk from the ancient**

identified underground fault at the property, the report recommended at least a 200-foot setback for residential construction."

Exhibits 271, 272, and 273 follow up on that work, the BET Group transferred subdivided Lots 4, 3, and 2, respectively. As noted above, that is inconsistent with an intent by the owner to reopen the IMM, because such residential development is incompatible with mining.

G. The Vector Engineering Environmental Assessment (Exhibit 66) From Its Odd Position Out of Sequence Among the Rise Petition Exhibits Creates More Questions Than Answers For Rise Ambitions.

Exhibit 66 is an out-of-sequence Rise Petition Exhibit (i.e., obscured amid old historical documents) called "Contaminant Assessment of the Bouma-Erickson-Toms Property, Grass Valley, California" dated November 1993, by Vector Engineering, Inc. This report (which objectors reserve the right to dispute in various parts) addresses (at 2, emphasis added) both (i) its "field investigation" "concentrated in these tailing areas" (i.e., dumps from mining before the mine closed and flooded in 1956) as only a 50-acre part of the 124-acre parcel consisting of 12 legal parcels (zoned M-1) described as: Parcel 17 (APN 09-500-17), and (ii) its "description of the environmental setting and past uses of the property includes all 12 parcels." According to that report citing "available" "historical data" (at 2) Parcel 17 is "vacant land, except for the northeast corner, which is occupied by Hap Warneke Mill, a lumber milling operation, and the only parcel "used for the deposition of tailing materials from the mine." The report disclaims investigating the following BET Group parcels: (i) APN 09-500-13 and 14 (licensed and used by North Star as discussed herein); (ii) APN 09-550-19, 20, 23, and 09-220-14 narrow strips of vacant land with by Wolf Creek and Idaho-Maryland Road that the report concludes have never been mined or improved; (iii) APN 09-550-29 a small parcel that appears to have a history as "part of a roadway or yard" as an entrance to a "cyanide plant" and a "main office building;" and (iv) APN 09-560-02 and -08 are vacant land uphill from the main tailing area, and APN 09-560-05 and -10 are adjacent. All are currently vacant and unused." None of those excluded parcels support any vested rights claims.

As to the history (at 5, emphasis added) on Parcel 17 there were obvious environmental **horrors, such as "cyanide-treated waste sands, or tailings, … placed in an unlined pond with waste rick berms adjacent to Wolf Creek" plus deposits in the "old mercury-treated tailings pond" that was "periodically breached and allowed to flow into the Wolf Creek." While the consequences are obvious, the report discretely states: "The quantity and fate of the materials which was allowed to enter Wolf Creek is unknown." Also, (at 7) the report stated: "Some water infiltrates into fractures in the underlying rock [and] Release of harmful levels of heavy metals or cyanide to Wolf Creek has not been studied." Even worse, (at 8) the report states: "No studies have been made in the area to verify interconnections between surface and subsurface water, or whether water levels in the wells of the area can be correlated." Like the disputed EIR/DEIR and Rise Petition, this report ignores all the hard questions that they correctly fear likely have negative answers.** Recall that in the disputed EIR/DEIR Rise contemplates dewatering objectors' groundwater, passing it through some new treatment plant (which has no precedent as a "component" in the *Paramount Rock* case discussed with approval

in Rise's *Hansen* case, and, therefore, cannot have any vested rights) to flush away into the Wolf Creek as purported "drinking water," although most objectors cannot imagine anyone risking such a drink.

However, in reciting the IMM history the report also states (at 5, emphasis added): **"Although the mine opened briefly after the war, it was never successful and CLOSED PERMANENTLY IN 1956."**

H. Rise Petition's Exhibit 262 Contains Provocative CONSULTING REPORTS FOR NORTHERN MINES AS A POTENTIAL PURCHASER of the IMM, Adding No Support For Rise's Vested Rights Claim, But Instead Admitting How Even Aggressive Speculators Contemplating Political Manipulations Have Abandoned The Quest for The IMM.

1. Exhibit 262.

This "Status Report" dated 1/23/89 provides the analysis and recommendations by Ross Guenther that was focused on the amount of gold and profit possibilities and permitting issues for dewatering and other exploration work to resolve various open, mining, economic questions. There was no evidence of any belief that any IMM miner had or could satisfy any of the requirements for any vested rights for any use or component on any parcel, much less for every parcel and every contemplated "use" and "component." To the contrary, the **following Condor consultant "Proposal [for] Permitting Feasibility Study, Reactivation Study Project May 2, 1988," is an implied admission that this alleged, comprehensive "expert" on the mine's history and other facts relevant to any vested rights claim knows that such claims are bogus, because such consultant instead focused his client on normal permitting and political manipulations to obtain such permits.**

Mr. Guenther claimed in his such Status Report "Summary" (at 1, emphasis added, as to this one person's disputed opinion, now long outdated) that: "The land status of this 2750-acre property is in good shape and **actions are being taken to upgrade the title. Permitting possibilities for dewatering and subsequent underground development and exploration appear fair, but the water quality study should commence immediately**." At 4 he predicts that the IMM and Brunswick gold quartz veins lie to the north of this intrusion [i.e., the Calaveras Formation where "granodiorite intruded the metasediments and metavolcanics," without addressing how that affects the groundwater depletion risks grossly underestimated by the disputed Rise EIR/DEIR.] At 9 he discussed how he began pitching the potential gold content prospects for the IMM, which he describes throughout in various ways inconsistently with the Rise SEC filings and the disputed EIR/DEIR, following how (emphasis added): **"William Ghidotti…purchased the holdings of the Idaho-Maryland Corporation when bankruptcy forced the sale of their property"** and after his death his wife's death the transfer to the BET Group discussed above. In any case, his report is part of his effort in 1986 for "negotiating a lease purchase agreement for Mother Lode Gold Mines," which was finalized in March 1988 and assigned to Northern Mines. **What matters for vested rights is this consultant's admission at 11 that** (emphasis added): "**The comparison for development vs. production grades was**

never calculated for the Idaho and Maryland portions of the property by the Brunswick Mine staff though plenty of the necessary records required to do so have been preserved. It could only be speculated that the Idaho development/production grade coefficient could be very similar to the 1.75 figure calculated for the Brunswick Mine, until it is calculated." If the BET Group or other predecessor owners had intentions to mine sufficient to claim vested rights, this is the kind of thing they would have done, and their failure to do so is a denial of the required "objective proof" for any vested rights by such predecessors. Such realities of that issue must have disappointed Northern Mines because they obviously "walked away" from this opportunity. Moreover, while this consultant talks about records showing what he calls "proven and probable [gold] reserves" (or even "possible" reserves), objectors have demonstrated with Rise admissions in its SEC filings that Rise has claimed no proven or probable reserves at all in such SEC filings, but instead just talked about the "good old days" results in a different part of the 2585-acre underground mine from what new expansion is now proposed by Rise.

2. Exhibit 262 (continued).

As to the "Proposal" from Condor for what it calls (at 1, emphasis added) **a "permit feasibility study," it likewise ignores any vested rights possibility, correctly assuming that permits are required. Revealingly, Condor describes the earlier, unsuccessful attempt to reopen a different nearby Banner-Lava Cap Mine, as if it were more of a public relations problem by less skilled manipulators who neglected the right "spin" and lobbying from mine advocates with the necessary "political" influence, rather than meaningfully addressing any environmental harm and risk problems to be addressed on the merits. For example,** (at 3, emphasis added) **Condor implies that it will seek "[t]he cooperation of County government … to gain access to the confidential records of well drillers logs kept by the Division of Water Resources. …Unless there is a storage facility downstream along the Flume [Condor proposed to dump our dewatered groundwater], mine discharges outside of the irrigation season could be politically disadvantageous." Indeed, Rise seems to be attempting to follow a more "aggressive" (i.e., bullying) version of some of Condor's "political influencing" suggestions with certain state or local officials, again incorrectly disregarding the science and legal merits discussed in objections to the EIR/DEIR. In any event, there is no support here for vested rights as demanded by Rise, and few of the legal and factual rebuttals by massive objections to the EIR/DEIR (and objections coming next against this Rise Petition) are responded to appropriately on the merits.**

I. Rise Petition's Reliance on DISPUTED EMGOLD EXHIBITS Also Fails To Support Any Vested Rights, Although the Prior Events And Conduct of Predecessors Already Defeated Those Rise Claims Before Emgold Became Involved.

1. Introduction.

As demonstrated in other briefing and more to come, vested rights were defeated long before Emgold became relevant in this dispute, since each predecessor-owner of each parcel and component needed to prove continuous, compliance vested rights for each "use." Therefore, since Emgold's predecessors had no vested rights, Emgold could not inherit any such vested rights. However, even if somehow Emgold had some vested rights, which objectors dispute, Emgold could not create or continue vested rights to pass along to Rise.

2. **Exhibit 289.**

Emperor Gold (U.S.) Corp., a Nevada corporation, changed its name to "Emgold Mining Corporation," but (for clarity) this document just uses the current name, shortened to "Emgold," even before that name change on June 2, 1997.

3. **Exhibit 285 (at the start).**

This recorded notice relates to the "Brunswick mill site" ("APN 6-44' 03, 04, 05, 29, and -30"). **Sierra Pacific Industries executed (emphasis added) a "Lease and Option to Purchase" effective March 10. 1994, in favor of Emgold for "the right to explore the property for a period of three years… with the further right and option to purchase the property during the lease term." This is not evidence of vested rights, but rather the opposite, since there was no continuing actual mining "uses" during that period (and presumably also not before that time by Sierra Pacific Industries, whose role is mostly ignored in these Rise Petition Exhibits 1-307 for any vested rights purposes, creating another gap in the required evidence for continuance of transferred vested rights), because such "exploration" is a different "use" of such parcels than actual "mining" or other "uses." Also, there is no such evidence that Sierra Pacific was doing any such relevant "uses" on its own, especially true, actual mining "uses," especially parcel-by-parcel in the underground 2585-acres and particularly in the new expansion areas never previously mined (according to the EIR/DEIR requiring 76 miles of new tunnels). Sierra Pacific would be unlikely to spend money to do anything creating or preserving vested rights for the benefit of Emgold during that period when Emgold had a purchase option. The clear implication is that Sierra Pacific had given up any mining intention and was only focused on a sale to any qualified buyer, even a speculator like Emgold. Thus, like all the other applicable predecessors since 1954, Emgold and Sierra Pacific did not contemplate doing anything to create or preserve any vested rights claimed by Rise.**

4. **Exhibit 306 (at the ending, with nothing accomplished by Emgold, after all the following interim "hype" and nonproductive Emgold activity between that 1994 start and this April 30, 2013, financial statement explanation of that predictable end when its rights expired unexercised.)**

These Exhibit documents are the financial statements issued 4/30/2013 by Emgold for the years ending 12/31/2012 and 2011, now reporting a loss/deficit of ($50,558,880) with minimal cash and liquid assets and once again warning: "For the

Company to continue to operate as a going concern it must obtain additional financing … there can be no assurance that this [successful fund raising] will continue in the future." [This sounds like the Rise SEC filing financials, which has an even stronger "going concern qualification"). The key is that in fn. 4(b) Emgold admits that: "The company owns land and surface rights which is part of the Idaho-Maryland property in the amount of $747,219. This land is adjacent to the property which the company leases that expired on February 1. 2013 (see fn.16, emphasis added) …" IN FN. "16. SUBSEQUENT EVENTS" (AT THE END OF THE FINANCIALS WITH AS LITTLE ATTENTION AS FEASIBLE) EMGOLD STATED:

> **SUBSEQUENT TO THE 31 DECEMBER 2012 YEAR END, THE COMPANY'S CURRENT EXTENSION OF THE LEASE AND OPTION TO PURCHASE AGREEMENT (THE "BET AGREEMENT") EXPIRED ON 01 FEBRUARY 2013 ... [AFTER THREE EXTENSIONS SINCE 2002]. (EMPHASIS ADDED)**

SEE ALSO FN. 9.A. Not only is Emgold not entitled to any vested rights (and, therefore, cannot pass them along to Sierra Pacific or Rise), but Emgold also made no attempt to comply with any vested rights requirements. For example, Emgold could do (and did) nothing at the IMM after that expiration, and the BET Group was not set up or funded to do anything relevant themselves, as demonstrated above. Sierra Pacific was also not proved to have done anything to create or preserve any vested rights in these Exhibits. Stated another way, this nonproductive Emgold speculation resulted in another extended period of inaction that defeats any claim of continuous mining uses or other relevant operations or "uses" of any kind on any of these "parcels" or for any "components." Obviously, because Emgold has no vested rights, it could not pass them along to any successor like Rise.

5. Exhibit 286.

This post by the Northern Miner Staff dated 12/11/1995, describes the terms of that Emgold lease option arrangement as well as updating information from Emgold (at 3) disclaiming certain environmental issues (e.g., "acid generation") and explaining that Emgold almost had its permits for dewatering under its (apparently staff approved) "Final Environmental Impact Report on the proposed dewatering, that was delayed at the County Use Permit hearing by local resident objections, "concerned that the proposed dewatering will cause the water table to be drawn down as the old workings are pumped out, rendering water wells dry." Note that there was no water treatment associated with that dewatering, stating (emphasis added): "The dewatering involves pumping the water into an existing pond adjacent to the Brunswick shaft, and then discharging it into the south fork of Wolf Creek." Thus, as objectors have argued there was no precedent for the disputed Rise water treatment plant "component" contemplated by the disputed EIR/DEIR, which needs its own vested rights for such use (as *Hansen* agreed in its approval discussion of the *Paramount Rock* added "rock crusher" in that case), that water

treatment facility has no precedent, and it therefore cannot have any vested rights now, as *Hansen and Paramount Rock* confirm.

6. Exhibit 287.

This follow-up post by the Northern Miner Staff dated 2/5/1996, announced the approval by the Nevada City Planning Commission "following several delays and appeals by a group of local residents." The post added that Emgold "plans to dewater the mine and rehabilitate an existing shaft to allow access for exploration," which was "expected to last one year." Again, there was no actual "mining" use or other "use" besides expected "exploration after another year of exploration and rehabilitation." What this proves is that Emgold continued to rely on the permitting process without any vested rights claim. Also, as objectors have asserted in many EIR/DEIR and other objections with more to come, this proves objectors' obvious claim; i.e., that no one could have done any mining or any real exploration since the mine flooded and closed in 1956, because the first use of the land had to be to dewater and rehabilitate the mine for a year before any meaningful exploration could even begin to decide whether to exercise the purchase option. Note again that the Emgold intention to explore is not the same as a current intent to purchase and reopen the mine, as would be required for any vested rights claims, although prior facts defeat any such disputed Rise theory. Also, there is no proof submitted that Emgold ever actually did any such dewatering, rehabilitation, or exploration as distinct from seeking the right to do so if it could ever afford to do so.

7. Exhibit 284.

This is the Emgold annual financial report dated 4/7/2000 to the British Columbia Securities Commission for the years ending 12/31/1999 and 1998, which addressed (at fn.3) the "Idaho-Maryland property, California" described its financial problems and interim renegotiations of the Sierra Pacific deal, *concluding (at fn. 3(d)):*

> ***Write Down of mineral property. At December 31, 1999, the Company [Emgold] reviewed the carrying value of the Idaho-Maryland property. It concluded that due to the prevailing low gold prices and uncertainties surrounding the ability of the Company to raise the additional financing to maintain its interest and develop the property, that the carrying value of the property may exceed its recoverable amount. Accordingly, a write-down of $6,982, 016 was made to reduce the carrying value of the property to a nominal value of $1. (emphasis added)***

What that means is that whatever exploration and analysis Emgold may have done, if any, there was no current intention to conduct any activities (or to harbor any such intentions) that could support any vested rights claim by Emgold (or thereafter by Rise). By confessing that write off of its investment, Emgold was hardly likely (even if it found money

not apparent on its financials) to invest more in such an expensive gamble to dewater, rehabilitate, and explore the IMM and thereby increase Emgold's reported losses. Moreover, having that result so publicly announced under these circumstances, no one would expect Sierra Pacific or the BET Group to have any intention to mine or otherwise use the IMM for anything besides what it has been since 1956, just "option value" property for any speculator willing to risk enough money to attract a buyer or investor to whom such speculator could flip the property opportunity at a profit (what is described above as the speculator focus on "option value"), considering the comparatively low purchase prices that each successive owner (including Rise) paid for the property.

8. **Exhibit 291.**

   This letter dated 3/28/2001 from the Nevada County Community Development Agency reported the two-year extension of time (until 1/25/2003) for the Conditional Use Permit application of Emperor Gold [Emgold] File Number U94-017." **Again, this makes the vested rights claim even weaker by further delay without action, "use," or objective intention besides just stalling for time to find more aggressive speculator as investors or buyers (like Rise) to whom it could "flip" this alleged "opportunity."**

9. **Exhibits 292, 293, 294, 296, 297, 298, 299, and 300.**

   This Exhibit 292 chapter begins with the June 5, 2002, Emgold press release announcing its renegotiated lease and purchase Option Agreement with the BET Group for their "BET Property" consisting of the 2750-acre underground mining rights "(with no surface rights)", the 37-acre "Brunswick Property" with some mineral rights "located around the New Brunswick Shaft," and an additional 56 acres. Emgold could purchase the property within five years for $4,350,000. **From the Emgold admissions, it is clear that little or nothing had been actually accomplished at the mine by that time because (emphasis added):**

> **The Company is currently reviewing the steps required for modification to the existing exploration permit (Nevada County-USE Permit U9 by the Northern Miner Staff dated 4-017) to allow for the installation of an exploration ramp from the surface to the 600-foot level… [Emgold also contemplated a] "scoping study" [to] "address the definition of the various exploration targets and the steps required to complete a feasibility study and put the mine back into production."** …[Besides some historical and aspiration data and "hype" Emgold admits that:] **"THE IDAHO-MARYLAND VEIN SYSTEM LIES WITHIN A WEDGE-SHAPED BLOCK, WHICH IS CONFINED BY THREE BOUNDING FAULTS."**

Besides the existing disputed EIR/DEIR objections about these matters, especially those fault risks, THERE WILL BE MORE OBJECTIONS COMING TO ATTACK THE RISE PETITION'S CLAIM THAT RISE CAN MINE AS IT WISHES WITH SUCH DISPUTED VESTED RIGHTS "WITHOUT LIMITATION OR RESTRICTION," WHEN THE RISK DEWATERED CAUSING EARTHQUAKES WILL BE

A MAJOR AREA OF DISPUTE. SEE THE PENDING OBJECTIONS IN KEYSTONE, VARJABEDIAN, AND OTHER CITED CASES DISCUSSED THEREIN REGARDING THE COMPETING CONSTITUTIONAL, LEGAL, AND PROPERTY RIGHTS OF OBJECTING SURFACE OWNERS ABOVE AND AROUND THE 2585-ACRE UNDERGROUND IMM, INCLUDING AS TO LATERAL AND SUBJACENT SUPPORT OF THE DEWATERED GROUNDWATER TO AVOID "SUBSIDENCE" WHICH OBJECTORS CONTEND IS A CAUSE OF EARTHQUAKES.

As to Exhibit 293 containing the Emgold financial statements issued 4/25/2003 for the years ending 12/31/2002 and 2001, besides noting the "(18,881,797)" Emgold loss and deficit and little cash and liquid resources on the balance sheet, objectors note continuing write-offs of the still #1 value of the IMM by another "(634,417)" annual operating loss mostly applicable to the IMM. More importantly, but informed by that admitted reality of extreme financial distress, Emgold's fn.1 states (emphasis added):

> **The Company is in the process of exploring its mineral property interest and has not yet determined whether its mineral interests contain mineral reserves that are economically recoverable.**
>
> ***
>
> **The Company's ability to continue in operation is dependent on its ability to secure additional financing. While it has been successful in securing additional financing in the past, there can be no assurance that it will be able to do so in the future.** Accordingly, these financial statements do not reflect adjustments to the carrying value of assets and liabilities and balance sheet classifications used that would be necessary if going concern assumptions were not appropriate. Some adjustments could be material.

In fn.4 there is an update on the IMM situation that explains how: **"All acquisition and exploration costs relating to the Idaho-Maryland property were written off in fiscal 1999 and expenditure since then has been written off in subsequent years."** (emphasis added) In fn.5 Emgold describes how I paid the IMM owners with a promissory note since it lacked the cash.

As to Exhibit 294, an Emgold press release reported an anticipated surface drill program at the IMM "to test the structural geologic model" over 15-24 months and applying for a related Use Permit. As to Exhibit 296, an Emgold press release announced some drilling results **including its admission about "several new locations that have never been mined"** (apparently, from EIR/DEIR data) the new Rise targets.) **A comparison of the drilling data to the parts of the underground mine will demonstrate how Rise cannot claim vested rights to mine under the applicable parcel-by-parcel, use-by-use legal requirements either on the new test places that admittedly have "never been mined" and even more expansion places in the 2585-acre underground mine that have never been either mined or even explored, thus requiring, for example, what the EIR/DEIR described as 76 miles of new tunnels.**

As to Exhibit 297, the 12/14/2004 press release announces another exploration and development plan, again applying for a Conditional Mine Use Permit that will include dewatering of the existing Idaho-Maryland Gold Mine workings and the construction of an access ramp for underground exploration and possible future staged mine production. Again,

note that Emgold has been saying similar things for years, while actually doing little besides some test drilling. That lack of continuous "uses" on each parcel again defeats Rise Petition's claims to inherit vested rights for such admitted, disqualified parcels. Also, note that Emgold announced plans for using its subsidiary's newly invented "Ceramext Process" "to reduce the effective cost… and mitigate the environmental impact of the operation." (emphasis added) **This appears to be a new "use" or "component" that cannot qualify for vested rights because it has no such historical precedent in that mining.**

As to Exhibit 298, this is another Emgold press release dated 2/13/2006 about its exploration program, but again Emgold's analysis is "historical" in nature, does not comply with NI 43-101, and "further exploration is required to verify the accuracy of this data and the data should not be relied upon for investment purposes."(emphasis added) **Furthermore, Emgold stated: "Since the mine workings are not accessible, Idaho-Maryland geologists have not verified the sample intercepts, but the historic assay map data is felt to be reliable."** (emphasis added) **Again, Rise is asking at-risk local objectors and the County to assume such risks with our health and welfare, our properties and their values, our environment, and much more (i) based on what such speculators "felt to be reliable" historical data, despite such documentation's incompleteness, deficiencies, and worse, and (ii) when Emgold (and now Rise) warned its speculator investors not to rely on such data, but then ask the County to accept and impose that unreliable data on us at-risk locals (who would not rely on such data voluntarily). See record objections to the EIR/DEIR versus the Rise SEC filings.** Likewise, **Exhibit 300** is another press release dated 3/1/2007 "hyping" historical data with the same disclaimers in identical language and subject to the same objections.

As to Exhibit 299, this is another press release dated 2/1/2007 about more revisions to the BET lease option agreement. Exhibit 301 is another press release dated June 25. 2007, that just **describes Emgold process at present and going forward, applying for permits and planning to comply with CEQA for a future EIR attempt, again without any sign of any vested rights claims or actual progress. Exhibit 302** is just a press release update on 1/7/2008 of the same nature and effect. **Exhibit 303** is the same kind of update on 9/21/2008. Similarly, **Exhibit 304** is another such shareholder update dated 11/3/2008 reporting on its DEIR. Also, **Exhibit 305** is another such press release date 2/23/2009 that describes negotiation of an extension with the BET Group, some financing and other updates, none of which are material for any Rise vested rights claims. **Thus, we are set up for the end game discussed in Exhibit 306 above, announcing that THE LEASE AND PURCHASE OPTION EXPIRED 2/1/2013. While there are many gaps in the Rise Petition's "story" through such Rise Exhibits, apparently Rise realized that what was missing was even more irrelevant or unhelpful to its disputed aspirations than the foregoing "filler," none of which supports any Emgold or Rise vested rights claims.**

J. Miscellaneous Rise Petition Exhibits Undercutting Its Vested Rights Claims, Including How The IMM Shut Down, The Problems With the Long Term $35 Cap On Gold Prices, Idaho Maryland Mines Closing And Liquidating Local Assets For Its New Business In LA And Then Bankruptcy, Alternative Sawmill And Other Non-Mining Uses, Local Resistance To Other Local Mines, Etc.

1. Exhibit 209.

The Nevada State Journal story dated 7/7/1957, entitled (emphasis added): "Once-Great Grass Valley Gold Mines Grind To Standstill After 106 Years," proves the opposite of any "objective intent" to continue mining. The story begins by discussing how the IMM "rolled to a halt perhaps permanently. …Mine officials questioned concerning its future, are hopeful but not optimistic. They believe a sizable increase in the price of gold is the only answer." The story also explains how the mine was removing its "pumps, hoists, mine rails, and other salvage jobs." As proven by Rise Petition's own Exhibits discussed herein, Idaho Maryland Mines closed the flooded IMM in 1956, changed its name and trademark, moved to LA to become an aerospace contractor, and ended up there in bankruptcy, leading to the liquidation auction at which William Ghidotti bought the IMM cheap, presumably not to reopen the mine, which he never tried to do, but rather as a history buff and for its "option value" for future speculators. There is no admissible or credible evidence that Idaho Maryland Industries had (or even imagined that it had) any vested rights at the time of that auction, nor did William Ghidotti imagine he had acquired any such vested rights at that sale. Lee Johnson's Declaration starts later in time with his relationship through his mother-in-law with Marian Ghidotti. None of that is not evidence of an objective intent to continue to mine. See how that problem was continuing and explained in Exhibit 222 below.

2. Exhibit 222.

Similarly, consider the letter dated December 19, 1961, from IMM director H.G. Robinson, who explained the hopeless fate of the IMM absent radical new laws that did not come for a long time to deal with the $35 gold price cap obstacle to any possibility of profitable gold mining. See also Exhibits 233, 234, and 243 discussed below regarding that $35 cap. As legal briefing will prove and Rise has offered no contrary authority, it does not constitute for vested rights purposes as an "objective intent" to resume discontinued mining in such a dormant, closed, and flooded mine, that a miner has a conditional intent dependent not just on a change in market conditions, but also a change in applicable law (that did not occur for more than a decade later). Stated another way, this initial miner (Idaho Maryland Industries, then called Idaho Maryland Mines) for vested rights purposes only intended to consider resuming mining if several things happened that required changes in the law. For example, first, the US Congress and President needed to approve ending the $35 gold price cap, and, second, a government bailout for miners was needed to cover otherwise unaffordable "development costs" because even the free market price of gold would not make such mining then profitable at the applicable cost at such time and long thereafter (see Exhibit 276, where, as discussed above even in April 1991, when Consolidated Del Norte Ventures announced its BET Group license and purchase option after the $35 gold price cap was finally repealed, the market price of gold was $367 an ounce compared to the "$400 per ounce often cited as the benchmark price for deciding whether a gold mine is viable…") Consider how Mr. Robinson explained that "hard rock gold mining is made up of three basic operations, to wit—development, extraction, and milling. Development work is by far the most expensive." He explained such "staggering costs" would be required for such development mining here, which was not economic at $35. [Note that "all in" cost versus gold price reality has continuously been a factor limiting the reopening of the IMM since 1956 and (although use of gold as a modern inflation hedge changed the modern dynamic) still applies, especially here considering the massive up-front cost and investment of reopening the

IMM even before one can be sure of profitable gold deposits and even in the disputed and deficient ways contemplated in the disputed EIR/DEIR. While the disputed EIR/DEIR failed to price its development and other goals, the mere description of such contemplated work and our objections with supporting SEC filing admissions, make it clear that such costs are still "staggering."]

Further, Mr. Robinson explained how mines close when the exposed gold is exhausted, and how more expensive tunneling and development is required to find more gold. [According to the disputed EIR/DEIR, Rise contemplates 76 miles of new tunnels into previously unexplored and unmined underground parcels, beyond the existing, flooded 72 miles of tunnels (and, per Exhibit 276, 150 miles of flooded "drifts" and "cut-offs."] "Accordingly, the initial capital outlay upon reopening the mines will be to develop or re-establish the ore reserves or access to tunnels to them. In the vernacular this is where 'pump will have to be primed' aside from recapture or dewatering costs." MR. ROBINSON THEN PROPOSES GOVERNMENT LOANS TO BAIL OUT THE GOLD MINERS. THIS SHOWS, AS THEIR CONDUCT LEADING TO THE AUCTION FIRE SALE OF THE MINE CHEAP TO WILLIAM GHIDOTTI DISCUSSED ABOVE, THAT THE IMM HAD NO SUFFICIENT INTENT OR PLAN TO REOPEN THE MINE, ABSENT AN UNREALISTIC HOPE/FANTASY IN LAW REFORM AND GOVERNMENT BAILOUTS OF GOLD MINERS, AND NONE OF WHICH COULD QUALIFY FOR ANY VESTED RIGHTS. If there were no vested for Idaho Maryland Mines at that start in 1954 (when this economic problem already existed and only government subsidized tungsten mining was happening at any scale) or 1956 (when the mine was formally closed and flooded), then no successor, including Rise, could have any vested rights. Stated another way, for future mining intentions to be eligible for consideration for vested rights, among many other requirements, there must be, at most, only a temporary business/market economic obstacle-not one that lasted from 1954-56 to now; and in any case, not ever a condition on the mining resumption intentions requiring such major changes in the applicable law (ending the $35 cap that didn't occur for more than a decade) much less a requirement for such a huge government bailout for gold mine owners that never happened.

3. Exhibit 295.

This is a Nevada Union story dated April 4, 2003, about the removal of the "old Bohemia Mill" and "old sawmill" "remains" for the Sierra Pacific Industries plan for residential subdivisions, uses that are inconsistent with reopening the IMM, as discussed above and illustrated by all the record objections to the Rise EIR/DEIR and those coming against the Rise Petition.

4. Exhibits 215 and 249.

This Use Permit dated June 12, 1958, was issued to Summit Valley Pine Mill, Inc, "to construct and operate a sawmill" on APN 6-44-02. (emphasis added) Again, that surface, sawmill use does nothing to support any vested rights claims, especially for the underground mining. Also, note that some later historical documents reflect back to even earlier times when non-mining uses began in the years after the 1956 closing and flooding of the mine. For example, Rise Petition Exhibit 249 is another incorrect effort by Rise to try (incorrectly) to claim vested rights for mining from incompatible non-mining uses such as this sawmill. Such work on a sawmill as late as 1976 cannot create continued vested rights for mining uses.

5. Exhibits 244, 245, 246, 247, 255, 256, 257, and 258.

For some reason not apparent to objectors, the Rise Petition includes Exhibits that address two other failed, local mining attempts, one for the Banner and Lava Cap mines (Exhibits 246, 247, and 258) and one for the San Juan Ridge mine (Exhibits 244, 245, 255, 256, and 257). It is not clear how these exhibits in any way support the Rise Petition, but they demonstrate some of the same meritorious grievances of local objectors then that are much larger now and supported by much stronger and supermajority local voters against Rise's much worse mining threats to our now larger and much more residential and non-mining community.

Exhibit 246 is a Sacramento Bee story dated 3/14/1984 about the threats to our community by Franco-Nevada Mining Corp of Toronto, Canada applying for exploration permits for reopening the Banner and Lava Cap mines "closed for 40 years" "in a growing residential area" now much bigger with many more objecting voters. That was followed by **Exhibit 247,** another Sacramento Bee story dated 6/5/1987, entitled, "Nevada County looks to solve mining conflicts," describing how the County was developing changes to the general plan to deal with such conflicts that have gotten more serious and intense since then. That was followed by **Exhibit 258**, another Sacramento Bee story dated 11/7/1985, entitled "Mining foes win by 51-vote edge; Nevada County recount plea likely." There, as would happen here, if necessary, the impacted locals qualified a Measure C ballot dispute on the mine and won, as objectors would do again now by an even larger margin.

Exhibit 244 is a Sacramento Bee story dated 5/13/1983, entitled "Gold Explorers' Permit Is Extended" describing how this San Juan Ridge (2200-acre Old Columbia Hill Diggings) "site had not been mined since 1884 when hydraulic mining was banned because of debris being dumped into rivers." See also Exhibit 245. **Exhibit 255** is another Sacramento Bee story dated 8/2/1984 entitled, "Geologists defend gold project," but that project is distinguishable, not evidence of anything in the IMM, and is 20 miles away from the IMM. **Exhibit 256** contains two Sacramento Bee stories dated 10/7/1984 and 9/12/1984 describing the miner dropping out of the dispute "because of unfavorable gold prices and community opposition" to that proposed open-pit gold mine "abandoned in the 19th century" and "unreasonable" permit restrictions" from the perspective of the wannabe miner, but that were actually essential protections for local residents with competing legal and property rights, plus the voting power to cause the enactment of law reforms to provide even stronger protections. The second story was more specific about "**the conditions placed on the permit are so restrictive that the company can't profitably operate the gold mine."** (emphasis added) **That does not support any vested rights claims by Rise, but it does explain why Rise is now trying this desperate and meritless vested rights claim at Rise Petition at 58 to be able to mine anywhere in the Vested Mine Property as Rise wishes "without limitation or restriction."**

6. Exhibits 233, 234, and 243.

These Exhibits address more miners' problems with the $35 cap on gold prices that began in 1942, which made such mining progressively more unprofitable thereafter, especially since the Rise's alleged "vesting date" in October 1954. Whatever miners' vague "hopes" (Rise exaggerates that to call them "intentions," since those aspirations were always conditional on law reforms or government bailouts, as discussed above), Rise's disputed and unproven claims

about predecessors just waiting for better market conditions are misleading and incorrect, since miners would not have reopened mines unless laws changed and even then when there was a government bailout required by Mr. Robinson on behalf of his Idaho Maryland Mine; i.e., such **miners' hopes were conditioned on the political events changing to eliminate that gold price cap and to provide Mr. Robinson's government bailout for development costs, which are not a basis for allowing any vested rights**. However, even ending that cap did not (and would not necessarily) restart the gold rush for many reasons, including those explained in **Exhibit 233,** a Stockton Daily Evening Record dated 3/18/1968, entitled "Soaring Gold Prices Trigger Speculation of New Wave 'Gold Rush' In Mother Lode," **describing a "vanished industry" in California, where there are no experienced or qualified miners and mining engineers.** (emphasis added) **Also, "gold will have to rise to a price of $100 or more … before it can again become profitable to mine." Exhibit 234 is a Sacramento Bee story dated 3/24/1968, entitled "Gold Crisis Is Not Spurring Rush To Reopen State's Mines," to the same effect except pushing the gold profit cost point to $120.** (emphasis added) **Then a decade later Exhibit 243** in the Napa Valley Register dated 9/5/ 1979 filed a story entitled, "There's A New Rush For Gold In Them Thar Mines." **However, none of those stories support the Rise Petition.**

V. Some Illustrative General Rules of Evidence To Defeat The Rise Petition, Including the Johnson Declaration (Exhibit 227) And Other Rise Petition Exhibits, On Account of Inadmissible Or Objectionable Evidence And Worse.

A. Some Evidence Code ("EC") Fundamentals And Guidance That Apply Broadly, As Distinguished From The Specific Applications Above Of Evidentiary Rules To Particular Exhibits Above.

1. Introductory Matters, And EC Objections Based On "Relevance" And Related Matters.

While this document does not yet present objectors' more comprehensive evidentiary objections, we briefly identify some illustrative evidentiary rules that the Rise Petition, including the Lee Johnson Declaration(#227) and other Exhibits, violates. All citations herein in this section are to the California Evidence Code ("EC"), with emphasis added in many quotes. **"No evidence is admissible except relevant evidence." EC #350.** (emphasis added) Much of the Rise Petition Exhibit evidence is not relevant to the vested rights issues in dispute but appears to be "filler" background. **"Where part of an act, declaration, conversation, or writing is given in evidence by one party" [e.g., Rise], the entirety of the same can be used by the other party as evidence, such as in rebuttal. EC # 356.** (emphasis added) **(This will be demonstrated in both further rebuttal declarations and other objections to come from objectors before the Board hearing.**) **That is also another reason why the County's disputed limitations for the December 13, 2023, Board hearing not only deny us objectors our equal due process rights under Calvert and Hardesty, but also our rights to rebut the Rise Petition using EC #356 and other always allowed rebuttal evidence without limitation**. In the EIR/DEIR disputes this EC rule (like many others) was routinely violated in massive ways as documented in some record EIR/DEIR objections incorporated and added to this record for objectors' Rise Petition objections, to

preserve the record for our objections against limitations on our rebuttal rights. While the Board may incorrectly follow the objectionable pattern of the County staff in allowing Rise and its enablers (e.g., the authors of the disputed EIR/DEIR, the County Economic Report, etc.) and the County Staff Report on the EIR, objectors insist here and elsewhere in their vested rights rebuttals, so that objectors can insist on strict compliance with the EC and applicable laws in the court trial to follow, thereby (as in *Calvert and Hansen*) excluding at trial much of what Rise incorrectly calls "evidence" or inadmissible opinions masquerading as "facts." Those above evidentiary objections to the Lee Johnson Declaration illustrate what is coming in the additional objections to follow this one.

Exclusions of much Rise Petition evidence must also be allowed pursuant to such EC #356 "full context" or other such rebuttal objections, even if not part of the administrative record, because in many cases objectors cannot be clear about which rebuttal evidence would be relevant and useful since the Rise purported evidence (especially its lacking "foundation") is too deficient. For instance, when there is "hidden hearsay" (as throughout the Lee Johnson Declaration, where he alleges an unsubstantiated opinion purporting to be an evidentiary "fact" from his "personal knowledge," with obscure qualifications, such as "I am aware …", "I believe…:, "I understand…", "my impression was…", or etc.) objectors cannot be required to produce rebuttal evidence until objectors are able by trial objections and motions to compel disclosures (e.g., who or what is the source or cause of such alleged "awareness," "belief," "understanding," "impression," etc.) for which there is no discovery or other process available to objectors to compel such disclosure at the County level. Also, for example, we fear a repeat in this vested rights, County process of the incorrect and objectionable procedures abused by Rise and its enablers, but allowed by the County in the past EIR/DEIR process, such as Rise or its enablers adding many disputed new and supplemental things (even amendments) to the record by incorrectly labeling them to be "clarifications" (while, by contrast, objectors each had only three minutes for rebuttal comments and even then with far less time and objectionably limited scope). Objectors will be demanding appropriate relief from the courts whenever the administrative process denies us *Calvert* due process by not treating objectors as equal participants, even us surface owners above and around the 2585-acre underground mine with competing constitutional, legal, and property rights and claims providing us equal "standing" as full participants, rights the County has again announced it will incorrectly deny us on December 13. If and to the extent that our objections are so improperly limited, impaired, or cut-off and other procedures disable any fair opportunity for us to dispute such objectionable Rise or enabler evidence with our own rebuttal evidence or for cross-examination to expose Rise wrongs with evidentiary and other objections, we will rely on the courts to correct that situation and exclude much of Rise's so-called evidence. E.g., *Calvert* at 622.

For example, as demonstrated above, most of the Johnson Declaration (Exhibit # 227), like many of the other Rise Exhibits) must be excluded and, therefore, cannot prove what the Rise Petition claims, for example, because such Exhibits lack the required evidentiary "foundation" to be admissible (EC #'s 402, 403, and 405), such as by disputed Rise "evidence" lacking the necessary "preliminary facts" (#400), especially where what Rise asserts is often just "proffered evidence" (#401), whose admissibility is "dependent upon the existence or nonexistence of [such] a preliminary fact" that is missing. Objectors focus on that missing context, because, for example, that understanding is necessary for the rejection of most of the

Lee Johnson Declaration and much of Rise's other Exhibits' purported evidence, requiring the court to apply the rule in EC #403(a) that states [with bracketed comments and often emphasis added to illustrate the application of such rules to this dispute]:

> **The proponent of the proffered evidence has the burden of producing evidence [EC #110] as to the existence of the preliminary fact [EC #400], and the proffered evidence [EC #401] is inadmissible unless the court finds that there is evidence sufficient to sustain a finding of the existence of the preliminary fact, when [as is the case in most of the Johnson Declaration, as in other Exhibit purported "evidence"]: (1) The relevance of the proffered evidence depends on the existence of the preliminary fact; (2) The preliminary fact is the personal knowledge of a witness concerning the subject matter of his testimony [see, e.g., inadmissible hearsay from Lee Johnson's mother-in-law [now long dead] or other third parties, which is not as he claims from direct "personal knowledge" as required, i.e., if that Declaration were factual, then the facts would appear to be more accurately stated in a manner such as, for example, "My mother-in- law told me that Marian Ghidotti told her that she [and sometimes her husband] intended [X], or believed [Y], or did [Z]," which is inadmissible hearsay.] (3) The preliminary fact is the authenticity of a writing, or (4) The proffered evidence is of a statement or other conduct of a particular person and the preliminary fact is whether that person made the statement or so conducted himself [see clause 2 herein]. [Also see EC #405 to extend that foundational requirement to other issues and circumstances.]**

2. The Johnson Declaration And Other Rise Petition Exhibits Are Doomed by the Applicable Burdens of Proof And Burdens of Producing Evidence.

EC #'s 500, 550. See EC #660 (all EC #660 et seq. presumptions and other #605 authorized presumptions to effectuate the burden of producing evidence). Besides the cases imposing the burden of proof on Rise as the party claiming vested rights (e.g.*, Calvert, Hardesty*, and even *Hansen)*, the general rule in EC #500 imposes that burden also on Rise as the party who has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defenses that he [Rise] is asserting." Likewise, in EC #550(b) the "burden of producing evidence as to a particular fact is initially on the party with the burden of proof as to that fact," and under EC #550(a), as to a particular fact, is on "the party against whom a finding on that fact would be required in the absence of further evidence."

3. Estoppels Against Rise And Its Enablers (Like Mr. Johnson).

Rise Is estopped from changing Its story from what it previously stated in the EIR/DEIR, permit applications, and Rise's SEC filings. EC #623 states that: "Whenever a party has, by his own statement of conduct intentionally and deliberately led another to believe a particular

thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it." Judicial estoppel is even more powerful as Nevada County learned to its sorrow in *Hansen*, even though its vested rights litigation concession in that case was a mistake. Because this is an "adjudicatory" administrative proceeding requiring full due process for objectors (e.g., *Calvert),* that kind of estoppel also applies in this context. (None of us objectors, especially those of us living on the surface above or around the 2585-acre, can be limited or bound by any action or statement of the County, since such objectors are independent and equal participants with no less rights and protections than the County or Rise, and we have made no (and do not contemplate any) such concessions or admissions in favor of Rise.)

4. "Opinions" of Many Rise Witnesses, Including Lee Johnson, Are Not Admissible Evidence of "Facts" And Should Be Disregarded, Especially Since the County Process Does Not Seem To Allow Objectors Sufficient Opportunity For Due Process For Voir Dire For Evidentiary Objections, Etc.

EC #'s 800-805 allows for objections to opinions masquerading as "facts," as well as the right BEFORE ADMISSION OF EVIDENCE to test the admissibility of purported evidence by seeking voir dire of the witness as to the foundational basis of his or her personal knowledge and/or qualifications and/or sources of information to which the witness is testifying, as may be applicable as to any such witness testimony. Thus, objectors will seek to exclude Rise evidence by appropriate court motions. This is a second level of screening (besides the requirements for a legally sufficient "foundation") and is another barrier to allowing the Lee Johnson Declaration and various other Rise Petition Exhibits to be considered "evidence" and, instead, they must be treated as disqualified opinions or other things. The point is that everyone on all "sides" (i.e., at least Rise and its enablers versus the County decision-makers, versus us objectors) has competing "opinions" about Rise's disputed vested rights claims and other things, but not everyone has admissible evidence of relevant "facts" or rebuttals to alleged evidence to which he or she could competently testify, and "lay" (as distinct from "expert") opinions are limited for evidentiary purposes. See EC #800. As #893 states: "The court may, and upon objection shall, exclude testimony in the form of an opinion that is based in whole or significant part on matter that is not a proper basis for such an opinion." "Experts "have greater latitude as to opinions, but all of Rise's consultants can be expected to be challenged (e.g., denied standing as experts) in some ways for how Rise purports to use their opinions, for example, either because they lack the required expertise or experience (or even familiarity with this particular mine or area), or because their expertise is narrower than the broader scope of their opinion. See, e.g., EC #801. (Frequently in the disputed EIR/DEIR, for example, some consultant would offer a general opinion not based on his or her personal examination of particular conditions, facts, or circumstances at our IMM, but instead just assuming hypothetically that those conditions are like some elsewhere. Then Rise incorrectly assumes and asserts that such consultant's assumption is correct, without any sufficient admissible proof by anyone that such assumptions are correct.) **Objectors will address below some additional, specific evidentiary objections that apply to the Rise Petition Exhibits and other purported evidence, but we note here that most opinions can be excluded upon**

analysis, because they "assume facts not in evidence," which also makes them inadmissible and noncredible.

5. **Admissions By Or Otherwise Binding Rise Or Its Predecessors Are Compelling Evidence Against the Rise Petition And Otherwise For Rebutting Rise Or Its Enablers.**

The Rise Petition and its Exhibits, EIR/DEIR, SEC filings, and other Rise documents contain admissions that contradict, are inconsistent with, or otherwise rebut or expose credibility problems with, Rise's claims in such other Rise documents or Exhibits. As demonstrated herein and in objections to come, even many such Rise Petition Exhibits actually contradict and discredit various Rise Petition claims, especially when the correct legal analysis is applied to them, instead of the incorrect Rise legal theory, and objectors' rebuttals are applied instead, including damning Rise admission evidence. See, e.g., EC #'s 1220 et seq (confessions and admissions generally as exceptions to the hearsay rule), and EC #1235 (prior inconsistent statements). As stated simply, Rise seems to tell a somewhat different "story" depending on the audience and the setting to advance its disputed goals in each situation. That discredits all such "stories." This is particularly powerful here because Rise is trying to change (despite estoppels that should prevent such changes) from the case it attempted to make in its disputed EIR/DEIR, permit applications, and SEC filings to this new, vested rights, disputed theory. **That inevitably creates inconsistencies, conflicts, and contradictions that doom Rise not just as to Rise's own admissions, but also in the Rise Petition Exhibits, where none of those Rise predecessors attempted to claim or preserve vested rights, but instead were applying for permits in the ordinary course.**

6. **The "Hearsay Rule" (EC #1200) Seems to Defeat Much of the Lee Johnson Declaration And Other Rise Petition And Exhibit Claims, And the Exceptions To That Rule Often Do Not Save Such Rise Hearsay Under the Circumstances.**

This subject is complex, so objectors used the disputed Johnson Declaration above to illustrate the general rules often violated by or for Rise and its Exhibits. **In his Declaration (Rise Petition Exhibit 227), Lee Johnson begins by swearing that he is testifying from his "personal knowledge," but upon examination, most of his statements appear to be "hidden hearsay" with no exceptions asserted to that rule barring hearsay, and none of the permitted exceptions appear to be applicable to save such evidence from exclusion. As demonstrated in that earlier analysis of his Declaration, Mr. Johnson qualified many statements as "I am aware," "my understanding," "I know," "I believe," "my impression is," etc., which seem to be evasive ways of avoiding saying what seems to be the case: that he is basing inadmissible statements NOT from his direct, personal experience. (e.g., If that were true personal knowledge, one would expect him to say something like "Marian Ghidotti told me X" under some explained circumstances and timing, which Mr. Johnson does not do.** However, if objectors were allowed to cross-examine him, we would expect Mr. Johnson to admit that the reason that he has such alleged "awareness," "knowledge," "beliefs," "impressions," or "understandings" etc. is that his "mother-in-law," (now long dead) told him something that she

claimed Marian Ghidotti or someone else saw or said or did, all of which are inadmissible and objectionable hearsay.)

In any case, Mr. Johnson's Declaration (like the disputed Rise Petition, EIR/DEIR, and many other Rise documents) can and will be rebutted in this Rise Petition dispute, among other things**, based on EC #1202, stating:**

> **Evidence of a statement or other conduct by a declarant that is inconsistent with a statement received in evidence as hearsay evidence is not inadmissible for the purpose of attacking the credibility of the declarant though he is not given and has not had an opportunity to explain or to deny such inconsistent statement or other conduct. Any other evidence offered to attack or support the credibility of the declarant is admissible if it would have been admissible had the declarant been a witness at the hearing. (emphasis added)**

That example of Mr. Johnson saying he has personal knowledge of his "impressions" or what he is "aware of" or "knows" or somehow "understands" or "believes," creates a credibility problem, because it evades the need to explain how, when, what, from whom, and where he acquired that awareness, knowledge, understanding, impression, or belief, etc. Here it seems likely that is "hidden hearsay" based NOT on what Mr. Johnson himself heard Marian Ghidotti or others say or do, but instead just based on what Marian or someone else told his mother-in-law, who in turn told him [or his wife, who told him], which is inadmissible hearsay.

7. Some Legal Presumptions Impair the Rise Petition And Its Other Exhibits And Rise Claims, Especially As To The Consequences Adverse To The Miner of the Miner's Deeding Surface Properties.

EC #665 states that: "A person is presumed to intend the ordinary consequences of his voluntary act." Thus, consider, as admitted in Rise Petition Exhibits, how predecessors deeded surface parcels or other rights above or around the 2585-acre underground mine (or describing such transfers) or otherwise demonstrated by objectors. Rise's predecessors (e.g., the Idaho-Maryland Mines Corporation or BET Group or Mr. or Mrs. Ghidotti planning or causing the subdivisions and other surface transfers as addressed in this document) must have so "presumed the consequences" of surface objections to any mining beneath or around them, not just by the initial surface buyer, but also by every successor in those lines of the surface titles, such as all us thousands of locals objecting to Rise's reopening of the Mine and especially to the disputed Rise Petition that conflicts with objectors' own competing constitutional, legal, and property rights. See, e.g., *Keystone and Varjabedian*. The many record objections to Rise's activities that now exist, and the more to come (e.g., all objections to the disputed EIR/DEIR and Rise Petition), are predictable as the normal and natural consequences of Rise attempting to reopen such an underground mine, especially as to impacted surface owners above and around the 2585-acre underground mine. Such impacted locals are not just concerned about their own fates, but also about the impacts on their property values and rights, their environment, and their whole local community's health and welfare. The courts will take judicial notice of the suburban character of the community that

now predictably has grown up above and around the IMM and feels the threat of predictable consequences of such incompatible mining, including not just thousands of impacted homes and properties (e.g., ironically, even the State Department of Parks And Recreation objected to the DEIR to protect the Empire Mine Park from the Rise menace), but also a business community, our regional hospital, and our regional airport.

As real estate broker experts have attested (and will attest) in this process, there will be a material adverse impact on property values that has already begun merely by the threat of this mining. Why? Because people investing in homes and businesses must TRUST that they, their properties (including their property values, existing and future wells, and groundwater), their environment, and their community health and welfare, will be "safe" from the predictable or historically common and irreconcilable harms of such mining. From the earliest days (e.g., visit the ancient Malakoff Diggings, where the surface is a vast moonscape from hydraulic mining still) and continuing into the present, mining has been an inherently (at a minimum) dangerous, disruptive (or worse), and incompatible land use from the perspective of impacted surface owners, who are certain to object to such mining below or around them. See the Rise Petition Exhibits discussed herein reporting on the intense local opposition to modern mining proposed on the San Juan Ridge and on Banner Mountain above the IMM. **Stated another way, a home or business buyer here now has to choose between trusting Rise or its enablers versus the many record objections to the disputed Rise mining project (e.g., to the disputed EIR/DEIR or the Rise Petition). Almost all will accept those objections over Rise's "assurances" (or any disputed choice by the County to gamble on such Rise "assurances.") "Better to be safe than sorry" is the rule buyers predictably will follow, absent huge price discounts that are almost as harmful to the seller as an inability to find buyers (and which negatively impact County property tax recoveries.)** This is not just the natural suspicion of miners who historically often have made messes or bigger problems, then taken their profits, and left (e.g., retreating, often back to a foreign base, often Canada, and/or bankruptcy), leaving behind more than 40,000 abandoned mine, toxic menaces in California on the EPA and CalEPA lists (none adequately remediated). **This is not just about local skepticism about Rise personally, although few, if any, of the thousands of objectors have yet found any persuasive reason to trust everything the love to Rise's disputed plans or claims, as reflected in the hundreds of record EIR/DEIR objections and more to come against the Rise Petition.** But, even if Rise were the best and most trustworthy miner (and there is no convincing evidence of that, especially considering all those record objections and Rise's [until recently] former CEO's Canadian mining problems in the news), **such mining normally has a rational stigma that will inevitably depress property values of those at risk, as has already occurred here.**

Objector witnesses can testify (if given more than three minutes to do so, with equal time compared to Rise) how owners of underground mines like the Ghidotti's, the BET Group, etc., who are serious about reopening such mines, have a choice between (i) maximizing the surface land sale price by making the miner's reservation of mining rights in the deed and transaction as innocuous as possible to the surface buyer (as Rise Petition Exhibits show was consistently done here by every Rise predecessor, such as with assurances of no surface entry without consent and defining a larger "surface" margin, e.g., 200 feet down), versus (ii) maximizing the underground or adjacent mining value by minimizing the surface buyers' rights, such as with entry for exploration drilling or other encroachments or advance consents for

disruptions, and other miner protections against future objections from the surface owner (none of which have been done in the Rise Petition Exhibit deeds or documentation). **Thus, the natural consequence of such Rise predecessor, surface sales is that such mining rights owners were not planning (at least themselves) to actually mine, and, in effect, as Rise has done here, start a civil legal feud with the surface owners impacted by the reopening of such a mine closed and flooded since 1956, which community relations would be of special concern to local human mine owners like the Ghidotti's and BET Group. As the consistent, defensive, community reaction to Rise and every other modern, local mine reopening attempt has demonstrated (even the Rise Petition Exhibit examples of the Banner and Lava Cap Mines and the San Juan Ride mines), mining is not ever compatible with such residential and non-mining commercial business uses (or generally tolerated by such competing surface users). A true miner (as distinguished from a speculator looking for a profit on a flip to a "real" miner, perhaps after the permitting or other permissions are accomplished over the local opposition) with anything more to lose besides the disputed mine the miner bought cheap, would be wary and concerned about such perpetual civil legal and political feuding with the local community. For example, not only would the impacted locals be quick to resist and oppose the mining, but if allowed while appeals were pending, the locals would be quick to report any noncompliance with applicable laws, regulations, or other requirements for any permitted mining, and then the miner would, at a minimum be vulnerable to negligence or other suits, where they would be presumed by Evidence Code #669 to be liable for any harm the miner causes on account of lack of due care legally presumed because of such noncompliance.**

While Rise and its enablers contend (and objectors dispute such claims and most of the County Economic Report) that 300 or so jobs and tax revenue should justify the County approving the IMM, those alleged benefits to the County as a whole, do not at all overcome the disproportionate sacrifices and risks such mining would impose on the impacted locals, especially those objectors on the surface above and around the 2585-acre underground mine (see *Keystone*). Thus, any miner also would have to contend (when "ripe") with risk of, and exposure to, possible nuisance, inverse condemnation, and other claims as discussed in *Varjabedian,* where the California Supreme Court found a "taking" of the property of homeowners downwind of the new sewer plant, because they were forced to suffer disproportionately for the benefit of more distant others who benefited without suffering such impacts.

8. The "Business Record" Evidentiary Exceptions Will Disqualify Many Rise Petition And Other Exhibits, And Many Records In The Disputed EIR/DEIR Exhibits And Rise SEC Filings Can Be Evidence For Objectors That Rebut Or Contradict the Rise Petition.

Many ancient Rise Exhibits or other documentary purported "evidence" are subject to challenge as not being admissible under **EC #1271**, such as because there is no proof of (and no possible apparent means of Rise proving) such records before or after the alleged 1954 "vesting date" were: (a) made in "the regular course of a business," as opposed to being made by some predecessor for other purposes, such as to promote the mine to investors or buyers or to

excuse or cover up problems; (b) was actually "made at or near the time of the act, condition, or event" about which such writing speaks; (c) validated as to the document's "identity and the mode of its preparation" by the custodian (presumably most long dead) or "other qualified witness" (whose qualifications are subject to challenge by objectors, when Rise identifies each witness to authenticate each such document, noting, for example, that Mr. Johnson's Declaration about many documents in Marian's basement storage does not qualify him to authenticate any individual document from that allegedly large mass of paper as proof, and Marian Ghidotti is not alive to do so. Even if Marian were living, she inherited them from her dead husband, who was a collector, not a custodian of a miner's business records). [Also, as demonstrated above, that basement document storage referenced in Mr. Johnson's Declaration appears to contain many documents from many different mines owned by William or from which he collected such memorabilia]; and (d) even the admitted "sources of information and method and time of preparation of the documents" are not "trustworthy" for those purposes, as objectors' rebuttal evidence will show when Rise tries to admit such records in court, which so far in most cases lack any adequate evidentiary "authentication" or "foundation." In any case, all these Exhibit writings must first be "authenticated" in accordance with EC #1400 et seq. While Rise may attempt to "slide by" those rules in hopes of admitting disputed records, the County should (as the courts will) apply the same standard to then allow objectors to use such records to prove other flaws in Rise's case pursuant to **EC #1272, such as to the "nonoccurrence of the act or event or the nonexistence of the condition." Stated another way, as demonstrated in this document, many Rise Petition Exhibits and other such Rise purported "evidence" may hurt Rise's case as much or more as they may be imagined by Rise to support Rise's goals, especially where here, for example, Rise offers a document to prove X and Y, but that document also fails to prove Y, which it should have also done if Y existed, thereby discrediting Rise's claims about both X and Y.**

B. Even If Rise Were Able To Prove Some Admissible Evidence, That Evidence Would Often Lack Weight And Credibility.

The Disputed Johnson Declaration And Many Other Rise Petition Exhibits Lack "Weight" And "Credibility" (EC #'s 406, 412, and 413). Also, even if some Rise Petition purported evidence were allowed, objectors are still allowed to introduce counter-evidence, rebuttals, and objections to demonstrate that Rise "evidence" lacks "weight" or "credibility." See, e.g., EC #'s 406, 412, and 413. For example, as demonstrated herein, there is little "direct evidence" {EC # 410] in the Johnson Declaration, because it does not (as required) "directly proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact." First, most of the disputed Johnson Declaration statements are not ever "direct" or "conclusive" or even "facts" (as distinguished from indirect information or mere unsubstantiated opinions, "inferences" or conjectures, hidden or other hearsay, or are, like most other Rise Petition Exhibits are subject to many different interpretations that cannot ever be considered "conclusive" or "direct" etc. For example, Rise and Mr. Johnson seem to argue that a sale of surface property with a reservation of rights to underground mineral rights is somehow proof of a direct or objective intent to mine underground, when it is not that at all. (Indeed, if everyone who reserved mineral rights were allowed vested rights on

that account, miners would rarely need a use permit anywhere, but that is not such proof.) For example, many owners of mineral rights underground never intend to mine at all, but hold them simply for their "option value" (which does not create or maintain vested rights), because such rights are cheap to acquire and maintain, and there always seem to be speculators like Rise or others addressed herein, who are willing to gamble on the potential for mining, either themselves or (more commonly considering the expenses and controversies involved in such mining) a more aggressive speculator, or by getting approvals and flipping the property again to a real miner. **For example, Rise Petition Exhibit 276 is a 4/4/1991 Sacramento Bee article about Consolidated Del Norte Ventures' 10-year lease with an option to buy the IMM from the BET Group, where it was admitted: "We have no illusions about this—it's a gamble—a big gamble." And that was the last we heard about that wannabe miner. (As the song goes, unlike Rise, "you have to know when to hold them and when to fold them" and when to walk away.)**

In any case, even if some of the Johnson Declaration or Rise Petition Exhibits were somehow admissible, they must lack "weight" or "credibility" and should be disregarded as such. For example, EC #412 is a common failing of both the Johnson Declaration and other Rise Petition Exhibits, which states: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust." As demonstrated above, Rise Petition Exhibits described conceptually many more documents than were produced by Rise as Exhibits, and objectors assume many of those missing documents contained evidence helpful to the objectors and adverse to the Rise Petition. We will be using EC #412 to address such tactics. Rise also violated that rule often in the EIR/DEIR disputes, and now again in the Rise Petition disputes, as demonstrated in objections thereto that Rise and its enablers ignored or where they were proven in objections to be guilty of "hide the ball" or "bait and switch" tactics. In addition, and stated another way to that same effect and result, EC #413 states that: "the trier of fact may consider, among other things, the party's failure to explain or deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto…" An examination of the EIR (as shown by some point-by-point EIR objections) shows that Rise generally did not respond compliantly or often even at all to DEIR objections it did not dare to address on the merits. This vested rights process will likely be worse, if objectors do not have a full opportunity for the full due process required by *Calver*t for use by us objector parties rebutting whatever else Rise or its enablers add after the Rise Petition objection cut off as full participants with equal rebuttal rights and time to protect our constitutional, legal, and property rights as surface owners above and around the 2585-acre underground mine (not just public commentators with three minutes to address policy issues).

VI. Concluding Comments On Rise Petition Exhibits 1—307 (i.e., the Rise alleged history BEFORE Rise's Acquisition of the IMM in or after 2017), Demonstrating that Rise Has Failed To Satisfy Its Burden of Proof of Vested Rights On The Applicable Use-By-Use And Component-by-Component Basis For Each Applicable Parcel-by-Parcel At the IMM, Especially As To the 2585-Acre Underground Mine (Or Any Rise Variation In Its Various Documents From Its EIR/DEIR 2585-Acreage Claim).

Rise Petition Exhibits 1—307 do not provide any of the required, "substantial evidence" (i.e., competent, admissible, non-objectionable, and even minimally credible evidence) to prove Rise's vested rights as to any use, parcel, or component of the "Vested Mine Property," especially as to the 2585-acre underground mine that has been dormant, discontinued, abandoned, closed, and flooded since 1956, particularly as to the never mined or explored expansion area where Rise intends to create 76 miles of new tunnels. [Objectors use that 2585-acre Rise EIR/DEIR number because it seems to be the largest of various inconsistent Rise numbers, but the objections apply to whatever is finally determined to be each of the applicable underground parcels at issue.] While that position will be proven further by counter-evidence and briefing rebuttals, especially by those of us objectors living above and around the 2585-acre underground mine, the foregoing commentary demonstrates such Rise failures. As *Calvert, Hardesty,* and other judicial precedents demonstrate (see the Table of Cases discussion below), this Rise Petition dispute must be a multi-party "adjudicative" proceeding in which objectors must have full, competing due process rights to contest the Rise Petition, especially those of us surface owners above and around the 2585-acre underground mine who have our own competing constitutional, legal, and property rights (independent and separate from the County) that must prevail without regard to what the County may do, unless the County wishes to pay just compensation for "taking" such local voters' surface property rights to give them to Rise. That is a particularly acute dispute as to the groundwater and existing *and future* well water owned by such surface owners, as demonstrated in key court decisions like *Varjabedian* and *Keystone, ignored by Rise.* This distinction is important, because even if the County were somehow unable to defeat the Rise Petition, such surface owners have many additional ways to do so on our own pursuant to applicable law as independent property owners.

In any case, contrary to Rise's comprehensively incorrect legal theories of vested rights, such as what objectors call Rise Petition's erroneous "unitary theory of vested rights," the Rise Petition would have to prove vested rights on the basis of (1) **use-by-use** (e.g., "exploration" "uses" are not actual mining "uses," and underground mining is not the same "use" as surface mining, etc.), (2) **parcel-by-parcel (a major briefing issue to come as to details, but *Hansen* [which allowed some mine land parcels and not others to have vested rights] and other authorities (e.g., *Calvert and Hardesty*) that cannot be reasonably disputed require each applicable parcel to have its own vested rights for each "use" and each "component" thereon)**, and (3) **component-by-component (e.g., since a rock crusher is a "component" for vested rights claims under *Hansen* and its cited *Paramount Rock* authority, so is the disputed EIR water treatment plant contemplated by Rise, without which Rise cannot possibly dump our surface owner owned groundwater Rise wants to dewater 24/7/365 for 80 years into the Wolf Creek.)** Also, each owner of each "parcel" must have its own continuous vested rights that it acquires from every predecessor in order to pass such vested rights along to each successor owner in the chain since the vesting date (Rise asserts October 1954).

All that must be considered in addressing the foregoing Rise Petition Exhibits, because Rise does not even address the individual uses, parcels, and components, but instead seems to follow Rise's unprecedented, disputed, and incorrect "unitary theory" of vested rights pursuant to which Rise claims the vested right to act as it wishes (to quote the Rise Petition at 58): "without limitation or restriction" as to any use or component wherever Rise wants on any parcel or part of the alleged "Vested Mine Property" (i.e., the MM, but there seems to be

games at issue involving Centennial and certain other parcels). Incredibly, Rise insists on that exaggerated and unlimited vested right whether as to a surface mining operation subject to SMARA or otherwise or as to an underground mining activity, which cannot be subject to SMARA or its court precedents. Hardesty expressly forbids that Rise claim, but Rise ignores *Hardesty* and *Calvert* and even misreads (and omits) much of its own *Hansen* cited authority. Accessing for testing/exploration of the underground mine on one surface parcel does not empower Rise or its predecessors with vested rights for its desired underground mining as it so wishes "without limitation or restriction," especially on other parcels or for other uses or components (e.g., the Rise contemplated water treatment plant.) Indeed, no **surface** uses or activities by Rise or its predecessors can in any way create any vested rights for any **underground** mining or uses. E.g., *Hardesty.* Indeed, any activity on any parcel cannot create vested rights for any other parcel. E.g., *Hardesty, Calvert, and Hansen.* **It is legally impossible for Rise to satisfy its burden of proving vested rights by generalizing (as Rise consistently attempts) from one "use" or "component" on one "parcel" to the rest of the "Vested Mine Property," especially as the Rise Petition claims (at 58): "without limitation or restriction."**

Since the Rise Petition has not even tried to demonstrate vested rights for each contemplated "use" or "component" on each applicable "parcel," Rise must fail as a matter of law to prove anything as required **continuously for each owner of each parcel and for each use and component**. However, even if somehow Rise were allowed to use its disputed, unitary theory of vested rights, it still must face the uniquely competing constitutional, legal, and property rights of us surface owners above and around the 2585-acre underground mine on scores of other legal and factual issues in unique disputes and never addressed at all in the disputed Rise Petition or even in the disputed EIR/DEIR (where some objectors also asserted such objections). For example, since Rise and its miner-predecessors have admitted to having no continuous ownership of the surface above the 2585-acre underground mine, how could they possibly assert rights to mine there underground, especially in such expansion parcels never before mined or even accessed, or where such miners are not allowed to disturb the "surface" uses with such underground uses, including with Rise admitting in its SEC filings that the "surface" extends down at least 200 feet (and farther as to things other than minerals to be mined, such as groundwater and existing and future well water.) **Even *Hansen* (Rise's favorite case that it announces as the primary basis for the disputed Rise Petition) would not allow even vested rights to expand from (i) the existing underground mine parcels of 72 miles of tunnels plus offshoots (e.g., "drifts" and "cross-cuts"), to (ii) the never mined or accessed underground parcels that Rise intends to mine according to the EIR/DEIR adding 76 miles of new tunnels etc. See also *Hardesty* and *Calvert.***

Moreover, vested rights are a legal theory focused on granting an excuse (subject to many exceptions and disputes over the conditions and requirements) for continuing "nonconforming uses" without the need to comply with certain County land use laws (e.g., without a use permit). **Nevertheless, even if there were an excuse to continue without a use permit, that excuse does not extend to many other kinds of still applicable laws, such as environmental laws and those protecting the competing rights of us objecting surface owners above and around the 2585-acre underground mine. Nowhere does Rise prove that it can now ignore any laws or regulations so as to be able to mine and act as it wishes (to quote the Rise Petition at 58) "without limitation or restriction." Moreover, all "uses" to be eligible for vested**

rights must be "legal uses," as even *Hansen* would require (plus *Calvert, Hardesty,* and many more authorities), and thus nothing done in the past by a predecessor can qualify if it were not "legal," thereby making Rise prove (as the party with the burden of proof) not only that its predecessors created a vested rights basis for what Rise wants to do now, but that it was then legal, e.g., in compliance with the applicable permits, regulations, and laws, since no Rise predecessor asserted vested rights, but instead applied for use permits.

Furthermore, even in situations where there may be a deadlock or dispute over whose competing constitutional, legal, and property rights must prevail, whether objecting surface owners above the 2585-acre underground mine or the underground miner. Such deadlocks must be resolved by all-out dispute contests under constitutional due process and property laws over which competitor has priority under all the applicable facts and circumstances, none of which can be controlled or won by Rise by claiming vested rights. In particular, but without limitation, consider that Rise using vested rights excuses to evade a use permit or other legal compliance means that Rise cannot claim the benefit of those laws. There is no benefit possible for Rise without the corresponding burdens. Thus, without a use permit and the protection that the County grants for governmental benefits to such a permitted miner, Rise is totally exposed in its contests with such surface owners above and around the 2585-acre underground mine without any governmental benefit and in which any vested rights are no defense or excuse for Rise. For example, without a use permit, how can Rise avoid being exposed for taking surface owner groundwater and existing and future well water owned by the surface owners above or around the 2585-acre underground mine? Likewise, Rise cannot claim any benefits under SMARA without also having the burden of the reclamation plans and financial assurances required by SMARA, if somehow that surface mining law could be used by Rise for this underground project (which should be legally impossible.)

Also, among the lethal failures of the Rise Petition is its such exposure to surface owners and even County rebuttals by many legal defenses, such as, for example, Rise being judicially estopped from now changing its legal position from prior Rise admissions that Rise needed a use permit and others in the EIR/DEIR and elsewhere, including Rise SEC filings. Indeed, such damaging Rise admissions can also create grounds for a wide range of defenses for objectors (and, where they may apply, the County). Stated another way, Rise owns what it owns, but how Rise "uses" that property is not ever (even as to the County), as claimed by Rise Petition at 58 "without limitation or restriction." Note that all the prior owners of the Vested Mine Property on which Rise claims vested rights sought permits and governmental approvals without any assertion that vested rights excused them from normal compliance. And, even if Rise claims that any predecessor did so, Rise will have to prove that continuously from 1954 for each owner of each parcel in the chain of title and for each "use" and "component," which Rise has not even attempted to do in the Rise Petition. The indisputable fact is that Rise and its predecessors are guilty, among other things, of laches, since all of us surface owners above and around the 2585-acre underground mine (and we assume the County as well) have reasonably relied on the belief, among many applicable others, that Rise and such predecessors never challenged the need for compliance with land use laws, if they tried to re-open the mine.

Indeed, since Rise acquired the IMM in 2017 (objectors will deal with the post-Rise acquisition Rise Petition Exhibits in another objection), Rise (like its predecessors) has been

guilty of such "laches" (and, as applicable, estoppel and waiver), allowing us surface owners to purchase and continue to invest in our properties in the reasonable belief that any Rise IMM threats to reopen the mine would be dealt with in compliance with all applicable laws, but never, as the Rise Petition now claims, for Rise to be empowered to mine underneath us and deplete our groundwater and existing and future well water 24/7/365 for 80 years, all (to quote the Rise Petition at 58) "without limitation or restriction." The indisputable fact is that our community grew and upgraded vastly over the years above and around the 2585-acre underground mine and other alleged Vested Mine Property, as were our legal surface rights to do so, and Rise and its predecessors took no action to put us on notice that they would attempt to deny us the protection of the applicable laws on which we all relied to our detriment, by now surprising (and disputed) claiming vested rights that Rise asserts would leave us vulnerable to whatever Rise attempts to do "without limitation or restriction." No reasonable person would have ever expected a dormant, discontinued, abandoned, closed, and flooded IMM (since 1956) to even attempt to reopen in such a suburban community next to our regional hospital and airport, as well as below and around thousands of impacted homes and businesses, at least without us having the full protection of all applicable laws and our rights to enforce compliance with all such laws enacted over the years to protect us from such mining menaces explained in the hundreds of meritorious record objections to the Rise EIR/DEIR, including by using Rise admissions in SEC filings to rebut Rise claims. Thus, even if Rise had any vested rights, which we comprehensively dispute, Rise cannot enforce them against us such objectors under the applicable facts and circumstances, none of which are changed in Rise's favor by such Rise Petition Exhibits. In that respect and many others, Rise Petition never confronts any of the hard issues raised by objectors with any admissible, competent, and sufficient proof from Rise, which means Rise failed to satisfy its burden of proof and the Rise Petition must be rejected.

Table of Exhibits Referenced In the Rise Petition.

This Incorporates the Rise Petition And Its Exhibits from the Nevada County Official Website. See www.nevadacountyca.gov (select County Development Agency's site, then select Planning Projects And Support Documents, then select Idaho Maryland Mine-Rise Grass Valley, then "Petition For Vested Rights." That links to a series of files as follows:

Rise Exhibits 1-50: www.nevadacountyca.gov/DocumentCenter/View/50842/IMM-Vested-Rights-Petition---Exhbits-1---50

Rise Exhibits 51-75: www.nevadacountyca.gov/DocumentCenter/View/50843/IMM-Vested-Rights-Petition---Exhbits-51---75

Rise Exhibits 76-125: www.nevadacountyca.gov/DocumentCenter/View/50846/IMM-Vested-Rights-Petition---Exhbits-76---125

Rise Exhibits 126-175: www.nevadacountyca.gov/DocumentCenter/View/50847/IMM-Vested-Rights-Petition---Exhbits-126---175

Rise Exhibits 176-225: www.nevadacountyca.gov/DocumentCenter/View/50844/IMM-Vested-Rights-Petition---Exhbits-176---225

Rise Exhibits 226-250: www.nevadacountyca.gov/DocumentCenter/View/50845/IMM-Vested-Rights-Petition---Exhbits-226---250

Rise Exhibits 251-300: www.nevadacountyca.gov/DocumentCenter/View/50850/IMM-Vested-Rights-Petition---Exhbits-251---300

Rise Exhibits 301-351: www.nevadacountyca.gov/DocumentCenter/View/50848/IMM-Vested-Rights-Petition---Exhbits-301---351

Rise Exhibits 352-400: www.nevadacountyca.gov/DocumentCenter/View/50849/IMM-Vested-Rights-Petition---Exhbits-352---400

Rise Exhibits 401-429: www.nevadacountyca.gov/DocumentCenter/View/50852/IMM-Vested-Rights-Petition---Exhbits-401---429

Rise Appendix A-F: www.nevadacountyca.gov/DocumentCenter/View/50853/IMM-Vested-Rights-Petition---Appendix-A---F

Exhibit A: Comments on Rise's Admissions In Its SEC 10K Filing Dated 11/30/2023 (attached at the end of this document after Attachments 1 and 2)

Table of Cases And Commentary on the Applicable Legal Principles Controlling What Evidence Is Relevant For Vested Rights Disputes Under The Correct Cases And Analysis of Authorities And Applicable Law that Frame The Evidence And Related Disputes, Followed By Attachments # A (a Comprehensive Discussion of *Hansen*) and # B (an Analysis of How SMARA Is Limited To SURFACE Mining, As Distinguished From UNDERGROUND Mining.)

1. **An Introduction To How These Court Cases Support The Foregoing Evidentiary Objections, And How Rise Evidence Fails Because It Is Only Relevant To An Incorrect Or Worse Legal Theory, Such As Rise Falsely Claiming Unitary Vested Rights Everywhere For Any Use When The Applicable Law Requires Proof On A Parcel-By-Parcel, Use-By-Use, And Component-By-Component Basis.**

    a. **A Guide To the Legal Principles That Provide A Framework For Judging Rise's Disputed "Evidence" And Allowing Objectors' Rebuttals, Applying Controlling Court Decisions And Applicable Laws That Were Either Disregarded By Rise Or, Like *Hansen* (see below and in Attachment A), Misconstrued And Ignored In Parts That Were Most Important.**

The foregoing objection asserted Evidence Code and related objections within the context of a vested right that must be framed by applicable law that is contrary to the Rise Petition's disputed and incorrect legal theories, "facts," and "evidence." Subsequent objections will more comprehensively demonstrate such legal and factual realities with rebuttal and other evidence exposing Rise's "alternative reality." Objectors' goal here is simply to illustrate some key legal principles from some key cases to frame some of what is wrong with the Rise Petition's purported "evidence" and claims. Stated another way, the legal disputes between objectors and Rise are irreconcilable and different, like "apples" versus "oranges," each claiming to be the right and only "fruit." Objectors use the brief, case commentary below to expose the errors and worse by Rise in its "tree farming evidence" by demonstrating that it can only apply to oranges (i.e., **surface** mining), instead of the reality of apples being our true issue (i.e., **underground expansion mining into previously unmined parcels**), as well as the other factual differences that relate as evidence to how an apple farmer (i.e., **underground** miner) must operate versus an orange farmer (i.e., **surface** miner), especially in compliance with different laws protecting competing surface owners objecting, for example, about how the farmer intends to take the groundwater owned by such objectors and thereby deplete such objectors existing and future wells. Thus, this vested rights dispute must begin with the fundamental legal distinctions about whether we are debating apples or oranges. Then, within that correct reality of such underground expansion mining, we can more productively discuss the evidentiary disputes. After all, the point of admissible evidence is that it must prove a relevant truth at issue in the dispute, not tell an irrelevant story about some issue in the dispute Rise wishes to have in its "alternative reality." Contrary to the Rise Petition ignores the reality of apples (underground Objectors' case illustrations below, however, prove both (i) that apples and oranges are different and subject to different laws and farming techniques and objections by different types of objectors (e.g**., objecting surface owners above and around the 2585-acre underground mine have more and unique constitutional, legal, and property rights at issue than the general**

objecting public), with "apples" (i.e., such underground expansion mining) being the correct and key issue, and (ii) Rise is wrong even if somehow its imagined "oranges" (i.e.., *surface mining, SMARA, and Hansen*) were somehow relevant.

If the Board is puzzled by Rise's "bait and switch" tactic, the Supervisors should ask the harder questions that objectors are only allowed to ask in these filings too few read, because the County's disputed process does not allow us objecting surface owners such hard questions as we would indisputably be allowed to do in a court process that follows the applicable laws (e.g., *Calvert* and *Hardesty*). The first such questions are these: Why have Rise and (so far) others failed to respond on the merits to any of such basic objections or our case authorities, especially regarding the issues relating to such proposed, underground expansion mining in the 2585-acre mine and the competing rights of us surface owners above and around that UNDERGROUND mine? Why does the Rise Petition not include any authority attempting to rebut the court decisions cited and quoted by objectors below? Why instead does Rise rely (as in the disputed EIR/DEIR) exclusively on SURFACE mining law (SMARA) and (only selected parts of) surface mining cases like *Hansen* (which *Hansen* case, as read in full, actually both contradicts key parts of the Rise Petition and defeats Rise's vested rights claims? See Attachment # A (comprehensively analyzing *Hansen* to prove that point, consistent with subsequent cases like *Hardesty* and *Calvert addressed here)* and B (illustrating why SMARA does not apply to underground mining, and why objectors fear that such surface mining regulators lack the jurisdiction and authority under SMARA to save us from Rise, such as with adequate "reclamation plans" and "financial assurances." While the County has recently announced disputed limitations in its process for this Board hearing that exclude such concerns about reclamation plans and financial assurances, even as what objectors contend to be permissible rebuttal required by due process [see Calvert]. For example, even *Hansen* states that such reclamation plans and financial assurances are the heart of SMARA, which, in turn, is the *sole legal basis of Hansen cited therein, which, in turn, is the primary basis of the Rise Petition* and what Rise incorrectly claims are relevant evidence, which objectors refute.)

Objectors will be filing objections like this that the County may consider in part beyond its disputed limitations on the scope of the hearing issues, like some parts of this objection. Objectors mean no offense, but we must object to be certain to preserve their rights in the court process to come next. Please consider this and other such filings by objectors as offers of proof, consistent with both (a) by due process, *Calvert*, and other authorities, and (b) as objectors' legally permitted rebuttals of the Rise Petition, Rise "evidence," and Rise legal arguments. See the prior discussions of the Evidence Code right of objectors and the application of such evidentiary objections to defeat Rise Petition and Exhibit disputed "evidence."

b. The County Vested Rights Process And Procedure Is Incorrect And Noncompliant With Applicable Law As It Applies To Objectors, Especially As To Objectors Who Own The Surface Above And Around The 2585-Acre Underground Mine And Have Competing Constitutional, Legal, And Property Rights Beyond Those of the General Public (Who Also Have *Calvert* Due Process Rights Not Yet Accommodated By The County.)

All objectors to the Rise Petition have due process rights that are not being accommodated by the County as required by *Calvert* and other authorities addressed in the objectors more or less concurrent, companion counter-petition to the County that is incorporated herein by reference, i.e., **Petition And Motion To Nevada County For A Status Conference And To Clarify Issues, Rules, And Procedures For This And Other Oppositions To Rise Grass Valley, Inc.'s Vested Rights Petition Dated September 1, 2023, (the "Rise Petition"), Based on These Illustrative, Preliminary Rebuttals** (the "**Objectors Petition For Pretrial Relief Etc.")**. *Calvert v. County of Yuba* (2006), 145 Cal. App.4th 613 ***("Calvert")*** (another surface mining vested rights case applying SMARA, stated (at 616, emphasis added, with annotations from objectors):

> **Our principal conclusion is that if an entity claims a vested right pursuant to SMARA to conduct a surface mining operation that is subject to the diminishing asset doctrine [as is the case with the Rise Petition, although Rise also incorrectly seeks broader vested rights for disputed underground mining and, apparently, the depletion of groundwater and existing and future of objecting surface owners above and around the 2585-acre underground mine by 24/7/365 dewatering for at least 80 years], that claim must be determined in a public adjudicatory hearing that meets the procedural due process requirements of reasonable notice and an opportunity to be heard."**

Because that companion "Objectors Petition For Pretrial Relief Etc." more comprehensively briefs these procedural and related legal and evidentiary issues, objectors will limit their briefing here to selected examples to support certain arguments and rebuttals against Rise.

Perhaps, the County should start asking Rise such hard questions in our ignored EIR/DEIR objections that still have not been asked (as far as we can tell) by the County staff or EIR/DEIR enablers and have not been addressed sufficiently anywhere by Rise, especially in the disputed Rise Petition. Fortunately, *Calvert, Hardesty,* and other cases forbid us objectors to be ignored on these vested rights disputes in such an adjudicatory process where we must have equal rights and standing. As *Calvert* explained (at 625):

> SMARA's policy is to assure that adverse environmental effects are prevented or minimized; that mined lands are reclaimed to a usable condition; that the production and conservation of minerals are encouraged while giving consideration to recreational, ecological, and aesthetic values; and that residual hazards to the public health and safety are eliminated. (# 2712) **A PUBLIC ADJUDICATORY HEARING THAT EXAMINES ALL THE EVIDENCE REGARDING A CLAIM OF VESTED RIGHTS TO SURFACE MINE IN THE DIMINISHING ASSET CONTEXT WILL PROMOTE THESE GOALS MUCH MORE THAN WILL A MINING OWNER'S ONE-SIDED PRESENTATION THAT TAKES PLACE BEHIND AN AGENCY'S CLOSED DOORS. (emphasis added)**

There is no way under the currently limited County hearing procedure for objectors to confront Rise as the equal parties we will soon be in the court process to follow, so that we

have sought pre-trial relief of various kinds, such as to allow evidentiary objections like those in this objection to counter Rise's inadmissible, incorrect, and worse evidence. More importantly, due process is also denied objectors since objectors are cut off by the pre-hearing deadline for filing our objections and evidence from confronting and rebutting Rise's new evidence, arguments, and claims at the hearing (an expected repetition of the problems suffered by objectors at the prior Rise hearings at the County). That means Rise not only gets the last word (actually another, uncontested, extensive briefing and evidence presentation opportunity), but Rise also escapes any rebuttals and counter-evidence that objectors must then battle to add in the court process as the objectors in *Calvert.* Three minutes of public comment at the hearing for each such objector is not due process confrontation, especially as to all the new things Rise will add during its lengthy presentation, where Rise again can escape accountability for its disputed arguments and evidence until the court process to come.

For example, ***Calvert* was not only focused on the *MINER'S* due process rights, BUT RATHER INSTEAD PROCLAIMED THE DUE PROCESS RIGHTS OF THE NEIGHBORING VICTIMS of that surface mining and the other impacted public (which types of victims are herein called "objectors," some with special standing for us surface owners above and around the 2585-acre underground mine whose groundwater and existing and future wells would be depleted 24/7/365 for 80 years, among other violations of objectors' competing constitutional, legal, and property rights. OBJECTORS WILL EXPECT NO LESS THAN WHAT *CALVERT* PROVIDED WHEN IT ADDRESSED (AT 622) THIS QUESTION IN THOSE OBJECTORS' FAVOR: "IS THE VESTED RIGHTS DETERMINATION REGARDING WESTERN'S SURFACE MINING OPERATIONS …SUBJECT TO PROCEDURAL DUE PROCESS REQUIREMENTS OF REASONABLE NOTICE AND OPPORTUNITY [FOR OBJECTORS] TO BE HEARD? OUR ANSWER: YES."** In that *Calvert* case, the county incorrectly approved the surface miner's purported, vested rights in an unconstitutional, two-party "ministerial" process without notice to, and adequate due process for, any impacted neighbors or other objectors, because such vested rights evasion of the normal permit requirements is not merely a "ministerial decision" for the County alone. As demonstrated in detail below, *Calvert* rejected as without merit many issues raised by that miner (and by Rise here) that would also defeat Rise's vested rights claims. Indeed, if *Calvert* had confronted an **underground** mine like the IMM instead of that SMARA surface mine, objectors would have been requesting (and we believe would have personal standing for) such clarity, rules, and procedures like those objectors are seeking in the Objectors Petition For Pretrial Relief Etc., especially considering the special, competing, constitutional, legal, and property rights of objecting **surface owners** above and around the 2585-acre underground IMM that are independent of anything the County may decide about this dispute with the Rise Petition.

2. **The Best Place To Begin Is With The Distinctions Between Underground Mining And Surface Mining, As Illustrated By *Hardesty* and *Keystone*. See also Attachment B describing the limitation of SMARA to surface mining.**

    a. **If One Were Only To Read One Court Decision Besides *Hansen*, *Hardesty* Is The One, Because It Proves For Vested Rights Claims, Among Other Things Addressed Below, Both (1) That Underground Mining "Uses" Are Different Than**

Surface Mining "Uses," And (2) the Necessity For Vested Rights of A Use-By-Use And Parcel-By-Parcel Analysis. *Hardesty v. State Mining And Geology Board (2017), 11 Cal. App.5th 790 ("Hardesty")*).

Rise ignores *Hardesty* because that key court decision defeats Rise Petition's vested rights claims, such as by rejecting Rise's disputed "unitary" theory that any kind of "mining operations" anywhere allows all kinds of mining everywhere, somehow allowing SMARA to apply to IMM **underground** mining, even in the never mined (or even accessed), expansion parcels of the 2585-acre underground mine beneath objecting surface owners above and around that mine. See Attachment B (describing how SMARA only regulates surface mining and cannot apply to underground mining). **Although the *Hardesty* court supported objectors' position from the reverse perspective of a miner trying to shift vested rights to surface mining instead of to underground mining, Hardesty confirmed that each type of mining is a different "use," and vested rights for either underground or surface mining cannot create any vested rights for such other type of mining.** *Hardesty* ruled in part (with more to come later):

> [T]he italicized portion of the statute [SMARA #2776] speaks of vested rights to ***surface*** mining, **not *any* mining**. "Surface mining involves stripping off the top of an area to reach the minerals, in contrast to boring down through tunnels or shafts to extract them." ([People v.] *Rinehart*, supra, 1 Cal. 5th [652] at p. 671, fn. 10 …) (emphasis added)
>
> ***
>
> To the extent Hardesty contends he has a vested right to surface mine under section 2776, he simply **failed to carry his burden to prove any substantial *surface* mining on the property** had been conducted by that date. As the trial court found, substantial evidence shows that **prior mining had been hydraulic, tunnel, and drift mining, not surface mining,** which began in the 1990's, and **which represented a SUBSTANTIAL CHANGE,** contrary to former section 2776's requirement that no substantial changes may be made in any such operation except" according to SMARA's terms…. (emphasis added)
>
> ***
>
> … Hardesty failed to prove any mining was occurring on or even reasonably before the date SMARA took effect. **SMARA was designed to allow existing, operating surface mines to continue operating** after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to dormant mines.**
>
> ***Hansen** Brother Enterprises, Inc. v. Board of Supervisors* (1996), 12 Cal. 4th 533…*(Hansen Brothers*)—**consistent with a long line of zoning cases—holds that A USE MUST BE PRESENT AT THE TIME A NEW LAW TAKES EFFECT, TO BE CONSIDERED A NONCONFORMING USE…**. Communities for a Better Environment … (2010), 48 Cal.4th 310, 323 fn.8 …["the traditional protections for nonconforming uses established *at the time* zoning restrictions become effective"]…; *McCoslin v. City of Monterey Park* (1958), 163 Cal. App.2d 339, 346…["A nonconforming use is **a lawful use existing *on the effective date* of the**

zoning restriction and continuing since that time in nonconformance to the ordinance."] … ***NEITHER A DORMANT NOR AN ABANDONED USE IS A NONCONFORMING USE.*** **(*HANSEN BROTHERS,* AT PL 552*…["NONUSE IS NOT A NONCONFORMING USE."])* As stated by our Supreme Court, "The ultimate purpose of zoning is … to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected." We have recognized that, given this purpose, courts should FOLLOW A STRICT POLICY AGAINST EXPANSION OF THOSE USES…

That policy necessarily applies to attempts to continue nonconforming uses which have ceased operation." *(Hansen Brothers*, at 568 …) (emphasis added)

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Further, **the record shows a proposed significant change in use since pre-1976 [SMARA's effective date] times. THE CONTINUANCE OF A NONCONFORMING USE "IS A CONTINUANCE OF THE SAME USE AND NOT SOME OTHER KIND OF USE." …[citing McClurken, Edmonds, and Goldring, where, FOR EXAMPLE, EDMONDS V. COUNTY OF LA (1953), 40 CAL. 2D 642 HELD "ENLARGEMENT OF PLAINTIFF'S TRAILER COURT TO ACCOMMODATE 30 MORE TRAILERS IS CLEARLY A DIFFERENT USE."] SURFACE MINING IS A CHANGED USE ON HARDESTY'S PROPERTY, WHEN CONTRASTED WITH THE PRE-SMARA USE [FOR UNDERGROUND ETC. MINING NOTED ABOVE]. Nor can Hardesty persuasively rely on post-1976 unpermitted surface mining –twice halted by the government— to show that surface mining was extant before 1976.** (emphasis added)

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799-812 ("**Hardesty**") (The miner lost at the Board, trial court, and on appeal in its mandamus action claiming SMARA vested rights as to an ancient, "19th century" federal mining patented gold mine that ceased operation during World War II and was "essential dormant" "through the 1970's" with "virtually no evidence that **qualifying mining activities** [not just the nondeterminative, incidental or different work on the parcel on which Rise and that miner attempted to call "mining"] 'continued' to exist at the time SMARA was enacted [effective January 1, 1976], apart from "sporadic," "unpermitted surface (open pit) aggregate and gold mining in the 1990's." Nevertheless, the miner claimed "vested rights to mine the property for gold, sand and gravel [as well as diamonds and platinum"] after he bought the property in 2006. The trial and appellate courts rejected that miner's vested rights claim, agreeing with the Board that "any right to mine had been abandoned.") In this situation, the miner seeking vested rights cannot claim as Rise attempts to do any benefit of the doubt, since that zoning policy goal is to eliminate or reduce all nonconforming uses "as speedily as consistent with proper safeguards for the interests of those affected." *Dienelt v. County of Monterey* (1952), 113 Cal. App.2d 128, 131. But those whose "interests are so affected" do not just include the underground miner seeking vested rights, but also objecting surface owners above and around competing against the underground miner, who are harmed by the mining and need those law reform protections.

That is an additional reason why the *County of San Diego v. McClurken* (1951), 37 Cal.2d 683, 687, insists on "a strict policy against their [i.e., nonconforming uses from vested rights] extension or enlargement."

Apart from the Rise Petition Exhibits disputed earlier in this document, Rise's inconsistent EIR/DEIR data never lays any factual foundation for vested rights (often the opposite). Rise just admits in the SEC 10K that "original mineral rights" were acquired "at various times" since 1851. The SEC 10K also describes the Rise purchase of everything from the BET Group Estate (at pp.29) by quitclaim deed on 1/25/2017 (with the "Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) **"subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" NOTE THAT RISE (AT SEC 10K PP. 28) NOT ONLY SEPARATES SURFACE FROM SUBSURFACE MINING, BUT SEPARATES "MINERAL EXPLORATION" FROM BOTH SUCH TYPES OF MINING, CONSISTENT WITH THE M1 DISTRICT ZONING.**

Indeed, ***HARDESTY*** **ALSO CLARIFIES KEY DIFFERENCES BETWEEN VESTED RIGHTS AS A PROPERTY OWNER VERSUS A VESTED RIGHT FOR MINING**, STATING (AT 806-807) (emphasis added):

> As we will explain, we agree that the [ancient Federal mining] patents conferred on **Hardesty vested rights *as a property owner*, but that is not the same as vested rights *to mine* the property absent compliance with state environmental laws.** The Board and trial court correctly concluded that Hardesty **had to show active surface mining was occurring on the effective date of SMARA, or the very least show objective evidence that the then owner contemplated resumption of such activities.** Under the facts, viewed in the appropriate light, Hardesty did not carry his burden to show that ***any*** mining was occurring or any intent to mine existed on the relevant date [3/31/1988. **Further, the Board and trial court correctly applied the "nonconforming use" and abandonment doctrines to the facts herein.**
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> **Indeed, in a case involving a different open-pit mine also operated by Hardesty, we rejected his view that a "vested right" to mine under SMARA obviates the need to comply with state environmental laws …[citing to] *Hardesty v. Sacramento Met. Air Quality Management Dist.* (2011), 202 Cal.App.4th 404, 427…**
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> The *Hardesty* precedent (also citing *Hansen Brothers—see Exhibit B hereto*) not only rejected that similar miner's vested rights claim for those reasons (and others that follow in later discussions), but also "[a]s an alternative basis for decision, the Board and the trial court found any right to mine was abandoned" on such facts. The Court of Appeal agreed: "Here the evidence of abandonment was overwhelming…. Further, **a person's subjective "hope" is not enough to preserve rights; a desire to mine when a land-use law takes effect is "measured**

by objective manifestations and not by subjective intent." (*Calvert*, supra, 145 Cal.App.4th at pl 623…)

In any case, **none of the work done above or around the closed, dormant, and abandoned IMM since it closed and flooded in 1956 qualifies for Rise vested rights, since there has only been "exploration" "uses" or environmental testing uses, which even Rise's SEC 10K admittedly excludes from "mining" activities by its admission (at pp. 28): "MINERAL EXPLORATION, HOWEVER, IS DISTINCT FROM THE DEFINITIONS OF 'SUB SURFACE MINING' AND "SURFACE MINING'" [MAKING THE POINT THAT MINERS IN THAT M1 DISTRICT ZONED LAND COULD EXPLORE WITHOUT A PERMIT.]** (emphasis added) Such admissions evidence that Rise's vested rights claims now seem to be an afterthought following the Planning Commission recommendation against the EIR and use permit, and another series of objections will address the inconsistencies, contradictions, and conflicts between the Rise Petition now and what Rise and its enablers previously admitted in the EIR/DEIR, in permit applications, in SEC filings, and other documents and communications. Rise is not just changing its legal theory "on the fly," but Rise is also changing its disputed "story."

b. Some of the Reasons Why Objecting Surface Owners Above And Around The 2585-Acre Underground Mine Have Extra Constitutional, Legal, And Property Rights Ignored By Rise And By Surface Mining Laws And Cases. See Attachment B (Explaining SMARA Limits To Surface Mining, And NOT Applying To Underground Mining). See, e.g., *Keystone Bituminous Coal Assn v. DeBenedittis,* 480 U.S. 470 (!987) ("Keystone".)

Objecting owners' "surface" constitutional, legal, and other property rights are comprehensive for at least (generally) the first 200 feet down (according to Rise's current SEC 10K filing, or under some deeds perhaps more or less), plus forever deeper as to anything not part of deeded "mineral" mining rights (e.g., such as our surface owner groundwater and existing and future wells). Even then, subject to many other legal rights of such surface owners, such as for "lateral and subjacent support," including such "support" by surface owners' groundwater that must support our surface legal estate. See, e.g., *Keystone Bituminous Coal Assn v. DeBenedittis,* 480 U.S. 470 (!987) ("Keystone".) That leading Supreme Court decision upheld against coal miner challenges the Bituminous Subsidence And Land Preservation Act (the "Subsidence Act" as it's called in Pennsylvania and many places where it has been replicated), where mining was limited to prevent "subsidence" ignored by Rise (i.e., the loss of surface lateral and subjacent support and loss of groundwater or depletion of surface water, which are competing legal and property rights objecting surface residents already have here above and around the 2585-acre underground mine, although Rise may inspire locals here to cause even more protective new laws (presumably triggering more, meritless, vested rights claims by Rise for objectors to defeat and creating incentives for test case litigation that prevents such harms not just by Rise, but also by any of its successors,

since the modern speculators' greed for this imagined gold seems endless.) That *Keystone* decision defined (at 474-475) such objectors' "subsidence" concerns (also at issue here for this IMM project), especially because of the massive and objectionable groundwater depletion (24/7/365 for 80 years along and off 76 miles of proposed new tunnels in Rise's new, deeper, and expanded vested rights mining claims for blasting, tunneling, rock removal, and other mining activities in new, unexplored IMM underground parcels, plus the 72 miles of existing tunnels and mined areas where the known gold supply was exhausted by the time the closed, dormant, and flooded IMM was abandoned in 1956. Consider this court summary, as applicable to gold mining here as to coal mining there:

> Coal mine **subsidence** is the lowering of the strata overlying a coal mine, including the land surface, caused by extraction of underground coal. This lowering of the strata can have devastating effects. It often causes substantial damage to foundations, walls, and other structural members, and the integrity of houses and buildings. Subsidence frequently causes sinkholes or troughs in land which make the land difficult or impossible to develop. Its effect on farming has been well documented—many subsided areas cannot be plowed or properly prepared. **Subsidence can also cause the loss of groundwater and surface ponds.** In short, it presents the type of environmental concern that has been the focus of so much federal, state, and local regulation in recent decades. (Emphasis added). [That conclusion about groundwater has a fn. 2, which states:]
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> Fn2. "Whenever [subsidence effects] extend, damage can occur to buildings, roads, pipelines, cables, streams, water impoundments, wells, and aquifers. Buildings can be cracked or titled; roads can be lowered or cracked, **streams, water impoundments, and aquifers can all be drained into the underground excavations**. Oil and gas wells can be severed, causing contents to migrate into underground mines into aquifers, and even into residential basements. Sewage lines, gas lines, and water lines can all be severed, as can telephone and electric cables. … (emphasis added).

While that *Keystone,* subsidence law generally required 50% of the coal to remain for support in strategic places, it did many other things to protect the surface and limit the mining, explaining that **the government was entitled to so act "to protect the public interest in health, the environment, and the fiscal integrity of the area," such as by "exercising its police powers to abate activity akin to a public nuisance," although the court made clear that the police power was broader than nuisances. (**At 488**,** emphasis added**)** See SMARA # 2715 and 2714 discussed in Attachment B, explaining how even valid vested rights to be excused from a use permit do not excuse Rise from other laws, and how the Rise Petition claim (at 58) to entitlement to operate as it wishes "without limitation or restriction" cannot ever survive the challenges it will inspire. The actual laws that Rise ignores (see Id.) will govern as the applicable laws "limiting or restricting" Rise's uses of the IMM, whether voters achieve such protections from such nuisances and worse by electing responsive officials, by initiatives/referendums, or, if necessary (when ripe), by test case litigation.) Of special note, the *Keystone* Court (at 493-94)

explained that this challenge was to the enactment of the law before it was enforced, meaning that it was premature to complain about how the law might be abused, since the facts of that surface and underground mining competition of rights were not yet established; citing its own precedent in *Hodel v. Virginia Surface Mining & Reclamation Ass'n Inc*, 452 U.S, 264 (1981), the Court explained:

> [The] court ignored this Court's oft-repeated admonition that the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary. [citations omitted] Adherence to this rule is particularly important in cases raising allegations of an unconstitutional taking of private property. *** (at 497): **[W]here an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' is not a taking because the aggregate must be viewed in its entirety. [The Court then followed that discussion how valid zoning laws always affect without any "taking" property uses with things like setbacks, lot size vs building size, etc.]** (emphasis added)

While Rise (like others before it) may attempt to argue that somehow such new regulations and laws reducing IMM potential profits are "eminent domain" "takings" or otherwise barred by its constitutional "vested rights," that meritless theory has long been rejected by courts and governments, both on the legal merits (e.g., such speculative "lost profits" are not recoverable as a legal remedy in this state) and **because objecting surface owners also have their own competing constitutional, legal, and property rights that do merit protection from such underground mining threats.** Note, unlike in that Supreme Court case, where some surface owners had signed waivers in favor of the underground mining, the reverse is true here, as demonstrated by the Rise deed limitations and absence of surface waivers, as admitted by Rise in its SEC 10K filing. California Courts have upheld such surface owner protection laws against underground mineral rights or other uses, such as in California Civil Code section 848(a)(2), upholding such surface owner protections challenged by oil and gas miners. *Vaquero Energy, Inc. v, County of Kern* (2019), 42 Cal. App. 5th 312 (including among protections some delegations of power to surface owners, depending on Tiers classified by the extent of current mining domination vs competing uses dominating the area and many other interesting ideas, involving notice requires, 120-day delays of mining, etc.). The point here is that there are many things our local government (and other law reforms discussed above) can and should do by enhanced legislation (or, if need be, by voter initiatives) independent of any CEQA or other screening or permitting as to this IMM threat, to further protect us residents and voters above and around the 2585-acre underground mine. See, e.g., ***Varjabedian v. Madera*** (1977), 20 Cal.3d 285 (allowing nuisance, inverse condemnation, and other claims for homeowners suffering downwind of the new sewer plant project, since those local victims suffered disproportionate harms compared to the general public enjoying the benefits or the sewer plant without its burdens.) ("***Varjabedian").***

Apart from the Rise Petition Exhibits disputed earlier in this document, Rise's inconsistent EIR/DEIR data never lays any factual foundation for vested rights (often the opposite in advocating for a use permit.) Rise just admits in the SEC 10K that "original mineral

rights" were acquired "at various times" since 1851. However, the SEC 10K also describes the Rise purchase of everything from the BET Group Estate (at pp.29) by quitclaim deed on 1/25/2017 (with the "Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) **"subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" NOTE THAT RISE (AT SEC 10K PP. 28) NOT ONLY SEPARATES SURFACE FROM SUBSURFACE MINING, BUT SEPARATES "MINERAL EXPLORATION" FROM BOTH SUCH TYPES OF MINING, CONSISTENT WITH THE M1 DISTRICT ZONING.**

Furthermore, Objecting surface owners especially have important legal rights and remedies to **mitigate** objectors' damages (when ripe), which include, for example, RIGHTS TO IMPROVE EXISTING WELLS AND TO CREATE NEW WELLS, none of which competing activities are evaluated or discussed in the noncompliant EIR/DEIR or are excused by any Rise vested rights claims. E.g., ***Smith v. County of LA*** (1986), 214 Cal. App. 3d 266 (homeowner victims' self-help mitigation was allowed when essential county road repairs created landslide conditions destroying local homes, triggering nuisance, inverse condemnation, and other claims, both for damages for diminution in the value of real property and for annoyance, inconvenience, and discomfort, including mental distress as part of the loss of quiet enjoyment rights as a property owner. Such exercise of surface owners' property rights will further counter Rise's vested rights theory and the battle over groundwater, future and existing wells, and subsidence. Indeed, *Gray v. County of Madera (2008), 167 Cal.App.4th 1099 ("**Gray**")* (rejecting an EIR surface miner's plan for similar, purported groundwater/well mitigation, that was even superior, to Rise's disputed EIR mitigation plan), clearly rejected the kind of mitigation Rise proposed in its EIR/DEIR, and that same reasoning will defeat Rise's vested rights claims for objecting surface owners competing for their owned groundwater with deeper and new wells and watering systems and charging culpable parties for that mitigation cost as and when allowed by many controlling court decisions. E.g., ***Ahlers v. County of LA*** (1965), 62 Cal.2d 250 (road construction caused landslides, entitling the threatened property owners to recover, among other things, the mitigation costs of constructing 25 shear pin caissons to hold back the landslide); ***Shefft v. County of LA*** (1970) 3 Cal. App.3d 720, 741-42 (when water diversion from subdivision and road construction caused damages, the victims were entitled to recover the costs of protecting their property with mitigation infrastructure.) See also ***Uniwill v. City of LA*** (2004), 124 Cal. App. 4th 537 (both the private party and the approving government can be jointly liable in inverse condemnation); ***Varjabedian v. Madera*** (1977), 20 Cal. 3d 285 (explaining inverse condemnation and nuisance rights of homeowners downwind of the new sewer treatment plant).

3. *Hansen* Itself Defeats Rise's Disputed, "Unitary Theory of Vested Rights" By Requiring A Parcel-By-Parcel Analysis For Each "Use" And "Component." See Attachment A for a comprehensive analysis of *Hansen.*

Rise incorrectly claims the *Hansen* unitary business theory somehow, applies so that any kind of "operation"(defined from SMARA in an out-of-context *Hansen* quote in Rise Petition Conclusion #2 at 76) conducted on any of the "parcels" (10 parcels or 55 sub-parcels in its SEC

10K filing or some other number or configuration?) of its alleged "Vested Mine Property" allows all kinds of **"operations" everywhere (claimed at Rise Petition 58) "without limitation or restriction**," both on the surface and in the 2585-acre underground mine, even in the new, expanded, never explored or accessed for mining underground mining proposed in the disputed EIR/DEIR. To quote that disputed Rise claim (citing *Hansen* at 556, but where the **actual** *Hansen* quote insufficiently quoted by Rise to support its exaggerated and disputed claim was qualified and limited in *Hansen [emphasis added]* to apply to: **"a vested right to quarry or excavate [surface mining/not underground mining terms] the entire area OF A PARCEL…**" Rise ignored the more important rulings to follow in the next *Hansen* pages Rise incorrectly ignored, with Rise instead incorrectly claiming (at Rise Petition 58, emphasis added) as follow: "Therefore, **as a matter of law,** Rise is entitled to engage in mining operations **throughout the whole of the Vested Mine Property pursuant to** the California Supreme Court's holding in **Hansen Brothers**, as mineral rights that have been vested **necessarily encompass, 'without limitation or restriction' the entirety of the Vested Mine Property** due to the nature of mining as an extractive enterprise **under the diminishing asset doctrine."**

To be clear (emphasis added), **Rise incorrectly cited *Hansen* as allowing such vested rights "throughout the whole of the Vested Mine Property," but, to the contrary, *Hansen* indisputably limited such vested rights to "the entire area OF A PARCEL" AND ONLY THAT PARCEL; i.e., only allowing vested rights on a parcel-by-parcel basis, as demonstrated by the *Hansen* court's ultimate decision allowing vested rights on some parcels in the miner's property, but not on other parcels there. See Appendix A (a comprehensive discussion of *Hansen* with quotes that defeat Rise's mischaracterizations of that court decision.) THE RISE PETITION DOES NOT PRODUCE ANY EVIDENCE ON A PARCEL-BY-PARCEL BASIS, BUT ONLY OFFERS UNDIFFERENTIATED "EVIDENCE" ABOUT THE GENERAL MASS OF THE MULTI-PARCEL, "VESTED MINE PROPERTY," THUS FAILING RISE'S BURDEN OF PROOF. Moreover, *Hansen* did NOT so apply vested rights as Rise claims or apply vested rights to any underground mining, but only exclusively to the "surface mine" subject to SMARA (which does not apply at all to underground mining, as explained in Attachment B) ON A PARCEL-BY-PARCEL BASIS. Thus, the disputed Rise Petition's incorrect and unprecedented "unitary theory of vested rights" contradicts *Hansen*, for example: (i) by Rise insisting incorrectly that vested rights apply to the "ENTIRETY" of a mine AS A MATTER OF LAW, when, to the contrary, *Hansen* instead REMANDED some parcels for further analysis, in effect, because of the LACK OF EVIDENCE as to the application of LEGAL AND FACTUAL ISSUES (also ignored by Rise) regarding various of the *separate parcels* of that mine. (In other words, Hansen divided the mine by parcels, some of which had vested rights and some failed to prove any vested rights); (ii) *by the* Rise Petition incorrectly claiming (at 58) that Hansen and SMARA allow Rise to mine as it wishes "without limitation or restriction," *when, to the contrary, neither Hansen nor SMARA applies to underground mining and both Hansen* and *SMARA* (see Attachments A and B) demonstrate many legal and regulatory "limitations or restrictions," especially as to the miner's need for an approved "reclamation plan" and related "financial assurances" for which Rise could never qualify, as illustrated in Rise's SEC filings and financial statements with "going concern qualifications;" and (iii) even more importantly, by Rise ignoring this *Hansen* quote defeating Rise's disputed cross-parcel/unitary operations claims (none of which disputed and unprecedented Rise theories apply to UNDERGROUND mining at all, as *Hardesty***

demonstrated above and as SMARA itself states in Attachment B. In an irrefutable rebuttal to such Rise claims, *Hansen* stated (at 558, emphasis added):

> **EVEN WHERE MULTIPLE PARCELS ARE IN THE SAME OWNERSHIP AT THE TIME A ZONING LAW RENDERS MINING USE NONCONFORMING, EXTENSION OF THE USE INTO PARCELS NOT BEING MINED AT THE TIME IS ALLOWED ONLY IF THE PARCELS HAD BEEN PART OF THE MINING OPERATION.** (*Dolomite Products Company v. Kipers* (1965), 23 A.D.2d. 339…affd 19 N.Y.2d 739 [279 N.Y.S.2d 192]…[**OWNER MAY NOT "TACK" A NONCONFORMING USE ON ONE PARCEL USED FOR QUARRYING ONTO OTHERS OWNED AND HELD FOR FUTURE USE WHEN THE ZONING LAW BECAME EFFECTIVE**]; *Smart v. Dane County Bd. Of Adjustments*…501 N.W.2d 782; *Stephan & Sons v. Municipality of Anchorage*…685 P.2D at p.102 fn.6 ["**THE DIMINISHING ASSET DOCTRINE NORMALLY WILL NOT COUNTENANCE THE EXTENSION OF A USE BEYOND THE BOUNDARIES OF THE TRACT ON WHICH THE USE WAS INITIATED WHEN THE APPLICABLE ZONING LAW WENT INTO EFFECT….]** see also *Midland Park Coal & Lumber Co. v. Terhune*, 56 A.2d 717 (N.J. 1948); *Syracuse Aggregate Corp. v. Weiss*, 51 N.Y.2d 278, 434 N.Y.S.2d 150 *…; Davis v. Miller*, 163 Ohio.St. 91, 126 N.E.2d 49 (1955).].) (emphasis added)

Further, to avoid any doubt about that required parcel-by-parcel and use-by-use analysis in *Hansen* and to emphasize the importance of **EVIDENCE** (contrary to Rise's disputed claim that somehow, we must trust its erroneous legal opinion "as a matter of law"), the *Hansen* court also stated (at 561-64, emphasis added):

> Some of those parcels were conveyed to Hansen Brothers after 1954, however. **The record does not confirm that all of the parcels, over which Hansen Brothers claimed vested rights in its SMARA application, were part of the Bear's Elbow Mine in 1946 or 1954. The record is also devoid of evidence that the owners of those parcels themselves held vested mining rights in the transferred property at the time they were deeded to Hansen Brothers.** Examination of the record reveals that [the County's related admissions, including one obvious mistake that it could not correct in time]… encompassed only the parcel that was the original site of the …Mine and one of the three parcels conveyed to Hansen Brothers after 1954.
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> Hansen Brothers does not dispute the absence of evidence in the record that the after-acquired properties were being used for mining purposes in 1954. Instead, it argues that its SMARA reclamation plan …[was sufficient and the County was estopped to object from subsequent use].
>
> ….**The court must make its own decision as to the legal impact of those facts and is not bound by any concessions of law that a party may have made. [citations]… Indeed, the county lacks the power to waive or consent to violations of zoning law. [citations]**
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> [After analysis that is even more powerful here because IMM objectors here make no admissions or concessions of any kind to Rise, the court concluded:] **Hansen Brothers has failed to carry that burden insofar as its SMARA reclamation plan asserted a vested right to quarry a 60 plus acre parcel…The evidence is insufficient to support a finding that Hansen Brothers is entitled to a writ of mandate… [therefore referring to a further] determin[ation] by the superior court on remand.**

Moreover, while parcels so limit vested rights, they are also limited to each specific "use" (as *Hardesty* demonstrates above) and even as *Hansen* demonstrates below by each specific "component." Consider that Rise admits in its EIR/DEIR that this expansion mining into new, underground parcels would requires a new, high-tech, massive dewatering system operating 24/7/365 for 80 years, but those 1954 Rise predecessors could have never planned to duplicate anything like that. Indeed, as described above even in Rise Petition Exhibits, untreated mine water flowed into the Wolf Creek for decades thereafter. More importantly, when the Idaho Maryland Mines Corporation was suffering its financial distress in 1954 and thereafter and cutting back on its gold mining in anticipation of the 1956 closure and flooding of the gold mine (as admitted in Rise Exhibits discussed above), no one could imagine that miner investing in or operating anything that could be considered a precedent for any such Rise water treatment system. Thus, Rise's claim to vested rights must fail for such an EIR/DEIR water treatment system essential for dewatering any "Vested Mine Property" and any such contemplated mining there. **As Attachment A demonstrates, THE *HANSEN* CASE ITSELF IS CONCLUSIVE AUTHORITY FOR DENYING SUCH VESTED RIGHTS CLAIM (**AT 566, EMPHASIS ADDED**) THE COURT "ILLUSTRATED" ITS "APPROACH" BY CITING *PARAMOUNT ROCK CO. V COUNTY OF SAN DIEGO* (1960), 180 CAL.APP.2D 217, 230 ("Paramount Rock"). IN PARAMOUNT ROCK THAT READY-MIX CONCRETE BUSINESS ADDED FOR THE FIRST TIME AFTER THE VESTING REZONING DATE A NEW "ROCK CRUSHING PLANT ON THE SITE" (REPLACING PRECIOUSLY OFFSITE CRUSHING), REJECTING THE ARGUMENT THAT SUCH A CRUSHER ADDITION WAS "AN INTEGRAL PART OF THE BUSINESS THAT THE [OWNER] PLAINTIFF HAD BEEN OPERATING," BECAUSE THAT CRUSHER WAS "NOT PART OF THE NONCONFORMING USE TO WHICH THE PROPERTY WAS BEING PUT AT THE TIME THE ZONING ORDINANCE WAS ADOPTED." STATED ANOTHER WAY, *HANSEN* (at 566, emphasis added) IN EFFECT STILL REQUIRED THAT SUCH "A COMPONENT OF A BUSINESS" MUST "ITSELF HA[VE] A VESTED RIGHT TO CONTINUE USING THE LAND ON WHICH IT IS LOCATED FOR OPERATION OF THE BUSINESS."**

Thus, Rise cannot now add such a new water treatment plant it admits in its disputed EIR/DEIR that Rise needs for its 24/7/365 for 80 years of dewatering of groundwater drained from objecting and competing surface owners and existing and future wells above and around the 2585-acre underground mine because that massive water has nowhere to go except into the Wolf Creek, which applicable law will not allow without such treatment. (Much better water treatment would be required than Rise proposed in the disputed EIR/DEIR, especially when the government finally focuses on the toxic hexavalent chromium menace from the cement paste the EIR/DEIR proposes to pipe into the underground mine to create shoring column braces from mine waste to avoid the expense of removing such waste rock. As explained in various objections, that toxin that killed Hinkley, California, and many of its citizens as publicized in the

movie, *Erin Brockovich,* has still not been remediated despite ample litigation settlement funds, as explained in www.hinkleygroundwater.com. See the EPA and CalEPA websites with massive threat studies on hexavalent chromium.)

4. Objectors' Cited Court Decisions Do Not Merely Announce Such Above Stated Limitations, Bars, And Principles To Defeat Rise's Vested Rights Claims, But Such Cases Also Apply Those Rebuttal Rules To SIMILAR EVIDENCE That Reinforces Our Objections, Even In *Hansen.* (See Attachment A.)

To avoid any doubt about that parcel-by-parcel, use-by-use, and component-by-component analysis required by *Hansen* and to emphasize the importance of **EVIDENCE AND RISE'S BURDEN OF PROOF (contrary to Rise's disputed claim that somehow, we must trust its erroneous legal opinion as a matter of law), the *Hansen* court also stated** (at 561-64, emphasis added):

> Some of those parcels were conveyed to Hansen Brothers after 1954, however. **The record does not confirm that all of the parcels, over which Hansen Brothers claimed vested rights in its SMARA application, were part of the Bear's Elbow Mine in 1946 or 1954. The record is also devoid of evidence that the owners of those parcels themselves held vested mining rights in the transferred property at the time they were deeded to Hansen Brothers.** Examination of the record reveals that [the County's related admissions, including one obvious mistake that it could not correct in time]… encompassed only the parcel that was the original site of the …Mine and one of the three parcels conveyed to Hansen Brothers after 1954.
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> Hansen Brothers does not dispute the absence of evidence in the record that the after-acquired properties were being used for mining purposes in 1954. Instead, it argues that its SMARA reclamation plan …[was sufficient and the County was estopped to object from subsequent use].
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> ….**The court must make its own decision as to the legal impact of those facts and is not bound by any concessions of law that a party may have made. [citations]… Indeed, the county lacks the power to waive or consent to violations of zoning law. [citations]**
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> [After analysis that is even more powerful here because IMM objectors here make no admissions or concessions of any kind to Rise, the court concluded:] **Hansen Brothers has failed to carry that burden insofar as its SMARA reclamation plan asserted a vested right to quarry a 60 plus acre parcel…The evidence is insufficient to support a finding that Hansen Brothers is entitled to a writ of mandate… [therefore referring to a further] determin[ation] by the superior court on remand.**

While this commentary continues below with further discussions of these evidentiary issues, such Hansen rules ignored by the disputed Rise Petition support objectors' many evidentiary objections above. **Nothing asserted by Rise can be resolved in its favor (as Rise incorrectly claims), "as a matter of law," and none of Rise's evidence is admissible or sufficient to prove any vested rights that it claims when such *Hansen, Hardesty, Calvert*, and other court rulings are applied to support the Evidence Code rules explained and applied in the foregoing objection. Indeed, since the Rise Petition is primarily based on Rise's incorrect and selectively deficient reading of *Hansen*, the more complete reading of Hansen as quoted herein and in Attachment A, defeats the Rise Petition by itself.** Rise may attempt to argue against evidentiary requirements, but Rise cannot ignore *Calvert,* or even the *Hansen* evidentiary example, where the California Supreme Court majority re-examined the evidence for the contrary ruling by the County, the trial court, and the Court of Appeal and then reversed those lower decisions. Yet, the Hansen court still ruled the evidence insufficient for various vested rights issues, thereby confirming the importance of the rules of evidence in such cases (refuting Rise's claims to prevail as a matter of law), stating (at 542):

> Nevertheless, **the record is inadequate** to permit us, or the lower courts and administrative bodies, **to determine (1) whether the nonconforming use** which Hansen Brothers claims a vested right to continue **extends to all of the Nevada County property it identifies** [and so owned in 1954], or (2**) the extent of the area over which an intent to quarry for rock was objectively manifested in 1954** [to which such intended area the court stated at page 543 that mining right is "limited."] (emphasis added)

As demonstrated in the above objection, **that evidentiary problem defeating such vested rights exists for Rise's Vested Mine Property parcels as well, since Rise has produced no sufficient, admissible, and credible parcel-by-parcel, use-by-use, and component-by-component such evidence, especially to mine the parcels never before mined, accessed, or even meaningfully explored by drilling where Rise proposes to create 76 miles of new tunnels. While the Hansen court's majority (versus the dissents supporting the County and lower court decisions) could disagree with everyone else about the evidence of whether the "proposal for future rock quarrying would be an impermissible intensification of the nonconforming use of its property" and whether various relevant inactivity was sufficient to determine that the applicable aggregate production business had been "discontinued," that majority thinking in *Hansen* does not apply in this distinguishable IMM case, where Rise cannot prove such factors.** Moreover, **after considering much more evidence than will be available to Rise for the IMM**, **the actual conclusion of the majority in *Hansen* (at 543) was**:

> Nonetheless, as we explain below, **because a court cannot determine on this record that Hansen Brothers is entitled to the [vested rights] relief it seeks, the [miner's] petition for writ of mandate to compel the Board to approve a Surface Mining And Reclamation Act of 1975 (#2710 et seq.) reclamation plan for the Hansen Brothers' property was properly denied by the superior court.** However, Hansen Brothers is entitled … to have its application reconsidered. We shall therefore reverse the

> judgment of the Court of Appeal … but we shall do so **with directions that … the superior court conduct further hearings." (**emphasis added)
>
> What that means is that evidence and the burden of proof are important matters in these vested rights disputes, especially where the courts here must deal with the additional factors from the competition between objecting surface owners above and around the 2585-acre underground IMM, who have no less constitutional, legal, and property rights at issue than Rise or the County. See *Keystone and Varjabdian* above.

Also, consider how Rise neglected to address this *Hansen* ruling (at 564, emphasis added), **among others, that must be addressed first, before our additional dispute over abandonment below: "The BURDEN OF PROOF is on the party asserting a nonconforming use to establish the lawful and continuing existence of that use at the time of the enactment of the ordinance", citing *Melton v. City of San Pablo* (1967), 252 Cal. App.2d 794. Among many incorrect Rise claims about evidence and the burden of proof that further objections will dispute in the coming briefing, objectors especially dispute RISE'S FALSELY CLAIMING WITHOUT CITED AUTHORITY AND INCORRECTLY (AT 1) THAT: "THE THRESHOLD FOR PROVING A VESTED RIGHT EXISTS ON THE VESTED MINE PROPERTY IS LOW. It requires only that Rise illustrate that the vested right is more likely than not to exist … meaning that if Rise provided enough evidence to indicate a 50.1% chance that a vested right exists, the County has a legal obligation to confirm that right." Fortunately for justice, Rise cannot achieve even that low standard it incorrectly sets for itself (even for the inapplicable SURFACE mining and surface mining law on which Rise incorrectly applies to this UNDERGROUND mining), but this illustrates why this Objectors Petition is so necessary to end such meritless Rise threats.**

More importantly, and another reason besides Calvert due process requirements for us objectors why objectors insist on full participation as equal parties in this vested rights dispute, is stated by *Hansen's* above quote in rejecting the miner's argument that the county was not estopped:

> ….**The court must make its own decision as to the legal impact of those facts and is not bound by any concessions of law that a party may have made. [citations]… Indeed, the county lacks the power to waive or consent to violations of zoning law. [citations] (**emphasis added)

As explained above and in other objections, not only are impacted surface residents above and around the underground mine entitled to enforce our constitutional, legal, and property rights independent of the County and regardless of its decision on vested rights, but, by abandoning its quest for a disputed use permit in favor of vested rights, Rise has sacrificed any legal benefits it might otherwise have claimed from any use permit (i.e., seeking to avoid such use permit burdens and conditions on Rise). That means any disputed Rise vested rights cannot impair any such constitutional, legal, or property rights of any such objecting and competing surface owners.

Even if Rise were correct about such disputed claims (which it is not), the County cannot BY ITSELF allow any vested rights for Rise mining, for example, such as in that new,

expanded, never mined or even accessed UNDERGROUND parcels, because the courts must also address the objections of us surface owners who have our own competing constitutional, legal, and property rights (see the US Supreme Court analysis in *Keystone* discussed below) to challenge Rise from such IMM mining beneath objectors and from depleting groundwater and existing and future wells of surface owners above and around the underground mine. If the County were to "take" away resisting surface owner' competing rights, then the County would be exposing itself to the kinds of inverse condemnation and other claims the California Supreme Court recognized in its *Varjabedian* decision discussed herein. Recall, for example, objectors EIR/DEIR challenging Rise's proposal to take the first 10% of every existing well (and 100% of all future wells) before even pretending to mitigate with measures already rejected similar to those in *Gray v. County of Madera,* with illusory mitigation proposals Rise's SEC filings admit it lacks the financial resources to afford.

The *Hardesty and other* case evidentiary quotes we add demonstrate next with greater particularity what evidence is required to satisfy the miner's burden of proof for vested rights:

> Significantly, at the Board hearing, Hardesty's counsel conceded the mine was dormant until at least the late 1980's, although counsel attributed this to market forces [a disputable argument that Rise cannot credibly make here]. Hardesty submitted other evidence, but the Board and trial court could rationally reject it. **There was no hard evidence, such as production records, employment records, equipment records, and so forth, showing any significant mining after World War II.** *(emphasis added)*

Hardesty, 11 Cal.App.5th at 801. (This followed the court's earlier evidentiary findings [at 799] that, for example: "'There are no records presently available …to show what kind of mining business … the owner from 1921 to 1988 … conducted on the property after the war.' **The trial court found that through the 1970's, the property 'was essentially dormant.'") As demonstrated in the main evidentiary objections above, even what Rise alleges to be evidence is not relevant, sufficient, or admissible when (i) it only applies to Rise's disputed and incorrect legal theories (e.g., Rise's unprecedented and incorrect invention of "unitary vested rights" refuted herein), and (ii) Rise fails to address the realities consistent with the correct, applicable law on a parcel-by-parcel, use-by-use, and component-by-component basis.** As noted above and elsewhere, **that court ruled at 811 (citing Hansen at 12 Cal.4th at 564, and Calvert at 145 Cal.App.4th at 629): "IT WAS HARDESTY'S BURDEN TO PROVE HE WAS CONDUCTING A NONCONFORMING USE AT THE TIME THE LAW CHANGED." IT ADDED THIS CITE FROM MELTON V. CITY OF SAN PABLO (1967), 252 CAL.APP.2D 794, 804: "THE BURDEN OF PROOF IS ON THE PARTY ASSERTING A RIGHT TO A NONCONFORMING USE TO ESTABLISH *THE LAWFUL* AND CONTINUING EXISTENCE OF THE USE *AT THE TIME* OF THE ENACTMENT OF ORDINANCE [IT WISHES TO EVADE.]"** (emphasis added) See also the court's discussion at Id. and 812 of *Stokes v. Board of Permit Appeals* (1997), 52 Cal.App.4th 1348, 1351, 1352-53, 1355-56, and *Walnut Properties, Inc. v. City Council* (1980), 100 Cal.App.3d 1018, 1024.

Moreover, Rise evidence, even if it were technically admissible, fails to meet the **credibility standards in the relevant cases that require at least "common sense" (Gray) and "good faith reasoned analysis" (Banning, Vineyard, etc.)** See, e.g., ***Banning Ranch***

Conservancy v. City of Newport Beach (*2017), 2 Cal.5th 918, 940-41 ("*Banning*"); *Vineyard Area Citizens For Responsible Growth v. City of Rancho Cordova* (2007), 40 Cal.4th 412, 442 ("*Vineyard*"); *Gray v. County of Madera* (2008), 167 Cal.App.4th 1099 (*"Gray*"); *Concerned Citizens of Costa Mesa, Inc. v. 32d Dist. Ag. Ass'n* (1986), 42 Cal.3d 929 ("*Costa Mesa"). Because (as objections to the EIR/DEIR expose) Rise has a habit of insisting on what is politely called an "alternative reality" (e.g., what *Hardesty* called a "muddle"), the County should consider how *Hardesty* handled a miner's evidentiary resistance to reality, such as where the court stated:

> Hardesty's **contentions are unnecessarily muddled** by his persistent refusal to acknowledge the *facts [the court's italics]* supporting the Board's and the trial court's conclusions. … **we will not be drawn onto inaccurate factual ground** (Western Aggregates Inc. v. County of Yuba (2002), 101 Cal. App.4th 278, 291…Because Hardesty does not portray the evidence fairly, any intended factual disputes are forfeited. See Foreman & Clark, supra, 3 Cal.3d at p. 881….Western Aggregates….

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799 -812. For example, what EIR/DEIR claims may apply for vested rights to one parcel of the IMM project has never been sufficiently proven could ever be generalized to the other parcels for which Rise offers no such proof by the disputed Rise Petition or Exhibits, the EIR/DEIR or otherwise by Rise or others, especially with the **required "common sense" (e.g., *Gray*) and "good faith reasoned analysis"** (emphasis added, e.g., *Banning, Vineyard, and Costa Mesa*) to apply similarly to the rest of the project; i.e., such parts like the Brunswick site, the Centennial site, or the specially addressed area around East Bennett Road, are more likely to be different than the 2585-acre underground mine that the EIR/DEIR speculates (and incorrectly assumes) to be the same or uniform.

In addition, the Rise Petition and Exhibits have compounded Rise's objectionable evidentiary problems because such disputed, supporting "evidence" is not just supporting incorrect legal arguments but is also inconsistent or contrary to other disputed Rise "evidence" or admissions in its now suspended EIR/DEIR, permit applications, or SEC filings. **When the Rise "story" in its Rise Petition, its SEC filings, its EIR/DEIR or its other documentation or communications don't "match" or "reconcile," then none of such "evidence" offered by Rise can be considered credible and should then be disregarded. See, e.g., Hardesty** discussed above; ***Communities for a Better Environment v. City of Richmond*** (2010), 184 Cal. App.4th 70 (where the court used Chevron admissions in, and inconsistencies from, its SEC filings to defeat its EIR) While objectors may search into such historical records to rebut the disputed Rise fragments (most of which have not been authenticated or proven admissible), objectors urge the County to evaluate its own historical records of the IMM mine for its own evidentiary analysis of the disputed vested rights claims, and then allow objectors must do their public records requests for access to such relevant historical records or, better yet, as is done in many such major cases like this, objectors ask the County to create an indexed data room for objectors with all of the potentially relevant records there for objectors to explore.

Moreover, massive evidentiary objections apply to the way Rise is "hiding the ball" as to its purported evidence in such conflicting ways that the present County proposed process incorrectly does not allow us to reconcile and rebut, and, therefore, which will consume the

early phases of the following court processes in comprehensive challenges to Rise's purported evidence and related disputes. For example, **EC #412 is a common failing of the Rise Petition and both the Johnson Declaration and other Rise Petition Exhibits, which statute states: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust." As already demonstrated above, Rise Petition Exhibits described conceptually many more documents than were produced by Rise as Exhibits, and objectors assume many of those missing documents contained evidence helpful to the objectors and adverse to the Rise Petition. Objectors will be using EC #412 more generally to address such tactics by rebuttal uses of such inconsistent Rise SEC filings, such as:**

Rise's SEC 10K claims at pp. 34 (Exhibit A) that: "The I-M Mine Property and its **comprehensive collection of original documents was rediscovered in 1990** by Consolidated Del Norte Ventures Inc, the predecessor company of Emgold Mining Corporation, and efforts were made to reopen the historic mine." (emphasis added) However, as described below, **Rise admits not acquiring that full collection,** and during the period of what Rise there called "Exploration & Mine Development 2003-2004" [skipping over in dead silence the period of nonuse or anything from 1956 to 2003], that **Rise 10K also claims (at pp. 34):**

> **"Development work during this period [2003-2004] included completion of a preliminary investigation of the mine records, publishing various technical reports on the I-M Property, leasing or purchasing adjacent properties [none of which disputed and unreliable "evidence" would be eligible for vested rights because they were expansion, intensification, and otherwise barred by case law], various permit applications and associated environmental studies, development of a ceramics technology process, and completion of an exploration program. Emgold was unsuccessful in reopening the historic mine due to inability to raise necessary funding in the midst of unfavorable market conditions."** (emphasis added)

Thus, one of two possibilities, or both of them in part, must apply here: either or both: (i) as discussed in the preceding analysis of the disputed Rise Petition Exhibit evidence, there were actually few or no other books, records, and other evidence that were relevant to the vested rights (besides the disputed Rise Petition Exhibits) than were so implied by Rise (e.g., whatever the records were they didn't prove vested rights but addressed irrelevant subjects instead), such as if such "rediscovered" "comprehensive collection" records of just dealt [with irrelevant to vested rights] gold production and location issues); and/or (ii) there were such records of relevant evidence that Rise (and perhaps Emgold and other predecessors) chose to ignore or disregard or otherwise keep out of the evidence pool, knowing that objectors had no discovery opportunities in the County dispute and that Rise could attempt to limit the evidence to what was in the County's administrative record; e.g., among the reasons why the Evidence Code included # 412 and other rules to discourage (or at least not reward) such hide the ball tactics.)

If the County corrects its procedures as objectors have requested to allow direct challenges and rebuttals to Rise's disputed claims and "evidence," and, in any event, in the courts correctly applying the rules of evidence in accordance with the applicable law, Rise confronts massive obstacles in admitting any such evidence. **Not only will there be all the same**

evidentiary objections asserted by objectors above in this objection, but there will be many more because Rise cannot expect to authenticate these historical records that allegedly were somehow "rediscovered" conveniently in 1990. Recall that Idaho Maryland Mine had no reason to preserve those records, as is proven above in this objection by Rise Petition's own Exhibits: (a) to have suffered a long period of financial distress due to the costs of gold mining exceeding the $35 legal cap on gold prices (which would continue indefinitely as everyone expected and progressively worse for more than a decade); (b) to have discontinued mining operations shortly after the October 1954 vesting date (various dates will be addressed in subsequent briefing between 1955 and 1956, but this objection references 1956 for convenience and to be conservative, since the 1956 closure and flooding of the mine made the abandonment clear to everyone but Rise; (c) to have changed its name and trademark to Idaho Maryland Industries, and moved to LA to become an aerospace contractor; and (d) to be then have that initial, alleged vested rights creators' at least dormant mining assets (now claimed by Rise as "Vested Mine Property") liquidated in an LA bankruptcy by a trustee whose auction resulted in the purchase cheap by William Ghidotti, all as described above by reference to Rise's own Exhibits.

Since there was no activity relevant to vested rights at or about the mine before that auction sale to William Ghidotti (or afterward), how likely is it that any of those mining records survived (especially as a "comprehensive collection") all those non-mining events, especially in the long LA bankruptcy case leading to the eventual auction sale to William Ghidotti. (If those LA bankruptcy records were available, which, unfortunately, the LA bankruptcy court reports they no longer exist, objectors believe that they would end Rise's whole vested rights case by themselves, because they would prove that the bankruptcy resulted in the end of any possible vested rights by abandonment before the sale to William Ghidotti. That will be a subject of further filed objections and evidence before the Board hearing. But the logic of the bankruptcy trustee and others is obvious and can be demonstrated as common practice in such mining bankruptcy cases. No bankruptcy estate parties would want any liability exposure for such a dormant mine that still had no possible value to them at the continuing $35 gold price cap, making it a dangerous asset set for a salvage sale with no one having any intention to continue mining. Why? Because there would be no apparent upside, and any such mining intentions would simply increase their liability exposure.)

In this case, considering the lack of admissible, competent, and credible evidence demonstrated by the deficient, inadmissible, objectionable, and otherwise objectionable Rise Petition Exhibits, Rise must be desperate for anything more persuasive than its previously rebutted and incorrect claim to prevail somehow "as a matter of law" without any such evidence. The fact that Rise did not provide more such "comprehensive" records from that alleged "collection," if and to the extent that such records existed, is more suspicious because Rise could have had more records but chose not to acquire them. That is like a buyer of a long-missing famous work of art whose "provenance" (the chain of legitimate owners, as distinct from thieves or forgers) which the buyer declined to acquire, because the buyer wanted the painting without the risk of the potentially ugly truths of its history. For example, the SEC 10K (at 34-35) reports that **Rise purchased the "Emgold diamond drill program database," as distinct from all the historical documents of Emgold, as Rise did when it purchased fragments**

from the BET Group. (emphasis added) Why not more? [Note that Rise's SEC 10K admits for example, that "[h]istoric drill logs were not available for review and no historic drill core was preserved from past mining operations**…"** thus contradicting the claim of a "comprehensive collection." Objectors wonder what competent, admissible, reliable, or even credible evidence, if any, serves as the foundation for Rise's (and the EIR/DEIR's) purported analysis, and what deficiencies exist to invalidate or discredit such analysis? Another discovery question is whether and to what extent the prior Emgold owner stopped its reported investigation merely (as the Rise 10k claims at 34-35) "due to inability to raise necessary funding in the midst of unfavorable market conditions," or whether Emgold may also have been discouraged by negative information, suspicions, or clues of risks that would have to have been awkward to address in the disputed EIR/DEIR (if Rise had chosen to search for or investigate them.) For example, **the SEC 10K reports that Rise purchased the "Emgold diamond drill program database" as distinct from all the historical documents of Emgold, as Rise did when it purchased fragments from the BET Group.** (emphasis added) Why not more?

As described in this and various other objections, alternatively, **objectors dispute any such Emgold purchased documentary evidence that might exist as not being consistent with Rise's description (e.g., disputing that such "REDISCOVERED" in 1990 pre-1956 records that were a "COMPREHENSIVE COLLECTION"). Where is Rise's competent proof for such claims, or even the authenticity of such "evidence?"** What is the proof for the "chain of custody" of such so-called evidence? The law of evidence should exclude those purported records (lacking the required foundation and admissibility factors) as admissible proof for any Rise claimed vested rights, since we cannot imagine how Rise will now prove and authenticate their disputed completeness, validity, and admissibility. As to that relevant "history" summarized by the Rise 10K starting at p. 34, using what are described as "**AVAILABLE** historic records" (emphasis added, to emphasize that **"availability" is a function both existence and the degree of diligence as to the search, which Rise has the burden to prove and which objectors doubt and may suspect Rise of failing to reveal relevant records adverse to Rise's claims)**. Objectors assume that **"available" means the portion of such a once greater mass of historical records that Rise was willing and able to find and consider.** What did Rise or its predecessors choose to hunt down and locate? What did Rise or its predecessors not seek, because, for example, it was from a source suspected of having possibly negative information? In any case, all those matters are part of Rise's burden of proof, for later litigation or discovery about what possibly available records Rise could have chosen to seek or investigate but didn't.)

Rise also violated a similar evidentiary rule as demonstrated in objectors' EIR/DEIR disputes, and now again above in the Rise Petition disputes, by Rise and its enablers so "hiding the ball." EC #413 STATES THAT: "THE TRIER OF FACT MAY CONSIDER, AMONG OTHER THINGS, THE PARTY'S FAILURE TO EXPLAIN OR DENY BY HIS TESTIMONY SUCH EVIDENCE OR FACTS IN THE CASE AGAINST HIM, OR HIS WILLFUL SUPPRESSION OF EVIDENCE RELATING THERETO…" An examination of the EIR (as shown by some point-by-point EIR objections) shows that Rise generally did not respond compliantly or often even at all to DEIR objections it did not dare to address on the merits. This vested rights process will likely be worse, if objectors do not have a full opportunity for the full due process required by *Calver*t for use by us objector parties rebutting whatever else Rise or its enablers add after the Rise Petition objection cut off deadline as full participants with equal rebuttal rights and time to protect

our constitutional, legal, and property rights as surface owners above and around the 2585-acre underground mine (not just public commentators with three minutes to address a limited scope of policy issues).

5. The Disputed And Incorrect Rise Petition Theory of the Case Is That Somehow Rise Acquired Unprecedented, "Unitary" Vested Rights Under Rise's Misreading of Only Parts of *Hansen* Applied Through Disputed Conduct, Gaps, And Intentions in a Chain of Vested Rights Predecessors Since October 1954.

a. Those Incorrect Rise Claims Are Rebutted Comprehensively In ATTACHMENT A, Presenting A Thorough Analysis of *Hansen, Which Supports Objectors And Defeats Rise.*

According to Rise's incorrect claim, the only possible issue is abandonment, which somehow must be incorrectly resolved in favor of rise "as a matter of law," or, in any event, based on the disputed, deficient, and worse rise petition exhibits refuted above. What preceded this next discussion defeated any such vested rights claim to be "continuous," both at the start and by "gaps" along that chain of rise's predecessors before any need even to consider "abandonment," which disputed issue objectors demonstrate that rise also misjudged.

b. Rise Must, But Fails To, Prove Every Element of What Is Required For Each "Use" And "Each Component" On Each "Parcel" Continuously for Rise And Each Rise Predecessor Since October 1954 To Have Any Vested Rights.

Rise Does Not Even Attempt To Prove Such Things In These Rise Petition Exhibits, Which, Among Other Fatal Flaws, Overgeneralize By Asserting Rise's Unprecedented And Incorrect "Unitary Theory" That Is Defeated By Even The Parts of Rise's Favorite *Hansen* Decision That Rise Improperly Disregards, As Demonstrated Both Here And More Comprehensively In Attachment A. These discussions are brief since these issues are comprehensively addressed in Attachment A and will be more fully briefed in other objections to be filed before the Board hearing. See also Objectors' Petition For Pre-Trial Relief, Etc. Consider the *Calvert* court's comments (at 623) regarding "objective manifestations of intent" continuously required for expanding vested rights uses on a parcel with vested rights for the same uses (as previously stated quoting *Hardesty* and *Hansen/Attachment A* on a parcel-by-parcel, use-by-use, and component-by-component basis, i.e., this confirms the ruling and result in Hansen where expansion of vested rights mining was tested parcel-by-parcel, with some allowed and some not):

> Under that [diminishing asset] doctrine, a vested right to **surface mine** into an expanded area requires the mining owner to show (1) part of the **same area** was being **surfaced mined when the land use law became effective,** and (2) the area the **owner desires to surface mine was clearly intended to be mined when the land use law became effective [i.e., in *Calvert* 1/1/1976]**, **as measured by objective manifestations and not by subjective intent. (**emphasis added.)

Even the *Hansen* majority concluded (at 543) that: "the record is inadequate to permit us, or the lower courts and administrative bodies, to determine (1) whether the nonconforming uses which Hansen Brothers claims a vested right to continue extends to all of the Nevada County property …over which it claims a vested right to continue operations…" Also, based on facts confirmed by EIR/DEIR, SEC filings, and other **Rise admissions**, the new/previously never adequately explored, accessed, or accessible **for mining** parcels of the 2585-acre underground mine into which Rise now wishes to expand **for mining** uses are **not the "same area" under that *Calvert* test (also consistent with *Hardesty* and *Hansen*)**. Recall that the entire 2595-acre underground mine has been inoperable, "dormant," flooded, and closed since at least 1956, and it has been (and still is) impossible to engage in any mining operations there, either (i) in the existing Brunswick shaft and 72 miles of existing, flooded tunnels from which pre-1955 or 1956 mining expanded to 150 miles of cross-cuts and drifts (probably now in the extremely dangerous and nonfunctional conditions one would expect after being abandoned and flooded since 1956) (for convenience call these parcels the **"Flooded Mine"),** or (ii) in the mineral rights parcels that have never been accessible (apart from minor and occasional test drilling, such as discussed above), mined, or otherwise explored (for convenience call these the "**Never Mined Parcels.")** Thus, contrary to the vested rights rules objectors have quoted from *Hansen, Calvert,* and *Hardesty* (and that Rise ignores), Rise cannot "expand" vested from those "Flooded Parcels" to mine the "Never Mined Parcels," even if there were somehow still continuous vested rights to mine the "Flooded Parcels," which Rise claim has been defeated by even the Rise Petition's own Exhibits when properly analyzed above. **As *Hansen* stated (at 558):**

Even where multiple parcels are in the same ownership at the time a zoning law renders mining use nonconforming, extension of the use into parcels not being mined at the time is allowed only if the parcels had been part of the mining operation. (*Dolomite Products Company v. Kipers* (1965), 23 A.D.2d. 339…affd 19 N.Y.2d 739 [279 N.Y.S.2d 192]…[**owner may not "tack" a nonconforming use on one parcel used for quarrying onto others owned and held for future use when the zoning law became effective**]; *Smart v. Dane County Bd. Of Adjustments*…501 N.W.2d 782; *Stephan & Sons v. Municipality of Anchorage*…685 P.2D at p.102 fn.6 ["**The diminishing asset doctrine normally will not countenance the extension of a use beyond the boundaries of the tract on which the use was initiated when the applicable zoning law went into effect….]** see also *Midland Park Coal & Lumber Co. v. Terhune*, 56 A.2d 717 (N.J. 1948); *Syracuse Aggregate Corp. v. Weiss*, 51 N.Y.2d 278, 434 N.Y.S.2d 150 *…; Davis v. Miller*, 163 Ohio.St. 91, 126 N.E.2d 49 (1955).].) (emphasis added)
That *Hansen* ruling should be fatal to the Rise Petition, because the separate underground parcels now to be mined had never been sufficiently accessed, explored, or mined before

(Also, whereas *Hansen* involved the court applying vested rights to a **continuous surface mining business** (where the key issue was the **scope of that surface business**), **this IMM underground mining dispute does not involve any underground mining at all after 1955 or 1956 and cannot possibly be called a "business" for application of *Hansen*, but merely an underground property speculation opportunity situation that *Hansen* did not address**.

Thus, for example, the kind of sporadic non-mining activity on the IMM surface is not continuous, and no such activities could have been happening on surface parcels sold by Rise predecessors to residential and non-mining commercial owners above and around the 2585-acre underground mine, whether the Flooded Mine parcels or Never Mined Parcels. See, e.g., the above discussed North Star rock-crushing for aggregate business on the Brunswick site that never excavated any surface, but just salvaged [and later imported] rock waste, tailings, and sand dumped onto the surface from ancient mining). That cannot qualify Rise for vested rights underground mining not only because it's on different parcels, but also because it is a different "use." **Consider not just *Hardesty* (which defeats the Rise Petition itself on such differences in uses between underground and surface mining), but also even the *Hansen* ruling forbids such dissimilar uses.** See *Hansen* (at 551-552, emphasis added) in its section entitled: "Scope of Vested Mining Rights –A. Zoning and related constitutional principles underlying Hansen Brothers vested rights claim":

When continuance of an existing use is permitted by a zoning ordinance, THE CONTINUED NONCONFORMING USE MUST BE SIMILAR TO THE USE EXISTING AT THE TIME THE ZONING ORDINANCE BECAME EFFECTIVE… [citing *"Rehfeld v. City and County of San Francisco* (1933), 218 Cal. 83 …*City of Yuba City v. Chemiavsky* (1931), 117 Cal. App. 568 …"] INTENSIFICATION of expansion of the existing nonconforming use, or moving the operation to another location on the property is not permitted. (*County of San Diego v. McClurken*, …37 Cal.2d 683,687-688. See also 8A *McQuillin* …#25.206 p.114) [I]n determining whether the nonconforming use was the same before and after the passage of a zoning ordinance, each case must stand on its own facts. (*Edmonds v. County of Los Angeles*…40 Cal.2d at 651 …[also *Livingston Rock and Tweed & Gambrell Mill*].

No one (beside Rise and its enablers, who have an excessive imagination) could possibly perceive or imagine any "similar uses" after 1956 to underground gold mining in the Flooded Mine or Never Mined Parcels or even elsewhere in the so-called "Vested Mine Property." Since there had been no possible gold underground mining anywhere in those 2585-acres of Flooded Mine And Never Mined Parcels since at least 1956, the entire Rise Petition claim depends on ignoring the full content of Hansen and all of Calvert, Hardesty, and other authorities cited herein) in favor of Rise's disputed, imagined, and unprecedented "unitary theory of vested rights" (see the above refutation of that Rise Petition fantasy for allowing vested rights for any

kind of mining operation everywhere, as long as there was any kind of mining-related use anywhere).

As *Hardesty* explained at 812: "THE CONTINUANCE OF A NONCONFORMING USE 'is a continuance of the same use and not some other kind of use'", citing "*County of San Diego v. McClurkin* (1951), 37 Cal.2d 683, 688; *Edmonds v. County of Los Angeles* (1953), 40 Cal.2d 642, 651; and *County of Orange v. Goldring* (1953) 121 Cal.App.2d 442, 446-47." (emphasis added) As *Hardesty* quotes demonstrated above, Rise's alleged **surface operations are always different uses from underground mining**, and even *Hansen* acknowledged that **each "component" must have its own vested right**. As the *Hansen* court reminded us (at 571-75 and in the County's Section 29.2(B), emphasis added)**: "No such [nonconforming use shall be enlarged or intensified." The court added: "Our conclusion that Hansen Brothers continues to have a vested right to continue quarrying hard rock for use in making aggregate DOES NOT COMPEL A CONCLUSION THAT THIS RIGHT EXTENDS TO QUARRYING THE AMOUNT OF ROCK PROPOSES IN ITS SMARA PROPOSAL." Citing again McClurken at 37 Cal.2d 663, 687, *Paramount Rock*, and other support, *Hansen*** added: "**Given the objective of zoning to eliminate nonconforming uses, courts throughout the country generally follow a strict policy against their extension or enlargement."**

Thus, *Hansen* (at 572, emphasis added) explained with approval the following **cases denying vested rights for such increased intensity, expansion, or enlargement: (1) *Edmonds v. County of Los Angeles* (1953), 40 Cal.2d 642, which disallowed vested rights to a trailer park when it had only 20 trailer spots on the zoning trigger date for vesting, but it thereafter increased the number of trailers to 48 (which increase also required an unprecedented, increased, and disqualified "utility house" for "sanitary facilities," just as Rise's new mining would require a new 24/7/365 dewatering system with a new water treatment plant for 80 years of increased, disputed depletion of groundwater from competing surface owner's property (and their existing and future wells) above and around the 2585-acre underground mine, adding another 76 miles of new and deeper tunneling for offshoot mining along every gold vein Rise hopes to cross, beyond the existing 72 miles of tunnels in the 1956 abandoned, closed, and flooded mine) ; (2) *County of San Diego v. McClurken* (1951), 37 Cal.2d 683,** where the court denied vested rights to evade a zoning ordinance banning heavy industrial purposes like the owners' storage of movable surface gas tanks by installing four new, permanent gas storage tanks on the property for the new and different use of storage of gas for service stations instead of such previous "industrial use." ***Edmonds* and *Hansen* also explained that defeat for vested rights claims by noting (at 572, emphasis added): "the additional trailers to be placed on the property were equated to additional structures, a type of changed or intensified use which most jurisdictions refuse to permit as part of a nonconforming use." [Like Rise's new water treatment plant, etc.] *McClurken* had the same concerns with both such a prohibited "new use and placing additional structures on the property. *Hansen* did not allow any of those things, because its miner did not have such a "new use," but instead the court focused on the question of "only an increased volume of production by the existing use." Id.**

In any event, the *Hansen* majority began assessing the issue of prohibited "intensification" by comparison of the quarry outputs before versus after, but again the court found the SMARA record for the *Hansen* required reclamation plan was deficient to resolve even that disputed measure. The court stated that the SMARA remediation application did not

need to address that intensity question sufficiently for resolving that issue in *Hansen.* Thus, the *Hansen* court stated (at 575, emphasis added): **"Impermissible intensification of a nonconforming use is more appropriately addressed at such time as increased production actually occurs**" (which objectors read as like the "ripeness" of a claim for threatened inverse condemnation, nuisance, trespass, or conversion discussed in *Varjabedian* and Objectors Petition For Pre-Trial Relief, Etc.) Thus, in deferring that "intensity" issue for a later "reality" test in practice, because that was a just two-party dispute, rather than a multi-party *Calvert* dispute like this one, *Hansen* added:

> **…[T]he County's remedies are the same as would exist independent of the SMARA application [for the compliant reclamation plan and financial assurances Rise has not presented for approval here] were the Hansen Brothers' business to increase. When it appears that a nonconforming use is being expanded, the county may order the operator to restrict the operation to its former level and seek an injunction if the owner does not obey. [citations]**
>
> Therefore, when the area over which Hansen Brothers has vested rights is determined, and if that area is less than 60 acres, a new or amended SMARA reclamation plan will be necessary. Even if the plan is unchanged, however, the intensification of use question must be reconsidered on remand if the county continues to require the determination of that question before approval of a SMARA reclamation plan.
>
> **…[T]he county is not without remedies if mining activity at the Bear's Elbow Mine increases in the future to a level that the county believes is excessive. As with any other nonconforming use, the county may seek an injunction or other penalties authorized by the zoning ordinance, whenever it believes that production at the mine has reached a level that constitutes an impermissible intensification of the nonconforming use for which Hansen Brothers have a vested right. (emphasis added).**

Since *Hansen* allows the County to do that enforcement against the miner in its discretion, the local voters can then assure their self-defense by all such appropriate means with comparable law reforms that be enforced directly by our impacted residents. What is most important in this discussion is not just that the quantities of IMM mining rock and any mineral recovery will progressively exceed any amount from past years (i.e., pre-1956), but that every proposed aspect of the IMM mining is prohibitively more "intense" as to its many different harms on, and threats to, impacted surface residents above and around this 2585-acre underground IMM, on objectors' groundwater and existing and future wells, on objectors' property rights and values, on objectors' vegetation and forest (and fire threats), on objectors' environment, on our community way of life, and on every other menace proven in record objections to the disputed EIR/DEIR.

The issue of "intensity" is about such harms on us local victims, not just about how much rock or gold is mined for the miner's profits. As *Calvert* and *Hardesty* prove, each objector has his or her own, personal due process and other constitutional, legal, and property rights to prevent this IMM menace from happening. See *Keystone* and *Varjabedian*.

Such objectors do not depend on the County acting for them. In any case, waiting to measure output is absurd and legally inappropriate here, because the harms that matter most will begin years before any possible gold production could start, such as when Rise first begins dewatering the mine and depleting surface owners' groundwater and existing and future wells, blatantly using a dewatering system and new "treatment" plant for which there is no possible vested right and flushing away our groundwater down the Wolf Creek. It should be incontrovertible that compared with the admittedly declining and noneconomic gold mining on October 1954, what changes Rise now proposes are many times more "intense," such as doubling the IMM in size (and with much greater "intensity" and "change") into new and deeper Never Mined Parcels with 76 miles of new tunneling (plus offshoots whenever they find something interesting), rather than just continuing to working in other parcels off of the 72 miles of existing, tunnels in the Flooded Mine parcels (probably now in the extremely dangerous and nonfunctional conditions one would expect after being abandoned and flooded since 1956.) See, e.g., *Hansen* examples herein and in Attachment A, providing a more comprehensive analysis with quotations to discourage disregard or denial by Rise.

Such mining size, use, change, expansion, and intensity differences are even more important with IMM **underground** mining than with *Hansen* **surface** mining, for example, because that at least doubles both the impacts on objecting surface owners above and around them (with more, new surface owners and businesses above and around the new, expanded underground mining) and with more the groundwater and existing and future well depletions, while involving new underground conditions that have not yet been properly explored or adequately analyzed. See Rise SEC admissions. Rise's analyses in these disputes all are pitched from the perspective of the miner's rights, but, unlike Rise, the applicable law focuses on the mine's victims, especially for surface owners above and around the 2585-acre underground mine, who have no less than equal competing constitutional, legal, and property rights. Mining and related impacts must be judged from such victims' rights and perspective, not just the miner's, especially such a speculator who appears in 2017 and now demands vested rights to mine as Rise wishes "without limitation or restriction" (Rise Petition at 58), when every single predecessor at that "Vested Mine Property" or IMM applied for use permits for surface work since all underground mining ceased continuously by 1956.

More importantly, consider, for example, the difference between the negative impacts for the Varjabedian constitutional analysis (I) **on the community** from the depletion of our community groundwater by Rise **24/7/365 for 80 years** (per Rise's disputed EIR/DEIR plans), versus (ii) **on an individual objecting homeowner above or around that underground mine whose own personally owned groundwater is being so depleted, as well as his or her existing or future wells (where Rise's proposed and disputed "mitigation" that cannot even satisfy the *Gray* requirements for protecting well owners, much less the constitutional, legal, and property rights of such surface owner when Rise would deplete the first 10% of existing such owner's existing well water, plus 100% of any future wells, without even attempting Rise's deficient and worse mitigation that its SEC filings admit Rise lacks the financial resources to perform.)**

c. There Can Be No Vested Rights, Especially For the Rise Underground 2585-Acre Parcels, Because All Flooded Mine Parcels, And, In Any Event, At Least The

Critical Underground Expansion Parcels For the New Rise Mining Were Either Abandoned Or Left "Dormant" Too Long.

Besides the *Hansen* discussion (at 569-71) of the 180-day limit on the "discontinuance" of the nonconforming uses required in Nevada County Land Use And Development Code section 29.2(B) and objectors briefing to come in subsequent briefing on the identified equitable and property rights of surface owners (e.g., challenges to vested rights bases laches, estoppel, waiver, and various competing property rights), objectors note that even *Hansen* articulated (at 560-71) principles to defeat the Rise Petition on its very different facts. For example, the Hansen **test states a general rule that admits exceptions for different situations,** as we clearly have in this IMM case (at 569, emphasis added):

> [A]bandonment of a nonconforming use **ordinarily depends** on a concurrence of two factors: (1) An **intention to abandon**, and (2) **an overt act, or failure to act,** which carries the **implication that the owner does not claim or retain any interest in the [vested?!] right to the nonconforming use**… Mere cessation of use does not of itself amount to an abandonment **although the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned.**

While further briefing will address the applicable nuances and authorities, consider these issues for purposes of the current analyses of the evidentiary disputes.

First, as to the **"intention to abandon,"** as proven by the evidence objectors cite above from Rise Petition's own Exhibits, Idaho Maryland Mine Corporation was not only in extreme financial distress by the October 10, 1954, vesting date, because of not only market conditions, but also because of the chronic legal problem about which all miners were already suffering and complaining and that would continue for more than a decade: the $35 legal cap on gold made mining unprofitable, because mining costs exceeded that capped revenue. Unlike *Hansen* and other such cases involving only "cessation" during adverse business climates, **this was a legal problem** that (as proven above herein) would persist for a decade before the $35 cap law changed. That meant that there was no miner intention to resume mining until both that $35 cap law changed and the market price of gold increased sufficiently to significantly exceed rising costs. See, e.g., prior analysis of Rise Petition Exhibits: (i) 209 (the Nevada State Journal 7/7/1957 article on the "perhaps permanent" cessation of all gold mining in the Grass Valley area, and, when asked about the future, the story quotes mine officials as being "hopeful but not optimistic," because "They believe a sizable increase in the price of gold is the only answer," which required law changes); (ii) 222 (the 12/19/61 desperation effort by Idaho Maryland Industries, Inc. director H.G. Robinson pitching Congress for an end to the $35 cap and a government bailout to fund unaffordable IMM "development costs"); (iii) 219 (the Sacramento Bee 8/14/1959 article describing that 1100 acres of surface land down 200 feet of "Idaho Maryland Miners Corporation property here [that] has been sold for residential, commercial, industrial, and recreational use" to Sum-Gold Corporation, retaining "mineral rights and 70 acres around three mine shafts," and (iv) 216 and 218 (these miner's Board minutes in 216 explained the background of the sale in Exhibit 219, which repeatedly used the word

"abandonment" [or its variations], such as discussing selling "2500 acres of mineral rights" "not contiguous to the Corporation's other mining properties and not accessible through the main mine shafts" "that had been abandoned by non-payment of taxes.") Also, because every Rise predecessor (and Rise itself initially) ignored any possible vested rights claims in favor of applying for normal land use permits whenever doing anything relevant, that seems to evidence an intent to have abandoned vested rights arguments. Between October 1954 and 9/1/2023 no predecessor claimed any vested rights at the IMM, allowing the increasing surface owners above and around the 2585-acre underground mine to rely on the absence of any vested rights and, therefore, their having the protection of CEQA and other laws protecting them from the threat (to quote the Rise Petition at 58) of mining as Rise wishes "without limitation or restriction."

Second, as future briefings will demonstrate, **the word "abandon"** (which has a broad range of alleged meanings in many different contexts, including as *Hansen* admits: "The term **"discontinued"** in a zoning regulation dealing with a nonconforming use is sometimes deemed to be **synonymous with 'abandoned'."** and as *Hardesty* above describes as **"dormancy" equivalent to "abandonment.")** The case interpretations of the term should be consistent with the public and legal policies announced above to eliminate vested rights exceptions to such zoning and land use laws whenever possible without making the government pay for an unconstitutional "taking." Here, however, the standard for any kind of abandonment is easily met as described below by objective actions and inactions that must be considered as more than temporary "cessations" by each Rise predecessor since 1954. Indeed, *Hansen* majority states (at 569-71): "This court has also equated discontinuance of a nonconforming use with voluntary abandonment (see *Hill v. City of Manhattan Beach*, supra, 6 Cal.3d 279, 286)" although the *Hansen* court states that it has "never expressly held that such terms are synonymous," and the "parties have not offered any evidence of the legislative standard or intent underlying the use of the term 'discontinued' "in Development Code section 29.2 (B)." Because of the extraordinary admission made by the county "conced[ing] that the **aggregate** business has not been discontinued" (and no objectors foresee conceding anything to Rise), and because of the court's controversial decision that "rock quarrying is an integral part of that [aggregate] business," the court decided that such "aggregate business" (so including rock crushing) had not been "discontinued," thereby, according to the Hansen majority, "the fact that rock quarrying may have been discontinued for 180-days or more is irrelevant….[although] [t]his is not to say that future inactivity at the mine may not result in termination of that vested right or that the county might not conclude that the property is no longer being used for aggregate production…[but] only as a yard for storage and sale of stockpiled material." (Thus, the *Hansen* majority explains in fn. 30 that they do not decide what the meaning of "discontinued" would be in other situations. In any case, *Hansen's* majority decision adds no support to Rise for application in our very different legal and factual situation. None of the sporadic (i.e., noncontinuous from 1954), surface activities of Rise's predecessors on the surface parcels owned by Rise's predecessors (e.g., lumber or milling work, rock crushing and aggregate sales by North Star, and others distinguished by objectors above) can be considered any part of a *Hansen* type "unitary business" that included the discontinued, "dormant" and "abandoned" underground gold mining in that IMM closed and flooded by 1956 and that has never been opened or accessible for any kind of mining operation since then. Moreover, and also defeating

the Rise Petition, the surface subdivisions and sales of the surface parcels prevented any such miner business operation on those parcels, resulting in the situation that would have defeated even the miner in *Hansen*, where a parcel had not ever been mined, like the underground Never Mined Parcel at the IMM. Here, we also have not just the long-Flooded Mine on which no underground mining operations could have been possible since at least 1956, but also, no surface mining operations could have been possible since those surface parcels above and around the underground mine were so sold for incompatible and competing residential and non-mining commercial businesses.

Third, as described in the above objection, the "overt acts or failures to act" in this IMM dispute are overwhelming in favor of objectors and against the Rise Petition, beginning with the Idaho-Maryland Mine Corporation, which owned the IMM in October 1954 and long thereafter until after its bankruptcy in LA when the IMM was sold cheap at auction to William Ghidotti, which Idaho Maryland entity: (i) liquidated all its movable/removable mining equipment, components, and infrastructure, stripping the mine of any functionality, (ii) closed the flooding underground mine, so that no mining could possibly occur again in the Flooded Mine physically without all the massive effort and expense in dewatering, repairing and reconstructing everything lost from neglect and other events and conditions since 1956 (see in the disputed EIR/DEIR what even Rise admits would be required to reopen), and that noneconomic expense and effort was a condition precedent to even begin starting any mining operations underground in the Never Mined Parcels, since the surface was unavailable to that miner (and owned by objecting surface owners) and the only possible access was underground through the restored Flooded Mine, (iii) Idaho-Maryland Mine Corporation changing its name (to Idaho Maryland Industries, Inc.) and its trademark to signal its restart by moving to LA to begin a new business as an aerospace contractor, then filing bankruptcy, and then liquidating the remaining IMM cheap at an auction to William Ghidotti, and (iv) many other factors discussed above in rebuttals to the Rise Petition Exhibits (1-307, pre-Rise in 2017). William and each of his successor owners failed to preserve any basis for vested rights, as also demonstrated above in rebuttals to the Rise Petition Exhibits (1-307, pre-Rise in 2017), including their consistent applications for zoning and permit without mention of vested rights excuses, and further subdivision and sale of the surface parcels by the BET Group for more incompatible residential and non-mining surface uses above and around the 2585-acre underground mine, resulting in the current conflicts between Rise and almost every directly impacted surface owner above or around that 2585-acre underground mine which remains in the same (or worse) condition since 1956.

In any litigation where the rules of evidence apply strictly (see evidentiary discussions above), Rise's disputed vested rights theory must fail not only on the foregoing parcel-by-parcel, use-by-use, and component-by-component rules, but also on each of the sub-component factors required for vested rights as discussed herein by even the surface mining authorities requiring (continuously) "similar uses," "same area," "no substantial changes," "no increased intensity," the future, "objective" "mining intentions" of each predecessor in the chains of title to expand for such "similar uses" on each parcel, etcetera. See the companion Objectors Petition For Pre-Trial Relief, Etc. and the incorporated record objections to the disputed EIR/DEIR. **As *Hardesty* explained at 812: "THE CONTINUANCE OF A NONCONFORMING USE 'is a continuance of the same use and not some other kind of use'", citing "*County of San Diego***

***v. McClurkin* (1951), 37 Cal.2d 683, 688; *Edmonds v. County of Los Angeles* (1953), 40 Cal.2d 642, 651; and *County of Orange v. Goldring* (1953) 121 Cal.App.2d 442, 446-47."** (emphasis added) As *Hardesty* quotes demonstrated above, Rise's alleged **surface operations are always different uses from underground mining**, and even *Hansen* (citing *Paramount Rock*) acknowledged that **each "component" must have its own vested right**.

While Rise reported the volume of ore mined and recovered (as distinct from *Hansen's* calculation of rock moved—a key difference from the perspective of the impacts on objectors owning the surface above and around the IMM and the rest of the community), the "intensity" test must be focused on protecting such impacted locals; i.e., the focus is on how much more suffering the rest of us have to endure compared to prior history in 1954, as distinct from how much more gold Rise can recover, if any, a fact not known for years of preliminary work at the Flooded Mine before mining can begin at the inaccessible Never Mined Parcels, while the rest of us objectors suffer the EIR/DEIR described start-up miseries. Rise cannot satisfy its burdens to prove with legally admissible, competent, and credible evidence the basic vested rights case of the old, pre-1956 mining to set the standard for comparison or modeling even to SMARA surface modeling precedents, much less the relevant dispute here over underground mining, especially into the Never Mined Parcels, for which the Rise Petition cites no authority, even to determine what evidence could be relevant to such underground mining or to loss of vested rights by abandonment, dormancy, discontinuance, judicial or other estoppels, and other objections.

Consider the *Hardesty* court's earlier discussed evidentiary findings [at 799] that, for example: "'There are no records presently available …to show what kind of mining business … the owner from 1921 to 1988 … conducted on the property after the war.' **The trial court found that through the 1970's, the property 'was essentially dormant.'"**

> However, Hardesty failed to prove *any* mining was occurring on or even reasonably before the date SMARA took effect [1/1/76]. SMARA was designed to allow existing, operating surface mines to continue operating after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to truly dormant mines.**

Hardesty at 810. Also, even if Rise tries to allege some such resumed mining, Rise would not be able to claim immunity from all the then-existing laws which would require substantial mining changes (all disqualifying vested rights for changed uses or components, increased intensity, or other factors discussed herein) from either the October 1954 vesting date claim or the time operations ceased in the closed and flooded IMM mine by 1956. **Rise's SEC 10K admits (at 34-35) that 1955 was "the final year of production from the mine."**

Thus, there has been no underground mining for vested rights acquisition since at least that time in 1955. (On account of which Rise changing its position for vested rights and creating uncertainty, objectors have "rounded up" the date to 1956, by which time Rise admitted the IMM closed and flooded.) Consider the comparison of the applicable law at that time to what Rise now proposes for vested rights underground mining in that new, expanded area part of the 2585-acre underground mine (i.e., what objectors call the Never Mined Parcels) that record objections prove was too often ignored in the disputed EIR/DEIR. None of

the work done at the abandoned IMM since it closed and flooded in 1956 qualifies for Rise vested rights, since there has only been "exploration" or environmental testing, which even Rise's SEC 10K excludes from "mining" activities by its admission at p. 28: "MINERAL EXPLORATION, HOWEVER, IS DISTINCT FROM THE DEFINITIONS OF 'SUB SURFACE MINING' AND "SURFACE MINING'" [MAKING THE POINT THAT MINERS IN THAT M1 DISTRICT ZONED LAND COULD EXPLORE WITHOUT A PERMIT.] (emphasis added)

6. **While the Bifurcated County Vested Rights Process Separates the Question of the Existence of Vested Rights From Questions About the Required Reclamation Plan And Financial Assurances, That Is A Mistake, Since SMARA Does Not Apply To Underground Mining (See above and Attachment B), And Objectors Worry That Rise May Later Claim That Vested Rights "Without Limitation Or Restriction" Mean Without Reclamation Or Financial Assurances; i.e., That Rise Can Incorrectly Claim the Benefit Of Vested Rights Without Such Burdens.**

When the Rise Petition (at 58) claims that its disputed vested rights allow it to mine anyway and anywhere it wishes "without limitation or restriction," objectors worry about the ambiguous and dangerous scope of that incorrect claim. For the record in the court process to follow, objectors contend that there are many "limitations and restrictions" on any such alleged vested rights by application of all applicable laws and as well as the constitutional, legal, and property rights of the surface owners above and around the 2585-acre underground mine, which includes the requirements for sufficient reclamation that are financially assured. For example, when Rise pipes that cement paste into the underground mine beneath surface owners and pollute the surface owners' groundwater, that will require remediation that is economically feasible and reliable (i.e., with adequate financial assurances). In any event, to the extent that the County regards SMARA as controlling, objectors remind the County that as *Hardesty* explained (at 801, emphasis added):

> **SMARA requires that all surface mining operations have an approved reclamation plan and approved financial assurances to implement the plan. (#2770, subd. (a)).** … Persons with existing surface mining operations were required to submit a reclamation plan by March 31. 1988. [Id.] **ABSENT AN APPROVED RECLAMATION PLAN AND PROPER FINANCIAL ASSURANCES (WITH EXCEPTIONS NOT APPLICABLE HEREIN) SURFACE MINING IS PROHIBITED. (#2770, SUBD. (D))**.
>
> See also *Hansen* (i) at 547: "' [T]he reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.' (#2711, subd. (a))" [and later #2772]), and (ii) "…SMARA requires that persons conducting surface mining operations obtain a permit and obtain approval of a reclamation plan from a designated lead agency for areas subjected to post-January 1, 1976, mining (#'s 2770, 2776).

7. A Brief Summary of How Objectors Use That Legal Framework For Both Evidence And Rebuttals To Counter Rise Petition's Exhibits And Other Disputed "Evidence" By Focusing On Prior Conduct of Rise And Its Predecessors.

RISE ALSO FAILS TO PROVE TIMELY COMPLIANCE by each of its predecessors with applicable laws requiring action or notices, especially as to deadlines, even those at issue in *Hansen, especially regarding the question of a miner's intent to abandon certain mining or plans for expansion of mining.* E.g., *Hansen's* discussion (at 569-571) of the effect of the "discontinuance of a nonconforming use" and its relationship to abandonment and statutory deadlines for resuming actions, such as:

> Although abandonment of a nonconforming use terminates it in all jurisdictions (8A McQuillin …25.191, p.68) ordinances or statutes which provide that discontinuance of a nonconforming use terminates it have not been uniformly construed. Some have been **held to create a presumption of abandonment by nonuse for the statutory period, others considered to be evidence of abandonment**. **In still other jurisdictions the nonconforming use is terminated** when the specified period of nonuse occurs, regardless of the intent of the landowner. (Id. at pp. 68-69) … [T]he parties have not offered any evidence of the legislative understanding or intent underlying the use of the term "discontinued" in Development Code 29.2(B). Id. at 569-570 (emphasis added)
>
> ***
>
> Since **we have concluded that the aggregate mining, production, and sales business was the land use for which the Hansen Brothers had a vested right in 1954,** the fact that rock quarrying may have been discontinued for 180 days or more [the deadline under Development Code 29.2(B)] is irrelevant. Hansen Brothers has a vested right to continue all aspects of its aggregate business at the Bear's Elbow Mine [because the *Hansen* majority (e.g., at 574) forbid treating the separate "components" of that integrated business "operated as a single entity since it was established in 1946" because that 180-day limit on discontinuance (at 570) only "applies to the nonconforming use itself, not to the various components of the business."] **This is not to say that future inactivity at the mine may not result in termination of that vested right or that the county might not conclude that the property is no longer being used for aggregate production and is currently in use only as a yard for storage and sales of stockpiled material**. Id. at 571. (emphasis added)

See Attachment A and in the Table of Cases And Commentary On Applicable Legal Principles… below, further discussing these issues.

None of that *Hansen* ruling helps Rise, among many other reasons discussed herein, because, as demonstrated below with Rise's own Exhibits and Rise Petition and other record admissions and unlike the facts in *Hansen*: (1) there was no "business" in which the initial predecessor was engaged on October 10, 1954, except the winding down of the underground gold mining in the "Flooded Mine" parcels of the 2585-acre underground mine (with nothing

happening in the "Never Mined Area," where any "expansion" or "enlargement" was then unimaginable, because: (a) the $35 legal limit on gold prices made gold mining chronically unprofitable, forcing Idaho-Maryland Mine Corporation to "downsize," and (b) the brief shift to government-subsidized "tungsten" mining (which is a different "use" for vested rights than gold mining), ended before the whole IMM closed and flooded at least by 1956; (2) none of the later surface activities of that Corporation's successors at the IMM (all irrelevant, different "uses" anyway) were ever part of that initial predecessor's "business," and underground gold mining was not ever part of anyone's business after the IMM closed, flooded, and discontinued all operations, ending any underground gold mining or other business at the IMM for all those years and leaving the gold mine discontinued, dormant, and abandoned (as it remains today); (3) that initial predecessor sold off the closed mine's equipment and salable fixtures/infrastructure, changed its name and trademark, moved to LA to become an aerospace contractor, filed bankruptcy, and the IMM was liquidated cheap at an auction sale to William Ghidotti in 1963; (4) William Ghidotti did not buy any business at the IMM auction, just abandoned mine real estate and whatever disputed plans Rise may have it could not have been to revive that underground gold mining as a part of any integrated surface business; (5) contrary to Rise's incorrect claims the mine was not closed pending changes in the "market conditions," but changes in the LAW (e.g., the $35 gold price cap effects that endured for another decade) that shut down the entire industry as mining costs kept rising, and Rise cites no cases where hoping for a change in the law (as distinct from changes in the market) can preserve any vested rights. (That is one reason why no specific proposals for reopening the IMM began to emerge until the 1980's from new, emerging speculators); (5) no one would have even planned any such massive investment to reopen that mine until after the $35 legal limit on gold prices ended, and, as the Exhibits below show, interest in such expensive underground gold mining still did not resume for years after the law changed to end the $35 cap until the whole US economy changed its investment model (e.g., using gold as an inflation hedge) raising the price of gold reliably above its mining costs; (6) no "business" has been possible for that included any part of that underground gold mine, whether for Mr. Ghidotti or any other Rise predecessor after him, among other things, because (a) for anyone to restart even the Flooded Mine (as distinguished from even more expensive, entirely new mining operations into the Never Mined Parcels) would have involved massive and expensive efforts (e.g., dewatering for more than a year; repair and reconstruction of all the infrastructure and support facilities; new equipment; legal compliance work still required despite any vested rights, although only Rise has tried to avoid full compliance with its incorrect vested rights arguments, etc., as admitted in the EIR/DEIR, other governmental applications by Rise or its later predecessors (Emgold), Rise's SEC filings, and other evidence addressed in objections to the EIR/DEIR or to this Rise Petition), (b) no Rise predecessor with gold mining aspirations has ever engaged in any material actions that could qualify as underground mining work (e.g., Emgold's test drilling and permits are not such mining "uses"), and all of them backed off from this imagined gold mining "opportunity" in favor of sales to more aggressive speculators, which brings us to Rise's conduct that will be addressed in a separate objection rebutting the remaining Rise Petition Exhibits after 307 and any other purported "evidence" from or for Rise; and (7) When the BET Group subdivided and sold for residential and non-mining commercial businesses the surface land (down 200 feet) above the 2585-acres of underground mining rights, it ended any possible gold mining related or other

vested rights qualified business **on the surface of those parcels** besides that possible future underground mining. As *Hardesty* explained as quoted herein, speculative hopes for some better future opportunity where mining could be practical do not prevent abandonment. As a result, it is legally impossible for Rise to claim that it has any vested right to mine gold in any of the 2585-acre underground mine as a continuous "use" or even as part of any business on those parcels (and, objectors contend, anywhere else).

Besides proving those facts below and (below that) the applicable law, such as vested rights requiring continuous qualified "uses" (and location of "components," like the imagined Rise water treatment plant) on a parcel-by-parcel, use-by-use, and component-by-component basis for each predecessor owner, such predecessor conduct and matters also create **evidentiary "presumptions" (see Hansen's quote above) and also at least "reasonable inferences"** as evidence against any Rise vested rights. E.g., *Gerhardt v. Stephens* (1968), 52 Cal.2d 864, 890 (a property owner's conduct can enable the court to reasonably "infer" the intention to abandon); *Pickens v. Johnson* (1951), 107 Cal.App.2d 778, 788 (explaining that intent to abandon can be proven as inferences even from the owner's acts or conduct alone; a feature of the case that Rise overlooks when the Rise Petition (at 54) mischaracterizes that decision as proposing a clear and convincing evidence standard that does not apply to vested rights.) See **Attachment A and in the Table of Cases And Commentary On Applicable Legal Principles… below.** Those **"inferences"** disproving Rise vested rights claims are further demonstrated below where this objection dissects each relevant Rise Petition Exhibit of any possible material consequence to prove either: (i) how such objectionable Exhibit is not admissible evidence or supportive of Rise's disputed claim for its use, (ii) how Rise's interpretation is incorrect or contrary to or inconsistent with some other purported Rise evidence or claim, or (iii) how such Exhibit actually supports this objection in some respect not addressed by Rise. For those purposes, among others, the legal context matter for what such "evidence" is trying to prove, and this objection demonstrates how Rise too often cites evidence to prove an incorrect legal theory, such as its incorrect and unprecedented "unitary theory of vested rights," where Rise incorrectly claims that any kind of mining-related surface or underground "use" on any parcel somehow creates vested rights for all uses and components of all parcels in the "Vested Mine Property." **However, to the contrary, the Table of Cases And Commentary On Applicable Legal Principles… below proves that for vested rights to exist, Rise must prove several elements of proof that Rise ignores (e.g., issues of enlargement, expansion, intensity, continuity, etc.) and the analysis must be continuous for each parcel, each use, and each component, since each parcel and component must have its own vested rights, and each predecessor must have continuous vested rights to pass along to its successor. Also, each different kind of mining is a separate "use" for vested rights, such that as *Hardesty* proved (in quotes herein), surface mining and underground mining are different uses, and *Hansen* proved (at 557 and by citing *Paramount Rock Co. v . County of San Diego*) that the scope of vested rights on a parcel is limited to the mining use for "the particular material" targeted, stating: "The right to expand mining or quarrying operations on the property is limited by the extent that the particular material is being excavated when the zoning law became effective." See, e.g., *Calvert v. County of Yuba* (2006), 145 Cal.App.4th 613, 625, distinguishing aggregate mining versus gold mining as separate, so that attempting to link them together did not prove the continuous use required for vested rights; *Hardesty v.***

***State Mining And Geology Board* (2017), 11 Cal.App.5th 810, (the court separated surface mining from underground mining as different "uses" for vested rights ("Hardesty").**

Timing is also a factor where action is required and fails to occur, especially by a deadline. While the distinguishable facts of *Hansen* (according to its majority) did not address the impact of discontinuations of certain mining, the Rise Petition does not explain how Rise and its predecessors managed to escape the statutory deadline for discontinuances or nonuse (or abandonment) of each parcel in the so-called "Vested Mine Property" on a parcel-by-parcel, use-by-use, and component-by-component basis. Clearly, as demonstrated herein and in other objections, especially applying the required parcel-by-parcel, use-by-use, and component-by-component analysis, Idaho-Maryland Mines Corporation (aka later Idaho-Maryland Industries, Inc.) violated the deadline addressed in *Hansen* (at 569-571, see above quote) as "Development Code section 29.2(B)." Its successors likewise violated the similar evolving deadlines of each applicable version of that continuing law also conditioning vested rights as to discontinued nonconforming uses. E.g., **Nevada County Land Use And Development Code** (the **"Development Code," "NCLUDC," or "LUDC**," depending on the citer) # L-II 5.19(B)(4) (one year or more "discontinuance" is fatal to vested rights), which even the Rise Petition and its Exhibits admit as demonstrated below and which admitted property conditions likewise demonstrate must be the case, such as all the admissions that no one has been able to operate or even access the flooded IMM since at least 1956. Accord *Stokes v. Board of Permit Appeals* (1997), 57 Cal. App. 4th 1348, 1354-56 and n. 4 ("**Stokes**"), which distinguished *Hansen* (including as we have done here and in Attachment A) because all relevant uses of that property stopped for 7 years (here as to the entire underground 2585-acre underground mine, since at least 1956). Because as **Hansen** ruled the County lacks the right to waive or consent to violations of its own zoning laws, the County must reject this disputed Rise Petition. See more proof below, even using Rise's own Exhibits and admissions.

An even more serious Rise and predecessor governmental disclosure problem also exists because Rise and its predecessors have **not corrected the long classification by the California Department of Toxic Substances of the "Vested Mine Property" (what is there called the "Idaho Maryland Mine Property") as an "abandoned mine" and Centennial as long dormant.** A future objection and declaration will deal with these issues more comprehensively, as part of briefing why Rise's project follows a problematic pattern that has resulted in over 40,000 abandoned mines ending up on the EPA and CalEPA lists, especially as to the chronic failures of miners deficient and worse "reclamation plans" and the almost invariable insufficiency of "financial assurances" to remediate the problems created by miners who too often have "taking the profits and run" or filed bankruptcy [or cross-border insolvency proceedings with US Chapter 15 cases] when the operation is no longer profitable," leaving a mess for the community. The pattern commonly (as here) includes a foreign-based mining parent company (often Canadian) using a US subsidiary (often incorporated in Nevada) with no material assets besides the mine and what financial funding is doled out by the parent depending on current needs and progress toward profits. Our community might try to tolerate a discontinued, dormant, and abandoned IMM, relying on the applicable government regulators to deal with the problems associated with such mines. But when a mining speculator announces its plans to open or reopen such a mine and publicly advances toward its disputed goal with media and permit events (or worse, vested rights claims) over the inevitable and resolute opposition of

impacted locals, many problems arise that objectors wish to stop as soon as possible, such as depressed property values, as discussed herein and elsewhere.

Stokes also stated that long lapses are evidence of an intent to abandon, and this objection proves that and much more. Even more striking is what would be noncompliance with applicable state and local mine reporting laws by Rise and every predecessor since 1991, who have **failed to file annual reports about any part of the IMM as either "active" or "idle" as required both by Pub. Res. Code # 2207(a)(6) and by County Development Code 3.22(M).** The legal inference and presumption from that inaction is that every predecessor failed to file such annual reports because they considered the entire "Vested Mine Property" and IMM to be abandoned, i.e., inactive, or idle. *Stokes* is also notable as more illustration of prior inconsistent or contrary positions defeating later vested rights claims, in that case, prior owners showed an intent to abandon a nonconforming bathhouse use when they filed applied for the alternate use as a senior center). There is a similar analysis below of how incompatible with the underground mining of the 2585-acre underground mine it was that the BET Group sold the surface above it (generally down 200 feet) for residential and non-mining commercial uses, including by our analyses of, and rebuttals from, the relevant Rise Petition Exhibits (e.g., 261, 263 and others). The same is true of Sierra Pacific Industries' rezoning efforts for non-mining uses (Rise Exhibits 281 and 282.)

In any case, these objections demonstrate how even the Rise Petition appears to admit that Rise and such predecessors failed to conduct themselves as required, and, among other things already argued in this and other objections (e.g., citing changes in the Rise "story" from the EIR/DEIR or other Rise applications or filings inconsistent or contrary to the Rise Petition), that **objectionable conduct enhances the other claims asserted by objectors to counter vested rights, especially by those objectors owning the surface above and around the 2585-acre underground IMM, asserting that Rise is estopped or otherwise prevented by law (e.g., by waiver or laches or unclean hands) from claiming vested rights.**

Attachment A: SOME REASONS WHY *HANSEN BROTHERS ENTERPRISES, INC. V. BOARD OF SUPERVISORS (1996), 12 Cal.2d 1324 ("HANSEN")* CANNOT HELP RISE, BUT INSTEAD DEFEATS RISE AS OBJECTORS PROVE WITH BETTER EVIDENCE AND CORRECT APPLICATIONS OF LAW.

To Best Appreciate How Rise Misuses PARTS OF *Hansen* For Rise's Incorrect And Worse Vested Rights Arguments, the County Should Examine *Hansen* In Detail In Order To Expose Rise's "Hide the Ball" Techniques, And Consider How What Disputed "Evidence" Rise Offers Misses The Point By Trying To Prove Incorrect And Worse Rise Legal Theories Instead of What Is Required Even By The Complete *Hansen* Decision, As Distinct From the Fragments Incorrectly Asserted As The Primary Support For The Rise Petition. Consider That:

(1) *Hansen* Is Distinguishable From this IMM Dispute Because *Hansen* Was Limited To SURFACE Mining Under SMARA, While the IMM Dispute Is About UNDERGROUND Mining Not Subject To SMARA. See Attachment B. That Difference Also Raises Many Other Legal And Factual Issues That Rise (Again) Incorrectly Ignores Entirely, Both In Its Disputed Rise Petition And the Disputed EIR/DEIR, And, Instead, Rise Assumes Incorrectly (Without Any Discussion) That Rise Can Base Its Disputed Claims And Proof Exclusively On SMARA And Its Surface Mining Cases Like *Hansen*. Even Worse, Rise Refuses Ever To Address Competing Constitutional, Legal, And Property Rights of Objecting Surface Owners Above And Around the 2585-acre Underground Mine At Issue, Especially Regarding Surface Owners' Existing And Future Wells And Groundwater, Particularly Since, For Example, Even *Hansen* (Plus All The Other Applicable Case Authorities) Must Deny Any Vested Rights For Rise's New Dewatering System And Water Treatment Plant Without Which "Components" the IMM Cannot Possibly Reopen;

(2) Rise Ignores Or Evades How The Most Important Parts/Lessons of *Hansen (All Neglected By Rise) Apply To The IMM To* Defeat the Rise Petition And To Reconcile Even *Hansen* With The Other Leading Decisions That Rise Ignores Because Such Cases Also Defeat The Rise Petition (e.g., *Calvert* and *Hardesty*), Such As About Rise's Proposed "Intensification Or Expansion of the Existing Nonconforming Use, Changes In Use, Or Moving the Operation To Another [Unused] Part of the Property [which] Is Not Permitted" (*Hansen* at 552, emphasis added, citing *McClurken at 687-688*);

(3) Rise Cherry-Picks Selected Parts of *Hansen's* Words And Foundational Principles Extracted From Their Actual, More Comprehensive Context, While Rise Ignores Entirely Evades Or Misconstrues Out of Context What *Hansen* Actually Both Ruled And Refused To Rule (e.g., Whether as Lacking Sufficient Evidence, Such As To Which "Parcels" Qualify For Vested Rights While Other Parcels DO NOT, Or Such As Whether That Mining Would Exceed the New "Intensity" Threshold Prohibited In *Hansen*) ;

(4) Rise Asserts Its Own Disputed Theories And Opinions, As If They Were Part of the *Hansen* Rulings, When They Are Just Unsubstantiated Rise Allegations Or Assumptions Mixed In With Rise's Disputed *Hansen Fragment* Arguments;

(5) Rise Implicitly Limits Disputes By Ignoring, Evading, Or Mischaracterizing *Hansen* Statements As If the Rise Fragments Were All That Needed To Be Known Or Decided, When, To the Contrary, The Rise Fragments Are Only A Part Of the

Comprehensive Legal And Factual Disputes. For Example, Rise Argues That Someone Else Has The Burden of Proof, By Citing Only To the Burden On "Abandonment" Disputes While Ignoring *Hansen*'s And Other Courts' Decisions (e.g., *Calvert* And *Hardesty*) PLACING ON RISE THE BURDENS OF PROOF For Its Claim of Vested Rights And Many Other Essential Issues. See the Evidence Code rules that are applied in the main objection text above to rebut the Rise Petition; and

(6) Rise Ignores Objectors' Own Competing Due Process Rights (e.g., *Calvert* And *Hardesty*) For A Full And Fair Rebuttal of Rise's Errors, Omission, And Other Noncompliance, Especially With The Law of Evidence, Which Mattered Even in *Hansen* And Other Cases. At Least In the Court Process The Law of Evidence Will Cause Rejection of Most of the Rise Petition Exhibits And Purported "Evidence" As Lacking Sufficient Foundation, Credibility, And Admissibility Among Other Evidentiary And Legal Objections. Id.

I. Some Introductory Comments And Previews.

Following that quick summary above, this Attachment presents some introductory comments followed by a systematic and detailed analysis of the *Hansen* majority opinion, with significant discussion of the strong *Hansen* dissents. The intention here is to be comprehensive; so that, once again, the County can see how Rise, as the old song goes, "sees what he wants to see, and disregards the rest." By focusing on what Rise has so disregarded even in its favorite *Hansen* case, the County can see below where Rise knew its "alternative reality" "story" was vulnerable. By contrast, objectors present all of *Hansen,* revealing both where Rise again, as in its disputed EIR/DEIR and other filings, "hides the ball," and why the parts that Rise likes are distinguishable (e.g., some examples noted in the quick summary above). **Also, a critical distinction, besides the limitation of *Hansen* to surface mining as contrasted with IMM underground mining, is that Hansen majority addressed those surface mining issues as a continuously operating business that wanted to expand, while the underground IMM mining has been comprehensively dormant, closed, and flooded since at least 1956, and cannot be judged as an operating business since then.**

After that analysis of the *Hansen* majority's position, objectors then present some important analyses of the two dissenting opinions agreeing with all the lower courts and the County, which each rejected any vested rights for the miner. because this IMM dispute includes massive underground mining outside the scope of the *Hansen* surface mining interpretations because SMARA does not apply to underground mining. Those comments and their cited authorities have had a significant influence on the case law that has evolved since then. Also, because the facts and law in this IMM dispute are sufficiently different from those in *Hansen*, both in fundamentals (underground mining here versus surface/SMARA mining in *Hansen*) and in details (see below), objectors believe that, if that *Hansen* majority had confronted our IMM situation, that majority would have favored the analysis of those original *Hansen* dissenters. **In any case, without the County accepting the Rise Petition's misreading of the Hansen fragments, there is no legal foundation cited in the Rise Petition, and Rise must fail its burden of proof, not just on the actual facts but also on the applicable law.**

The comprehensively disputed Rise Petition begins incorrectly (at 55): "The facts surrounding the Vested Mine Property are indisputable." The reverse is true. Rise's "bold" attempt to create an "alternate reality" to support its vested rights claim was similar to the approach of the unsuccessful miner incorrectly asserted in *Hardesty (and harshly rejected therein as a "muddle").* However, there in *Hardesty,* as here, the court had no difficulty in rejecting that miner's vested rights claims, because (like Rise) that miner insisted on attempting to restrict everyone to his "alternative reality" "bubble," where the miner never had to address the real, hard, and contrary issues, facts, or court decisions. The miner simply defined his fantasy "reality" and declared it "good." But, contrary to Rise's disputed claims of infallibility, objectors would now move to dismiss (or at least move for summary judgment) if we were now in court. See illustrations in the companion "Objectors Petition For Pre-Trial Relief, Etc." and as will be demonstrated in more comprehensive objections to follow in objectors' main briefing in due course against the disputed Rise Petition.

Rise's vested rights "alternative reality," principally crafted around its disputed misuse of *Hansen,* is meritless in many ways that are illustrated briefly herein and that will be systematically demonstrated in more detail in the coming objection to the Rise Petition. Those rebuttals include not just by: (i) missing "time gaps" in the critical evidence required to prove continuous vested rights conduct and intentions (e.g., the period discussed in the above objection rebuttals where Idaho Maryland Mines closed its flooded IMM in 1956, moved to LA, where it changed its name, trademark, and business to become an aerospace contractor, and eventually liquidated in bankruptcy (in which there was no Rise proof of that bankruptcy trustee having any intent or plans to reopen the IMM or do anything else to create or preserve any vested rights), and (ii) what Rise misuses in its disputed overgeneralizations, unproven and unprovable "facts," and other unsubstantiated claims that are not admissible evidence under the law of evidence discussed above in the main text of this objection, and many other disputed Rise contentions. The Rise Petition also must fail because of the many things it neither substantiated (e.g., disputed Rise opinions not supported by any cited authority, but incorrectly woven into the fabric of some case discussion), nor even addressed at all. See discussions in this objection about how the Rise Petition evades or disregards many legal and factual issues (e.g., the "hide the ball tactic"), misuses some distractions and "filler" Exhibits rather than producing all the relevant evidence Rise or its predecessors claim to exist (e.g., the "bait and switch" tactic), or ignores the real issues or key cases not just *Hansen* (e.g., *Hardesty, Keystone, Varjabedian,* and others often already cited.) See also the record EIR/DEIR objections, such as the four "Engel Objections" (DEIR objections Ind. 254 and 255 and related EIR objections dated April 25, and May 5, 2023) that integrate many others and third-party evidence in over 1000 pages incorporated both in this objection and in the Objectors Petition For Pre-Trial Relief Etc. (For example, what happened in Rise Petition to the *Hansen*/SMARA requirement for a "reclamation plan" and "financial assurances" that were supposed to be "the heart" of SMARA? See Attachment B. Remember please that *Hansen* limited itself to SMARA without relying on any common law of California, leaving uncertainty as to whether Rise is attempting to claim the benefits of vested rights without their reclamation plan and financial assurances burdens, when the Rise Petition at 58 claims the rights to mine as it wishes "without limitation or restriction.")

However, many rebuttals are for that next opposition brief, which will explore not just Rise's errors, omissions, and worse, but also Rise's such objectionable "hide the ball" or "bait

and switch" tactics, such as for example, the examination of some subtle manipulation of defined terms with obscure evasions of reality, such as, for example, the Rise Petition's definition (at p.1) of "Vested Mine Property" versus its term "Mine Property" (aka "Mine," i.e., the "Vested Mine Property" is vague, evasive, and objectionable about how it defines and misuses the defined term "Mine Property"), adding to the confusion created by confusing Rise maps and disputed and deficient "evidence" that do not allow the parcel-by-parcel, use-by-use, and component-by-component analysis required for any possible vested rights claims. The Rise Petition is fairly detailed about what Rise claims and wants as relief in its conclusion at 76, but it is vague and deficient in its disputed proof required for that parcel-by-parcel and predecessor-by-predecessor analysis; e.g., "Before the Vested Mine Property was consolidated into its current configuration in 1941, it existed as multiple mines and operations referred to in this Petition as the 'Mine Property' or the 'Mine.') The objectors' future deconstruction of the alternative reality crafted in the Rise Petition will address how such tactics are misused and, therefore, as with the miner who played that strategy in *Hardesty,* Rise cannot satisfy its burden of proof.

That coming further briefing of the applicable law and facts will require significant time and effort, because objectors must deconstruct that clever "alternate reality" in the Rise Petition that is disputable in many ways. The point here is merely to illustrate that there is much to dispute about Rise's claims about the meaning and application in this IMM dispute of Rise's favorite *Hansen* case, even before briefing the many *California* cases evaded or ignored by Rise, but that must ultimately determine this dispute. In any case, objectors invest time in this *Hansen* analysis because *Rise's favorite Hansen case hurts Rise's disputed claims more than it helps them.* If the Rise Petition is the best-case Rise can make for its disputed and incorrect claims, that should convince the County that Rise's other cited cases and authorities are (as objectors also contend) even more inapposite or worse. By contrast, the cases explained in this objection should be sufficient to doom Rise's disputed vested rights claims. Stated another way, Rise's plan must fail to somehow use *Hansen* as a "shield" against all the objectors' better and more applicable authorities, like *Calvert* and *Hardesty,* even before objectors reach cases supporting competing constitutional, legal, and property rights of surface owners above and around the 2585-acre underground mine who are entirely ignored by Rise (as they were in the disputed EIR/DEIR), despite objections citing applicable authorities, such as *Keystone* and *Varjabedian.* The defined terms in the main objection text are incorporated herein, including what is referenced or incorporated therein.

II. Rise Fails Its Burden of Proof Both On The Merits And As Lacking Required And Sufficient Admissible Evidence, Even Under *Hansen.*

Before Rise can argue about who has the burden of proof over the abandonment dispute (the only issue Rise seems actually to address on that topic as the basis for its general attempt incorrectly to shift Rise's burden of proof to objectors), Rise must acknowledge that it has the burden of proof on vested rights and many things it prefers to ignore, rather than attempt to debate. See the foregoing main objection text, citing both the Evidence Code and case authority. See Evidence Code #'s 500 et seq. and 600 et seq. applied in the foregoing objection. Since Rise relies primarily on *Hansen,* why did Rise neglect to address this *Hansen*

ruling (at 564, emphasis added), **among others, that must be addressed first, before the dispute over abandonment: "The burden of proof is on the party asserting a nonconforming use to establish the lawful and continuing existence of that use at the time of the enactment of the ordinance", citing *Melton v. City of San Pablo* (1967), 252 Cal. App.2d 794.** Among other *Hansen* stated principles to the applicable facts in the section (at 560-61) named "A. Extent of Bear's Elbow Mine in 1954," the court began with the previously elaborated basic principle (here without the limitations and nuances discussed elsewhere that further doom Rise's claims) that: **"a vested right to continue a nonconforming use extends only to the property on which the use existed at the time zoning regulations changed and the use became a nonconforming use** [here 10/10/1954 according to the Rise Petition]." (emphasis added) Just as Rise admits to the IMM being an aggregation of different mines acquired at different times from different predecessors (as to which the Rise Petition only offers selected and incomplete data that objectors dispute under the laws of evidence and otherwise), the *Hansen* mine also involved such different adjacent parcels aggregating 60 acres. The related *Hansen* discussion of each of the four parcels aggregating 60 acres confirms the flaws in Rise Petition's presentation of its disputed "evidence" for its many parcels. (Is it the 10 parcels [and 55 sub parcels] in the SEC filings, or something else in the other Rise documents?) Objectors will dispute the parcel issues in the main substantive briefing to come, but the Rise Petition disputed above addresses various different parcel arrangements from time to time, including the BET Group subdivisions above and around the 2585-acre underground mine, some of which it sold off to surface owners for further subdivisions over time. Details matter, as does the sufficiency of evidence, especially since *Hansen's* majority remanded for such detailed evidentiary deficiencies (as did *Calvert*). **Notice how *Hansen* requires this vested rights dispute to require proof (i.e., competent, admissible evidence) on a PARCEL-BY-PARCEL (and, in the IMM case, sub-parcel-by-sub-parcel) basis, as** *Hansen* **demonstrated.** The *Hansen* court stated (at 561-64)(emphasis added):

> Some of those parcels were conveyed to Hansen Brothers after 1954, however. **The record does not confirm that all of the parcels, over which Hansen Brothers claimed vested rights in its SMARA application, were part of the Bear's Elbow Mine in 1946 or 1954. The record is also devoid of evidence that the owners of those parcels themselves held vested mining rights in the transferred property at the time they were deeded to Hansen Brothers.** Examination of the record reveals that [the County's related admissions, including one obvious mistake that it could not correct in time]… encompassed only the parcel that was the original site of the …Mine and one of the three parcels conveyed to Hansen Brothers after 1954.
>
> ***
>
> Hansen Brothers does not dispute the absence of evidence in the record that the after-acquired properties were being used for mining purposes in 1954. Instead, it argues that its SMARA reclamation plan …[was sufficient and the County was estopped to object from subsequent use].
>
> ….**The court must make its own decision as to the legal impact of those facts and is not bound by any concessions of law that a party may have made.**

> **[citations]… Indeed, the county lacks the power to waive or consent to violations of zoning law. [citations]**
>
> ***
>
> [After analysis that is even more powerful here because IMM objectors here make no admissions or concessions of any kind to Rise, the court concluded:] **Hansen Brothers has failed to carry that burden insofar as its SMARA reclamation plan asserted a vested right to quarry a 60 plus acre parcel…The evidence is insufficient to support a finding that Hansen Brothers is entitled to a writ of mandate… [therefore referring to a further] determin[ation] by the superior court on remand.**

The lessons of *Hansen* are not what the Rise Petition claims. **See also, e.g., *Calvert, Hardesty,* and cases cited therein.** As further objector briefing will demonstrate, the Rise Petition record and purported "evidence" are even more deficient and disputed than those at issue in *Hansen*. See also the main objection text for more evidentiary disputes and reasons why the Rise Petition must fail. **See, e.g., many disputed Rise Petition Exhibits (besides often being cherry-picked parts out of the missing alleged "collection" context) are inadmissible or otherwise objectionable under the law of evidence, such as often lacking authentication and the required "foundation," reliability, credibility, and other bases required for admissibility. Again, this is not, as proven in Objectors Petition For Pre-Trial Relief, Etc., just a dispute between Rise and the County, with the public as impotent three-minute commentators. This vested rights dispute is a multi-party dispute that must fully include the objecting public, especially those surface owners above and around the 2585-acre underground IMM, who have their own competing due process and other constitutional rights, legal rights, and groundwater/existing and future wells, and other property rights explained in Objectors Petition For Pre-Trial Relief, Etc. (e.g., *Calvert, Hardesty, Keystone,* and *Varjabedian*).**

Also, even if it had some vested rights to any of such Vested Mine Property, that would not empower Rise to trespass, harm, or otherwise adversely affect such impacted objectors or their property (e.g., existing or future wells and groundwater owned by such surface objectors), especially without first proving Rise's right to do so with admissible evidence and heavy burdens of proof in a proper due process proceeding in which objectors can full participate as equal parties in interest. See, e.g., *Calvert*, *Hardesty,* and cases cited therein. The Rise Petition and process fails that requirement even as to Rise's own property, beginning with the necessity of Rise satisfying its burden of proof with competent evidence in such a due process proceeding as to each fact and issue required to establish a vested rights claim. To avoid delay the County should promptly dismiss the Rise Petition. Even then, if Rise somehow were to prevail over the County on such vested rights, Rise still could not prevail over such surface-owning objectors, since, for example, Rise cannot deplete such objectors owned (existing and future) wells and groundwater, which are property rights that cannot be "taken" without violating the objecting owners' own personal constitutional and legal rights. For the County to participate or assist in any such "taking" from objecting surface owners would create much more massive problems for the County than Rise attempts to threaten, as explained both in the Objectors Petition For Pre-Trial Relief, Etc. and more thoroughly in the incorporated EIR/DEIR objection record. See, e.g., *Varjabedian.* The point of that commentary is to remind

the County that these are some of the many fundamental distinctions between claims for SURFACE MINING vested rights under SMARA (to which *Hansen* limited itself) and UNDERGROUND mining (which Rise continues to ignore and evade, despite record EIR/DEIR objections, and which *Hansen* did not address).

As illustrated throughout the foregoing objection, Rise's proof will also be doomed by its own admissions and inconsistent statements in the Rise Petition compared to the Rise SEC filings and the EIR/DEIR and other Rise applications etc. to the County which seek the use permits or other approvals that Rise now, in a disputed (and impossible to do consistently) switch of legal theories for such mining, claims Rise can evade somehow by such disputed vested rights. Future objector briefs will explain about judicial (and similar administrative) and other estoppels, laches, waivers, and other effects of objectors' impeaching Rise with its own admissions and inconsistencies. See Rise SEC admissions inconsistent with, or contrary to both the EIR/DEIR and the Rise Petition). As the saying goes, Rise can have its disputed and incorrect opinions, but it cannot have its own facts or laws, especially when it is responsible for so many inconsistencies and conflicts between the Rise Petition now versus all those prior SEC filings, disputed EIR/DEIR, and permit and other applications, etc., such as those listed in the County Staff Report about the EIR.

III. The Rise Petition's Incorrect Use of *Hansen Fragments* Is Based On Various Unproven And Incorrect Rise Assumptions And Claims That ARE NOT ANYWHERE Even Attempted To Be Proven In *Hansen* Or Other Rise Cites, Especially As To The Differences Between (1) SMARA Surface Mining Laws On Which Rise Incorrectly Relies (See Attachment B) Versus (2) The Actual, IMM Underground Mining At Issue As Admitted in Rise's Conflicting EIR/DEIR and SEC Filings.

A. Rise Incorrectly Claims/Assumes That *Hansen* (And SMARA on Which *Hansen* Was Solely Based), Which Is Limited to "Surface Mining," Somehow Also Applies To This IMM Underground Mining When It Does Not (And the Rise Petition Does Not Even Expressly Claim It To do So Or Even Discuss Underground Mining Authorities.) See Attachment B.

1. Underground Mining And Surface Mining Are Different "Uses" Raisings Different Legal And Factual Issues, Such That Rise Claims To Vested Rights Based on Surface Uses Or Components Cannot Possibly Prove Anything For Any Vested Rights For Underground Mining Uses Or Components.

Hansen's (and SMARA's) express terms limit them to "*surface mining*," and there is no underground mining at issue or even present in *Hansen's* facts (nor in SMARA). See, e.g., Attachment B discussing the SMARA limitations that prevent any application of that surface mining law to this IMM underground mining dispute.*Hansen* begins by **defining "surface mining operations"** in FN 4 quoting SMARA (Pub. Resources Code #2735), since that *Hansen* decision is limited by the scope of that definition, stating: "[A]ll, or any part of, the process involved in the mining of minerals on mined lands by **removing overburden and mining directly from the mineral deposits open-pit mining of minerals naturally exposed, mining by auger method,**

dredging and quarrying, or surface work incident to any to an underground mine…." (emphasis added) Thus, while *Hansen* and the law (see, e.g., *Calvert and Hardesty* and Attachment B) **distinguish between underground mining and the "surface work incident to an underground mine," Rise** not only totally ignores that distinction and issue, but (without any purported analysis or authority) **simply, falsely assumes that SMARA vested rights' permission to do such "surface work" for an underground mine is also permission to mine as it wishes underground at the IMM according to Rise Petition at 58 "without limitation or restriction," such as described in the disputed EIR/DEIR (e.g., 24/7/365 for 80 years: underground blasting 76 miles of new tunnels into new, never mined and unexplored areas of the 2585-acre underground mine, chasing imagined gold veins, if any, wherever they might lead; dewatering with a new underground and surface system, including an unprecedented, water treatment plant, to deplete groundwater and wells owned by objecting surface owners living above and around that underground mine; etc.)** More importantly, that surface mining access to the underground may start at the Brunswick site owned by Rise, but that **underground mining is beneath objecting surface owners with their own competing constitutional, legal, and property rights (down at least 200 feet, plus deeper for water and other rights not included in the mineral rights quitclaim deed quoted in Rise's SEC 10K filings) analyzed in cases like *Keystone and Varjabedian.*** Stated another way, even if somehow words don't mean what they say any more for Rise and if somehow "surface work incident to any underground mine" were relevant in this dispute (which it is not and wouldn't give Rise any permission actually do any underground mining), objectors own the surface above that new underground mining **that has not been used in modern times (and cannot now be used) even for such Rise surface mining work. How would Rise even create access to begin that new underground mining expansion area without doing all the massive, underground work admitted in the EIR/DEIR and SEC filings?**

2. The Facts And Analysis Of Hansen Did Not Include Any Underground Mining, Just Surface Mining.

Hansen (at 544-46) describes the applicable "aggregate business in which the materials combined and sold as aggregate are obtained by surface mining and quarrying on part of a 67-acre-plus tract of land comprised of several parcels…" "in a remote, mountainous area…" made up of riverbed, adjacent hillsides, and a flat yard area which is used for processing and storage." "Production of aggregate from sand, gravel, and rock mined and quarries … commenced almost 50 years ago." Moreover, as the Hansen majority itself defined the scope of the dispute (at 547, emphasis added): **"This action arose out of Hansen Brothers' efforts to comply with the Surface Mining And Reclamation Act of 1975 (#2710 et seq.)(hereinafter 'SMARA'), and in reliance on #2776 the miners claim vested rights to be excused from the conditional use permit requirement, recognizing that SMARA required its own regulatory compliance, including for a "reclamation plan" and related "financial assurances."**

3. The Hansen Majority (Unlike the Dissenters And All the Lower Decisionmakers) Found Continuity of That Hansen "Aggregate Business" Sufficient On Certain Parcels On Facts Very Different From Those Rise Claims Regarding the IMM.

The *Hansen* majority found (at 544-545): "Production of aggregate from sand, gravel, and rock mined and quarries … commenced almost 50 years ago [in 1946].) And, despite conflicting testimony, Hansens testified and claimed that the operations were continuous during that entire period." Evidence of various continuing business activities on site was also produced, although issues about the significance of those activities was at the core of the disputes both between the parties and between the majority and dissenting Justices in *Hansen.* However, as analyzed below in more detail, in this IMM dispute the abandoned/discontinued IMM flooded and closed for such mining operations by 1956, making such continuing work essential to vested rights impossible, especially as to the new, underground expansion area that had never before been accessed or explored much less mined. Yet, Rise's own Exhibits to rebut its vested rights claims, such as among the missing "time gaps" in the critical evidence required to prove **continuous vested rights conduct and intentions, the years discussed in the above objection rebuttals where Idaho Maryland Mines closed its flooded IMM, moved to LA, where it changed its name, trademark, and business to become an aerospace contractor, and eventually liquidated in bankruptcy before the IMM auction purchase cheap by William Ghidotti (during which time there was no Rise proof of that bankruptcy trustee having any intent or plans to reopen the IMM or do anything else to preserve or create any vested rights.)**

4. Even the Hansen Majority Concluded (at 543) That: "the record is inadequate to permit us, or the lower courts and administrative bodies, to determine (1) whether the nonconforming uses which Hansen Brothers claims a vested right to continue extends to all of the Nevada County property …over which it claims a vested right to continue operations…"

Thus, Rise's unprecedented, incorrect, and disputed "unitary theory of vested rights" is defeated by *Hansen*, and Rise overstates the result in *Hansen* on that key issue which here relates to objectors' disputes about Rise claiming vested rights to underground mine in that separate, new expanded, unexplored, never mined before parcels of the 2585-acre underground IMM beneath objecting surface owners living above or around that proposed mining. Stated another way, *Hansen* is not authority supporting Rise's vested rights claim to mine there as it demands, especially as the Rise Petition claims (at 58) "without limitation or restriction," because even in that *Hansen* majority decision, where the facts were more favorable to the miner (in the majority view) than these IMM facts, *Hansen* found the evidence insufficient for the miner to prevail on various parcels at issue in that court's parcel-by-parcel analysis. Here, the IMM evidence against Rise is much stronger and includes mining facts and objectors' use of Rise admissions and inconsistencies cited in the Objectors Petition For Pre-Trial Relief, Etc. and Rise's SEC filings (Exhibit A thereto) to defeat Rise's claim. Indeed, as explained in the foregoing objection, most of Rise's so-called proof cannot satisfy its burden of proof because, besides massive foundational and authentication issues (including unproven custodians for long periods, unidentified sources, and lack of completeness), credibility, and reliability objections, the law of evidence would bar such inadmissible evidence on many grounds. Coming in as a speculator in 2017 to buy the mine that had been closed and flooded since 1956, Rise has no relevant personal knowledge about prior intentions, events, or other

facts at issue, and most of the relevant witnesses are long dead. Objectors do (and will) object to most of Rise's allegations and so-called "evidence," assuming the County process allows it before the courts reject the same in another objector due process ruling as in *Calvert or Hardesty.*

5. Rise Cannot Claim Vested Rights To the New Underground Expansion Parcels Now Targeted For Mining (Discussed Above As the "Never Mined Parcels") That Had Not Previously Been Accessed, Explored, Or Mined As Admitted by Rise in Its SEC Filings And In the EIR/DEIR Before Rise Switched To Its Inconsistent Vested Rights Theory.

As so noted herein and elsewhere, each so-called Vested Mine Property parcel must be analyzed separately as to its historical ownership and continuous operations, and mining intentions for each use and component by each Rise predecessor since the 10/10/1954 vesting date**. As *Hansen* stated (at 558):**

> **Even where multiple parcels are in the same ownership at the time a zoning law renders mining use nonconforming, extension of the use into parcels not being mined at the time is allowed only if the parcels had been part of the mining operation.** (*Dolomite Products Company v. Kipers* (1965), 23 A.D.2d. 339…affd 19 N.Y.2d 739 [279 N.Y.S.2d 192]…[**owner may not "tack" a nonconforming use on one parcel used for quarrying onto others owned and held for future use when the zoning law became effective**]; *Smart v. Dane County Bd. Of Adjustments*…501 N.W.2d 782; *Stephan & Sons v. Municipality of Anchorage*…685 P.2D at p.102 fn.6 ["**The diminishing asset doctrine normally will not countenance the extension of a use beyond the boundaries of the tract on which the use was initiated when the applicable zoning law went into effect….]** see also *Midland Park Coal & Lumber Co. v. Terhune*, 56 A.2d 717 (N.J. 1948); *Syracuse Aggregate Corp. v. Weiss*, 51 N.Y.2d 278, 434 N.Y.S.2d 150 *…; Davis v. Miller*, 163 Ohio.St. 91, 126 N.E.2d 49 (1955).].) (emphasis added)

That *Hansen* ruling should be fatal to the Rise Petition, because the separate underground parcels now to be mined had never been sufficiently accessed, explored, or mined before. See Rise admissions to that effect in its EIR/DEIR and SEC filings, as discussed in Objections various objections. There were no tunnels, infrastructure, or mining activities there on or after 10/10/1954, and the EIR/DEIR proposal was to create 76 miles of new tunnels to access those previous unavailable parcels. Thus, Rise cannot under its own primary *Hansen* authority claim a vested right to that new mining expansion.

Consider how *Hansen* applied that rule to the mining facts in the section (at 565-568) entitled "Separate Use." Unlike Rise's IMM plan to mine such underground parcels never previously mined (hence, for instance, the admitted EIR/DEIR description of 76 miles of new tunneling to access that area seeking veins of gold), ***Hansen's* miner had previously mined much of the areas where the court granted vested rights, but (and what Rise ignores) even the disputed (by all lower decisionmakers and the Supreme Court dissenters) *Hansen* majority reserved judgment (at 543, see also 568, emphasis added) as to some of those then unmined**

parcels pending more and better evidence that they were entitled to vested rights; i.e., stating: "Nonetheless, the record is inadequate to permit us, or the lower courts and administrative bodies [which had all rejected the miner's vested rights claims], to determine (1) whether the nonconforming use to which Hansen Brothers claims a vested right to continue extends to all of the Nevada County property it identifies … or (2) the extent of the areas over which an intent to quarry for rock was objectively manifested in 1954."

No one (not even the overly generous *Hansen* majority) should allow Rise any vested rights to mine that new, underground IMM expansion area, because, among many other objections, Rise's so-called evidence is much worse than what even that *Hansen* majority found too deficient. See the above objection main text discussing and applying evidence standards, The Rise Petition rarely even tries to satisfy its burden of proof, instead simply citing disputed partial, objectionable records, without proof of continuous vested rights (e.g., with massive gaps, as shown from the start as to the lack of any proof to support vested rights during Idaho Maryland Industries [formerly Idaho Maryland Mines] bankruptcy trustee's exclusive control for years before the auction sale to William Ghidotti) that objectors main briefing will show are neither admissible evidence nor complete, sufficient, or credible to prove any vested rights.

In *Hansen* (at 565-66) the majority agreed with the united dissenters and lower decision-makers that rock quarrying had been discontinued for periods in excess of 180 days deadline, and when operating had been producing smaller quantities of material than the riverbed mining. However, the majority stated those facts were not "dispositive" because the court saw "mining for sand and gravel and quarrying for rock" as "integral parts of that business" on 10/10/1954 that "could [not] be compartmentalized into two mining uses and aggregate production business," because such mining uses … were incidental aspects of the aggregated production business." **However, as proven above in quotes from Hardesty, it is indisputable that surface mining and underground mining are different "uses" for vested rights. Even if somehow Rise could satisfy anyone without the required evidence, Rise still could not pass the test (at 566, emphasis added) for these new and unexplored/unmined "open area" parcels now proposed for such new, expansion underground mining, because even if all other conditions were satisfied for vested rights, such "open area" parcels would only be included (even by the *Hansen* majority) when and if: "such open areas were in use or partially used in connection with the uses existing when the regulations were adopted," which was not the case in this such admittedly inaccessible part of the underground IMM.**

Ironically, this is one of the powerful differences for "objective intentions" about the future between all these surface mining cases which Rise cites for its "alternative reality" versus objectors' underground mining reality: the underground parcels of the IMM 2585-acres proposed for mining are an "open area," but underground and physically isolated from any such qualifying mining activity, especially in 1954, considering all the technology, financial, and other legal and practical limitations making that unused and inaccessible expansion area some future reserve on different parcels (or sub parcels) that cannot ever qualify for vested rights. Remember, the relevant, predecessor miners were still using manual pumps for dewatering in 1954, and these new IMM expansion areas are deeper than anything in the 1954 existing IMM**.** Even now Rise admits in its EIR/DEIR that this expansion mining would requires a new, high-tech, massive dewatering system operating 24/7/365 for 80 years that those predecessors could have never planned to duplicate. **SEE THE *HANSEN* DISCUSSED CASE**

DENYING SUCH VESTED RIGHTS CLAIM (AT 566, EMPHASIS ADDED**) THAT THE MAJORITY SAID "ILLUSTRATED" ITS "APPROACH": *PARAMOUNT ROCK CO. V COUNTY OF SAN DIEGO* (1960), 180 CAL.APP.2d 217, 230, WHERE THE READY-MIX CONCRETE BUSINESS ADDED FOR THE FIRST TIME AFTER THE VESTING REZONING DATE A NEW "ROCK CRUSHING PLANT ON THE SITE" (REPLACING PRECIOUSLY OFFSITE CRUSHING), REJECTING THE ARGUMENT THAT SUCH A CRUSHER ADDITION WAS "AN INTEGRAL PART OF THE BUSINESS THAT THE [OWNER] PLAINTIFF HAD BEEN OPERATING," SINCE THAT CRUSHER WAS "NOT PART OF THE NONCONFORMING USE TO WHICH THE PROPERTY WAS BEING PUT AT THE TIME THE ZONING ORDINANCE WAS ADOPTED."** STATED ANOTHER WAY, ***HANSEN*** (AT 566, EMPHASIS ADDED) **IN EFFECT STILL REQUIRED THAT SUCH "A COMPONENT OF A BUSINESS" MUST "ITSELF HA[VE] A VESTED RIGHT TO CONTINUE USING THE LAND ON WHICH IT IS LOCATED FOR OPERATION OF THE BUSINESS."**

That objector analysis of *Hansen is* also consistent with what *Hansen* recognized and imposed (at 558-559, emphasis added) as the additional rule against mining extensions onto "property acquired after the zoning change went into effect," among other things to prevent forbidden evasions "by [the miner] acquiring property abutting a tract on which the nonconforming use operated and expanding into the new property, even though the original owners of the newly acquired property had no vested right to such use of the property." (Citing McCaslin) "The use at the time the ordinance was adopted established the non-conforming use which defendant was entitled to continue," but as in *Struyk v. Samuel Braen's Sons* (N.J. Super. 1951), 85 A.2d 281, that quarry operation could not be so extended even when the purchased, adjacent parcel was used for related support by not as a quarry by the seller. That "no expansion across different parcels rule" applies even where Rise's predecessors owned both parcels. NOTE, THAT *HANSEN* AND *PARAMOUNT* THEREBY (*HANSEN* AT 566) NOT ONLY DEFEAT THE VESTED RIGHTS IMM MINING AT ISSUE, BUT ALSO DEFEAT THE ADDITION OF THE NEW IMM WATER "TREATMENT" SYSTEM DESCRIBED IN THE EIR/DEIR THAT IS ESSENTIAL TO DEWATERING THE EXPANDED MINING (AND ACCESS TO IT, SINCE RISE CANNOT USE ANY SURFACE QWNED BY OBJECTORS ABOVE OR AROUND THE 2585-ACRE UNDERGROUND IMM. *Without that new "treatment system" Rise's whole mining plan is futile, which is a good thing for saving the surface owners' groundwater and existing and future wells from the proposed IMM menace by application of objectors' other rights and claims.*

B. The Rise Petition Incorrectly Claims (at 58) A Sufficient "Objective Intent" To Expand The Underground IMM Mining As It Wishes "Without Limitation Or Restriction," But Even the *Hansen* Majority Analysis Does Not Support Rise's Contentions, And Rise Again ignores "Inconvenient Truths" And Controlling Case Law.

***Hansen* declined to rule on the miner's objective intent for lack of sufficient evidence, and there is far less evidence here about rise predecessors' intentions as to the expanded mining into that separate, new, unexplored, area of the underground IMM.** *Hansen* stated (at 543, emphasis added): "Nonetheless, **the record is inadequate to permit us,** or the lower courts and administrative bodies, **to determine … (2) the extent of the area over which an intent to quarry for rock was objectively manifested in 1954." Here, in the years since 1956 at the closed, flooded, and (yes) abandoned IMM, much of our community grew up above and**

around the IMM underground 2585-acre mine (e.g., thousands of homes, shopping centers and businesses, churches, an airport, a hospital, and much more, all reasonably assuming from the objective manifestations that the IMM was abandoned and would never reopen. If the owners wanted to preserve their vested rights, they needed to do far more CONTINUOUSLY than the insufficient and mostly irrelevant things Rise claims its predecessors did (but where is there admissible evidence to satisfy Rise's burden of proof?) None of what Rise claims was done on the surface of the abandoned mine after 1954 (but not on the surface owned by objectors above or around the 2585-acre underground mine, and not underground from the Brunswick site that is flooded) is sufficient to create vested rights for what Rise proposed to do now underground, where no one has done anything that could be considered mining since before 1956. As far as our community knew until Rise showed, the flooded IMM was just history, with predecessors like Emgold giving up their quest. Moreover, until recently our community believed we could defeat on the legal and factual merits the Rise EIR/DEIR, use permits, and other applications for approvals, not expecting that for the first time ever Rise would incorrectly assert such vested rights, especially as the Rise Petition states (at 58) with the right to mine as it wishes "without limitation or restriction." The main briefing to come will detail all those rebuttals of Rise's attempts to link that past to the present plan, but in the interim, please recall how, as discussed above, *Hansen* insisted on a parcel-by-parcel, use-by-use, and component-by-component analysis.

In discussing the "objective intention" disputes addressed throughout this objection and Objectors Petition For Pre-Trial Relief, Etc. also recall that *Hansen* stated (at 557, emphasis added) that: **"The right to expand mining or quarrying operations on the property IS LIMITED BY THE EXTENT THAT THE PARTICULAR MATERIAL IS BEING EXCAVATED WHEN THE ZONING LAW BECAME EFFECTIVE." Here, Rise's self-selected and cherry-picked part of history admitted that gold production was dwindling progressively, and the mining shifted to government-subsidized TUNGSTEN instead, until even that was abandoned by 1955. But Rise is not seeking tungsten in this expanded new IMM mining, a topic ignored in the EIR/DEIR and SEC filings. The reality of this history is not that these Rise predecessors (and since 2017 Rise) waited from 10/10/1954 until now (or 2017) to launch a preposterous, 69-year suspended, but at all times somehow continuous through many predecessors, plan to mine this unexplored and unproven underground expansion gold mining site. If as some objectors may suspect, however, some incorrect or worse attempt by Rise to imitate the facts of *Hansen* by trying to connect its gold mining to some newly imagined "aggregate business," that must fail on both the law and the facts as demonstrated in this objection. However, Rise's attempt now to imagine any historical link for what Rise discussed in the disputed EIR/DEIR about unapproved, and at best unlikely, new business of selling mine waste rebranded as "engineered fill," is irrelevant here, and has no proven counterpart in 1954, 1955, or 1956, or otherwise that can create a vested right to mine gold underground, which is a separate use on separate parcels and which even Hansen's quote above forbids. In any event, neither *Hansen* itself, nor other objector precedents, would allow a vested right claim for an aggregate business to support an expansion for vested underground gold mining in this new expansion area. Future briefing will rebut the even more strange and disputed attempt by the Rise Petition to misuse the toxic Centennial site to manufacture vested rights.**

IV. Most Damning to Rise's Disputed Vested Rights Claim May Be What *Hansen* Addresses As Denying Vested Rights For "D. Expansion or intensification of use."

A. Rise's Vested Rights Claims Violate *Hansen's* Most Basic Rules Denying Vested Rights For "Changes In Nonconforming Uses" From the Initial Vesting Date, Such As (At 552) By "Intensification" or "Expansion" of the Existing Nonconforming Use Or "Moving The Operation To Another Location On the Property."

Rise's vested rights claims are defeated at the start, before reaching the abandonment issues, by more of *Hansen's* own statements (at 551-552, emphasis added) in its section entitled: "Scope of Vested Mining Rights –A. Zoning and related constitutional principles underlying Hansen Brothers vested rights claim":

> **When continuance of an existing use is permitted by a zoning ordinance, the continued nonconforming use must be similar to the use existing at the time the zoning ordinance became effective… [citing *"Rehfeld v. City and County of San Francisco* (1933), 218 Cal. 83 …*City of Yuba City v. Chemiavsky* (1931), 117 Cal. App. 568 …"] Intensification of expansion of the existing nonconforming use, or moving the operation to another location on the property is not permitted. (*County of San Diego v. McClurken*, …37 Cal.2d 683,687-688.** See also 8A *McQuillin* …#25.206 p.114) [I]n determining whether the nonconforming use was the same before and after the passage of a zoning ordinance, each case must stand on its own facts. (*Edmonds v. County of Los Angeles*…40 Cal.2d at 651 …[also *Livingston Rock and Tweed & Gambrell Mill*].

Objectors' follow-up briefing will offer to prove how that quote alone and others in the next subsection defeat Rise's vested rights claims, including by using Rise's own admissions inconsistencies against the Rise Petition, such as from Rise's SEC filings and the disputed EIR/DEIR and objector record rebuttals thereto. As the record objections to the EIR/DEIR demonstrate, the new underground mining proposed by Rise violates each such requirement, because it is so admitted not to be "**similar"** to the 1956, 1955, or 10/10/1954 versions (e.g., deeper in a new, unexplored, and expanded underground area on separate parcels (or sub parcels). Other such prohibited changes include "moving" mining uses to those underground expansion parcels that were never mined or accessed, and proposing to use disqualified changes for modern methods, equipment, techniques, systems (e.g., the water treatment plant and dewatering systems), and substances (including adding toxic hexavalent chromium made infamous in the *Erin Brockovich* movie that now ghost town still cannot remediate even after years of effort using that huge settlement fund [see www.hinkleygroundwater.com], but which Rise wants to use to cement mine waste into shoring pillars to support the underground mine and save the expense of having to export that mine waste. That technique and intense threat were not used in 1954.)

Also, the new mining will be far more **"intense**" by the **unprecedented in 10/10/1954 extreme of now proposed 24/7/365 for 80 years of dewatering (i.e., depleting surface owner existing and future wells and groundwater for purported "treatment" at a new facility (not**

used or contemplated in 1954) to flush away our local groundwater downstream in the Wolf Creek), blasting (more powerful), tunneling (another 76 miles into new unexplored areas), mining with that toxic, hexavalent chromium, shoring technique to leave the cemented mine waste in support pillars to save export costs), clearing and supposedly selling the mine waste rebranded as "engineered fill"(a new business not done there in 1954), and other dissimilar activities.

Other environmental, labor, and other laws and police powers beyond the reach of Rise's disputed vested rights overrides would prevent Rise from returning to the "old ways" in the 1950's, even if it could afford to do so. While the disputed Rise Petition no doubt will argue for the adoption of that inapplicable, grocery store natural evolutions argument (i.e., for accommodating natural business growth or evolution of the technology), nothing in that *Hansen* analogy excuses Rise for vested rights being defeated by changes required by applicable health, safety, environmental, or other "police power" required laws to protect the public above or around the 2585-acre underground mine, especially from the consequences of science revealing that some change is needed to avoid material harms, rather than a safe and tolerable technology to be more efficient at what was done less efficiently in the past. See also the next section explaining the additional limits on vested rights to the extent increasing intensity or expanding or enlarging the nonconforming use in dispute. Rise, of course, focuses on the *Hansen* court's featuring of the Kansas court's discussion in *Union Quarries* that a natural growth of the business or an increase in the business done is not an impermissible change in the nonconforming use**. (Note this assumes inapplicable comparisons and ignores the whole *Hansen* and other law prohibitions discussed above forbidding expansion to use another "open property.")** *Hansen* made the inapplicable analogy to allow "a gradual and natural increase in a **lawful** nonconforming use of a property, including quarry property," using the example of a grocery store operated as a **lawfu**l, nonconforming use in an area of increasing population would not be restricted to the same number of patrons or in the volume of goods sold…" (emphasis added, because as the **record objections to the EIR/DEIR already show that proposed IMM use would not be "lawful" in many ways, especially without the permits Rise is refusing to seek in reliance on these disputed and meritless vested rights claims.)**

In any case, Rise could not afford to do things less expansively, less intensely, or otherwise more similarly. See, e.g., Rise's SEC filing admissions, and DEIR at 6-14, where Rise admitted that the whole IMM project is not economically feasible unless Rise can mine as it has proposed 24/7/365 for 80 years, which of course is unimaginable in the face of objectors' votes supporting greater exercise of permitted police powers for more protective law reforms and officials who voters will expect to prioritize our common community "good," "health," "welfare," "safety," property rights and values, and environmental policies over bad or worse practices to maximize profits for such mining speculator shareholders. See record objections to the disputed EIR/DEIR's claims about Rise's disputed, minor economic benefits or those alleged in the disputed County Economic Report, all of which purported IMM benefits are far less than what record objectors offer to prove would be lost, and is already occurring, as depressed property values and consequent property tax collections.

Also, contrary to that *Hansen* quoted rule, the new Rise mining is not only admittedly "expanding" (e.g., 76 new miles of new tunneling into separate and deeper parcels compared to

the existing 72 miles of tunnels), but it is also "moving that operation to another location of the property," which is especially serious because that impacts more surface owners and their properties above or around those new underground parcels (e.g., groundwater and existing and future wells), triggering even more direct, conflicting constitutional, legal, and property rights than were at issue before and countering the absurd Rise Petition vested rights claim (at 58) that somehow Rise can mine wherever and however it wants "without limitation or restriction" as long as it enters from the same Brunswick site as before (for which, of course, Rise cites no authority, which is not surprising because Rise's whole legal theory relies on SMARA surface mining, which is fundamentally different than this underground IMM mining.) After 69 years of flooded isolation, Rise's vested rights mining in that separate, unexplored, expanded underground area is not legally possible, as objectors offer to prove further in their main briefing.

B. Application of Even the *Hansen* Majority Recognized "Intensity" Rules From *Hansen* and Cases Cited Therein Defeat Rise's IMM Vested Rights Claims.

As the *Hansen* court reminded us (at 571-75 and in the County's Section 29.2(B), emphasis added)**: "No such [nonconforming use shall be enlarged or intensified." The court added: "Our conclusion that Hansen Brothers continues to have a vested right to continue quarrying hard rock for use in making aggregate DOES NOT COMPEL A CONCLUSION THAT THIS RIGHT EXTENDS TO QUARRYING THE AMOUNT OF ROCK PROPOSES IN ITS SMARA PROPOSAL." Citing again McClurken at 37 Cal.2d 663, 687, *Paramount Rock*, and other support, *Hansen*** added: "**Given the objective of zoning to eliminate nonconforming uses, courts throughout the country generally follow a strict policy against their extension or enlargement."** Thus, *Hansen* (at 572, emphasis added) explained with approval the following **cases denying vested rights for such increased intensity, expansion, or enlargement: (1) *Edmonds v. County of Los Angeles* (1953), 40 Cal.2d 642, which disallowed vested rights to a trailer park when it had only 20 trailer spots on the zoning trigger date for vesting, but it thereafter increased the number of trailers to 48 (which increase also required an unprecedented, increased, and disqualified "utility house" for "sanitary facilities," just as Rise's new mining would require a new 24/7/365 dewatering system with a new water treatment plant for 80 years of increased, disputed depletion of groundwater from competing surface owner's property (and their existing and future wells) above and around the 2585-acre underground mine, adding another 76 miles of new and deeper tunneling for offshoot mining along every gold vein Rise hopes to cross, beyond the existing 72 miles of tunnels in the 1956 abandoned, closed, and flooded mine) ; (2) *County of San Diego v. McClurken* (1951), 37 Cal.2d 683,** where the court denied vested rights to evade a zoning ordinance banning heavy industrial purposes like the owners' storage of movable surface gas tanks by installing four new, permanent gas storage tanks on the property for the new and different use of storage of gas for service stations instead of such previous "industrial use." ***Edmonds* and *Hansen* also explained that defeat for vested rights claims by noting (at 572, emphasis added): "the additional trailers to be placed on the property were equated to additional structures, a type of changed or intensified use which most jurisdictions refuse to permit as part of a nonconforming use." [Like Rise's new water treatment plant, etc.] *McClurken* had the same concerns with both**

such a prohibited "new use and placing additional structures on the property. *Hansen* did not allow any of those things, because its miner did not have such a "new use," but instead the court focused on the question of "only an increased volume of production by the existing use." Id.

This distinction is critical because Rise's proposed, massive, "enlarged," underground activities 24/7/365 for 80 years is unprecedented in their "intensity" and could not have been imagined by anyone in 1954, much less be proven by admissible evidence of "objective manifestations" from 1954, especially where that initial Idaho Maryland Mines closed and abandoned that flooded IMM by 1956, in to change its name, trademark, and business, to move to LA to become an aerospace contractor, and then ended up being liquidated by a bankruptcy trustee who neither did, nor intended, anything to create or preserve any vested rights, but arranged the auction sale cheap to William Ghidotti. Moreover, as objectors' follow-up briefing and proof will show, these legal tests must also include the negative impacts of those mining and related activities on, among others, the surface residents and property (including groundwater and existing and future wells) above and around the 2585-acre underground IMM, the environment, and the community way of life. Rise is just wrong to ignore such crucial things and instead insist incorrectly that intensity can only be judged by comparing the amount of gold extracted now versus earlier. Also, *Hansen*, following such cited principles it deduced from *Edmonds* and *McClusken,* would correctly judge for example, the massive new dewatering system (and particularly its new "treatment plant") as far beyond any vested rights permission, as agreed above by *Hansen, McClurken*, and *Edmonds.*

However, in that (for many reasons) distinguishable *Hansen* case dissimilar facts of that case compressed the issue into the single narrow question of comparative rock volume, and, again, the court did not necessarily support Rise's claim as Rise asserts. Again, the court did not resolve that question of whether that mining was "enlarged or intensified," although the majority stated (at 574-75) some dicta guidance that is hard to apply here to this very different IMM case, even if one were to disregard (only for the sake of argument) the differences between surface and underground mining. Rise, of course, stay focused incorrectly on the court's featuring of the Kansas court's discussion in *Union Quarries* that a natural growth of the business or an increase in the business done is not an impermissible change in the nonconforming use**. (Note this assumes inapplicable comparisons and ignores the whole *Hansen* and other law prohibitions discussed above forbidding expansion to use another "open property;" i.e., again the parcel-by-parcel, use-by-use, and component-by-component analysis that Rise incorrectly ignores.)** *Hansen* made the inapplicable analogy to allow "a gradual and natural increase in a **lawful** nonconforming use of a property, including quarry property," using the example of a grocery store operated as a **lawfu**l, nonconforming use in an area of increasing population would not be restricted to the same number of patrons or in the volume of goods sold…" (emphasis added, because as the **record objections to the EIR/DEIR already show that proposed IMM uses would not be "lawful" in many ways, especially without the permits Rise is refusing to seek in reliance on these disputed and meritless vested rights claims. And even if those uses were lawful now, local voters will cause law reforms exercising police powers immune from vested rights to protect our community from such Rise harms.)**

That unhelpful and distinguishable *Hansen* analogy and commentary on which Rise incorrectly relies does not apply to the IMM, but **that shows the problem with the County incorrectly limiting this multi-party disputed into essentially a two-party case, trivializing the objections and rights of us objecting, impacted local neighbors, those surface property owners above and around the 2585-acre underground mine with their own competing constitutional, legal, and property rights, especially as to groundwater and existing and future wells, who are not allowed to participate properly and to inject reality into such limited and distinguishable *Hansen* type situations, as required for objectors' due process by *Calvert* and *Hardesty*.** Notice, however, that one of the cases cited by *Hansen* with approval did address such third-party victim issues, where *Frank Casilio & Sons v. Zoning Hearing Bd*. Etc. (1956), 364 N.E.2d 969, 970 (emphasis added), **correctly added the condition on an "expansion" claim for vested rights that such "right of natural expansion" had to be "reasonable and not detrimental to the welfare of the community," which that miner violated in that case because "an increase from an occasional truckload of sand and gravel leaving the property each day to as many as 30 a day was not reasonable." (Recall Rise's disputed EIR/DEIR plan for the 100 trucks a day 24/7/365 for 80 years at the IMM compared with some much less impactful number in 1954, among many other harms and burdens proven in our record objections. [Note: objectors' offers of proof are proof until they receive their due process opportunity fairly to present their evidence, which is not just another three minutes for public comments to the County officials]** in hundreds of record objections to the EIR/DEIR here proving the IMM would be so detrimental to the community, but especially by violations of such surface owners' personal competing constitutional, legal, and property rights. See *Keystone and Varjabedian*.**)**

In any event, the *Hansen* majority began assessing the issue of prohibited "intensification" by comparison of the quarry outputs before versus after, but again the court found the SMARA record for the *Hansen* required reclamation plan was deficient to resolve even that disputed measure. The court stated that the SMARA remediation application did not need to address that intensity question sufficiently for resolving that issue in *Hansen.* Thus, the *Hansen* court stated (at 575, emphasis added): **"Impermissible intensification of a nonconforming use is more appropriately addressed at such time as increased production actually occurs**" (which objectors read as like the "ripeness" of a claim for threatened inverse condemnation, nuisance, trespass, or conversion discussed in *Varjabedian* and Objectors Petition For Pre-Trial Relief, Etc.) Thus, in deferring that "intensity" issue for a later "reality" test in practice, because that was a just two-party dispute, rather than a multi-party *Calvert* dispute like this one, *Hansen* added:

> **…[T]he County's remedies are the same as would exist independent of the SMARA application [for the compliant reclamation plan and financial assurances Rise has not presented for approval here] were the Hansen Brothers' business to increase. When it appears that a nonconforming use is being expanded, the county may order the operator to restrict the operation to its former level and seek an injunction if the owner does not obey. [citations]** Therefore, when the area over which Hansen Brothers has vested rights is determined, and if that area is less than 60 acres, a new or amended SMARA reclamation plan will be necessary. Even if the plan is unchanged, however, the

> intensification of use question must be reconsidered on remand if the county continues to require the determination of that question before approval of a SMARA reclamation plan.
>
> **…[T]he county is not without remedies if mining activity at the Bear's Elbow Mine increases in the future to a level that the county believes is excessive. As with any other nonconforming use, the county may seek an injunction or other penalties authorized by the zoning ordinance, whenever it believes that production at the mine has reached a level that constitutes an impermissible intensification of the nonconforming use for which Hansen Brothers have a vested right. (emphasis added).**

Since *Hansen* allows the County to do that enforcement against the miner in its discretion, the local voters can then assure their self-defense by all such appropriate means with comparable law reforms that be enforced directly by our impacted residents.

What is most important in this discussion is not just that the quantities of IMM mining rock and any mineral recovery will progressively exceed any amount from past years (i.e., pre-1956), but that every proposed aspect of the IMM mining is prohibitively more "intense" as to its many different harms on, and threats to, impacted surface residents above and around this 2585-acre underground IMM, on objectors' groundwater and existing and future wells, on objectors' property rights and values, on objectors' vegetation and forest (and fire threats), on objectors' environment, on our community way of life, and on every other menace proven in record objections to the disputed EIR/DEIR. The issue of intensity is about such harms on us local victims, not just about how much rock or gold is mined for the miner's profits. As *Calvert* and *Hardesty* prove, each objector has his or her own, personal due process and other constitutional, legal, and property rights to prevent this IMM menace from happening. See *Keystone* and *Varjabedian*. Such objectors do not depend on the County acting for them. In any case, waiting to measure output is absurd and legally inappropriate here, because the harms that matter most will begin years before any possible gold production could start, such as when Rise first begins dewatering the mine and depleting surface owners' groundwater and existing and future wells, blatantly using a dewatering system and new "treatment" plant for which there is no possible vested right and flushing away our groundwater down the Wolf Creek.

C. Briefly Comparing the Intensity of Old Mining Ways Versus New Mining Ways.

It is indisputable that modern mining techniques, methods, practices, explosives, dewatering systems, equipment, and every other activity planned by Rise at the IMM or "Vested Mine Property" is more "intense" in every way than the mining in 1954, 1955, or 1956 when the abandoned IMM closed and flooded. Rise incorrectly contends that this kind of intensity must be ignored by Hansen's natural business progression, using the inapplicable analogy (especially for underground IMM mining) of an evolving grocery store. The courts may have to resolve in due course as a question of law which kinds of intensity increase local surface objectors must tolerate, if any, and which cannot be protected by Rise vested rights. That is a complex debate for another briefing, except that underground mining intensity must be judged on its own unique basis, especially considering the competing constitutional, legal, and property rights of

objecting surface owners above and around the 2585-acre underground mine. See *Keystone* and *Varjabedian.* For example, the massive 24/7/365 dewatering effort and systems and components for 80 years, including the new water treatment plant "component," have no counterparts in 1954 or 1956 underground mining or to grocery store business evolution matters. That Rise system is clearly massively more "intense" and "dissimilar" to the dewatering methods. The question should not be about comparative technology expectations, but rather about the intensity of the harm and impacts they cause not just on the environment, but on the surface owners who must either suffer them or, as here, resist in legally and politically appropriate ways such harms to their health, welfare, property, and rights. That impact is intolerable, for example, as to its intense depletion of our surface owner groundwater and existing and future wells, and nowhere does Rise cite authority for its disputed vested rights to take our surface owner groundwater, dry up our existing and future wells, as well as our forests and vegetation, flushing the precious water needed for climate change chronic droughts away down the Wolf Creek for its speculator shareholder profits and no net benefit to objecting owners of their depleted groundwater and wells.

For example, if the shallower, less impactful, and less intense (i.e., manual pumping untreated into the Wolf Creek and not 24/7/365 for 80 years) dewatering of the IMM before 1956 was tolerable, we dispute it could be allowed today under stricter environmental laws that vested rights claims cannot overcome. Thus, the far more intense, Rise dewatering system and component treatment plant working 24/7/365 for 80 years, even during climate change, chronic droughts must defeat Rise's vested rights. When our wells dry up (and our new wells [that surface owners have a constitutional and legal right to drill, like surface owners everywhere lacking sufficient surface water] are no longer feasible), when our forest and vegetation begin to die, and when "subsidence" and other groundwater depletion problems emerge, that intensity must defeat any disputed Rise vested rights. That becomes irrefutable evidence of the inverse condemnation, nuisance, and other claims mentioned in Objectors Petition For Pre-Trial Relief, Etc. and detailed in objectors' EIR/DEIR objections. See *Keystone* and *Varjabedian*. Also, if the pick and shovel mining and old-fashioned dynamite blasting of 1954, 1955, or 1956 did not materially impact the few, if any, surface residents living above or around the underground IMM at that earlier time with noise and vibration, but the 24/7/365 modern tunneling, blasting with modern explosives, mining, or other activities will have that impact, that must be a forbidden increase of intensity to defeat vested rights, even though such surface owners moved in after 1956 as a result of mine owners (e.g., the BET Group) subdivisions and sales for such residential and non-mining commercial uses, as illustrated by the Rise Petition Exhibits discussed in the main objection text here. Stated another way, what about competing surface owner constitutional and vested rights in reverse? Objectors also will have practical evidence of "intensity" because such Rise impacts will materially depress surface property values by those and other impacts.

V. In Many Ways, Some Addressed Here For Illustration Before Full Briefing Rebuttals And Counters To Come In Due Course, The Rise Petition Summary Is Incorrect, Flawed, And Incomplete Regarding The *Hansen Majority's Section Entitled:* "Zoning and related constitutional principles underlying Hansen Brothers vested rights claim."

At the outset, *Hansen* proclaims (at 551, emphasis added) the settled law to be: "Adoption of a zoning ordinance which is not arbitrary and does not unduly restrict the use of private property is a permissible exercise of the police power and does not violate the takings clause of the Fifth Amendment …and comparable provisions of the California Constitution, even when the law restricts an existing use of the affected property. [citations omitted for now]." That means if SMARA #2776 does not apply to aid Rise's vested rights claim, Rise must rely on whatever undefined constitutional right it may have to argue under that standard against the contrary competing rights of us surface owner objectors, whose interests must be considered and doing so is not "arbitrary" or "unduly restrictive of property uses" under the *Keystone* standards for protecting surface owners from such underground mining menaces. See also *Varjabedian*. In addition, among the many things Rise ignores in seeking to evade that reality is that *Hansen* was only focused on the competing "**zoning law," as distinguished from many other environmental, health, safety, and other applicable laws protecting those potential victims of the mining, such as the voting surface owners living above and around the 2585-acre underground IMM who have political, as well as personal legal remedies, including a *Calvert* and *Hardesty* recognized right to due process participation in this vested rights dispute process.** Recall in this muti-party IMM dispute that this is **not just about how Rise uses its property** to harm such surface owners, impacted others, or the general public.

More importantly for this IMM dispute, **objecting surface owners above and around the 2858-acre underground mine have their own competing constitutional, legal, and property rights (including as to their groundwater and existing and future wells) that Rise would "dewater" and (after purported treatment by the new component plant without any hope of vested rights) would flush away down the Wolf Creek. In deciding what is "arbitrary" or "permissible exercise of police power" the court must consider not just the general public, but also those thousands of impacted competitors living on the surface above or around that 2585-acre underground IMM mining. The Objectors Petition For Pre-Trial Relief, Etc. explains some of those surface ownership rights both (i) to groundwater and to lateral and subjacent support (such as to avoid "subsidence" that includes depletion of groundwater and existing and future wells) in the US Supreme Court's Keystone decision, as well as (ii) the thousands of impacted neighbors' rights to assert (when ripe) inverse condemnation, nuisance, and other claims (which SMARA denies blocking as explained in Attachment B) in the California Supreme Court's *Varjabedian* decision, that the County must weigh against a speculating miner's desire for exploitive profits, as explained in objectors record EIR/DEIR objections.**

For example, Hansen added (at 551-52, emphasis added):

> **A zoning ordinance or land-use regulation which operates prospectively and denies the owner the opportunity to exploit an interest in the property that the owner believed would be available for future development, or diminishes the value of the property, is not invalid and does not bring about a compensable taking unless all beneficial use of the property is denied.** (citations)"

Here Rise's vested rights claims should also be defeated by laches, estoppel, waiver, and many other defenses objectors expect to brief in their main filings to come. What is notable when these disputes reach the courts is that **this is not just a land use dispute between a miner and the County,** but rather, as ***Calvert*** *and* ***Hardesty*** recognized, **this is a multi-party dispute where allowing vested rights to Rise would create counter constitutional, legal, and property rights in favor of those thousands of objectors living above and around the 2585-acre underground mine.** If Rise were right (but it is not), the County would suffer one way or the other, since such surface owners' competing rights should be superior to Rise's within their scope, as illustrated in *Varjabedian.*

When Rise attempts to bully the County and others about potential County "takings" liability, ignoring *Keystone* and *Varjabedian* even though briefed in prior EIR/DEIR objections, consider what even *Hansen's* summary of the general principle stated of broader relevance in this multi-party dispute:

> When the law effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a substantial investment in development costs has been made, the ordinance may be invalid as applied to that property unless compensation is paid.

Competing surface owners should have no such less rights in reverse. The protection of our growing surface community is not unreasonable, oppressive, or unwarranted, especially in our reasonable reliance on the abandonment of the IMM by 1956 (or at least by the Idaho Maryland Industries bankruptcy trustee thereafter before the auction sale to William Ghidotti), and the County cannot be liable for applying valid laws protecting our surface community against the proposed Rise mining menace beneath them. Indeed, since objecting surface owners have many political remedies, as well as our legal remedies in these disputes, objectors urge the County to be careful about being overly tolerant of Rise's bullying, because, one way or another, local voters will cause the enactment (as appropriate) more laws to protect such surface owners' and our community's competing groundwater (as well as existing and future wells), property and other rights and values, and our environment from Rise's threatened mining harms. See the Objectors Petition For Pre-Trial Relief, Etc. and the massive, incorporated record objections to the dispute EIR/DEIR.

VI. Rise Incorrectly Focused Only on *Part* of One of *Hansen's* Many sections Entitled: "III.B. Vested rights to mining, quarrying, and other extractive uses—the 'diminishing asset' doctrine;" i.e., Rise Incorrectly Narrows Hansen's Rulings To The Ones That Rise Perhaps Considers (Incorrectly) To Appear Less Problematic To Rise's Disputed Claims But That Still Fail To Support the Rise Petition.

The Rise Petition incorrectly fills in many gaps in Rise's disputed analysis of the California SURFACE mining law (See Attachment B) with inapplicable and distinguishable cases from other states and situations, as if they were somehow compatible and consistent with this proposed California UNDERGROUND mining at the Vested Mine Property or IMM (or even consistent with *SURFACE* California mining under SMARA). However, Rise cannot use such

SURFACE laws to evade permits required for such underground mining, and Rise would fail even under the surface laws themselves. See Attachment B. That result will be shown further in objectors' later briefing on the merits. However, for now it is sufficient to observe that the Rise Petition is so citing to OTHER state cases and laws (besides California) on which neither *Hansen* nor other key, applicable California cases rely for the specific claims Rise asserts about such inapplicable foreign citations (or Rise's own unsubstantiated opinions mixed [without warning] into such case law discussions.)

While *Hansen* perceived (at 553, emphasis added) that "the state has the same power to prohibit the extraction or removal of natural products from the land as it does to prohibit other uses," the court recognized an "**exception to the rule banning expansion of a [LAWFUL, as the court later qualified] nonconforming use that is specific to mining [by which the court meant 'surface mining', which was the only kind at issue or otherwise discussed in that case]."** Again, this does not address the Vested Mine Property or IMM **underground** mining, but only relates to **surface** mining under **SMARA (which contains both benefits and its own regulatory burdens for the miner, such as enforcement of an approved miner "reclamation plan" with "financial assurances" that Rise could never achieve—See Rise's SEC filing admissions**, and DEIR 6-14.) However, for the sake of argument, consider the details of what *Hansen* actually said, which Rise misinterprets in significant parts as shown. *Hansen* explains that under the "diminishing asset" doctrine "progression of the mining or quarrying activity into other areas of the property is not necessarily a prohibited **expansion or change of location** of the nonconforming use." Id. (emphasis added) **(NOTE THAT ONLY ADDRESSES LOCATION CHANGE BUT DOES NOT ADDRESS CHANGE IN "INTENSITY" OR "USE" OR ADDING "COMPONENTS" AS OCCURS WITH RISE'S NEW IMM MINING.)**

Then Hansen continued at 553 (and here focus on our emphasis added to expose the conditions Rise cannot satisfy): "When there is **objective evidence** of the **[then] owner's intent to expand** a mining operation, **and that intent existed at the time of the zoning change [here Rise says was 10/19/1954]**, the use may expand into the contemplated area." **That statement assumes, of course, that all the other *Hansen* requirements for vested rights are satisfied, including those stated above regarding the parcel-by-parcel, use-by-use, and component-by-component analysis where mining had to be continuing at that time, i.e., the reasons *Hansen* had to remand the to decide which other parcels, if any, were entitled to vested rights. In other words, because both Hansen's reasoning and its ruling were so contrary to the disputed Rise Petition's incorrect "unitary theory of vested rights," the Rise Petition must fail.**

Moreover, like that *Hansen* miner, Rise cannot satisfy its burden of proof with "objective evidence" that each of the "Vested Mine Property Parcels" (whether 10 parcels and 55 sub-parcels or otherwise, as future briefing will address) on 10/10/1954 ("the time of the zoning change") as to mining that new, separate, unexplored part of the 2585-acre underground IMM. As demonstrated above and even objectors' analysis of Rise Petition's own Exhibits (e.g., #'s 223, 224, and 226), vested rights claims failed (if not before, as we argue) certainly when the Idaho Maryland Industries' LA bankruptcy trustee took control (after that miner abandoned mining, changed its name and trademark and moved to LA to become a failing aerospace contractor) and arranged the liquidation auction at which

William Ghidotti purchased the IMM cheap. Few Rise Petition Exhibits or other things that Rise incorrectly asserts to be "evidence" are credible, true, or admissible such objective evidence, which evidentiary issues are shown to affect the results in cases like *Hansen* and *Hardesty*, where insufficient, competent evidence defeated vested rights, despite what was allowed in the administrative record. **The Rise predecessor owner witnesses on 10/10/1954 of each such underground mining area parcel or sub parcel, Idaho Maryland Mines, are not available witnesses now. The unauthenticated records are incomplete, disputed, and unreliable, and there is no required evidentiary "foundation" for any evidence of their respective such intentions that satisfies the applicable law of evidence, as described in the main objections text above. See also where Rise admits in SEC filings the problematic nature of the historical records.**

Even *Hansen* refused to rule on some vested rights issues lacking sufficient competent evidence, including as to some locations of expanded mining disputes. Indeed, Rise's own admissions, such as in its SEC 10K filings, undermine its own claims by confirming some of the objective realities about the deficient, incomplete, unreliable, and otherwise not convincing or sufficient historical records for such Rise's imagined "facts." Also, recall the related admissions about the objective facts (or **"objective manifestations" of intent**) regarding the IMM mine that should counter any such Rise alleged general intentions. Some of Rise's predecessors at and after 10/10/1954 (i) may have some insufficient or irrelevant activities like minor exploration by occasional small numbers of sample drilling that were **not** legally capable of creating vested rights for any mining "uses," especially underground mining uses, since the IMM has been closed, flooded, and inaccessible for mining uses since at least 1956, and the surface became inaccessible after predecessors (e.g., the BET Group) sold off the surface parcels above and around the 2585-acre underground mine so that no exploration was possible from there. On which parcels does Rise make its claims, since even Hansen required parcel-by-parcel, use-by-use, and component-by-component proof that Rise never even attempts? (ii) sold all removable and salvageable tools, equipment, and operating assets, but (iii) also did (and failed to do) other things contrary to any intent now to mine these new, expanded, unexplored underground areas that were never mined. Indeed, because this new IMM expansion area was not explored or mined, and because Rise admitted in its SEC filings that there are no proven gold reserves, making **this new mining (in our words for convenience) a speculators' gamble, it is unimaginable that desperate, financially stressed predecessor owners liquidating assets to survive had any objective intent to mine this particular underground expansion area, which requires massive restart efforts and costs (e.g., draining the flooded old mine, repairing, reconstructing, and building new infrastructure above and below ground and through the 72 miles of tunnels and 150 miles of "cutoffs" and "drifts" from those tunnels), is admittedly deeper and more challenging than the rest of the mine, requires 76 miles of new tunnels just to access and hunt off for any gold veins there, and requires more dewatering and other costs, difficulties, and risks than any existing underground IMM mining in 1954, 1955, or 1956.**

However, notice that the Rise Petition history is totally one-sided from disputed fragments of purported records, as the foregoing objection demonstrates from our rebuttal of Rise Petition Exhibits, such as Rise's lack of proof of continuous required conduct or intentions during the many time gaps (e.g., during the Idaho Maryland

Industries reinvention of itself after closing the flooded IMM in 1956 as an LA aerospace contractor and especially in the years during which its LA bankruptcy trustee was in control). Rise also says far less about the times between 1954 to 1956 in its Petition now than Rise said in its SEC filings and other communications since it bought the IMM in 2017, but before Rise's recent attempt to change legal theories and its "story" to accommodate its disputed, new vested rights theory. Further briefing will expose all the reasons Rise must fail, both as to the realities on these issues, but also as to the objectors' related objections above to Rise's "evidence" and in objections to come about objectors' legal theories about laches, estoppel (including judicial estoppel in the administrative context), waiver, prescriptive easements, and other defenses of competing surface owners. Notice, for example, that the vested rights theory against the government, does not empower the miner against the competing constitutional, legal, and property rights objecting surface owners above and around the 2585-acre underground mine, who have reasonably relied and invested in their surface properties (and groundwater wells) since 1956 on the abandonment of that underground mining. Where, for example, does Rise's Petition address the differences between these disputes when they are between Rise versus the County, as distinguished from between Rise and those competing surface owners?

As the Supreme Court said in *Keystone,* property rights are a **bundle of many strands, and surface owner objectors have a right to dispute against Rise with respect to every single one. As *Keystone said* quoting** (at 497) *Hodel v. Virginia Surface Mining & Reclamation Ass'n Inc*, 452 U.S, 264 (1981):

> **[W]here an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' is not a taking because the aggregate must be viewed in its entirety. (emphasis added) [The Court then followed that discussion how valid zoning laws always affect without any "taking" property uses with things like setbacks, lot size vs building size, etc.]**

For example, even if Rise were to claim vested rights to such underground mining, where is Rise's authority to deplete groundwater and existing and future wells owned by the surface owners above and around that 2585-acre underground IMM? Notice that some of the "diminishing asset" theory cases *Hansen* cited (at 556-57) with approval (although surface mining cases) are helpful for the competing rights of objecting surface owners above the underground IMM, such as *Town of Wolfeboro (Planning Board) v. Smith* (1989), 131 N.H. 449 [556 A.2d 755, 759] (clarifying this requirement for such vested rights: "and third, he [the miner] must prove that the continued operations do not, and/or will not have a substantially different and adverse impact on the neighborhood" [which adverse impacts hundreds of meritorious record objections to Rise's EIR/DEIR have already proven here].)

***Stephans & Sones v. Municipality of Anchorage* (Alaska 1984), 685 P.2d 98, 101-102 included in that test for vested rights this clarification: "The mere intention or hope on the part of the landowner [miner] to extend the use over the entire tract is insufficient; the intent must be objectively manifested by the present operations" (which was not proven, thus denying vested rights in that gravel pit case, where the mining at the alleged vesting date was**

at "a relatively small scale at the time… and even four years later extended to only two to five acres" on a 53-acre parcel zoned for 13 acres of mining).

VII. Rise Misperceives And Misapplies To What *Hansen* Called (at 568-71): "C. Discontinuance of Use" At The IMM After 10/10/1954 And Especially After the IMM Closed And Flooded In 1955 Or 1956 And Ever Since Has Remained "Dormant;" i.e., the IMM Mining *At Issue* Was Abandoned.

Rise also cannot satisfy its burden of proof to have any vested rights at all, so objectors should never have to reach the abandonment dispute. Nevertheless, the last part of *Hansen's* vested rights lesson is this (at Id.):

> Nonuse is not a nonconforming use, however, and reuse may be prohibited if a nonconforming use has been voluntarily abandoned. (Hill v. City of Manhattan Beach…6 Cal.3d 279, 286.)

We will address abandonment disputes below where *Hansen* deals with that issue in more detail. In discussing Nevada County Land Use And Development Code section 29.2(B), eliminating vested rights after 180 days of "discontinuing" nonconforming use, the *Hansen* court recognized that such requirements "further the purpose of zoning laws which seek to eliminate nonconforming uses," in effect the opposite of Rise's pro-mining policy claims. The court stated (at 568-69):

> The ultimate purpose of zoning is …to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected. [citing Dieneff] … We have recognized that, given this purpose, **courts should follow a strict policy against extension or expansion of those [nonconforming] uses.** [citing *McClurken*] …**That policy necessarily applies to attempts to continue nonconforming uses which have ceased operation** … assum[ing] that the county did not intend an arbitrary or irrational application of its provisions. (emphasis added)

First, although *Hansen* did not confront or address in its two-party, miner vs County dispute what multi-party due process is required (e.g., *Calvert* and *Hardesty*) for our thousands of objections from impacted neighbors, especially those living on the surface above or around the 2585-acre underground IMM, **even that *Hansen* majority ruling did require "proper safeguards for the interests of those affected."** (emphasis added) In this IMM case those safeguards are not to protect Rise, but, as *Calvert* and *Hardesty* demonstrate, rather instead to protect all our impacted residents who developed their surface properties above and around the IMM underground mine after it closed, flooded, and, as far as our reasonably reliant and growing community was concerned, abandoned, and "discontinued" the "dormant" IMM. It should not be necessary for all those impacted objectors to testify against the IMM vested rights, but all would contend they reasonably relied not just on (a) the objective signs of IMM abandonment

of such "dormant" mining (the other post-1956 Rise predecessor businesses are irrelevant because they were not vested in 10/10/1954), but also (b) on the growth of the community above and around the IMM with many incompatible and competing uses, such as thousands of homes, many businesses, shopping centers, churches, a regional hospital, a regional airport, and much more. **Second**, **that legal policy against extension or expansion is enhanced by that reasonable reliance of every such surface owner, who, among their own bundles of constitutional, legal, and property rights (e.g., *Keystone* and *Varjabedian*), have (when ripe) their own counterarguments, claims, and defenses against Rise, such as** for laches, estoppel (including, now that Rise has switched its legal theories from permits to vested rights, judicial estoppel and lethal admissions and inconsistencies under the law of evidence by Rise in its different documents), prescriptive easements, unclean hands, and others. **Third,** Hansen said (at 569) that while "mere cessation of use does not of itself amount to abandonment… **the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned**." (emphasis added) What *Hansen* suggests would be a tolerable cessation was reflected in its citation to *Southern Equipment Co. v. Winstead* (N.C. 1986), 342 S.E.2d 524, where a "concrete mixing facticity" ceased operating for 6 months "during a business slowdown" while "the plant, equipment, and utilities were maintained" and the plant could be reopened "within two hours." Contrast that with Rise's EIR/DEIR admissions about the years of work required just to be able to dewater the existing flooded mine (requiring new systems and a water treatment plant for which there are no vested rights, even under *Hansen*) and determining after 69 years of flooded abandonment what would be required to make even that existing mine repaired, reconstructed, and ready as a portal to begin work on the proposed new 76 miles of tunneling for mining in the expanded underground parcels. Meanwhile, while that IMM sat abandoned as a historical curiosity from 1956, the community above and around the mine grew to include all those many incompatible uses.

When *Hansen* describes "abandonment" (at 569) it qualifies its definition as "ORDINARILY depend[ing] on a concurrence of two factors: (1) An intention to abandon [as quoted above and applied here, by the 10/10/1954 owner of each IMM parcel or sub parcel at issue], and (2) an overt act, or failure to act, which carries the implication the owner does not intend to retain any interest in the right to the nonconforming use…" As to the Nevada County Section 29.2(B) statute's undefined term "discontinued," objectors are not bound by any County's mistaken "concessions" on this topic as applied in that case (which are not the same as the court's own ruling as to legislative intent). In any event, the facts there do not control the ruling here, for many reasons objectors explain. Those such issues are addressed in more detail elsewhere throughout this objection, including above (as to the evidentiary disputes) some of the rules that defeat Rise and some of the key facts, including some drawn even from Rise admissions and inconsistencies in the EIR/DEIR and SEC filings. See also the Objectors Petition For Pre-Trial Relief, Etc., and the four "Engel Objections" report on such flaws in the disputed EIR/DEIR. More law, data, and evidence will follow in the next main briefing. Objectors contend that discontinuation and abandonment occurred no later than 1956 (and certainly no later than during the Idaho Maryland Industries bankruptcy trustee's control before such trustee arranged the auction to sell the IMM to William Ghidotti in 1963). *Hansen* cannot provide Rise with vested rights. Those illustrative circumstances at the IMM (and others to come next in the main briefing) are ample to prove "discontinuance" and "abandonment" sufficient to negate any Rise

vested rights. In any case, "dormancy" of the IMM, especially for the 2585-acre closed and flooded mine by 1956 cannot be serious disputed by Rise and that should be sufficient as explained above in *Hardesty.*

Incidentally, but importantly, the *Hansen* court concluded that abandonment discussion (at 571, emphasis added) by limiting the scope of its own decision:

> **…That is not to say that future inactivity at the mine may not result in termination of that vested right or that the county might not conclude that the property is no longer being used for aggregate production and is currently in use only as a yard for storage and sales of stockpiled material.**

Objectors emphasize that court's comment because it demonstrates the point made elsewhere. Conducting such a separate non-mining business on the property (the proposed new "engineered fill" [i.e., mine waste] aggregate business) is not going to continue any vested rights, when the mining, nonconforming use ceases; i.e., what *Hardesty* calls "dormancy." Among the *Hardesty* court's earlier evidentiary findings [at 799] was that, for example: "'There are no records presently available …to show what kind of mining business … the owner from 1921 to 1988 … conducted on the property after the war.' **The trial court found that through the 1970's, the property 'was essentially dormant.'"** However, *Hardesty* failed to prove *any* mining was occurring on or even reasonably before the date SMARA took effect [1/1/76]. SMARA was designed to allow existing, operating surface mines to continue operating after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to truly dormant mines.** *Hardesty* at 810.

VIII. Because the *Hansen Majority Rulings Are Distinguishable From Our IMM Dispute And Because Hansen* Dissents Present Authorities And Arguments That Have Influenced Other Cases More Applicable to This One, We Address Some Selected Illustrations of Arguments by the *Hansen* Dissenters, Urging Rejection of the Surface Miner's Vested Rights (As Such Miner Claims Were Rejected By Each of the County, the Trial Court, And the Court of Appeal.)

The two, powerful *Hansen* dissents have influenced the judicial thinking favoring objectors on this topic in situations more similar to the IMM and have echoed helpful analyses from the lower decision-makers that could still apply under such different facts and legal contexts than those found by the *Hansen* majority in that case. Besides objectors sharing some of what the *Hansen dissenters argued, objectors also note more about what such dissents reveal about what the majority* excluded from their ruling either for the majority's remand or deferred for further litigation, thereby leaving objections' paths open for other decisions and cases that doom Rise's claims, such as *Calvert* and *Hardesty.*

A. Hansen Was Limited to SURFACE Mining, Distinguishable from the IMM Underground Mining Disputes With Rise.

To what extent, if any, does *Hansen* apply to support any vested rights claim relevant to such ***underground*** mining at issue in this IMM dispute? The main objection above and Objectors Petition For Pre-Trial Relief, Etc. each demonstrate some of the many reasons why *Hansen* and other ***surface*** mining authorities cannot support Rise Petition's vested rights claims for its **underground "**Vested Mine Property" or IMM mining, beginning with the fact that the *Hansen* majority rulings were limited to SMARA law (e.g., #2776 as a statutory interpretation, rather than constitutional issue). Moreover, the legal and factual issues in that *Hansen majority,* **surface** mining analysis are radically different in many ways from objectors' IMM disputes with Rise's proposed **underground** mining to which SMARA does not apply. See Attachment B. However, Rise does not even attempt to fashion some analogous constitutional law to extrapolate from such surface mining vested rights statutes to underground vested rights, and, because the Rise Petition stands on SMARA and its surface mining cases, Rise cannot even begin to satisfy its burden of proof. Also, that reopens the whole debate between the *Hansen* majority versus the dissenters in this new context (and those decisions against vested rights in the lower courts that the dissenters would have affirmed), in effect empowering those dissents (and lower court decisions) for this different underground context as to which the Hansen majority's analysis has limited application. Rise's efforts to impose surface mining rules (under which Rise still could never qualify for vested rights) on IMM underground mining (and against objecting surface owners above and around that 2585-acre underground mine) would compel the courts to, in effect, become unauthorized, perpetual referees and detailed rule makers for 80 years (plus any reclamation plan and financial assurances aftermaths) of 24/7/365 menaces and consequent disputes. In our separation of powers system of justice, unlike our legislature, our courts are not supposed to make such new laws, and there is no basis to empower Rise underground mining against objecting surface owners defending with their own, competing constitutional, legal, property, and political rights the health and welfare of our families, the values and uses of objectors' groundwater, existing and future wells, properties and environment, and our community way of life. All the courts can do is decide whether Rise can somehow prove some kind of more constitutional, legal, and property right that is more compelling on each disputed issue and law than the competing, contrary constitutional, legal, and property rights of us surface owners above and around the 2585-acre underground mine to resist any of Rise's threatened operations or uses that would adversely impact them or their property. Such competition would also extend to the rest of the impacted community and to the County and other applicable governments and regulators.

In particular, **surface mining impacts adjacent neighbors by what the miner does on its own property, while this disputed, expanded, underground Rise mining would impact *directly on the objectors' own property* above and around that underground mining with personal competing constitutional, legal, and property rights (e.g., rights to "lateral and subjacent support," for example, to prevent "subsidence" [expressly including groundwater and well depletion] as described by the US Supreme Court in *Keystone*. See *Varjabedian*. Rise has admitted in its SEC filings that its deed restrictions (some illustrated in the Rise Petition Exhibits addressed above) define our "surface" to extend down generally at least 200 feet, plus even deeper as to groundwater and other matters besides the relevant mining minerals. [The above main objection, and in greater detail in Objectors Petition For Pre-Trial Relief, Etc., also demonstrate that, as *Gray v. County of Madera* already proved, Rise's disputed EIR/DEIR**

groundwater mitigation plan is insufficient to protect competing existing and future wells of objectors. See also the record objections against the EIR/DEIR, such as those by the CEA, the Rudder Group, the Wells Coalition, the Engel Objections, and others.]

Until Rise's claims are defeated, such test-case conflicts must be continuous, since the vested rights disputes will test not only such impacts of ***existing*** laws on the actual Rise underground mining and related threats, but also effects of the **new** laws that right-thinking elected officials and citizen initiatives will create during that 80 years (plus any reclamation or financial assurances period) to protect resident local voters from such Rise mining menaces**. See, e.g., the correct (at least for this distinguished situation), dissenting opinion in *Hansen,* which correctly observes at Kennard FN 15 that:**

> **The lead opinion asserts that: 'the SMARA application form is not designed for, and alone is not an adequate basis upon which to decide, the question of impermissible intensification.' … The lead opinion suggests that Nevada County wait until it determines that plaintiff's mining activities have exceeded the scope of its nonconforming use, after which it can seek injunctive relief (Id. at pp. 574-575.) … The lead opinion's suggestion is not a good one, either from the plaintiff's perspective or the county's….Similarly, the county's interests will be better served if it can halt illegal activities on plaintiff's land before those activities have begun. (emphasis added)**

Indeed, whatever the County may do, this must be a due process for objectors', multi-party, *Calvert* dispute involving Rise, the County, and objectors as equal parties. Objectors do not know any impacted surface owners who will suffer waiting at all either to challenge Rise or to delay law reform efforts to mitigate harms better than Rise's disputed mitigation proposals that are not only deficient for impacts Rise recognizes, but also for those Rise offers no mitigations for the many harms Rise incorrectly refuses to recognize or misjudges, as demonstrated in the record objections to the EIR/DEIR and other objections to come. Also, it is unclear what Rise's vested rights mining plans and corresponding reclamation plans are now since the disputed Rise Petition incorrectly claims (at 58) that it can mine (and apparently deplete our surface-owned groundwater and wells) as it wishes "without limitation or restriction." That is critical because there is no way Rise has the resources or economic capacity to provide satisfactory required "financial assurances" for any tolerable reclamation plan, as Rise's SEC filings show from its deficient financial resources.)

B. Increased "Intensity" That Defeats Vested Rights Is Obvious And Disputed Here Although the *Hansen* Majority Dodged the Issue.

To what extent has the proposed mining proposed by Rise "intensified" in disqualifying ways since the IMM was last actively mined before it was closed and flooded? **See Kennard Dissent FN 2 correctly stating:**

> **The plurality opinion leaves open the question of whether intensification of Hansen Brothers' nonconforming use will eventually violate the zoning ordinance. The Superior Court's findings already establish, however, that it will. In any event, the practical problem with the plurality opinion's holding is that, by the time the evidence of intensification becomes apparent and a remedy is sought and obtained, serious damage may well already have been inflicted."**

That SMARA "intensity" of Rise's nonconforming use issue that *Hansen* ducked may be itself intensively litigated by objectors (when ripe) whatever the County may do, especially since it is objecting surface owner property rights, including groundwater and existing and future well water, that Rise would be depleting. Recall that, as addressed in the main objection above, the Objectors Petition For Pre-Trial Relief, Etc., and the record objections to the EIR/DEIR, not only has the surface land residential and non-mining commercial uses above the 2585-acre underground IMM mine massively developed since the mine closed and flooded in 1956, but the mining techniques, science, environmental and other laws have also radically evolved and changed during that period before 10/10/1954 when Rise starts its vested rights claim. That especially impacts the required **Rise reclamation plan and matching "financial assurances" (unachievable by Rise as proven by its SEC filing admissions)**, which must match whatever it is that Rise is permitted to do, if anything, at the end of every dispute process and application of opposition remedies. The obvious reality is that such Rise mining is fundamentally incompatible with our community's residential surface way of life and objectors' constitutional, legal, and property rights.

At a minimum, prohibited "intensity" of such expanded underground mining must exist (even alone) by Rise planning to double the size of that underground mining (e.g., adding 76 miles of new tunnels to the existing 72 miles of flooded tunnels), adding a water treatment facility and massive dewatering equipment and improvements for dewatering 24/7/365 for 80 years, and much more. That must likewise at least equally "intensify" the corresponding reclamation plan and more than double the required "financial assurances" that are already grossly insufficient (and illusory according to the Rise SEC filings), even without considering all the substantial changes between the applicable dates for comparison and all the financial updates likewise required to address those changes and other matters relevant to assuring completion of the final, required reclamation plan. See Attachment B, addressing reclamation plans and financial assurances under the SMARA model assumed to apply in *Hansen* and other cases cited by the Rise Petition.

Note that, **unlike the majority who incorrectly dodged the reclamation issue entirely in *Hansen [see Kennard Dissent FN 9]*, the dissenter correctly demonstrated that THE "PLAINTIFF'S RECLAMATION PLAN REPRESENTED A SUBSTANTIAL INTENSIFICATION OF PLAINTIFF'S MINING OPERATION, AND THUS NECESSITATED A CONDITIONAL USE PERMIT." KENNARD DISSENT FN11. ALSO, WHILE THE EIR/DEIR AND STAFF INCORRECTLY TREAT THE CENTENNIAL DUMP AS A SEPARATE PROJECT FOR CEQA, AS DEMONSTRATED IN EIR/DEIR OBJECTIONS, NOW THE RISE PETITON CLAIMS (WITHOUT ANY SUFFICIENT PROOF) THAT CENTENNIAL IS AN IMPORTANT PART OF RISE'S WHOLE, DISPUTED, VESTED RIGHTS THEORY. THOSE CENTENNIAL SITE "INTENSITY" AND "SUBSTANTIAL CHANGE" ISSUES WILL HAVE A**

MASSIVE IMPACT IN DEFEATING RISE'S VESTED RIGHTS CLAIMS TO THAT PART OF (AND ALL OF) THE MASSIVE INCREASES IN THE RECLAMATION PLAN AND FINANCIAL ASSURANCES RISKS, BURDENS, COSTS, AND IMPACTS. ALSO, THAT DUMPING OF TOXIC MINE WASTE THERE FROM THE NEW RISE MINING WOULD REQUIRE INTENSE MAINTENANCE FOR LETHAL SAFETY CONCERNS, SUCH AS NEEDING FREQUENT DAILY WATERING TO SUPPRESS THE DEADLY FUGITIVE DUST WITH ASBESTOS AND OTHER HEALTH HAZARDS AT RISK, even during droughts when wasting precious water to suppress that community health hazard for the benefit of the Canadian miner's shareholders' gambles for profits is not the best use of local water in such times of scarcity. See record objections to the disputed EIR/DEIR.

C. *Hansen* Incorrectly Dodged the Reclamation Plan And Financial Assurances Issues, That Must Defeat Rise in This IMM Dispute.

Since Rise cannot mine without an approved reclamation plan that matches whatever it is permitted to do, if anything, and since Rise must have "financial assurances" for any such reclamation plan [that Rise's SEC filings admit Rise is not capable of providing], especially considering all the relevant issues raised by impacted surface owners, neighbors, and others, how can Rise possibly prevail, even under *Hansen*? While the County can do whatever it decides to do, objectors may insist on litigating fully the reclamation and financial assurances issues that should doom any hope of Rise having any vested rights mining, unless Rise attempts another switch in legal theories and Rise Petition's claim use vested rights to mine as it wishes "without limitation or restriction" means without any reclamation plan or financial assurances at all; i.e., if Rise attempts to claim that those SMARA requirements do not apply to vested rights for underground mining (as to which the Mining Board has no regulatory jurisdiction). However, when Rise tries to claim the benefits of such vested rights without the burden, that is just another reason to deny Rise any vested rights in the first place.

D. *Hansen Incorrectly* Dodged Some "Diminishing Asset Doctrine" Issues Applied To Such Mines And Asserted That Not To Be An Issue In *Hansen.*

Is the Kennard dissent in *Hansen* correct that the diminishing asset doctrine (emphasis added):

> **(A) does not restrict the power of a governmental entity to limit, as was done here, the *intensity* of the operator's mining activities, if not also to expansions of the area to be mined? [yes], and (B) that must be considered as an issue in such cases at least to evaluate whether the plaintiff's riverbed mine and its quarry may be viewed separately to determine whether plaintiff proposes an intensification of its use of the property? [Yes.]**

Note here that issue must be addressed for many "intensified" uses, such as not only doubling the size of the underground mine into new, unexplored, and deeper expanded parcels that have never been mined, but also to address the many additional planning and improvement issues raised by Rise in its disputed DEIR/EIR, such as, for example, building an unprecedented water

treatment plant and new dewatering system equipment and improvements to operate 24/7/365 for 80 years plus reclamation thereafter. The merits of that debate about that diminishing asset doctrine are addressed elsewhere in the Petition and in the briefing to follow once we have had time to fully study the new Rise Petition filing. But again, Rise never cites any controlling authority for how the diminishing asset doctrine for s**urface** mining could be applied to this **underground** mining.

Also, as clarified in Justice Werdegar's concurrence in *Hansen,* the case was remanded in part to resolve uncertainties in the record about past rock quarry mining in the hills, at least some of which would not qualify for vested rights under that diminishing asset doctrine if there was no objectively proven continuous intent to mine in some of that hill area at the time of the new law became effective.

E. *Hansen*'s Analysis of the Nature of Cessations in Mining Operations Must Be Analyzed Relevant Date-By-Date, Parcel-By-Parcel, And Predecessor-By-Predecessor (As Even *Hansen* Did), Not Just As to Applying SMARA There And Underground Mining Here, But Also As To the Impact of All Applicable Laws From Time To Time That Objectors May Seek To Enforce, Whether Or Not the County Elects To Do So.

What are all the applicable laws that impact Rise's mining operation as each relevant date, not just the inapplicable SMARA? What is the impact of each cessation or change in mining operations by Rise from any period when Rise claims vested rights? See the county ordinances and other laws, such as the impact of Section 29.2B at issue in *Hansen* as to the discontinuation of nonconforming uses for a period of 180 days or more compared to the 69-year-long gap in the types of mining activity required for vested rights at issue in the IMM case. **Without a permit or statutory immunity, Rise can held accountable for noncompliance with every applicable law that existed before the start of its vested rights, which will be a bigger deal that Rise seems to imagine, because, even if Rise somehow established some vested right to evade some particular law, the scientific facts may have changed since 1954 to make some pre-10/10/1954 law applicable because of changes in scientific knowledge. For example, if someone evaded an old building code by claiming vested rights at a time before the law established the danger of toxins like asbestos etc., such vested rights would not allow use of such toxins now (to quote Rise Petition at 58 again) "without limitation or restriction." No one ever has a vested right to use what law and science decide is too dangerous to use, such as the hexavalent chromium Rise plans to pipe into the underground mine as cement paste to make shoring columns out of mine waste. See record EIR/DEIR objections, such as the Engel Objections on that issue. As Justice Mosk explained in his dissent (at 577-81) objectors assert should still apply to IMM underground mining as if it were the *Hansen* decision, that vested rights dispute also depends on. and is subject to, (at 579) "a condition that the lawful nonconforming use of land existing at time of adoption of the ordinance and not some other and different kind of nonconforming use which the owner of the land might subsequently find to be profitable or advantageous…. *County of Orange v. Goldring* (1953), 121 Cal.App.2d 442…" Moreover, the use must be continuous: if abandoned, it may not be resumed. …Nonuse is not a nonconforming use…" citing *Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279.**

F. *Hansen* Correctly Excludes From Vested Rights the Portions of Property Acquired By the Miner After 10/10/1954, As Even The Majority Acknowledged In Requiring Further Evidence For Some Parcels, Thereby Confirming the Necessity of a Parcel-by-Parcel Analysis.

Kennard Dissent FN 2 stated: "Without a conditional use permit plaintiff may mine these portions of the property only if they were being mined in 1954, when the county prohibited mining." See Hansen at 560-564 (emphasis added.) For comparison, Rise must disclose the timing of every acquisition of each parcel at issue, not just including those at the Brunswick and Centennial sites, but also those in the 2585-acre underground mine.

G. Unlike the Hansen Majority's Controversial Combination of the River Gravel Business With the Rock Quarry Mining Business, There Is No Basis For Considering the Centennial Business (Although That Long Closed Potential Super-Fund Toxic Site Cannot Be Considered A Relevant "Business") As Such An Integrated Part of the Brunswick Mine Operation For Vested Rights Purposes, Because That Test Looks Back In Time, While the CEQA Test Looks Forward.

How, if at all, does Centennial play into the disputed Rise Petition's vested rights claim for Brunswick site/2585-acre underground mining, both as to Rise's need to prove the same location, no changes, and no more intensity? See the prior discussions. **Also, unlike that controversy, where the two Hansen businesses were part of a unitary operation, Rise cannot prove that unitary operation for the Centennial mining operation (and in the EIR/DEIR Rise claimed the opposite, insisting that Centennial was entirely separate), and Rise should not dare to do so for the additional pollution and toxic remediation/clean-up liabilities that association with Centennial would impose on Rise and even on the Brunswick operation, if deemed unitary. As a result, the Centennial activities contemplated by Rise are not protected by any vested rights claim by Rise as to or for the Brunswick operation, resulting in permitting and other requirements for the contemplated mine waste dumping. Without the ability to dump new mine waste on Centennial, Rise has expanded and intensified mining operations by its dumping of such toxic waste on the Brunswick site, which (as objections to the EIR/DEIR proved), will be much greater than Rise admits because its fantasy plan to sell that notorious mine waste to the market as "rebranded" "engineered fill" is doomed from the start.)**

H. Unlike the Hansen Majority's Controversial Interpretation of SMARA and Nevada County "Section 29.2" Mining Ordinance For SURFACE Mining, Courts Could Still Follow The Hansen Dissents In Such Interpretations For UNDERGROUND Mining, Although Objectors Will Prevail Under Any Possible Interpretation Or Even Surface Mining Rules.

What is the correct interpretation standard for vested rights when the "expanded use" of land will no longer be tolerated because it exceeds the applicable limit on such expansions? (As Justice Mosk said in his Dissent correctly citing the applicable CA Supreme Court precedents

misapplied or ignored by the majority in their ***SURFACE*** mining ruling (and unresolved as to this underground mining):

> Because a nonconforming use "endangers the benefits to be derived from a comprehensive zoning plan" (City of Los Angeles v. Gage (1954), 127 Cal.App.2d 442 …), the law aims to eventually eliminate it (City of Los Angeles v. Wolf (1971), 6 Cal.3d 326 …). However, **to avoid constitutional problems an existing nonconforming use will be tolerated as long as it does not expand to a significant extent.** (Edmonds v. County of Los Angeles (1953), 40 Cal.2d 642 …; Sabek, Inc. v. County of Sonoma (1987), 190 Cal.App.3d 163, 166-167 …). **"The underlying spirit of a comprehensive zoning plan necessarily implies the restriction, rather than the extension, of a nonconforming use of land, and therefore … a condition that the lawful nonconforming use of land existing at the time of the adoption of the ordinance may continue must be held to contemplate only a continuation of substantially the same use which existed at the time of the adoption of the ordinance and not some other and different kind of nonconforming use which the owner of the land might subsequently find to be profitable or advantageous …"** (County of Orange v. Goldring (1953), 121 Cal. App.2d 442…). **Moreover, the use must be continuous: if abandoned, it may not be resumed." "A nonconforming use is a lawful use existing on the effective date of the zoning restriction and continuing since that time in nonconformance to the ordinance."… [citation] Nonuse is not a nonconforming use.** This rule is consistent with the further rule that reuse may be prohibited when a nonconforming use is voluntarily abandoned. (Hill v. city of Manhattan Beach (1971), 6 Cal.3d 270, 285-286… (emphasis added)

Subsequent cases have followed that reasoning, which the majority here did not overrule or dispute, but rather just misapplied by ignoring key evidence against the miner and failing to defer sufficiently to every lower decisionmaker as that surface mining.

The key guidance from the courts generally can be stated plainly as this: nonconforming uses can only be tolerated to the extent necessary to avoid a "taking" contrary to the state or federal constitution. However, since that constitutional dividing line is often less clear, what the courts have done is attempt to provide more readable standards, but only for surface mining where they could apply SMARA. Objectors phrase the issue this way against Rise because this is a multiparty dispute that involves COMPETING TAKING VERSUS INVERSE CONDEMNATION CLAIMS about Rise's UNDERGROUND MINING versus surface owners' PROPERTY RIGHTS, VALUES, AND GROUNDWATER/WELL WATER under applicable laws. As explained in the Objectors Petition, surface owners above and around the 2585-acre mine have their own competing constitutional, legal, and property rights at stake, especially as to their groundwater and existing and future wells that Rise would deplete by dewatering, purport to sanitize in an unprecedented water treatment plant with no vested rights, and then flush away down the

Wolf Creek 24/7/365 for 80 years, which indisputably is a more "intensive" misuse without precedent.

Indeed, the only attempted groundwater depletion standard comparable in modern times involved much less intensity and wrongdoing, which was nevertheless defeated in a decision rejecting proposed mitigation measures in ***Gray v. County of Madera*** (comparable but superior to Rise's EIR/DEIR plan that has been rebutted in record objections thereto and in the Objectors Petition For Pre-Trial Relief, Etc.) Ultimately, the County could be required to choose whether it wishes, as the courts require, either (a) to pay inverse condemnation claims to thousands of its citizen voters for the profit, if any, of speculator shareholders of this (substantively) Canadian mining company (operating strategically as a Nevada corporation from a Canadian base), or (b) to deny Rise's claim, so the County and objectors can prevail in the court proceedings that will continue until either Rise gives up or the courts finally end this menace to our community.

I. *Hansen* Is Also Distinguishable From This Rise Case Because Rise's Expansion Into Unmined Parcels Includes New And Material "aspects of the operation that were [NOT] integral parts of the business at that time [when the applicable ordinance was enacted]."

What were the "components" of the mining operation/business at the applicable time in 1954? In *Hansen*, they were found by the Supreme Court majority mining gravel in the riverbed and banks, quarrying rock from the hillside, crushing, combining, and storing the mined materials, and selling or trucking the aggregate from the mine property. In this case, since 10/10/1954 (or whatever the time chosen) for each law at issue for Rise's vested rights claims, Rise is clearly adding unprecedented, new features to its mining operations, such as, for example, (a) constructing a massive dewatering system with a "water treatment plant" to "dewater" groundwater owned by objecting and competing surface owners, purportedly treating that water (ignoring until the courts stop Rise, adding the toxic hexavalent chromium cement paste into the mine for shoring up mine waste in place, a technique not used in 1954), and then flushing that groundwater away down the Wolf Creek, (b) selling "engineered fill" that is really "rebranded" mine waste on some market in which Rise and many of its predecessors did not previously participate (i.e., that was not a continuous use and North Star bought itself outside that chain), (c) dumping toxic mine waste on (what even Rise has consistently claimed, until this new vested rights switch in legal theory 9/1/23, has been) the toxic, **separate Centennial property** already the subject of governmental toxic clean-up orders, requiring frequent daily watering (even during droughts) to prevent (we hope) toxic fugitive dust (e.g., asbestos and now perhaps hexavalent chromium) from harming the neighbors, (d) (presumably) creating massive new remediation and reclamation obligations never before done at the IMM, as well as others now done more intensively, and (e) all the while, without Rise admitting in its SEC filings that it has insufficient financial resources to pay to accomplish anything material that Rise proposes or will be required by law or the courts to do now or in the future, especially as objectors may press for stronger law reforms and initiatives to protect their families, their groundwater, wells, and environment, their property rights and values, and their community

way of life, in effect testing the boundaries of what is or is not a “taking” either or both from Rise or from objecting surface owners with potential inverse condemnation claims.

Attachment B: SOME ADDITIONAL REASONS WHY SMARA AND SURFACE MINING CASES CANNOT BE USEFUL TO RISE BY ANALOGY OR AS GUIDANCE FOR SOME RISE IMAGINED "COMMON LAW," VESTED RIGHTS THEORIES (IF ANY), Especially As the Rise Petition (at 58) Incorrectly Seeks SMARA Benefits Without Its Burdens, Insisting on The Right To Mine Above And Below Ground "Without Limitation Or Restriction."

1. **SMARA Is Limited To "Surface Mining" With Its Required Reclamation Plans And Financial Assurances. Even Purported Rise "Analogies" Or Rebranding As "Common Law" Must Fail, Especially As To Rise's UNDERGROUND IMM, Especially As to Such Disputed "Vested Mines Property" Parcels That Were Closed, Flooded, "Dormant," "Discontinued," And "Abandoned" by 1956, And That Could Not Satisfy The SMARA Conditions For Vested Rights Even If They Were Treated Like "Surface Mines." However, Objectors' Use of Surface Cases For Rebuttals Is Appropriate.**

    a. **An Overview of Some Authorities And Reasons Why Rise's Vested Rights Claims For UNDERGROUND Mining Are Doomed At the "Dormant," "Discontinued," And "Abandoned" IMM. See Also the Companion Table of Cases And Legal Commentary And Attachment A Thereto.**

This exhibit explains, consistent with the more extensive, companion "Objectors Petition For Pre-Trial Relief, Etc." incorporated herein, both (i) how even surface mining precedents defeat Rise Petition's vested rights, and (ii) especially how SMARA's text and related data should prevent Rise from misusing such inapplicable surface mining law to advance its disputed vested rights theories for this UNDERGROUND MINING. See Attachment A, demonstrating how even Rise's favorite *Hansen* case actually helps defeat the Rise Petition's disputed claims (e.g., at 58) that Rise can have benefits of SMARA vested rights without any SMARA burdens, instead allegedly allowing Rise to mine above and below ground anywhere on any "Vested Mine Property" as Rise wishes "without limitation or restriction." (The capitalized terms used herein, or in quotation marks, have the same meaning as defined in the foregoing main objection document and incorporated herein.) **There is no path to that illusory Rise goal, whether directly or indirectly or whether as purported "analogies" or imagined revisions to invent incorrect "common law" for expansion to the UNDERGROUND IMM mining at issue.** See Attachment A, for example, explaining why Rise's favorite *Hansen* case is distinguishable and cannot accomplish any of Rise's disputed goals. **Thus, Rise's vested rights claims for the 2585-acre underground IMM must fail as a matter of law, because the Surface Mining And Reclamation Act ("SMARA"), Public Resources Code # 2710 et seq., only applies to "surface mining." For example, by their own terms *Calvert*, *Hansen*, *Hardesty*, and other cases that Rise must confront are contrary to Rise's disputed vested rights claims and also only apply to "surface mining" under SMARA,** including what SMARA **#'s 2736 and 2729**, respectively, define as **"surface mining operations"** on "**mined lands." See the more detailed discussion of that reality below.**

However, the County should consider (as the courts in the following process will do) both what would be required of Rise if SMARA were directly or indirectly applied to the Rise Petition and how SMARA does not "fit" or "integrate" with underground mining either as Rise

claims or as the statute speaks, especially as to the mining and related operations and components described in the disputed EIR/DEIR and in objectors' record objections thereto that are incorporated herein to avoid repetition. For example, (emphasis added throughout) even **"nonconforming uses" based on vested rights must still be "legal**." Surface mining with vested rights must comply with the text and regulations in and for SMARA and many other applicable laws. Even without addressing the scope of *Calvert* due process rights (see Attachment A and the companion Objectors Petition For Pre-Trial Relief, Etc.), **SMARA expressly also allows neighboring objectors and governments to sue the miner for nuisances and many other wrongs; i.e., escaping a use permit requirement doesn't free the SMARA miner to do as it wishes, especially as the Rise Petition claims are "without limitation or restriction."** E.g., **SMARA #'s 2714 (*excluding* many things from its scope, including some "operations" planned or reserved by Rise for its proposed and disputed mining), 2715 (*disclaiming* from any SMARA impact a long list of "limitations" on mining by the paramount powers of local government and people, such as**, for example, "(a) …the police power … to declare, prohibit, and abate nuisances …(b) … to enjoin any pollution or nuisance. (c) On the power of any state agency …[to enforce the laws it administers]. (d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance …or any other private relief. (e) On the power of any lead agency to adopt policies, standards, or regulations … if the requirements do not prevent the person from complying …[with SMARA]. (f) On the power of any city or county to regulate the use of buildings, structures, and land …" See also SMARA #2713, disclaiming any intent "to take private property for public use without payment of just compensation in violation of the California and United States Constitutions," which statute Rise mistakenly contends is just for the miner, when it is also for the projection of impacted public, especially surface owners above and around the 2585-acre underground mine objecting to the Rise Petition, the EIR/DEIR, and Rise's IMM activities not just as members of the impacted public but as victims with their own competing, constitutional, legal, and property rights, especially as to the groundwater and existing and future well water owned by such surface owners that Rise would dewater and delete 24/7/365 for 80 years. See, e.g., *Keystone* and *Varjabedian*.

Clearly, SMARA # 2736, defining "surface mining operations," generally ignores any references to any **underground** mining applications, uses, operations, and components, except as a way of including "**surface work incident to an underground mine" (**emphasis added). However, here on the so-called "Vested Mine Property" IMM, the only possible "surface work" is on the small parcels wholly owned by Rise (i.e., the Brunswick site and, incredibly, the Centennial site, as an obscure but radical switch from the disputed EIR/DEIR, insisting that Centennial was entirely separate from that IMM "project"). Objectors and others own the entire surface above and around the relevant 2585-acre underground mine at issue here, preventing any access from there and defeating the Rise Petition by the cases discussed throughout this objection, like *Hardesty, Calvert,* and even *Hansen,* that require a parcel-by-parcel, use-by-use, and component-by component limit on any vested rights. **As to the SMARA #2776 statute on which the Rise Petition relies, if one replaces the word "surface" with the word "underground," it become clear that there can be no Rise Petition rights for the 2585-acre underground mine beneath surface owner objectors, whether in the "Flooded Mine" parcels (where there was mining until no later than 1956 when it all flooded), or in the balance of the "Never Mined Parcels." There has been no such #2776 "good faith" reliance by Rise and its**

chain of predecessors on each parcel on any "permit or other authorization," no "surface [now read "underground" or other relevant] *mining* operations" have "commenced" (miner "exploration" of other areas besides the new expansion areas [or even parts of that expansion area] for underground mining, does not create such vested rights to mine as Rise claims). Also, no "substantial liabilities for work and materials necessary" have been incurred for that *"commencement" of any underground "mining" "operations"* IN EACH APPLICABLE PARCEL of that underground mine all beneath or around the surface owned by objectors and others, especially the most inaccessible Never Mined Parcels.

On the other hand, while SMARA does **not** give Rise any rights as to underground mining, SMARA at #2733 defines "reclamation" (and therefore, "financial assurances" in #2736 to "including adverse surface effects incidental to underground mines … [and] The process may extend to affected lands surrounding mined lands…" Such statutes (and other SMARA terms and conditions) are sufficient to create obligations by Rise (and standing and rights for) surface owners above and around the 2585-acre mine as well as impacted others. However, nothing in SMARA creates any reciprocal objections by objectors to Rise. See the "State Policy for the Reclamation of Mined Lands," SMARA #'s 2755-2764; "Reclamation Plans And the Conduct of Surface Mining Operations," SMARA #'s 2770-2779, including successor liability in #2779, making all reclamation related plans, reports, and documentation "public records" under #2778.

For example, what Rise contemplates in its disputed EIR/DEIR and otherwise is UNDERGROUND MINING that cannot possibly qualify (even by miner analogy) as such SMARA or such *Hansen* or other "surface" "mining" for such vesting rights claims. As Rise has admitted in its EIR/DEIR mining plan, in its SEC filings (Exhibit A), and in other County applications, the only gold Rise is attempting to recover is disconnected from Rise's surface property and underground in new, unmined, unexplored, expanded areas. That truth is especially incontestable since objectors and others own the surface parcels above and around that 2585-acre underground mine inaccessible from that surface. Exhibit A SEC 10k admits that Rise's 2017 acquisition deed restrictions prohibit even entry on that at least 200 foot deep "surface" without the owners' consent (which Rise does not claim it has.) For example, that SEC 10K describes the Rise purchase of everything from the BET Group Estate (at p.29) by quitclaim deed on 1/25/2017 (with the "Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) **"subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" Note that Rise (at 10K p. 28) not only separates surface from subsurface mining, but separates "mineral exploration" from both such types of mining, consistent with the M1 district zoning.**

As the *Hardesty* mining case ruled in defeating such disputed vested rights claims:

> [T]he italicized portion of the statute [SMARA #2776] speaks of vested rights to ***surface*** mining, **not *any* mining**. "Surface mining involves stripping off the top of an area to reach the minerals, in contrast to boring down through tunnels or shafts to extract them." ([People v.] *Rinehart*, supra, 1 Cal. 5th [652] at p. 671, fn. 10 …) (emphasis added)
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To the extent Hardesty contends he has a vested right to surface mine under section 2776, he simply **failed to carry his burden to prove any substantial *surface* mining on the property** had been conducted by that date. As the trial court found, substantial evidence shows that **prior mining had been hydraulic, tunnel, and drift mining, not surface mining,** which began in the 1990's, and **which represented a SUBSTANTIAL CHANGE,** contrary to former section 2778's requirement that no substantial changes may be made in any such operation except" according to SMARA's terms…. (emphasis added)

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… Hardesty failed to prove any mining was occurring on or even reasonably before the date SMARA took effect. **SMARA was designed to allow existing, operating surface mines to continue operating** after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to dormant mines.**

Hansen *Brother Enterprises, Inc. v. Board of Supervisors* (1996), 12 Cal. 4th 533…*(Hansen Brothers*)—**consistent with a long line of zoning cases—holds that A USE MUST BE PRESENT AT THE TIME A NEW LAW TAKES EFFECT, TO BE CONSIDERED A NONCONFORMING USE…**. Communities for a Better Environment … (2010), 48 Cal.4th 310, 323 fn.8 …["the traditional protections for nonconforming uses established *at the time* zoning restrictions become effective"]…; *McCoslin v. City of Monterey Park* (1958), 163 Cal. App.2d 339, 346…["A nonconforming use is **a lawful use existing *on the effective date* of the zoning restriction and continuing since that time** in nonconformance to the ordinance."] … ***NEITHER A DORMANT NOR AN ABANDONED USE IS A NONCONFORMING USE.* (*HANSEN BROTHERS,* AT PL 552*…["NONUSE IS NOT A NONCONFORMING USE."])* **As stated by our Supreme Court, "The ultimate purpose of zoning is … to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected." We have recognized that, given this purpose, courts should FOLLOW A STRICT POLICY AGAINST EXPANSION OF THOSE USES…**

That policy necessarily applies to attempts to continue nonconforming uses which have ceased operation." *(Hansen Brothers*, at 568 …) (emphasis added)

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Further, **the record shows a proposed significant change in use since pre-1976 [SMARA's effective date] times. THE CONTINUANCE OF A NONCONFORMING USE "IS A CONTINUANCE OF THE SAME USE AND NOT SOME OTHER KIND OF USE." …[citing McClurkin, Edmonds, and Goldring, where, FOR EXAMPLE, EDMONDS V. COUNTY OF LA (1953), 40 CAL. 2D 642 HELD "ENLARGEMENT OF PLAINTIFF'S TRAILER COURT TO ACCOMMODATE 30 MORE TRAILERS IS CLEARLY A DIFFERENT USE."] SURFACE MINING IS A CHANGED USE ON HARDESTY'S PROPERTY, WHEN CONTRASTED WITH THE PRE-SMARA USE [FOR UNDERGROUND ETC. MINING NOTED ABOVE]. Nor can**

> **Hardesty persuasively rely on post-1976 unpermitted surface mining –twice halted by the government— to show that surface mining was extant before 1976.** (emphasis added)

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799-812 ("**Hardesty**"). In that case ignored by Rise, the miner lost at the Board, trial court, and on appeal in its mandamus action claiming SMARA vested rights as to an ancient, "19th century" federal mining patented gold mine that ceased operation during World War II and was "essential dormant" "through the 1970's" with "virtually no evidence that those mining activities 'continued' to exist at the time SMARA was enacted [effective January 1, 1976], apart from "sporadic," "unpermitted surface (open pit) aggregate and gold mining in the 1990's."

Nevertheless, the miner claimed "vested rights to mine the property for gold, sand and gravel (as well as diamonds and platinum)" after he bought the property in 2006. The trial and appellate courts rejected that miner's vested rights claim, agreeing with the Board that "any right to mine had been abandoned," as discussed in the evidence analysis discussed in the main objection and at the end of Attachment A.) More importantly, ***Hardesty*** **forbids ignoring the kind of change Rise tries to ignore between different types of mining in incorrectly claiming vested rights. As that court stated:**

> **The trial court found that in the 1990's unpermitted surface (open pit) aggregate and gold mining began different in nature from the 'hydraulic, drift, and tunnel' [i.e., underground] mining that historically had been conducted on the land.** The RFD alleged the new proposed open-pit mining was safer and better for the environment. *** As an alternative to the finding of no vested right based on the lack of mining [in the right way and at the required time] … the trial court **found that any right to mine had been abandoned**." (emphasis added)
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> **While that statutory reality should be obvious on its face, what follows below demonstrates some of the many ways in which SMARA cannot even be applicable by analogy by miners, but nevertheless can be used by objectors. Why?**

FIRST, Rise has not even tried to satisfy its burden of proof for such disputed theories or offer more than SMARA and *Hansen* to support its doomed theory. Even if Rise again shifted its theory to invent some unprecedented "common law" claim, there are no such statutory links or such case authority. To the contrary, Rise has ignored contrary authority such as in *Hardesty* discussed in this objection, in the companion Objectors Petition For Pre-Trial Relief, Etc., and in objections to the disputed EIR/DEIR. Indeed, neither *Hansen* nor any other Rise surface mining cases cite any common laws, even by analogy, for such underground mining, but (like Rise) strictly limit themselves to following the SMARA statute**.**

SECOND, because miners are not granted any vested rights to mine as they wish by the constitution (i.e., there is no legal basis for Rise claiming in the Rise Petition at 58 any vested rights to operate "without limitation or restriction"), all Rise could achieve would be a limited

excuse for certain nonconforming (but lawful) uses or components on certain parcels, but even then, only under specified terms and conditions. That vested rights excuse only applies for certain such qualified, "nonconforming uses" on vested parcels as to the application of a specific kind of land use statute (e.g., use permits) that interrupts either (i) certain otherwise LAWFUL kinds of existing types of mining uses in which the miner is actively conducting permissible existing operations on a PARCEL (see the main objection discussion of *Hansen* and Attachment A counters against Rise's incorrect claim that work on one parcel creates vested rights on another), or (ii) certain "objectively" intended and permitted future mining expansions ON AN ELIGIBLE PARCEL during such qualifying continuing operations. Id. That also means, for example, that Rise's vested rights still must comply with many other laws and regulations not constituting such a land use regulation "taking" to trigger the constitutional prohibition on applying that law to such qualifying operations. In other words, the disputed Rise Petaton (at 58) incorrectly demanding the vested right to mine anywhere and any way it wishes "without limitation or restriction" seems to contend that objectors can be disabled somehow from enforcing or relying on each and every law Rise later claims to ignore or evade. Fortunately, Rise has the **burden of proof** of that, which necessarily means that it is Rise, not objectors, who must identify each such law or regulation and how such vested rights apply to each such law and regulation as it existed at the relevant time, as distinguished, for example, by compliance by laws (like CEQA and environmental laws) which objectors future briefing will demonstrate apply independent of any such vested rights. **Stated another way, Rise must be bound by every law and regulation that it does not specifically identify and prove over objections to be applicable. *Hardesty* ruled at 811 (citing *Hansen* at 12 Cal.4th at 564, and Calvert at 145 Cal. App.4th at 629): "IT WAS HARDESTY'S BURDEN TO PROVE HE WAS CONDUCTING A NONCONFORMING USE AT THE TIME THE LAW CHANGED." IT ADDED THIS CITE FROM MELTON V. CITY OF SAN PABLO (1967), 252 Cal.App.2d 794, 804: "THE BURDEN OF PROOF IS ON THE PARTY ASSERTING A RIGHT TO A NONCONFORMING USE TO ESTABLISH *THE LAWFUL* AND CONTINUING EXISTENCE OF THE USE *AT THE TIME* OF THE ENACTMENT OF ORDINANCE [IT WISHES TO EVADE.]"** (emphasis added) See also the court's discussion at Id. and 812 of *Stokes v. Board of Permit Appeals* (1997), 52 Cal.App.4th 1348, 1351, 1352-53, 1355-56, and *Walnut Properties, Inc. v. City Council* (1980), 100 Cal.App.3d 1018, 1024.

THIRD, such vested rights do not overcome, impair, or adversely affect competing property owners' legal, constitutional, and property rights that may interfere with such mining, such as those of us surface owners above and around the 2585-acre underground IMM, such as to our existing and future wells and groundwater. That competition between underground miners and surface owners is not about the vested rights of a miner displacing surface owner rights and protective laws, but rather, as between competing surface vs underground owners, as to who has the superior legal right on each disputed issue under all the facts and circumstances. However, if *Calvert* or *Hardesty* were somehow a relevant analogy for any such Rise claims of vested rights (despite being legally inapplicable surface cases), *Calvert and Hardesty* SUPPORT THE OBJECTORS, AND NOT THE MINER, in any analogous parts. See also Attachment A, analyzing ***Hansen***, which also fails to support Rise vested rights for these IMM disputes and even in some parts rules against that *Hansen* surface miner.

On the other hand, the reverse uses of surface mining cases in favor of objectors, of course, are different, because the competing objectors' oppositions aren't about qualifying like

a miner for vested rights, but rather conversely use objectors' own constitutional, legal, and property rights as defenses and to counter any miner claimed vested rights claims however those vested rights claims may be imagined. As explained in the main objection and in record and incorporated EIR/DEIR objections, for example, there can be no vested rights for Rise to "take" such objecting surface owners' owned well water and other groundwater by Rise's proposed and disputed dewatering system for disputed, purported "treatment," and to flush our water away down the Wolf Creek. On the other hand, objecting surface owners have contrary constitutional, legal, and property rights to protect their existing and future wells and groundwater. E.g., *Keystone and Varjabedian,* as well as *Gray v. County of Madera,* defeating an EIR for surface mining to deplete competing owners' wells and groundwater based on what the court rejected as mitigations similar to those disputed mitigations proposed here by Rise in its disputed EIR/DEIR.

Indeed, ***Hardesty* also clarifies key differences between vested rights as a property owner versus a vested right for mining**, stating (at 806-807) (emphasis added) **the need for vested rights claimants to continue to comply with environmental and various other laws:**

> As we will explain, we agree that the [ancient Federal mining] patents conferred on **Hardesty vested rights *as a property owner*, but that is not the same as vested rights *to mine* the property absent compliance with state environmental laws.** The Board and trial court correctly concluded that Hardesty **had to show active surface mining was occurring on the effective date of SMARA, or the very least show objective evidence that the then owner contemplated resumption of such activities.** Under the facts, viewed in the appropriate light, Hardesty did not carry his burden to show that ***any*** mining was occurring or any intent to mine existed on the relevant date [3/31/1988. **Further, the Board and trial court correctly applied the "nonconforming use" and abandonment doctrines to the facts herein.**
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> **Indeed, in a case involving a different open-pit mine also operated by Hardesty, we rejected his view that a "vested right" to mine under SMARA obviates the need to comply with state environmental laws …[citing to] *Hardesty v. Sacramento Met. Air Quality Management Dist.* (2011), 202 Cal.App.4th 404, 427…**

Such quoted authorities and others in this objection, in the companion Objectors Petition For Pre-Trial Relief, Etc., and record objections to the disputed EIR/DEIR defeat the Rise Petition in many different but cumulative ways.

b. SMARA Requires Reclamation Plans And Financial Assurances That the Rise Petition Ignores And That Rise Could Never Satisfy, And, Even If Rise Had Vested Rights for "Surface Mining" (Which Its Does Not), That Would Not Create Any

Vested Or Other Rights Claimed by Rise, Especially For Its Proposed Underground Mining In the 2585-Acre Underground Mine Beneath Objectors.

Any rebuttal to Rise's vested rights claim begins with the following ruling by *Calvert* (at 617, 624, emphasis added):

> **At the heart of SMARA is the general requirement that every surface mining operation have a permit, a reclamation plan, and financial assurances to implement the planned reclamation. (#2770, sub. (a);** People ex rel Dept of Conservation v. El Dorado County (2005), 36 Cal.4th 971, 984…(*"El Dorado").*

See SMARA #2776 and many other precedents demonstrating that vested rights have burdens as well as benefits for the miner. See also SMARA #'s 2733 (broadly defining " reclamation" in ways that, when properly applied, will make the required "financial assurances" defined in # 2736 unaffordable by Rise or its buyer) and # 2716 (allowing any interested persons [i.e., any objector here] to commence legal actions for writs of mandate to enforce counters against the miner, as was done in *Calvert and other cited cases.)* As explained in this objection and others, there is not, and cannot be, any satisfactory Rise reclamation plan for any vested rights mining, and, even if there were such a reclamation plan, objectors can prove from Rise's SEC filing admissions that Rise lacks any economic and other feasibility or credibility to perform any such assurances. *Hardesty* and other cited authorities also defeat Rise's vested rights claims for many other reasons discussed in various places herein, but (besides that similar "abandonment" reasoning applicable in both that dispute and this one) that Court of Appeal's analysis of SMARA itself is especially lethal to Rise's theories.

For example, as *Hardesty* explained (at 801, emphasis added):

> **SMARA requires that all surface mining operations have an approved reclamation plan and approved financial assurances to implement the plan. (#2770, subd. (a)). … Persons with existing surface mining operations were required to submit reclamation plan by March 31. 1988. [Id.] Absent an approved reclamation plan and proper financial assurances (with exceptions not applicable herein) surface mining is prohibited. (#2770, subd. (d)).**

The detailed disputes over Rise's "reclamation plan" and related "financial assurances" will be further addressed in other objections, especially since the County has (incorrectly) recently bi-furcated the disputes over vested rights from those over the related reclamation plan and financial assurances. However, any such reclamation plan must relate to the reality of what is to be done in the mining and related operations, which means that not only is Rise's outdated "Existing Remediation Plan" earlier on file at the County deficient and inconsistent with what is required, even regarding the disputed EIR/DEIR plans. Rise is even more wrong in every way for what will be required if this dispute descends into such a vested right "free for all," where no objector knows what will happen in the mine and what laws and regulations apply under the

disputed Rise Petition's claim (at 58) that Rise vested rights somehow empower it to do as it wishes "without limitation or restriction," including not even telling us what Rise plans to do so that objectors can insist on both (i) matching reclamation plans and financial assurances and (ii) compliance with all applicable laws and regulations.

Objectors assume that Rise will attempt incorrectly to use such disputed vested rights claims under #2776 to evade reclamation plans and financial assurances, whether directly or indirectly (or both). But again, that statute clearly is limited (emphasis added) to those who validly have "a vested right to conduct surface mining operations prior to January 1, 1976…" which Rise does not, even as to such Rise's surface mining operations, and nothing in SMARA or any case cited by the Rise Petition provides that any claimed vested right to "surface mining" could create any vested or other right to mine on the disconnected and separate parcels of that new, underground expansion area of the 2585-acre underground mine, especially since that underground IMM is beneath or around surface property owned by objectors and others. E.g., Hardesty quoted above. This objection, the companion Objectors Petition For Pre-Trial Relief, record EIR/DEIR objections, and other coming objections will defeat such attempted Rise claims and evasions.

First, SMARA does not apply to create vested rights for such **underground** mining, and whatever Rise ties to do (and almost everything Rise does without a permit) is subject to legal and political challenge and change by objectors and then also to more changes by new laws (whether by officials passing political or legal reforms, or by voters directly, such as with initiatives), as each disputed use and issue, and the application of each law or regulation, is resolved in the courts. **Second,** Rise will have to react to such changing legal and political realities in its operations (whether by right-thinking government officials enforcing or enacting laws better to protect objecting surface owners from such mining or by self-defense, resident initiatives), thereby requiring more constant changes in the reclamation plan and greater financial assurances, as proven below. See what SMARA allows in #'s 2714 and 2715. **Third,** not just such mining legal changes, but every deficient reclamation plan and financial assurances response by Rise is itself subject to challenge and revision. See, e.g., SMARA #'s 2716, allowing objectors to file actions for writs of mandate; 2717, requiring periodic reporting by the miner as to such reclamation plans and financial assurances. Also, each change in any such reclamation plan requires a new financial assurance to match it, and, considering Rise's admitted financial condition in its SEC filings, objectors cannot imagine Rise ever being able to obtain any such required financial assurance, even for its own proposed and deficient reclamation plan.

2. Any Rise Attempt To Invent Vested Rights For Such Underground Mining By Analogy, Imagined Common Law, Or Otherwise, Is Also Doomed, Legally Impossible, And Practically Infeasible, Including Because SMARA Does Not Correspond To the IMM Realities.

Moreover, no such underground mining legal analogy to SMARA (or its cited cases applying SMARA like *Hansen)* is feasible or legally appropriate, among other things, for example, because objecting surface owners above and around the 2585-acre underground mine have competing constitutional, legal, property, and groundwater rights that must defeat any such Rise claim. Whatever Rise's Brunswick site may allow on the surface (which objectors also still

dispute) is irrelevant, because this Rise Petition is mainly about the gold imagined in the Never Mined Parcels of the 2585-acre underground mine. See the EIR/DEIR and objections thereto, as well as Rise's SEC filing admissions. Apparently, Rise imagines that it can make some vested rights argument for underground mining by inventing common law, such as by analogy to SMARA surface mining. However, there is no legal authority for such a claim (see *Hardesty),* and such a vested rights process is not feasible or even yet attempted by Rise. Consider, for example, what governmental agency would even have any jurisdiction even to deal with whatever Rise wants to file or have approved in such an imagined SMARA regulation equivalent for underground mining (e.g., some SMARA equivalent reclamation plan or financial assurances proposal). Where would the agency find the budget or qualified staff to deal with such new and unauthorized underground matters, not to mention all the inevitable disputes with objectors, as here. Moreover, no such legal analogy (even rebranded as imagined common law) is appropriate (as shown elsewhere and in *Hardesty*) because objecting surface owners above and around the 2585-acre underground mine have their own, unique, competing constitutional, legal, and property rights (including as to groundwater and existing and future well rights) that must defeat any such Rise claim; e.g., trying to regulate such underground mining by some SMARA analogy inevitably will clash with such surface owners' competing rights that is never an issue in surface mining. What government agency will want to wade into such conflicts without any statutory authority and no state or local funding? What court will want to ignore the constitutional separation of powers to try to fill such a regulatory gap and spend the next 80 years refereeing the constant conflicts with surface owners and other objectors over such 24/7/365 IMM underground mining where the governing law must be crafted by issue-by-issue test case litigation?

Indeed, as some objectors already demonstrated in objections to the EIR/DEIR, for example, surface owners' groundwater and wells depletion by Rise "dewatering" for underground mining would raise complex "taking" or inverse condemnation and other issues under the Fifth Amendment to the US Constitution as well as under the California constitution. See SMARA #2713, *Keystone*, and *Varjabedian*, as well as *Gray v. County of Madera* rejecting purported and disputed mitigation solutions for depleting wells by draining the competing property owners' groundwater that were even less bad than Rise's disputed and illusory mitigation proposals. It makes no policy or economic sense for the County to accommodate meritless Rise's vested rights claims for needless fear of Rise liability claims, only to thereby provoke thousands of the objecting and voting surface owners above and around the 2585-acre underground mine, especially since, as demonstrated in many EIR/DEIR objections, cases like *Gray v. County of Madera,* already have rejected the kind of deficient and disputed mitigation measures that Rise has proposed. Moreover, even if somehow referencing SMARA helped Rise (even by incorrect analogy or to craft some disputed common law), any such analogy would have to include all of SMARA, i.e., both the benefits and the burdens; not just the cherry-picked parts Rise seems to like in a doomed attempt to evade permit requirements**. For example, SMARA #'s 2715 and 2716 prevent any such vested rights thereunder from allowing pollution or nuisances (which would clearly exist from such Rise mining without permits)** or from counters by thousands of voting objectors electing "wise policy" officials and causing the passage of wise laws and regulations to prevent such abuses and other wrongs by Rise and to

protect surface owners and others from objectionable Rise mining as explained in objections to the disputed EIR/DEIR, especially from depleting surface owner groundwater and wells.

More fundamentally, SMARA includes its own interactive regulatory system for such **surface** mining that cannot be misused by Rise, even by such analogies etc., for its **underground** mining. Rise apparently contemplates claiming vested rights under SMARA to proceed without the normally required permits and CEQA compliance for which Rise has already applied and which the Planning Commission has properly recommended that the Board reject. (Rise's disputed letter incorrectly protesting that Planning Commission decision will also be the subject of further counters by objectors as we near the Board consideration of the Rise Petition or EIR, as applicable, and to correct that record.) However, an examination of SMARA reveals that its regulatory system still has ample protections for the public against miners, especially as to requirements Rise cannot hope to satisfy by its doomed reclamation plans and related financial assurances, even if somehow it were possible (which it is not) for SMARA to be adapted by the courts by analogy or common law for Rise's underground mining. Consider, for example, how SMARA #2717 ensures compliance with reporting and monitoring, especially of reclamation plans and financial assurances in accordance with detailed policies and requirements for reclamation of "mined lands" in #'s 2740-2764, following the statutory mandates for reclamation plans and the conduct of surface mining operations in sections 2770-2779. For instance, SMARA #2773 requires the specific application of each reclamation plan to each "specific piece of property" "based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, etc. (an insufficient list for underground mining) as well as "establishing site-specific criteria for evaluating compliance with the approved reclamation plan …" and adopt[ing] regulations specifying minimum, verifiable statewide reclamation standards…" (again insufficient to include underground mining and groundwater variables and issues.) Likewise, #2773.1 requires "financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operator's approved reclamation plan…" that Rise could never afford according to its own admissions in its SEC filings. Consider even rebuttal evidence by objectors in the EIR/DEIR objection record of Rise's financial infeasibility and even in DEIR at 6-14 (where Rise admitted that the IMM project is not so feasible, unless Rise can mine as it demands 24/7//365 for 80 years, which objectors expect to become legally impossible.)

Note that, while Rise may plan to "flip" this disputed IMM opportunity to another miner with more financial capabilities (e.g., stated by the staff as an incorrect justification for ignoring objectors' evidence and admissions of Rise's financial infeasibility in the EIR/DEIR dispute process), objectors note that such a solvent and successful buyer (as distinct from the usual "shell" subsidiary, like Rise Grass Valley) may be reluctant to inherit the IMM controversies since laws about successor liabilities can be discouraging to companies with any real assets at risk, such as SMARA #2779: "Whenever one operator succeeds to the interest of another in any incomplete surfacing mining operation … the successor shall be bound by the provisions of the approved reclamation plan and provisions of this chapter."

In no such case is it feasible, constitutional, or appropriate for the courts to try themselves to replace the missing regulators in such functions, or for surface mining regulators to expand their jurisdiction to underground mining. To end any argument on that subject note

that under #2773.1 (a)(2) “Financial assurances shall remain in effect for the duration of the surface mining operation [here 80 years] and any additional period until reclamation is completed” [here potentially forever, considering the pollution that even Rise admits in the EIR/DEIR requires continuous “treatment” of such groundwater entering the mine, plus, for example, the toxic hexavalent chromium in cement paste Rise plans to add into the mine to shore up the mine waste into support columns as will be leaching from them into the Wolf Creek when the mine again floods. See the reclamation problems the ghost town of Hinkley, Ca, documented in the *Erin Brockovich* movie and www.hinkleygroundwater.com , where after all these years and ample settlement funds those victims have still not been able to remediate that groundwater.] Moreover, in #2773.1(a)(3) financial assurances “shall be reviewed and, if necessary, adjusted once each calendar year, to account for new lands disturbed …, inflation, and reclamation of lands accomplished ….”, thus creating an annual battle between Rise and all the objecting neighbors at risk for such 80 plus years. See # 2796.5(e) providing reimbursement rights for government remediation in civil actions when the miner allows or causes pollution or nuisance. Also, SMARA # 2773.1(b) mandates such a financial feasibility analysis with public hearings and corrective/defensive actions, and objectors contend that must now also be an issue in this vested rights process. See, e.g., SMARA #2772.1.5 including financial tests for financial assurance credibility that Rise cannot possibly satisfy, such as a “minimum financial net worth of at least thirty-five million dollars ($35,000,000) adjusted annually to reflect changes in the Consumer Price Index…” and other regulatory requirements. And any amendment to any miner reclamation plan (inevitable as objectors prevail in their litigation objections, especially after the annual #2774.1 government inspections) would require under #2772.4 a new “financial assurances cost estimate.” Furthermore, SMARA and related laws themselves will change over time, both by approval of local ordinances (e.g., #2774.3) and public pressure on the applicable government officials to carefully police the mine under # 2774.4, especially when the public makes such mining “an area of statewide or regional significance” under # 2775 for such enhanced policing. How would any of that work in this Rise underground, vested rights fantasy

The power of such objections is magnified by the fact that disputes over such reclamation plans and financial assurances must consider the manifest (and to some extent Rise admitted in SEC filings) unknowns and uncertainties in the disputed EIR/DEIR plan, assuming Rise does not revise that disputed plan to be even more objectionable in disputed reliance on its alleged freedom from use permit and other compliance, claiming (Rise Petition at 58) vested rights permission to operate as it wishes “without limitation or restriction.” Among other things, consider obvious risks in: (i) reopening such a massive underground mine that has been discontinued, dormant, abandoned, closed, and flooded since 1956, without any adequate study of the current actual conditions of the existing mine or the new, expanded area to be mined (as distinct from Rise’s disputed consultants “theories,” i.e., often seeming to be pro-mining, biased guesses) or the new, expansion mining parcels (the “Never Mined Parcels” discussed in this objection) doubling its size (e.g., 76 versus 72 mines of new versus old tunneling, and now even deeper in the new mining); (ii) proceeding with mining without adequate exploration, investigation, or credible, reliable, or otherwise critical information as to all the risks listed for investors in Rise’s SEC filings, but mostly ignored improperly both in the disputed Rise Petition and in Rise’s disputed EIR/DEIR; and (iii) satisfying Rise’s burden of proof,

which, under the facts and circumstances, will be impossible for Rise to satisfy in any litigation where the rules of evidence apply, since even much of the insufficient, unreliable, inadmissible, and otherwise noncredible proof Rise has offered so far will fail to overcome objectors' evidentiary objections when they are allowed to be applicable, no later than in the judicial process

Exhibit A: Selected Admissions From Rise Gold Corp SEC Filings (With Some Related Admissions From the EIR/DEIR), Countering And Rebutting the Rise Vested Rights Petition And Related Rise Claims.

I. Introductory Highlights Illustrating Rise Admissions of Facts That Defeat Vested Rights Claims, Including How Rise Cannot Satisfy Its Burden of Proof Using "Alternative Realities" About Historical And Other Facts.

A. Some Initial Comments On Rise SEC Filings, Particularly Rise's Current SEC Form 10K Dated October 30, 2023, for the fiscal year ending July 31, 2023 (the "2023 10K" and, together with previous 10K filings, collectively called the "10K's"), And Rise's Most Recent Form 10Q Dated June 14, 2023, for April (the "2023 10Q" and, together with the previous 10Q filings, collectively called the "10Q's").

1. Rise Admissions Addressed In Rise SEC Filings Cannot Be Disregarded As Objector Evidence, Both (a) Because They Are Allowed By the Evidence Code As Rebuttals To Counter Specific Contrary And Conflicting Rise Petition Claims, And (b) Because They Counter Any Rise Financial Assurance And Reclamation Plans And Other Requirements Essential To the Existence of Any Vested Rights.

In the past, objectors' rebuttal evidence from Rise admissions in SEC filings and otherwise was incorrectly excluded from the EIR/DEIR disputes, despite objectors' citation of ample authorities and justifications for the admissibility of such Rise admissions. Therefore, objectors begin with this proof supporting objectors' use of such admissions as evidence to defeat this Rise Petition. However, whatever the County may decide about such evidentiary disputes, the courts in the following processes will agree that admission of such rebuttal evidence is mandatory, especially because objectors are directly proving by Rise admissions facts that are directly contrary to, or in conflict with, what vested rights require**.** See objectors' **"Initial Evidentiary Objection"** and the companion **"Objectors Petition For Pre-Trial Relief, Etc."** described below to which this Exhibit is designed to be attached. For example, such rebuttals and refutations in objectors' Initial Evidentiary Objection rebuts each material Rise Petition Exhibit, while also explaining the legal and evidentiary bases for objectors' use of these SEC admissions to refute any possibility of any Rise vested rights. That companion "Objectors Petition For Pre-Trial Relief, Etc." adds more law and evidence in support of such rebuttals through these admissions to justify requested relief and greater clarity before the Board hearing. In other words, objectors are not just refuting Rise's purported "evidence" with its own words but also proving with Rise admissions that such vested rights cannot exist as the courts correctly define such vested rights.

As demonstrated in many court decisions, such as ***Communities for a Better Environment v. City of Richmond*** (2010), 184 Cal. App.4th 70 (where objectors' use of Chevron's inconsistent SEC filing admissions defeated Chevron's EIR) (sometimes called "**Richmond v. Chevron**"), such admissions are indisputably admissible and powerful rebuttal evidence. Moreover, the disputed EIR/DEIR itself (as well as Rise's related project permit and approval

applications, which objectors include here in the collective term **"EIR/DEIR"** for convenience), also add admissions contrary to, or inconsistent with, the Rise Petition seeking vested rights. Those may also be referenced herein, although the disputed "ambiguities," "hide the ball" and "bait and switch" tactics," and other objectionable features of the Rise Petition create uncertainty about what the disputed Rise Petition is actually claiming. Rather than be at risk from such Rise conduct, objectors may assume the "most likely worst case" from Rise to be "safe." Objectors also insist on **Evidence Code ("EC") # 623** and other laws to estop or otherwise prevent Rise from exploiting any such inconsistencies in the Rise Petition. See the many applications of the EC rules in objectors' Initial Evidentiary Objection, such as EC #356 (the right to use the whole "story" to rebut the claimant's cherry-picked parts), 413 (contesting claimant's failure to explain or deny evidence), and 412 (contesting claimant's failure to produce better evidence that it could have presented if it wished to be accurate).

In any event, the Board needs to appreciate how inconsistent and contradictory the Rise Petition "story" is from the "story" Rise has told its investors in Rise's new "2023 10K," even after Rise radically changed its incorrect legal theory to assert instead its disputed vested rights' claims. The new, October 30, 2023, SEC Form 10K (the "**2023 10K**") filed by Rise after its September 1, 2023, (the "**Rise Petition")** should be at least consistent with each other. Instead, this rebuttal proves by Rise admissions that those stories are inconsistent or contradictory in many respects. For example, that 2023 10K admits to at least 25 major "Risk Factors" as warnings to its investors that cannot be reconciled with the Rise Petition or what Rise claims in or about its Exhibits thereto. This objection discusses each such conflict below and explains how such admissions impact the disputed Rise Petition. Objectors also note that these periodic SEC filings make Rise's admissions something of a "moving target." However, because this recent 2023 10K has been filed after the Rise Petition dated September 1, 2023, we focus on that as most impactful on the disputed Rise Petition, with some pre-vested rights claim illustrations to follow in an Attachment for comparison.

Correcting such Rise "errors" (or whatever is the correct characterization) is critical for the "clarity" to which objectors are entitled from the disputed Rise Petition and which the Board (or, if necessary, the court) needs about any such material Rise inconsistencies or worse to reconcile and resolve between (a) the stories Rise is telling the SEC and its investors (with a few additions from Rise admissions in the disputed EIR/DEIR or related Rise filings and presentations), versus (b) the disputed Rise Petition. That is an example of what the **"Objectors Petition for Pre-Trial Relief, Etc."** seeks before the Board hearing or, in any case, in the court proceedings to follow because objectors have made such requests to enhance our record. Because our current objection deadline is at the start of that Board hearing, while Rise continues to have an opportunity again to change and supplement its story during the hearing without objectors having any meaningful rebuttal opportunity (as we previously suffered at the EIR/DEIR hearings), objectors seek to inspire the County to require greater clarity from Rise before the hearing. Everyone should be able to anticipate (as best as we can) what disputed additions Rise may make during the hearing for which a three-minute rebuttal is grossly insufficient. Because many such Rise inconsistencies, contradictions, and worse are already addressed in the objectors' EIR/DEIR record (also including objections to much of the County Economic Report and County Staff Report), objectors again incorporate them into this and each other Rise Petition objection for such rebuttals.

Also, the base objections in the "Initial Evidentiary Objection" (including the incorporated EIR/DEIR objections), including use of Rise admissions against itself, are also incorporated by reference herein to avoid repetition. (However, some may be summarized to support arguments against Rise's vested rights claims.) Those objections include the more than 1000 pages in four "Engel Objections" to the EIR/DEIR and the more than two score of other objectors' filings cross-referenced and incorporated therein. See what the County labeled as DEIR objection Letters Ind. #'s 254 and 255 and related EIR objections dated April 25, 2023, and May 5, 2023, respectively (including each exhibit and incorporation, collectively called the "Engel Objections.") While the disputed EIR/DEIR process so far have incorrectly declined to consider such economic feasibility objections and other rebuttals, in effect obstructing objectors' counters to Rise claims (even though Rise itself violated those incorrect "boundaries"), that CEQA dispute cannot be allowed to interfere in this vested rights process with such evidence from SEC filing admissions on those subjects and others. See, e.g., *Communities for a Better Environment v. City of Richmond* (2010), 184 Cal. App.4th 70, where objectors' use of Chevron SEC filing admissions and inconsistencies defeated Chevron's EIR in correctly demonstrating the law of evidence, as further illustrated in the Initial Evidentiary Objection.

2. Consider, For Example, Rise's Admission (2023 10K at 13-14) That Its Mining Plan Is Conditional On the Results of Its Exploration, Thereby Defeating Its Vested Rights.

Rise admits in various ways in this 10K discussed below that, if Rise's further "exploration" does not produce satisfactory results, Rise will not mine and, even if Rise wished to mine, Rise would not be able to continue any mining plan unless such exploration results convince Rise's money sources to fund further operations. (This was admitted in terms of Rise lacking the capacity to mine (or even unconditionally to commit to mine) unless it was able continuously to find the needed financial and other support from its investors.) For example, Rise states (Id. emphasis added): **"Our long-term success depends on our ability to identify mineral deposits on our I-M Mine Property … that we can then develop into commercially viable mining operations." Furthermore, Rise admits that:**

> **Mineral exploration is highly speculative in nature, involves many risks, and is frequently non-productive. These risks include unusual or unexpected geologic formations and …[listing various risks already admitted by Rise, including the need for "capital available for exploration and development work."]**
>
> **Substantial expenditures are required to establish proven and probable reserves through drilling and analysis to develop …[listing again what is needed for mining and how they determine "whether a mineral deposit will be commercially viable]. WE MAY INVEST SIGNIFICANT CAPITAL AND RESOURCES IN EXPLORATION ACTIVITIES AND FIND IT NECESSARY TO ABANDON SUCH INVESTMENTS IF WE ARE UNABLE TO IDENTIFY**

> **COMMERCIALLY EXPLOITABLE MINERAL RESERVES. THE DECISION TO ABANDON A PROJECT MAY HAVE AN ADVERSE EFFECT ON THE MARKET VALUE OF OUR SECURITIES AND THE ABILITY TO RAISE FUTURE FINANCING. Id. (emphasis added)**

Moreover, Rise admits these losses and problems are expected to continue:

> **THE COMPANY EXPECTS TO OPERATE AT A LOSS FOR AT LEAST THE NEXT 12 MONTHS. IT HAS NO AGREEMENTS FOR ADDITIONAL FINANCING AND CANNOT PROVIDE ANY ASSURANCE THAT ADDITIONAL FUNDING WILL BE AVAILABLE TO FINANCE ITS OPERATIONS ON ACCEPTABLE TERMS IN ORDER TO ENABLE IT TO CARRY OUT ITS BUSINESS PLAN. THERE ARE NO ASSURANCES THAT THE COMPANY WILL BE ABLE TO COMPLETE FURTHER SALES OF ITS COMMON STOCK OR ANY OTHER FORM OF ADDITIONAL FINANCING. HOWEVER, THE COMPANY HAS BEEN ABLE TO OBTAIN SUCH FINANCINGS IN THE PAST. IF THE COMPANY IS UNABLE TO ACHIEVE THE FINANCING NECESSARY TO CONTINUE ITS PLAN OF OPERATION, THEN IT WILL NOT BE ABLE TO CARRY OUT ANY EXPLORATION WORK ON THE I-M MINE PROPERTY OR THE OTHER PROPERTIES IN WHICH IT OWNS AN INTEREST AND ITS BUSINESS MAY FAIL. ID. AT**

But again, nowhere in the disputed EIR/DEIR, Rise Petition, or other Rise filings does Rise ever explain what happens to the mine and our community, especially those of us living on the surface above or around the mine when Rise ceases operations for any reason (including because the investors stop funding the money required continuously for years before Rise admits it could possibly produce any revenue.) Thus, everyone is at continual risk for years before the best case (for Rise) when (and, even Rise admits, if) break-even revenue is achieved. Rise admits it may be unable to perform (or credibly commit to perform) anything material in its disputed plan. At any time, Rise or its money source could decide that the results of such future explorations are unsatisfactory and "abandon the project." Who cleans up the mess Rise leaves behind? That is both why reclamation plans and financial assurances are essential to any vested rights and why it is a legal and policy mistake to separate the adequacy of such reclamation plans and financial assurances from the dispute over the existence of vested rights.

3. **Consider, For Example, Some of the Many Adverse Rise's 2023 10K Admissions About Its "Vested Mine Property" That Rise Calls the "I-M Mine Property" in These SEC Filings And Objectors Call the "IMM" (with special treatment regarding the toxic Centennial site which the Rise Petition has hopelessly confused with irreconcilable contradictions with the EIR/DEIR.)**

As one calculates the disputed reliability of Rise's comments, especially when Rise's plans appear illusory because of chronic, economic infeasibility (plus the substantial uncommitted financing Rise admits below that it continuously needs for years and which seems speculative considering the huge exploration and startup costs before Rise admits anyone can even make an informed guess if and to what extent there is any commercially viable gold there), the Board should focus on the Rise admissions in the 2023 10K (at 11 emphasis added) section about "Risk Related to Mining and Exploration." There Rise stated: "WE HAVE NOT ESTABLISHED THAT ANY OF OUR MINERAL PROPERTIES CONTAIN ANY MINERAL RESERVE ACCORDING TO RECOGNIZED RESERVE GUIDELINES, NOR CAN THERE BE ANY ASSURANCE THAT WE WILL BE ABLE TO DO SO." Also consider (at Id., emphasis added) :

> **The I-M Mine Property is in the exploration stage. There is no assurance that we can establish the existence of any mineral reserve on the I-M Mine Property … in commercially exploitable quantities. Unless and until we do so, we cannot earn any revenues from these properties and if we do not do so we will lose all of the funds that we have expended on exploration, If we do not establish the existence of any mineral reserve in a commercially exploitable quantity, the exploration component of our business could fail.**

As objectors' following analyses of Rise admitted "Risk Factors" demonstrate, among other things and contrary to the disputed Rise Petition, Rise is just speculating and slowly doing minor exploration when money to do so is available. Rise is not planning or acting to mine in a way that creates or preserves any vested right to any mining "uses," especially those in the 2585-acre underground IMM that neither Rise nor any predecessor has even "explored" (apart from trivial, occasional drilling) since that dormant mine closed, discontinued, flooded, and was abandoned by at least 1956. Rise has no current or objective intent or commitment to execute any mining "use" plan on any schedule or to commit to any such startup mining activities beyond the separate exploration" use" (that does not create any vested right for any mining "use"), unless and until Rise believes that it has raised the funds for sufficient further such "exploration" and Rise and its speculator- financiers/investors each find those exploration results to be "successful" in demonstrating WHAT RISE ADMITS DOES NOT NOW EXIST: SUFFICIENT, PROVEN GOLD RESERVES IN CONDITIONS THAT CAN BE MINED PROFITABLY AND SUFFICIENT FINANCING ON ACCEPTABLE TERMS AND CONDITIONS TO CARRY THE MINE OPERATIONS TO POSITIVE CASH FLOW. Under the circumstances that cannot create vested rights for mining any parcel of the 2585-acre underground mine, and particularly the "Never Mined Parcels" that required not only such exploration, but, first, also all the startup work in the Brunswick shaft and the Flooded Mine (e.g., dewatering the flooded mine and reconstructing 72 miles of flooded tunnel and infrastructure) even to be able to reach those Never Mined Parcels to begin any exploration or gold production there. (Remember the surface above the 2585-acre underground mine is owned by objectors and others and not available to Rise for exploration or access, as admitted by Rise in its previous 10K.)

This is not a meritorious vested rights case, but more like this analogy. A Texas holdem poker-playing gambler puts in his ante (buying the IMM cheap) and matches the bets on the

initial round (e.g., the preliminary exploration, initial permitting application work, and then the recent vested rights litigation work) waiting to see the "common cards" dealt out face up on the table one by one to decide whether or not to stay in the game or fold. Rise admits (to its investors and the SEC) throughout this 2023 10K that it may fold. That conditional, wait-and-see approach, especially when Rise is entirely dependent on discretionary funding from money sources who may be more risk adverse, is the opposite of what the Rise Petition claims as a continuous commitment to mine sufficient for preserving vested rights that Rise incorrectly imagines Rise inherited from each previous predecessor. Because there needs to be a continuous, unconditional commitment to mining for vested rights (perhaps under different circumstances allowing short term delays for "market conditions"), such speculators like Rise cannot qualify with such conditional intentions. Such conditional interest in possible mining is not the kind of commitment required by applicable law, because Rise is only "in the game" as long as both Rise and its money source like their odds and as long as their investors keep handing Rise the money to continue their bets.

But, as explained in existing record objections**, once Rise starts any actual work at the IMM (e.g., prolonged dewatering work in particular as an early starter), our community will be much worse off when Rise stops than we are now, one way or another.** Of course, the more Rise does to execute its disputed mining plan will also make our community and, especially objecting local surface owners worse off. Therefore, this objectionable activity cannot ever be allowed to start.

But consider it from this alternative perspective of the impacted local objectors. Rise admits that any intent to actually mine is dependent on many pre-conditions, such as successful future exploration and related fundraising, meaning that Rise does not have the required objective, continuous, and unconditional intent to mine required for vested rights. But suppose (as the law requires and objectors contend) the Rise reclamation plan and financial assurance plans are decided at the same time as the vested rights. In that case, it will become clear that there can be no such vested rights, because no such Rise investors are going to go "all in" by funding at this admittedly early exploration stage the required financial assurances in advance to Rise for the massive reclamation plan that will be required for any such mining. By reference to the gambler analogy above, even if Rise were willing and intending to push all its chips on the table at the start before seeing the next open face cards (e.g., certainly before starting to dewater the IMM and begin depleting groundwater and existing and future well water), it is hard to imagine the investor holding back the chips needed by Rise to commit "to go all in" would prematurely commit to that gamble. That is especially considering all the risks not just admitted by Rise here, but also those demonstrated by record objections to the disputed EIR/DEIR and Rise Petition. Even the more aggressive money players backing such gamblers wait to see all (or at least most all) of the cards face up before they go all in. Stated another way, the objective test of any vested rights intent to mine is proven or disproven by whether or not the miner's money source is willing to go all in now, i.e., at the time the vested rights questions are to be decided. Otherwise, what Rise Petition is incorrectly claiming (without any precedent) is that such miners can have an OPTION TO MINE IF THEY WISH AFTER THEY PROCEED WITH INDEFINITE EXPLORATION ACTIVITIES WHILE TRYING TO RAISE THE REQUIRED FUNDING AND WHILE US SURFACE OWNERS AND OUR COMMUNITY INDEFINITELY SUFFER THE STIGMAS DEPRESSING OUR

PROPERTY VALUES. No applicable law gives such an indefinite option to Rise at objectors' prejudice, as the property values of objecting surface owners above and around the 2585-acre underground IMM remain eroding indefinitely while Rise gambles to our harm.

Consider, for example, how the unprecedented, disputed, and incorrect Rise Petition's "unitary theory of vested rights" is not just inconsistent with EIR/DEIR admissions and with applicable law requiring continuous vested rights for each "use" and "component" on each "parcel" (even in Rise's favorite *Hansen* case). Still, the Rise Petition's failure to so distinguish between "mining" versus "exploration" "uses" and between SURFACE mining "uses" versus UNDERGROUND mining "uses" as required in *Hardesty* is contradicted in Rise's 2023 10K at 29 (and earlier 10K and 10Q filings) as follows:

> **"Mineral exploration, however, is distinct from the definitions of 'subsurface mining' [aka underground mining] and 'surface mining.' Exploration involves the search for economic minerals through the use of geological surveys, geophysical prospecting, bore holes and trial pits, and surface or underground headings, drifts, or tunnels (NCC #L-II 3.22(B)(5)." (emphasis added)**

For another example, consider how Rise is claiming inconsistently that at the same time: (a) the toxic **Centennial** site is (and has been, as admitted, including in the EIR/DEIR contradicting the Rise Petition) physically, legally, and operationally separate in all material respects from the Brunswick IMM project, including the 2585-acre underground mine, so that they are separate projects for CEQA, as explained at length in the disputed EIR/DEIR admissions (a position that Rise incorrectly contends provides it both legal immunity from the environmental liabilities associated with the Centennial pollution and CERCLA etc. clean up, as well as evading adequate CEQA disclosures about Centennial), but also (b) somehow for Rise Petition's vested rights claims, massive and prolonged dumping of Rise mine waste from the new underground mining (and the related repairing of the old "Flooded Mine" for access) in the 2585-acre new Never Mined parcels allegedly are not an "expansion" or a "new operation" or a new "intensity" that would contradict and defeat Rise's vested rights "story." Also, the 2023 10K (and earlier versions) admit that Rise purchased the Centennial site parcels in 2018, separately from Rise's 2017 purchase of the IMM. As stated, Rise cannot have both CEQA exclusion for Centennial and vested rights for including Centennial in the new, separate, underground mining project in the "Vested Mine Property." Among other things, the disputed Rise Petition's "unitary theory of vested rights" is legally incorrect and inapplicable. See the discussion below of Rise's SEC 10K admissions on this topic versus both the disputed EIR/DEIR and many record objections and others thereto. See, e.g., 2023 10K at 32 admitting that the CalEPA has not yet approved (and may never approve) the Final RAP dated 6/12/2020, and the massive record objections to the disputed EIR/DEIR also dispute any such Centennial approvals.

Also consider the Rise admission in the 2023 10K (at 29) that "the planned land use designation for the Brunswick land remains 'M-1' Manufacturing Industrial, while the planned land use designation for the "Idaho land" (Centennial) is 'BP' Business Park (CoGV-CDD, 2009)." How can Rise possibly imagine any "continuous" vested rights for mining "uses" for either (i) the toxic "Centennial" mine that for many years no one could possibly "use" 'legally" for mining (see, e.g., the EIR/DEIR admissions and record objections to the EIR/DEIR) or other

related uses, or (ii) such Idaho land as rezoned "Business Park" (on which no mining has been attempted or contemplated for many years) and as to which every relevant predecessor before Rise believed would have again required rezoning that seems not only legally infeasible, but also economically infeasible, considering even just the environmental compliance and cleanup costs. While under certain circumstances and conditions (not applicable here) vested rights could perhaps evade certain use permit requirements for continuous "legal" uses on a parcel, Rise has not even attempted to overcome its burden of proof for vested rights for any such continuous mining uses when Centennial must first be legally remediated before anyone could even begin to think about mining there. Indeed, the EIR/DEIR did not even contemplate mining on Centennial, perceiving it just as a potential surface dump for mining waste from other parcels, and no such dump uses (or, if remediated, business park uses, could ever create in basis for expanding the long abandoned and legally prohibited mining uses from Centennial to other parcels as contemplated by the disputed Rise Petition. Also, as admitted in the 2023 10K and even in the EIR/DEIR, Centennial is disconnected from the rest of the IMM or Vested Mine Property in what must be a separate parcel, so that under *Hansen, Hardesty,* and other applicable cases nothing on any separate parcel creates any vested rights "uses" for any other such parcel that did not have the same such continuous "uses."

Because of such inconsistencies, contradictions, and all the other lacks of required "good faith" and objectionable conduct described in the hundreds of existing objections and those additional objections to come against Rise's new vested rights claims, Rise has created what the *Hardesty* court called a "muddle." That "muddle" creates massive disabilities for Rise's burden of proof on all of its critical vested rights claims, as well as adding many new defenses for objectors to the vested rights, such as "unclean hands," "bad faith," "estoppels," "waivers," evidentiary bars and exclusions, and many more in particular issues. See objectors' Initial Evidentiary Objection incorporated herein. (For example, under these circumstances and in this kind of administrative process, there cannot now be "substantial evidence" to support either Rise Petition's vested rights claims or Rise's EIR/DEIR claims. Also, in the court process to come objectors will have extra time and opportunity even more fully to contest and rebut Rise so-called evidence, such as by motions in limine to exclude most of Rise's self-contradictory evidence.) Id. Whenever the law of evidence is allowed to apply, Rise cannot prevail, and (while avoiding any delays in rejecting the Rise Petition) the County should insist that Rise provide BEFORE THE HEARING a comprehensive, consistent, sufficiently detailed, admissible, compliant, and evidentiary appropriate presentation of the reality to litigate with objectors in a full, due process proceeding as equal participants. While it may be possible (in different situations no applicable here) to litigate alternative legal theories, Rise cannot expect the County to approve (and objectors to litigate) more than one of such "alternate realities" inconsistently asserted by Rise to suit each of Rise's disputed, alternative legal theories.

Unfortunately, the County has bifurcated the consideration of the existence of Rise Petition's vested rights from the "reclamation plan" and "financial assurances" that should be essential to any vested rights contest. For example, how can there be any vested rights at all, if (as here) Rise is incapable of providing any adequate "financial assurance?" Even worse, any tolerable "reclamation plan" would itself violate the requirements for vested rights to exist; i.e., such reclamation actions themselves must have vested rights, or else implementation of

that reclamation plan needs its own use permit. See, e.g., discussion in the Initial Evidentiary Objection authorities and other objections regarding how the addition of the Rise water treatment plant on the Brunswick site would be a prohibited "expansion," "intensification," and new, unprecedented "component" (see, e.g., *Hansen* citing *Paramount Rock*) that cannot have any vested rights. The same is true about Rise's unprecedented plan to pipe cement paste with toxic hexavalent chromium into the underground mine to create shoring columns of mine waste, exposing locals to the fate of Hinkley, CA, which died with many of its residents from such hexavalent chromium water pollution as shown in the movie *Erin Brockovich*, and which survivors (despite massive funding from the culpable utility) still are unable to remediate such toxic groundwater (e.g., www.hinkleygroundwater.com).

4. **Rise's Vested Rights Cannot Exist Without A Sufficient "Reclamation Plan" With Adequate "Financial Assurances." Still, Rise's SEC Filings All Admit That Rise Lacks The Resources To Provide Any Meaningful Such Financial Assurances, And The Kinds of Reclamation Plans That Would Be Essential Require Their Own Vested Rights, Which Cannot Exist For Them In This Case, Resulting In Rise's Need For Objectionable Use Permits That Should Be Impossible To Obtain.**

Any adequate "reclamation plan" for the many vested rights requirements demonstrated in this Exhibit and many other record objections would also require their own vested rights, especially when assessed (as they must be) on a parcel-by-parcel, use-by-use, and component-by-component basis. Id. That means Rise would need permits that should be impossible to achieve over the massive and meritorious objections that those applications would inspire. Whatever the Rise reclamation requirements will be determined to be in these disputes from objectors, the related mine work and improvements must be considered new, expanded, and more intense "uses" compared to the historical 1954 mine on which Rise purports to base its vested rights claims. This is not just about changes in science, equipment/infrastructure/materials, and modern technology/practices, but also simply both by the massive scale of the "expansion" and "intensity" of the impacts, measured not just by ore, or by waste rock removed from the underground mine, but, more importantly, by the scale and impacts on the local community, especially on those objectors owning the surface above and around the 2585-acre underground mine. Id. As the EIR/DEIR and earlier SEC filings admit (see, e.g., the Attachment to this Exhibit explaining more from previous 10K's than now revealed in the 2023 10K), the mining expansion from 1954 is massive in scope and intensity, increasing far beyond vested rights tolerance standards from (a) the 72 miles of underground tunnels with 150 miles of drifts and crosscuts in the Flooded Mine that existed in October 1954 and discontinued, flooded, and closed by 1956, to (b) after 24/7/365 dewatering and other startup work for more than a year, adding another 76 miles of new tunnel in the Never Mined Parcels beneath and around our objecting surface owners and others, plus whatever drifts, cross-cuts, and other lateral adventures the miner may pursue. This is relevant to disputing vested rights because Rise's new and unprecedented "components" for which no vested rights could exist (e.g., *Hansen* citing *Paramount Rock*) would have to include not only a water treatment plant, but also a new water replacement system (that Rise's SEC filings demonstrate it could not

afford) as the court required under similar circumstances in the controlling case of ***Gray v. County of Madera (2008), 167 Cal.App.4th 1099 ("Gray")*** **(rejecting the miner's mitigation proposals similar to those proposed by Rise's disputed EIR/DEIR for a tiny fraction of the impacted surface owners), applying legal standards that could only be satisfied by an equivalent water delivery system for each impacted local.**

More fundamentally, as demonstrated in such record objections and others to come, Rise's disputed EIR/DEIR are themselves full of errors, omissions, and worse, compounding, and conflicting with those in the Rise Petition, as well as creating more conflicts and contradictions with Rise's SEC filing admissions. This Exhibit reveals how (as in *Richmond v. Chevron)* much other evidence, authorities, and rules, such as EC #'s 623, 413, and 356, apply not just to rebuttals to Rise's disputed CEQA claims, but even more so to these vested rights disputes. That is especially true since those surface owners above and around the 2585-acre underground mine have their own competing constitutional, legal, and property rights at issue, entitling us to even more standing and due process than provided in *Calvert* and *Hardesty*. Besides Rise failing by application of the normal rules of evidence within the correct legal framework explained in the foregoing objection, the Rise Petition also fails the standard of what *Gray v. County of Madera* calls "common sense," and what *Vineyard, Banning, and Costa Mesa* call "good faith reasoned analysis." Thus, any vested rights dispute must allow both rebuttals of what Rise admits and deficiently reveals, plus all the other realities that are exposed regarding the merits of the disputes.

That means the essential comparison for Rise's vested rights claims is not just (i) what Rise choose to reveal about the "Flooded Mine" (the 1954 underground working mine) versus the "Never Mined Parcels" (the new underground expansion mine) and related disputes against alleged "Vested Mine Parcels," but also (ii) what Rise should have revealed in each case that makes the gap between the old and new impossible for Rise to bridge for its disputed, vested rights claims. One example demonstrated in the foregoing objection (and in many EIR/DEIR and other objections) is that the depleting impacts of proposed dewatering of surface owners' groundwater (and existing and future wells) 24/7/365 for 80 years are grossly understated by Rise and far more "expansive" and "intense" than permitted by any applicable authority defining the boundaries of vested rights. Indeed, the 1954 Flooded Mine did not have surface owners above or around it, but because of surface sales by Rise predecessors over time, Rise inherited a massive community above and around that 2585-acre underground mine whose interests can only be protected by many new uses, components, and other things for which there was no 1854 precedent and for which no vested rights are possible now. Note how Rise and its predecessors (e.g., Emgold) proved nothing by the deficient number and locations of test sites and massively undercounted, impacted existing wells. Also, Rise does not consider the rights of us objecting surface owners living above and around the 2585-acre mine to create new, additional, and deeper competing wells to deal with both the climate change impacts Rise incorrectly denies as "speculative," and to mitigate Rise's wrongs in depleting groundwater and existing and future well water owned by surface owners above and around the 2585-acre undergrounds mine. See the Supreme Court ruling in *Keystone Bituminous Coal Assn v. DeBenedittis, 480 U.S 470 (1987)* ***("Keystone"),*** discussed in the foregoing objection and in such EIR/DEIR and other objections; i.e., Rise cites no authority for any vested rights to deplete any water owned by such objecting surface owners. See also *Varjabedian* (where that court

confirmed that those living downwind of a new sewer treatment plant and so disproportionately impacted by such projects have powerful constitutional rights and other claims.)

B. The Disputed Rise Petition (Like the Disputed EIR/DEIR) Primarily Focuses On the Older, Wholly Owned Portion of the "Vested Mine Property" In Objectionable And Deficient Ways That Too Often Ignore The Disputed Issues Regarding the 2585-Acre Underground Mine Contested by Impacted Objectors Owning The Surface Above And Around That Underground Mine, Especially It's Expansion from the 1954 "Flooded Mine" to What Objectors Call the "Never Mined Parcels" That Have Been Dormant, Closed, Discontinued, And Abandoned Since At Least 1956.

As discussed in this and other objections, the Rise Petition asserts what objectors call Rise's unitary theory of vested rights as to the whole of its so-called "Vested Mine Property," failing to make any serious effort to prove vested rights for each "use" and "component" as continuous on each parcel on the required parcel-by-parcel, use-by-use, and component-by-component bases. Instead, Rise asserts its deficient and insufficient "evidence" to attempt to prove its unprecedented unitary theory of vested rights that seems to claim that anything it does anywhere on the "Vested Mine Property" is sufficient for any "use" or "component" anywhere there, even when Rise's cited *Hansen* decision rejects such an idea, as do the other authorities cited in the foregoing and other objections. While subsequent objections on this subject will demonstrate more errors in that Rise claim and will debate the relevant "parcels" in dispute, objectors frame those issues below in terms of Rise's latest (and only such post-Rise Petition) SEC filing. **Rise's recent SEC 10K for the fiscal year ending July 31, 2023 (at 30) again admits** (as did the previous 10K filings) what the Rise Petition and other communications obscured to "hide the ball" to avoid undercutting their incorrect "unitary theory" excuse (emphasis added):

> "Mineral Rights. The I-M Mine Property consists of **mineral rights on 10 parcels, including 55 sub parcels, totaling 2,560 acres … of full or partial interest**, as detailed in Table 2 and displayed in Figure 4. The mineral rights encompass the past producing I-M Mine Property, which includes the Idaho and Brunswick underground gold mines.
> ***
> The Quitclaim Deed [Rise identifies Document # 20170001985 from Idaho Maryland Industries Inc., to William Ghidotti and Marian Ghidotti in County Records vol. 337, pp.175-196 recorded on 6/12/1963] describes the mineral rights as follows:
>
> The I-M mine Property consists of all rights to minerals within, on, and under the land shown upon the **Subdivision Map of BET ACRES No. 85-7,** filed in the Office of the County Records, Nevada County, California, on February 24, 1987, in Book 7 of Subdivisions, at Page 75 et seq. [See **Rise Petition Exhibit 263** dated Feb. 23, 1987]

> The I-M Mine Property consists of all rights to minerals within, on, and under the land located in portions of Sections 23, 24, 25, 26, 35, and 36 in Township 16 North- Range 8 East MDM, Section 19, 29, 30, and 31 in Township 16 North- Range 9 East MDM, and Section 6 in Township 15 North- Range 9 East MDM and all other mineral rights associated with the Idaho-Maryland Mine.
> ***
> Mineral rights pertain to all minerals, gas, oil, and mineral deposits of every kind and nature beneath the surface of all such real property … subject to the express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land… [and] Mineral rights are severed from surface rights at a depth of 200 ft. (61 m) below surface …. (emphasis added)

Notice that Rise admitted that there are at least 10 parcels and (what Rise calls 55 sub parcels), and objectors will address in a later objection how many more parcels actually may exist. See, e.g., the 2023 10K Table 1 (at 27) describing 12 APN legal parcels just on the Rise-owned surface, without considering any underground mine parcels. Moreover, the color-coded, separate units in SEC 2023 10K Figure 4 show more than 90 parcels. Rise must prove continuous vested rights uses and components at least for each such parcel and sub-parcel, and Rise has not even attempted to satisfy its burden of proof by doing so. Moreover, the vested rights rules prohibit expanding or transferring "uses" or "components" from (i) one parcel (or what Rise calls a "sub parcel") with a vested use or component to (ii) another parcel (or what Rise calls a sub parcel) without such a continuous vested use or component. Thus, even if Rise had vested rights to the Flooded Mine parcels (which objectors' dispute) that would not result in any vested rights for any Never Mined Parcel. Also, having so admitted such parcels (and sub-parcels), Rise should be estopped from asserting its disputed and unprecedented unitary theory of vested rights as if the Vested Mine Property were just one big parcel (which objectors dispute.) See objectors' Initial Evidentiary Objection, addressing various Evidence Code requirements for Rise (e.g., EC #623, 413, 356, etc.) and various other rebuttal opportunities for objectors.

C. Some General, Property Description And Related Issues From the SEC 2023 10K Filings Compared To the Rise Petition And Other Rise Filings With the County, And Related Contradictions For Rebuttals And Objections.

"Item 2. Properties" (beginning at p. 21) of the 2023 10K still uses the general term "I-M Mine Property" to describe (i) what objectors call the "IMM" plus the separate "**Centennial"** site, and (ii) what the disputed Rise Petition calls the "Vested Mine Property." (Note that objectors plan a separate objection for the Centennial site and related issues, and that the limited discussion of that topic here does not mean it is not important in objectors' comprehensive objections to the Rise Petition, but rather only that we are just addressing some such issues sequentially.) That "I-M Mine Property" is described by Rise (in that 20233 10K at 24) as "approximately 175 acres …[of] surface land and 2560 acres … of mineral rights," without

any attempt to make any easy comparisons with the EIR/DEIR terms, data, or other contents or to explain inconsistencies, such as, for example, why the EIR/DEIR described **2585-**acres of underground mineral rights but here only **2560**. (Objectors use the larger number for "safety" [i.e., to avoid omitting anything in objections], but, in due course, objectors will address whatever answers we discover for such needless and inconsistent mysteries.) For example, (apart from the 2585-acre underground mining rights) instead of addressing the issues like the EIR/DEIR as to the Brunswick site surface versus the separated Centennial site surface, the 2023 10K identifies in Table 1 (at p. 27) 12 APN legal parcels (contrary to describing 10 in the above subsection quote) called (1) "Idaho land" representing 56 acres …, (2) "Brunswick land" representing 17 acres, and the "Mill Site" property representing 82 acres … as displayed in Figure 3" [a useless map lacking needed landmarks for needed precision.] For convenience (e.g., to avoid confusion in SEC filing quotes herein) this Exhibit generally will use the SEC terms with some additional objector terms for ease of application to our other objection documents. (Why the Rise Petition uses different terms than that 2023 10K in discussing such vested rights issues is another suspicious curiosity.)

Note, however, that the 202310K separately identifies such legal descriptions of Rise's "Surface Rights" as separate from the underground "Mineral Rights." Id. 24-34. Notice how Rise brags (at 32) about how "environmental studies" were "completed on all the surface holdings owned by Rise," ignoring the 2585-acre underground mine where many problems exist as addressed in the record objections to the disputed EIR/DEIR. However, those studies are disputed on many grounds in objections to the EIR/DEIR. The absence of proof of environmental safety in and from the 2585-acre underground mine is a bigger concern not satisfactorily addressed anywhere by Rise, especially as to the addition of admitted use of cement paste with toxic hexavalent chromium pumped down into the underground mine to create shoring columns from mine waste (but obscured without any disclosure, much less reasoned analysis as required in the "Hazards And Hazardous Materials" section of the disputed DEIR or in the obscure and disputed EIR Response 1 to Ind. #254 to that disputed DEIR). See, e.g., the descriptions of hexavalent chromium menaces in the EPA and CalEPA websites and the case study of the hexavalent chromium groundwater pollution in Hinkley, Ca. at www.hinkleygroundwater.com (the story shown in the movie *Erin Brockovich*).

D. Of Course, the Rise SEC Filings Themselves Are Disputed In Many Respects, And Objectors Are Not Accepting Anything In Those Filings As True. Nevertheless, Our Objections Address Them as Admissions That Contradict And Rebut the Rise Petition's Purported Claims. See EC #623.

The Initial Evidence Objection both disputes the Rise Petition and contradicts some of the purported "History" in the 2023 10K and other Rise filings, citing the many ways the laws of evidence defeat Rise claims. See, e.g., *Hardesty* describing how the alternative reality "muddle" of mutually inconsistent and incorrect miner claims cancels all of them out. Objectors will not repeat all those many rebuttals here. However, objectors' rebuttals in that objection also refute the similar Rise Petition claims, for example, alleging evidence that (202310K at 35) Del Norte Ventures, Inc. (Emgold's predecessor) "rediscovered" in 1990" a "comprehensive collection of original documents" for the IMM (presumably pre-1956,

"unauthenticated" documents from before the mine closed and flooded and the miner moved to LA to become an aerospace contractor ending in bankruptcy and a cheap auction sale of the IMM to William Ghidotti.) Part of the more comprehensive problem is that Rise is trying to recreate records from Idaho-Maryland Mines Corporation that closed and abandoned its flooded and dormant mine by 1956, due in large part to the fact that the cost of gold mining increasingly exceeded the indefinite $35 legal cap on gold prices, in effect also abandoning hope of resuming mining unless and until that $35 legal cap was lifted, which did not occur for another decade. That abandonment of the mine and the mining business is proven by Rise Petition's own Exhibit records that prove how that miner liquidated its moveable mining assets and after that1956 abandonment of the dormant and discontinued mine and mining business changed its name and trademark to Idaho Maryland Industries, Inc., moved to LA to become an aerospace contractor, filed Chapter XI under the Bankruptcy Act, and liquidated the mine cheap in an auction sale to William Ghidotti in 1962. Another objection to follow will counter Rise's disputed history in more detail by going beyond the fragmentary and disputed Rise Petition Exhibits that noncontinuous "snapshots" and are by no means adequately "authenticated," admissible evidence, or a "comprehensive collection of original documents" demonstrating vested rights. Many such Rise Petition Exhibits are just "filler," and Rise's failure to produce such alleged records relevant to the vested rights disputes created an inference and presumption that Rise has no such evidence. See the Initial Evidentiary Objection and EC #412, 413, 356, and 403.

Many records referred to in such Rise filings and admissions are production and gold mining process related records that don't prove vested rights and ceased when the dormant and abandoned IMM closed and flooded by 1956. Stated another way, there is no objective intent evidence to prove continuous use (or even continuous intent to resume mining) on a parcel-by-parcel, use-by-use, and component-by-component basis as required by the applicable case law (e.g., *Hardesty, Calvert, Hansen*, etc.). That Initial Evidentiary Objection also exposed errors and omissions in the SEC filings' description (at pp. 35-36) of the Emgold (and predecessor) activities on certain parcels for drilling exploration in 2003-2004 [(not on all parcels and just "exploration" "uses," **not** mining or other relevant mining related "uses"). For example, the 2023 10K admits (at 36): "Exploratory drilling was mainly conducted from tow sites: 1) west of the Eureka shaft, and 2) west of the Idaho shaft, both targeting near surface mineralization around historic working. See Figure 6." That admits no exploration (much less anything relevant to mining "uses" for vested rights) on the critical "Never Mined Parcels" or even most of the "Flooded Mine" parcels in the 2585-acre underground mine where the gold is supposed to be below or near objecting surface owners. The same is true as to what Rise describes (at pp.42-43) as drilling 17 holes in 2019. None of that occasional, noncontinuous activity satisfies any requirement for any vested rights by either Emgold or Rise, even if all their predecessors had vested rights, which none of them did, especially that initial miner-owner in 1954-1962.

Furthermore, contrary to the Rise Petition's confidence about its mining plan and incorrect insistence on its objective intent to reopen the mine and execute its disputed plan, the 2023 10K (like the earlier SEC filings, addressing some in an Attachment) admissions contradict Rise's disputed factual foundation for vested rights. See, e.g., the Initial Evidentiary Objection addresses EC #'s 401-405 (establishing the preliminary facts for admissibility) and 1400-1454

(authenticating evidence). For example, the entire Rise 2023 10K "Risk Factors" discussion below proves that Rise is just a speculator seeking to create a mere, indefinite, and conditional option to mine if the future conditions and explorations are sufficiently attractive both to Rise and to the uncommitted investors from whom Rise continuously needs funds to be able to afford to do much of anything. For example, consider this such admission (at 9) contrary to Rise's claims for continuous activity it incorrectly describes as sufficient for vested rights to mine, which are disproven by objectors from Rise's own exhibit admissions and only involve occasional and limited "drilling explorations" on only a few parcels with no actual "gold mining" uses anywhere in the IMM since at least 1956:

> Our Idaho-Maryland Mine Project is a historic, past-producing mine which, apart from the exploration work that we have completed since 2016, has had very little recent exploration work since 1956. **We would require further exploration work in order to reach the development stage. Advancing our I-M Mine Property into the development stage will require significant capital and time, and successful commercial production from the I-M Mine Property will be subject to completing feasibility studies, permitting and re-commissioning of the mine, constructing processing plants, and other related work and infrastructure. As a result, we are subject to all of the risks associated with developing and establishing new mining operations and business enterprises,** including …[see continued discussion of these issues in the Risk Factor rebuttals below] (emphasis added)

The point here is that vested rights are about continuous prosecution on each parcel of a prior "nonconforming" "use-by-use" and "component-by-component" basis (or enough objective intent to qualify to do so under required facts and circumstances that are not present here), always on a parcel-by-parcel basis. What Rise admits to here is not only contrary to such requirements for vested rights, but such admissions are also contrary to the whole concept of vested rights as based on continuing on a parcel the prior mining activity as a nonconforming use or component. Exploration is the only mining related "use" activity since 1956 that the Rise Petition claims or that is even affordable or physically feasible by Rise. Now, even after the Rise Petition filing, this new, 2023 10K not only admits the reality that during that long period there has been little (and deficient for vested rights purposes) exploration "uses" on the Vested Mine Property, but also that basically Rise is starting a new mine on the ruins of just part of the older "Flooded Mine" with the impermissible goal of expanding that long abandoned and discontinued 1954 use to the Never Mined Parcels. (Note that, in any event, exploration is a different "use" than any underground mining "use" and, therefore, would not create any vested rights for mining in any event.)

II. Some "Risk Factor" And Compliance Admissions by Rise From the 2023 10K, Including Conflicts With the Rise Petition Or Related Rise, Vested Rights Claims.

A. Some Legal Compliance Concerns And Objectors' Requests For The County To Decline To Tolerate Any Rise Petition (Incorrect) Interpretations of What Vested Rights Would Allow Rise To Do (Or Not To Do) As To Any "Use" Or "Component" On Any "Parcel."

As explained in the companion objections referencing this Exhibit, **objectors are confused by the Rise Petition claiming (at 58) that, in effect, Rise can mine and conduct itself generally as it wishes anywhere on the Vested Mine Property "without limitation or restriction."** In contrast with that incorrect and massive overstatement of the disputed effect of Rise vested rights, Rise asserts in the 2023 10K much narrower (though still incorrect) statements of what Rise could accomplish and do, recognizing (e.g., at p.8) "environmental risks" and how (i) Rise "will be subject to extensive federal, state and local laws, regulations, and permits governing protection of the environment," and (ii) "Our plan is to conduct our operations in a way that safeguard public health and the environment." One key issue for the County in reconciling those inconsistent claims is whether (and to what extent) Rise is asserting (a) what it claims the legal right to do in the Rise Petition "without limitation or restriction" versus (b) an aspirational, public relations statement of goals Rise can violate whenever it wishes, or, more likely, "interpret" from the perspective of an aggressive miner so as to make those legal standards of little practical consequence by exaggerated and otherwise incorrect interpretations. Granting the Rise Petition as written is perilous not just for the County but also for objectors, since such an acknowledgment in SEC filings of the need for legal compliance is not a legally enforceable equivalent to the required use permit conditions or a commitment that can be readily enforced by impacted objectors living above and around the 2585-acre underground mine with our own competing, constitutional, legal, and property rights (e.g., it's objectors groundwater and existing and future well water that would be depleted 24/7/365 for 80 years).

Stated another way, objectors take little comfort in such Rise public relations "reassurances" in such SEC filings and other public relations statements, and it is simply too risky to trust Rise (and any successor who may be "hiding behind the curtain", since Rise admits in these 2023 10K financials that Rise lacks the financial resources to accomplish much of anything material that it is asserting it will do.) Indeed, Rise also admits (at 8) that it cannot "predict with any certainty" the "costs associated with implementing and complying with environmental requirements," which Rise acknowledges "could be substantial" and "possible future legislation and regulations" could "cause us to incur additional operating expenses, capital expenditures, and delays." That uncharacteristic realism is appropriate, especially because impacted locals not only have their own legal rights, but also the power to create, directly or indirectly, such protective law reforms to prevent harms to our large community above and around the IMM, such as those predicted in the hundreds of meritorious objections already in the record in opposition to the disputed EIR/DEIR with more to come in opposition to the Rise Petition. However, such aspirational realism in Rise's SEC filings does not seem to be included in the Rise Petition. That means if the County were (incorrectly) to approve any disputed vested rights for any "use" or "component" on any "parcel" of the disputed Vested Mine Property, the County should not accept any of what the Rise Petition claims vested rights mean (e.g., don't gamble on whatever "without limitation or restriction" may mean in the Rise

Petition, but define clearly and correctly what any vested rights would mean.) In particular, the County should follow the guidance of all the many applicable laws and court decisions that the Rise Petition ignores by asserting its incorrect "without limitation or restriction" claim (e.g., instead follow *Hardesty, Calvert, Gray,* and even the whole of *Hansen*, as distinct from merely the fragments Rise that misinterprets.) See the Table of Cases And Comments attached to the Initial Evidentiary Objection and other objections cited legal authorities demonstrating what the applicable law actually is, as distinct from what Rise wishes the law were.

B. Risk Factors Admitted by Rise In Its 2023 10K, But Generally Ignored In the Rise Petition, the EIR/DEIR, And Other Applications And Requests Approval For Benefits From the County. But Also See Those Not Addressed By Rise Anywhere, Such As The Correct, Applicable Law And Facts Supporting The Competing Constitutional, Legal, And Property Rights of Objectors Owing the Surface Above And Around the 2585-Acre Underground Mine.

1. Rise Incorrectly Describes Its Disputed Vested Rights In All of Its Disputed Filings With the SEC Or the County.

As described above and throughout the foregoing and companion objections, as well as in the incorporated record EIR/DEIR and other objections, Rise has incorrectly described (e.g., pp. 4-6) what is required for acquiring and maintaining any vested rights and what the results are of having any vested right for any use or component on any parcel. See, e.g., the Table Of Cases And Commentaries…at the end of the Initial Evidentiary Objection and others. Of relevance here is that the so disputed 2023 10K is not only inconsistent with, or contrary to, the disputed Rise Petition (and the disputed EIR/DEIR) [and vice versa], but also with itself. **For example, the 2023 10K (at 34) states: "Subsurface mining, including ancillary surface uses, would require the following permits and approvals under a Use Permit process [citing many County, State, and Federal approvals, although fewer than in the County Staff Report for the EIR/DEIR]. However, the Rise Petition appears to claim (incorrectly) it can evade many of such requirements. Indeed, that 10K itself is not as clear in other commentaries since it only (at p.6) contemplates a use permit if the Board rejects Rise's vested rights claim.**

In addition, the following Rise admitted "Risk Factors" demonstrate that, among other things and contrary to the disputed Rise Petition, Rise is just engaged in occasional, limited exploration, and speculating; not planning to mine. Rise has no current or objective commitment or committed funding to execute any mining plan at any time or to commit to any other such mining activities, unless and until Rise has raised the funds for sufficient *further* "exploration" and Rise and its speculator- financiers/investors each subjectively finds those exploration results to be "successful" in demonstrating what Rise admits does not now exist: both sufficient, viable, proven or probable gold reserves in conditions that can be mined profitably, plus sufficient financing on acceptable terms and conditions to carry the mine operations to positive cash flow sometime in the distant future. Under the circumstances that intent to speculate and decide what to do in that indefinite future cannot create vested rights for any mining "use" or "component" on any parcel of the 2585-acre underground mine, and, particularly, the "Never Mined Parcels" that require not only such exploration but also all the

startup work in the Brunswick shaft and the Flooded Mine (e.g., dewatering the flooded mine and reconstructing 72 miles of flooded tunnel and infrastructure) even to be able to reach those Never Mined Parcels to begin any exploration or gold mining uses there. (Remember: the surface above the 2585-acre underground mine is owned by objectors and others and is not available to Rise for exploration or access, a Rise "Risk Factor" discussed below.)

This is not a meritorious vested rights case, but rather is more like this analogy: A Texas holdem poker-playing gambler puts in his ante (buying the IMM cheap) and matches the bets on the initial round (limited, preliminary exploration on some parcels), waiting to see the common cards dealt out one-by-one face up on the table to decide each time whether or not to stay in the game or fold. Since there needs to be a continuous commitment to mining uses on each applicable parcel for any vested rights, such speculators like Rise cannot qualify. Such conditional interest in possible mining is not the kind of commitment required by applicable law, because Rise is only "in the game" as long as they like their odds on each "card" and as long as their investors keep doling out the money to continue their bets. But as explained in record objections, once Rise starts any work at the IMM, our community will be much worse off when it stops than we are now, one way or another.

As one calculates the reliability of Rise's economic feasibility and the substantial financing Rise admits below it continuously needs for years before any possible revenue, focus on the Rise admissions in the 2023 10K section about "Risk Related to Mining and Exploration," where Rise stated (at 11, emphasis added): "WE HAVE NOT ESTABLISHED THAT ANY OF OUR MINERAL PROPERTIES CONTAIN ANY MINERAL RESERVE ACCORDING TO RECOGNIZED RESERVE GUIDELINES, NOR CAN THERE BE ANY ASSURANCE THAT WE WILL BE ABLE TO DO SO." Also consider (at Id.) :

> **THE I-M MINE PROPERTY IS IN THE EXPLORATION STAGE. THERE IS NO ASSURANCE THAT WE CAN ESTABLISH THE EXISTENCE OF ANY MINERAL RESERVE ON THE I-M MINE PROPERTY … IN COMMERCIALLY EXPLOITABLE QUANTITIES. UNLESS AND UNTIL WE DO SO, WE CANNOT EARN ANY REVENUES FROM THESE PROPERTIES AND IF WE DO NOT DO SO WE WILL LOSE ALL OF THE FUNDS THAT WE HAVE EXPENDED ON EXPLORATION, IF WE DO NOT ESTABLISH THE EXISTENCE OF ANY MINERAL RESERVE IN A COMMERCIALLY EXPLOITABLE QUANTITY, THE EXPLORATION COMPONENT OF OUR BUSINESS COULD FAIL. (emphasis added)**

[THE FOLLOWING COMMENTS ARE PRESENTED IN ORDER OF THEIR PRESENTATION IN THE 2023 10K "ITEM 1A. RISK FACTORS: RISKS RELATED TO OUR BUSINESS" SECTION (since those risk items are not numbered).]

2. Rise Admits (Its Vulnerability To Increased Levels of "Volatility" or "Rapid Destabilization" That Can Create "Material Adverse Impacts" On Rise.

For reasons Rise admits in its financial statements and comments below, and as confirmed by its own accountants' concerns about Rise as a "going concern" and other risks,

many Rise critics regard Rise's mining plans to be financially infeasible with good cause. While some at the County may have incorrectly regarded such concerns about economic feasibility to have been irrelevant to them in respect of the disputed EIR/DEIR, those concerns must be fully relevant for the "financial assurances" required for any "reclamation plan" required for any vested rights claimed under the Rise Petition. As future objections will explain in more detail, all Rise's proposed safety and protection assurances are meaningless if they are unaffordable by Rise, as seems to be the case based on its own admitted financial condition. Moreover, since reclamation plans themselves may block vested rights by requiring new "uses" and "components" (e.g., not just an unprecedented water treatment plant on the Brunswick site but also a whole water replacement supply system for impacted owners of existing and future depleted wells, as required by ***Gray v. County of Madera***). Those feasibility issues will be much larger than Rise admits, even in the disputed EIR/DEIR. Of course, the obvious risk that has not been addressed by Rise, but which is obvious from reading all the Rise SEC filings since its 2017 IMM acquisitions began, is this: Rise (both the parent and its shell subsidiary) owns limited assets besides the Vested Mine Property, whose disputed value (and which is subject to liens for a large secured loan) crashes when and if its investors cease to continue to dole out the periodic funded needed to continue. Rise will quickly lack working capital for operations, as Rise admits in the following subsection of the 2023 10K and discussed next below. Suppose investors stop funding before any profitable gold is recovered and generating revenue, which the EIR/DEIR admits will first require years of start-up work. In that case, unless there are fully adequate financial assurances for a quality reclamation plan, our community will suffer the fate of many others with the misfortune to endure the more than 40,000 abandoned or bankrupt mines in California on the EPA and CalEPA lists, none of whose financial assurances proved sufficient for adequate reclamation.

3. Rise Admits (at 8-9, emphasis added): "OUR ABILITY TO CONTINUE TO OPERATE AS A GOING CONCERN DEPENDS ON OUR ABILITY TO OBTAIN ADEQUATE FINANCING IN THE FUTURE."

As discussed in the prior paragraphs and demonstrated in Rise's financial statements and comments below, Rise can only continue operating if, as, and when its investors continue to fund those operations in their discretion. Rise has consistently admitted (see discussion below) that there are no "proven [gold] reserves" to value the mine in excess of its secured debt or other, positive, admitted financial data. Thus, Rise is not creditworthy for expecting to attract any asset-based debt financing. (Any credit extensions would be based on warrants or equity kickers, such as being convertible into equity or supported by cheap warrants for stock, thus making another type of equity bet rather than a credit decision based on Rise having any financial resources capable of repaying the debt.) Thus, Rise's hope for attracting funding is fundamentally about the speculator-investors' gamble that Rise can somehow overcome all the current, and foreseeably perpetual: (i) local legal and political opposition to reopening the mine and whatever defensive law reform results locals would cause for protecting their health, welfare, environment, property, and community way of life, if somehow Rise were allowed to start mining; (ii) other risks admitted in the 2023 10K discussed herein; (iii) the business and market risks that could make mining uneconomic or non-viable, even if Rise found

merchantable amounts of gold, such as if the all-in mining costs exceeded their revenue; (iv) the natural physical risks of mining, for which there is long history, such as floods, earthquakes, etc., as well as mining accidents from negligence or get-rich-quick gambles causing cave-ins etc.; (v) the danger of environmental sciences impacting their operations, such as, for example, finding no cost-effective and legal way to dump mine waste [e.g., exposing the disputed theory of Rise selling mine waste as so-called "engineered fill"], or outlawing Rise's planned use of cement paste with toxic hexavalent chromium to shore up mine waste into bracing columns to avoid the cost of removing the waste from the mine; or (vi) many other risks that would concern such a speculator-investor, including the fact that the investor might find more attractive and less risky alternative investments, especially because there could likely be no liquidity from this mine investment (e.g., no one to buy their Rise stock), unless and until somehow in some future year Rise has overcome all the risks and challenges and is finally producing profitable gold revenue from this disputed mine.

While Rise there admits (at 8-9) that there is **"no assurance that the Company will be able to obtain adequate financing in the future or that such financing will be on terms advantageous to the Company," "management believes that the Company can raise sufficient working capital to meet its projected minimum financial obligations for the fiscal year." What about beyond that year? Is our community supposed to endure indefinitely the risk of a failed mine on a year to years basis unless and until in some distant year the Vested Mine Property becomes self-sufficient? What happens if Rise were to get approval to drain the flooded mine, makes other start-up messes, and then discovers that "management" was wrong about costs or other risks or no longer has sufficient working capital? In effect, Rise is demanding (incorrectly, in the name of its disputed version of "vested rights") that not just the County share those speculator risks, but that the County assist Rise in forcing those risks on local objectors, especially those most impacted objectors owning the surface above or around the 2585-acre underground mine who have our own competing constitutional, legal, and property rights independent of the County. Objectors decline to accept any of these admitted risks that should not be ignored by the County and will not be ignored by the courts.**

4. **Rise Admits (at 9) That "We will require significant additional capital to fund our business."**

This is more about the same concerns objectors have noted from the previous Rise admissions above, but Rise adds more confirmation here to what objectors stated as grounds for rejecting Rise Petition or for any other permissions for its mining goals in the EIR/DEIR or otherwise. For example, **Rise admits that: (i) "We will be required to expend significant funds to determine whether proven and probable mineral reserves exist at our properties," i.e., again admitting that no such proof of such gold reserves now exists, thereby confirming that our community, especially those owning the surface above and around the 2585-acre underground mine, will be suffering all the problems identified in hundreds of objections to the EIR/DEIR and more coming to the Rise Petition so that this Rise-speculator can gamble at our expense (without any net benefit or reason to suffer to facilitate such speculation);** (ii) "**We will be required to expend significant funds to… continue exploration and, if warranted, to develop our existing, properties," i.e., confirming that Rise has no sufficient objective intent**

to mine, as required for vested rights, but rather only a conditional and speculative desire to mine if all the conditions are "right" for such speculation, such as, for example, as admitted throughout the 2023 10K that Rise raises sufficient money to conduct sufficient exploration to determine that it is worth beginning to mine, and, if so, that it can raise sufficient money to do so in the context of all the risks that Rise admits to exist, as discussed herein; (iii) "We will be required to expend significant funds to… identify and acquire additional properties to diversify our portfolio," i.e., demonstrating that not only is Rise demanding that the County and its citizens suffer all the problems demonstrated in our many referenced objections as to this local mine, but that **our misery is also to be suffered in order to enable Rise and its investor speculators to double its gambling bet somewhere else, reducing those speculators' risks but increasing our risks (e.g., instead of using money locally as a reserve for all these admitted risks and more, Rise would spend such fund somewhere else of no possible benefit to us suffering locals whose sacrifices enabled the speculators to double their bets;** (iv) "We anticipate that we will be required to make substantial capital expenditures for the continued exploration and, if warranted, development of our I-M Mine Property…[but] We may not benefit from some of these investments if we are unable to identify commercially exploitable reserves" [from "continued exploration and, if warranted, development…"]; i.e., the reality here, and the difficulty for speculators, is that Rise is admitting the risk that, for example, its investors could fund years of legal and political conflicts with local objectors while doing the expensive start-up work (e.g., chronically disputed permitting, dewatering the mine, constructing a water treatment plant and drainage system, repairing the Flooded Mine infrastructure shaft and 72 miles of existing tunnels in order to begin exploring the Never Mined Parcels through 76 miles of new tunnels, only then to learn whether the IMM could become a profitable gold mine or whether it's a total write-off; (v) again, "We may not be successful in obtaining the required financing, or, if we can obtain such financing, such financing may not be on terms favorable to us" for such work, beyond the merits of the mine on account of factors, including the status of the national and worldwide economy [citing the example of the financial crisis 'caused by investments in asset-backed securities] and the price of metal;" (vi) **"Our inability to access sufficient capital for our operations could have a material adverse effect on our financial condition, results of operations, or prospects," i.e., that is the obvious and understated reality, but what matters are the consequences for our community and especially objectors owning the surface above and around the 2585-acre underground mine, because once the disputed mining work starts, we will all be worse off when the mining stops than we already are now,** even if there were adequate reclamation plans with sufficient financial assurances; (vii) **"We have not yet commenced commercial production at any of our properties and, therefore, have not generated positive cash flow to date and have no reasonable prospects of doing so unless successful production can be achieved at our I-M Mine Property," and "expect to continue to incur negative investing and operating cash flows until such time as we enter into successful commercial production," which Rise admits in its disputed EIR/DEIR could take years and likely considering the unknown condition of the closed and flooded 2585-acre underground mine, and all the legal and political opposition to the IMM, could take much longer;** and (viii) again, "There is no assurance that any such financing sources will be available or sufficient to meet our requirements," and "There is no assurance that we will be able to continue to raise equity capital or to secure additional debt financing, or that we will not

continue to incur losses," i.e., **this is an all or nothing bet by the Rise speculators at the unwilling risk and prejudice of our whole community, but especially objectors owning the surface above and around the 2585-acre underground mine.**

5. **Rise Admits (at 9-10) That It Has "a limited operating history on which to base an evaluation of our business and prospect," thus admitting that objectors' impacted community has no less reason to be skeptical about Rise's performance and credibility than the speculating investors Rise is warning to beware in Rise's SEC filings.**

Rise admits that "since our inception" it has had "no revenue from operations" and "no history of producing products from any of our properties." More importantly, consider the following admissions (at 9, emphasis added) **AFTER THE RISE PETITION FILING and contrary to Rise's claims for continuous activity** that Rise incorrectly describes as sufficient for vested rights to mine. (Objectors prove from Rise Petition's own Exhibit admissions the only possibly relevant work at the IMM since 1956 involved occasional and limited "drilling explorations" on only a few parcels with no actual "gold mining" uses anywhere in the IMM since at least 1956.) None of these Rise admissions support vested rights, but, to the contrary, defeat them:

> **Our Idaho-Maryland Mine Project is a historic, past-producing mine which, apart from the exploration work that we have completed since 2016, has had very little recent exploration work since 1956. We would require further exploration work in order to reach the development stage. Advancing our I-M Mine Property into the development stage will require significant capital and time, and successful commercial production from the I-M Mine Property will be subject to completing feasibility studies, permitting and re-commissioning of the mine, constructing processing plants, and other related work and infrastructure. As a result, we are subject to all of the risks associated with developing and establishing new mining operations and business enterprises, including *completion of feasibility studies to verify reserves and commercial viability, including the ability to find sufficient ore reserves to support a commercial mining operation; * …further exploration, preparing feasibility studies, permitting and construction of infrastructure, mining and processing facilities; * the availability and costs of drill equipment, exploration personnel, skilled labor, and mining and processing equipment, if required; * the availability and cost of appropriate smelting and/or refining arrangements, if required; * compliance with stringent environmental and other governmental approval and permit requirements; * the availability of funds to finance exploration, development, and construction activities, as warranted, * potential opposition from non-governmental organizations, local groups, or local inhabitant…* potential increases in …costs [for various reasons]…* potential shortages of …related supplies.**

> ***
> **…Accordingly, our activities may not result in profitable mining operations, and we may not succeed in establishing mining operations or profitably producing metals … including [at] our I-M Mine Property [for those and other stated reasons].**

As explained above, this "starting over" admission that Rise is not just planning to reopen the IMM as a continuation of anything that preexisted. Rise also admits to starting over as if it were "developing and establishing new mining operations and business enterprises." That is the opposite of vested rights and rebuts any claim to the required continuity. Rise is admitting the obvious reality that was clear to all its predecessors: reopening the mine is, in effect, starting over on the ruins of part of the old mine that has been dormant, discontinued, abandoned, closed, and flooded since at least 1956. That is NOT engaging in a continuing, nonconforming use through all those predecessors of Rise, none of whom claimed vested rights, but instead (like Rise itself until 9/1/2023) applied for permits for each such activity as the law required.

6. Rise Admits (at 10) That Its "History of Losses" Is Expected To Continue In the Future.

Among the many reasons why even vested rights work requires both a "reclamation plan" and "financial assurances" is that for each of the more than 40,000 abandoned or bankrupt mines in California on the CalEPA and EPA lists the reclamation plans and financial assurances proved to be insufficient or worse. As future objections and expert evidence will prove before the hearing, the reality confirmed in Rise's SEC filings is that Rise cannot provide any sufficient "financial assurances" for any acceptable "reclamation plan," as is obvious from its financial and other admissions. Consider these admissions (at 10, emphasis added):

> ***We have a history of losses and expect to continue to incur losses in the future.***
>
> We have incurred losses since inception, have had negative cash flow from operating activities, and expect to continue to incur losses in the future. We have incurred the following losses from operations during each of the following periods:
>
> *$3,660,382 for the year ended July 31, 2023
>
> *$3,464,127 for the year ended July 31, 2022
>
> *$1,603,878 for the year ended July 31, 2021
>
> **We expect to continue to incur losses unless and until such time as one of our properties enters into commercial production and generates sufficient revenues to fund continuing operations. We recognize that if we are unable to generate significant revenues from mining operations and/or dispositions of our properties, we will not be able to earn profits or continue operations. At this early stage of our operation, we also**

> **expect to face the risks, uncertainties, expenses, and difficulties frequently encountered by companies at the start-up stage of their business development. We cannot be sure that we will be successful in addressing these risks and uncertainties and our failure to do so could have a materially adverse effect on our financial condition.**

As noted herein, lacking any material assets besides its disputed IMM that is already subject to secured loan liens exceeding (what objectors perceive as) the mine's conventional collateral value (hence the requirements for "equity kicker" stock warrants), these admissions explain why it is infeasible to expect this uncreditworthy (by any conventional standard) Rise to find any adequate such "financial assurances." So, why isn't the Board addressing that reality and the absence of any credible reclamation plan at the hearing? See objectors many arguments on that subject in this Exhibit and other objections, but especially including the fact that any possible reclamation would require uses and components for which no vested rights can be credibly claimed, among other things, because (like the water treatment plant that had no counterpart in 1954, or the water supply system required for the whole impacted local community by Gray v. County of Madera) there can be no vested rights for those unprecedented uses and components, especially on a parcel-by-parcel basis as required even by *Hansen* (citing and discussing *Paramount Rock* for that result).

7. Rise Complains (at 11) About How Public Opposition Allegedly Could Cause Reputational Damage That Could Adversely Affect Rise's Operations And Financial Condition, But Rise Is The Problem—Not the Victim.

Objectors are astonished that this Canadian-based miner would come to our community to attempt to reopen such a massive mine menace underneath and near our homes **and dare "to play the victim**." See the hundreds of meritorious objections to the disputed EIR/DEIR and more to come to the Rise Petition. Among the many reasons that objectors living above and around the 2585-acre underground IMM remind the County of our plight and peril as the real victims in this drama, is that we have our own, competing, constitutional, legal, and property rights at stake. Objectors are not just public-spirited community residents and voters protecting our environment and community way of life by the exercise not just of our First Amendment rights, but also by exercise of our constitutional rights to petition our government for redress of our many grievances. We were here first, before Rise came to town to speculate at our prejudice. We invested in surface homes on surface lands sold by Rise predecessors with protective deed restrictions to protect surface owners from any future miners, and we reasonably assumed that that historical IMM would be no threat because we would be protected by applicable law, environmental regulators, and responsible local governments. Now, when it is disappointed by such a correct and proper Planning Commission decision (Rise's complaint letter will be rebutted in another objection), Rise somehow claims some unprecedented priority over all of us by incorrectly claiming "vested rights." Nonsense. There is no such possible thing as Rise silencing objectors' lawful exercise of competing interests explaining why Rise is wrong because somehow being wrong might harm is reputation, especially since Rise has itself harmed its reputation by its objectionable conduct and threats.

Such objectors are properly protecting our homes, families, and property values and rights from the risks and harms threatened by this mining in legally appropriate ways, as demonstrated by the foregoing objection and by hundreds of other meritorious record objections to the EIR/DEIR with more to come to the Rise Petition. For example, such objectors' groundwater and existing and future well water would be dewatered 24/7/365 for 80 years and flushed away by Rise down the Wolf Creek. Rise came to town to speculate by seeking to reopen a dormant gold mine closed, discontinued, abandoned, and flooded since at least 1956. **That (and more) makes us existing resident surface owners above and around the 2585-acre underground IMM the victims, not Rise.** So far, contrary to many record objections, Rise has entirely ignored or disregarded objectors' issues and concerns as if this were just a dispute about how Rise uses its owned property, as distinguished from how Rise impacts objectors' own properties. Contrary to the disputed Rise Petition, Rise has no vested or other right to mine here. Objectors are not taking anything away from Rise, but, to the contrary, Rise is taking much away from objectors by 24/7/365 operations for 80 years that are utterly incompatible with our preexisting, suburban way of life and our competing property rights and values. And for what? For the profit for this Canadian-based miner and its distant speculating investors. What this Exhibit demonstrates is that Rise not only admits that speculation and the huge risks that such investors are taking. But if the County approves anything for Rise, it would be imposing all those same risks (and additional burdens) on unwilling local objectors with no net benefit, just massive risks, and harms, including the prolonged erosion of our property values as Rise "explores" and indefinitely waits for the data it and its speculator money sources to decide whether or not to proceed with the mining. Under these circumstances, there is no such thing as vested rights for such an indefinite, conditional option to mine.

Consider here in greater detail as the Board reads such Rise risk admissions in this and previous Rise SEC filings that such admissions not only describe the risks for Rise investors and for us impacted local objectors, but also for our whole community. The incompatibility of such mining with our surface community above and around the 2585-acre underground IMM is demonstrated by the negative impact our property values, which also harms the County's property tax revenue (plus declining sales tax revenue from tourists who don't come here for the miseries of a working mine). All of the local service industries also will suffer to the extent they depend, for example, on such surface owners building on their lots and residents repairing or remodeling their homes. Also consider this dilemma: what do objectors tell a prospective buyer or its mortgage lender about the IMM risks? We could hand them the thousands of pages of Rise EIR/DEIR and Rise Petition filings, plus all the meritorious rebuttals and objections, and say: "make your own decision, and buyer beware." That will guarantee the depression in our property values as much as will their brokers warning them of the risks of property value declines regardless of the merits merely because of the stigma: no buyer wants to pay top dollar for the opportunity to live in what has been a wonderful and beautiful place that now is at such risk for such mining underneath them 24-7-365 for 80 years. Even if the buyer or its lender were willing to risk trusting Rise and its enablers and to disregard the hundreds of record objections and the concerns of almost every impacted resident, wouldn't that buyer still follow his or her broker's advice that there are equivalent houses that now have become better investments at a safer distance from the IMM? Indeed, wouldn't even such a Rise trusting buyer (if such an impacted, local person exists) decide in any case that it is "better to be safe than sorry"? Also,

even if the buyer were both trusting and not risk-averse, his or her mortgage lender will only lend 80 or 90% of the appraised value of a house. If the appraised value is less than the asking price or the pre-Rise value, won't the buyer always drop his or her offer to that now lower appraised value? (Most buyers need that financing and are not eager to stretch further for a down payment.) Once one appraiser causes that predictable price drop, that lower sale price becomes the new "comparable" for all the other appraisals to follow, and the market prices begin to spiral down. Almost every broker in town recognizes that property value problem, whether or not they wish to speak candidly on that topic, proving the obvious: Such underground mining is incompatible beneath surface homes in a local community like this. Defending one's home is not about harming Rise's reputation or prejudice about mining or such speculators. Few buyers anywhere ever want to live above a working mine, regardless of the truth or falsity of Rise's public relations and other claims about the quality of its mining.

In any event, independent of the many disputes with, and objections to, Rise Petition, the EIR/DEIR, and other Rise "communications," Rise's own admissions in its SEC filings and elsewhere, such as those addressed in this Exhibit, are not reassuring to surface owners or any potential buyer or lender (or its appraisers.) Also, what does a resident seller say to a buyer who looks at the Rise financial statements and admissions and asks, why should I assume Rise can afford any of the safety and other protections Rise promises to make its mining tolerable and legally compliant? How can Rise acquire sufficient "financial assurances" for an adequate "reclamation plan?" Isn't Rise asking all of us existing and future owners to assume (for no good reason or benefit) the risks against which Rise is warning his speculator-investors? Why should any existing or future resident do that? In any case, before Rise starts accusing its resistors of causing it reputational damages, Rise should consider that it cannot possibly complain about objectors exposing Rise admissions that are contrary to its Rise Petition, EIR/DEIR, and other communications. If Rise has credible answers to our concerns, objectors have not yet seen them, leaving Rise with additional credibility problems of its own making and more reasons why, Rise should look to itself instead of at its critics.

8. Rise Admits (at 11) That "Increasing attention to environmental, social, and governance (ESG) matters may impact our business.

Objectors refer the reader to the previous response to the more specific complaint about Rise's reputation. However, the disputed EIR/DEIR demonstrated that Rise is a climate skeptic/denier, which is a cause for concern about any miner seeking to dewater the mine 24/7/365 for 80 years by draining surface owned groundwater needed not just for lateral and subjacent support to protect such owners from "subsidence," but also to save our surface forests and vegetation from the chronic droughts assured by climate change that is an undeniable part of our actual reality and cannot continue to be disregarded in Rise's "alternate reality" in which climate change issues are "too speculative" to address (e.g., where Rise's disputed EIR/DEIR incorrectly relied on prior decades of average surface rainfall to attempt to justify its 24/7/365 dewatering for 80 years as if there were no climate change/dryness/drought threat issues.) See, e.g., *Keystone, Gray v. County of Madera, and Varjabedian.*

9. Rise Admits (at 11-12) Risks Related to Mining and Exploration.

Rise admitted (Id. emphasis added): "WE HAVE NOT ESTABLISHED THAT ANY OF OUR MINERAL PROPERTIES CONTAIN ANY MINERAL RESERVE ACCORDING TO RECOGNIZED RESERVE GUIDELINES, NOR CAN THERE BE ANY ASSURANCE THAT WE WILL BE ABLE TO DO SO." Rise also admitted (at Id. emphasis added):

> **THE I-M MINE PROPERTY IS IN THE EXPLORATION STAGE. THERE IS NO ASSURANCE THAT WE CAN ESTABLISH THE EXISTENCE OF ANY MINERAL RESERVE ON THE I-M MINE PROPERTY … IN COMMERCIALLY EXPLOITABLE QUANTITIES. UNLESS AND UNTIL WE DO SO, WE CANNOT EARN ANY REVENUES FROM THESE PROPERTIES AND IF WE DO NOT DO SO WE WILL LOSE ALL OF THE FUNDS THAT WE HAVE EXPENDED ON EXPLORATION. IF WE DO NOT ESTABLISH THE EXISTENCE OF ANY MINERAL RESERVE IN A COMMERCIALLY EXPLOITABLE QUANTITY, THE EXPLORATION COMPONENT OF OUR BUSINESS COULD FAIL.**

This is why objectors describe Rise and its investors as speculators. They are making a bet that there is profitable gold that they cannot prove exists there; i.e., they are making a (presumably, perhaps, educated) guess. But this is a "heads they win, tails we lose" coin flip risk from the perspective of local surface owners above and around the 2585-acre underground mine. Suppose Rise cannot find what it seeks before its investors cut off its funding. In that case, our community will suffer the mess (absent sufficient reclamation plan "financial assurances," but still not making locals whole for the lingering losses of depressed property values and depleted groundwater or existing or future well water.) On the other hand, if Rise succeeds in its gamble, us locals suffer all the miseries that accompany living above or around a working gold mine. See, e.g., record objections to the disputed EIR/DEIR and this Rise Petition.

In addition. Rise admitted (at 12): "Even if we do eventually discover a mineral reserve on one or more of our properties, there can be no assurance that they can be developed into producing mines and that we can extract those minerals. Both mineral exploration and development involve a high degree of risk, and few mineral properties that are explored are ultimately developed into producing mines." Rise then explained (at Id.) many reasons why "an established mineral deposit" is either "commercially viable" or not, such as various factors that "could increase costs and make extraction of any identified mineral deposits unprofitable."

10. **Rise Admits (at 12, emphasis added) That "mineral exploration and production activities involve a high degree of risk and the possibility of uninsured losses."**

Rise admits (Id.) that: "EXPLORATION FOR AND THE PRODUCTION OF MINERALS IS HIGHLY SPECULATIVE AND INVOLVES GREATER RISKS THAN MANY OTHER BUSINESSES. Most exploration programs do not result in mineralization that may be of sufficient quantity or quality to be profitably mined." Rise added that: "OUR OPERATIONS ARE …SUBJECT TO ALL OF THE OPERATING HAZARDS AND RISKS NORMALLY INCIDENTAL TO EXPLORING FOR AND

DEVELOPMENT OF MINERAL PROPERTIES, such as, but not limited to: … *environmental hazards; * water conditions; * difficult surface or underground conditions; * industrial accidents; … *failure of dams, stockpiles, wastewater transportation systems, or impoundments; * unusual or unexpected rock formations; and * personal injury, fire, flooding, cave-ins, and landslides." Rise then reports the unhappy consequences of such risks for the speculator-investors, but not on the impacted victims, such as those living on the surface above or around the 2585-acre underground IMM, which is the consequence that should most concern the Board. Again, as described above, any Board support for Rise would make us objecting locals suffer from the same risks about which Rise is warning its investors, as it is required to do by the securities laws. Among the many reasons why objectors owning the surface above and around the 2585-acre underground mine are asserting their own competing constitutional, legal, and property rights is that we prefer not to be vulnerable to anyone imposing those risks on us. Our independent objection rights and standing should enable us to better protect our own interests.

11. Rise Admits (at 13) That It Is Vulnerable To Gold Commodity Prices, Because Such "Commodity price volatility could have dramatic effects on the results of operations and our ability to execute our business plans."

This obvious truth is just one more reason why Rise's admitted financial concerns and other risks (and its consequent insufficient creditworthiness) expose impacted locals to the consequent risks of Rise lacking the funds when needed to pay for the safety, mitigation, and protections it and its enablers incorrectly claim is sufficient. That is another of many risk factors that should disqualify Rise from reopening the IMM, since Rise's capacity to perform such duties may be or become illusory. All these Rise admitted risk factors demonstrate that Rise has little or no margin for surviving any such disappointments or adverse events. Yet, Rise's disputed EIR/DEIR, Rise Petition, and other filings with the County do not address those consequences to our community, especially on impacted locals living above and around the 2585-acre underground IMM, when those risks occur and Rise has exhausted its funding. Also, Rise's disputed intent for vested rights to mine cannot be so conditional and indefinite. Stated another way, neither Rise nor its predecessors can preserve vested rights to mine by an alleged future intent, if and when the conditions and circumstances it requires all exist at such future dates, such as sufficient funding, ideal market conditions, permits and approvals without burdensome conditions, the absence of any such 25 plus admitted or other foreseeable risks occurring, and the absence of all the other factors Rise admits to being possible obstacles to Rise's execution and accomplishment of its mining plans.

12. Rise Admits (at 13, emphasis added) That "evaluation uncertainties …could result in project failure" such as incorrect "[e]stimates of mineralized material and resources."

That is another example of how Rise admissions of risks for investors are likewise admissions of bigger problems for our community, especially on those objectors owning the

surface above and around the 2585-acre underground IMM. For example, Rise so admits that such risks (detailed further below): "could result in uncertainties that cannot be reasonably eliminated from the process of estimating mineralized material and resources/reserves. If these estimates were to prove to be unreliable, we could implement an exploration plan that may not lead to commercially viable operations in the future." Id. emphasis added. The Board should ask the hard, follow-up questions that objectors would ask if allowed, such as what happens then to us locals? Consider what Rise admitted (Id.) about those "risks associated with being able to accurately predict the quantity and quality of mineralized material and resources/reserves" for Rise's "exploration and future mining operations." Rise admits that all these analyses consist of **"using statistical sampling techniques,"** which is necessary because neither Rise nor its relevant predecessors have actually investigated the actual conditions in the dormant, discontinued 2585-acre underground mine that closed and flooded by 1956.

There is no sufficient data provided by Rise in any filing objectors have found that reveal the data needed to evaluate Rise's critical "statistical sampling techniques." However, judging by the disputed and massively incorrect well-testing methodology proposed by Rise in its disputed EIR/DEIR challenged in record objections, objectors have good cause not to accept Rise's such results without thoroughly re-examining its methodology and analyses. For example, Rise cannot satisfy its burden of proof by simply announcing the results from its mystery formulas from "samples obtained from appropriately placed trenches, test pits, underground workings, and intelligently designed drilling." Id. This will be disputed the same way objectors have and will dispute Rise's well sampling but adding that the surface above and around the 2585-acre underground IMM is owned by objectors or others who would not consent to Rise drilling test holes on their properties.

Also note, for example, that Rise's admitted lack of resources prevents it from "doing the job right" in all the correct and necessary places for greater accuracy. By that polling analogy, there will be a vastly higher margin of error for a poll that samples 100 people versus one that samples 10,000 people, and, here, Rise and is predecessors sampled too few locations for tolerable accuracy and for too few purposes relevant to our community's safety and well-being (as distinct from pleasing Rise's investors). See the related Rise admission in the following paragraph. Furthermore, this following Rise disclaimer may be sufficient for its willing speculator-investors, but it is legally deficient for imposing the risks and burdens of this mining on our community, especially those of us owning the surface above and around the 2585-acre underground IMM:

> **THERE IS INHERENT VARIABILITY OF ASSAYS BETWEEN CHECK AND DUPLICATE SAMPLES TAKEN ADJACENT TO EACH OTHER AND BETWEEN SAMPLING POINTS THAT CANNOT BE ELIMINATED. ADDITIONALLY, THERE ALSO MAY BE UNKNOWN GEOLOGIC DETAILS THAT HAVE NOT BEEN IDENTIFIED OR CORRECTLY APPRECIATED AT THE CURRENT LEVEL OF ACCUMULATED KNOWLEDGE ABOUT OUR PROPERTIES THIS COULD RESULT IN UNCERTAINTIES THAT CANNOT BE REASONABLY ELIMINATED FROM THE PROCESS OF ESTIMATING MINERAL MATERIAL AND RESOURCES/RESERVES. IF THESE**

> **ESTIMATES WERE TO PROVE TO BE UNRELIABLE, WE COULD IMPLEMENT AN EXPLORATION PLAN THAT MAY NOT LEAD TO COMMERCIALLY VIABLE OPERATIONS IN THE FUTURE.** Id. (emphasis added)

Again, objectors ask, and the Board should ask, what happens to us then?

13. Rise Also Admits (at 13) Its Lack of Relevant Knowledge, Creating Risks for "material changes in mineral/reserve estimates and grades of mineralization will affect the economic viability of placing a property into production and a property's return on capital."

The comments in the previous paragraph apply equally here. Indeed, in this risk comment, Rise admits to our such concerns by stating (Id. emphasis added**): "MINERALS RECOVERED IN SMALL SCALE TESTS MIGHT NOT BE DUPLICATED IN LARGE SCALE TESTS UNDER ON-SITE CONDITIONS OR IN PRODUCTION SCALE."** Rise further confesses its lack of work to acquire necessary knowledge for it factual conditions, which are not just uninformed opinions:

> As we have not completed feasibility studies on our I-M Mine Property and have not commenced actual production, we do not have mineral resources, and any estimates may require adjustments or downward revisions. In addition, the grade of ore ultimately mined, if any, may differ from that indicated by future feasibility studies and drill results. Id.

Again, the Board should ask Rise the hard questions objectors would ask if we were allowed to do so in this stage of the process, such as: SINCE THE FATE OF US IMPACTED LOCALS OWNING THE SURFACE ABOVE AND AROUND THE 2585-ACRE UNDERGROUND MINE DEPENDS, AMONG MANY OTHER RISKS, ON THE ACCURACY OF SUCH RISE "STATISTICAL SAMPLING TECHNIQUES," WHAT IS THE MARGIN OF ERROR IN ITS PREDICTIONS, AND WHAT ARE THOSE SAMPLING TECHNIQUES, SO THAT WE CAN CHALLENGE THEM? WHO IS "CHECKING RISE'S MATH" AND THE ASSUMED FACTS IN ITS VARIABLES? Consider by analogy the similar statistical sampling techniques used in political polling. There is always an admitted margin of error (and a greater unadmitted margin of error) demonstrated by the bias injected in the formulas by partisan poll takers. (e.g., If the pollster assumes a 63% election turnout for one side and a 51% turnout for the other side, the margin of error in the resulting prediction could be huge, when the reverse proves true by hindsight.) If the Board would not trust a partisan poll that relies on partisan variables and discloses neither its formulas nor its margin of errors, why should the Board or anyone else trust our community and personal fates to Rise's partisan statistics without a thorough study of Rise's math and its chosen assumptions for the key variables? (As to motive for being "realistic" versus "aggressive," note that Rise repeatedly admits that it is continuously dependent on periodic funding from its investors, and negative data could end that funding and the entire project, including the managers' jobs.)

14. Rise Again Admits (at 13-14) That Its Mining Plan Is Conditional On the Results of Its Exploration, Thereby Defeating Its Vested Rights.

Rise admits again that, if its exploration does not produce satisfactory results, Rise will not mine. Id. (This was previously admitted in terms of Rise lacking the capacity to mine (or even unconditionally to commit to mine) unless it is able to continuously find the needed financial and other support needed from its investors.) For example, Rise states (emphasis added): "OUR LONG-TERM SUCCESS DEPENDS ON OUR ABILITY TO IDENTIFY MINERAL DEPOSITS ON OUR I-M MINE PROPERTY … THAT WE CAN THEN DEVELOP INTO COMMERCIALLY VIABLE MINING OPERATIONS." Id. emphasis added. Furthermore, Rise admits that:

> **MINERAL EXPLORATION IS HIGHLY SPECULATIVE IN NATURE, INVOLVES MANY RISKS, AND IS FREQUENTLY NON-PRODUCTIVE. These risks include unusual or unexpected geologic formations and …[listing various risks already admitted by Rise, including the need for "capital available for exploration and development work."]**
>
> **Substantial expenditures are required to establish proven and probable reserves through drilling and analysis to develop …[listing again what is needed for mining and how they determine "whether a mineral deposit will be commercially viable]. WE MAY INVEST SIGNIFICANT CAPITAL AND RESOURCES IN EXPLORATION ACTIVITIES AND FIND IT NECESSARY TO ABANDON SUCH INVESTMENTS IF WE ARE UNABLE TO IDENTIFY COMMERCIALLY EXPLOITABLE MINERAL RESERVES. THE DECISION TO ABANDON A PROJECT MAY HAVE AN ADVERSE EFFECT ON THE MARKET VALUE OF OUR SECURITIES AND THE ABILITY TO RAISE FUTURE FINANCING. Id. (emphasis added.)**

But again, nowhere in the disputed EIR/DEIR, Rise Petition, or other Rise filings does Rise ever explain what happens next to the mine and our community, especially those of us living on the surface above or around the mine, when Rise (or the investors whose money is required for Rise to do anything material) decides the results of exploration are unsatisfactory and "abandons the project." Who cleans up the mess Rise leaves behind? That is why "reclamation plans" and "financial assurances" are essential, and why it is a legal and policy mistake to separate the adequacy of such reclamation plans and financial assurances from the dispute over the existence of vested rights, especially since Rise's reclamation plan will not have vested rights and will need conventional permits.

But consider this from the alternative perspective of the impacted local objectors. Rise admits that any intent to actually mine is dependent on many pre-conditions, such as successful future exploration and related fund raising, meaning that Rise does not presently

have the required objective and unconditional intent to mine that is required for vested rights. But suppose (as the law requires) the reclamation plan and financial assurance plans are decided at the same time as the vested rights. In that case, it will become clear that there can be no such vested rights because no Rise investors will go "all in" at this exploration stage on providing "financial assurances" in advance to Rise for the massive reclamation plan required for any such mining. By reference to the gambler analogy above, even if Rise were willing and intending to push all of its chips onto the table bet at the start before seeing the next open face cards, it is hard to imagine the investor with all the chips needed so to commit "to go all in" would prematurely commit to that gamble, especially considering all the risks not just admitted by Rise in these SEC filings but also those demonstrated by record objections to the disputed EIR/DEIR and Rise Petition. Stated another way, the objective test of any vested rights intent to mine is proven or disproven by whether or not the miner's money source is willing to go "all in" now, i.e., at the time the vested rights questions are to be decided. Otherwise, what Rise Petition is incorrectly claiming without any precedent is that such miners can have an unlimited option to mine if they wish after they proceed with indefinite exploration activities while trying to raise the required funding and while us surface owners and our community continue indefinitely to suffer the stigmas depressing our property values. No applicable law gives such an indefinite option to Rise at such objectors' prejudice.

15. **Rise Admits (at 14-16, emphasis added) That there are "significant governmental regulations" that may prevent Rise from obtaining "all required permits and licenses to place our properties into production."**

THIS ADMISSION (LIKE OTHERS) IS CONTRARY TO RISE PETITION'S DISPUTED CLAIM (AT 58) THAT RISE'S DISPUTED VESTED RIGHTS EMPOWER RISE TO DO WHATEVER IT PLANS "WITHOUT LIMITATION OR RESTRICTION."

Apparently, that Rise Petition reflects Rise's litigation goal (e.g., to see how much it can "get away with" free of regulation or obligation), but to avoid liability to investors Rise does not dare that same outrageous and incorrect claim in the Rise SEC filings. By analogy, this is like some "alternative reality" politician irresponsibly claiming something absurd at a rally, but then admitting the contrary reality when he or she is under oath and subject to consequences for false statements. See the Initial Evidence Objection, including its Table of Cases And Commentaries … as well as other record objections to any such Rise vested rights claims. Notice that, besides incorrectly discussing abandonment (e.g., ignoring the required use-by-use, component-by-component, and parcel-by-parcel analysis, and the requirements of many cases cited by objections that Rise ignores), Rise implicitly asserts its incorrect unitary theory of vested rights as if any "use" or "component" on any "parcel" allows all uses and components on all parcels until abandoned. But, as objectors prove, Rise overstates what vested rights, if any existed anywhere (which objectors dispute), could accomplish for Rise, although the scope of that overstatement is different between the Rise Petition versus this SEC filing and others (as well as the EIR/DEIR and other Rise filings at the County).

Rise also states (at 14, emphasis added) that "THE COMPANY'S OPERATIONS, INCLUDING EXPLORATION AND, IF WARRANTED, DEVELOPMENT OF THE I-M MINE PROPERTY,

REQUIRED PERMITS FROM GOVERNMENTAL AUTHORITIES AND WILL BE GOVERNED BY LAWS AND REGULATIONS, INCLUDING …[a general and insufficient list of applicable laws, none of which apply to the conflicts between the surface owners above and around the 2585-acre underground mine versus Rise that all Rise filings continue to ignore entirely.]

In any case, the 2023 10K is both internally inconsistent and contrary to the Rise Petition. For example, Rise claims (Id. at 14) that its disputed vested rights empower it to avoid a use permit: **"Mining operations on the I-M Mine Property are a vested use, protected under the California and federal Constitutions, and A USE PERMIT IS NOT REQUIRED FOR MINING OPERATIONS TO CONTINUE." HOWEVER, ON THE NEXT PAGE, RISE SEEMS TO ADMIT (AT 15, EMPHASIS ADDED) THAT USE PERMITS ARE STILL REQUIRED AS FOLLOWS:**

> **Subsurface mining is allowed in the County M1 Zoning District, where the I-M Mine Property is located, with approval of a "Use Permit." Approval of a Use Permit for mining operations requires a public hearing before the County Planning Commission, whose decision may be appealed to the Board of Supervisors. Use Permit approvals include conditions of approval, which are designed to minimize the impact of conditional uses of neighboring properties. … [After describing the 11/19/2019 Use Permit application for underground mining and Rise's proposed additions, like the "water treatment plant and pond, Rise said] There is no assurance our Use Permit application will be accepted as submitted. If substantial revisions are required, our ability to execute our business plan will be further delayed.**

Thus, while the Rise Petition describes evading the requirement for a use permit, and this SEC filing discussion begins with a similar disclaimer of the need for such a use permit, this 2023 10K discussion still contemplates a use permit. Moreover, **Rise also admits that: "Existing and possible future laws, regulations, and permits governing the operations and activities of exploration companies or more stringent implementation of such laws, regulations, or permits, could have a material adverse impact on our business and caused increases in capital expenditures or require abandonment or delays in exploration."** What Rise does not do is address the DEIR admission at 6-14 claiming that the whole project is economically infeasible if Rise cannot operate 24/7/365 for 80 years, which extraordinary timing impositions many objectors expect law reforms to prevent by all appropriate legal and political means.

Indeed, AFTER EXPLAINING THE COSTS AND BURDENS OF SUCH LAWS, REGULATIONS, AND PERMITS, RISE WARNS THAT IT "CANNOT PREDICT IF ALL [SUCH] PERMITS… WILL BE OBTAINABLE ON REASONABLE TERMS." RISE THEN ADDS (at 15): "WE MAY BE REQUIRED TO COMPENSATE THOSE SUFFERING LOSS OR DAMAGE BY REASON OF OUR MINERAL EXPLORATION OR OUR MINING ACTIVITIES, IF ANY, AND MAY HAVE CIVIL OR CRIMINAL FINES OR PENALTIES IMPOSED FOR VIOLATIONS OF, OR OUR FAILURE TO COMPLY WITH, SUCH LAWS, REGULATIONS, AND PERMITS." See Rise's financial admissions below demonstrating that Rise both lacks the insurance and the financial resources to pay any material judgment to such victims. (Again, there is no discussion about the consequences of Rise harms to impacted surface residents or their properties above or around the underground IMM.)

This confusion becomes more complicated because Rise now also admits (at 16) what objectors thought Rise denied for its vested rights, that, besides a use permit, Rise also (i) needs to comply with SMARA, (ii) needs to have a reclamation plan and financial assurances as required in SMARA, (iii) and must comply with CEQA, making all our objections to the disputed EIR/DEIR part of this Rise Petition dispute.

16. Rise Admits (at 16) That Its "activities are subject to environmental laws and regulations that may increase our costs of doing business and restrict our operations."

This is another example of the SEC filings conflicting with the Rise Petition (at 58) incorrectly claiming that Rise can operate as it wishes with vested rights "without limitation or restriction." See objectors' prior discussion of such confusion and disputes. This section correctly observes that environmental and related laws and regulations are evolving to being stricter and more burdensome for miners, and thereby "may require significant outlays and may cause material changes or delays in our operations and future activities. It is possible that future changes in these laws or regulations could have a significant adverse impact on our properties or some portion of our business, causing us to re-evaluate those activities at that time." As discussed above, objectors worry that, when Rise finally decides it cannot accomplish its objectionable plans or its investors stop doling out its essential working capital, our community will be much worse off than we already are now if Rise were allowed to start its operations before they stop again. This is a constant theme throughout these SEC filings where Rise warns investors that they may lose their investments when Rise abandons the project for any of these many such risk-related reasons. Such Rise admissions of risks and consequent abandonment should require the Board to be extremely protective of our community, especially those living on the surface above and around the 2585-acre underground IMM, such as by insisting on the strongest possible reclamation plans and financial assurances. The EPA and CalEPA lists include more than 40,000 such abandoned or bankrupt mines, and what they have in common is poor or worse reclamation plans and financial assurances.

17. Rise Contends (at 17) That Its Compliance With Climate Change Laws and Regulations Could Increase Its Costs And "have a material adverse effect on our business."

Suppose the Board compares this Rise commentary with Rise's responses to objections to the DEIR and objectors' rebuttals to the EIR's evasions of those meritorious objections. In that case, the Board will see a shift from comprehensive denial and evasion in the disputed EIR/DEIR to this strange and disputed appeal for sympathy about the costs and burdens Rise fears from climate change that it still regards as "highly uncertain" (and previously disregarded in the EIR/DEIR disputes as "too speculative.") When objectors say "strange," Rise again is protesting that "any adverse publicity in the global marketplace about potential impacts on climate change by us or other companies in our industry could harm our reputation." While the hundreds of objections to the disputed EIR/DEIR addressed climate change in many ways, objectors have

been particularly focused on the EIR/DEIR's incorrect use, for example, of irrelevant historical surface average rainfall data to justify the massive 24/7/365 dewatering for 80 years that would drain groundwater (and existing and future well water) owned by surface owners living above and around the 2585-acre underground IMM, purporting to treat it in the disputed, proposed water treatment plant "component" (for which there can be no vested rights because it has no precedent in 1954) and then flush our water away down the Wolf Creek. Notice in the following quote (at 17) about how Rise now deals with the reality of increasing climate change droughts and chronic dryness by making this about Rise instead of about how Rise makes this problem massively worse for our community in the most objectionable ways:

> Water will be a key resource for our operations and inadequate water management and stewardship could have a material adverse effect on our company and our operations. While certain aspects relating to water management are within our ability to control, extreme weather events, resulting in too much or too little water can negatively impact our water management practices. The effects of climate change may adversely impact the cost, production, and financial performance of our operations.

Again, nowhere does Rise even attempt realistically to address Rise's threat to take objecting surface owners' groundwater or well water, except for a few (e.g., just 30? Mine neighbors along East Bennett Road) compared to the hundreds of existing, impacted well owners plus many more when one considers, as the law requires, the rights of all (thousands) surface owners above and around the 2585-acre underground mine to tap their groundwater in **future wells** (that Rise ignores) to mitigate drought and other climate change dryness. See *Keystone, Gray v. County of Madera, and Varjabedian.*

18. Rise Admits (at 17-18) That "land reclamation requirements for our properties may be burdensome and expensive" even without considering any of the competing, constitutional, legal, and property rights of objecting surface owners above and around the 2585-acre underground mine.

After noting some general reclamation requirements (again ignoring such surface owners' competing, constitutional, legal, and property rights, and thereby underestimating the scope and intensity of its reclamation and other obligations), Rise complains (at 18, emphasis added):

> In order to carry out reclamation obligations imposed on us in connection with our potential development activities, we must allocate financial resources that might otherwise be spent on further exploration and development programs. **We plan to set up a provision for our reclamation obligations on our properties, as appropriate, but this provision may not be adequate. If we are required to carry out reclamation work, our financial position could be adversely affected.**

FIRST, vested rights require not just reclamation obligations but also "financial assurance," which cannot be satisfied by what Rise's 2023 10K calls "setting up a provision" (i.e., setting aside some reserve funds, probably on a legally and economically illusory basis, where such set asides are vulnerable to judgment creditors and to disappointing treatment in any bankruptcy case), as our expert will address when the County or county is willing to hear our objections to Rise's reclamation plans and financial assurances, which should be heard now to defeat Rise's vested rights claims, because such reclamation uses and components on each parcel need their own vested rights and Rise cannot achieve any of them.) See Rise's admitted financial condition below which makes its "set up of provisions" worse than unsatisfactory. SECOND, as Hardesty and other cases demonstrate, this underground mining is a different "use" for vested rights analysis than surface mining "uses." Reclamation of underground mining harms, such as draining our community's groundwater and existing and future well water, is massively more expensive than Rise admits or contemplates, since it ignores those issues entirely. But see *Keystone, Gray v. County of Madera, and Varjabedian.* ***THIRD,*** despite ample warning in meritorious record EIR/DEIR objections explaining the toxic water pollution menace of hexavalent chromium confirmed in the CalEPA and EPA websites' studies and evidence and illustrated by the case study of how such CR6 pollution killed Hinkley, CA and many of its residents as illustrated in the movie, *Erin Brockovich,* Rise has not renounced its objectionable plan to pipe cement paste with hexavalent chromium into the underground IMM to shore up mine waste into columns. If, despite massive funding from the utility's settlement in that historic case, that town still has been unable to remediate its groundwater after all these years. See www.hinkleygroundwater.com. Rise can hardly be expected to do better when it still refuses to confront that obvious risk.

19. Rise Admits (at 18) harms from "intense competition in the mining industry."

This reveals one more of the many ways in which Rise is positioned to fail, since it has no sufficient financial cushion on which to rely when it suffers any of the many risks and problems it admits may be fatal to it. Rise's concluding admission on this topic is also telling for another reason: despite admitting the lack of resources that render Rise unable to afford to accomplish any part of its plans for the I-M Mine Property, Rise wants to "diversify" and start buying more mines; i.e.: "If we are unable to raise sufficient capital our exploration and development programs may be jeopardized or we may not be able to acquire, develop, or operate additional mining projects."

20. **Rise Admits (at 18) that it is vulnerable to any "shortage of equipment and supplies.**

21. Rise Admits (at 18) that "[j]oint ventures and other partnerships, including offtake arrangements, may expose us to risks."

Rise's chronically distressed financial condition is admitted below and in other Rise SEC filings, that demonstrate Rise's lack of the resources or credit to accomplish any of its material objectives or to satisfy any material obligations it contemplates without continuous equity-based funding from its investors. Many objectors have worried about "who may be behind the curtain" and whether they might be an even bigger risk to our community than Rise. In this admission paragraph, Rise states the obvious:

> We may enter into joint ventures, partnership arrangements, or offtake agreements … Any failure of such other companies to meet their obligations to us or to third parties, or any disputes with respect to the parties' respective rights and obligations, could have a material adverse effect on us, the development and production at our properties, including the I-M Mine Property, and on future joint ventures … could have a material adverse effect on our results…

Perhaps more than in most industries, there are some "aggressive in the extreme" players in the mining industry, and many such miners operate through "expendable" shell subsidiaries that they may not hesitate to place into strategic bankruptcies (or foreign insolvency proceedings for which they may seek US Bankruptcy Code Chapter 15 accommodations) that would create problems for everyone. This industry may also suffer its share of "loan to own" hedge funds (or the like), which can create difficulties for everyone else. This is another risk factor against which the County should prepare to protect our community, especially those living above and around the 2585-acre underground mine.

22. Rise Admits (at 18) that it "may experience difficulty attracting and retaining qualified management" and that "could have a material adverse effect on our business and financial condition."

23. Rise Admits (at 18) that currency fluctuations could become a problem.

24. Rise Admit (at 19) that "[t]itle to our properties may be subject to other claims that could affect our property rights and claims."

While it seems likely that major disputes by third parties over title to the IMM would have surfaced by now, the real question is whether, or to what extent, Rise anticipates attempting to solve its problems by asserting disputed claims to expand its alleged rights, titles, and interests. For example, what groundwater rights does Rise claim to empower it to dewater the mine 24/7/365 for 80 years? Also see the Rise's issues herein of concern to owners of surface properties above and around the 2585-acre IMM.

25. Rise Admits (at 19) that it may attempt to "secure surface access" or purchase required surface rights" or take other objectionable actions to acquire surface access (all of which are prohibited in the deeds by

which Rise acquired the IMM, as admitted in the Rise Petition Exhibits and earlier year SEC 10K filings).

If the County wonders why us surface owners living above or around the 2585-acre underground mine have been so defensive and outspoken against the mine, in part, it is from concern (in the case of some objectors born of experience) that Rise may battle for access to the surface to promote its opportunity to plunder the ground below the 200 foot deep surface rights of objecting surface owners, especially as to the groundwater and existing and future well water rights. See Initial Evidence Objections proving by Rise Petition's own exhibits that such Rise assertions in this 2023 10K (compare with the prior 10K's) admits are meritless. Such implied or express Rise warnings including the following (at 19, emphasis added):

> **In such cases [i.e., where Rise does not own the surface above and around its underground mine it decides it wants to use], applicable mining laws usually provide for rights of access for the purpose of carrying on mining activities; however, the enforcement of such rights through the courts can be costly and time consuming. It is necessary to negotiate surface access or to purchase surface rights if long-term access is required. [This is wrong and contrary to Rise's deed restrictions attached as an Exhibit to its Rise Petition.] There can be no guarantee that, despite having the right at law to carry on mining activities, we will be able to negotiate satisfactory agreements with any such existing landowners/occupiers for such access or purchase such surface rights, and therefore we may be unable to carry out planned mining activities. In addition, IN CIRCUMSTANCES WHERE SUCH ACCESS IS DENIED, OR NO AGREEMENT CAN BE REACHED, WE MAY NEED TO RELY ON THE ASSISTANCE OF LOCAL OFFICIALS OR THE COURTS IN SUCH JURISDICTION THE OUTCOMES OF WHICH CANNOT BE PREDICTED WITH ANY CERTAINTY. OUR INABILITY TO SECURE SURFACE ACCESS OR PURCHASE REQUIRED SURFACE RIGHTS COULD MATERIALLY AND ADVERSELY AFFECT OUR TIMING, COST, AND OVERALL ABILITY TO DEVELOP ANY MINERAL DEPOSITS WE MAY LOCATE.**

None of that is correct in respect to the IMM, which is the only mine Rise presently reports owning in these SEC filings or in its financial statements. FIRST, this demonstrates there can be no vested rights for Rise as to the 2585-acre underground mine, since Rise admits it needs surface access for such mining that Rise has not had (and neither did many predecessors in the chain of title.) Rise neither has such access, nor can Rise expect to acquire such access (or the permits Rise would need for that new "use" on a new parcel for which all cases, including Hansen, would forbid vested rights.) See the Table of Cases and Commentaries… at the end of the Initial Evidentiary Objection and other objections in the record, including to the disputed EIR/DEIR. SECOND, even Rise Petition's own Exhibits prohibit Rise from any such access to the surface without the owners' consent, which means that

Rise's express threat to "rely on the assistance of local officials or the courts" is wrongful, meritless, and worse; it sounds like this may be a Rise threat to bully surface owners by asserting such meritless threats based on a deed that Rise must have read since it is a key piece of imagined Rise evidence for its disputed Rise Petition. THIRD, Rise's incorrect and disputed claim that mining law "usually provides for rights of access" for such mining is irresponsible and inapplicable, because what matters at law here is what the controlling deed states, and this deed (and those of various predecessors) clearly denies Rise access to the surface.

26. Rise Admits (at 19) that its "properties and operations may be subject to litigation or other claims" that "may have a material adverse effect on our business and results of operations."

Based on the irresponsible Rise warning in the previous subsection against surface owners living above and around the 2585-acre underground mine to compel access with litigation and official complaints, Rise seems planning to provoke meritless disputes.

27. Rise Admits (at 19) that "[w]e do not currently insure against all the risks and hazards of mineral exploration, development, and mining operations."

Rise admits the obvious, that (at 19):

> Exploration, development, and mining operations involve various hazards, including environmental hazards, industrial accidents, metallurgical and other processing problems, unusual or unexpected rock formations, structural cave-ins or slides, flooding, fires, and periodic interruptions due to inclement or hazardous weather conditions. These risks could result in damage to or destruction of mineral properties, facilities, or other property; personal injury, environmental damage, delays... increased costs…monetary losses, and possible legal liability. We may not be able to obtain insurance to cover these risks at economically feasible premiums or at all. We may elect not to insure…

Since Rise's financial statements prove that Rise cannot to pay any sizable judgment, much less cover significant other losses, this is another reason why Rise may be unable to continue to mine, leaving everyone else with the still unanswered question: What then?

III. Rise's Admitted (at 49-50, emphasis added) Financial Problems In item 7 of the 2023 10K: Management's Discussion And Analysis of Financial Condition And Results of Operations, Including "Liquidity and Capital Resources."

As summarized below in more detail, Rise has reported (at 49) a net loss and comprehensive loss for the fiscal year ending 7/31/2023 of $3,660,382 and for 2022 of $3,464,127. For fiscal 2023 Rise only reported (at 50) "working capital of $474,272" with a deficit loss of $26,668,986, burning "$2,476,478 in net cash used in operating activities (compared to $2,694,359 in the prior fiscal year). Besides its own excuses for distress, Rise also admits (at 50) vulnerability to "[c]ontinued increased levels of volatility or rapid destabilization of global economic conditions" because they "could negatively impact our ability to obtain equity or debt financing or … other suitable arrangements to finance our Idaho-Maryland Mine Project which, in turn, could have a material adverse effect on our operations and financial condition." Id. Moreover, these losses and problems are expected to continue:

> **THE COMPANY EXPECTS TO OPERATE AT A LOSS FOR AT LEAST THE NEXT 12 MONTHS. IT HAS NO AGREEMENTS FOR ADDITIONAL FINANCING AND CANNOT PROVIDE ANY ASSURANCE THAT ADDITIONAL FUNDING WILL BE AVAILABLE TO FINANCE ITS OPERATIONS ON ACCEPTABLE TERMS IN ORDER TO ENABLE IT TO CARRY OUT ITS BUSINESS PLAN. THERE ARE NO ASSURANCES THAT THE COMPANY WILL BE ABLE TO COMPLETE FURTHER SALES OF ITS COMMON STOCK OR ANY OTHER FORM OF ADDITIONAL FINANCING. HOWEVER, THE COMPANY HAS BEEN ABLE TO OBTAIN SUCH FINANCINGS IN THE PAST. IF THE COMPANY IS UNABLE TO ACHIEVE THE FINANCING NECESSARY TO CONTINUE ITS PLAN OF OPERATION, THEN IT WILL NOT BE ABLE TO CARRY OUT ANY EXPLORATION WORK ON THE I-M MINE PROPERTY OR THE OTHER PROPERTIES IN WHICH IT OWNS AN INTEREST AND ITS BUSINESS MAY FAIL. ID. AT 50 (emphasis added).**

The Board must consider this not just as proof of Rise's financial infeasibility that makes all its actual mining plans likewise appear long-term/indefinite, unaffordable, and perhaps illusory, but these facts also defeat any objective intent for mining required for any vested rights to mine. Note that the Rise admissions could at most be alleged by Rise to prove this disputed claim (which is insufficient for vested rights to mine, which mining is a separate "use" from "exploration" under the applicable cases, which insist of testing for vested rights on a continuous, use-by-use, component-by-component, and parcel-by-parcel basis): Rise (like to a lesser extent its Emgold predecessor, but not Emgold's predecessors) from time to time has claimed to have engaged in some occasional drilling exploration on certain parcels and to aspire to further such exploration, if and when it can afford to do so, requiring further discretionary (i.e., noncommitted) funding from investors. Rise admits in these SEC 10K's (and consistently in other filings) massive and chronic financial problems that consistently require "going concern" warnings from Rise and its accountants. Rise also admits that it has no "proven" or "probable" gold reserves and that it remains speculative that there is any commercially viable gold potential. Also, as the disputed EIR/DEIR admits, there are years of massive start-up work required (e.g., dewatering the IMM, repairing and reconstructing infrastructure, the shaft, and the 72 miles of Flooded Mine tunnels, etc.) even to be able to begin exploring the Never Mined Parcels where Rise claims to need 76 more miles of tunnels for further exploration and mining.

While the County (incorrectly) has so far declined to consider SEC filing admissions and Rise's economic circumstances in objectors' rebuttals, the courts will certainly do so, especially as to these vested rights claims, where reclamation plans are essential to vested rights and financial assurances are essential to any tolerable reclamation plan. But beyond that, to preserve vested rights there must be a continuous objective intent to do the nonconforming vested "use," which here is (at most) so far just to explore, not to mine. Rise is following the same pattern as its Emgold predecessor did (also without achieving any vested rights) before Emgold finally abandoned its quest for mining that never proceeded beyond minor and occasional exploration (when its repeatedly extended option finally expired unexercised.) There is no such thing as a miner having a vested right to mine such continuously (since at least 1956) closed, dormant, flooded, and discontinued underground mine parcels under these circumstances, such as because such explorations were so minor, infrequent, misplaced, and noncontinuous, plus such a successor miner's alleged intent to mine cannot be so conditioned on both (i) the availability on terms satisfactory to Rise of sufficient new money from investors who have no funding commitment and making discretionary decisions on their continuous, day-to-day decisions to dole out money only on a short term basis, as they continuously reassess the risks versus benefits of gambling more money, and (ii) Rise itself being satisfied with whatever opportunities Rise continues to perceive from time to time as the exploration and other relevant data cumulates. These SEC 10K admissions are essential evidence for rebutting vested rights, among other Rise claims, because the miner cannot satisfy any vested right to mine under such circumstances, in effect claiming that it intends to mine if and only if all such practical and legal requirements for mining appear to be viable (many of which are admitted and defined as Risk Factors" in this 2023 10K) and appear to exist in the future to the satisfaction of both Rise and its money source.

Consider what these and other Rise admissions and indisputable facts mean for the disputed Rise Petition's vested rights claims. Rise is, in effect, like a gambler in a Texas holdem game who has no chips left to bet except those that are doled out by her/his by the money source looking over her/his shoulder at the cards being dealt face up one by one. The effect of such Rise admissions for this analogy is that Rise admits it must abandon the game whenever the money source has exhausted her/his appetite for such risks. That is not a possible vested right situation for Rise (or its predecessors.) Reading Rise's 2023 10K admissions demonstrates that Rise isn't committed to mining, but just wants an indefinite and perpetual option to explore (when and to the extent that its money sources fund more exploration) with the Rise **option** to mine (or abandon mining) in some future situation when and if the circumstances arise where Rise and its money source both agree that mining could be sufficiently profitable to make it worth that huge cost of that start-up gamble. But this 10K, like the other Rise SEC filings, proves both that (i) Rise is not yet at that point of commitment to mine, and (ii) Rise's money source is not yet willing to fund anything more than such exploration. Objectors ask the Board to consider the same question objectors will ask the courts, as we keep trying to resolve this dispute as quickly as possible: how long must our community, and especially objectors living above and around the 2585-acre mine, suffer in limbo with depressed property values and other stressful uncertainties, while Rise indefinitely "explores its options?"

IV. Rise's Financial Statements, And Its' Accountants' Opinions, (at 52-79) Also Contain More Admissions That Defeat Rise's Vested Rights And Other Claims.

The Rise accountants confirm Rise's admitted, continuing vulnerability and the present financial infeasibility concerns consistently also reported in Rise's previous SEC filings and audited financial statements. As Davidson & Company, LLP explained at the start of its opinion (Rise's 2023 10K at 53, emphasis added):

> ***Going Concern***
>
> The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company incurred a loss of $3,660,382 for the year ended July 31, 2023 and as of that date, had an accumulated deficit of $26,668,986. **These events and conditions raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.**

In that Note 1 Rise admitted to the accountants, which confirmed (at 59, emphasis added) that:

> The Company is in the early stages of exploration and as is common with any exploration company, it raises financing for its acquisition activities. **The accompanying consolidated financial statements have been prepared on the going concern basis, which presumes that the Company will continue operations for the foreseeable future and will be able to realize its assets and discharge its liabilities in the normal course of business. The Company has incurred a loss of $3,660,382 for the year ended July 31, 2023 and has accumulated a deficit of $26,668,986. The ability of the Company to continue as a going concern is dependent on the Company's ability to maintain continued support from its shareholders and creditors and to raise additional capital and implement its business plan. There is no assurance that the Company will be able to obtain adequate financing in the future or that such financing will be on terms advantageous to the Company. These events and conditions cast substantial doubt about the Company's ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.**
>
> At July 31, 2023, the Company had **working capital of $472,272** (2022 - working capital of $636,617).

Those "going concern" issues, as well as the $1,437,914 secured loan secured by the IMM assets (as explained in Note 9 at 67), make it challenging (at best) for Rise to attract either credit or asset-based loans, making Rise dependent upon continuing equity fundraising, which itself becomes progressively more difficult because existing shareholders' stock is diluted by the issuance of additional equity securities, including debt that is equity-based (e.g., debt convertible into equity or arranged with massive stock warrants or other "equity kickers"). That dilution is becoming a problem because, as Rise itself admits in such 2023 10K and prior SEC filings, Rise's continued deficit spending each year without any revenue or addition of any material capital assets does not enhance Rise's creditworthiness, except Rise may argue that: (i) Rise's exploration related work might add some intangible value to offset such increasing equity dilution perhaps from any value to a mining speculator

of some incremental information from that exploration; and (ii) Rise's cost of seeking permits, governmental approvals, or vested rights might add intangible value for a mining speculator to the extent that those efforts ultimately succeed before the project is abandoned by the essential money sources or by Rise (following the pattern set by Emgold, when it abandoned its purchase option).

As described at p. 54 and Note 5 at p. 64, the reported "carrying amount [value] of the Company's mineral property interests" is $4,149,053, reflecting the Rise purchase prices of the IMM and Centennial discussed in Note 5. As explained in the "Significant Accounting Policies" for Mineral property" in Note 3 (at 61, emphasis added):

> **Mineral property**
>
> The costs of acquiring mineral rights are capitalized at the date of acquisition. After acquisition, various factors can affect the recoverability of the capitalized costs. If, after review, management concludes that the carrying amount of a mineral property is impaired, it will be written down to estimated fair value. **Exploration costs incurred on mineral properties are expensed as incurred. Development costs incurred on proven and probable reserves will be capitalized. Upon commencement of production, capitalized costs will be amortized using the unit-of-production method over the estimated life of the ore body based on proven and probable reserves (which exclude non-recoverable reserves and anticipated processing losses).** When the Company receives an option payment related to a property, the proceeds of the payment are applied to reduce the carrying value of the exploration asset.

Unlike the legal rules where Rise has the burden of proof, accountants here rely on management's assessment of the facts requiring write-downs of that IMM asset value below its purchase price for such "impairment," explaining (at 64, emphasis added):

> As of July 31, 2023, based on management's review of the carrying value of mineral rights, management determined **that there is no evidence that the cost of these acquired mineral rights will not be fully recovered and accordingly, the Company determined that no adjustment to the carrying value of mineral rights was required. AS OF THE DATE OF THESE CONSOLIDATED FINANCIAL STATEMENTS, THE COMPANY HAS NOT ESTABLISHED ANY PROVEN OR PROBABLE RESERVES ON ITS MINERAL PROPERTIES AND HAS INCURRED ONLY ACQUISITION AND EXPLORATION COSTS.**

Note, that Rise admits (and the accountants confirm**) (**at 65, emphasis added**) that because there are not "proven or probable [gold] reserves"** all these increasing exploration expenditures have cumulated to $8,730,982. As explained, that requires that such costs must be reported as expenses adding to the perpetual and cumulating Rise losses. Only "[d]evelopment costs incurred on proven and probable [gold] reserves" will be capitalized and then, when and if "production" "commences," amortized using "the unit-of- production method." Id. at 61.

Note 9A (at 74) addressed "Evaluation of Disclosure Controls And Procedures" and then "Managements Annual Report on Internal Control over Financial Reporting." These admissions and opinions reflect not only on the reliability and quality of Rise's financial

reporting, but also on all the other important Rise filings with the County, such as the disputed Rise Petition and the disputed EIR/DEIR. The Board should consider whether this seems to reflect a pattern and practice about which objectors have previously objected in record filings, such as to Rise assertions of alternate reality opinions as if they were facts, and misuse of certain objectionable tactics described as “hide the ball” or “bait and switch.” Consider the following admissions (Id. emphasis added):

> **Evaluation of Disclosure Controls and Procedures**
>
> The United States Securities and Exchange Commission (the "SEC") defines the term "disclosure controls and procedures" to mean controls and other procedures of an issuer that are designed to ensure that information required to be disclosed in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.
>
> As of the end of the period covered by this Report, our management carried out an evaluation, with the participation of its Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. **Based on this evaluation, management concluded that our disclosure controls and procedures were not effective as of July 31, 2023 because of a material weakness in internal control over financial reporting that existed as of that date, as more fully described below.**
>
> **Management's Annual Report on Internal Control over Financial Reporting**
>
> Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.
>
> We carried out an evaluation, with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of its internal control over financial reporting as of July 31, 2023. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission

("COSO") in Internal Control-Integrated 2013 Framework. **Management concluded that our company's internal control over financial reporting was not effective as of July 31, 2023 because a material weakness in internal control over financial reporting existed as of that date as a result of a lack of segregation of incompatible duties due to insufficient personnel. A material weakness is a deficiency or a combination of control deficiencies in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.**

As of the end of the period covered by this Report, our management carried out an evaluation, with the participation of its Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. **Based on this evaluation, management concluded that our disclosure controls and procedures were not effective as of July 31, 2023 because of a material weakness in internal control over financial reporting that existed as of that date, as more fully described below.**

Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

We carried out an evaluation, with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of its internal control over financial reporting as of July 31, 2023. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control-Integrated 2013 Framework. Management **concluded that our company's internal control over financial reporting was not effective as of July 31, 2023 because a material weakness in internal control over financial reporting existed as of that date as a result of a lack of segregation of incompatible duties due to insufficient personnel. A material weakness is a deficiency or a combination of control deficiencies in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.**

Objectors also note Item 10 “Involvement in Certain Legal Proceedings” in the 2023 10K (at 78-79), which describes a long story about environmental wrongs or crimes at the British Columbia (Canada) mine of Banks Island Gold, Ltd. (“Banks”), where Rise stated (at 78) that “Benjamin W. Mossman was a director and officer” before Banks still pending Canadian

bankruptcy proceedings. Objectors do not have sufficient knowledge (or interest) to explore the merits of those disputes. What objectors know is that, after discussion of Rise's perspective on that extensive litigation, the 2023 10K states the following (at 79, emphasis added):

> [In the second trial in 2022] He [Mr. Mossman] was found guilty of 13 environmental violations in relation to certain waste discharges at the Banks mining site, and on September 26, 2023, Mr. Mossman was fined a total of approximately C$30,000 in connection with all of the offenses. Both Mr. Mossman and the Crown has filed appeals from this trial. The Crown has appealed all acquittals. Mr. Mossman has appealed all convictions. The hearing of both appeals has been scheduled for the week of January 15, 2024.

Objectors have not evaluated these Canadian disputes and do not address their merits, if any. Objectors cite such Rise quotes only because objectors are informed and believe that Mr. Mossman has had a substantial role in Rise's many filings with the County, as demonstrated in his presentations at the previous County hearings and his public comments on the various IMM disputes, especially those professing his adherence to high standards of environmental compliance. Therefore, as with any such conviction (if only as a legally appropriate challenge to his credibility and the weight of any evidence he has presented (or not presented), objectors reserve the right to ask the County to consider how these convictions (which he disputes and appeals) reflect on Rise and the credibility and weight of such evidence. None of that is not offered here as proof of any wrongs on the merits of this dispute or as proof about his character on the merits. However, that Rise information itself may be (or become) relevant to the credibility of any evidence to the extent provided in Evidence Code #780, 785, and (if and to the extent applicable, 788). See both the Initial Evidentiary Objection and Objectors Petition of Pre-Trial Relief, Etc.

ATTACHMENT 1: SOME PREVIOUS SEC FILINGS ON WHICH OBJECTORS FOUND USEFUL ADMISSIONS BEFORE RECENTLY HAVING TO UPDATE TO THE 2023 10K, BECAUSE RISE FILED THAT NEW 10K BEFORE OBJECTORS FILED DOCUMENTS ADDRESSING SUCH RISE SEC FILINGS.

I. This Attachment Provides Useful Rebuttal Comparisons Between Rise Claims Before And After Rise's September 1, 2023, Shift In Legal Theories For Its Rise Petition Claiming Vested Rights.

Rise SEC filings have long been a source of useful admissions. The fact that Rise has updated its reports in the 2023 10K does prevent those earlier admissions from being useful rebuttal evidence. Since some of those rebuttals were already prepared when Rise filed its 2023 10K on October 30, 2023, objectors have attached some of them below for helpful comparison. While the selected Rise statements are often similar and sometimes identical, objectors note that the changes in from those prior reports to the new 2023 10K are important rebuttal evidence, since what Rise changed (and failed to change) in its SEC 2023 10K updates after its September 1, 2023, Rise Petition filing to claim vested rights, proves how Rise has and has not changed its "story" before and after that radical change in legal theories from (a) normal permitting to (b) vested rights claims. While objectors have objected on the record to both Rise's pre-Rise Petition filings and the Rise Petition, the rebuttals are often focused on how Rise can be contradictory and inconsistent with itself. Thereby that both (i)

defeats credibility of claims by Rise for or from its Rise Petition, and (ii) creates other rebuttal opportunities for objectors to defeat the Rise Petition. See the Initial Evidence Objection authorities like EC #623. Objectors are more focused on the SEC filings than on Rise's County filings because general experience in other cases demonstrates that the more serious consequences of incorrect, deficient, or worse statements in such SEC filings tend to inspire greater accuracy and reality (although still disputable) than filings like those with the County, where the filing miners may perceive less risk of accountability or adverse consequences. The more contradictions and conflicts exist between Rise's different presentations to different audiences, the less possible it is for Rise to satisfy its burden of proof.

II. General Admissions from Rise's SEC Form 10Q for the Quarter Ending 10/31/2022 (Updating from the Prior 10Q Addressed in my DEIR Objection 254 #2). [Note that the lack of current SEC reporting data is another problem for Rise, for example, creating a basis for objectors to ask if Rise is trying to avoid admitting even worse facts by delaying filings.]

A. General Admissions About the Speculative Nature of Rise As a Hypothetical "Going Concern" from the Footnotes of Its Current Financial Statements Qualified By Its Accountant, Defeating Any Credibility For Reclamation And Demonstrating Why Sufficient Rise Financial Assurances Will Not Be Achievable.

As described in FN1 to the financial statements reporting the massive financial losses and problems described herein, with 10/31/22 working capital of only $66,526: "The ability of the Company to continue as a going concern is dependent on the Company's ability to maintain continued support from its shareholders and creditors and to raise additional capital and implement its business plan. There is no assurance that the Company will be able to obtain adequate financing in the future or that such financing will be on terms advantageous to the Company. These events and conditions cast significant doubt about the Company's ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern." While Rise, the EIR/DEIR team, and County staff (even the County Economic Report team) have tried to evade any consideration of Rise's financial condition, capabilities, or credibility, that is no longer possible because even SMARA recognizes that reclamation is the key to any vested rights, and reclamation cannot be satisfactory without credible and required "financial assurances" that Rise cannot provide, even for the less expensive reclamation plans disputed by objectors as grossly insufficient and non-compliant. Moreover, the County should also be more generally concerned about how it and others harmed by any Rise conduct creating liability can be compensated when Rise shows no ability to satisfy any significant judgment against it. That Rise lack of financial responsibility should be considered for governmental caution not sufficiently shown so far in these Rise processes, in effect not only justifying objectors' concerns about the harms from such Rise mining and related activities, but also who will bear the cost of

remediating and cleaning up any such harms during operations, much less the ultimate reclamation burdens at the end of this ordeal.

B. General Financial Data as of 10/31/2022.

Rise reports little cash ($166,805) [even less than compared to the 7/31/22] for the period, and that cash will not be sufficient to fund any of its EIR/DEIR goals, especially those relating to the "aspirational" safety and mitigation issues of concern to the objectors and likely the lesser priorities for the miner once it has obtained its disputed EIR approval and has then begun its meritless defense to the objectors' legal, political, and law reform resistance to protect objectors' homes, groundwater and other property rights and values, our forests and environment, and our way of life in our community above and around the 2585-acre underground mine. Rise's other current assets are not material, and its noncurrent assets are just the speculative mine and equipment that has little value absent massive additional investment needed even to begin mining (e.g., dewatering and updating to a starting position the mine condition from being closed and flooded since 1956, as to which there are insufficient reliable and useful information, many likely dangerous conditions unaddressed by the disputed DEIR/EIR, and massive admitted risks). That is why the disputed $4,149,053 "book value" of the mine (including Centennial, Brunswick, and the underground mine) and $545,783 equipment are qualified by the Rise accountant as dependent on the disputed assumption that Rise remains a "going concern" which the accountant and Rise itself admit is speculative.

Note that the most current reported information on expenses and losses (for the three months ending 10/31/2022, which is comparable to prior periods shown) declares an operating (expense) loss of $702,522 and a Net Loss for the period of $684,538, which losses will continue (and objectors expect to prove would dramatically increase) until at best the start of profitable mining which will be long delayed and may never occur for many reasons, whether for lack of working capital, lack of sufficient accessible gold, objectors resistance and resulting lack of investment or credit, worse than expected mining conditions, and other factors that Rise and its accountant admit cause this to be a highly speculative enterprise, as demonstrated above and in objections to the EIR/DEIR. For example, the 10Q reports for the most current reported three months of "Cash Flows From Operating Activities (showing a "loss for the period" of $684,538 and "net cash used in operating activities" of $305,113) that will quickly exhaust the current cash on hand long before not only any net cash flow is produced by the mining, but also long before the potential value of the long closed and flooded mine can even be evaluated for its actual, potential value. FN 1 reports working capital on 10/31/22 of only $66,526. But see other data on page 19. Note also from FN 1 that its "accumulated deficit" (loss) is $23,693,142. [However, note that on 10Q at p. 18 in the "Results of Operations" discussion of "expenses" for that period ending 10/3/1/2022 there are different numbers reported that are larger but still comparatively small, i.e., $105,570 for consulting, $123,989 for geological, mineral, and prospect costs, and $154,096 for "professional fees."]

C. Mining And Other Risk Related Admissions by Rise.

For any such EIR/DEIR mining and related activities, legal compliance, vested rights' reclamation, and other operations, Rise needs (and lacks) vastly more financial resources, especially working capital and the credit needed for compliant "financial assurances" for vested rights reclamation. This SEC 10Q filing admits various things that are directly or indirectly contrary to or inconsistent with the EIR/DEIR or which support any or all of the four Engel Objections, as well as those of others, including the admitted reality that Rise lacks the working capital, financial resources, and capacity to perform its material obligations with respect to the mine, especially regarding the CEQA, vested rights duties (e.g., reclamation and related financial assurances), and other safety or mitigation "aspirations" proposed or required by the EIR/DEIR and other Rise presentations. In effect, if the County were to approve the EIR or vested rights it would be imposing massive harms, risks, and problems on us local objectors for no net benefit to us or the community that Rise admits are **reasons why even voluntary investment in this mine would be a speculative investment for even the most risk tolerant investors.** For example, consider the following such 10Q admitted reasons for disapproving the EIR and rejecting vested rights:

a. "As of the date of these consolidated financial statements, the Company has not established any proven or probable reserves on its mineral properties and has incurred only acquisition and exploration costs." At p.7
b. "Our business, financial condition, and results of operations may be negatively affected by economic and other consequences from Russia's military action against Ukraine and the sanctions imposed in response to that action." "Risk Factors at p. 21. [Is this a subtle way of warning us that the suspected real party in interest "behind the curtain" successor maybe someone/some entity who presents even greater risks than Rise, such as, for example, someone vulnerable to such Russian sanctions or similar disabilities?]
c. "We will require significant additional capital to fund our business plan." Risk Factors at p. 22-23. Consider the detailed admissions that follow that admission:

> We will be required to expend significant funds to determine whether proven and probable mineral reserves exist at our properties, to continue exploration and, if warranted, to develop our existing properties, and to identify and acquire additional properties to diversify our property portfolio. We anticipate that we will be required to make substantial capital expenditures for the continued exploration and, if warranted, development of our I-M Mine Property. We have spent and will be required to continue to expend significant amounts of capital for drilling, geological, and geochemical analysis, assaying, permitting, and feasibility studies with regard to the results of our exploration at our I-M Mine Property. We may not benefit from some of these investments if we are unable to identify commercially exploitable mineral reserves.
>
> Our ability to obtain necessary funding for these purposes, in turn, depends upon a number of factors, including the status of the national and worldwide economy and the price of metals. Capital markets worldwide were adversely affected by substantial losses by financial institutions, caused by investments in asset-backed securities and remnants from those losses continue to impact the ability for us to raise capital. We may not be successful in obtaining the required financing or, if we can obtain such financing, such financing may not be on terms that are favorable to us.

> Our inability to access sufficient capital for our operations could have a material adverse effect on our financial condition, results of operations, or prospects. Sales of substantial amounts of securities may have a highly dilutive effect on our ownership or share structure. Sales of a large number of shares of our common stock in the public markets, or the potential for such sales, could decrease the trading price of those shares and could impair our ability to raise capital through future sales of common stock. We have not yet commenced commercial production at any of our properties and, therefore, have not generated positive cash flows to date and have no reasonable prospects of doing so unless successful commercial production can be achieved at our I-M Mine Property. We expect to continue to incur negative investing and operating cash flows until such time as we enter into successful commercial production. This will require us to deploy our working capital to fund such negative cash flow and to seek additional sources of financing. There is no assurance that any such financing sources will be available or sufficient to meet our requirements. There is no assurance that we will be able to continue to raise equity capital or to secure additional debt financing, or that we will not continue to incur losses.

d. ***"We have a limited operating history on which to base an evaluation of our business and prospects." Risk Factors at p.23.*** Consider the detailed admissions that follow that admission and which raise the question: why aren't those additional investigations being required and done in advance of the EIR approval, especially since the EIR/DEIR ignores objector demands for a commentary about the adverse consequences us neighbors fear if the EIR miner dewaters and otherwise creates a mess and then (before any of the mitigation or other safety work) abandons the project as infeasible? Such advance work should include what the 10Q plans for later after approval as follows:

> Since our inception, we have had no revenue from operations. We have no history of producing products from any of our properties. Our I-M Mine Project is a historic, past-producing mine with apart from the exploration work that we have completed since 2016 has had very little recent exploration work since 1956. We would require further exploration work in order to reach the development stage. Advancing our I-M Mine Property into the development stage will require significant capital and time, and successful commercial production from the I-M Mine Property will be subject to completing feasibility studies, permitting and re-commissioning of the mine, constructing processing plants, and other related works and infrastructure. As a result, we are subject to all of the risks associated with developing and establishing new mining operations and business enterprises including:

- completion of feasibility studies to verify reserves and commercial viability, including the ability to find sufficient ore reserves to support a commercial mining operation;
- the timing and cost, which can be considerable, of further exploration, preparing feasibility studies, permitting and construction of infrastructure, mining and processing facilities;
- the availability and costs of drill equipment, exploration personnel, skilled labor, and mining and processing equipment, if required;
- the availability and cost of appropriate smelting and/or refining arrangements, if required;
- compliance with stringent environmental and other governmental approval and permit requirements;
- the availability of funds to finance exploration, development, and construction activities, as warranted;
- potential opposition from non-governmental organizations, local groups or local inhabitants that may delay or prevent development activities;
- potential increases in exploration, construction, and operating costs due to changes in the cost of fuel, power, materials, and supplies; and

- potential shortages of mineral processing, construction, and other facilities related supplies.

The costs, timing, and complexities of exploration, development, and construction activities may be increased by the location of our properties and demand by other mineral exploration and mining companies. It is common in exploration programs to experience unexpected problems and delays during drill programs and, if commenced, development, construction, and mine start-up. In addition, our management and workforce will need to be expanded, and sufficient support systems for our workforce will have to be established. This could result in delays in the commencement of mineral production and increased costs of production. Accordingly, our activities may not result in profitable mining operations and we may not succeed in establishing mining operations or profitably producing metals at any of our current or future properties, including our I-M Mine Property.

e. ***"We have a history of losses and expect to continue to incur losses in the future" Risk Factors at p.23.*** Consider the detailed admissions that follow that admission and which raise the question, under these many admitted uncertain and high-risk circumstances, why is it not the EIR/DEIR that is "speculative" instead my objections, as the disputed EIR/DEIR continues incorrectly to assert. For example, consider these quoted 10Q admissions (emphasis added):

We have incurred losses since inception, have had negative cash flow from operating activities, and expect to continue to incur losses in the future. **We have incurred the following losses from operations during each of the following periods:**

- **$3,464,127 for the year ended July 31, 2022**
- **$1,603,878 for the year ended July 31, 2021**
- **$5,471,535 for the year ended July 31, 2020**

We expect to continue to incur losses unless and until such time as one of our properties enters into commercial production and generates sufficient revenues to fund continuing operations. We recognize that if we are unable to generate significant revenues from mining operations and/or dispositions of our properties, **we will not be able to earn profits or continue operations.** At this early stage of our operation, we also expect to face the risks, uncertainties, expenses, and difficulties frequently encountered by companies at the start-up stage of their business development. **We cannot be sure that we will be successful in addressing these risks and uncertainties and our failure to do so could have a materially adverse effect on our financial condition. (emphasis added)**

What that implies is not just an unhappy fate for investors, but a worse result for us local surface owners above and around the 2585-acre underground mine, a topic which the EIR/DEIR incorrectly refuses to address as too "speculative," although the reverse is more true; i.e., as so admitted, shortly after the Rise investors and creditors lose hope for their gamble, they will cease supporting Rise and it will collapse, leaving a mess for us neighbors and our bigger community that the EIR/DEIR refuses to discuss but which (as a bankruptcy lawyer with vast experience in such situations) Some objectors report having seen such problems too many times and can describe for the bankruptcy or other courts that most likely will resolve the disputes that must follow any EIR or vested rights approval by the County. See the Engel Objections.

Again, these admissions defeat the level of certainty incorrectly implied in the EIR/DEIR to the contrary and wrongly asserted as grounds for ignoring objections as too speculative or unsubstantiated or unexplained, because such admissions confirm the correctness of objections, at least to the extent of requiring a meaningful EIR/DEIR "good faith reasoned analysis" and "common-sense" risk assessment in the DEIR/EIR where none now exists. These problems are even more serious in the vested rights disputes, making the granting of vested rights to evade the permitting process even more dangerous for us objectors and the County. In

particular, for example, as described in Engel's DEIR Objection 254 #'s 2, 4, 14, and 15, it is not speculative (as the disputed EIR incorrectly claims) that us objectors living on the surface above and around the 2585-acre underground mine will enforce our defensive rights to protect our homes, environment, and property rights and value, our forests and environment, and our community way of life against this mining menace with not just the usual legal challenges, but also with law reforms and political changes.

D. SEC Filing Admitted "Risks Related to Mining and Exploration."

Consider the detailed 10Q admissions that follow that forgoing admission and which raise the question, under these many admitted uncertain and high-risk circumstances, why is it not the EIR/DEIR that is "speculative" instead my objections, as the disputed EIR/DEIR continues incorrectly to assert. For example, consider these quoted 10Q admissions (with emphasis added):

(i)"The I-M Mine Property is in the exploration stage. There is no assurance that we can establish the existence of any mineral reserve on the I-M Mine Property or any other properties we may acquire in commercially exploitable quantities. Unless and until we do so, we cannot earn any revenues from these properties and if we do not do so we will lose all of the funds that we expend on exploration. If we do not discover any mineral reserve in a commercially exploitable quantity, the exploration component of our business could fail." 10Q at p. 24:

> **We have not established that any of our mineral properties contain any mineral reserve according to recognized reserve guidelines, nor can there be any assurance that we will be able to do so.**
>
> A mineral reserve is defined in subpart 1300 of Regulation S-K under the Securities Act of 1933, as amended (the "Securities Act") and the Exchange Act ("Subpart 1300") as an estimate of tonnage and grade or quality of "indicated mineral resources" and "measured mineral resources" (as those terms are defined in Subpart 1300) that, in the opinion of a "qualified person" (as defined in Subpart 1300), can be the basis of an economically viable project. In general, **the probability of any individual prospect having a "reserve" that meets the requirements of Subpart 1300 is small, and our mineral properties may not contain any "reserves" and any funds that we spend on exploration could be lost. Even if we do eventually discover a mineral reserve on one or more of our properties, there can be no assurance that they can be developed into producing mines and that we can extract those minerals. Both mineral exploration and development involve a high degree of risk, and few mineral properties that are explored are ultimately developed into producing mines.**
>
> The commercial viability of an established mineral deposit will depend on a number of factors including, by way of example, the size, grade, and other attributes of the mineral deposit, the proximity of the mineral deposit to infrastructure such as processing facilities, roads, rail, power, and a point for shipping, government regulation, and market prices. **Most of these factors will be beyond our control, and any of them could increase costs and make extraction of any identified mineral deposit unprofitable.**

(ii)"The nature of mineral exploration and production activities involves a high degree of risk and the possibility of uninsured losses." 10Q at p. 24:

> **Exploration for and the production of minerals is highly speculative and involves greater risk than many other businesses. Most exploration programs do not result in mineralization that may be of sufficient quantity or quality to be profitably mined. Our operations are, and any future development or mining operations we may conduct will be, subject to all of the operating hazards and risks normally incidental to exploring for and development of mineral properties, such as, but not limited to:**
>
> - economically insufficient mineralized material;
> - fluctuation in production costs that make mining uneconomical;
> - labor disputes;
> - unanticipated variations in grade and other geologic problems;

- **environmental hazards;**
- **water conditions;**
- **difficult surface or underground conditions;**
- **industrial accidents;**
- metallurgic and other processing problems;
- mechanical and equipment performance problems;
- **failure of dams, stockpiles, wastewater transportation systems, or impoundments;**
- **unusual or unexpected rock formations; and**
- **personal injury, fire, flooding, cave-ins and landslides.**

Any of these risks can materially and adversely affect, among other things, the development of properties, production quantities and rates, costs and expenditures, potential revenues, and production dates. If we determine that capitalized costs associated with any of our mineral interests are not likely to be recovered, we would incur a write-down of our investment in these interests. All of these factors may result in losses in relation to amounts spent that are not recoverable, or that result in additional expenses.

(iii). "Commodity price volatility could have dramatic effects on the results of operations and our ability to execute our business plan." 10Q at p. 25:

The price of commodities varies on a daily basis. Our future revenues, if any, will likely be derived from the extraction and sale of base and precious metals. The price of those commodities has fluctuated widely, particularly in recent years, and is affected by numerous factors beyond our control including economic and political trends, expectations of inflation, currency exchange fluctuations, interest rates, global and regional consumptive patterns, speculative activities and increased production due to new extraction developments and improved extraction and production methods. The effect of these factors on the price of base and precious metals, and therefore the economic viability of our business, could negatively affect our ability to secure financing or our results of operations.

(iv). "Estimates of mineralized material and resources are subject to evaluation uncertainties that could result in project failure." 10Q at p. 25:

Our exploration and future mining operations, if any, are and would be faced with risks associated with being able to accurately predict the quantity and quality of mineralized material and resources/reserves within the earth using statistical sampling techniques. Estimates of any mineralized material or resource/reserve on any of our properties would be made using samples obtained from appropriately placed trenches, test pits, underground workings, and intelligently designed drilling. **There is an inherent variability of assays between check and duplicate samples taken adjacent to each other and between sampling points that cannot be reasonably eliminated. Additionally, there also may be unknown geologic details that have not been identified or correctly appreciated at the current level of accumulated knowledge about our properties. This could result in uncertainties that cannot be reasonably eliminated from the process of estimating mineralized material and resources/reserves. If these estimates were to prove to be unreliable, we could implement an exploitation plan that may not lead to commercially viable operations in the future.**

(v). "Any material changes in mineral resource/reserve estimates and grades of mineralization will affect the economic viability of placing a property into production and a property's return on capital." 10Q at p. 2:

As we have not completed feasibility studies on our I-M Mine Property and have not commenced actual production, we do not have mineralization resources and any estimates may require adjustments or downward revisions. In addition, the grade of ore ultimately mined, if any, may differ from that indicated by future feasibility studies and drill results. Minerals recovered in small scale tests may not be duplicated in large scale tests under on-site conditions or in production scale. (emphasis added)

(vi). "Our exploration activities on our properties may not be commercially successful, which could lead us to abandon our plans to develop our properties and our investments in exploration." 10Q at p. 25:

> Our long-term success depends on our ability to identify mineral deposits on our I-M Mine Property and other properties we may acquire, if any, that we can then develop into commercially viable mining operations. Mineral exploration is highly speculative in nature, involves many risks, and is frequently non-productive. These risks include unusual or unexpected geologic formations, and the inability to obtain suitable or adequate machinery, equipment, or labor. The success of commodity exploration is determined in part by the following factors:
>
> - the identification of potential mineralization;
> - availability of government-granted exploration permits;
> - the quality of our management and our geological and technical expertise; and
> - the capital available for exploration and development work.
>
> Substantial expenditures are required to establish proven and probable reserves through drilling and analysis, to develop metallurgical processes to extract metal, and to develop the mining and processing facilities and infrastructure at any site chosen for mining. Whether a mineral deposit will be commercially viable depends on a number of factors that include, without limitation, the particular attributes of the deposit, such as size, grade, and proximity to infrastructure; commodity prices; and government regulations, including, without limitation, regulations relating to prices, taxes, royalties, land tenure, land use, importing and exporting of minerals, and environmental protection. We may invest significant capital and resources in exploration activities and may abandon such investments if we are unable to identify commercially exploitable mineral reserves. The decision to abandon a project may have an adverse effect on the market value of our securities and the ability to raise future financing.

(vii). "We are subject to significant governmental regulations that affect our operations and costs of conducting our business and may not be able to obtain all required permits and licenses to place our properties into production." 10Q at 26:

> Our current and future operations, including exploration and, if warranted, development of the I-M Mine Property, do and will require permits from governmental authorities and will be governed by laws and regulations, including:
>
> - laws and regulations governing mineral concession acquisition, prospecting, development, mining, and production;
> - laws and regulations related to exports, taxes, and fees;
> - labor standards and regulations related to occupational health and mine safety; and
> - environmental standards and regulations related to waste disposal, toxic substances, land use reclamation, and environmental protection.
>
> Companies engaged in exploration activities often experience increased costs and delays in production and other schedules as a result of the need to comply with applicable laws, regulations, and permits. Failure to comply with applicable laws, regulations, and permits may result in enforcement actions, including the forfeiture of mineral claims or other mineral tenures, orders issued by regulatory or judicial authorities requiring operations to cease or be curtailed, and may include corrective measures requiring capital expenditures, installation of additional equipment, or costly remedial actions. **We cannot predict if all permits that we may require for continued exploration, development, or construction of mining facilities and conduct of mining operations will be obtainable on reasonable terms, if at all. Costs related to applying for and obtaining permits and licenses may be prohibitive and could delay our planned exploration and development activities. We may be required to compensate those suffering loss or damage by reason of our mineral exploration or our mining activities, if any, and may have civil**

or criminal fines or penalties imposed for violations of, or our failure to comply with, such laws, regulations, and permits.

Existing and possible future laws, regulations, and permits governing operations and activities of exploration companies, or more stringent implementation of such laws, regulations and permits, could have a material adverse impact on our business and cause increases in capital expenditures or require abandonment or delays in exploration. Our I-M Mine Property is located in California, which has numerous clearly defined regulations with respect to permitting mines, which could potentially impact the total time to market for the project.

Subsurface mining is allowed in the Nevada County M1 Zoning District, where the I-M Mine Property is located, with approval of a "Use Permit". Approval of a Use Permit for mining operations requires a public hearing before the County Planning Commission, whose decision may be appealed to the County Board of Supervisors ("County Board"). **Use Permit approvals include conditions of approval, which are designed to minimize the impact of conditional uses on neighboring properties.**

On November 21, 2019 we submitted an application for a Use Permit to Nevada County (the "County"). On April 28, 2020, with a vote of 5-0, the County Board approved the contract for Raney Planning & Management Inc. to prepare an Environmental Impact Report and conduct contract planning services on behalf of the County for the proposed I-M Mine Project.

The Use Permit application proposes underground mining to recommence at the I-M Mine Property at an average throughput of 1,000 tons per day. The existing Brunswick Shaft, which extends to ~3400 feet depth below surface, would be used as the primary rock conveyance from the I-M Mine Property. A second service shaft would be constructed by raising from underground to provide for the conveyance of personnel, materials, and equipment. Processing would be done by gravity and flotation to produce gravity and flotation gold concentrates.

We propose to produce barren rock from underground tunneling and sand tailings as part of the project which would be used for creation of approximately 58 acres of level and useable industrial zoned land for future economic development in Nevada County. A water treatment plant and pond, using conventional processes, would ensure that groundwater pumped from the mine is treated to regulatory standards before being discharged to the local waterways. There is no assurance our Use Permit application will be accepted as submitted. If substantial revisions are required, our ability to execute our business plan will be further delayed.

In 1975, the California Legislature enacted the Surface Mining and Reclamation Act ("SMARA"), which required that all surface mining operations in California have approved reclamation plans and financial assurances. **SMARA was adopted to ensure that land used for mining operations in California would be reclaimed post-mining to a useable condition. Pursuant to SMARA, we would be required to obtain approval of a Reclamation Plan from and provide financial assurances to the County for any surface component of the underground mining operation before mining operations could commence. Approval of a Reclamation Plan will require a public hearing before the County Planning Commission.**

To approve a Reclamation Plan and Use Permit, the County would need to satisfy the requirements of California Environmental Quality Act ("CEQA"). CEQA requires that public agency decision makers study the environmental impacts of any discretionary action, disclose the impacts to the public, and minimize unavoidable impacts to the extent feasible. CEQA is triggered whenever a California governmental agency is asked to approve a "discretionary project". The approval of a Reclamation Plan is a "discretionary project" under CEQA. Other necessary ancillary permits like the California Department of Fish and Wildlife ("CDFW") Streambed Alteration Agreement (if applicable) also triggers CEQA compliance.

In this situation, the lead agency for the purposes of CEQA would be the County. Other public agencies in charge of administering specific legislation will also need to approve aspects of the Project, such as the CDFW (the California Endangered Species Act), the Air Pollution Control District (Authority to Construct and Permit to Operate), and the Regional Water Quality Control Board (National Pollutant Discharge Elimination System (authorized to state governments by the US Environmental Protection Agency) and Report of Waste Discharge). However, CEQA's Guidelines provide that if more than one agency must act on a project, the agency that acts first is generally considered the lead agency under CEQA. All other agencies are considered "responsible agencies." Responsible agencies do need to consider the environmental document approved by the lead agency, but they will usually accept the lead agency's document and use it as the basis for issuing their own permits. **There is no assurance that other agencies will not require additional assessments in their decision-making process. If such assessments are required, additional time and costs will delay the execution of, and may even require us to re-evaluate the feasibility of, our business plan. (emphasis added)**

(viii). "Our activities are subject to environmental laws and regulations that may increase our costs of doing business and restrict our operations. 10Q at 27:

All phases of our operations are subject to environmental regulation in the jurisdictions in which we operate. Environmental legislation is evolving in a manner that may require stricter standards and enforcement, increased fines and penalties for non-compliance, more stringent environmental assessments of proposed projects, and a heightened degree of responsibility for companies and their officers, directors, and employees. **These laws address emissions into the air, discharges into water, management of waste, management of hazardous substances, protection of natural resources, antiquities and endangered species, and reclamation of lands disturbed by mining operations. Compliance with environmental laws and regulations, and future changes in these laws and regulations, may require significant capital outlays and may cause material changes or delays in our operations and future activities. It is possible that future changes in these laws or regulations could have a significant adverse impact on our properties**

(ix). "Regulations and pending legislation governing issues involving climate change could result in increased operating costs, which could have a material adverse effect on our business." 10Q at 27:

A number of governments or governmental bodies have introduced or are contemplating legislative and/or regulatory changes in response to concerns about the potential impact of climate change. Legislation and increased regulation regarding climate change could impose significant costs on us, on our future venture partners, if any, and on our suppliers, including costs related to increased energy requirements, capital equipment, environmental monitoring and reporting, and other costs necessary to comply with such regulations. Any adopted future climate change regulations could also negatively impact our ability to compete with companies situated in areas not subject to such limitations. Given the emotional and political significance and uncertainty surrounding the impact of climate change and how it should be dealt with, we cannot predict how legislation and regulation will ultimately affect our financial condition, operating performance, and ability to compete. Furthermore, even without such regulation, increased awareness and any adverse publicity in the global marketplace about potential impacts on climate change by us or other companies in our industry could harm our reputation. The potential physical impacts of climate change on our operations are highly uncertain, could be particular to the geographic circumstances in areas in which we operate and may include changes in rainfall and storm patterns and intensities, water shortages, changing sea levels, and changing temperatures. These impacts may adversely impact the cost, production, and financial performance of our operations.

(x). "Land reclamation requirements for our properties may be burdensome and expensive." 10Q at 28:

Although variable depending on location and the governing authority, land reclamation requirements are generally imposed on mineral exploration companies (as well as companies with mining operations) in order **to minimize long term effects of land disturbance.**

Reclamation may include requirements to:

- **control dispersion of potentially deleterious effluents;**
- **treat ground and surface water to drinking water standards; and**
- **reasonably re-establish pre-disturbance landforms and vegetation.**

In order to carry out reclamation obligations imposed on us in connection with our potential development activities, we must allocate financial resources that might otherwise be spent on further exploration and development programs. We plan to set up a provision for our reclamation obligations on our properties, as appropriate, but this provision may not be adequate. If we are required to carry out unanticipated reclamation work, our financial position could be adversely affected. (emphasis added)

(xi). "We may be unable to secure surface access or purchase required surface rights." 10Q at 28:

Although we obtain the rights to some or all of the minerals in the ground subject to the mineral tenures that we acquire, or have the right to acquire, in some cases we may not acquire any rights to, or ownership of, the surface to the areas covered by such mineral tenures. In such cases, applicable mining laws usually provide for rights of access to the surface for the purpose of carrying on mining activities; however, the enforcement of such rights through the courts can be costly and time consuming. It is necessary to negotiate surface access or to purchase the surface rights if long-term access is required. **There can be no guarantee that, despite having the right at law to carry on mining activities, we will be able to negotiate satisfactory agreements with any such existing landowners/occupiers for such access or purchase of such surface rights, and therefore we may be unable to carry out planned mining activities. In addition, in circumstances where such access is denied, or no agreement can be reached, we may need to rely on the assistance of local officials or the courts in such jurisdiction the outcomes of which cannot be predicted with any certainty. Our inability to secure surface access or purchase required surface rights could materially and adversely affect our timing, cost, or overall ability to develop any mineral deposits we may locate. (emphasis added)**

(xii). "Our properties and operations may be subject to litigation or other claims." 10Q at 28:

From time to time our properties or operations may be subject to disputes that may result in litigation or other legal claims. We may be required to take countermeasures or defend against these claims, which will divert resources and management time from operations. The costs of these claims or adverse filings may have a material effect on our business and results of operations.

(xiii). "We do not currently insure against all the risks and hazards of mineral exploration, development, and mining operations." 10Q at 28:

Exploration, development, and mining operations involve various hazards, including environmental hazards, industrial accidents, metallurgical and other processing problems, unusual or unexpected rock formations, structural cave-ins or slides, flooding, fires, and periodic interruptions due to inclement or hazardous weather conditions. These risks could result in damage to or destruction of mineral properties, facilities, or other property, personal injury, environmental damage, delays in operations, increased cost of operations, monetary losses, and possible legal liability. We may not be able to obtain insurance to cover these risks at economically feasible premiums or at all. We may elect not to insure where premium costs are disproportionate to our perception of the relevant risks. The payment of such insurance premiums and of such liabilities would reduce the funds available for exploration and production activities. (emphasis added)

Again, all these Rise admissions defeat the level of certainty incorrectly implied in the EIR/DEIR to the contrary and wrongly asserted as grounds for ignoring objections as too speculative or unsubstantiated or unexplained, because such admissions confirm the correctness of objections, at least to the extent of requiring

a meaningful EIR/DEIR good faith reasoned analysis and common-sense risk assessment in the DEIR/EIR where none now exists. In particular, for example, it is not speculative (as the disputed EIR incorrectly claims) that us objectors living on the surface above and around the 2585-acre underground mine will enforce our defensive rights to protect our homes and property rights and value, our forests and environment, and our community way of life against this mining menace with not just the usual legal challenges, but also with law reforms and political changes.

E. Miscellaneous 10Q Admissions Inconsistent With Or Contrary to the EIR/DEIR.

The DEIR claims that there is no viable alternative to the mining of this property, because industrial uses would be too "intense," a bizarre idea that is contrary to "common sense" (the standard in *Gray v. County of Madera*) and for which the DEIR/EIR offers no "good faith reasoned analysis" (the standard in *Vineyard, Banning, and Costa Mesa)* as demonstrated in Engel Objections and others thereto, noting that nothing is worse or more "intense" than such 24/7/365 mining for 80 years with continuous resistance from the local victims of this mining menace. However, the 10Q states at p. 17: "**The Company would produce barren rock from underground tunneling and sad tailings as part of the project which would be used for creation of approximately 58 acres if local and useable industrial zoned land for future economic development in Nevada County, which is the alternative rejected by the DEIR/EIR as not viable and too "intense." (emphasis added) This intensity works against Rise's vested rights claims, as well as by adding an "expansion" to its business operations not contemplated in the prior mining.**

F. Miscellaneous Other Admitted Data from the 10Q.

As discussed at page 8 of the 10Q, Rise closed its purchase of the "Idaho-Maryland Gold Mine" property on 1/25/2017 for $2,000,000. It then purchased the 82-acre surface rights adjacent thereto for $1,900,000 closing on May 14, 2017. Including those purchase prices and related acquisition expenditures totaling $7,958,346, the Rise cumulative expenditures for this project have been $8,082,335. Thus, Rise's working investment after acquisition has only been modest, such as for that 10Q period $123,989, of which the only CEQA evaluation or risk relevant expenses have been $92,159 for "consulting" $2453 on "engineering," and $1596 for "supplies." No wonder that Rise has so little useful to say about the conditions regarding its mine, both the flooded part (still unevaluated in any sufficient way since 1956) and the new expansion area in the 2585-acre underground mine, because not only has Rise seemed eager to avoid discovering any inconvenient or worse truths or information, but Rise had insufficient working capital to investigate even if it had wished to risk acquiring the information us objectors expect to be true and damning to its goals for EIR/DEIR approval and vested rights claims.

As discussed at 10Q page 10, Rise borrowed $1,000,000 on 9/3/2019 secured by all of its (and its subsidiary's) mine and other assets due in full on 9/3/2023. The 10Q reported current balance is $1,491,308. The substantial warrants and high interest rate on the loan, which confirm the lender's belief in the high-risk nature of that loan against those mining assets (i.e.,

almost 8 to 1 loan principal to book value of assets plus the stock warrants). Various stock transactions are also described that raised the money already spent.

III, RISE ADMISSIONS IN ITS FORM 10K FOR THE FISCAL YEAR ENDED 7/31/2022 (FILED 10/31/2022) [Again Not Updated Yet By Rise.]

A. Admissions Regarding the Mine Property And Basic Context Data.

` **1, How Rise's 10K (at pp.34-38) Describes the IMM History And How That Compares To Rise's Vested Rights Claims.**

Rise's 10K admits (at 34-35) that 1955 was "the final year of production from the mine." Thus, there has been no mining for vested rights acquisition since at least 1955, thus focusing on the comparison of the applicable law at that time to what Rise now proposes for vested rights mining. Compare this to the Nevada County's 1954 ordinance and State laws in 1954 laws versus what was done in that last 1955 year of mining operations, as discussed in *Hansen* in this Petition, including detailed analysis of that often-mischaracterized case by miners more correctly described in Exhibit __hereto. To be clear none of the work done at the mine since it closed and flooded in 1956 qualifies for vested rights, since it was only "exploration" or environmental testing, which even the Rise 10K excludes from mining activities by its admission at pp. 28: "Mineral exploration, however, is distinct from the definitions of 'sub surface mining' and "surface mining'" [making the point that miners in that M1 district zoned land could explore without a permit.] While Rise cites aggregate gold production numbers from 1866-1955 in its Table 3 at pp. 35, what matters for the vested rights dispute is what vested rights uses and intensities existed, for example, when the Nevada County ordinance addressed in Hansen was enacted compared to the nonconforming uses, if any, that occurred in 1955. Clearly, nonuse since 1956 cannot create any additional or enhanced vested rights, even under *Hansen* (much less under many other authorities that objectors cite [and will cite in later briefing] to defeat Rise's vested rights claims). While this is not the time or the place for briefing all objectors facts, evidence, and law for our trial briefs defeating the vested rights, it is instructive to consider this Rise 10K admission at 34, demonstrating that not much happened in 1954-55 of helpful relevance for Rise's vested rights claims, especially considering all the additional laws and regulations occurring after the mine closed and flooded in 1956 and even before since:"[mining was] forced to shut down by the US Government in 1942 (Shore 1943). Due to lack of development, a decline in gold production was experienced and recovery from war-time shutdown never occurred."

While Rise's 10K claims at pp. 34 that: "The I-M Mine Property and its comprehensive collection of original documents was rediscovered in 1990 by Consolidated Del Norte Ventures Inc, the predecessor company of Emgold Mining Corporation, and efforts were made to reopen the historic mine." During the period of what Rise called "Exploration & Mine Development 2003-2004" [skipping over in dead silence the period of nonuse or anything from 1956 to 2003], Rise claims (at pp. 34): "Development work during this period [2003-2004] included completion of a preliminary investigation of the mine records, publishing various technical reports on the I-M Property, leasing or purchasing adjacent properties [none of which would be eligible for

vested rights because they were expansion, intensification, and otherwise barred by case law], various permit applications and associated environmental studies, development of a ceramics technology process, and completion of an exploration program. Emgold was unsuccessful in reopening the historic mine due to inability to raise necessary funding in the midst of unfavorable market conditions." As described in this Petition, objectors dispute any such Emgold documentary evidence as consistent with Rise's description (e.g., that such "rediscovered" in 1990 pre-1956 records that were a 'comprehensive collection"), the law of evidence will exclude those purported records as admissible proof for any vested rights.

As to the relevant "history" summarized by the Rise 10K starting at p. 34, using what are described as "available historic records," which objectors assume means the portion of such historical records which Rise was able to find and chose to hunt down and locate, leaving for later litigation discovery the question of which possibly available records Rise chose not to seek or investigate. [While the 10K admits that "[h]istoric drill logs were not available for review and no historic drill core was preserved from past mining operations…" and objectors wonder what **reliable** evidence, if any, serves as the foundation for Rise's (and the EIR/DEIR's) purported analysis and what deficiencies exist to invalidate or discredit such analysis. Another discovery question is whether and to what extent the prior Emgold owner stopped its reported investigation merely (as Rise claims at 34-35) "due to inability to raise necessary funding in the midst of unfavorable market conditions" or whether they may also have been discouraged by negative information or clues of risks that would have to have been addressed in the EIR (if Rise had chosen to investigate them.) For example, the 10K reports that Rise purchased the "Emgold diamond drill program database" as distinct from all the historical documents of Emgold, as Rise did when it purchased from BET Group. In objectors' experience miners tend to be selective about what they want to know and what they avoid, because they might not want to know inconvenient truths or worse. Incidentally, Rise's efforts to dodge discovery claiming limits to the administrative record may work for CEQA disputes (although objectors do not waive any rights to seek such discovery by exceptions) do not apply to this vested rights dispute involving competing rights and claims between surface owners above and around the 2585-acre underground mine.

None of that Emgold activity could have created or preserved or otherwise supported any Rise vested rights claim. Even if Emgold had some intent to restart the mine, under the circumstances of nonuse, abandonment, etc., that intention could not support vested rights since it was not accompanied by any relevant mining or nonconforming uses, because, among other things, it could not comply with all the applicable laws and regulations taking effect since 1956 during the period of nonuse and abandonment before its 2003 acquisition. Even if somehow Emgold was relevant, Rise admits at pp. 35 that Emgold's intention was not to expand and do intensive mining like in the EIR/DEIR Rise plan, but rather (consistent with Emgold's "exploration drill program") on two different sites "both targeting near surface mineralization around historic workings, whereas Rise's plan was for deeper mining in different places. No one should imagine that anyone in 1956 had any intention to do what Rise proposes to do now, and objectors will dispute any contrary claim by Rise, as well as any claim of Emgold's exploration activities providing any support for Rise's vested rights claim.

Moreover, applying the objective standard for future intent, no one in 1956 when the mine flooded and closed could have had any intent to reopen the mine for what Rise wants to do now. Not only was the mine abandoned, but no effort was made to preserve any restart opportunity at least until that ineffectual Emgold dabbling in 2003. Mining historians can prove how everything changed radically between 1956 and any relevant modern dates in dispute with Rise, since in 1956 underground mining was largely still reliant on manual labor using hand tools and dynamite for excavation (as distinct from modern machinery), none of the equipment was at all comparable, the times primitive science was all superseded by more modern science in every field, safety regulations and practices and environmental considerations were absurdly lax and, in the absence of meaningful laws and enforcement ancient miner owners did as they wished, which is also reflected in their record keeping where they recorded what they wanted known or imagined, without little regard for realities or comprehensiveness for modern vested rights purposes, ventilation systems, dewatering systems, and communication systems were dangerously primitive, etcetera. Dewatering in the 1950's was especially primitive with manual or the beginning of steam pumps which made the kind of dewatering needed in the IMM and planned by Rise literally imaginable in 1956. (Electric pumps did not begin to appear until well into the 1960's.) Among the factors leading to the 1956 closure was not just declining gold prices, but also depletion over decades of mining of easily accessible and high-grade gold, making mining more expensive and riskier, with many technology limits compared to the challenging conditions as well as the growing environmental concerns.

2, Some General Data Admissions About the IMM to Compare To the Disputed EIR/DEIR and the Vested Rights Claims

As stated in Rise's 10K at pp. 22+ the I-M Mine Project is described as a unified project comprised of "approximately 175 acres … surface land and … 2800 acres … of mineral rights" identified by maps and parcel data without any meaningful surface location data like roads or addresses. According to the 10K at pp. 25, that is comprised of "10 surface parcels" including 55 sub parcels (The "Brunswick" 37-acre site and related 82-acre "Mill" site, and the "mineral rights" area we call the "2585-acre underground mine" that the EIR/DEIR calls its CEQA project, as distinct from what the 10K calls the 56 acre "Idaho land" that the EIR/DEIR separates from that project and calls the "Centennial" dump site and on which no mining is contemplated. However, as explained in the Introduction to this Exhibit and elsewhere in the Petition, all of those parcels are described in Rise's 10K as parts of one unified mining project, thus conflicting with Rise's EIR/DEIR presentation of its alternate history (and trying to escape its SEC filings admissions by trying in the EIR/DEIR and other presentations to assert that the Centennial site is a separate project for CEQA but somehow inconsistently at the same time denying that Centennial work is an expansion or intensity-change for purposes of vested rights to use it as a dump for its new mining operations. Thus, for example, there can be no vested right to dump IMM mine waste on Centennial. Besides physical location and other differences, one of many factors separating the Centennial dump site from the IMM mining is that Centennial gets its NID water from the "Loma Rica System," while Brunswick gets its NID water from the "E. George System" (10K at 28).

In any case, neither Rise's 10K nor the EIR/DEIR nor other related filings reveal when or how Rise's predecessor acquired those 10 parcels (55 sub parcels) or underground mining rights to compare mine "expansions" for vested rights analysis versus the continuously evolving and expanding applicable laws at such times. Instead, Rise just states in the 10K that "original mineral rights" were acquired "at various times" since 1851. The 10K describes the Rise purchase of everything from BET Group Estate (at pp.29) by quitclaim deed on 1/25/2017 (with the Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) "subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" Note that Rise (at pp. 28) not only separates surface from subsurface mining, but separates "mineral exploration" from both such types of mining, consistent with the M1 district zoning.

The Rise description of its environmental studies (at 10K pp. 31-32) addresses the IMM and Centennial wholly owned land conditions, which is not determinative of the conditions in the different areas of the 2585-acre underground mines. As admitted at page 31 as to "Environmental Liabilities," all "environmental studies were completed prior to Rise purchasing the Idaho land [aka Centennial] and the Brunswick land." That means that Rise cannot vouch for the accuracy, completeness, or sufficiency of the studies or any directions (or lack of correct instructions) given by prior owners. Motions in limine at the start of the court trial will exclude most of Rise's so-called evidence because it is inadmissible on various grounds and other reasons (such as those discussed in the Introduction to this Exhibit) why there can be no substantial evidence for any vested rights as claimed by Rise.

Such issues are important, among other things, because when Rise wants to impress the potential investor readers about the details of the "Geological Setting, Mineralization, And Deposit Types" (SEC 10K at 38+), it describes the variable underground gold related data with some precision. However, when the EIR/DEIR addresses those underground conditions to deal with groundwater and related environmental and other property rights issues, it generalizes and incorrectly assumes a uniformity of those underground conditions that is rebutted by Rise's SEC 10K variations, which in turn, however, also incorrectly extrapolates and generalizes on many such dispute topics from the surface conditions at its small, wholly owned Brunswick site to the underground mining of the 2585-acre sites. Again, what is lacking from Rise is a sufficient baseline either for CEQA or vested rights disputes as to the relevant starting dates for each parcel and at the relevant later dates so as to know how to judge applicable expansions and intensity changes at critical times. (While that variation is relevant for gold opportunities addressed in the 10K that Rise wants to know, the EIR/DEIR does not equally address that variability because its disputed "talking points" (the miner equivalent of politician "spin") sound less problematic for such groundwater and other EIR/DEIR risk disclosure exposures when it assumes uniformity consistent with its apparent desire for what seems to me to be an "alternative reality" Objectors expect yet another alternative reality version for Rise's vested rights claims.

Stated another way, should the Rise vested rights claim or EIR/DEIR be mistakenly approved by the County, the challenge litigation will impeach the EIR/DEIR's and vested rights' descriptions of the underground and other conditions for groundwater and other risk and dispute issues, among other things, based on the contrary or inconsistent variable underground

data presented in the SEC 10K. Also, when describing the underground conditions for gold, there are many described exceptions and variations, but the disputed EIR/DEIR's "don't worry about groundwater" theory (which objectors expect incorrectly attempt to evade key precedents that defeat Rise's plans, such as *Gray v. County of Madera*, and to be even further minimized in Rise's vested rights claims to attempt to evade objections like those in this Petition) falsely assumes or implies uniformity not described in the SEC 10K. For example, in discussing its underground analysis, even Rise's 10K reflects doubts (e.g., at 44): "Although Rise has carefully digitized and checked the locations and values of drill hole results from level plans and other documents, the absence of drill hole related documentation, such as drill logs, drill hole deviation, core recovery and density measurements, assay certificates, and possible channel sample grade biases, could materially impact the accuracy and reliability of the reported results."

Many inconsistencies appear even within the Rise 10K, although not usually as substantial as the differences between the more detailed 10K and the less significant, more general, and less detailed data in the EIR/DEIR. Objectors fear the vested rights claims will be the worst of each alternative reality, such as exaggerating alleged "facts" that would help vested rights theories, while minimizing, ignoring, or incorrectly addressing "facts" that would defeat vested rights. For example, (at 44) the Rise 10K admits that "Rise has conducted mineral processing and metallurgical testing analysis on the recent drill core from the I-M Mine Property for the purposes of environmental study in conjunction with permitting efforts." Since the disputed EIR/DEIR does not sufficiently reveal those results, that will likely be a subject of intense discovery efforts in any subsequent litigation to determine, for example: what was not reported by Rise and why? Even if the answer is that the EIR/DEIR or vested rights claim editor did not trust that data, as the Rise 10K admittedly does not accept/trust the inconvenient historical data that also rebuts the EIR/DEIR and vesting rights as addressed in our objections. For the 10K's such doubts, consider, for example (at 44): "No estimates of mineral resources have been prepared for the I-M Mine Property. We are not treating historical mineral resource estimates as current mineral resource estimates. In addition, there are no mineral reserves estimates for the I-Mine Property." Since the 10K (at 44-45) cites and relies on somewhat different authorities than the EIR/DEIR and (we assume) also than the vested rights claims, the question is why? Considering all of the many Rise and its enablers' credibility issues with the EIR/DEIR, one wonders if Rise is more cautious about the 10K and other SEC filings because of the more serious consequences of misrepresentations than Rise is concerned about the accuracy, compliance, and sufficiency of the EIR/DEIR and (objectors assume) the vested rights claim data.

3. Some Environmental Data.

The Rise 10K contains (see pp. 28-45) many environmental facts that are often inconsistent with, or that fill in factual gaps in, the EIR/DEIR (and, objectors predict, will do so as well for Rise vested rights claim.) What is important for focus is that the history and investigations are either about the much less relevant and important Rise owned Brunswick and Mill site land (compared to the key 2585-acre underground mine, where the mining takes place and the problems begin), and most explorations/investigations are about the search for gold

sources, not about a study for safety or environmental threats. Almost as bad, is the telling fact that Rise admits it and its predecessors didn't even do much looking at the dangerous spots, but simply focused on their such wholly owned entry lands and then incorrectly extrapolated from that to wrongly assume those conditions uniformly applied in the 2585-acre underground mine that is the greatest concern. The Rise description of its environmental studies (at 10K pp. 31-32) addresses the IMM and Centennial wholly owned land conditions, which is not determinative of the conditions in the different areas of the 2585-acre underground mines. As admitted at page 31 as to "Environmental Liabilities," all "environmental studies were completed prior to Rise purchasing the Idaho land [aka Centennial] and the Brunswick land." That means that Rise cannot vouch for the accuracy, completeness, or sufficiency of the studies or any directions (or lack of correct instructions) given by prior owners. Motions in limine at the start of the court trial will exclude most of Rise's so-called evidence because it is inadmissible on various grounds and other reasons (such as those discussed in the Introduction to this Exhibit) why there can be no substantial evidence for any vested rights as claimed by Rise.

For example, as to the "Idaho land" [aka Centennial] and containing arsenic in the mine tailings and waste berms, the NV5 Draft Final Preliminary Endangerment Assessment and follow-up Draft Remedial Action Plan (7/1/2020) is reported still "currently in process" by the Cal EPA. As to the Brunswick & Mill site (at p.31) following a surface Phase 1 assessment by ERRG, "ERRG has recommended further sampling and studies" "to determine if contamination historic mining and mineral processing was present." This is one of several opportunities for investigation that Rise has avoided to evade inconvenient truths and embolden Rise's "alternative reality" presentations. Also, in 2006 a Phase II assessment was reportedly done for the Mill Site by Geomatrix (at 32) which found arsenic in the waste rock and Volatile Organic Compounds (VOC) in the groundwater but they were not concerned with "vapor" and relied on the "deed restriction which restricts the use of groundwater for any domestic purpose and the construction of wells for the purpose of extracting water, unless expressly permitted by the Regional Water Board." The significance of these causes of concern have not been investigated or addressed sufficiently by the DEIR/EIR, although NV5 reportedly prepared a "Phase I/II ESA (June 16, 2020) presenting the results of additional investigations and addressing historical conditions identified in previous reports" (at 32). [Stated another way, the wording of the summary results is cleverly ambiguous although drafted in the passive voice (e.g., "mine waste is believed [by whom? based on what?] to have originated from offsite…") and subjective (e.g., arsenic concentrations …were relatively low except for …) [compared to what standard?]

At p. 32 + the 10K provides a general list of permits that might be required under particular summarized circumstances, but the Rise 10K does not apply that general summary to reveal when such permits will be sought for this project or what of the listed factors are expected to trigger that require such permits. Objectors mention this because when the EIR/DEIR lists permits it also does not describe sufficiently such trigger factors or the circumstances where objectors could apply such SEC 10K data and other law to assure ourselves that the miner was planning to seek all the required permits, as opposed to evading them until the miner was "caught" and then seeking such permits and "forgiveness." The four Engel Objections to the EIR/DEIR demonstrate why objectors perceive the EIR/DEIR to suffer from credibility problems that make such concerns reasonable, and, as noted above in the Introduction, that credibility problem will now be compounded by Rise's alternative reality in

the EIR/DEIR conflicting with Rise's alternative reality for its vested rights claims, as so described above regarding the Centennial site.

B. Admissions in Risk Factor Discussion 10K Item 1A at p.6+.

The risk factors admitted in the 10K are the same as those admitted in the more current 10Q that is addressed above. So, objectors will not repeat them here, but we note that the consistency of those admissions increases their importance as admissions in these disputes.

C. Miscellaneous Additional Financial Admissions. (Most data here is passed over in favor of the more current 10Q data stated above).

To place the foregoing Rise 10Q financial data in contest and reveal Rise's chronic incapacity to perform its EIR/DEIR goals and aspirations, even as limited to what it admits to be required (as distinct from what us objectors expect to be ultimately required if the EIR were ever to be approved and for the vested rights claims), objectors note the admission at Rise 10K p. 5: "As at July 31, 2022, we had a cash balance of $471,918, compared to a cash balance of $773,279 as of July 31, 2021." However, the 10K financial data for the prior year (starting at 48+) gives one a sense of scale, such as with respect to the "net loss and comprehensive loss for the year [2022]" of $3,464,127, compared to the operating loss of $3,385,107 (ignoring the large "gain on fair value adjustment on warrant derivatives"). Among the key questions is whether the data developed by Rise for the EIR/DEIR is being fully processed for its CEQA compliance as opposed to simply its gold exploration use. See, e.g., (at 49) where the 10K reports an "Increase in mineral exploration costs to $788.684 (2021- $782,261) related to activities surrounding the Use Permit application."

As admitted (at 49): During the year ended July 31, 2022, the Company received cash from financing activities of $2,392, 998 (2021-$248,198) related to the private placement' that year. But during that year "the Company used $2.694,359 in net cash on operating activities, compared to $2,853, 475 in net cash the prior year…" As to the risk that creates for nonperformance of the EIR/DEIR, please note the following related 10K admission that follows those admissions:

> The Company expects to operate at a loss for at least the next 12 months. It has no agreements for additional financing and cannot provide any assurance that additional funding will be available to finance its operations on acceptable terms in order to enable it to carry out its business plan. There are no assurances that the Company will be able to complete further sales of its common stock or any other form of additional financing. However, the Company has been able to obtain such financings in the past. If the Company is unable to achieve the financing necessary to continue its plan of operations, then it will not be able to carry out any exploration work on the Idaho-Maryland Property or the other properties in which it owns an interest and its business may fail.

The Rise auditors, Davidson & Company, LLP, qualified its financials (starting at 10K p. 53) as follows:

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company incurred a loss of $3,464,127 for the year ended July 31, 2022, and as of that date, had an accumulated deficit of $23,008,604. These events and conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.