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December 12, 2023

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Re: Idaho-Maryland Mine Vested Rights Petition dated 9/1/2023 (the "Rise Petition") Disputes: Objectors' "Overlying Surface Owner Rebuttal" To The Rise Petition of Rise Grass Valley, Inc. (herein, together, as applicable, with Rise Gold Corp., called "Rise")

Dear Board Members And Advisors:

This is the final part of the undersigned objectors' "Comprehensive Objections" disputing the "Rise Petition" and related vested rights claims, as well as other overlapping "Rise Reopening Claims," as such terms are defined and explained in the following objection. This is added to the existing foundation of objectors' Evidence Objections Part 1, Evidence Objections Part2, and Objectors Petition For Pretrial Relief, Etc. Such objections refute the disputed Rise Petition's incorrect legal and other theories, as well as rebut each material Rise Petition Exhibit. Objectors often use as rebuttal evidence Rise's admissions from its County filings and from Rise's "2023 10K" and other SEC filings. What is unique in this objection (and why, for clarity, this is referenced as the "Overlying Surface Owner Rebuttal") is that it adds more legal details and proof about the applications to such disputes of the "Rise Reopening Claims" of our competing, constitutional, legal, and property rights as the "overlying surface owners" impacted

by living above and around the 2585-acre underground IMM if it were ever mistakenly allowed to reopen. (The precise underground acreage may be more or less than 2585, because Rise's claims are inconsistent in different documents. Although objectors use that 2585-acre EIR/DEIR number for consistency in our Comprehensive Objections, we intend such objections to be comprehensive as to whatever the reality may be about that underground, mineral rights portion of what the disputed Rise Petition incorrectly calls the "Vested Mine Property.")

Among the many such disputes are those caused by Rise's threatened 24/7/365 dewatering of that underground IMM for at least 80 years. That intense depletion of the groundwater (and existing and future well water) owned by such overlying and impacted surface owners would be an intolerable threat to such overlying surface owners' priority water rights. Also, such overlying surface owners each have constitutional, legal, and property rights of subjacent and lateral support to prevent subsidence from such underground mining, none of which rights can be overcome by any miner vested rights, even if Rise could prove any, which Rise has not done. Because the disputed, ambiguous, and generally objectionable Rise Petition may be incorrectly asserting contrary vested rights against any or all of such overlying surface owners' groundwater, well water, and property rights, such surface owners are "indispensable parties" in all disputes regarding the Rise Reopening Claims. That is one reason why such objecting surface overlying and impacted owners have insisted that this must be a multi-party dispute process in which they must be given more than the extra due process to which all the impacted objectors are entitled under *Calvert* and other authorities. Such overlying surface owners are also entitled to contest the Rise Petition as full and equal parties as required by *Wright v. Goleta Water Dist*. and other authorities. See also Objectors Petition For Pre-Trial Relief, Etc. Stated another way, because such objecting surface owners have our own personal and competing property and legal rights at stake, independent of whatever the County may do (or not do), it is legally impossible for the Rise Petition to prevail without such overlying and impacted surface owners achieving the complete and comprehensive due process and other rights to which they are personally and individually entitled directly as overlying and impacted, surface property and groundwater/well owners with priority water rights being directly threatened by the disputed Rise Petition and other Rise Reopening Claims.

If there is any doubt about how the disputed Rise Petition threatens such overlying or impacted surface owner objectors, please consider the objectionable Rise "hide the ball" tactics. For example, **the disputed Rise Petition incorrectly demands (at 58) that its meritless and unproven vested right claims allow Rise to mine as it wishes 24/7/365 for at least 80 years anywhere in its disputed "Vested Mine Property" "without limitation or restriction.**" However, that meritless vested rights theory is contradicted by, and inconsistent with, Rise's admissions to its investors and the SEC in Rise's 2023 10K (filed after the Rise Petition). **Exhibit 2 to the following objection exposes many such contrary admissions in that 2023 10K's "Risk Factors." Since Rise Petition is literally asserting intolerable and incorrect threats against such competing (and priority) overlying surface owner rights, no vested rights can be proven without such objectors having full due process to defeat such meritless claims. Even worse, Rise's "2023 10K" also asserts a right for Rise to engage the government and courts to force objecting surface owners to accommodate on our surface properties various of Rise's disputed such underground mining activities. E.g., Exhibit 2 (see #II.B.25)**

The Rise Petition also lacks legally sufficient clarity on many such disputed issues that it either obscures, evades, or ignores. (That kind of objectionable tactic would result in objectors' successful motion to dismiss such a Rise complaint for failures to plead with required clarity if this were a court process.) It is difficult to know how many more unhappy surprises lurk in the Rise Petition ambiguities "hiding in plain sight," besides such bold, overstatements like vested rights allegedly empowering Rise to mine "without limitation or restriction." The only "good news" for us in this disputed process is that no vested rights can be granted that affect us because of our lack of the full, required due process to defeat such Rise claims. In other words, if the County were mistakenly to grant the Rise Petition, it could not adversely affect objecting overlying surface owners and other impacted objectors who must still have their proper "day in court." As demonstrated in Evidence Objections Part 1 and 2, Rise has the burden of proof. By failing to counter such objections (or to prove anything material covertly alleged against such objectors) Rise's fatally incomplete, deficient, and objectionable Rise Petition and Exhibits cannot succeed. Indeed, what objectionable Exhibit evidence Rise has offered has been defeated comprehensively not just by our such Comprehensive Objections, but also by Rise's self-destructive admissions contradicting its Rise Reopening Claims, such as demonstrated in Exhibit 2 and Evidence Objections Parts 1 and 2. See Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235, as well as demonstrated, for example, both in *Hardesty (*rejecting the miner's evidentiary "muddle" that we call a denial of reality in favor of the miner's "alternative reality" where inconvenient truths are excluded) and in the *City of Richmond* case, where the court rejected the Chevron EIR because it was inconsistent with Rise's SEC filing admissions (and on facts far less egregious than those shown here in Exhibit 2.)

Finally, objectors note that questions also exist as to whether and how long the disputed Rise Petition's 24/7/365 dewatering abuses against overlying surface owner groundwater and well rights could survive against the continuous testing that would be required against continuous California Constitution's requirements in Article X, section 2 (and Water Code #100, 100.5, et seq), constantly requiring reasonable and beneficial uses without waste or otherwise objectionable misuses or diversions. As also demonstrated below, no vested rights claims can evade that perpetual obligation for proper use and disposition of groundwater, especially since such groundwater (and existing and future well water) is subject to overlying surface owners' priority water rights (See *City of Barstow* and *Pasadena*), as well as being part of the bundle of rights for subjacent and lateral support such surface owners may enforce against underground miners to avoid subsidence, such as by depletion of such groundwater supporting their surface (see *Keystone* and *Marin Muni Water.)*

Some such disputes may not yet be ripe, and it may be hard to know sufficiently what Rise would actually do with its disputed dewatering system or the actual state of our relevant groundwater supplies in the most relevant sub-basin or legally applicable sources (e.g., each parcel beneath each overlying surface owners). However, those deficiencies are Rise's failures as to its burdens of proof, and Rise cannot possibly prevail by both failing to prove its vested rights and failing to rebut our meritorious objections. While such disputes, like all water rights issues, are complex and fact-driven analyses, what is demonstrated in the following objection on these topics should be sufficient to discourage the County from allowing Rise to continue exaggerating the potential impacts of its meritless vested rights claims to the detriment of objectors.

For the reasons stated and proven in such Comprehensive Objections, objectors respectfully request that the Board deny the entire Rise Petition, both on the merits proven by objectors and others and by Rise's comprehensive failure to satisfy its burden of proof. However, suppose the Board incorrectly finds some basis for any of Rise's wrongly claimed vested rights. In that case, objectors urge the Board to make specific findings as the law requires on a parcel-by-parcel, use-by-use, and component-by-component basis. Accepting any of the Rise Petition drafted findings or conclusions would be a double mistake because they are overbroad, ambiguous, and appear tactically written to achieve even more inappropriate claims than the Board may imagine. For example, when the Rise Petition (at 58) incorrectly claimed the vested right to mine as it wishes anywhere in the disputed Vested Mine Property "without limitation or restriction," that would seem to be giving Rise a "blank check" that even Rise's recent SEC "2023 10K" filing admits, in effect, would be a gross overstatement because such SEC filings acknowledge many legal and other limitations and restrictions as "Risk Factors" for Rise's investors. See Exhibit 2, rebutting that SEC "2023 10K" filing and also using such Rise admissions to rebut the disputed Rise Petition.

Thank you for considering these important concerns.

Sincerely,

//Larry Engel
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The Personal Competing Constitutional, Legal, And Property Rights of Impacted Surface Owners Above And Around the 2585-Acre (More Or Less) Underground IMM Must Defeat the Rise Petition, Especially By Objectionable Dewatering 24/7/365 For At Least 80 Years That Not Only Violates Overlying Surface Owners' Priority Rights In Groundwater, But Also Surface Owners' Rights Of Subjacent And Lateral Support To Prevent Subsidence. Rise Will Also Be Perpetually At Risk of Noncompliance With CA Constitution ART. X, Sec. 2 (And Water Code #100).

I. Introduction And Relation To Other Objections, Supplementing, But Not Repeating, The Incorporated Cover Letter Summary, And Alerting The County Again, But In More Detail, About How the Competing, Personal Constitutional, Legal, And Property Rights Of Overlying Surface Owners Can Be Used In Their Self-Defense Against the "Rise Reopening Claims," Especially Those In The Rise Petition.

A. Introduction And Relation To Other Objections, Supplementing the Cover Letter.

The undersigned objectors have previously filed or incorporated many objections to the disputed Rise Petition and Rise's related claims, such as described in **Exhibit 1,** including objectors' **"Evidence Objection Part 1," "Evidence Objection Part 2," and "Objectors Petition For Pre-Trial Relief"** (including the exhibits and attachments to it and everything incorporated therein by reference.) Those objections (including their case cites and definitions and whatever more objections, evidence, and other incorporated are cited in support of such objections) are incorporated herein, and (together with this objection and its incorporations and support) they are collectively called objectors' **"Comprehensive Objections."** That is because, as demonstrated, for example, in Evidence Objection Part 2, there exists one massive, multi-party, integrated dispute with Rise (and anyone facilitating its disputed claims or activities) collectively called the incorrect **"Rise Reopening Claims."** See Exhibit 1. Such objectionable Rise content includes not only the comprehensively disputed Rise Petition, EIR/DEIR, and all of the other Rise applications for related governmental permits, approvals, or other benefits, such as those listed on the County website for the Idaho Maryland Mine or in the County Staff Report on the EIR/DEIR, but any others to which objectors have objected (or to which they will object but have not yet been required or able to do so; e.g., whether (i) by the County separating/excluding the reclamation plan and financial assurances and many other remaining matters segregated by the County for later or further consideration as to which objectors wish to object now or later [whether to the County or the courts], or (ii) by Rise adding amended or supplementary evidence, argument, or other support at the Rise Petition hearing [even if Rise incorrectly calls it "clarification" or "embellishment" as Rise improperly did to add to or correct its EIR or DEIR record at those prior hearings] after the objectors' opportunity ended for a response thereto, except in the following court process disputing that County process, such as discussed in the Objectors Petition For Pre-Trial Relief, Etc.) That term [Rise Reopening Claims] also includes all other Rise admissions, evidence, and other support for such Rise Reopening Claims, whether or not intended as such by or for Rise, such as, for example, Rise's "2023 10K" and other SEC

filings, as well as the parts which objectors disputed in the "County Staff Report," the "County Economic Report," and others filings supporting any Rise Reopening Claims on which Rise may attempt to rely.)

This is a comprehensive dispute regarding the meritless Rise Reopening Claims and what Rise does or proposes to do in implementing such disputed vested rights or other claims. Fundamentally, this is about objectors' "reality" versus Rise's "alternative reality" (e.g., what some objections describe as the proverbial "apples versus oranges" debate, in which objectors are both proving that the relevant fruit is an "apple" by both our proof about meritorious "apples" [e.g., overlying surface owner rights ignored or denied by Rise] and our rebuttals to Rise's meritless "oranges" claims.) For example, objectors demonstrate in our Comprehensive Objections that Rise is telling different and inconsistent "stories" in the SEC (e.g., Exhibit 2) than in its County filings, and even then, different "stories" to the County in the Rise Petition than in the EIR/DEIR and permit and approval applications. Those kinds of conflicting and contradicting admissions are self-defeating for the Rise Petition, as shown in the *City of Richmond* and *Hardesty* cases discussed in various Comprehensive Objections. See, e.g., Evidence Objections Parts 1 and 2 (e.g., Evidence Code # 623, 412, 413, 1220, 1230, and 1235) and Exhibit 1 below. Moreover, the comprehensively disputed Rise Petition Exhibits often do not prove what they are cited to prove in that Petition, and some admissions in those Exhibits help objectors rebut the Rise Petition and other Rise Reopening Claims. Id.

Rise can only reopen the mine if it is dewatered 24/7/365 for at least 80 years, as deficiently described in the disputed DEIR/EIR (subject to Comprehensive Objections). Rise also admits that it can only continue to repair, maintain, operate, and expand such underground mining if Rise can continue to dewater 24/7/365 for at least 80 years. Id. However, dewatering directly conflicts with the competing overlying and impacted surface owners' such water rights and rights to subjacent and lateral support to prevent subsidence. Furthermore, in order to dewater, Rise has admitted that it needs to install a new and unprecedented water treatment plant and related system for which Rise cannot possibly have any vested rights or any lawful right to the permits that would be required over the opposition of such objecting surface owners and others. No such disputed Rise vested rights claims can overcome any such surface owner competing constitutional, legal, or property rights, which must prevail independent of anything the County may do (and, absent inverse condemnation by the County [e.g., creating taking and other claims, such as discussed in Varjabedian]) to quote the opposite of Rise Petition (at 58) back against Rise "without limitation or restriction" by any permissions for Rise that violate such surface owner rights. More disputes are also addressed herein and in the Comprehensive Objections, and they are mentioned here because such dewatering uses and components on such parcels create many other disputes as well. Id.

For the reasons stated or incorporated herein, objectors request that the Board deny all relief requested by the Rise Petition, especially every finding requested by or for the Rise Reopening Claims. Instead, the Board should find in favor of our Comprehensive Objections on every relevant issue, fact, and claim, both by our objectors' proof and by rebuttals of each material Rise Petition Exhibit and claim. Although Rise has the burden of proof, it failed to prove anything at issue, and the Board should consider this objection, the Evidence Objections Parts 1 and 2, and Objectors Petition For Pre-Trial Relief, Etc., as a sufficient basis for that relief and for contrary findings consistent with the Comprehensive Objections. Moreover, besides being

wrong and deficient, the Rise Petition fails (as did the EIR/DEIR) to satisfy the "common sense" standard of proof in Gray v. County of Madera, and the "good faith reasoned analysis" requirement of *Vineyard Area Citizens For Responsible Growth v. City of Rancho Cordova* (2007), 40 Cal.4th 412, and other cited authorities.

B. Objectors Have Personal, Constitutional, Legal, And Property Rights And Standing on At Least an Equal Basis To Rise In These Multi-Party Dispute Processes To Rebut Each of the "Rise Reopening Claims," Especially As Overlying Owners of the Surface Above And Around the 2585-Acre IMM (And What Rise Incorrectly Calls the "Vested Mine Property.")

The rights of each overlying or impacted surface owner versus the underground miner are in direct competition in a "zero-sum game, where whatever benefit is gained by the miner creates harm, prejudice, and worse misery to such surface owners, as demonstrated below, and as the Comprehensive Objections also prove. The Rise Petition is often legally incorrect, especially regarding the priority and superior rights to which such surface owners are entitled, especially as to protection from subsidence and the groundwater and existing and future well water owned by such surface owners as demonstrated herein. Stated another way, any accommodations by the County to Rise come as a nonconsensual sacrifice by objecting surface owners for which the County has no right or power to cause under these facts and circumstances unless the County is going to make the mistake of causing inverse condemnation or other "taking" claims by unwisely giving away surface owner rights to Rise. See, e.g., *Varjabedian.*

Notice there is a difference here for such overlying and impacted surface owners above and around the 2585-acre underground IMM that is even greater than the due process *Calvert* required for the objecting public in a multi-party vested rights dispute. As the court explained *in California Water Service Co. v. Edward Sidebotham & Sons, Inc.* (1964), 224 Cal. App. 2d 715 ("***Cal Water Service"***), every overlying or impacted surface owner is an indispensable party to any relief being granted to Rise that impacts such owner, and, since such surface owners. As the court explained (at 731, emphasis added):

> **Whether all indispensable parties were before the court is determined by the relief granted. (*Orange County Water Dist. v. City of Riverside*, 173 Cal.App.2d 137…) The requirement that indispensable parties be before the court is mandatory.** (*Hartman Ranch Co. v. Associated Oil Co*., 10 Cal.2d 232…). A failure to join indispensable parties necessary to the relief involved constitutes a jurisdictional defect. (*Sime v. Malouf,* 95 Cal.App.2d 82…) The finally rendered was an inter se adjudication of the rights of all the parties among themselves.

That means that Rise may not use this adjudicatory administrative proceeding to determine any vested right claim that directly or indirectly affects any such objectors or their property. Should it become necessary for overlying or impacted surface owners to defend their rights and

interests in court, such as to protect our groundwater or existing or future well water or to prevent loss of subjacent or lateral support or subsidence, the lack of such due process and full participation (at least equivalent to what was granted to Rise—not just three minutes) **means that no vested rights findings or decisions in this process in favor of Rise can have any effect on such surface owners or their property or any of their constitutional, legal, or property rights or claims.** (**Of course, if, as would be the correct result, the County rejects the Rise Petition, then there is no problem because the indispensable parties are not affected. Such a ruling against Rise means, in effect, that Rise Petition cannot be misused in any way to bind or affect any such objecting surface owner or his or her property or any such rights or interests.)**

Rise cannot continue to assert such "Rise Reopening Claims," such as those in the disputed Rise Petition, in any such process to which objectors are not allowed their full due process, evidentiary, and other rights for rebuttal on equal terms. See, e.g., Objectors Petition For Pre-Trial Relief, Etc., explaining *Calvert v. County of Yuba* (2006), 145 Cal. App. 4th 613 ("**Calvert")** and other authorities. Besides such rights of due process (and more) to which all those with Comprehensive Objections are entitled (see, e.g., *Calvert*), as demonstrated further below, overlying and impacted surface owners living above and around the 2585-acre underground IMM (or what Rise called the disputed "Vested Mine Property") have our own personal, constitutional, legal, and property rights to protect, defend, and enforce in such "Comprehensive Objections" against the disputed Rise Petition and all the other "Rise Reopening Claims," independent of whatever the County may do or not do. See, e.g., objectors' "Evidence Objection Part 1," "Evidence Objection Part 2," and "Objectors Petition For Pre-Trial Relief." Notice that, as described herein and Id., Rise not only threatens to deplete objectors' groundwater and existing and future well water by 24/7/365 dewatering at the disputed Vested Mine Property. Worse, Rise recently has also asserted incorrectly in its disputed 2023 10K SEC filing (exposed and rebutted in Exhibit 1 hereto at #II.B.25) that Rise can cause the government or the courts to allow Rise to *invade the surface* owned by nonconsenting objectors above or around the 2585-acre underground IMM (aka disputed "Vested Mine Property.") Id. See, e.g., *Gray v. County of Madera* (2008), 167 Cal. App. 4th 1099 (**"Gray")(**ruling that a surface miner's threat to locals around that quarry was entitled to full assurance of water service equivalent to the current well status quo to prevent well water depletion in a legally compliant way. In a lengthy analysis, *Gray* insisted that nothing short of service from a new water treatment and supply system, [i.e., NID equivalence at no cost to the impacted locals] would be sufficient) and other Comprehensive Objections. Since the disputed Rise Petition (at 58) claims the right to mine as it wishes anywhere in the "Vested Mine Property" (e.g., beneath objectors' homes and businesses) "without limitation or restriction," such Rise threats are alarming. However, they are also contradicted by Rise's 2023 10K, as shown in Exhibit 1, admitting various (but insufficient) legal "limitations" and "restrictions" for Rise's contemplated reopening conduct. Id. Consider, for example, how the incorrect, Rise-requested, overbroad, and ambiguous findings by the Board could be abused by Rise to the irreparable harm of such surface owners above and around the 2585-acre underground mine, as illustrated in this and other Comprehensive Objections.

In any event, the Rise Petition does not even attempt to prove that its alleged and disputed vested rights claims could have any legal effect at all on such objectors owning the surface above or around the 2585-acre IMM, at least if such objectors (as the Comprehensive

Objections have done) oppose Rise's disputed claims and the County's dispute process incorrectly limiting objectors' opportunity for effective objections (e.g., something more than 3 minutes of public comments and the opportunity to file objections before Rise adds more objectionable arguments and purported evidence at the Board hearing, as Rise has incorrectly done over objections at the two prior Planning Department hearings regarding the DEIR/EIR.) See, e.g., Objectors Petition For Pre-Trial Relief, Etc. The power of that analysis becomes clearer here when one focuses on the analysis below (and in Comprehensive Objections) that the overlying surface owners' groundwater and well water being depleted by Rise 24/7/365 belongs with priority to such objecting surface owners, not to the County or Rise. Stated another way, because such overlying and impacted surface owners and underground miners have competing and incompatible rights and interests in this situation, this must be a multi-party dispute like most water rights disputes, as illustrated below in many controlling water rights court decisions.

Objectors suggest that the County study the water rights dispute issues addressed below that, if necessary, may be part of the court dispute process to follow, because no objector will be willing to sacrifice his or her priority, owned water, for Rise's profit gambles. However, such water rights briefings are not comprehensive on that complex subject. Each major water right (including groundwater and well water disputes) involves many premature complexities until more things are clarified. However, none of those water disputes involve any deference to Rise's disputed vested rights (or even what permits Rise may seek when its vested rights claims are rejected). If the County were (incorrectly) to grant the disputed Rise Petition, that still would leave thousands of surface owners above and around the 2585-acre underground mine in water rights disputes with Rise's dewatering threats to our groundwater and existing and future well water. (If anyone doubts that, see the Comprehensive Objections, disputing on constitutional, legal, and property rights' grounds Rise's EIR/DEIR insistence on taking the top 10% of surface owner well water before even attempting to mitigate those harms in Rise's disputed and deficient EIR/DEIR proposal. (That Rise plan is illusory, in any event, because, as Rise's 2023 10K and other SEC filings admit, Rise lacks the financial resources to perform even its proposed deficient mitigations, much less what the law would actually require. See, e.g., *Gray v. Madera County, Exhibit 1, and Id.*

II. The Overlying And Impacted Surface Owners Above And Around the 2585-Acre Underground IMM Have Unique Rights Against the Underground Miner That Rise Continues To Ignore In Each Comprehensive Objection, Such As For Subjacent And Lateral Support To Prevent Subsidence (Which Includes Depletion of Supporting Groundwater).

A. Rise Has Threatened Surface Owners' Rights And Interests Above And Around The 2585-Acre Underground IMM With Various Harms Or Risks By Vaguely Claiming the Right To Ignore (i.e., Violate) Such Surface Owners' Rights And Interests.

The disputed Rise Petition (at 58) asserts that its meritless claims for vested rights empower Rise to mine as it wishes "without limitation or restriction." Objectors have disputed that claim in our Evidence Objections Part 1 and Part 2. We have also objected in the Objectors'

Petition For Pre-Trial Relief, Etc. to the lack of clarity by Rise about what laws, rights, boundaries, conditions, limitations, and restrictions, if any, Rise would respect since it has admitted in its recent SEC 2023 10K (e.g., see Exhibit 2 at #II.B.25) and elsewhere that many laws still apply to its mining. Id. However, Rise nevertheless vaguely asserted in that 2023 10K (Id.) some unprecedented, disputed, and unspecified right somehow to cause government and courts to force objecting surface owners to allow Rise to use their surface property to support such disputed "Vested Mine Property" mining. See Exhibit 2 (especially #II.B.25) and the authorities cited in this objection (and the other objections referenced herein). Rise has no such right or powers, whether on account of disputed vested rights or otherwise. However, to the contrary, everything Rise seeks to do that could impact such surface owners must be limited and defeated by such surface owners' competing constitutional, legal, and property rights. See *Keystone, Varjabedian,* and other authorities cited in this and such other objections.

Our Evidence Objections Part 1 and Evidence Objections Part 2 insist on due process and other rights for more clarity from Rise about the nature and extent of such disputed claims. "Objectors Petition For Pre-Trial Relief, Etc." was, among other things, an attempt to compel more clarity from Rise not only to frame the disputed issues so that they can be resolved efficiently against Rise's disputed claims but also so objectors know what evidence to advance in such disputes once the legal issues are properly framed. For example, because Rise radically changed its legal theories in the 9/1/2023 Rise Petition seeking vested rights, objectors intend to confront Rise at any court trial (the County process makes that impossible now) with a mass of self-defeating Rise admissions that contradict and conflict with the Rise Petition (whatever Rise is finally compelled to disclose it means). See, e.g., Evidence Objections Parts 1 and 2. It is indisputable (assuming Rise is required to return to "reality" from its "alternative reality" that no local objector can understand or accept) that the disputed Rise Petition cannot be reconciled with either Rise's admissions (i) in the 2023 10K or other SEC filings analyzed in Exhibit 2 (or in previous Comprehensive Objections), or (ii) with the EIR/DEIR admissions (often already revealed in objectors' EIR/DEIR objections or Objectors' Petition For Pre-Trial Relief, Etc. or Evidence Objections Part1 or Part 2), or (iii) even in the Rise Petition Exhibits themselves (Id.). Consequently, the Rise Petition is defeated by its such admissions by the law of evidence. E.g., Evidence Code #'s 623, 412, 413, 1220, 1230, 1235, and Id. Among other reasons why that reality is so obvious, is that neither Rise (before 9/1/2023) nor any of its predecessors ever tried before to set up vested rights claims. Therefore, in normal applications for governmental permits and approvals and other normal conduct, such miners made many admissions that are contrary to, or that conflict with, what Rise is now claiming in its meritless quest for vested rights.

B. Some Illustrations of Objecting to Surface Extra Constitutional, Legal, And Property Rights Consistently Ignored By Rise And Not Addressed By The Surface Mining Laws And Cases On Which Rise Exclusively Relies. See, e.g., *Keystone Bituminous Coal Assn v. DeBenedictis,* 480 U.S. 470 (!987) ("Keystone.")

Objecting such overlying and impacted owners' "surface" constitutional, legal, and other property rights are comprehensive for at least (generally) the first 200 feet down (more or less according to Rise's admissions in SEC filings and Rise Petition Exhibit deeds), plus

forever deeper as to anything not part of the deeded "mineral" mining rights. That means such overlying surface owners also own the groundwater and existing and future well water beneath them to any depth, as demonstrated by cases cited later in this objection regarding such objectors' water rights. However, we begin this objection by discussing some of the many other legal rights of such surface owners for defense against the underground mining risks and harms, such as to enforce the underground miner's duties of "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 (1987) ("*Keystone*.") That use of groundwater for support of the surface is essential, since dirt and rock are insufficient by themselves, as demonstrated by the massive and chronic subsidence problems suffered in the Central Valley and elsewhere where extensive well pumping of underground water for irrigation and other surface uses has caused considerable infrastructure harms as the surface "subsided." We later discuss below the requirements in the State Constitution Art. X section 2 (and related Water Code 100 and 100.5) mandating "reasonable" and "beneficial" uses of water (*which include surface support*) and avoidance of wasting or unreasonably diverting groundwater. What is important for the County to remember here is that just as the Supreme Court upheld the mandatory retention of coal underground to support the surface, courts will also uphold maintaining groundwater support, which favors objecting surface owners here, who are proven below to have priority in groundwater rights compared to any such underground miner. Also, at some point in the inevitable decline in our local groundwater supplies, there will be serious questions as to whether Rise's 24/7/365 dewatering for at least 80 years can be "reasonable," "beneficial," and not "wasteful" as Rise would be depleting our local supply and flushing it away down the Wolf Creek, especially because that groundwater is subject to priority ownership of the objecting overlying and impacted surface owners and may also be causing subsidence.

That leading *Keystone* 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). That law limited mining of coal to prevent such "subsidence" consistently ignored by the Rise Petition and the other Rise Reopening Claims (i.e., defined as consequences from the loss of surface lateral or subjacent support, including from depletion of groundwater or surface water). Since depletion of groundwater supporting the surface threatens subsidence like removal of minerals, this court decision applies for the legal principle that required underground support can be paramount over underground mining, as we shall demonstrate below. Thus, when contested by Rise such competing legal and property rights of objecting surface residents above and around the 2585-acre underground IMM may inspire locals to cause even more protective new laws. While Rise (or its successors) may attempt to challenge such new protections with its disputed vested rights claims, local owners will eventually find some combination of effective law reforms and clarifications that can achieve the lawful and proper policies that can protect our community from such mining risks and harms, just as the Supreme Court upheld in *Keystone.* Objectors begin with this Keystone lesson to remind the County that law reforms to protect the surface owners from underground mining risks and harms have a long and successful tradition that validates such self-defense efforts by objecting surface owners competing against underground miners.

That *Keystone* decision defined (at 474-475) such objectors' "subsidence" concerns that are 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 unexplored and unmined IMM underground parcels (what Evidence Objections Parts 1 and 2 call the "Never Mined Parcels"), plus the 72 miles of existing tunnels and mined areas (what such Id. objections called the "Flooded Mine" parcels) where the known gold supply may have been exhausted by the time the closed, dormant, and flooded IMM was abandoned by 1956. Consider this court summary, which is 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:]
>
> 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 defense 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." However, the court clarified that police power was broader than nuisances. (**At 488**,** emphasis added**)** See Vaquero Energy, Inc. v. County of Kern (2019), 42 Cal. App. 5th 312 (allowing surface owner protections from underground mining).

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's 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. Stated another way, again, this is not just a two-party administrative dispute between Rise and the County, but a multi-party dispute in which objecting surface owners personally and individually have competing Constitutional, legal, and property rights directly at issue that the County could not give away to Rise if it wished to do so (absent the County risking the consequences of inverse condemnation and other claims from surface owners applying cases like Varjabedian v. Madera (1977), 20 Cal.3d 285, allowing inverse condemnation, nuisance, 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 living at a safe distance away.)**

Note, unlike in that *Keystone* 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 filings before the new 2023 10K. See, e.g., Evidence Objections Parts 1 and 2, especially Exhibit A, for tracking the many Rise admissions in its SEC filings. 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 protect us residents and voters further 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 Evidence Objections Parts 1 and 2, Rise’s inconsistent EIR/DEIR data never lays any factual foundation for vested rights (often the opposite in advocating for a use permit.) Rise admits in the SEC 10Ks that “original mineral rights” were acquired “at various times” since 1851. However, the 2022 and earlier SEC 10Ks also described the Rise purchase of everything from the BET Group Estate (at pp.29 in the 2022 filing) 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 2022 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.** If the County wonders about objectors’ complaints in Comprehensive Objections about Rise’s “hide the ball” tactics, the County should compare the recent SEC “2023 10K” (addressed in Exhibit 2 hereto) to Rise’s prior 10K’s (addressed in Exhibit A to the Evidence Objections Parts 1 and 2.)

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 costs 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).

C. California Real Property Law Protects Overlying And Impacted Surface Owners From Underground Miners In Ways Never Addressed By Rise, Despite Comprehensive Objections Repeatedly Proving Such Rights, Not Just In Response To the Disputed Rise Petition, But Also In Oppositions To the Disputed EIR/DEIR And All The Related Rise Applications For Permits Or Approvals, Such As Described in Exhibit 1.

The core issues involved in the California rules for lateral or subjacent support and subsidence are best discussed in *Marin Municipal Water Dist. v Northwestern P.R. Co*. (1967), 253 Cal.App.2d. 83 **("Marin Muni Water"),** where the court confronted a situation where the railroad tunnel beneath the water district's pipes and surface collapsed and the land surface "**subsided."** The court determined several key issues, although there is more to be said that may apply later in these IMM dispute processes. That decision confirmed core objector rights and protections to include at least the following: (1) the common law of **"subjacent" support** obligations of the subsurface owner or user (e.g., miners like Rise) to the overlying or impacted surface owners (like objectors here) was not changed or affected when **Civil Code #832** was enacted to govern the separate issue of "**lateral support"** as between coterminous **surface** land owners [Id. at 92] (which statute still preserves certain lateral support rights for such impacted surface owners and does not adversely affect the rights of any surface owners to protect their various other rights, such as defending their groundwater and existing and future well water from underground miners); (2) the overlying or impacted surface owner has such common law rights to subjacent support against the underground owning actor, because the subsurface owes such surface property a legal duty of subjacent support, among others, under the facts and circumstances present in this IMM case but not at issue in that Marin Muni Water case; and (3) the legal, policy, and practical considerations that apply to "lateral support" between two adjacent **surface** owners are entirely different than those that apply to disputes between an overlying surface owner versus such a subsurface owner, such as a miner operating underground of impacted surface owners above or around the underground mine, as Rise proposes here. (After extensive analysis, that court concluded correctly (at 96): "No such reason dictated a relaxation of the obligation of subjacent support owed at common law by a subsurface **owner**. [**T]he need for protection** of the **surface,** in fact, **has increased** as the importance of such **subsurface activities as mining** … **has declined** in modern times.")

Consider the following features of such common law of "subjacent support" that were pronounced by *Marin Muni Water* that should not be overlooked by the County, even if they continue to be ignored or evaded by Rise:

> …Under all the authorities, also, **the common law obligation of subjacent support is "absolute."** (E.g., Rest. Torts…#820, subd. (1), com. b…) [at 90]
> ***
> …This rule [about lateral support] is consonant with the authorities' **invariable description of the right of subjacent support as a "natural" property right, which is unaffected with any element of foreseeability associated with liability for negligence**. [at 97, emphasis added]
> ***

> …[T]he common law right to support is not lost by the imposition of structures unless the downward pressure of their artificial weight contributes to the subsidence. (cites) California lateral support cases so hold. (cites) In this regard, the burden of showing that the structures' weight contributed to the subsidence rests upon the defendant [the underground owner]. [Id]

Another earlier description of the general rules of lateral and subjacent support in the mining context is ***Empire Star Mines Co. v. Butler*** (1944), 62 Cal.App.2d 466 ("***Empire Mines***"), where the plaintiff and defendant were both competing adjacent miners whose underground veins met, and the defendant's mining actions at that boundary caused harm to the plaintiff's mine by complex alleged "water trespasses." *Empire Mines* is distinguishable in many ways in its factual and legal context from our IMM dispute. For example, *Empire Mines* is the opposite of our potential IMM water disputes because, in *Empire Mines,* the higher underground mine was flooding the lower underground mine. In contrast, in this IMM dispute, overlying or impacted surface owners above and around the 2585-acre underground mine fear the depletion of their surface-owner-owned groundwater and existing and future well water by Rise's underground dewatering 24/7/365 for 80 years to flush it away down the Wolf Creek (purportedly after treatment in a new water treatment plant and system for which there are clearly no vested rights, as confirmed by *Hansen's* approval of its *Paramount Rock cite,* denying any vested rights for the addition of a rock crusher **"component"** to a parcel that never had one before.)

Nevertheless, even that old *Empire Mines* decision provides useful guidance for this dispute. For example, here, as in that *Empire Mines* case, where state law, not federal mining patent law, controlled, the court addressed those Grass Valley townsite boundary issues for what is a "parcel" as discussed in mining cases like *Hansen and Hardesty* for determining vested rights by applying (e.g., *Empire Mines* at 480-481) **the normal surface ownership boundaries where the plaintiff's predecessors acquired their mining rights from overlying surface owners in accordance with their surface boundaries, while the defendant did the same.** That resulted in the court stating (Id.): "The divided ownership is described in plaintiff's brief as a 'checkerboard,' which made economical mining operations impractical," thus inspiring a settlement by an agreement between those miners at issue in that case. Furthermore, (at 496-97, emphasis added) the ***Empire Mine*** **Court reaffirmed that overlying surface owner boundary rule for determining underground mine boundaries**:

> Plaintiff … makes a **prima facie case of ownership of subsurface minerals by showing that they lie within his surface boundaries projected into the earth.** The burden of going forward is then on the defendant, who must show that the mineral beneath plaintiff's land is part of a vein which apexes outside plaintiff's boundaries, and one line of authority holds that, in addition, defendant must show that the vein apexes within defendant's surface boundaries. (cites) By analogy plaintiff would apply a similar rule in this case. It claims that **it made a prima facie case by showing that it owned the mineral rights to lots 6 and 7… below a depth of 200 feet**

> **from the surface, under a grant from the surface owners….[W]e are also of the view that plaintiff has satisfactorily discharged that burden.**

Such rulings are relevant here because Rise's vested rights must be determined (as even *Hansen* holds) on a **parcel-by-parcel** basis for each **"use"** and **"component,"** with parcels defined (as asserted in objectors' objections) by **surface parcel boundaries "projected into the earth,"** which is not only legally correct, but also critical to resolving the disputes over groundwater and existing and future well water depletion by such Rise dewatering in the IMM (or disputed "Vested Mine Property".) See, e.g., *Keystone;* Evidence Objections Parts 1 and 2. While the facts and relationships are different in that case from this IMM dispute (i.e., two adjacent underground miners there versus the overlying surface owner versus the underground miner below here), the old *Empire Mines* court lays the foundation for many follow-up decisions recognizing how the law of "subjacent" and "lateral" support each prevents subsidence in cases like this [e.g., at 533-34, emphasis added]:

> …**Similarly, where one person owns the surface of land and another the subsurface or minerals therein, the owner of the surface is entitled to have it remain in its natural condition, without any subsidence by reason of the withdrawal of the land or minerals thereunder by the subjacent owners.** (cites) Violation of the rights of lateral and subjacent support gave rise to an action for damages which was ordinarily held not to accrue until a subsidence had not taken place, although occasionally a right to an injunction against further excavation was recognized after some damage had resulted. (cites)
>
> **The right to lateral and subjacent support is a right pertaining generally to land ownership. It does not depend on the facts of the particular case. Where such right exists, it is in the nature of an easement. It is not required that the servient owner [here Rise] be compensated in money for the inconvenience and restriction in use which the duty to maintain lateral and subjacent support entails.**

In this IMM dispute, none of the objecting surface owners (as far as objectors know) have transferred to Rise or its predecessors or released any of such (or other) surface owner's rights or interests (with the "surface" generally defined by the deed reservations to be 200 feet deep before any mineral rights exist--see Rise SEC filing admissions in Exhibit A to Evidence Objections Parts 1 and 2). Indeed, to the contrary, Rise SEC filings admit (at Id.) that Rise and its relevant predecessors have no right to enter or harm the surface owned by others above or around the 2585-acre underground IMM (or what Rise calls the disputed "Vested Mine Property"). However, that is the opposite of what the recent Rise "2023 10K" inconsistently claims, as rebutted in Exhibit A at #II.B.25, as what Rise incorrectly claims the general practice of miner's acquiring by deed or recorded waivers the right to cause subsidence or worse on the surface (which did not happen here). (This is not Kentucky or old-time West Virginia.)

However, even if some unknown (and unproven) surface owners had somehow lost or released their protections from underground miners like Rise, miners like Rise are still

vulnerable to legal and regulatory prohibitions, limitations, or restrictions contrary to the disputed Rise Petition's incorrect claim (at 58) that Rise can mine as it wishes "without limitation or restriction." A useful illustration of such a situation where a miner failed in its effort to claim the government caused a regulatory taking in violation of the Fifth Amendment by a regulator's order to protect the surface from subsidence better, regardless of the surface owner's predecessors having deeded away their protections from and claims for subsidence. See one such case, *M&J Coal Co. v. United States,* 30 Fed. Cl. 360 (1994) ("**M&J Coal")** (a predatory speculator bought mining rights from predecessor coal companies that had already exhausted all the coal that they could safely mine, **but the predator now used a more advanced [and dangerous] mining technique to remove even more coal from the existing safety shoring protecting against subsidence, assuming that such new miner had the right to "subside" the surface, resulting in a wide variety of surface harms not just as to people losing homes but also losing public infrastructure and creating dangerous public conditions, such as broken roads and gas lines, downed power lines, etc.**). The regulator's order increased the "draw angle" (from 15 degrees to 30, consequently reducing the coal that could be extracted to increase protection from subsidence) and increased the protected surface structures to include single-family dwellings). The *M&J Coal* court correctly rejected that miner's "taking" claim on summary judgment: first, because the miner did not hold a property right that is "compensable under the Fifth Amendment "AT THE TIME THE ***CLAIMANT [NOT ITS PREDECESSORS]*** TOOK TITLE TO THE PROPERTY;" (emphasis added at 367), explaining (Id. emphasis added): "For example, **a government action is not a taking, regardless of the extent of the deprivation, if it proscribes a use that previously was impermissible under the relevant property and nuisance principles."** Even if Rise had such surface rights (which it admitted it does not, and which Rise has not proven), **the legal issue here is *not* what could Rise's predecessor "get away with" on the surface in 1954, but, instead, what could Rise be allowed to do in 2017. Id.**

Even if Rise could somehow overcome that insurmountable proof obstacle, then Rise would still have to prove the existence of a compensable right because of taking that right. The predatory miner in *M&J Coal* claimed (at 367-369) that they could freely cause subsidence as they wished [sounding like Rise Petition insisting at 58 on operating "without limitation or restriction] because the surface owners' predecessors in M&J Coal had "sold away their rights to structural support through mineral severance deeds granted [to predecessors] between 1904 and 1920" and had released their subsidence claims. However, as **the M&J Coal court recognized: "A title to property does not include rights forbidden by law at the time title transfers" and "At the time plaintiffs purchased their rights to the Mondogah mine …[applicable law] forbade any coal operator from engaging in mining practices that endanger the public health and safety."** Id. (emphasis added) **While that regulatory action "may have had the incidental effect of benefitting surface owners," "the court is satisfied that OSM's [regulatory] actions were necessary to protect public health and safety," as was clear from a long list of miseries caused by those miners. Id. (**emphasis added)

Similar results also exist, even in historically aggressive underground mining states, as illustrated by *Schoene v. McElroy Coal Co.,* 2016 US Dist. Lexis 163185 at *2-4 (2016), aff'd 47 F.3d 1148 (Ct. App. Fed. Cir. 1995), stating:

> With respect to the claim for common law damages [for loss of subjacent support], **the defendant [miner] seeks to have this court enforce a waiver of subjacent support contained in a 1902 deed, even though the longwall method of mining was unknown in Marshall County at the time**. The distinction between longwall mining and conventional room and pillar mining is significant, **since with the pillar and post mining there is the possibility of some subsidence damages, while with longwall mining subsidence damage and loss of all groundwater is a virtual certainty. (**emphasis added)

Likewise, see *United States v. Stearns Coal & Lumber Co*, 816. F.2d 279 (6th Cir. 1987), where the court rejected the miner's claim that the reservation of mineral rights in a deed of surface land may engage in strip mining when the deed is silent on the subject, using many interpretation principles helpful here.

That issue flags another problem: the lack of clarity about what exactly Rise is threatening to do "without limitation or restriction" in harming the constitutional, legal, and property rights of surface owners above and around the 2585-acre underground Vested Mine Property. See, e.g., Objectors Petition For Pre-Trial Relief, Etc. demanding more clarity and urging the County not to approve the Rise Petition, not just because it is comprehensively wrong and harmful to our community, but also because no one can (safely) predict (besides assuming the worst-case conduct by and for Rise attempting to exploit its ambiguous overstatement) what that Rise Petition means at 58 and elsewhere when Rise claims to be entitled to mine as it wishes "without limitation or restriction." Consider this example from the coal cases, where the victims dispute the miners' attempts to shift from the old/traditional **"room and pillar"** underground mining technique to the newer and more devastating **"long wall"** mining method that is certain to cause subsidence but increases the amount of the minerals that can be recovered. [Before Rise can object that underground gold mining is different than underground coal mining, the point being illustrated here is to use that as an example of how some newer underground mining techniques, like long wall mining, are riskier about causing subsidence and other harms than the older methods that left more rock and minerals in the ground. (As those cases described, the long wall miner digs out the underground miner and moves on, allowing the mine to collapse behind the machine, assuring subsidence at the surface and harm to groundwater supplies.) As a result, those surface owners above and around the 2585-acre underground mine have a legal right to know what Rise is proposing to do, so objectors can focus their objections and hold Rise accountable when the "subsidence" occurs, a term which *Keystone* ruled includes depletion of groundwater and surface water from underground mining.]

III. The Objectors' Comprehensive Objections Use What *Keystone* Described As a "Full Bundle of Rights," Including Priority Water Rights, To Prevent Rise From Dewatering the 2585-Acre Underground IMM When And To The Extent Contrary To Those Rights of Objecting Overlying Or Impacted Surface Owners Above And Around that Underground IMM (or "Vested Mine Property") As to Our Groundwater (And Existing And Future Well Water) At Least Beneath That Surface Property.

A. Some Introductory Comments About Water Rights Disputes Created By Rise's Proposed Dewatering of the 2585-Acre Underground IMM (aka Rise's Disputed "Vested Mine Property").

The "Comprehensive Objections" defeat the disputed Rise Petition and Rise's other disputed "Rise Reopening Claims" and theories for reopening the IMM (or "Vested Mine Property" mine), among other ways, in whole by disputing the existence of all such vested rights and, in parts, by disputing the vested right applicable to any Rise "use," "component," or "parcel," and by demonstrating that any Rise vested rights cannot overcome the objectors' competing constitutional, legal, or property rights, as just illustrated above with respect to subjacent and lateral support and prevention of subsidence. This section of the objection proves how the 2585-acre underground mine's 24/7/365 dewatering for at least 80 years must ultimately (and perhaps at the start or soon after that in the next drought) be stopped or reduced by the competing and priority water rights of the overlying and impacted surface owners or by Rise's dewatering being found to be not a reasonable or beneficial use or diversion of such groundwater in violation of California Constitution Art. X, section 2 (supported by Water Code 100 and 100.5, among other laws). Of course, the dewatering may never be permitted to start for many other reasons advocated in the Comprehensive Objections, especially those disputing the EIR/DEIR, creating or exposing various other water-related obstacles for Rise, such as, for example, proving that the water treatment plant and related facilities and system "components" cannot have vested rights even under *Hansen* citing *Paramount Rock* in forbidding vested rights for adding a rock crusher to a parcel that never had one before.

Moreover, many environmental objections may also prevent the flushing away of our community groundwater down Wolf Creek, as Rise proposes. While many are legacy problems, some are Rise proposed, disputed creations, such as Rise using cement paste to create underground pillars from mine paste (a disputed new use with new components) that exposes groundwater to toxic hexavalent chromium in that cement, a chemical menace proven by that the Hinkley, CA, case study about that town's long polluted groundwater that still has not been capable of remediation during all these years of effort and settlement funding expenses after the notorious groundwater pollution by such hexavalent chromium inspired the movie, *Erin Brockovich*. See www.hinkleygroundwater.com. If Rise cannot treat and flush the dewatered groundwater away for any such reasons or various others, then there cannot be any dewatering. Without the dewatering, the IMM will stay flooded or again be flooded. This objection focuses on what happens if somehow Rise's scheme for dewatering the mine survives all the many such objections, which would then make this a water rights dispute between the overlying and impacted surface owners, who will own the groundwater being sucked into Rise's disputed dewatering system as the existing flood waters are removed. Future water rights disputes will

depend on many variables as to when they become ripe. Still, objectors expose the issues now because it seems inconceivable that Rise could dewater that IMM 24/7/365 for 80 years without violating the overlying surface owners' priority groundwater rights or such constitutional and statutory mandates against water waste or misuse. The reason for raising those issues now and here is to make certain both that Rise cannot claim any vested rights for any such dewatering (or any such components or uses on any parcels) and that Rise must finally address one of the most crucial issues Rise continues to ignore or evade: what happens when Rise is no longer able for any reason to continue its mining (assuming that somehow Rise was mistakenly permitted to begin its process), including because its dewatering plan is or becomes inoperable for any reason.

In that context, this objection focuses further on the competing water rights between objecting, overlying, or impacted surface owners above and around such a 2585-acre underground mine. As already shown above, such surface owners have paramount rights of subjacent and lateral support to prevent subsidence by maintaining sufficient groundwater to so support the surface. (e.g., *Keystone* and *Marin Muni Water*). This section addresses those surface owners' use on their surface of their owned groundwater (and existing and future well water) as part of such "overlying" water rights of surface owners' (e.g., *City of Barstow, Pasadena v. Alhambra,* and other authorities cited herein or therein or following them). Because any such water rights dispute is a zero-sum game, all the overlying and impacted owners would need to do ultimately to prevail would be to preserve their water rights priority against Rise's foreseeable counter maneuvers when applicable law stops the dewatering. There are many problems with how much objectors could suffer in the interim. If Rise were mistakenly allowed to start dewatering and other mining, we would all be worse off when Rise cannot continue for any of many possible reasons, especially if the County does not fully protect the community with a viable reclamation plan with ample financial assurances to cover all contingencies. (As a bankruptcy lawyer who once liquidated the nation's leading reclamation surety bond issuer, this objector can report that no reclamation funding was ever sufficient, which is why the EPA and CalEPA have so many thousands of abandoned mines rotting as environmental and other hazards. Please do not allow that to happen here.) That is why we ask the County to consider the future issues for our community discussed at the end of this objection.

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In any event, there is ample authority requiring the "reasonable" use and "conservation" of water only for "beneficial" uses, raising an issue of disputed fact on which Rise cannot have satisfied its burden of proof, because it has not offered sufficient competent evidence on its dewatering plans and has ignored all objectors' evidentiary rebuttals (e.g., objectors' Evidentiary Objections Parts 1 and 2) and other Comprehensive Objections (e.g., Cal. Const. Art. X #2 and Water Code #'s 100 and 100.5; *Rank v. Krug,* 142 F. Supp. 1, 111 (S.D. Cal. 1956). What is reasonable about Rise draining and flushing away down Wolf Creek our community's groundwater 24/7/365 for at least 80 years, especially when we increasingly need more precious water in the coming climate change times of increasing drought and dryness (that Rise incorrectly denies as too speculative)? See also objectors' EIR/DEIR objections to all that groundwater being flushed away down the Wolf Creek (e.g., DEIR objection assigned # Ind. 254 by the EIR, which EIR "Responses" and "Master Responses" and other EIR claims were in turn

rebutted by that objectors' EIR objection dated April 25, 2023) and other Comprehensive Objections. Rise may continue to argue (incorrectly) that such unreasonably diverted, dewatered water benefits someone else way downstream, but the focus on local impacts rebuts that. Taking away locally owned groundwater needed by its overlying and impacted surface owners and their community and giving it away to new recipients in other communities downstream has never been approved as a beneficial or reasonable use or diversion permitted by applicable law. Indeed, while Rise makes that argument, as usual, it does not prove either how much suffering our community can endure or whether the gifted community even needs that additional water.

Moreover, any benefit for those imagined users down Wolf Creek can be disputed on the demerits of diverted water, such as over the purported water treatment in the imagined Rise, an unprecedented water treatment plant for which there can be no vested rights and which has not proven it can clean the water sufficiently that anyone downstream would dare use it "beneficially." For example, those EIR/DEIR objections and other Comprehensive Objections expose the threats of Rise adding cement paste with toxic hexavalent chromium to the underground mine to cement mine waste into support pillars, which objectors complained about Rise "hiding the ball" by not including discussion of the issue Hazards And Hazardous Materials section of the DEIR and then when Rise complicated that hide the ball tactic in the EIR (e.g., EIR Response 1 to Ind. 254), objectors rebutted that Response and other EIR obscured Appendices Q, R, and S at the end of the EIR (e.g., the April 25, 2023 objection). See Id. and www.hinkleygroundwater.com, discussing the "*Erin Brockovich"* movie reminder of how such hexavalent chromium killed the town of Hinkley, CA. And, after all these years of trying, the survivors still haven't been able to remediate that toxic groundwater pollution, despite huge settlement funding.

B. Illustrative Applications To These IMM Disputes of The City Of Barstow And Other Key Water Rights Authorities, Proving That Neither Rise Nor The County Can Ignore The Overlying Or Impacted Surface Owners' Constitutional, Legal, And Property Rights To Save Our Own Groundwater And Existing And Future Well Water From Rise's 24/7/365 Dewatering When the Circumstances Require Such Protections.

1. *City of Barstow v. Mojave Water Agency* (2000), 23 Cal.4th 1224 ("City of Barstow") Is One of the Controlling Water Rights Cases That Confirms The Priority Rights of Objecting, Overlying Surface Owners And the Standards To Be Applied In Any Dispute With the Underground Miner.

This *City of Barstow* case confronted a problem that our community will confront too soon from climate change drought and dryness, conditions that Rise and its disputed EIR/DEIR denied as "too speculative" to require a response to the many meritorious objections of the impacted owners of the surface above and around the 2585-acre underground IMM (or Rise's so-called "Vested Mine Property"). The Board could reject the Rise Petition and EIR/DEIR and related permits for that hole in Rise's burden of proof alone, at least at the level of detail required for proving vested rights, i.e., parcel-by-parcel, use-by-use, and component-by-component. (Stated another way, Rise Reopening Claims incorrectly assert an unproven vested

right to a "forest" when the disputed issues must be focused "tree-by-tree.) That is especially true considering the local impact problems to which Rise would massively contribute by 24/7/365 dewatering for 80 years and flushing away our groundwater (and existing and future well water) down Wolf Creek after purported treatment by an imagined, new, and unprecedented Rise water treatment plant "component" and system "use" for which no vested rights are possible. See Comprehensive Objections, especially those addressed or incorporated in the well and groundwater objections in DEIR Ind. 254 and April 25, 2023, objections to the EIR response to those DEIR objections.

In the *City of Barstow* case, a downstream plaintiff city and water company sued others like them upstream, claiming those upstream groundwater uses harmed plaintiffs' water supplies and increased the whole Mojave River Basin groundwater overdraft. The trial court ordered a physical solution (not following the "preexisting legal water rights") for "equitable apportionment" allocations to 200 parties stipulated to that order. Still, some overlying surface owners opted out, insisting on their legal water rights priorities. The California Supreme Court clarified and protected overlying surface owners' groundwater rights as discussed. That court's ruling (and others that follow it or are cited therein) preserves the groundwater rights of objecting overlying or impacted surface owners in this case, without regard to any Rise-type vested rights (or even any permits, assuming the County declines to waste taxpayer funds to attempt to "take" water rights away from local surface owners by allowing Rise to so dewater and flush away such surface owner objectors' groundwater for the benefit of such Rise investor-speculators' imagined profits. As that court defined the issue (at 1233, emphasis added):

> We granted review to determine whether a trial court may definitively resolve water rights priorities in an overdrafted basin with a "physical solution that relies on the equitable apportionment doctrine but does not consider the affected owners' legal water rights in the basin. **We conclude it may not, and affirm the Court of Appeal judgment in that respect**. [In footnote 3 the court defined a "basin" as "[t]ract of country drained by a river and its tributaries." In this case the 3600 square mile area is interconnected and "the groundwater and surface water within the entire basin constitute a single interrelated source."]

As objectors fear it may happen here, although for different reasons, including such 24/7/365 Rise dewatering, the court found (at 1234, emphasis added) that: "Groundwater extractions in the Alto Basin have lowered the water table, increasing the Alto Basin's storm flow absorption. As more water is absorbed in the Alto Basin, less water reaches the downstream area. … **[W]ell levels and water quality experienced a steady and significant decline."**

The trial court held a trial for the "non-stipulating" water users in the basin, like overlying surface users pumping their own groundwater from wells on their own land (on what the Supreme Court found to be an incorrectly limited basis, as shown below). However, the trial court incorrectly ruled that it was not necessary "to adjudicate individual legal water rights when a river basin is in overdraft," instead the trial court just incorrectly applied the

"constitutional mandate of reasonable and beneficial use" [i.e., Article X, #2 of the California Constitution, quoted by the *City of Barstow* Supreme Court in FN 6] to achieve what the trial court incorrectly called "equitable apportionment of water rights," by disregarding overlying surface owners' legal water rights that the trial court considered would have been "extremely difficult, if not impossible to" adjudicate. Consistent with common usage, the *City of Barstow* Supreme Court (at FN 7) referred to the prevailing surface owners as having **"overlying rights"** to groundwater under their surface-owned property, citing *California Water Service Co. v. Edward Sidebotham & Son* (1964), 224 Ca. App. 2d 715. **[Thus, those ultimately prevailing surface owners were in the same position as us, overlying and impacted surface objectors above and around the 2585-acre underground IMM.**

While Rise may incorrectly try to distinguish those overlying surface owners in that overdraft basin from our Nevada County situation, that must fail for many reasons, such as, for example, because: (i) the water law pronounced and confirmed by the California Supreme Court (and accepted by the 9th Circuit and US Supreme Court) still defeats Rise in any basin or sub-basin, as discussed below; (ii) the increasing applicable climate changes now obvious, two decades later, make drought and dryness impacts inevitable (not "too speculative" for consideration as the pro-Rise EIR/DEIR claims, ignoring the fact that Rise demands dewatering 24/7/365 for at least 80 years, thus requiring that everyone look forward for planning and water rights defenses, rather than, as Rise has attempted to do as in the disputed EIR/DEIR, insisting on the application of pre-climate change historical rainfall averages from prior decades before such climate changing impacts, as proven in objectors' EIR/DEIR objections (see Exhibit 1), and (iii) all the locals here will do as others have long done in sooner drying areas and basins in the Central Valley and elsewhere: drill more wells to pump their groundwater or, if stopped by government, to make those *Varjabedian* and other inverse condemnation and other claims to assure Constitutional compliance and fairness. That means, for example, that there must be equality of equitable treatment for those with priority entitlements, which puts residential customers first, then useful farmers and non-mining businesses, and, dead last, water wasting, dewatering, mining speculators, see, e.g., the Court's discussion here of such policy priorities in Water Code #106 and objectors' disputes below of any claim by Rise that its dewatering and diversion down the Wolf Creek is a "reasonable and beneficial use" under Article X, section 2 of the California Constitution or could be otherwise entitled to any greater or equal priority compared to objecting overlying surface owners, who have priority because they own the groundwater for their existing and future wells.]

The *City of Barstow* case also begins early in its analysis in that FN 7 by limiting the competing State (and, therefore, County) interest in such overlying and impacted surface owner groundwater as **"usufructuary only" and not "an ownership interest, but rather a nonproprietary, regulatory one"** citing *State of California v. Superior Court* (2000), 78 Cal. App. 4th 1019. As the Court translated that ruling: "The state does not have the right to possess and use the water to the exclusion of others and has only such riparian, overlying, or appropriative rights as it may obtain by law; its interest is therefore not an ownership interest …" Thus, if the County were to allow (or, even worse, accommodate or assist) Rise in its disputed dewatering of surface owner owned groundwater in the guise of disputed vested rights, that would be incorrect. That error in favor of Rise would also have at least the consequences imposed by *Varjabedian and similar cases.* Thus, the surface owners in *City of Barstow* (called the "Cardozo"

appellants) correctly and successfully argued on appeal to the contrary. Such trial court's imposed "physical solution" was **"invalid because it failed to recognize their preexisting and paramount legal water rights under California law and therefore amounted to a taking without due process."** (emphasis added) Stated another way, for our purposes in this IMM dispute, **the groundwater/well water dispute for the immediate purposes is not (as long as the County does not side with Rise) between the County and its local objecting residents, since the County must protect its local surface owners from dewatering (which could become water trespasses, etc.), but primarily a dispute between local overlying and impacted surface owners versus Rise as the underground miner "appropriator" depleting their water.**

As proven in the objectors' Comprehensive Objections (Exhibit 1), objecting surface owners have disputed Rise's proposal (see the disputed EIR/DEIR) to MITIGATE ONLY SOME OF EVEN THE MANY MORE EXISTING WELLS THAT RISE'S DEWATERING MAY DEPLETE (after Rise taking the top 10% of such well water as claimed in the disputed EIR/DEIR with no legal right or excuse before the EIR/DEIR illusory mitigation proposals apply) and to mitigate NONE OF THE MANY *FUTURE* WELLS OF SURFACE OWNERS TRYING TO SAVE THEIR SURFACE PROPERTY (DEFINED TO INCLUDE THE FIRST 200 FEET DOWN) FROM THE IMPACTS OF CLIMATE CHANGE DOUGHT AND DRYNESS EVEN WITHOUT REGARD TO DEPLETION OF THE SURFACE OWNERS' GROUNDWATER BY THE THREATENED DEWATERING. MOREOVER, AS SUCH OBJECTORS HAVE ALSO PROVEN IN SUCH COMPREHENSIVE OBJECTIONS, RISE'S PROPOSED MITIGATION IS BOTH INTOLERABLY DEFICIENT (AS *GRAY V. MADERA COUNTY* HELD IN REJECTING A SIMILAR BUT LESS WRONGFUL MINING MITIGATION PROPOSAL THE LOCAL WELL OWNERS DEFEATED) AND ILLUSORY BECAUSE RISE HAS NOT AND CANNOT SATISFIED ITS BURDEN OF PROOF THAT IT COULD EVEN AFFORD THE IMPROPERLY DEFICIENT AND LIMITED MITIGATION IT HAS PROPOSED, MUCH LESS WHAT WOULD BE REQUIRED TO ACTUALLY PROTECT THE THOUSANDS OF IMPACTED SURFACE OWNERS ABOVE AND AROUND THE IMM (OR "VESTED MINE PROPERTY.") BUT MORE IMPORTANTLY, BEFORE RISE CAN DEBATE MITIGATION, RISE MUST FIRST ESTABLISH (AND CANNOT EVER DO SO) A RIGHT TO DEPLETE SUCH SURFACE OWNER GROUNDWATER IN THE FIRST PLACE. SEE COMPREHENSIVE OBJECTIONS ON SUCH DISPUTES, THAT (AS FURTHER CLARIFIED HEREIN) DEMONSTRATE THAT THE RISE PETITION CANNOT CREATE VESTED RIGHTS TO DEPLETE SURFACE OWNERS' GROUNDWATER, BECAUSE THAT IS NOT WITHIN THE COUNTY'S CONTROL (ABSENT A "TAKING"). THE ONLY WAY THAT RISE COULD EVER CREATE ANY PRIORITY WATER RIGHTS WOULD BE BY "ADVERSE POSSESSION," WHICH CANNOT BE CLAIMED BY RISE FROM AN UNDERGROUND MINE THAT HAS BEEN DORMANT, CLOSED, FLOODED, DISCONTINUED, AND ABANDONED SINCE AT LEAST 1956 THROUGH MANY PREDECESSOR OWNERS NONE OF WHOM HAVE BEGUN ANY DEWATERING OR ACHIEVED ANY PRESCRIPTIVE RIGHTS.

Consider in that regard what the court stated (at 1240-41, emphasis added) in *City of Barstow* (both here and further below):

> Courts typically classify water rights in an underground basin as **overlying**, **appropriative, or prescriptive.** (cites) An **overlying right,** "analogous to that of the riparian owner in a surface stream, **is the owner's right to take water from the ground underneath for use on his land** within the basin or watershed; **it is based on the ownership of the**

> **land and is appurtenant thereto.** (cite) **One with overlying rights has rights superior to that of other persons who lack legal priority**, but is nonetheless restricted to a reasonable beneficial use. Thus, after first considering this priority, courts may limit it to present and prospective reasonable beneficial uses, consonant with Article X, section 2 of the California Constitution. (cite)
>
> In contrast to owners' legal priorities, we observe that "the right of an appropriator … **depends upon the actual taking of water.** Where the taking is wrongful, it may ripen into a prescriptive right. Any person having a legal right to surface or ground water may take only such amount as he reasonably needs for beneficial purposes. … [discussion of "surplus water"].
>
> "Prescriptive rights are not acquired by the taking of surplus or excess water. [But] [a]n appropriative taking of water which is not surplus is wrongful and may ripen into a prescriptive right where the use is actual, open, and notorious hostile and adverse to the original owner, continuous and uninterrupted for the statutory period of five years, and under a claim of right." (cite)
>
> "Even these acquired [prescriptive] rights, however, may be interrupted without resort to legal process if the [here surface] owners engage in self-help and retain their rights by continuing to pump nonsurplus waters. (cite) [The court notes that prescriptive rights were not an issue in that *City of Barstow* case, and Rise does not allege and could not have any in this IMM dispute.]

While Rise may perceive its disputed vested rights legal strategy to include future attempts at obtaining prescriptive rights, nothing in the applicable water law empowers any vested rights to create any prescriptive or other rights against such competing locals with such overlying water rights. Objectors assume that if Rise were somehow able to reopen the IMM and begin depleting surface owner wells, dewatering would be appropriately resisted and defeated in due course by overlying or impacted surface owners either defending their priority legal water rights or (as to those surface owners without operating wells now) by spending their defense funds on drilling and operating competing wells to defeat in advance any such adverse possession claims by Rise.) In any event, that is a future issue that has yet to be ripe. Objectors' concern at present is to make sure that the County appreciates what is at risk, not just at law, and not just as discussed over political and law reform counters to any mine reopening, but also as to the water policy consequences of the mine reopening. If the choice is either spending money on litigation to defend surface owner groundwater and wells or to drill competing new wells that everyone will soon need to do anyway because of increasing climate change dryness and drought (and even much sooner if Rise were allowed to dewater the IMM), the County will have to address as policy what to do with many homeowners and non-mining businesses trying to save their property and way of life by so accessing their groundwater. That raises complex issues in the final section of this objection, sometimes addressed already in the Comprehensive Objections to the disputed EIR/DEIR. However, all one has to do to predict the future is to

consider what is happening already in the Central Valley and elsewhere, where wells are becoming essential to the preservation not just of property values, but also the environment (and, here in fire country, avoiding or delaying the lowering of the water table and lack of groundwater killing our forests and other vegetation. See many Comprehensive Objections to the disputed EIR/DEIR.) Whatever else happens, since subsidence and other consequences of reduced groundwater will be a common problem, no one should perceive draining our groundwater by Vested Mine Property dewatering by Rise mining as a "reasonable or beneficial use or diversion," much less such waste being entitled to any priority or tolerance. See *City of Barstow* discussion of the Constitutional Article X, #2 issues (e.g., at 1242) as well as the equitable apportionment discussion (e.g., at 1242-51)

2. The City of Barstow And Other Authorities Reconfirm the Priority of Overlying Surface Owners Groundwater Rights And Other Bases For Defeating Rise Vested Rights Claims.

The key principle for beginning the *City of Barstow* water rights priority analysis of importance for this IMM dispute is as follows (at 1243-44, emphasis added):

> Thus, **water priority has long been the central principle in California water law. The corollary of this rule is that an equitable physical solution must preserve water right priorities to the extent those priorities do not lead to unreasonable use. In the case of an overdraft, riparian and overlying use is paramount, and the rights of the appropriator must yield to the rights of the riparian or overlying owner.** (cites)

That court further stated (at 1248, emphasis added):

> … In 1975 in its most comprehensive statement of water law, our Supreme Court in [City of San Fernando, supra, 14 Cal.3d 199] finally clarified the proposition that overlying **owners "retain their rights [to nonsurplus water without judicial assistance] by using them." [**citations] **As against potential appropriators the court noted that the five-year period for establishing prescriptive rights to nonsurplus water may be interrupted by the overlying owners' pumping of their nonsurplus water.**

As discussed in the Comprehensive Objections, there are many objections to the Rise contemplated dewatering. Whenever, for any reason, including Rise dewatering 24/7/365 for at least 80 years, there is a water supply shortage (i.e., overdraft condition), Rise must lose not just under existing legal priorities, but also under those to come by law reforms. It is inconceivable that voters would ever sacrifice our local community's needs for sufficient water to the claimed needs of Rise to dewater and flush our precious water away down Wolf Creek. Stated another way, by insisting on perpetual vested rights to dewater 24/7/365 for at least 80 years, Rise

provokes objecting overlying and impacted surface owners and the County to consider not just the current facts and circumstances (which Rise also has wrong), but also what can be reasonable at risk in that dangerous future discussed further at the conclusion of this objection, so that our community is protected both now and in that long future.

One application of that concern is: What happens to our local environment when the Vested Mine Property underground mine can no longer dewater and the mine floods again? That critical issue has been entirely evaded and ignored by Rise. However, the answers to that question are essential to any rational decisions about the mine, especially since, as Comprehensive Objections demonstrate, everyone will be worse off, if the dewatering or mining starts, whenever it stops, even if Rise could afford even its deficient and disputed "reclamation plan" and "financial assurances," which Rise 2023 10K (Exhibit 2) and other Rise SEC filings prove Rise lacks the financial resources to make credible (and even more illusory, if any legally compliant reclamation plan and financial assurances were required as they should be.)

Indeed, **the *City of Barstow* Court also addressed the right of overlying surface owners not only to have priority as to current uses, but also as to new, future uses,** explaining (at 1246-49, emphasis added):

> This Court reiterated: **"Overlying rights take priority over appropriative rights in that if the amounts of water devoted to the overlying uses were to consume all the basin's native supply, the overlying rights would supersede any appropriative claims by any party to the basin's native ground water [citation] except insofar as the appropriative claimed ripened into prescriptive rights [citation]**. Such prescriptive right would not necessarily impair the private defendants' rights to ground water for ***new*** overlying uses for which the land had not yet come into existence during the prescriptive period. [citation"… *** Accordingly, overlying defendants "should be awarded the full amount of their overlying rights, less any amounts of such rights lost by prescription, from the part of the supply shown to constitute native ground water."
> **… Case law simply does not support applying an equitable apportionment to water use claims unless all claimants have correlative rights; for example, when parties establish mutual prescription. Otherwise, cases like *City of San Francisco* require that courts making water allocations adequately consider and reflect the priority of water rights in the basin.** (cite) The Court of Appeal's reasoning is consistent with this principle. …[W]e never endorsed a pure equitable apportionment that completely disregards overlying owners' existing legal rights….
>
> **In Wright, overlying owners in a groundwater basin sued to determine relative water rights in that basin.** The Court of Appeal found that the **trial court erred in holding** that a water district's appropriative rights had a higher priority than the overlying owner' unexercised rights. *(Wright*, supra, 174 Cal.App. 3d at pp. 78, 82.) **The court also held that the trial court could not define or otherwise limit an overlying owner's**

future unexercised groundwater rights, in contrast to this court's limitation of unexercised riparian rights.

As to the future, however, as discussed at the end of this objection, the legal water right is distinct from what can be presently adjudicated. Specifically, **water rights adjudications apply only to existing rights, and there can be no declaration as to future rights in water to which a party has no present right.** E.g., *City of Pasadena v. City of Alhambra* (1949), 33 Cal.2d 908 at 935 and 937. At present, the only possible water rights possessed by Rise are beneath its small fee property as an overlying owner there. Because the long abandoned, discontinued, and closed 2585-acre underground IMM has been dormant and flooded to capacity since at least 1956, there is no water right that Rise can claim there or from there (where Rise is not the overlying surface owner.) Therefore, whatever groundwater is dewatered from that mine will be by Rise as a disputed appropriator with no right to do so, at least once the current water contents are disbursed.

3. Consider Also These Further Rulings Favoring the Overlying Or Impacted Surface Owners, Such As To The Inherent Nature of Such Water Rights.

Moreover, the Court emphasized the **need not to burden the overlying owners with too much expense in these water disputes,** citing itself in ***Rancho Santa Margarita v. Vail*** (1938), 11 Cal.2d 501 and citing with approval: "See *Allen v. California Water & Tel. Co.* (1946), 29 Cal.2d 466, 483-484…(rejecting proposed physical solution and **finding overlying owners entitled to make reasonable use of water without incurring substantial costs**.)" (emphasis added)
That brings us to the part of the *City of Barstow* where the Court upholds the Court of Appeals in rejecting the trial court's decision requiring more proof from the surface owner, stating (at 1251-1255, emphasis added):

> …Here, the Court of Appeal reasoned, **"overlying rights are a property right appurtenant to the land, and are based on ownership.** [citation] Although limited to the amount needed for beneficial use, irrigation for agriculture is clearly such a use…
>
> After pointing out that overlying rights are dependent on land ownership over groundwater, and are exercised by extracting and using that water, the Court of Appeal concluded: "**Having shown ownership, extraction, and beneficial use of the underground water here, the Cadoso Appellants established overlying rights, and the contrary finding of the trial court is without evidentiary or legal support." …"proper overlying use … is paramount and the right of the appropriator, being limited to the amount of the surplus, must yield to that of the overlying owner in the event of a shortage unless the appropriator has gained prescriptive rights through the taking of nonsurplus waters." (Citiation) … [O]verlying rights are superior to appropriative rights."**
> ***

> **… [O]verlying pumpers are not under an affirmative duty to adjudicate their groundwater rights, because they retain them by pumping**. (citation)
>
> As overlying owners, the Cardozo appellants have the right to pump water from the ground underneath their respective lands for use on their lands. The overlying right is correlative and is therefore defined in relation to other overlying water rights in the basin**. In the event of water supply shortage, overlying users have priority over appropriative users.** (City of Pasadena, supra, 33 Cal.2d at p.962)

However, nothing in the water rights discussions or disputes adversely affects the separate property rights of overlying or impacted surface owners to the use of groundwater to support the surface and its vegetation, because that shifts the discussion from groundwater rights of overlying surface owners to a different, additional part of the bundle of property rights for lateral and adjacent support to prevent "subsidence" discussed herein and in other objections, such as discussing *Keystone* and *Marin Muni Water. No cited case allows any water use that violates those separate surface owners' such property rights for lateral and adjacent support, including by groundwater. Id.* ***In many ways, the surface is supported by groundwater as much as it is by dirt and rock. If any underground miner causes subsidence from dewatering depletion of the groundwater, they must confront Keystone and many other authorities. To reconcile these different property rights, it may help to focus on this simple reality: overlying surface owner water rights are focused on how that water gets used on the surface, while surface owner rights to lateral and subjacent support are about how the groundwater must remain as groundwater to support the surface to avoid subsidence****. In this IMM case, the overlying and impacted surface owners above and around the 2585-acre underground IMM have all of those rights at risk from Rise's threatened dewatering 24/7/365 for at least 80 years during massive climate change, drought, and other risks to the sufficiency of our local groundwater that everyone (except Rise and its supporters living in an "alternate reality") recognize to be continuing and increasing threats to objecting surface owners' whole bundle of property rights, which, in turn, are supported by surface owners constitutional and legal rights, all of which should prevail over any disputed Rise Petition and other Rise claims.*

As to when the surface owners can or must act to defend their such rights from Rise, much can be said, but that timing issue does not have to be resolved today, since Rise has not yet done anything besides occasional exploration. What is interesting and helpful now is that court comments on timing illustrate how quickly the California Supreme Court allows overlying surface owners to defend their rights. As the Court stated in *Pasadena v. Alhambra* (1949), 33 Cal.2d 908, 928-29 (emphasis added), on which *City of Barstow* and other decisions have relied:

> **The proper time to act in preserving the supply is when the overdraft commences, and the aid of the courts would come too late and be entirely inadequate if as appellant seems to suggest, those who possess water rights could not commence legal proceedings until the supply was so greatly depleted that it actually became impossible to obtain water. Where the quantity withdrawn exceeds the average**

> **annual amount contributed by rainfall, it is manifest that the underground store will be gradually depleted and eventually exhausted, and, accordingly, in order to prevent such a catastrophe, it has been held proper to limit the total use by all consumers to an amount equal, as near as may be, to the average supply and to enjoin takings in such quantities or in such a manner as would destroy or endanger the underground source of water.** (citations) …
>
> **The lowering of the water table resulting from the overdraft was plainly observable to the wells of the parties** … [reciting data]
>
> **THIS EVIDENCE IS CLEARLY SUFFICIENT TO JUSTIFY CHARGING THE APPELLANT WITH NOTICE THAT THERE WAS A DEFICIENCY RATHER THAN A SURPLUS AND THAT THE APPROPRIATIONS CAUSING THE OVERDRAFT WERE INVASIONS OF THE RIGHTS OF OVERLYING OWNERS…**

If the Rise reopening were mistakenly allowed, the 24/7/365 dewatering (at least in our local community, especially the thousands of us living on the surface above and around the IMM) eventually would recreate the overdraft-like situation that was described in the *Pasadena* case and others that followed that precedent in similar circumstances, such as *Hi-Desert County Water Dist. v. Blue Skies Country Club, Inc.*, 23 Cal.App.4th 1723 ("***Hi-Desert***"), explaining (at 1730-1732, emphasis added):

> In *Pasadena,* extractors had been adversely taking nonsurplus groundwater for more than 20 years, thereby creating a condition of overdraft. The court illustrated the nature of the prescriptive rights in groundwater in which adverse users do not completely oust owners of their rights. Both parties continue to pump, creating an overdraft and interfering with everyone's ability to pump in the future. [citing *Pasadena* at "33 Cal.2d at pp. 931-932."]
>
> …[in rebutting the incorrect idea that the "wrongful appropriators" could acquire prescriptive rights to the full amount so taken," the court ruled instead that] **"[t]he running of the statute … can effectively be interrupted by self help on the part of the lawful owner of the property right involved…**
>
> **Hence, an overlying user may maintain rights to water by continuing to extract it in the face of adverse appropriative use. Such is the doctrine of "self help."**

What that means here is that overlying surface owners have a choice that the County (and NID) must understand, because how they stop any future Rise attempt to gain prescriptive rights affects many future planning decisions by everyone else. The future political and legal defenses expected from the locals impacted by any mistakenly permitted mining can be expected to consider: pending the end of the mining threats by other causes (including Rise exhausting its

funding and appetite, as was the case of its Emgold predecessor), either (i) the overlying surface owners must either drill competing wells to use and/or register for Water Code protection from the miner as explained herein, or (ii) the courts must be persuaded to enjoin the wrongful extraction or otherwise deny the miner any prescriptive rights.

As that *Hi-Desert* decision added (at Id., emphasis added):

> The point was driven home when the Supreme Court applied the preceding principles for establishing the rights of the parties to the water, declaring: "**Private defendants [surface owners] should be awarded the full amount of their overlying rights, less any amounts of such rights lost by prescription, from the …native groundwater." (Id. at p. 294) That is, overlying users retain priority but lose amounts not pumped.**

To reinforce that *Hi-Desert* conclusion, the court also explained (at Id., emphasis added):

> In 1975, in its most comprehensive statement of water law, our Supreme Court in *City of Los Angeles v. City of San Fernando* (1975), 14 Cal.3d 199…finally clarified the proposition that **overlying owners "retain their rights by using them."**

As that *Pasadena* court said (at 926, emphasis added) to bring this discussion to an end for now:

> **It follows from the foregoing that, if no prescriptive rights had been acquired, the rights of the overlying owners would be paramount.**

Of course, there are many additional lawful options for objecting overlying or impacted surface owners to protect their priority rights in groundwater and future and existing wells, but there is no need to discuss any such strategies yet because objectors expect the County to do the right things and save our community from the many conflicts and problems that would arise by tolerating the disputed Rise Petition or any other Rise Reopening Claims. The point here is that the objectors are right, Rise is wrong, and the County should do the right thing, as is its duty to protect its local community.

IV. Besides the Controlling Lessons of the *City of Barstow*, *Pasadena,* and Other Leading Cases, The County Should Also Consider Some Detailed And Practical Lessons From *Wright v. Gleta Water District* (1985), 174 Cal. App. 3d 74 ("*Wright*"), Including How the Courts Will Deal With Overlying Or Impacted Surface Owners Who Have Not Yet Fully Exercised Their Priority Groundwater Rights, But Do Not Wish To Suffer Any Impairment For Future Priority Uses By What Rise Or Its Successors May Try Next.

A. Some Introductory Context, Definitions, And Guiding Principles.

The *Wright* court confronted a quagmire during a declared "water emergency" (i.e., drought) that could become relevant here if the County were mistakenly to accommodate Rise. In *Wright,* some overlying surface owners sued the water district to determine their relative rights to groundwater use in "***sub-basins"*** of Santa Barbara County (at 79-80). However, the defendant water district responded by escalating the litigation by cross-complaining against over 220 other overlying owners and appropriators (but far from all relevant persons), including by asserting certain governmental issues not relevant here, resulting in the appellate court reversing and remanding the trial court by defining the dispute as follows: **"whether a trial court, in a judicial determination of a ground water dispute among private parties and public entities, may define or otherwise limit future ground water rights of an overlying [surface] owner who has not yet exercised those rights. We hold that it [the trial court] may not and reverse the judgment."** See the final section of this objection that further addresses the future in the context of what the County should foresee depending upon its decision and consequent decisions of the local objectors as to how best then to defeat Rise Reopening Claims once and for all. As explained below, in such a groundwater dispute, there is an absence of a statutory scheme for groundwater with sufficient due process notice and opportunity for overlying surface owners to be heard (as shown below in discussions of various Water Code and other governmental issues, distinguishing riparian stream cases like *Long Valley* and how Water Code #2500 et seq, applies only to riparian rights, not to groundwater, especially since # 1200 et seq. exempted groundwater from extensive surface water regulations). Thus, the trial court was not permitted to define or otherwise limit future groundwater rights of overlying owners who had not yet exercised those rights (e.g., who had not yet drilled their wells or fully used existing wells) and who were not parties to the litigation.

As *Wright* explained, there was no statutory or constitutional basis for that trial court to make such future groundwater rulings, especially as to overlying surface groundwater owners who were not before the court or not yet using their groundwater. As the court explained (at 88, emphasis added):

> **…Other overlying landowners owning these present rights to future use are entitled to notice and an opportunity to resist any interference with them.** (*Orange County Water Dist. v. City of Colton* (1964), 226 Cal.App. 2d 642, 649…) **A court has no jurisdiction over an absent party and its judgment cannot bind him**. … This is true even though an adjudication between the parties before the court may on occasion adversely affect the absent person as a practical matter, or leave a party exposed to a later inconsistent recovery by the absent person.
> … [A]bsent a statutory scheme for comprehensive determination of all ground water rights, the application of *Long Valley* to a private adjudication would allow prospective rights of overlying landowners to be subject to the vagaries of an individual plaintiff's pleading without adequate due process protections. Therefore, we must reverse the judgment and **remand the matter for a**

> **redetermination in accord with the principles enunciated in *Tulare Dist. v. Lindsay-Strathmore Dist*. which *Long Valley* acknowledged were applicable to private adjudications.**

As the last section below illustrates, this lesson applies to the fact that thousands of overlying and impacted surface owners live above and around the 2585-acre underground IMM. Most do not yet have a well, but few, if any, would ever fail to do whatever is required to preserve their priority groundwater rights against Rise's dewatering and other threats, as well as in response to the climate change increasing dryness/drought threats that Rise incorrectly claims to be (i) too speculative to have to consider in the EIR/DEIR or other Rise Reopening Claims, and (ii) unnecessary to consider because Rise incorrectly imagines its meritless vested rights will somehow protect it from any "limitations or restrictions" (Rise Petition at 58). This groundwater dispute is a complex issue for such future contests. (The Rise Petition has the burden of proof and loses, such as by asserting an incorrect "unitary theory of vested rights" where the controlling parcel-by-parcel, use-by-use, and component-by-component analysis is incorrectly imagined by Rise not to matter, and where Rise ignores the local groundwater underground context [e.g., water basin or sub-basin or other hydrology boundary issues, some of which were disputed in the EIR/DEIR context, but many have yet to be addressed for these groundwater dispute issues.]) To frame that dispute, consider the key definitions applied in *Wright* for such analysis (at fn. 2, emphasis added):

> …**"Safe yield"** is defined as "the maximum quantity of water which can be withdrawn annually from a **ground water supply** under a given set of conditions without causing an undesirable result." [citing] (*City of Los Angeles v. City of San Fernando* (1975), 14 Cal.3d 199…) **"Undesirable result"** is a gradual lowering of the ground water levels leading eventually to depletion of the supply. (Idid.) "A ground water basin is in a state of **surplus** when the amount of water being extracted from is less than the maximum that could be withdrawn without adverse effects on the basins' long term supply … **Overdraft commences whenever** extractions increase, or the withdrawable maximum decreases, or both, to the point **where the surplus ends**." (Id., at pp. 277-278.)

The question in many such cases with overlying or impacted surface-owned groundwater issues (or where the parties stipulate or settle with court judgments about groundwater issues) is resolved on a basin (or here sub-basin) supply measurement. However, because groundwater is treated differently as a legal matter, the priority rights of objecting overlying surface owners to their groundwater must prevail, unless and to the extent that such priority is lost, such as to (expected to be disputed) prescriptive claims (which cannot exist here yet [or at least to some extent ever] as to this long-dormant, closed, discontinued, and abandoned IMM underground mine, especially since the overlying surface owners and impacted objectors are alert to possible adverse miner tactics.) In this Rise Reopening Claims dispute case, the "safe yield" should be measured by any water level reduction by any surface

parcel's well or groundwater measuring device. And, if there is any "surplus" on that basis, such surplus may not long endure once Rise starts its disputed watering 24/7/365 for at least 80 years. Suppose a broader depletion analysis is required than on a parcel-by-parcel basis. In that case, the nature of the underground geology/hydrology, even as admitted in the disputed EIR/DEIR, will still confine the correct supply analysis to a limited area as the source, which cannot include the 2585-acre underground IMM, because that will be drawing and depleting groundwater from many different sources/sub-basins around it.

B. The Foreseeable Disputes Between "Overlying" Surface Owners And Rise May Not Yet Be "Ripe," But There Is an Extensive History of Such Groundwater Disputes With Miners To Predict the Future.

Vested rights do nothing to give Rise any rights to groundwater owned by overlying or impacted surface owners above and around the 2585-acre underground IMM. Rise offers no authority, evidence, or argument to the contrary, even to attempt to satisfy its burden of proof. Instead, Rise ignores these issues entirely and pretends this is just a two dispute with the County, disproven by Comprehensive Objections and cases like *Calvert* and *Hardesty* See *Hi-Desert*. That means that regardless of anything else, the overlying surface owners must prevail, and the Rise Petition must be rejected based on this groundwater/existing and future well water dispute alone (although that result is also proven on many other grounds). *Gray v. Madera County* was discussed at length in the Comprehensive Objections to the disputed EIR/DEIR, where the court rejected proposed miner mitigations as to groundwater and well water that were less objectionable than even what Rise admitted in the incorrect EIR/DEIR's grossly inadequate proposal under much worse facts and circumstances from the perspective of the overlying surface owners with such impacted wells. See also *Keystone* and *Varjabedian*. Besides what is so described in this and other Comprehensive Objections about priority for overlying surface owners' constitutional, legal, and property rights compared to Rise as the underground miner, objectors also direct the Board's attention to the rights evidenced by the court decisions and principles enforcing those overlying surface owner rights. E.g., see **Restatement of Torts, Restatement of Torts 2d, and cited cases therein for #'s 820 "Withdrawing Naturally Necessary Subjacent Support," 817 "Withdrawing Naturally Necessary Lateral Support," and 821C "Who Can Recover For Public Nuisance," as well as Restatement of Torts 2d and cited cases therein for #'s 821B "Public Nuisance" and 858 "Liability for Use of Groundwater" (and 859-863, as well as by analogy liability for riparian water use at 850-854.)**

V. Some Examples of Groundwater/Existing And Future Well Water Law Reforms, Defenses, And Clarifications That May Apply And Impact Rise Mining Despite Any Vested Rights Claims.

Water Code # 1221, "Regulation of groundwater not authorized," states: "This article shall not be construed to authorize the board to regulate groundwater in any manner." Despite that, the Water Code nevertheless seems to create some groundwater impacts Rise will hate because they protect competing overlying or impacted surface owners from miners like Rise.

That state exemption of groundwater from such regulation also strengthens the opportunities for more local laws of general application and IMM relevance (i.e., protections for "overlying" surface owners' groundwater priorities. What is important here is that such a disclaimer statute prevents Rise from arguing for any state law preemptions and allows freedom for local groundwater regulation. See also even existing **Water Code** options for protecting overlying surface owner water rights from underground depletion and subsidence, as discussed above and in many Comprehensive Objections. That is all consistent with Water Code #113, which states (emphasis added): "It is the policy of the state that groundwater resources be managed sustainably for long-term reliability and multiple economic, social, and environmental benefits for **current and future beneficial uses. Sustainable groundwater management is best achieved locally through the development, implementation, and updating of plans and programs based on the best available science."** See further discussion herein of many Water Code provisions and court interpretations, including the Cal. Constitution Art. X, section 2.

That means that if the Vested Mine Property could reopen for mining, there would certainly be applicable groundwater law reforms to enhance protections for our community, as well as for overlying or impacted surface owners' existing and future wells and priority groundwater rights. Our applicable community water basin/sub-basin may not yet be in groundwater overdraft situations. However, Rise has failed to prove any surplus conditions, partly due to NID and its surface water and the fact that Rise has been unable to start its massive disputed 24/7/365 dewatering for at least 80 years. However, that coming hard time is foreseeable, and prudent overlying and impacted surface owners can be expected to begin protecting their groundwater and existing and future well water from any such competitive threats from aggressive, lower (if any) priority and disputed users, like Rise. For example, the Rise DEIR admits (at 6-14) that its whole project is economically unfeasible unless it can mine as proposed 24/7/365 for at least 80 years (which Comprehensive Objections cannot be allowed by existing applicable laws in any event), any such new laws to protect our community will have predictable consequences (including some which even Rise's "2023 10K" admits—See that Exhibit 2) that may both (i) reduce the harms and risks to overlying surface owners and our community exposed in many Comprehensive Objections, and (ii) result in the mining lacking the funding needed to continue operations before achieving any future, break-even gold revenue, much less any imagined profitability, which is a risk about which Rise has warned its investors (Id.), but not the County or its impacted citizens, who still have not had an acceptable explanation for what happens when Rise ceases mining operations if and after they start.

Every informed and impacted local realizes that, as described in the Comprehensive Objections to the EIR/DEIR and other Rise Reopening Claims, climate change will cause increased dryness and drought that threatens our community and our already dying forest and vegetation, among other harms, thereby increasing already high wildfire risks. Rise's dewatering of the IMM 24/7/365 for 80 years will increase and accelerate that menace dramatically. Id. Among the existing Water Code provisions that may get more attention in the future, should there be any need for "overlying" surface owner protection (and water rights' priorities) against any actual mining (and especially such dewatering), consider some examples. Many surface owners will drill competing wells for self-defense before Rise's dewatering can drain the basin's groundwater, which **future wells** Rise tactically ignores entirely (as well as undercounting the relevant existing wells and misplacing Rise's proposed monitoring wells to evade inconvenient

truths.) See Comprehensive Objections on that subject, especially rebutting Rise's deficient mitigation proposals already rejected by *Gray v. Madera County.* Those overlying or impacted surface owners who delay drilling wells or limit their use (e.g., for irrigation instead of household etc. uses) can be expected to exercise their rights under Water Code #'s 1005.1, 1005.2 and 1005.4 et seq. to preserve their future groundwater rights against any possible attempt by Rise to claim prescriptive rights (which Rise activities objectors dispute would be appropriate or effective) for its wasteful dewatering, diversion, and other lower priority water uses. [Local voting or law reforms can resolve any NID or other complications with such defensive strategies, including by initiatives.] For example, Water Code #'s 1005.1, 1005.2/1005.4 enable surface owners in certain ways to "cease" or "reduce" their "extraction of ground water to permit the replenishment of such ground water, so that "[n]o lapse, reduction, or loss of any right in ground water, shall occur under such conditions." That is declared by such statutes to be "a reasonable beneficial use of the ground water" to maximize such rights for the future when climate change impacts (and, God forbid, any Rise dewatering) compel NID cutbacks and rationing and thereby inspire many more surface owners to supplement their water supplies from their own (or new local community) wells. (While existing local property values are already depressed by even the disputed possibility of such IMM mining, chronic water rationing will cause a huge difference in property value impacts based on whether or not the surface owner has a viable well supplement, which viability may depend on the effective competition with any disputed dewatering that might still be occurring.)

VI. Rise Has Continued To Ignore The Impact of Many Applicable Laws That Cannot Be Evaded Or Overcome By The Disputed Rise Petition Or Other Rise Reopening Claims, Such As The Mandates Of California Constitution Art. X, #2 And The Water Code.

A. Cal. Constitution Art. X, #2 (Like Water Code #'s100 And 100.5 To Similar Effect) Requires That "Water Resources Be Put To Beneficial Uses To the Fullest Extent of Which They Are Capable," And That "Waste Or Unreasonable Use Or Unreasonable Method of Use of Water Be Prevented."

The Rise dewatering cannot claim to trump California **Constitution Art. X, #2 (or Water Code #'s 100 and 100.5)** when applied to Rise's wasteful dewatering under the applicable facts and circumstances. Suppose those conditions are not yet found to exist. In that case, they will during Rise's 24/7/365 dewatering for at least 80 years, probably sooner rather than later, considering the climate change impacts Rise dismisses as too speculative. The overlying and impacted surface owners will have (whenever the predicted "overdraft" of our applicable local groundwater area begins) the right to contest further dewatering by Rise (once we figure out (i) what Rise actually plans to do, (ii) the actual, relevant hydrology and geology for the parcels above and around the 2585-acre underground IMM [and anywhere else depleted by such dewatering], and (iii) when in the process the inevitable dewatering impacts become actionable and the claims become "ripe," based on facts and plans Rise has failed properly and compliantly to disclose in the disputed EIR/DEIR or to satisfy Rise's applicable burdens of proof.) That seems inevitable sooner or later on account of noncompliance with those constitutional and legal

mandates that such low priority (if any) dewatering: (a) be proven by that standard to be such a "reasonable" use and "beneficial" use, which could only be possible when, if, and so long as there is continuously and consistently so much relevant excess/surplus groundwater that all the priority, overlying surface uses are constantly satisfied (i.e., so no competing, priority surface users have any reason to contest the benefit such exploitive or wasteful uses of disputed benefit to anyone other than distant gold speculators/investors); (b) be proven by that standard not to be a wasteful or unreasonable use (or method of use or diversion) of such water, dewatered (or given disputed treatment; e.g., besides contesting the adequacy of remediation of the admitted, legacy, toxins and pollutants, there is also the new issue for remediation of the toxic hexavalent chromium Rise keeps trying to obscure and which case studies like the Hinkley, Ca, groundwater pollution debacle has proven to be beyond remediation for years—see www.hinkleygroundwater.com); (c) be proven by that standard not to be an unreasonable or wasteful diversion when such groundwater is flushed away down the Wolf Creek; and (d) be proven compliant with the water conservation requirements, which focus on the local needs where the groundwater is owned, rather than where the low priority (if any) miner seeks to dispose of such groundwater to distant and uncertain uses, especially if the ultimate end users do not trust the Rise treatment, water quality, or hexavalent chromium components in such water flow sufficiently to dare to drink or use it.

Likewise, Water Code #100 paraphrases that constitutional mandate and concludes for emphasis that: "such right does not and shall not extend to waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water." See also #100.5. Significantly, because the groundwater being sucked into the disputed Rise dewatering system is exposed to more legacy toxins in the mine than where it originated under suburban homes, the cleaning capacity and effectiveness of Rise's treatment plant and system process need to be proven, and so far, has not been so proven, especially as to the toxic hexavalent chromium Rise tries not even to acknowledge. See Comprehensive Objections on that topic. **Many courts have followed the ruling that there is no legally protectable interest in the unreasonable use of water, and the constitutional amendment was adopted to redefine water rights, rather than merely providing remedies for their invasion. *Joslin v. Marin Mun. Water Dist.* (1967), 67 Cal.2d 132, 140.**

That is all consistent with Water Code #113, which states(emphasis added): "It is the policy of the state that groundwater resources be managed sustainably for long-term reliability and multiple economic, social, and environmental benefits for **current and future beneficial uses. Sustainable groundwater management is best achieved locally through the development, implementation, and updating of plans and programs based on the best available science."** See Water Code # 2100 et seq., allowing the board to protect the water supply in various ways already exercised in Central Valley or Southern California basins where the underground water has been dangerously depleted. (The massive 24/7/365 dewatering demanded by Rise for 80 years threatens sustainable groundwater for our community in that climate changed and dryer/drought-menaced future that Rise denies and insists everyone look only to the distant past before climate change began.) If Rise argues that groundwater protections will not be needed here, consider the last section of this objection, which provides a glimpse of the future Rise wishes to ignore and evade. See, e.g. Water Code # 10609.42 "Identification of small water suppliers and rural communities at risk of drought and water

shortage vulnerability; Notification to counties and groundwater sustainability agencies of at-risk suppliers and communities; Public accessibility of information; Recommendations and guidance regarding development and implementation of countywide drought and water shortage contingency plans for small water suppliers and rural communities;" # Div. 6, Part 2.74 "Sustainable Groundwater Management;" and many other sections, such as dealing with groundwater management and related issues in: #'s 10720.5 "Consistency with California Constitution; No alteration of surface water rights or groundwater rights law;" #10723 "Election to become a groundwater sustainability agency for a basin;" #10723.6 "Methods to combine agencies to form groundwater sustainability agency;" # 10720.7 "Management of basins under groundwater sustainability plans;" #10725.6 "Registration of groundwater extraction facility."

B. While the "Reasonableness" And "Beneficial Use" of Rise's Dewatering For Purposes Of Applicable Law Is Disputed For Purposes Of Cal. Constitution Art. X, #2 (Like Water Code #'s 100 To Similar Effect), Water Code #100.5 Defeats Rise's Claim That Any Mining Custom And Practice Makes Tolerable Whatever Still Unclear Things Rise Plans To Do On Its Disputed "Vested Mine Property."

Water Code # 100.5 states that: "the conformity of a use, method of use, or method of diversion of water with local custom shall not be solely determinative of its reasonableness but shall be considered as one factor to be weighed in the determination of the reasonableness of use." Many courts interpret such Constitution Art. X, #2 (or its predecessor) or Water Code #100, consistent with the following quote and reaffirm *Tulare Dist. v. Lindsay-Strathmore Dist.* (1935), 3 Cal.2d 489, 567:

> **What may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is beneficial use at one time may, because of changed conditions, become a waste of water at a later time.** (emphasis added)

In this case, sooner or later, Rise's dewatering plan (increasing climate change impacts and the other factors depleting overlying and impacted objecting surface owners' groundwater and wells) seems (inevitably) likely to cause our local well levels and the water table (essential to surface vegetation, especially our forests) to drop into "overdraft" conditions. Then there will be nothing "reasonable" or "beneficial" about Rise's wasteful 24/7/365 dewatering activities and system draining our local parcels for at least 80 years and (after disputed, purported treatment) flushing away our groundwater down Wolf Creek somewhere else. That means Rise must stop, sooner or later. When Rise argues that such underground mining required dewatering in 1954 and is empowered somehow again by its disputed Rise Petition meritless vested rights claims, overlying surface owners can correctly respond by more than the many meritorious bases for defeating such vested rights claims on the merits. There is no vested right for Rise to so take and flush away such overlying surface owner groundwater and existing and future well water. Also,

that is no longer a permitted beneficial or reasonable use, especially when diverted elsewhere down Wolf Creek.

Consider that miners' 1954 customs and practices are no longer relevant, since the miner no longer owns that overlying surface. Those homeowners and non-mining businesses that populate the overlying surface above and around the underground mine own that groundwater and well water ***with legal priority over any Rise claim to such local water and a right to prevent such waste (to quote the Rise Petition in rebuttal) without limitation or restriction by any disputed vested right claims. (Rise's claim that unspecified others downstream somewhere will benefit is both disputed and irrelevant because the diversion of locally owned groundwater from our locale to some other place is neither lawful nor reasonable nor beneficial from the perspective of the locals who own that water.*** Moreover, such mining is incompatible with and unreasonable to the overlying surface community above it. Water Code #100.5 ends any relevance of historic mining practices in such changed conditions. For example, there was a time when hydraulic mining was a local mining custom, and the haunting results of that mining custom and practice compelled miners to stop it. Such harm done then still makes those mining areas look like the moon's surface, not to mention the legacy impacts of the impacted rivers and streams. There can be no vested right in such harmful violations of overlying or impacted surface owner rights by Rise.

VII. Concluding With Some Other Forward-Looking Disputes If Rise Were Allowed To Reopen The IMM, Which Should Never Be Permitted.

This objection and other such Comprehensive Objections must be allowed to use each of the often inconsistent or contradictory Rise Reopening Claims in rebutting each other, especially as to the use of adverse admissions that exist in the disputed EIR/DEIR and Rise applications for permits and approvals (and in the "2023 10K and other SEC filings exposed in Exhibit 2). The reality is that Rise told different and often inconsistent or contradictory "stories" to the County versus the SEC, as well as about the EIR/DEIR versus the Rise Petition. Those admissions are rebuttal evidence against the disputed Rise Petition and each Rise Reopening Claim. See, e.g., Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235, as well as other objections in Evidence Objections Parts 1 and 2. Worse, Rise's "hide the ball" tactics create confusion and worse about what Rise is actually alleging in each Rise Reopening Claim. See, e.g., Objectors Petition For Pre-Trial Relief, Etc. demanding more clarity from Rise. For example, the disputed Rise Petition (at 58) demands the "vested right" to mine in any way Rise wishes anywhere in the Vested Rights Property "without limitation or restriction." Still, Rise's "2023 10K" (filed 10/30/2023, after the Rise Petition dated 9/1/2023) and other SEC filings admit to many "limitations and restrictions" that Rise describes as "Risk Factors" (see Exhibit 1 hereto and Exhibit A to Evidence Objections Parts 1 and 2), many addressing of those disputes likely or possible to arise or apply in the future. Likewise, the EIR/DEIR and many Rise applications for permits and approvals and other Rise Reopening Claims admit the application of many laws, regulations, and other limitations or restrictions, including those that are foreseeable.

If Rise were somehow (incorrectly) allowed to reopen the Vested Mine Property for mining, the thousands of "overlying" surface owners would be motivated to exercise their

existing water rights defense opportunities discussed in this objection. Such surface owners may assume the worst about Rise's possible tactics to attempt to defend its 24/7/365 dewatering menace for at least 80 years and follow various already feasible defense counters, as well as causing the enactment of more legal protections for surface owner groundwater and existing and future wells and well water. As discussed herein, there are many self-defense options that overlying surface owners may elect to do (or arrange for wise elected officials or others to do) to protect our community from that dewatering menace. E.g. Water Code #1005.1 (and 1005.2 and 1005.4). If Rise argues that groundwater protections will not be needed here, consider the last section of this objection, which provides a glimpse of the future Rise wishes to ignore and evade. See, e.g. Water Code # 10609.42 "Identification of small water suppliers and rural communities at risk of drought and water shortage vulnerability; Notification to counties and groundwater sustainability agencies of at-risk suppliers and communities; Public accessibility of information; Recommendations and guidance regarding development and implementation of countywide drought and water shortage contingency plans for small water suppliers and rural communities;" # Div. 6, Part 2.74 "Sustainable Groundwater Management;" and many other sections, such as dealing with groundwater management and related issues in: #'s 10720.5 "Consistency with California Constitution; No alteration of surface water rights or groundwater rights law;" #10723 "Election to become a groundwater sustainability agency for a basin;" #10723.6 "Methods to combine agencies to form groundwater sustainability agency;" # 10720.7 "Management of basins under groundwater sustainability plans;" #10725.6 "Registration of groundwater extraction facility."

That focus on the future must be part of what the County must address now in these Rise Petition disputes, because Rise wrongly seeks disputed and incorrect "findings" that, despite changing conditions, would improperly allow overbroad, prohibited, and objectionable mining activities (especially dewatering and diversion down Wolf Creek) 24/7/365 for at least 80 years. However, contrary to such Rise claims, applicable legal rights sought by the disputed Rise Petition cannot be fixed now for the next 80 years or for whatever future Rise now may mysteriously claim to be empowered by its disputed vested rights. Those disputed Rise "rights" especially cannot prevail now or in the future against the competing constitutional, legal, and property rights of objectors owning the overlying or impacted surface above and around the 2585-acre underground IMM (or what Rise calls the disputed "Vested Mine Property.") What has been demonstrated in the Comprehensive Objections both (i) illustrates that need for recognition of future matters now, and (ii) reminds the County that what Rise seeks in many cases is based (incorrectly) on Rise's denial of climate change dryness and drought as "too speculative" to be considered in granting disputed rights for Rise to mine beneath such surface owner homes and businesses 24/7/365 for at least 80 years. Stated another way, even if Rise could prove vested rights (which it has failed to do), that cannot accomplish what Rise Petition incorrectly claims, especially against the competing constitutional, legal, and property rights of the overlying or impacted surface owners above or around the 2585-acre underground IMM, especially as to groundwater rights and existing and future wells.

For the reasons stated or incorporated above, objectors request that the Board deny all relief requested by the Rise Petition and every finding requested by the Rise Reopening Claims and, instead, find in favor of the Comprehensive Objections on every relevant issue, fact, and claim.

Table of Exhibits

EXHIBIT 1: SELECTED CONVENIENCE LINKS AND COPIES TO SOME INCORPORATED DOCUMENTS.

I. Some Justifications for Incorporating All of the EIR/DEIR Administrative And Other Records Into Objectors' Objections To the Disputed Rise Petition.

For various reasons, the foregoing "Overlying Surface Owner Rebuttal," like objectors' "Evidence Objections Part 2," "Evidence Objections Part 1," and "Objectors Petition For Pre-Trial Relief, Etc.", each incorporated each others (and also each of objectors' EIR/DEIR objections), as well as (for rebuttal) rest of the EIR/DEIR administrative record (e.g., see the list below). Those reasons for creating such a comprehensive record included objectors' goal of enabling each of those objections to the comprehensively disputed "Rise Petition" and other "Rise Reopening Claims" to be able to refute all of both Rise's legal arguments and its purported evidence purporting to support each part of the collective Rise Reopening Claims by objectors' use of Rise admissions as rebuttal evidence. Objectors often cite to various parts of that disputed EIR/DEIR and Rise Petition administrative record (much of which is described below) as rebuttal evidence, because many things communicated or presented by or for Rise (or by its EIR/DEIR or Rise Petition) are admissions adverse to disputed Rise Reopening Claims that can be used by objectors as supporting rebuttal evidence and legal authority in or for objectors' "Comprehensive Objections." (The definitions in that "Overlying Surface Owner Rebuttal" and "Evidence Objections Part 2" apply herein, as well as the referenced law and rules of evidence explained, incorporated, and applied both therein and even more thoroughly in "Evidence Objections Parts 1 and 2.") As explained in the foregoing "Overlying Surface Owner Rebuttal," regardless of how Rise or the County separate such disputes for their procedural purposes, the reality and approach of objectors is to address this all as one collective dispute against what objectors call the "Rise Reopening Claims" by objectors applying our "Comprehensive Objections." That means each part of objectors' collective "Comprehensive Objections" disputes every part of the Rise Reopening Claims, which includes disputing the Rise Petition, the EIR/DEIR, and Rise's applications for permits, approvals or other relief, such as are listed below.

For example, the EIR/DEIR administrative record contains many Rise admissions and disputed claims that are contrary to, or inconsistent with, the disputed Rise Petition. Those admissions and claims are both: (i) obvious, as illustrated in Exhibit 2 hereto, exposing and applying blatant inconsistencies and contradictions between (a) Rise's SEC "2023 10K" filings [and other Rise SEC filings further exposed in Exhibit A to objectors' Evidence Objections Parts 1 and 2] versus (b) such other Rise Reopening Claims, many also addressed and incorporated in that incorporated EIR/DEIR administrative record; and (ii) more complex, as illustrated by the disputed Rise Petition claiming that the "Centennial" parcels were part of the alleged "Vested Mine Property," while Rise had previously claimed repeatedly in the EIR/DEIR record that Centennial was NOT any part of that "project." In essence, objectors contend that everything relating to the attempted reopening of the "IMM" plus "Centennial" (or what Rise calls the disputed "Vested Mine Property") is part of one omnibus dispute not just involving the generally impacted and objecting public (see, e.g., *Calvert* and *Hardesty*), but also, and more fundamentally, involving us objecting owners of the overlying surface properties above

and around the 2585-acre underground IMM, who each have such objectors' own constitutional, legal, and property rights to defend from such mining beneath and around his or her surface property (e.g., these objectors are the owners of the groundwater and existing and future well water Rise plans wrongly to deplete, dewater, and flush away down Wolf Creek 24/7/365 for 80 years.) See, e.g., *Keystone, Gray, City of Barstow, Pasadena,* and *Varjabedian*. Whatever the County does or does not do about the Rise Petition cannot defeat those competing surface owners' personal rights and interests, among other things, because Rise's disputed vested rights cannot overcome those overlying surface owners' priority rights, especially in our groundwater and existing and future wells. That dispute between the underground Rise miner and such overlying or otherwise impacted surface owners above and around the 2585-acre underground IMM cannot be separated as Rise attempts to do with the County's disputed accommodations, because this is a multi-party dispute even more so than the *Calvert* vested rights dispute in which it is a key part, although not yet treated as such by the Rise Petition process at the County.

Besides the disputes about the applicable law and its application in this case, there is also a massive evidentiary dispute against the Rise Petition in which all those Rise admissions and claims in the EIR/DEIR record (including those Rise applications for related permits and approvals) help to rebut, impeach, and defeat the Rise Petition. For example, as proven in Exhibit 1 exposing Rise admissions that contradict the Rise Petition's claim (at 58) to mine as it wishes anywhere in the" Vested Mine Property" "without limitation or restriction," that 2023 10K SEC filing (filed *after* the Rise Petition filing) admit that Rise still needs the disputed EIR/DEIR and many other permits and approvals (as objectors also contend, but differently). As a result, the law of evidence proven in Evidence Objections Parts 1 and 2 confirms that the EIR/DEIR record (including the Rise SEC filings incorporated therein and herein) is also (with the Rise Petition record) appropriate rebuttal evidence.

Thus, objectors are entitled to use as evidence everything in EIR/DEIR/SEC filings and other admissions and incorporations by reference because such admissions and other matters are all proper rebuttal evidence as well as proper substantive evidence by overlying surface owners above and around the 2585-acre underground IMM defending their constitutional, legal, and property rights, including their as to groundwater and existing and future wells. Those points were not just made in the objections filed by objectors in this Rise Petition dispute, but in many ways, they were also made in objections to the EIR/DEIR, including other things in that record as well such as the County Staff Report and the County Economic Report. As a result, objectors resist and contest any attempt to limit objectors' incorporated evidence, defenses, and claims, including the common pattern of incorporating many things and documents into each objector filing, because (again) this is one massive dispute against the Rise Reopening Claims in which everything relevant to any part is relevant to the whole. Objectors understand that the County has practical considerations that may explain why it might accommodate Rise by separating these related and interconnected proceedings for (i) Rise's incorrect vested rights claims, (ii) EIR/DEIR and related disputes, or (iii) other Rise applications for other governmental permits or approvals, such as described in the County Staff Report about the disputed EIR/DEIR. However, objectors cannot be required to risk our rights by accepting any such limitations, and to assure our due process and the correct results in all such separated disputes, objectors insist on consolidating our objections in order to be

comprehensive as to both law and evidence. For such many objections to be fully appreciated and coherent, objectors must incorporate the whole record, so that the courts can be clear as to Rise admissions and about everything that objectors are disputing.

II. The Incorporated EIR/DEIR Administrative Record.

A. Comprehensive Objections To the Disputed EIR/DEIR And Related Matters Justify A Comprehensive Record For the Court Process.

Objectors have incorporated many objections to the disputed EIR/DEIR and related Rise and supporting filings and documents, such as those listed below or referenced therein. The Final EIR ("EIR") referenced below included in its attachments the two major objections of the undersigned objectors to the disputed DEIR, which the EIR labeled as Individual Letters Ind. 254 and Ind. 255, which parts of the "Engel Objections" also included objections to the County Staff Report on the EIR/DEIR and the County Economic Report and also incorporated many other objections to the DEIR and EIR. The disputed EIR included purported and disputed "Responses" and "Master Responses" to those Engel Objections and those it incorporated into the DEIR. The undersigned also then comprehensively objected to the EIR, including every EIR Response and Master Response, in the undersigned's follow-up objection to that EIR, including one objection dated April 25, 2023, focused on those disputed EIR Responses and Master Responses to such DEIR objection Ind. 254 and another objection dated May 5, 2023, to those disputed EIR Responses and Master Responses such DEIR objection Ind. 255.

All of those objections (and other objections and evidence/supporting documents or data each incorporated) are incorporated by reference to this and each other objection by objectors to the Rise Petition, as if this were all one massive, consolidated record about the omnibus, massive dispute discussed above regarding the reopening of the IMM plus Centennial or the Vested Mine Property and related Rise threats and claims. What such documents reveal is that there is a massive record. Because objectors' objections are comprehensive against all such things by or for Rise regarding the IMM, Centennial, or Vested Mine Property, objectors submit such entire comprehensive County files for the record in the court disputes expected to follow the Board hearing and other related actions. For convenience, some links to such relevant documents are provided below to avoid refiling thousands of pages of paper already on the County's Idaho-Maryland Mine consolidated files linked together in the Nevada County Community Development Agency's comprehensive website electronic document. However, some filings may also be held in the Planning Department, by the Clerk of the Board of Supervisors or County Counsel, and elsewhere in the County public record.

B. For the Convenience of Readers, Some of That Comprehensive Incorporated County Record Is Connected Here With Links Or References.

1. Some EIR Links From the County Website Document Depository.

The Final EIR ("EIR"):
https://www.nevadacountyca.gov/DocumentCenter/View/46397/IMM-FEIR-1--Volume-VI-Chapters1-4.

https://www.nevadacountyca.gov/DocumentCenter/View/46398/IMM-FEIR_VII---Volume-IX-Appendices-A---R

https://www.nevadacountyca.gov/DocumentCenter/View/46457/Idaho-Maryland-Mine-Project-Supplement-to-the-Final-EIR--Individual-Letter-748

2. Some DEIR And Appendices Links From the County Website Document Depository:

https://www.nevadacountyca.gov/DocumentCenter/View/41650/Idaho-Maryland-Project-Draft-EIR_Volume-1-Draft-EIR-Chapters-1-8

https://www.nevadacountyca.gov/DocumentCenter/View/41616/Appendix-A_Idaho-Maryland-Mine-NOP

https://www.nevadacountyca.gov/DocumentCenter/View/41617/Appendix-B_NOP-Comment-Letters

https://www.nevadacountyca.gov/DocumentCenter/View/41618/Appendix-C_Reclamation-Plan

https://www.nevadacountyca.gov/DocumentCenter/View/41619/Appendix-D_Aesthetics-Technical-Study

https://www.nevadacountyca.gov/DocumentCenter/View/41620/Appendix-E1_AQ---GHG-Report

https://www.nevadacountyca.gov/DocumentCenter/View/41621/Appendix-E2_ASUR-Plan

https://www.nevadacountyca.gov/DocumentCenter/View/41622/Appendix-F1_Centennial-ARD

https://www.nevadacountyca.gov/DocumentCenter/View/41623/Appendix-F2_Centennial-BRA

https://www.nevadacountyca.gov/DocumentCenter/View/41624/Appendix-F3_Centennial-Impact-Tech-Memo

https://www.nevadacountyca.gov/DocumentCenter/View/41625/Appendix-F4_Centennial-HMP-Pine-Hill-Flannelbush

https://www.nevadacountyca.gov/DocumentCenter/View/41626/Appendix-F5_Centennial-Aquatic-Resources-MP

https://www.nevadacountyca.gov/DocumentCenter/View/41627/Appendix-F6_Centennial-Botanical-Report

https://www.nevadacountyca.gov/DocumentCenter/View/41628/Appendix-F7_Brunswick-ARD

https://www.nevadacountyca.gov/DocumentCenter/View/41629/Appendix-F8_Brunswick-Aquatic-Resources-MP

https://www.nevadacountyca.gov/DocumentCenter/View/41630/Appendix-F9_Brunswick-BRA

https://www.nevadacountyca.gov/DocumentCenter/View/41631/Appendix-F10_SF-Wolf-Creek-Tech-Memo

https://www.nevadacountyca.gov/DocumentCenter/View/41632/Appendix-F11_Brunswick-Botanical-Report

https://www.nevadacountyca.gov/DocumentCenter/View/41633/Appendix-G_Cultural-Resources-Report

https://www.nevadacountyca.gov/DocumentCenter/View/41634/Appendix-H1_Brunswick-Geotech-Report

https://www.nevadacountyca.gov/DocumentCenter/View/41635/Appendix-H2_Brunswick-Fault-Zone-MP

https://www.nevadacountyca.gov/DocumentCenter/View/41636/Appendix-H3_Brunswick-Steep-Slopes-and-High-Erosion-MP

https://www.nevadacountyca.gov/DocumentCenter/View/41637/Appendix-H4_Centennial-Geotech-Report

https://www.nevadacountyca.gov/DocumentCenter/View/41638/Appendix-H5_Centennial-Steep-Slopes-and-High-Erosion-MP

https://www.nevadacountyca.gov/DocumentCenter/View/41639/Appendix-H6_Geotech-Review-of-Near-Surface-Features

https://www.nevadacountyca.gov/DocumentCenter/View/41640/Appendix-H7_Geotechnical-Peer-Review

https://www.nevadacountyca.gov/DocumentCenter/View/41641/Appendix-H8_Septic-System-Analysis

https://www.nevadacountyca.gov/DocumentCenter/View/41642/Appendix-I_Brunswick---Centennial-Phase-1-ESA

https://www.nevadacountyca.gov/DocumentCenter/View/41643/Appendix-J_Brunswick-Phase-I-II

https://www.nevadacountyca.gov/DocumentCenter/View/41644/Appendix-K1_Geomorphic-Assessment-SF-Wolf-Creek

https://www.nevadacountyca.gov/DocumentCenter/View/41645/Appendix-K2_Groundwater-Hydrology-and-Water-Quality-Analysis

https://www.nevadacountyca.gov/DocumentCenter/View/41646/Appendix-K3_Groundwater-Model-Report

https://www.nevadacountyca.gov/DocumentCenter/View/41607/Appendix-K4_Water-Treatment-Design-Report
https://www.nevadacountyca.gov/DocumentCenter/View/41608/Appendix-K5_Preliminary-Drainage-Analysis

https://www.nevadacountyca.gov/DocumentCenter/View/41609/Appendix-K6_Centennial-Floodplain-MP

https://www.nevadacountyca.gov/DocumentCenter/View/41610/Appendix-K7_West-Yost-Peer-Review

https://www.nevadacountyca.gov/DocumentCenter/View/41611/Appendix-K8_Groundwater-Monitoring-Plan

https://www.nevadacountyca.gov/DocumentCenter/View/41612/Appendix-K9_Idaho-Maryland-Well-Mitigation-Plan

https://www.nevadacountyca.gov/DocumentCenter/View/41663/Appendix-L_Noise-and-Vibration-Study

https://www.nevadacountyca.gov/DocumentCenter/View/41613/Appendix-M_Blasting-Report

https://www.nevadacountyca.gov/DocumentCenter/View/41614/Appendix-N_Water-Supply-Assessment

https://www.nevadacountyca.gov/DocumentCenter/View/41615/Appendix-O_Traffic-Impact-Analysis

3. **Some Links To the County Staff Report on the EIR:**

https:/www.nevadacountyca.gov/DocumentCenter/View/48030/Idaho-Maryland-Mine-Staff-Report-Memo-05-05-2023

Add appendices and exhibits.

4. **Some Links To the County Staff Recommendations Regarding the Rise Petition.**

https:/www.nevadacountyca.gov/DocumentCenter/View/51713-1-Nevada-County-Notice-of-Staff-Report-Publication

https:/www.nevadacountyca.gov/DocumentCenter/View/51713-2-Staff-Report

https:/www.nevadacountyca.gov/DocumentCenter/View/51713-4-Nevada-County-Responses-To-Facts-and Evidence-in-the-Vested-Rights-Petition-w—County-exhibits

https:/www.nevadacountyca.gov/DocumentCenter/View/51713-5-Petition-for-Vested-Rights-Notice-of-Public-Hearing

5. **All the County Website "Application Documents-Idaho Maryland Mine-Rise Grass Valley**

III. Some Excerpts From Objectors' Other Objections To the Rise Petition Are Also Attached For Convenience – Table of Cases and Commentary

Exhibit 2: 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.**

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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.