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October 23, 2023

County of Nevada
Board of Supervisors
950 Maidu Avenue
Nevada City, CA 95959

Re: Idaho-Maryland Mine Vested Right Petition

To the Board of Supervisors:

I write on behalf of Rise Grass Valley, Inc., the owner of the property comprising the historic Idaho-Maryland Mine. Based on our independent review of the facts and the law, we have concluded that Rise Grass Valley, Inc. has a vested right to operate the Idaho-Maryland Mine, and we expect that right to be vindicated in court, should it be necessary to do so.

California law on these issues is clear. First, a land use “vests” when it is an existing use of a property at the time a zoning ordinance is passed that would restrict or prohibit that use. In California, “[t]he rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected.” *Hansen Bros. Enter., Inc. v. Bd. of Super.*, 12 Cal.4th 533, 552 (1996). Second, a vested right to mine extends to all of the property as it was intended to be used at the time of vesting. *Id.* at 554 (“An entire tract is generally regarded as within the exemption of an existing nonconforming use, although the entire tract is not so used at the time of the passage or effective date of the zoning law.”) Third, the vested mining right continues unless and until a property owner abandons it, which occurs only when two conditions are met: (1) an owner has an intention to abandon; and (2) undertakes an overt act or failure to act, which implies that the owner is abandoning the vested right. *Id.* at 569. “Mere cessation of use does not of itself amount to abandonment.” *Id.*

The extensive historical record, which our firm has independently reviewed and assessed, demonstrates that Rise Grass Valley, Inc. possesses a vested right to mine its property comprising the Idaho-Maryland Mine. The right to mine vested in 1954, when the Idaho-Maryland Mine was operating at the time Nevada County enacted a zoning ordinance that would have, for the first time, required the mine operators to obtain a use permit. The vested right to mine extends to the entirety of the property now owned by Rise Grass Valley, Inc., because that property was part of the Idaho-Maryland Mine in 1954 and because the then-owners objectively manifested their intent to use the entire property for mining and related activities. No property owner has abandoned the right to mine the properties comprising the Idaho-Maryland Mine. All of the properties’ owners have intended to mine the property, as evidenced by their mineral exploration activities, their marketing of the property, their reservation of mineral rights, and their statements about the relevant economic conditions for mining. California law is clear that abandonment requires both

Nevada County Board of Supervisors

October 23, 2023

Page 2

intent and an overt act (or failure to act), neither of which have occurred here. Mere cessation of mining cannot constitute abandonment.

I am available at your convenience to discuss this matter. Thank you for your attention.

Respectfully,

s/ Charles J. Cooper

Charles J. Cooper

cc:

Brian Foss (Nevada County)

Kit Elliot (Nevada County)

Diane Kindermann (Abbott & Kindermann, INC.)