Tine Mathiasen

From:	G. Larry Engel <larry@engeladvice.com>
Sent:	Friday, February 9, 2024 3:54 PM
To:	bdofsupervisors; BOS Public Comment; Clerk of Board; County Counsel
Cc:	Kit Elliott; G. Larry Engel
Subject:	IMM: Idaho-Maryland Mine EIR Disputes For the Board of Supervisor's Meeting 2/25-16/2024
Attachments:	IMM 2-25-24 EIR OBJ DOC.pdf

Please find enclosed my objection and petition, including exhibits. Thank you.

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[other participants may join or file joinders]

February 9, 2024

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cc: Katherine Elliott, County Counsel, county.counsel@nevadacountyca.gov
Julie Patterson Hunter, Clerk of the Board, clerkofboard@nevadacountyca.gov

Re: Idaho-Maryland Mine EIR Disputes Addressed At The February 15-16, 2024, Board of Supervisors Hearing: The Attached "Petition/Objections" With Exhibits A-G Seeking Relief In Opposition to the Proposed "EIR" And Other Claims of Rise Grass Valley, Inc. ("Rise").

Dear Board Members And Advisors:

Please find enclosed a "Petition/Objections" and related Exhibits A-G in opposition to the EIR for Rise's proposed Idaho-Maryland Mine Project and related claims and filings. Rather than summarize those extensive attachments in this letter, we refer you to the Opening Statement that provides such a summary. Please advise us if you have any questions or issues. Thank you.

Sincerely,

/s/ Larry Engel
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Engel Law, PC

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February 9, 2024

NEW PA

Objectors' "Petition/Objection" For The Nevada Board of Supervisors EIR Hearing on February 15-16, 2024, Updating And Supplementing "Comprehensive Objections" Requiring More Due Process, Equal Protection, Redress of Grievances In The Disputed County Process And Other Proper Treatment of Objectors Constitutional, Legal, And Property Rights Etcetera Compared To Rise In Disputing the Incorrect And Worse "EIR/DEIR" (Including the Disputed Use Permit) And Other "Rise Reopening Claims."

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February 9, 2024

Objectors' "Petition/Objection" For The Nevada Board of Supervisors EIR Hearing on February 15-16, 2024, Updating And Supplementing "Comprehensive Objections" Requiring More Due Process, Equal Protection, Redress of Grievances In The Disputed County Process And Other Proper Treatment of Objectors Constitutional, Legal, And Property Rights Etcetera Compared To Rise In Disputing the Incorrect And Worse "EIR/DEIR" (Including the Disputed Use Permit) And Other "Rise Reopening Claims."

OPENING STATEMENT: Among the many disputes and differences between the "County team" and "objectors" is that, while objectors have many common interests with the County team in the application of the rule of law to the disputed "EIR/DEIR" and other disputed "Rise Reopening Claims," the County team incorrectly still treats such related disputes as separate and narrow, two-party processes between Rise versus the County team in which the County team has so far accommodated Rise by its limited scope for analysis and evidence that has (at least in public) incorrectly ignored, disregarded, and evaded our competing and broader Comprehensive Objections with much broader law, evidence, and proof. While the County team understands even that limited scope requires some consideration of "public comments," the County team incorrectly seems to treat objectors as inconsequential commentators without our independent standing or rights as equal parties-in-interest equivalent to Rise; i.e., as public commentators without any of the competing constitutional, legal, and property rights at stake that objectors have proven in our "Comprehensive Objections" must be allowed to compete equally against Rise and the County team with our at least equal such rights and legal standing as parties-in-interest in what must be MULTI-PARTY (NOT TWO-PARTY) disputes. What follows below includes a further proof of the errors in how the County team incorrectly so treats objectors and our broader Comprehensive Objections (including our legal briefing, evidence, and other proof), none of which can continue to be so ignored, disregarded, and evaded as do Rise, its "enablers" (e.g., the generally disputed "independent consultants" preparing the disputed EIR/DEIR and certain other parts of the record, such as the disputed "County Economic Report"), and (at least in public) the "County team," including staff and decision-makers.

Besides such proof below of objectors' independent rights and standing in these proceedings, the Board should consider also the hypothetical below that illustrates what objectors perceive that the County team is still overlooking about these disputes; e.g., the consequences of Rise gambling on never attempting in these County administrative processes to rebut our Comprehensive Objections and, therefore, lacking anything sufficient in the record to contest such objections when objectors finally have our required, proper "day in court" on our broader and better-evidenced objections. Objectors call that a "gamble," because Rise seems to be betting (incorrectly) that Rise can evade ever having to confront the

"reality" of our Comprehensive Objections by later relitigating its disputed "Rise Reopening Claims" in another threatened, two-party dispute in Federal District Court, presumably following the (inapplicable and distinguishable) "Hardesty2" model jury trial surface miner strategy, based on (incorrect) Rise claims of "bias. etc." as a basis for disputed "#1983 Etc. Claims" supporting its disputed Rise Reopening Claims on which Rise hopes to prevail in its "alternate reality" contest against the County team, BUT without ever having to confront our Comprehensive Objections on the merits. How? Apparently, Rise expects either to (i) fool a jury with its disputed "alternate reality" (in such a trial where the judge and jury in that two-party case don't ever hear objectors' "reality") or (ii) by bullying the County team with such litigation into an objectionable "settlement" intolerable to objectors. For such a Rise plan and theory to achieve such a goal of escaping the comprehensive realities only objectors are presenting in our broader Comprehensive Objections, Rise presumably (incorrectly) will attempt to claim that (again, in the two-party dispute *Hardesty2* model wrongly denying objectors' independent standing and rights) somehow (incorrectly and without ever having our proper "day in court") objectors are legally bound by whatever Rise so achieves against the County team by Rise's various disputed legal theories, such as "claim or issue preclusion," "collateral estoppel," etc. This Petition/Objection and the rest of our Comprehensive Objections are intended to preempt and defeat any such Rise maneuvers.

As one preview of what objectors mean by that difference between such "broad" and "narrow" disputes, evidence, and proof against Rise and its Rise Reopening Claims, consider the following. Rise and (at least in public) the County team address these disputes as if they are solely governed by SURFACE MINING LAW AND PRINCIPLES, basically basing their disputed (to different extents) respective positions on disputed fragments of the surface mining case of *Hansen* that is restricted to SMARA. They never addressed any of our broader Comprehensive Objections based on the indisputable reality that the core of this dispute is not just about distinguishable UNDERGROUND MINING and groundwater-related rights of the overlying surface owners, but the incorrectly ignored, disregarded, and evaded competing constitutional, legal, and property rights and standing of each overlying surface parcel owner above and around the 2585-acre underground IMM that Empire Mine and applicable law declare to be determined on a parcel-by-parcel basis bases on such parcel's boundaries being projected into the earth to define that parcel's mineral rights boundaries for competition between the surface owner and the underground miner. Clearly, that raises many issues never addressed by Rise or (at least in public) by the County team, despite them having been consistently asserted at every permitted opportunity by Comprehensive Objections, especially those cited to herein (including the extensive Exhibits).

For example, each overlying surface parcel owner above and around the 2585-acre underground IMM owns a first priority right to the groundwater under the surface of that parcel, as proven by a long line of controlling California case law explained in Exhibit D (e.g., *City of Barstow and Pasadena*), but the disputed EIR/DEIR claims Rise can dewater that groundwater (Rise does not own) 24/7/365 for at least 80 years and flush it away down Wolf Creek (after disputed purported treatment) and, even worse, the Rise Petition (at 58) claims it can dewater and otherwise mine as it wishes anywhere in such disputed "Vested Mine Property" "without limitation or restriction." Also, such overlying surface owners have paramount rights to subjacent and lateral support to prevent subsidence (even by depletion

of the groundwater support), as explained in Exhibit D (e.g., *Keystone. See Marin Muni Water).* Nowhere does the disputed EIR/DEIR or the related Rise or County record respond to any of those realities as CEQA requires with "common sense" and "good faith reasoned analysis" (e.g., *Gray v. County of Madera, Vineyard, Banning,* et al), and they fail to explain what happens when such dewatering is prohibited or when the dewatering or mining stops for any of many foreseeable reasons, including Rise's lack of financial resources admitted in Rise's SEC filing. See, e.g., Exhibit G, ESPECIALLY SEE THE RISE "RISK FACTOR" DISPUTED IN EX. G #II.B.25, WHERE RISE EXPLAINS HOW IT MAY USE THE GOVERNMENT OR COURT SOMEHOW TO FORCE SURFACE OWNERS TO SUFFER RISE'S USE OF SUCH OBJECTORS' OVERLYING SURFACE PARCELS TO SUPPORT RISE'S SUCH UNDERGROUND MINING. What is surprising to objectors is why the County team should feel bullied by Rise's meritless litigation threats as to "takings," "# 1983 Etc. Claims," etc. when the real exposure of the County would be for accommodating Rise's such inverse condemnations, nuisance, trespass, and other threats that only objectors address in Comprehensive Objections. In any case, even as to the surface mining disputes, the Comprehensive Objections must prevail, such as *Gray v. County of Madera* proved by rejecting the surface miner's EIR and well water mitigation proposal with precedents and controlling standards that Rise does not and cannot ever satisfy, even if it could somehow afford to do anything material of its proposals. See, e.g., Exhibit G.

I. Introductory Comments on How This "Petition/Objection" Both Updates Previous Comprehensive Objections And Renews Requests For Equal And Proper Accommodations For Objectors in the Disputed County Process That Has (So Far) Disproportionately Accommodated Rise, Despite Rise's Disputed Claims To Be The Victim of "Bias, Etc." With Threats of "#1983 Claims" That Appear To Be "Bullying" the County Team.

A. An Overview And Preview of Coming Attractions For Context And Some Useful Definitions And Guidance.

1. Objectors' "Comprehensive Objections" Must Be Allowed To Expand And Update Broadly, So That Objections To Each Expanding And New "Rise Reopening Claim" Can Correspondingly Be Comprehensively Rebutted, A Result Required For Our Competing, Constitutional, Legal, And Property Rights That, So Far, The Disputed County Dispute Process Has Not Properly Allowed For Objectors, But Only And Disproportionately For Rise.

a) Some Examples of How This Petition/Objection Relates To And Updates the Existing "Comprehensive Objections, And This Is An Update And Supplement To the "Prior Ind 254/255 Objections" That Merges In Objectors Related Objections To the Rise Petition For Vested Rights To Defend Against Certain Disputed Rise Tactics.

This **"Petition/Objection"** applies to both (i) the upcoming February 15-16, 2024, **"Board Hearing"** for whatever objectors are permitted to dispute about the EIR and any Use Permit or

other Rise applications for permits or approvals (all collectively described as the "**EIR/DEIR")** within the objectionable County process limits expected to continue to apply and that we challenge herein, and, in order for our record to be more complete for our "**Comprehensive Objections**" than that incorrect County process may permit, (ii) to objectors' broader "EIR/DEIR" and other "**Rise Reopening Claims"** disputes described below that objectors contend are relevant and important to enforce and defend our competing constitutional, legal, and property rights. At the broadest level every "Comprehensive Objection" applies to every "Rise Reopening Claim." (The definitions for terms used herein correspond to those in the existing Comprehensive Objections, except as updated to include all amendments, revisions, and supplements such as this Petition/Objection and its Exhibits. Such Exhibits hereto supplement and clarify definitions and concepts explained in this main text, and vice versa.) That means objectors dispute and do not accept any of the ways that the disputed County process disaggregates or separates "Rise Reopening Claims" into objectionable fragments. Those objections apply for all the reasons demonstrated in the various Comprehensive Objections, but especially because Rise is rarely consistent, often objectionably telling different, inconsistent, and contradictory Rise "stories" for each occasion, issue, or filing with the County or other governmental authorities (including the SEC in filings like Rise's most recent "2023 10K" exposed in Exhibit G, which shows how Rise tells its investors and the SEC things that do not reconcile with various Rise Reopening Claims.) See, e.g. Exhibits E and F, including Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235 and "***City of Richmond,"*** where the court rejected Chevron's EIR because of inconsistencies and contradictions with Chevron's SEC filings. Consider, for example, Exhibits E and F, which do not just refute each of the material Rise Petition Exhibits, but also prove contradictions and inconsistencies between the Rise Petition and the EIR/DEIR. Other Comprehensive Objections, such as Prior Ind. 254/255 Objections, prove inconsistencies and contradictions among the various Rise EIR/DEIR filings (e.g., DEIR vs EIR vs Use Permits etc.) and even within the same Rise filing. Id.

The Comprehensive Objections must be further updated to address the coming County Staff Report to the Board regarding the EIR/DEIR hearing issues expected shortly before the hearing. Rather than delay this filing to respond to that staff report, we act now so that these concerns can be fully evaluated before the hearing, in probably vain hopes of a reformed approach by the County team in objectors receiving an improved chance to battle Rise on more equal terms as we proposed before in Exhibit C. Whatever further responses are filed should be also incorporated herein as part of the Comprehensive Objections.

By incorporating all Comprehensive Objections to rebut all Rise Reopening Claims, this Petition/Objection especially incorporates and renews objectors' previous **"Objectors Petition For Pre-Trial Relief, Etc." attached as Exhibit C (**relating especially to the disputed Rise Petition and vested rights issues), because the same issues (plus more new ones now) seem probable to exist here as addressed in that previous objectors' challenge to the similar County process for the Board's consideration of the disputed Rise Petition for what Rise incorrectly exaggerated and called "vested rights" (and we call part of the comprehensively disputed "**Rise Reopening Claims").** See also the incorporated "EIR Ind. 254/255 Objections" described below disputing the EIR/DEIR and the similarly incorrect procedure followed for the prior Planning Commission Hearing as also contested in that Exhibit C petition. Based on that foundation and supplemented by each further Comprehensive Objection, this Petition/Objection (together with

some companion objections for this EIR Board Hearing) updates and expands the existing Comprehensive Objections regarding the EIR/DEIR (e.g., the Prior Ind. 254/255 Objections) as to everything subsequent to the last reference objection before the Planning Commission Hearing, which was the last occasion when the disputed County process (also incorrectly separating the EIR/DEIR process from the Rise Petition process, although they are all part of the same Rise Reopening Claims dispute process from objectors' perspective, and we contend the applicable law, as Rise may confirm when its threatened, meritless litigation against the County team is asserted without regard to the County's fragmented divisions of such integrated issues.) These dynamics are described in more detail below for application to all Comprehensive Objections, but the core reality is that objectors assert Comprehensive Objections to dispute comprehensively every Rise Reopening Claim, however it may be fragmented or separated by any County team process, including because each such filing, presentation, or communication by or for Rise has the same disputed objective of reopening the same mine, whether it is called the **"IMM"** or "**Centennial"** (objectors' preferred terms, the **"Vested Mine Property"** (Rise's latest term from the disputed Rise Petition), or otherwise characterized by or for Rise in its various Rise Reopening Claims.

Objectors have previously filed a similar petition denied by the County to allow objectors equal time and opportunities to rebut Rise's case with our at least equal (and we contend to be superior) competing constitutional legal and property rights. **Exhibit D** (our **"Objectors Petition For Pre-Trial Relief, Etc."** previously filed with the County in opposition to the Rise Petition seeking vested rights.) That prior petition is incorporated and renewed in this Petition because it applies as equally to the EIR/DEIR dispute as to that prior vested rights dispute, since (from the perspective of objectors) there is one, integrated master dispute we have against the **"Rise Reopening Claims,"** rather than the separate fragments into which the bullied County has separated and disaggregated these disputes to accommodate the bully Rise. That global consideration of these disputes is especially important because Rise has presented inconsistent and contradictory positions and evidence at each stage in these dispute processes, and even within the same process, as well as worse inconsistencies and contradictions in Rise's SEC filings, especially the **"2023 10K"** filed October 30, 2023, after the September 1, 2023, Rise Petition. E.g., Exhibit G hereto (also addressed in **Exhibit D hereto and prior EIR Ind. 254/255),** each incorporated herein by this reference and citing Rise's SEC admissions to rebut both Rise's vested rights petition and the earlier EIR/DEIR; **Exhibit E and F ("Evidence Objections Parts 1 and 2,"** rebutting the Rise Petition Exhibits, including with the law of evidence that applies equally to the EIR/DEIR disputes, such as because all admissions by Rise can be used to rebut Rise's disputed claims, as illustrated by **Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235. See, e.g., the *City of Richmond* case** (where the court rejected Chevron's EIR based on inconsistencies and contradictions with Chevron's SEC filings.**)**

The existing record in this EIR/DEIR dispute process already contains four objections from objectors also supporting this Petition (incorporating many others' objections), which are **all** incorporated herein and **called collectively** "**Prior Ind. 254/255 Objections,"** which also included some objections to the "County Staff Report" to the Planning Commission and to the "County Economic Plan;" i.e., the "**EIR Ind 254,"** and the "**DEIR Ind 254" (**together collectively called the **"Ind 254 Objections");** and the "**EIR Ind 255"** and the "**DEIR Ind 255"** (together collectively called the **"Ind 255 Objections"),** which are further identified in the Exhibits here to

or exhibits to such Exhibits (such as the most recent **"Overlying Surface Owners Rebuttal Exhibit D,"** providing an updated and detailed list of the Comprehensive Objections and especially focusing on the first priority groundwater rights of overlying surface owners above and around the 2585-acre underground IMM. See, e.g., ***City of Barstow and Pasadena*** (discussing each overlying surface owner's first priority rights in groundwater beneath his or her parcel against underground "appropriators" like Rise, applying the *Empire Mines* precedent that determines underground mine boundaries based on surface boundaries projected into the earth.); ***Keystone* and *Marin Muni Water*** (discussing each surface owner's rights to subjacent and lateral support from the underground beneath and adjacent to prevent subsidence, including as the US Supreme Court explained in Keystone to the support from the groundwater); and ***Gray v. County of Madera*** (discussing in detail in the EIR surface mining context how the kinds of mitigations propose by Rise in this EIR/DEIR cannot meet the requirements for true equivalence imposed by the court to assure that such impacted well owners are not prejudiced by the miner's depletion of their groundwater.) As discussed in that Exhibit B, Rise proposes wrongly to deplete that groundwater by 24/7/365 dewatering for at least 80 years, creating another reason for standing and rights for such overlying surface owners, as described below.

b) Some Key Definitions And Relationships To Reconcile Such Updates With the Terms of Such Other Existing Comprehensive Objections Incorporated Herein, Including How Some Terms Anticipate Predicted Events And Issues.

Thus, **"**objectors" continue to contend in our **"Comprehensive Objections"** that all such objectors with consistent positions in this and other (what objectors consider to be) related County proceedings (collectively the **"objectors"** or similar pronouns like **"we," "our,"** or **"us")** have (and must be permitted)_at least equal (and we contend sometimes superior) competing US or California constitutional, legal, and property rights and defenses both to dispute **all "Rise Reopening Claims"** every time **any** of them are asserted in any County process by or for Rise, regardless of how the County team may choose to separate or disaggregate such processes in ways objectors resist or dispute. [Unless the context is clear that the reference to "objectors" is more limited (e.g., as only to signers of a Comprehensive Objection, as distinguished from those who may support it at any time in various ways), there may be a limiting adjective placed before the word "objector(s)." Otherwise, references to "objectors" include not only those signing any Comprehensive Objections, but also those who join in or share any such concerns, especially, for example, in the context of any dispute as to any **"use," "component,"** or **"parcel"** above or below the **"surface"** (as applicable for each Rise or County dispute, such as, for example, allowing overlying surface owners above the 2585-acre underground IMM to protect as the "surface" in disputes regarding what is permitted in such underground property called part of the "surface" before the mineral rights reserved in any deed to a parcel begin, often 200 feet in this case.) It is common for victim creditors to form ad hoc groups under Bankruptcy Rule 2019 to protect their interest and enforce rights in such situations, including to share and protect privileged attorney-client work product within such a "joint defense/enforcement group." For example, as explained in Prior Ind 254/255 Objections, those with consistent interests and concerns can join in any or all of these Comprehensive Objections, and there is in formation an

"Ad Hoc Mine Opposition Group" for which some also may act should that become necessary or useful. Some may exercise the right for that group to act from time to time in relevant proceedings as it deems useful. Therefore, that group can also be an objector with respect to Comprehensive Objections. What that will involve for that group will depend on the results of these EIR/DEIR and other Rise Reopening Claim disputes and the disputed actions or omissions by or for the miner in the dispute processes to come.

The disputed County processes continue to allow Rise to surprise objectors (who have no permitted rebuttal opportunity besides a three-minute public comment) with massive Rise and "enabler" additions to the record present Rise's scripted case, oral, and other expansions of Rise's and enablers' records at each hearing for hours without limitations apparent to objectors. Meanwhile, objectors' are consistently denied any right to rebut that expanded record at or even after the hearings, and objectors are never able to effectively counter the many errors, omissions, and worse so added to the record by or for Rise or its "enablers" (or errors, omission, or other objectionable positions added to the record by the "bullied" "County team" accommodating or enabling disputed Rise positions), all free of our desired but silenced objections and rebuttals (apart from an incorrectly limited and grossly inadequate three-minute per person "public comment"). That (like other such wrongs and disproportionate favoritism for Rise addressed in Exhibits A and B) denies objectors' constitutional due process, equal protection, and the right to redress their grievances. See, e.g., Exhibit C, which we incorporate for making that same objection regarding the prior Rise Petition, and below. [The **"County team"** broadly refers to the County, the County Planning Commission, the Planning Department, the Community Development Agency, or other relevant departments or agencies as an entity, the Board of Supervisions, any County employees, staff, officials, or relevant consultants, agents, or contractors. Rise "**enablers"** includes anyone who directly or indirectly knowing, unconsciously, or otherwise supports any disputed Rise claim contrary to any Comprehensive Objection, such as, for example, the EIR/DEIR or County Economic Report authors and contributors who either incorrectly assumed they could accept such disputed Rise claims, either without applying the legally required "good faith reasoned analysis " and "common sense" or on some other objectionable, incorrect, or worse basis.] Therefore, objectors also here anticipate in this update (including Exhibits) some expected Rise, Rise enabler, or County team future actions that objectors worry that we may not be permitted to dispute effectively in the process, so that our Comprehensive Objections extend to whatever is so added by Rise or its enablers or incorrectly in Rise's favor by the bullied County team.]

The term **"bullying" (**and any variation**) is used broadly in this and other Comprehensive Objections as to any kind of Rise manipulation, whether intended or not, whereby any of the County team (or other Rise enablers) feel coerced or discouraged in any way from correctly and completely doing their jobs fully in the best and proper ways with respect to any of the objectors or Comprehensive Objections. Consider, for example, the grossly disproportionate way that some on the "bullied" County team have knowingly, mistakenly, or unconsciously "accommodated" Rise or its enablers contrary to such objectors' competing rights, such as by facilitating and enabling Rise in these dispute processes, while both (i) ignoring, disregarding, and evading objectors' Comprehensive Objections, proof, and evidence, such as what should comprehensively dispute, rebut, and defeat the disputed EIR/DEIR, the Rise Petition, and other Rise Reopening Claims, and (ii) limiting, evading, or**

preventing the objectors, as equal and indispensable parties-in-interest under applicable law, from the combatting Rise's (or its enablers') errors, omissions, and worse in the County's such discriminatory, deficient, and otherwise objectionable dispute process as to objectors (although the County is providing Rise and its enablers far more than they are entitled to for anything that could be called a satisfactory process or "level playing field.") Stated another way, giving Rise or its enablers more due process or other process than is required would be OK, but only if and when objectors are treated equally and permitted effectively, timely, and comprehensively to rebut, correct, and dispute Rise and such enablers. From objectors' perspective and these Comprehensive Objections, objectors do not ascribe wrongful intent to Rise, its enablers, or the County team, because objectors do not need to prove wrongful motivation, intentionality, or culpability to prove objectors' Comprehensive Objections. Such bullying of the County team (or some enabler) or such denial of due process, equal protection, or right to redress of grievances is wrong and objectionable, even if, for example, the actor imagines that he or she only intended to enforce or exercise "alternate reality" rights that (as here) don't exist. The impact on the County (and on objectors) is the same whether or not Rise believes it is doing right or wrong in its such threats of meritless litigation, incorrect accusations of "bias, etc." or other conduct imagined to support "# 1983 Etc. Claims," and whether or not any on County team realizes how he or she is wronging objectors to so "accommodate" Rise to our disproportionate prejudice.

The term **"bias etc."** (and its variations) is used herein broadly as to any kind of misconduct so alleged by Rise against any of the County team claiming to be such a "victim" in connection with any part of the Rise Reopening Claims process. As noted above, Rise cannot possibly be the victim in this **"zero-sum game or contest"** of Rise versus the objectors, because some on the County team have been, instead, incorrectly ignoring, disregarding, and evading objections as if objectors were merely inconsequential public commentators. As illustrated in Exhibits A and B, objectors are the objectively obvious victims being deprived in the County processes of our competing constitutional, legal, and property rights, the effect of which should be to defeat all the Rise Reopening Claims with our Comprehensive Objections. See Exhibit A ("Objectors Are The Victims, Not Rise"), Exhibit B ("____"), and Exhibit C ("Objectors Petition For Pre-Trial Relief, Etc.") The County decision-makers not doing anything wrong against Rise, but instead by denying Rise the County team is doing the right things for objectors entitled by applicable law to that result, especially such **objecting surface owners above and around the 2585-acre underground IMM, who have no counterparts in the inapplicable, deficient, and misread Rise cited surface mining authorities.** The fact that the County staff (or some enabler) was too "accommodating" to Rise (and too objectionable in their treatment of objectors), for whatever reason, does not make the contrary, correct but too narrow (and too deficient for objectors' meritorious Comprehensive Objections, evidence, and proof) decisions of the County decision-makers wrong as to Rise or its enablers.

To be clear, objectors blame Rise and its enablers, not the County team, for this unsatisfactory, continuing situation, even if Rise or some enabler incorrectly believes in its meritless rights and claims. Consider a simple example, when a potentially dangerous bully swaggers down the sidewalk, as if such bully were the only entitled user of the sidewalk, ignoring the fact that such conduct consequently forced oncoming walkers into the high risk, busy street. Such a bully may or may not be oblivious to or intending such consequences (or

may consider himself or herself entitled to exclusive use of the sidewalk next to the dangerous, high-speed street into which the bully drives the oncoming walkers.) The cop on the corner "beat" may incorrectly disregard that problem without considering himself or herself intimidated or failing in his or her duty to keep the peace with equal rights for all. But victims who are forced from the sidewalk into such street traffic are entitled to at least equal rights (and would prefer to compete against the bully than against the cars racing down the street.) The impact on such victims of any such unintended or intended objectionable conduct, whether by the enabling cop or the bully is the same in any such case, whatever their reasons or states of mind. For purposes of defeating Rise's Reopening Claims and DEFENDING the County team, so that they dare to do their jobs, the threat and intimidation is no less, whether Rise is intentionally "playing the victim" as an objectionable tactic, or whether Rise mistakenly believes in the merits of its "alternative reality," or whether there is some other explanation for causing such suffering.

In each such case, the intimidating impacts on the County team are the same in each such case, as are the consequences on objectors of the County team or Rise enablers "accommodating" Rise and, thereby, mistreating objectors in this "zero-sum game," where Rise's "gain" is objectors' "loss." Thus, objectors are focused on their self-defense in stopping such violations of objectors' at least equal (and often superior) competing constitutional, legal, and property rights. Hopefully, as a necessary consequence of such self-defense, objectors' defense of their rights will also defend the County team, so that they can do their jobs correctly to begin achieving the right and correct results for everyone (e.g., responding correctly to the Comprehensive Objections), without the risk of being inhibited by fear of Rise's meritless threats or embarrassment at Rise enabler mistakes. Thus, by proving the Comprehensive Objections, objectors thereby defeat all the Rise Reopening Claims, including the disputed EIR/DEIR (including the Use Permit) now at issue, while consequently proving that Rise is not a "victim" and has no meritorious claims against the County team, whether for "bias, etc." or "#1983 Etc. Claims." Whatever Rise's intentions in such conduct of "playing the victim," it is natural for the County team to feel intimidated by the threats, which such presumed targets (and objectors competing for equal treatment from such County team members and being consistently disappointed) assume is likely a meritless attempt to posture Rise as like the distinguishable **surface** miner model in the inapplicable, disputed *Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist.* (6/8/2016), 2016 US Dist. Lexis 75552, (E.D. Cal.), mod. by on 2016 US Dist. Lexis 78852 (6/15/2016) ***(the "6/15/2106 Hardesty2 Modification" and, with that modified case, called "Hardesty2 Summary Judgment"),*** and together with the also inapplicable, distinguishable, and disputed follow-up, post-trial decision ("**Hardesty2 Final Order"),** 307 F. Supp.3d 1010 (E.D. Cal. 2018) (collectively called "**Hardesty2"). While we address some aspects of Hardesty2, this EIR hearing is not the occasion for a full briefing on those issues, so we just mention enough here to prove some relevant points among many that distinguish that case from this one.** [Objectors note that a *different*, depublished "*Hardesty* "case, involving a different mine, facts, and defendants, was discussed earlier in the administrative record by objectors and mentioned by the County's counsel at the prior Board hearing, which is why we call the Rise model "Hardesty2" to distinguish between the case aggressive miners like versus the one everyone else likes.)

Exhibits C—G incorporate herein a variety of Comprehensive Objections to the disputed **"Rise Petition"** and all the other Rise or Rise enabler filings, presentations, arguments, or other assertions by or for Rise in any way related thereto, as any of the same may be amended, supplemented, or otherwise changed at any time and from time to time by or for Rise (**all collectively** called the **"Rise Petition"**). While those involve disputed claims for what Rise incorrectly calls "vested rights" of disputed kinds, nature, or character, whether as used correctly at law or used incorrectly by or for Rise, the "**Alt 2 Letters"** from Rise counsel rebutted near the end of this Petition/Objection follow that same disputed pattern of incorrect or worse allegations against the County team, as do the other Comprehensive Objections to the EIR/DEIR (including the Use Permit). All such meritless Rise litigation threats or other objectionable process, procedure, or proceeding seem to share the same assumed Rise goal of incorrectly asserting that Rise has been denied its disputed constitutional, legal, and property rights by the County team and otherwise has been mistreated in ways that are collectively assumed any such vested rights by or for Rise, apparently for "bullying" leverage that objectors dispute because we objectors are the victims' whose competing constitutional, legal, and property rights against Rise have been denied, ignored, disregarded, or evaded by the County team. See, e.g., Exhibits A and B comparing Comprehensive Objections versus any disputed Rise **"#1983 Etc. Claims"** imagined based on disputed ***"bias, etc."*** claims threatened by Rise to "inspire" apparently some intimidated County team members into "accommodating" Rise incorrectly in various grossly disproportionate ways compared to the objectors. E.g., the Alt 2 Letter disputes near the end of this Petition/Objection and Exhibits A and B.

Presumably Rise's such threats follow the disputed and inapplicable model followed by the **surface** miners asserting disputed vested rights in ***Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist.,*** **307 F. Supp.3d 1010 (E.D. Cal. 2018),** exploiting apparent mistakes and ambiguous conduct by the defendant county team as a basis for successfully somehow convincing a jury there was $105 Million worth of serious misconduct in allegedly both denying those disputed vested rights and violating various miner constitutional rights that allegedly put the miners out of business **("Hardesty2 Jury Order"),** following the earlier ruling denying summary judgment to the Sacramento County defendants, so that the jury could hear those "#1983 Etc. Claims," at 2016 US Dist. Lexis 75552, (E.D. Cal. 6/8/2016), mod. by 2016 US Dist. Lexis 78852 (E.D. Cal. 6/15/2016) (*called* ***"Hardesty2 Summary Judgment",*** and together with that post-trial decision (all collectively called "**Hardesty2")**

Such final decisions of the Planning Commissions and Supervisors cannot be impeached by Rise citing parts of the staffs' reports or opinions, because objectors have no less constitutional, legal, and property rights than Rise (and we contend superior rights) and because any such disputed opinions of County staff in favor of Rise that ignore Comprehensive Objections and are entitled to no more legal effect than those of such disputing objectors. See ***Fairfield*** and Exhibit A. (In effect, Rise acts like the County team staffers who accommodated Rise in the disputed EIR/DEIR, Rise Petition, and related staff reports gave Rise some rights somehow (which they have no legal power to do, especially in disregard of our Comprehensive Objections) that somehow those elected officials are allegedly taking away from Rise. The reverse is true. Instead, such "accommodators" of Rise were denying objectors' our at least equal, competing, constitutional, legal, and property rights that the County officials correctly, if insufficiently, recognized to be the meritorious positions, even though too narrowly for proper

treatment of our Comprehensive Objections in more comprehensively, broadly, and strongly defeating Rise.)

Unfortunately, compared to objectors, so far, Rise has been too often incorrectly "accommodated" too much (and grossly disproportionately) by the County team for whatever reason, not too little. By trying to be more than "fair," generous, and "accommodating" to Rise, some of the County team have been objectionably unfair and worse to objectors, as detailed in Exhibit A, explaining why objectors, not Rise, are the "victims" here. What matters is the County and the courts doing "right" in this dispute, and the reality is that objectors are right and Rise is wrong, as proven by the Comprehensive Objections too often have been disregarded, ignored, or evaded by some on the County team in favor of "accommodating" Rise. Note that Rise itself does not rebut most of the Comprehensive Objections, thus preventing Rise from attacking later in the next stages in these dispute processes what Rise has so ignored, disregarded, or evaded. As to the County team's disputed "accommodations" for Rise and disputed EIR "Responses" and "Master Responses," consider, among other Comprehensive Objections, Prior Ind. 254/255 Objections, which rebut item by item each such "Response" and "Master Response" because, among other things, they often incorrectly ignored, disregarded, evaded the objection, rather than attempting any serious counter on the merits with what CEQA requires as a matter of "common sense" (e.g., Id., including *Gray v. County of Madera*) and with a "good faith reasoned analysis" (e.g., Id., including *Vineyard, Banning, Costa Mesa,* etc.)

Rather than try to correct everything in a court process later, objectors sometimes have predicted objectionable events, claims, or problems from the history of these disputes, from threats, admissions, or hints from Rise, or from deductions other relevant data (e.g., Rise SEC filings). Some events are likely, such as the County team continuing incorrectly to treat these disputes as separate two-party disputes in which objectors' Comprehensive Objections can incorrectly be made inconsequential and disproportionately limited, restricted, or disregarded, contrary to objectors' constitutional, legal, and property rights for equal treatment to Rise and the County staff in these multi-party disputes. Other events may be harder to predict with accuracy, such as the meaning, substance, and effects of various Rise threats and various County team "accommodations." If objectors are inaccurate in any such prediction objectors apologize for our suspicions being inaccurate but nevertheless the reasons for such suspicions still merit objections because the objectionable circumstances would have allowed such harms to befall objectors. Therefore, consider any such incorrect prediction as a mere hypothetical worry that still needs to be considered as a Comprehensive Objection because that prediction illustrated a threat to objectors that was proper to dispute in self-defense to combat that possibility and to illustrate as a hypothetical the correctness of the Comprehensive Objection to prevent such hypothetical events from occurring.

2. Rise Cannot Successfully "Play The Victim" of Non-existent "Bias, Etc." In Disputed "#1983 Etc. Claims," When The Disputed County Processes Obstruct Objectors From Defeating Rise With Our Comprehensive Objections.

As discussed herein and Exhibits A and B, Rise has made various disputed litigation threats and accusations against the County team (and some others) and other clues exist,

implying, among other things, that Rise may assert disputed **"#1983 Etc. Claims"** on account of incorrectly alleged **"bias etc."** claims of misconduct by some of the "County team" in the federal District Court in Sacramento. If so, it seems a reasonable deduction from Rise's conduct and communications to assume that Rise may try to follow the disputed and inapplicable ***"Hardesty2"*** model in any such litigation, whether Rise actually believes in those meritless claims (e.g., another feature of Rise's "alternate reality") or whether Rise has some other even less tolerable motivation for intentionally or unintentionally manipulating the County team defendants. However, whether or not Rise pursues that litigation, the County team is likely feeling "bullied" and intimidated by such impacts, threats, burdens, and risks, even though they would appear to be meritless and are certainly inconsistent with the public conduct visible to everyone else, where the County team has grossly and disproportionately favored the undeserving Rise throughout the County processes addressing Rise Reopening Claims compare to the reciprocal mistreatment of objectors and their Comprehensive Objections. See both **Exhibit A**, explaining how some bullied County team members have denied objectors our competing constitutional, legal, and property rights in favor of being much too "accommodating" to Rise, as if such County team members were "appeasing" the Rise bully, whether or not among of them realized or intended such things; and **Exhibit B,** explaining how the many "bias, etc." and # 1983 Etc. Claims lack merit, credibility, and reality as some "alternate reality" that cannot co-exist with the actual facts, especially those with which they conflict in **Exhibit A.** In any event, the resulting impact of whatever is going on is an unacceptable denial of objectors' competing constitutional. legal, and property rights to defeat all the Rise Reopening Claims with all our Comprehensive Objections, whatever meritless reasons or motives of Rise or whatever excuse any such County team member may have for so disregarding, ignoring, or evading such objections in so disproportionately, incorrectly, and objectionably favoring and "accommodating" Rise and thereby causing such prejudice to objectors.

Apart from the Alt 2 Letter rebuttals herein, objectors use Exhibits A versus B to compare and contrast how the County team has treated objectors much worse than Rise and, while almost always accommodating Rise, the County team has not permitted opportunities for our full range of our broader opposition against Rise for our Comprehensive Objections that rebut the disputed Rise Reopening Claims, even those meritless Rise claims of "bias, etc." (e.g., Exhibit B and Rise's Alt 2 Letters) that seem to be setting up meritless "# 1983 Etc. Claims" that cannot co-exist with such Exhibit A realities impeding objectors from such full and equal participation required by applicable law in these multi-party disputes against Rise and its enablers. There are many reasons for objectors shifting the details of such disputes from this main text to Exhibits A and B, but one is that while such details may be legally important putting that mass of data in Exhibits seems less distracting for readers who are focused on other parts of these disputes. Therefore, in this text we just illustrate such points with the Alt 2 Letter rebuttals and invite further detailed and broader analysis in such Exhibits. Either way, this reality cannot reasonably be ignored: If Rise were right about any of its disputed "bias, etc." or "# 1983 Etc. Claims" instead of accommodating Rise and ignoring, disregarding, and evading objectors and our Comprehensive Objections, the County would have enable us to be a full and equal participant in these multi-party disputes consistent with applicable law so that objectors could defeat so Rise ourselves as we have been consistently trying to do in self-defense of our competing

constitutional, legal, and property rights with such Comprehensive Objections that Rise and its enablers have ignored, disregarded, and evaded.

Perhaps by expressing these concerns and adding Exhibits A and B proof rebutting Rise's disputed claims and accusations against the County team, objectors can prevent more suffering from further such denials of objectors' competing constitutional, legal, and property rights in these disputed Rise Reopening Claim processes. **Therefore, since there can be only one such "victim" not receiving proper treatment from the County team, objectors prove our case for so adding to the Board Resolutions for this EIR/DEIR dispute and the other Rise Reopening Claims disputes, enhanced, broader, and more comprehensive and better evidences and proven findings of fact and conclusions of law consistent with our Comprehensive Objectives and our constitutional, legal, and property rights proven.** By any fair comparison of our objectionable treatment by County team versus their competitive, far "more than fair" treatment of Rise, it is indisputable that we are the victims—not Rise, who seems to be focused on incorrectly "playing the victim" and "intimidating the referee" so that he or she fails to call the Rise "fouls" against objectors on the opposite team with irreconcilable rights, interests, and claims to often so ignored, disregarded, or evaded. Stated another way, objectors wish the County team to feel "safe" to do their jobs "fairly" and "right" for all parties-in-interest without fear of Rise "bullying" or other abuse.

Objectors' competing self-defense, rights, interests, and property should benefit if objectors are allowed to prove each of our Comprehensive Objections that exist or those to come as additions when objectors are finally allowed all of the constitutional, legal and property rebuttal rights were denied rebutting all of the Rise cases in these incorrectly fragmented and managed dispute processes. See, e.g., Exhibit A, exposing the incontrovertible facts of how Rise (and its County staff enablers) have consistently imposed an unconstitutional and objectionable dispute process system in which (and objectors dispute): (a) Rise has been unfairly allowed to present and use at each Planning Commission and Board of Supervisors hearing whatever Rise wanted without any opportunity for objectors to rebut it (apart from a three-minute per person "public comment" as to which the County rules limited and censored the scope and content of such rebuttal); (b) Rise has been able to answer questions from and make arguments to the Planning Commissioners and Supervisors at such hearings without any equal or other opportunities for rebuttal or counters by objectors; (c) the County staff has presented their often incorrect and pro-Rise comments at such hearings without any equal or other opportunities for rebuttal or counters or corrections by objectors, and, worse, such staff reports, comments, and presentations (like Rise's) ignored, disregarded, and evaded all of objectors Comprehensive Objections as if they were inconsequential; (d) the County Commissioners and Supervisors did not allow objectors to address their questions or comments as Rise and the staff were allowed to do; (e) the result was that the record of these disputes for appeals contain massive amounts of new, incorrect, and otherwise objectionable matter added by both Rise and the County staff to which no response or rebuttal from Objectors was allowed, and (f) objectors still do not have access to any transcripts of those additions to cite, and the visual presentations are still not in the County's public record for access. As a result, because Rise and the staff's ignoring, disregarding, and evading the Comprehensive Objections and there being no effective or meaningful rebuttal allowed for objectors to rebut Rise and correct the staff, the County not only denied objectors' constitutional (e.g., procedural and substantive due process, equal

protection, right to petition for redress of grievances, etc.), legal, and property rights, but (at least in public) the Commissioners and Supervisors were not even presented with our Comprehensive Objection law, evidence, and contentions, and the comparative and competing official record for objectors were not allowed to be comprehensive against Rise and to fully correct the staff. Thus, when the Board Resolution (like the Planning Commissioners' recommendations) ignored our such Comprehensive Objections and what we would have added in opposition to Rise and corrections to the County staff, if objectors had been allowed to do so as the applicable law required, the result would have been better and the defeat of Rise on the merits more comprehensive in providing the more comprehensive protections needed for objectors' constitutional, legal and property rebuttal rights.

3. A Hypothetical For Rebutting the Denial of Such Constitutional, Legal, And Property Rights of Objectors, Especially Those Overlying Surface Owners Above And Around the 2585-Acre Underground IMM, by Translating The Rise And (At Least In Public) County Team Disputes Into A More Familiar Judicial Context.

While the narrow County Board Resolution based on narrow findings correctly denied some Rise Reopening Claims of concern to the County, that Resolution did not address as required the Comprehensive Objections, much less the additional objections we would have added if allowed that were (and continue to be) of great concern to objectors. While the Commissioners and Supervisors can be assumed to have become familiar with the massive record that included thousands of pages of Comprehensive Objections (E.g., *Fairfield* and similar cases), when and if Rise carries out its meritless litigation threats claiming to be the "victim" of "bias, etc." and the basis for any "#1983 Etc. Claims," how is that court supposed to even know about even our Comprehensive Objections in that massive record that would defeat every Rise Reopening Claim on the merits and, thereby, also defeat Rise's meritless claims against the County team, since when objectors' defeat such Rise alleged constitutional, legal, and property rights Rise cannot blame the County team for violating such non-existent rights. Consider this hypothetical, the kind of law school professor's exam question that most lawyers remember long afterward:

(1) **Assume** the following context that: (a) this Rise Petition dispute was instead held in a nonjury, local state court, quiet title action (for these purposes by analogy a hypothetical dispute then "ripe," as distinct from the current dispute not yet "ripe" for such litigation) launched by a Rise complaint like the Rise Petition (at 58) claim that Rise's disputed vested rights entitled it to mine as it wished anywhere in the disputed "Vested Mine Property" (including what we call "Brunswick," "Centennial," and the "2585-acre ***UNDERGROUND*** mine" beneath objecting and nonconsenting overlying surface owners) "without limitation or restriction;" (b) the County was a party defendant and cross-complainant to protect what it wanted of the relevant public rights at stake threatened by the Rise mining, and (we add a hypothetical judge acting for comparison to the current dispute in place of the County now in its adjudicatory capacity); and (c) the impacted objectors in the local community

answering with comprehensive affirmative defenses and cross-complaints for enforcing the Comprehensive Objections, especially those objecting overlying surface owners owning parcels above and around the 2585-acre underground IMM, each asserting a first priority groundwater rights of overlying surface owners above and around the 2585-acre underground IMM and for subjacent and lateral support, all violated, for example, by Rise's plan to dewater the mine 247/365 for at least 80 years and flushing such groundwater away down the Wolf Creek with illusory and disputed mitigation (after deficient treatment in a disputed water treatment plant for which there could be no vested rights even under *Hansen* citing *Paramount Rock*). See, e.g., ***City of Barstow and Pasadena*** (discussing each overlying surface owner's first priority rights in groundwater beneath his or her parcel against underground "appropriators" like Rise, applying the *Empire Mines* precedent that determines underground mine boundaries based on surface boundaries projected into the earth.); ***Keystone*** and ***Marin Muni Water*** (discussing each surface owner's rights to subjacent and lateral support from the underground beneath and adjacent to prevent subsidence, including as the US Supreme Court explained in *Keystone* to such support from the groundwater); and ***Gray v. County of Madera*** (discussing in detail in the EIR **surface** mining context how the kinds of mitigations propose by Rise in this EIR/DEIR cannot meet the requirements for true equivalence imposed by the court to assure that such impacted well owners are not prejudiced by the miner's depletion of their groundwater.)

(2) **Assume** that the judge (by analogy the County in its adjudicatory capacity) granted the County's motion for summary judgment as to its narrow claims and defenses, and denied the corresponding Rise defense, without either Rise or the County addressing the Comprehensive Objections in the objectors' defenses and cross-complaints parts of the case. Worse, assume that the court had limited the hearing on summary judgment to Rise and the County, allowing objectors to file objections to Rise and corrections against the County team but disallowing the objectors either (a) to participate in the County/Rise limited hearing (apart from a three minute per person limited comment with restricted content and scope), or (b) respond to the reply briefs of Rise or the County or the additional evidence and argument added at or for the hearing to the record; in other words, the objectors were also refused (over their objections) the right to supplement their record to counter the added record, briefing, evidence, and oral arguments supplemented by Rise and the County. Further, assume that the court then dismissed that entire quiet title case based on the County's motion based on that court's limited statement of decision or finding of facts or conclusions of law that ignored, disregarded, and evaded the many different legal and factual issues and evidence that were uniquely raised only by those objectors and were never addressed by the summary judgment issues of law or fact or evidence that only concerned (i) the Rise that objectors had comprehensively disputed, refuted, and disproved (until the court closed the record to the objectors), and (ii) the County's narrower and less evidenced case that objectors corrected and supplemented as useful to the objectors far broader case involving legal, factual, and evidentiary issues that proved the objectors' separate

and independent from the County constitutional, legal, and property rights cases. For example, among those unaddressed disputes was that Rise's claimed the right to deplete each such overlying surface owner's groundwater beneath his or her surface parcel (e.g., such Rise Petition claim at 58 to so mine as it wished throughout the "Vested Mine Property" "without limitation or restriction," whatever that means, i.e., a strategic ambiguity that objectors also dispute), all of which was comprehensively disputed by Comprehensive Objections asserting objectors' unaddressed, competing, constitutional legal, and property rights that must prevail regardless of the County's fate in the litigation. Thus, the objectors never had their "day in court" on their Comprehensive Objections and were thereby denied substantive and procedural due process, equal protection, the right to petition for redress of their grievances, etc.; and (finally)

(3) **Assume** that Rise goes "forum shopping" by filing an objectionable 42 USC #1983 suit (requesting a jury) in the Federal District Court against the County team, based on the inapplicable and distinguishable surface miner's model in ***Hardesty2,*** where Rise asserts various kinds of "bias etc." and other "#1983 Etc. Claims" (See Exhibit A, where objectors rebut such claims in the process of enforcing and defending their own Comprehensive Objections.) In that action Rise "plays the victim" seeking to relitigate those Rise Reopening Claims before a jury (following that *Hardesty2* model because to prove a violation of a vested right or other constitutional right the alleged victim has to first prove it has such a right to be violated and continues to ignore the objectors and their Comprehensive Objections and grievances. Even though their Comprehensive Objections, rights, and evidence have been so ignored, disregarded, and evaded objectors worry that they will later confront disputed and incorrect issue and claim preclusion fights with Rise over everyone somehow (incorrectly) being bound by any decisions that Rise may (incorrectly) win from the County team, even though under applicable law and justice objectors must still be entitled to defeat Rise on their own, regardless of the fate of the County.

(4) **Questions** (putting aside the many procedural problems by shifting our current disputes to this court-based hypothetical to better illustrate the legal issues muddled by administrative law complications regarding the adjudicatory role of the County): What do the objectors do now, since they are the real "victims" in the County process (Exhibit A) and they need to protect their own rights themselves with their Comprehensive Objections, such as, for example, to prevent mining and dewatering underneath each objectors' overlying surface parcel? (This is one of the problems objectors raise that Rise and the County ignore in their exclusive reliance on surface mining law [e.g., *Hansen and SMARA, where there are no overlying surface owners with competing and at least equal constitutional, legal, and property rights*] that is inapplicable to such underground mining beneath objecting surface owners. This UNDERGROUND mining cannot occur without Rise's threatened, constant, 24/7/365 dewatering and flushing that surface-owned groundwater away down the Wolf Creek. Therefore, there is an irreconcilable conflict that Rise and the County have chosen to ignore, but that impacted objectors keep raising in our Comprehensive Objections. How does that get resolved? Rise claims its disputed rights without

rebutting (just ignoring, disregarding, and evading) such Comprehensive Objections. Therefore, in any local writ process now Rise would have nothing in the record to rebut those Comprehensive Objections and must lose by default (as it would on the merits as well, in any event). But, from what we hear and surmise, Rise apparently wants to "start over" (still without addressing such Comprehensive Objections) in such a Federal #1983 Etc. Claims action against the County team. So, one corollary question is: What happens if and when such surface owners act to protect themselves locally in the usual writ of mandate action?

(5) **Appeal To the Board:** We hope the Board do the right things before more narrow County decisions triggers such "brain teaser" disputes and provide us all with more comprehensive solutions that are consistent with objectors' Comprehensive Objections. Failure to do so means a denial of our competing constitutional, legal, and property rights, and, therefore, must create a result that protects objectors' from any later claims of collateral estoppel or other issue or claim preclusion on account of the County's cases on any Rise Reopening Disputes, because our Comprehensive Objections are not being adequately represented by the County, even though its narrower case should be sufficient to defeat Rise's case.

(6) **EIR/DEIR Impacts:** These Comprehensive Objections and disputes relate to the EIR/DEIR in many ways, but here is one critical impact to address. The EIR/DEIR contemplates dewatering the 2585-acre underground IMM 24/7/365 for at least 80 years, but that involves flushing it away down the Wolf Creek, thereby "taking" the groundwater from, among others, each overlying surface owner who has first priority rights to that groundwater beneath or around his or her parcel (e.g., City of Barstow and Pasadena), which would violate such objectors' competing constitutional, legal, and property rights. See, e.g., Exhibit D, as well as *Varjabedian* and other such inverse condemnation, nuisance, etc. authorities. Since that depletion would be wrongful but is assumed incorrectly by Rise and the EIR/DEIR, no such EIR can be approved without addressing that issue with the common sense required by Gray v. County of Madera and the good faith reasoned analysis required by Village, Banning, and other cases addressed in Comprehensive Objections, such as the Prior Ind. 254/255 Objections. Stated another way, the EIR/DEIR just assumes away all the meritorious Comprehensive Objections with meritless EIR "Responses" and "Master Responses" without ever addressing the impact of such errors, omissions, and other consequences of such false EIR/DEIR assumption, assertions, and claims. What happens then? The EIR/DEIR never addresses anything outside the bubble of its "alternative reality."

In terms of disputed "bias, etc." and alleged misconduct or mistreatment of Rise of any kind by the County team (i.e., whatever the Rise "#1983 Etc. Claims" may be), the only party with meritorious grievances are objectors, not Rise. Exhibit A. Why is the County team still so disproportionately accommodating to the bully Rise, compared to objectors? That answer may be explained by Rise "bullying" the County team with such threats of its meritless "#1983 Etc. Claims," such as by using the controversial and inapplicable here *Hardesty2* case distinguished in Exhibit A hereto. That *Hardesty2* surface miner also used disputed claims of "bias etc." in order

to evade the normal writ of mandate process under state law to attack that Sacramento County team in that more expensive, burdensome, and otherwise intimidating jury trial. Rise "playing the victim" with such similar, disputed "bias, etc." claims could be modeling for a similar forum shopping strategy for such #1983 Etc. Claims for jurisdiction in that federal court. However, from the perspective of such objectors, the County team has been accommodating "almost" everything Rise wants, while generally ignoring, disregarding, or evading most of our Comprehensive Objections that more broadly and thoroughly defeat each Rise Reopening Claim. **That contrast, with the County team incorrectly being too excessively (what it incorrectly calls) "fair" and "accommodating" to Rise, should defeat any such Rise "bias, etc."/victim/#1983 Etc. Claims, which are not even credible, especially because the parties-in-interest working hardest to defeat the Rise Reopening Claims are objectors. If anyone on the County team had any "bias, etc." against Rise and wanted to defeat most effectively any such Rise claims, all such County team parties had to do was allow objectors to have the more fair and proper (to objectors) process we (and applicable law) require, so that objectors could better defeat Rise allowing us to prove our broader, meritorious Comprehensive Objections with our greater evidence and independent standing, regardless of what the County team did or did not do.**

The Comprehensive Objections must prevail on every disputed issue, even if Rise were to somehow incorrectly to defeat the County on any issue in their mistakenly limited two-party disputes that incorrectly to often exclude objectors and ignore, disregard, or evade objectors' constitutional, legal, or property rights. However, instead of supporting (or even allowing objectors to make their case for) the Comprehensive Objections, the County team has consistently, mistakenly, and incorrectly deprived objectors of our competing constitutional, legal, and property rights, as demonstrated in our Comprehensive Objections. Exhibits A-G. In any event, in any rational reality where the rule of law prevails, Rise cannot possibly complain about being the victim of any "bias, etc." from the County team, and there can be no merit to Rise's threatened "#1983 Etc. Claims," which are disproven by Comprehensive Objections, including by an issue-by-issue refutation in Exhibit A of Rise's presumed, inapplicable, and disputed *Hardesty2* model.

4. Objectors' Have Greater And Broader Competing Constitutional, Legal And Property Rights And Standing Than Any Party-in-Interest In Any Authorities Cited By Rise Or the County Team, Especially Objectors' Who Are Surface Owners' Above And Around the 2585-acre Underground IMM, Each Of Which Parcel Owners Has First Priority Groundwater Rights Beneath That Parcel No Only For Existing And Future Wells And Other Uses, But Also For Groundwater For Subjacent And Lateral Support To Prevent Subsidence. See Exhibit D.

a) A Preview of Some of the UNDERGROUD Mining Law And Surface Rights Ignored, Disregarded, And Evaded By Rise And (At Least In Public) the County Team.

"Overlying Surface Owners Rebuttals" (Exhibit D) provide an updated and detailed list of the Comprehensive Objections for the disputed EIR/DEIR, especially focusing on such first priority groundwater rights of overlying surface owners above and around the 2585-acre underground IMM and for subjacent and lateral support. See, e.g., ***City of Barstow and Pasadena*** (discussing each overlying surface owner's first priority rights in groundwater beneath his or her parcel against underground "appropriators" like Rise, applying the *Empire Mines* precedent that determines underground mine boundaries based on surface boundaries projected into the earth.); ***Keystone* and *Marin Muni Water*** (discussing each surface owner's rights to subjacent and lateral support from the underground beneath and adjacent to prevent subsidence, including as the US Supreme Court explained in Keystone to the support from the groundwater); and ***Gray v. County of Madera*** (discussing in detail in the EIR surface mining context how the kinds of mitigations propose by Rise in this EIR/DEIR cannot meet the requirements for true equivalence imposed by the court to assure that such impacted well owners are not prejudiced by the miner's depletion of their groundwater.) As discussed in the disputed EIR/DEIR and earlier rebutted in Prior Ind. 254/255 Objections and others, Rise proposes wrongly to deplete that groundwater by 24/7/365 dewatering for at least 80 years and flushing such groundwater away down the Wolf Creek after purported and disputed "treatment" in a future, also disputed water treatment plant for which vested rights are not legally possible even under *Hansen and Paramount Rock*, thereby creating more reasons for standing and rights for such overlying surface owners, as described below, including by application of *Varjabedian and other authorities against such takings.*

Consider also Exhibit G, in which objectors rebut at #II.B.25 Rise's disputed claim in Rise's "2023 10K" that Rise somehow can use governments and the courts to force overlying surface owners to suffer the use of their surface properties to facilitate the underground mining beneath such surface parcels, presumably including by such disputed dewatering. Fortunately, the courts cannot do that under applicable law (Id. and Exhibit D), and it is hard to imagine the County wanting to give away such surface owner groundwater to Rise. However, what Rise seems to imply and predict is that somehow Rise expects to "bully" the County would improperly, objectionably, and unconstitutionally "take" each such surface owner's groundwater from beneath each parcel above and around the 2585-ace IMM to flush it away down the Wolf Creek 24/7/365 for at least 80 years. Such disputed "takings" would create massive County liability to such surface owners as described in Varjabedian and many other constitutional, legal, and property rights authorities (e.g., Exhibit D), even if this were somehow considered a public benefit project (like the sewer plant in *Varjabedian* that drove the downwind homeowners from the houses). Here, however, this gold mine is a no-net benefit private project for the profit of nonresident investors for this (in effect, although Rise may be a Nevada corporation) Canadian miner at massive cost, harm, and prejudice to everyone in the County (e.g., inspiring many other such speculators likewise to buy cheap abandoned mines to replicate Rise's disputed game.) **Also notice that, in the Rise Partition Exhibits showing predecessor deeds to the surface above and around the 2585-acre underground IMM (and in objections in Exhibits E and F and Rise SEC 10K filing admissions), that "surface" generally extends down 200 feet, so that any drop in the groundwater table from the top surface proves a taking from the surface owner.**

As Rise admitted in the disputed EIR/DEIR, unless the IMM is dewatered 24/7/365 and the groundwater is flushed away down the Wolf Creek the mine will flood. Since what Rise is proposing to do is wrong, at some point the rule of law will stop that wrong to save our community and especially such overlying surface owners. What the disputed EIR/DEIR effectively still fails properly to address, as proven in the prior Comprehensive Objections, are the consequences of Rise starting and stopping the mining for these or any other reasons (e.g., because Rise lacks the financial resources for anything material it proposes to be economically feasible, as admitted in its SEC filings [e.g., Exhibit G], showing how the accountants qualify Rise's financial statements questioning if Rise will continue as a going concern because it can only afford to operate as long as investors continue to dole out high-risk money in their discretion for current operations, but not committing to "go all in" for the long term gamble.) Remember that the EIR/DEIR contemplates doubling the expanding size of the underground mine from the 72 miles of underground tunnels in 1954-1956 by adding another 76 miles of new tunnels, plus all the offshoots from each tunnel, also proven, even by the surface mining cases like *Hansen* on which Rise and the County rely, as well as by other cases on which we also rely in our Comprehensive Objections, these kinds of changes and expansions creates more and forbidden "intensity" that defeat any vested rights claims. If the mining starts and stops for any reason, who will clean up the mess? The Comprehensive Objections have long asked that question, citing the more than 40,000 abandoned or bankrupt mines that suffered that fate, leaving the community suffering that shut down mess alone, when the never, properly funded miner itself files US or cross-border bankruptcy or just retreats back across the border.

While (so far) Rise has entirely ignored these groundwater objection issues, presumably because Rise has no valid answers and perhaps also for tactical reasons, such as, perhaps, hoping to escape the legal immunity to which the County team is entitled from some of the Rise bullying from "bias-etc." and "#1983 Etc. Claims" as discussed below. However, what Exhibit D and other Comprehensive Objections demonstrate are the following realities, none of which Rise or (at least in public) the County have attempted to dispute, thus defaulting in that debate, and failing to exhaust Rise's administrative remedies. Each surface parcel owner has a first-priority right to the groundwater beneath that parcel, following the surface parcel legal boundary lines projected into the earth (e.g., *Empire Mines, discussing that underground mine as a "checkerboard" because of different surface owners creating the underground boundaries between competing underground miners*), unless such owner does something to change that result (e.g., a water trespassing appropriator begins trying to create prescriptive water rights, which cannot happen here unless the County now enables Rise, which would create a whole new set of disputes). E.g., *City of Barstow and Pasadena.* Moreover, each such surface parcel is entitled to subjacent and lateral support, including support by such groundwater, to prevent subsidence. E.g., Exhibit D, including the Supreme Court's *Keystone* decision upholding the PA law requiring half the coal to be left underground to provide such surface support and protecting groundwater by recognizing that depleting groundwater is part of subsidence; and *Marin Muni Water* (not a mining case by confirming these key principles under CA law). Also consider, as previously addressed in the Prior Ind. 254/255 Objections, the surface quarry case of *Gray v. County of Madera* is the leading case on groundwater/well mitigation defeated Rise's disputed and deficient EIR/DEIR well mitigation plan, by rejecting a better proposal than offered by Rise (whose plan was never economically feasible in any event.) **Now, instead of just fighting**

over Rise under-counting the number of existing, impacted wells, while disregarding entirely the rights of surface owners to new wells, the foregoing proves a much bigger problem because Rise would have to mitigate all the groundwater Rise dewaters 24/7/365 for at least 80 years and flushes away down the Wolf Creek. Nothing in the EIR/DEIR or in any Rise Petition claim can overcome those issues, and contrary to the Prior Ind. 254/255 Objections (e.g., Gray v. County of Madera, requiring "common sense," and *Vineyards, Banning, and Costa Mesa*, requiring good faith reasoned analysis) Rise has failed any meaningful attempt to respond to these meritorious disputes.

b) Not Yet "Ripe" Potential Claims For Objectors (e.g., Groundwater Not Yet Dewatered And Flushed Away Down Wolf Creek) Further Confirm Present Standing And Rights Independent of the County.

The potential existence of a claim, even as here those claims that are not yet "ripe" or asserted as claims as distinguished from objections to Rise Reopening or other claims or defenses, but only as proof of the existence of Plaintiffs' or other objectors' rights, defenses, or claims, are sufficient to establish that to quote the ***"Save the Bag"*** standard for minimal "standing" for this kind of action (at 165); i.e., requiring, with certain expanded exceptions for those with better standing, that the party have "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." Many of the Plaintiffs' members satisfy that requirement as **"Impact Victims,"** in many and various ways, such as illustrated by the "**Groundwater Victims**," the "**Subsidence Victims**," and others who are impacted by any or all of the ways explained in the many objections in the record against the EIR/DEIR. As explained in such Comprehensive Objections, this Petition/Objection (as in those objections) is not the assertion of cause of actions, because they are not yet "ripe" or yet causing the predicted harms so far threatened by Rise in its Rise Petition, EIR/DEIR, other permits or applications, or other Rise Reopening Claims. However, the existence of that risk and threat that would, if converted from a Rise threat or demand for permission from a government official or court into wrongful action, create a cause of action, proves the existence of the constitutional, legal, and property rights and standing for their protection before the permission to act and resulting harmful actions commence. See, e.g., Exhibit G at II.B.25, where objectors dispute Rise's SEC "2023 10K" filing threat to use government authorities and courts to force objecting, overlying surface owners above and around the 2585-acre underground IMM to surrender surface parcels to Rise's underground miming support.

By way of further example, as demonstrated in various Comprehensive Objections, the local "Impact Victims" in this case are like the downwind homeowners in the *Varjabedian* case for whom the CA Supreme Court confirmed claims of inverse condemnation, nuisance, and others when that new sewer plant stink made their homes no longer livable and of little or no value. The key differences between this case and *Varjabedian* are (i) the different stages in which these disputes exist, and (ii) the legal nature of the disputes (e.g., what legal or administrative claims and remedies are asserted) that are at issue, and (iii) their "ripeness" and eligibility for being "judicially reviewable." (*Varjabedian* also illustrates the difference for standing between the plaintiffs living downwind of that sewer plant who were directly impacted

by their proximity to the menace compared to those others living at a safe distance who were argued to benefit without suffering that burden.) For example, and by way of analysis for comparing this case to *Varjabedian*, imagine that the downwind homeowners in *Varjabedian* had properly objected to the sewer plant during its governmental approval process, as objectors and their members are doing in this case. Such *Varjabedian* homeowners could not yet then have brought their claims for the harms they were predicting, because they were not yet "ripe," since the sewer plant had not yet been approved or constructed or begun to operate to harm those homeowners. However, the potential then for such claims that later arose when the sewer plant was approved, constructed, and operating, as predicted (i.e., the "I told you so moment") and confirmed in *Varjabedian*, had to be sufficient earlier as a matter of law for standing to make such homeowner objections during that earlier approval process. The same things would be true if we change the analogy to a disputed effort by a new owner to reopen such a sewer plant that had been dormant, discontinued, and abandoned since at least 1956.

5. By Failing To Respond To the Comprehensive Objections As Required By Applicable Law (e.g., Exhibits A, D, And Others, Such As the Prior Ind. 254/255 Objections) Rise Has Failed To Exhaust Its Administrative Remedies, But That Also Should Save The County Team's Immunities' From Being Attacked And Thereby Reducing the Danger To Objectors of Rise "Bulling" The County Team.

Exhibits A and B demonstrate what seems to be Rise's disputed and objectionable bullying of the County team to the prejudice of the competing constitutional, legal, and property rights of objectors, as explained throughout this Petition/Objection. Why Rise risked ignoring, disregarding, and evading the Comprehensive Objections and defaulting in its exhaustion of administrative remedies and losing Rise's ability to rebut such objections, while not essential to objections' success, may be explained by many tactics and by the simple fact that Rise has no good reply because objectors are right and Rise is wrong on the merits. **However, one other possible reason is that, if and to the extent Rise is following the *Hardesty2* model for attacking the County teams' governmental immunity, that approach would be defeated if the applicable laws being addressed by the County team were unsettled or uncertain. What the Comprehensive Objections do is to prove and expose that there is no certainty to any Rise Reopening Claims and, therefore, the County team should retain its immunity and be more fearless in doing the right things as required by law for objectors.**

6. Contrary To Rise's Claims By Its Misreading Of The Inapplicable, Irrelevant, And Distinguishable "*Hardesty2 Final Order,*" County Officials Have At Least Qualified Immunity.

a) Objectors' Comprehensive Objections Preserve the County Team's Immunity That Rise Seems To Be Preparing To Attack with Disputed "# 1983 Etc. Claims."

Our County officials and team satisfy the requirements for at least "qualified immunity from Rise "# 1983 Etc. Claims." The *"Hardesty2 Final Order"* (at 1055-55, emphasis added) acknowledges the Supreme Court's qualified immunity test from *Pearson* and *Harlow* protecting government officials "from liability for civil damages insofar as their conduct does not violate **clearly established statutory or constitutional rights of which a reasonable person would have known."** The two implementing factors in that test are stated to be: **"(1) whether the facts 'make out a violation of a constitutional right;' and (2) 'whether the right at issue was 'clearly established' at the time of defendant's alleged misconduct." Id**. (emphasis added) Considering those factors in any order, qualified immunity exists "if either factor is missing." Id. **For such a right to be "clearly established," "a reasonable official …[must] underst[and] that what he is doing violates that right" "under case law existing at the time of the conduct at issue" [and] … "existing precedent must have placed the statutory or constitutional question beyond debate. [citing *Ashcroft*]" Id**. (emphasis added)

The Comprehensive Objections prove the County teams' cases for such qualified immunity by objectors' proving our own Comprehensive Objections against Rise, and Rise cannot fairly even argue against that because Rise has ignored, disregarded, and evaded our Comprehensive Objections, in effect defaulting in that dispute. While Rise may try to claim excuses for not doing more in the administrative record, none of those Rise excuses apply to our Comprehensive Objections under these circumstances. Even if Rise could assert some excuse against objectors, which we dispute is possible, Rise could never satisfy the test for overcoming qualified immunity against objectors' proof to the contrary, defeating all such Rise claims. Also, even if Rise incorrectly could (incorrectly) apply those **surface** mining rules to this **underground** mining here (like that *Hardesty2* court just applying [and incorrectly from fragments] the inapplicable SMARA and *Hansen* surface mining rules), both the Comprehensive Objections (especially Exhibit D) prove to the contrary that none of such exception to qualified immunity exists in this case. Rise did not (and now cannot) cite any authority for the application, relevance, or impact for these purposes of SMARA and *Hansen* (or any other cited surface mining cases), for example, to this underground mining of the 2585-acre underground IMM below or around our objecting overlying surface owners who have their own constitutional, legal, and property rights independent of the County. Consider especially our consistent record opposition to the depletion of overlying surface parcel-owned groundwater (including existing and future well water) in which the surface parcel owner has a first priority right to stop dewatering 24/7/365 for at least 80 years and flushing such water away down the Wolf Creek (after disputed treatment in a new and unprecedented water treatment plant for which, even under *Hansen* and *Paramount Rock*, there can be no vested right.) Exhibit D including *City of Barstow, Pasadena, Keystone, Marin Muni Water, etc. See also Varjabedian and Gray v. County of Madera*. If there is any "precedent" that is "beyond debate" here, it is what objectors have cited here and in the other Comprehensive Objections; not in what has been cited by Rise.

Rise cannot succeed by "playing the victim" when objecting local surface owners are the real victims, as described herein and proven further in Exhibits A and B. As to Rise's "playing the victim" for incorrect, false, and worse claims of "bias etc." and "#1983 Etc. Claims" for bullying the County into ignoring the true victims (i.e., objectors), the motivation of the County team (and objectors) includes not only "legitimate regulatory concerns," but also legitimate concerns about the competing independent constitutional, legal, and property rights

asserted by such objectors in the Comprehensive Objections, all of which are no less important than (and objectors contend to be superior to) any alleged rights or claims of Rise. Our competing concerns are not the kind of "political pressure" at issue in *Hardesty2* as demonstrated in this Petition/Objection, but, as we prove elsewhere, if any such disputed Rise theory were permissible, then objectors have no less right to apply that same standard in reverse against Rise, because objectors have suffered worse (to the opposite of Rise) from Rise's bullying the County team and other objectionable conduct (especially as to the Planning Department staff and Planning Commissioners; see Exhibits A and B) than Rise allegedly has, especially because on the ultimate merits Rise cannot have any meritorious vested rights or other Rise Reopening Claims. Whatever the County's fate may be, objectors have defeated Rise's vested rights on the merits, despite Comprehensive Objections being ignored, disregarded, and evaded, and, as even *Hansen* confirmed (as we prove other ways as well), objectors can defeat (and we contend have proven the right to defeat) Rise on every material issue in these disputes. See also our discussion herein of ***Fairfield, Calvert,*** and other authorities that recognize that any Rise's rights, whatever they may be, cannot prevent the exercise of objecting property owners' own competing constitutional, legal, and property rights. Stated another way, even if the court were to mistakenly treat commercial competitors as somehow obstructed from their competing political rights, objecting overlying surface owners have no less self-defense rights than does Rise to compete both at law and politics against Rise by exercising our own competing constitutional, legal, and property rights, especially as against the Rise bullying and other objectionable tactics against the County team doing their duty for objectors. For example, objectors would be denied their own constitutional rights (e.g., to petition our government officials for redress of our grievances against Rise, for due process, and for equal protection), if Rise could bully the County team with meritless lawsuits like what is apparently threatened for the alleged wrong of responding to the meritorious concerns of their impacted local victims of Rise mining as the applicable law requires. Remember, unlike the real miner in Hardesty2, Rise is a speculator new to the scene in 2017 whose SEC filings (e.g., Exhibit G) admit that Rise is an "exploration" company, who has done no real mining at the site and could not, since the relevant underground IMM has been continuously close, discontinued, dormant, flooded, and abandoned since at least 1956, while meanwhile objectors, especially overlying surface owners purchased and developed their properties above and around the 2585-acre underground IMM in reasonable reliance on that underground mine never reopening (e.g., see Comprehensive Objections based on estoppel, laches, waivers, etc.), just as the Empire Mine next door never reopened and became a historic park. (As Exhibit E and F prove, the whole gold mining industry shut down in the 1950's because of the $35 legal cap on gold prices perpetually exceeding the recovery costs, and even extremely risk tolerant, previous speculators (like Emgold) gave up on the Rise fantasy that it now is attempting to impose on our local community for its "alternative reality."

b) The Updated Comprehensive Objections Include Substantive, Procedural, And Evidentiary Objections.

(1) Some General Context for Further Comprehensive Objections.

All types of updated Comprehensive Objections apply against each of the Rise Reopening Claims, regardless of the way the County incorrectly disaggregates those integrated rebuttals, **whether such Comprehensive Objections are (a) "substantive"** (e.g., substantive due process, equal protection, our right to petition for redress of grievances, or enforcement, defense, or protection of personal or property substantive rights, interests, or claims under any applicable law or court or administrative ruling); **(b) "procedural"** (e.g., procedural due process or under other applicable law with any procedural impact, application, or significance), or **(c)** having any other evidentiary, proof, or other impact, application, or significance (collectively for convenience called **"evidentiary").** For example, such Comprehensive Objections include:

(i) disputing (comprehensively) the existing **EIR/DEIR**, including its related **"Use Permit"** or other applications or requests for (or for recognition of) any other related permit, approval, claim, right, or other permission to mine or operate in any manner or place or with any **"use"** or **"component"** above or below the surface within any part of the **"IMM"** or **"Centennial,"** (including what Rise incorrectly called the "**Vested Mine Property**"), as any of the same may be amended, supplemented, or otherwise changed from time to time by or for Rise, **all collectively** called the **"EIR/DEIR"** in this and every other existing or related expression of any "Comprehensive Objections." [It is essential that we include any such concurrent and future changes by or for Rise, because any such mining activities contemplated by Rise are compatible with such objectors rights' especially those of us overlying surface owners above and around the **"2585-acre"** underground IMM (more or less, because Rise inconsistently asserts different numbers of acres underground IMM and objections are intended to be comprehensive for whatever may be the reality. An amendment, supplement, or change is "for" Rise if it would increase any objectionable right, interest, or problem from the perspective of any Comprehensive Objection, without regard to the motive, intent, or relationship of any such actor to Rise; e.g., a County staff person's action that is so objectionable is considered "for" Rise if it has any such direct or indirect effect, even if such staffer considered that he or she was "just doing his or her job." In this "adjudicatory" process, such staffers' opinions and actions should have no more legal importance than those contrary Comprehensive Objections of objectors, especially as to those asserting competing constitutional, legal, or property rights of such overlying surface owners above or around the 2585-acre underground IMM.];

(ii) disputing (comprehensively) the existing **"Rise Petition"** and all the other filings, presentations, arguments, or other assertions by or for Rise in any way related thereto, as any of the same may be amended, supplemented, or otherwise changed at any time and from time to time by or for Rise (**all collectively** called the **"Rise Petition"**) claiming any "vested rights" of any kind, nature, or character, whether as used correctly at law or used incorrectly by or for Rise, including that part of any Rise litigation case or other process, procedure, or proceeding

asserting any such vested rights by or for Rise, apparently for "bullying" leverage, including the **"#1983 Etc. Claims"** imagined based on disputed ***"bias, etc."*** claims threatened by Rise to "inspire" apparently some intimidated County team members into "accommodating" Rise incorrectly in various grossly disproportionate ways compared to the objectors. E.g., Exhibits A and B. Presumably, Rise's such threats follow the disputed and inapplicable model followed by the **surface** miners asserting disputed vested rights in *Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist.,* 307 F. Supp.3d 1010 (E.D. Cal. 2018), exploiting apparent mistakes and ambiguous conduct by the defendant county team as a basis for successfully somehow convincing a jury there was $105 Million worth of serious misconduct in allegedly both denying those disputed vested rights and violating various miner constitutional rights that allegedly put the miners out of business **("Hardesty2 Jury Order"),** following the earlier ruling denying summary judgment to the Sacramento County defendants, so that the jury could hear those "#1983 Etc. Claims," at 2016 US Dist. Lexis 75552, (E.D. Cal. 6/8/2016), mod. by 2016 US Dist. Lexis 78852 (E.D. Cal. 6/15/2016) (*called **"Hardesty2 Summary Judgment",*** and together with that post-trial decision (all collectively called "**Hardesty2"); and**

(iii) proving, enforcing, and defending the competing or otherwise legally appropriate constitutional, legal, and property rights, interests, and other claims and defenses (including those asserted in Comprehensive Objections) of objectors in these multi-party disputes against "Rise Reopening Claims," especially as to those objectors asserting competing constitutional, legal, or property rights as such overlying surface owners above or around the 2585-acre underground IMM. See, e.g., Exhibits D, E and F, as well as the arguments and proof herein, updating and illustrating some Comprehensive Objections, including some that the bullied County Board may again not allow us to make at the hearing. Comprehensive Objections continue also to dispute the County's objectionable and disputed fragmentation/disaggregation of the integrated disputes of all Rise Reopening Claims into separate proceedings (and, worse, separating the related records for such fragments). E.g., the EIR/DEIR versus Rise Petition [and even in one fragment like, for example, the Rise Petition with vested rights separated from its reclamation plan and financial assurances]. Each part of the Rise Reopening Disputes is subject to all Comprehensive Objections, especially since each such Rise or enabler part can be rebutted by objectors using admissions, inconsistencies, and contradictions from the other parts. See, e.g., Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235; Exhibits E and F, "Evidence Objections Parts 1 and 2;" and the *City of Richmond* case where Chevron's inconsistent and contradictory SEC filings defeated its EIR; Exhibit G as to SEC filing admissions. Because Rise has the burden of proof, objectors must be allowed broad scope for rebuttals, among other things, so that Rise cannot advance its goals by telling different, disputed "stories" to different audiences or for different applications. Id.

Objectors update all the prior definitions in prior or concurrent objection filings to include what is added or otherwise changed here. Except as so updated, the applicable definitions in each Comprehensive Objection (or its exhibits) shall apply, such as, for example, **"Rise"** referring to Rise Grass Valley, Inc. and, when and as applicable for factual or legal reasons, Rise Gold Corporation (e.g., as to its SEC filings creating self-defeating admissions addressed in Exhibit G, especially in its #II.B.25, where Rise threatens to engage the government or courts to force objectors' to suffer the "use" of our surface property above or around the 2585-acre underground IMM for underground mining.) Such updates are asserted to keep objections comprehensive against Rise's changing or added positions, whether or not admitted by Rise, as well as to address what later Rise filings or threats expose, reveal, or imply about Rise's disputed plans, intentions, and threats that make such updates prudent. For example, as addressed in such updating Comprehensive Objections objectors prove or address many that exist between different Rise documents, presentations, or communications (or even within one of them). Those such inconsistencies and contradictions expose, for example, what Rise apparently meant in its strategically ambiguous or overbroad words, inspiring matching objections so that at all times, the Comprehensive Objections stay comprehensive with the evolving disputes with Rise, which seems to make little effort to be consistent.

Consider this example. The disputed Rise Petition at 58 asserts, in effect, the right to mine anywhere in the Vested Mine Property "without limitation or restriction." However, until Rise's SEC "2023 10K" filing 10/30/2023 (after the initial 9/1/2023 Rise Petition), objectors did not realize that Rise was incorrectly imagining that its disputed "vested rights" somehow allowed an unprecedented claim to be entitled to invade objecting overlying surface owners' parcels to support the disputed underground mining, as exposed and rebutted in **Exhibit G #II.B.25** (disputing that claim in the "**2023 10K.")** To the extent that any such newly exposed and disputed Rise Reopening Claim may apply to similar exaggerated claims or requests in the EIR/DEIR, this and other Comprehensive Objections now dispute them in our EIR/DEIR rebuttals as well as in the overlapping Rise Petition refutations. This should be an even greater concern to the County because Rise now seems to be seeking permission in both the EIR/DEIR and Rise Petition to "take" overlying surface property owned by objectors above and around the 2585-acre underground IMM and make it a legally wrongful gift to Rise, thereby creating more constitutional disputes with objectors besides the already cited claims that would arise from the disputed EIR/DEIR under ***Varjabedia****n* and other applicable law. That is especially a disputed problem as to the first priority groundwater of such overlying surface owners Rise proposes to dewater, deplete, and flush away our groundwater down Wolf Creek 24/7/365 for at least 80 years in accordance with its disputed EIR/DEIR plan.

What is especially important to consider in this objection is that Rise is not just seeking approval of an EIR under CEQA, but also a related Use Permit that would harm both objectors and the County itself. As demonstrated in those "Prior Ind 254/255 Objections" and in the Rise Petition objections attached as Exhibits C-F hereto, Rise does not stay within any conventional legal boundaries for its various approaches to Rise Reopening Claims or to the incorrect and worse boundaries that the County process or staff applies to objections to each such Rise petition, application, or request for approval. By allowing Rise to make its disputed case as it wished for any EIR/DEIR, vested rights, or other County or governmental permit or approval,

regardless of conventional boundaries of content and especially at hearings from which objectors are excluded (except for limited three-minute public comments) [Exhibits A and B], that Rise filing or request or other Rise Reopening Claim must be the only subject matter or content boundary that the County or other government agency or authority can lawfully impose on any objector. Otherwise, objectors must have due process, equal protection, and other constitutional (e.g., right to petition the government for redress of grievances), legal, and property rights for Comprehensive Objections and for unlimited, matching rebuttals against anything and everything that Rise asserts, presents, files, or otherwise claims in any manner. E.g., Exhibits A-C. What has happened so far in this disputed County process, and what we protest and urge to stop and reform, is that the County has denied objectors such constitutional, legal, and property rights objections by rules and conduct that wrongly interferes with, impairs, or prevents objections to being as broad and comprehensive as such Rise Reopening Claims. Id.

Stated another way, the objectors must be "heard" for, and allowed comprehensively to object, rebut, and dispute with any Comprehensive Objections, any applicable law, or any other rebuttal or other relevant evidence as and when objectors consider appropriate to rebut and disprove everything Rise uses to advance its Rise Reopening Claims. E.g., Exhibits C, E, and F. In doing so, only the law of evidence can limit what is permitted (not, for example, CEQA or some County standard for the content of a use permit dispute), such that any relevant rebuttal, proof, or evidence must be allowed to rebut whatever Rise or its enablers may assert, present, file, or otherwise claim in any manner, including any admission by or for Rise from any source, so as to apply, for example, Evidence Code #'s 623, 412, 413, 1220, 1230, or 1235. Indeed, there must be more than a "level playing field" for objectors to be allowed equality compared to Rise, because Rise has the burden of proof and objectors are entitled not only to rebut Rise comprehensively, but also to present our own contrary law and evidence, especially where to read the Rise case (and the public County team case) one can only see Rise's surface mining alternative reality, rather than the underground mining reality of our Comprehensive Objections.

(2) In Order For Rise To Succeed On Its "#1983 Etc. Claims" Rise Must Prove That It Had Constitutionally Protected Vested Rights (That Rise Does Not Have). If the County's Case Is Not Sufficient For Any Reason To Defeat That Rise Claim, Plaintiffs Opposition To the Rise Petition And Other Rise Reopening Disputes Are More Than Sufficient To Defeat Rise.

Objectors believe that by Rise continuing again to "play the victim," what Rise has threatened is likely a meritless attempt to posture Rise as like the distinguishable surface miner model in the inapplicable, disputed *Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist.* (6/8/2016), 2016 US Dist. Lexis 75552, (E.D. Cal.), mod. by on 2016 US Dist. Lexis 78852 (6/15/2016) ***(the "6/15/2106 Hardesty2 Modification" and, with that modified case, called "Hardesty2 Summary Judgment"),*** and together with the also inapplicable, distinguishable, and disputed follow-up, post-trial decision ("**Hardesty2 Final Order"),** 307 F. Supp**.**3d 1010 (E.D. Cal.

2018) (collectively called "**Hardesty2").** This rebuttal subsection disputes the context of Rise's expected #1983 **substantive** due process claim because, among other things, Comprehensive objections prove on the merits how the applicable law, evidence, and other matters both prevented Rise or any of its predecessors from having any vested rights, or to the extent any vested rights existed for any "use" or "component" on any "parcel" of the disputed "Vested Mine Property," it was abandoned, discontinued, or otherwise lost, especially as to the 2585-acre underground IMM where Rise (and also, in many ways at least visible to the public, the County team) ignored, disregarded, or evaded entirely in both that vested rights disputed process and this disputed EIR/DEIR process the competing constitutional, legal, and property rights of the objecting and nonconsenting overlying surface owners above and around that underground mine. However, objectors' cases for such objections do more than defeat Rise on such substantive merits because that **underground dewatering-groundwater and mining** dispute cannot be won by Rise citing only to its irrelevant and distinguishable **surface** mining authorities supported only by Rise's comprehensively rebutted and fatally deficient and inadmissible, incompetent, or non-credible evidence. See, e.g., Exhibits D, E, F, and G and Prior Ind. 254/255 Objections. Comprehensive Objections and evidence, including Rise admissions (Id.) and objectors' competing constitutional. legal, and property rights also defeat Rise as a matter of procedural due process and law, as to each of: (i) what Rise has failed to do, (ii) what the County denied objectors procedural due process, equal protection, redress of grievances, and other constitutional, legal, and property rights to do, and (iii) what objectors have done that the County has not (at least publicly) treated properly in these dispute process so that our objections and proof are properly addressed in the test case litigation that Rise is expected to cause. To adjudicate any of these disputes in accordance with applicable law, each adjudicator needs to consider the whole record, which includes the Comprehensive Objections overlooked (at least in public) by the County team.

This subsection's part of that effort involves a brief introduction to objectors' use of the applicable law, evidence, and other proof to so defeat all Rise Reopening Claims for incorrectly alleged substantive due process and other violations of Rise's nonexistent vested rights (not just by "abandonment," but also on the merits as to each Rise predecessor and Rise itself, beginning with Rise's expected, incorrect "#1983 Etc. Claims" theory alleging a **substantive** due process violation based on a disputed vested right in *Hardesty2* (at 107-119 and in the *Hardesty2 Modification*). That Hardesty2 Modification was limited to clarification as to the court's rejection of those miners' claims that the government defendants "drove their sand and gravel mining operations out of business by arbitrarily enforcing the California Surface Mining and Reclamation Act of 1975 (SMARA), Cal. Pub. Res. Code #2710 et seq., at the behest of legislators and the Hardestys' competitors." The court just explained that those surface miners failed to offer sufficient evidence to satisfy the 9th Circuit's *Shanks v. Dressel* test at 540 F.3d 1082, 1087-1088, discussed below (quoting from *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846…(1998)): "[O]nly 'egregious official conduct can be said to be arbitrary in the constitutional sense': it must amount to an 'abuse of power' lacking any 'reasonable justification in the service of a legitimate governmental objective.'" As proven in Comprehensive Objections, unlike *Hardesty2* where this was a two-party surface mining dispute with non-party competitors and legislators accused of causing the alleged problem, this IMM case is a multi-party underground dewatering and mining dispute in which the County must also address the Comprehensive Objections that

include overlying surface parcel owners with at least equal competing (and we contend superior) constitutional, legal, and property rights to defeat Rise and who claim that Rise is just "playing the victim" because such objectors are the real victims of Rise's such disputed dewatering and mining scheme at issue in both the disputed EIR/DEIR and Rise Petition for vested rights. Furthermore, while the surface miners in *Hardesty2* were the only parties with procedural due process claims against that defendant county, in this IMM case, objectors are the ones suffering the real, procedural due process wrongs not only as demonstrated in this Petition/Objections (and Exhibits A, B, and D), but also as predicted by objectors in advance in Exhibit C, "Objectors Petition For Pre-Trial Relief, Etc.

c) Applying Those Considerations To Illustrate Both Controlling Principles And Objectors' Dilemmas Created By Objectionable Rise Accommodations By The County Team in A Zero-Sum Game In Which Every Disproportionate Benefit To Rise (Or limiting Objectors' Rebuttals To Any Rise Reopening Claim) Deprives Objectors Of Their Competing Constitutional, Legal, And Property Rights Requiring Hearings For Our Comprehensive Objections.

That is especially important in this case, where Rise's filings are so often inconsistent and contradictory with each other and are also fatally defective for Rise's burden of proof by what seems common strategic or tactical "ambiguities" obscuring the scope, meaning, and impact of Rise's disputed comments, by which Rise apparently hopes that objectors will overlook traps for the unwary giving words a narrower and more rational interpretation, rather than what Rise could later assert was a broader and much more objectionable, intended meaning and effect. **Stated another way, we are entitled to dispute Rise on the merits, not later about what possible meanings could be applied to Rise's "strategic ambiguity traps." For example, the Rise Petition at 58 asserted that Rise could, in effect, conduct mining activities as and anywhere Rise wished in its disputed "Vested Mine Property" "without limitation or restriction" (emphasis added), apparently including in the 2585-acre underground IMM beneath many objecting, overlying surface owners, including (when one adds in the EIR/DEIR for details never provided in the Rise Petition the County team incorrectly treated as a separate dispute) apparently dewatering and depleting the groundwater in beneath each such surface parcel in which each such surface owner has a first priority right and (after purported and disputed treatment) flushing such groundwater away down the Wolf Creek. See, e.g., Exhibit (the "Overlying Surface Owners Objections") discussing the controlling California Supreme Court cases (e.g., *City of Barstow* and *Pasadena*) and other precedents for related applications, such as *Keystone, Marin Muni Water, Empire Mines, and Gray v. County of Madera.*** Now consider please, the objectors' dilemma. Rise's SEC filings, even the newest "2023 10K" filed after the Rise Petition, contradict that "without limitation and restriction" permission to some unclear extent, and Rise cannot be allowed such contradictions and inconsistencies, as proven in the City of Richmond case (rejecting the Chevron EIR that was inconsistent with the Chevron SEC filings); Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235; Exhibits A-G.

Consider also objectors' dilemma relating to the fact that Rise is playing two concurrent, somewhat, and generally confusing overlapping "zero-sum games" against objectors at once without anyone clarifying (in a way that is effective and legally binding against Rise and its successors) what the resulting impact will be on objectors of the different outcomes, even in the short-term, not just as we keep complaining about the omission of what happens when the mining activities stop for any of many possible reason before or at the 80-year EIR/DEIR limit (or even indefinitely under the disputed Rise Petition). For example, "such zero-sum game 1" for Rise seems to be to continue to pursue the disputed EIR/DEIR (including the disputed Use Permit) to achieve whatever it can, if anything, over Comprehensive Objections, while "zero-sum game 2" for Rise is continuing to pursue its vested rights and other "bias, etc." and "# 1983 Etc. Claims" in Rise's threatened litigation discussed herein and in other objections. (Such a "zero-sum game" is one, for example, in which any benefit won by the underground miner is a consequent loss to the competing, overlying surface owner, since their competing rights are incompatible or worse.) The County must tell us for due process, fundamental fairness, and otherwise what the results will be (as objectors contend in the Comprehensive Objections) on a "parcel-by-parcel," "use-by-use," and "component-by component" basis. See, e.g., the controlling *Empire Mines* ruling that the surface owner's surface legal parcel controls the ownership of the mineral rights under that parcel's boundaries projected into the earth, as is followed for groundwater disputes in City of Barstow, Pasadena, etc., all discussed in Exhibit D ("Overlying Surface Owners Objections").

For example, consider in the worst case, because Rise claims vested rights "without limitation or restriction" and without regard to any Use Permit, what happens, if (which we dispute is legally possible), if Rise were somehow to win on appeal (or remand) some vested right for some "use" or "component" on some "parcel" that was subject to Use Permit conditions granted in the interim (which objectors would oppose). Rise presumably would assert that the Use Permit conditions (and EIR/DEIR mitigation requirements) would cease to apply to that vested rights parcel because Rise (sometimes and inconsistently) incorrectly asserts and imagines vested rights "without limitations and restriction" cancels and such conditions or mitigations from the Use Permit/EIR/DEIR. **Thus, in order for objectors to protect their competing constitutional, legal, and property rights from such Rise threats and uncertainties, objectors must oppose both such Rise "zero-sum games 1 and 2" with Comprehensive Objections applied to both, because, for those and many other reasons, the Rise Reopening Claims are inextricably interconnected and integrated, especially as to objectors with comprehensive constitutional, legal, and property rights to rebut and disprove every part of any Rise Reopening Claims, especially by using any Rise admissions, inconsistencies, and contradictions from any part of such claims or Rise SEC filings (Exhibit G), whether in an EIR/DEIR fragment, Rise Petition fragment, vested rights reclamation plan or financial assurances fragment, SEC filing or otherwise.**

Also, besides our such objections to the County process so incorrectly limiting the **content and scope** of objectors' cases against each disputed EIR/DEIR (including Use Permit) claim and other Rise Reopening Claim, objectors also **dispute the County rules and procedures** that incorrectly deny objectors our **equal opportunity** as equal and indispensable parties-in-interest for equal participation in what must be a due process, multi-party process to exercise our competing constitutional, legal, and property rights to such comprehensive rebuttals and

counter presentations. **Compare Exhibit A with Exhibit B. For example, objectors' objection rights were cut off at the start of each hearing before the Planning Commission for the EIR and permits and before the Board of Supervisors for vested rights (except for a deficient three-minute limited "public comment" incorrectly limited by scope and content rules not enforced equally against Rise), while Rise was allowed hours to present (without rebuttals or dispute then or thereafter) whatever Rise wished to add to the record at the hearing, as well as to respond to officials questions and debate the County. Id. That disputed County team procedure and such disputed rules deny objectors due process, equal protection, and the right to petition the government for redress of objectors' grievances. See, e.g., the authorities cited under the First, Fifth, and Fourteenth Amendments of the US Constitution and the California Constitution's equivalents, including throwing back Rise such cites back at them because they apply against Rise, not for Rise. Objectors urge the County to allow us more in the coming hearing, as described in Exhibit C, when objectors made a similar objection before the last Board hearing on the Rise Petition.**

d) Details Matter And Only Objectors Are Providing Such Details In Supporting Evidence And Rebuttals, But Rise and its enablers (and, at least in public, various County team members) Wrongly Ignore, Disregard, Or Evade Our Comprehensive Objections, Sticking Instead Solely To Rise's Own Disputed And General "Story."

Moreover, details must matter in this dispute, even though Rise must also fail on the fundamentals, such as Rise (and, at least in public, too often some accommodating County team) relying exclusively on **surface** mining law, when the substantive and procedural core of this dispute is about underground mining beneath the overlying surface parcels owned by objectors above and around the 2585-acre underground IMM. Exhibits A-G. Among other things, it is the relevant detail impacting such surface objectors (and others) that can independently also defeat each Rise Reopening Claim, regardless of the County's approach, whether under the EIR/DEIR, the Rise Petition, or otherwise, because Rise's strategy and tactics focus on avoiding the critical details that are exposed by the Comprehensive Objections. Id. Too often, some of the bullied County team, especially the staff, has accommodated Rise's approach. By analogy, looking down at an environmental atrocity from a plane at 30,000 feet is not the way to prove the problems that exist there on the ground and especially not underground.

For example, Rise incorrectly relies on "unitary theories" that disregard the legal requirements that focus on such differences. For instance, those Comprehensive Objections rebut Rise when it incorrectly claims that what Rise alleges as to one "use" or "component" on one (usually unspecified) "parcel" above or below the surface entitles Rise to do any "use" with any "component" on any "parcel" in its disputed "Vested Mine Property "and without proof that what might have been true (still usually disputed) at one moment of time (i.e., a Rise photo snapshot or momentary document) **incorrectly was somehow continuous**. See, e.g., Exhibits E and F ("Evidence Objections Parts 1 and 2.") For instance, Rise's disputed claims about the 10/10/1954 "vesting date" intentions of some managers of the Idaho-Maryland Mines

Corporation, when that Rise predecessor was winding down the gold mining operation for a closure like the rest of the gold mining industry. Id. That was not about a temporary pause because of "adverse market conditions," because what was driving the industry to that shutdown was the $35 **legal** cap on gold prices that made it impossible for gold miners to operate profitably and recover their costs. Id. Also, Rise never proved that those predecessor managers even continued their control during the many following years after 1954 when, for example (and remembering the burden of proof is on Rise), some unproven and probably different managers and shareholders: (1) liquidated everything movable for sale at the IMM, (2) closed, discontinued, and abandoned the dormant and flooded underground IMM, (3) changed its name (and trademarks) to Idaho Maryland Industries, Inc., (4) moved to the LA area to become an aerospace contractor with new constituents and presumably new management, and (5) filed bankruptcy in 1962 that was resolved with a chapter XI plan that exchanged its new reorganization aerospace company stock for the debts owed to the aerospace business creditors, none of whom or their new management were shown to (or likely to) have any interest in reopening the IMM, which was sold cheap at a liquidation auction in1963. Id. The Comprehensive Objections also shred the EIR/DEIR with many other such defeating details in this record, such as the Prior Ind. 254/255 Objections and Id.

The problems of allowing what should be inadmissible or objectionable, purported proof and evidence into the record in any of these Rise Reopening Claim disputes is illustrated by the mistakes by Sacramento County illustrated in *Hardesty2,* which is why objectors are focused on making certain that, even if Rise could somehow prevail over our County team's narrow legal and factual presentations and rulings (which Rise should not be allowed or able to do), those Rise Reopening Claims can still be defeated independently by objectors' broader, better, and more relevant Comprehensive Objections, proof, and evidence. Fortunately, both the Board of Supervisors and any courts addressing any appeals or challenges, including any disputed "bias, etc." or #1983 Etc. Claims suits, can consider the whole record in each such dispute even if the bullied officials do not cite that fact in public (e.g., *Fairfield),* including the Comprehensive Objections and objectors' more rigorous application of the applicable laws and rules of evidence, especially those allowing impeachment and rebuttal by Rise's. Id.

e) Without Unduly Repeating the Previous Comprehensive Objections That Defeat Rise Reopening Claims Both For The Surface Mining Context On Which Rise And (At Least in Public) The County Team Exclusively Rely And For Such Underground Dewatering And Mining Context, This Section Illustrates How The Applicable Law Overcomes Rise's Expanding, Disputed Theories And the Prevention of Any Viable Rise #1983 Etc. Claims For Any Rise Reopening Claims.

Consider for context both (A) the following indisputable facts and law ***against*** Rise's vested rights claims that are disproven by Comprehensive Objection, and (B) why such matters should be resolved in the customary local state court proceeding instead of having two courts addressing such overlapping issues as Rise seems to contemplate:

(i) Like *Hansen* on which Rise's claim to vested rights depends as presented, Rise's next favorite case, *Hardesty2, also* depends on the false and unsubstantiated application of SMARA and ***surface* minin**g law to this primarily ***underground dewatering and mining dispute*** by Rise as an exploration company has not done any mining since it acquired the IMM in 2017, nor has any Rise predecessor since the 2585-acre underground IMM closed, discontinued, became dormant and flooded, and was abandoned in at least 1956. See, e.g., Exhibits C, E, and F. However, SMARA does not apply to underground mining, but (at most) to certain surface activities that may facilitate underground mining. E.g., Exhibits C and D, analyzing SMARA and *Hansen* for that and related purposes. Thus, Rise has made no sufficient case whatsoever for the vested rights for such underground dewatering or mining by its just assuming the law is the same when the two very different kinds of mining "uses" are treated differently by law for many obvious and subtle reasons, since SMARA does not apply to underground mining for many such reasons. Id. One such reason is that, unlike **surface** mining that just involves the miner's harms (e.g., a nuisance) to surrounding neighbors on the **miner's** property, by contrast **underground** mining involves the miner's harm directly to the overlying surface owners' groundwater (including existing and future well water) and other property rights (e.g., inverse condemnation, trespass, conversion, and many more torts), including the loss of groundwater in which the surface owner has a first priority water right under his parcel (e.g., *City of Barstow, Pasadena,* and Exhibit D) for many surface uses, including for subjacent and lateral support and for preserving the surface water table essential to preserving our forest and other vegetation, which groundwater Rise wrongly proposes to dewater and flush away down Wolf Creek 24/7/365 for at least 80 years, all without any proof of Rise's legal right to do so and without adequate EIR/DEIR compliance with the CEQA relevant consequences See Exhibit D discussing City of Barstow, Pasadena, *Keystone, Marin Muni Water,* Gray v. County of Madera, Varjabedian and other facts and authorities addressed in Prior Ind. 254/255 Objections and other Comprehensive Objections.

(ii) Because Rise's administrative case does prove any vested rights as to such underground dewatering or mining, it cannot succeed in that suspected Federal court jury case for disputed # 1983 Etc. Claims. Citing *Hansen* and SMARA #2776 achieves nothing for Rise's vested rights or EIR/DEIR plans for any underground dewatering or mining, because they do not apply, and Rise presented no other proof, arguments, or authority for underground vested or other rights. Conversely, objectors presented contrary evidence, arguments, and authorities, all of which Rise (and, at least in public, the County) incorrectly ignored, disregarded, or evaded. Thus, in any event, Rise has not exhausted its administrative remedies, and cannot now use in its Federal action or elsewhere assert any new theories or evidence not already in the County proceeding record. For example, Rise made no effort to prove anything on the parcel-by-parcel, use-by-use, and component-by-component required as demonstrated in

the Comprehensive Objections, such as Exhibit C, D, E, and F. Even if Rise could prove some vested or other right (which objectors dispute) to some surface "use" or "component" on some surface "parcel" Rise owns (none of which are above or around the 2585-acre underground mine owned entirely by local objecting or nonconsenting locals that cannot justify any relief for Rise even in that imagined "#1983 Etc. Claims" Federal action. Note that *Hardesty2* (at 106-109), like *Hansen*, also only applied to surface mining under SMARA and the "diminishing asset doctrine" in those cases was likewise limited to such surface mining, without any cited authority or argument by Rise for the application of that doctrine to underground dewatering or mining, especially in this context for harming more objecting surface owners, such as by depleting their groundwater; i.e., by expanding Rise's underground mining (e.g., increasing the 72 miles of flooded tunnels with 76 miles of new tunnels per the disputed EIR/DEIR) the miner is also expanding its competing surface parcel owner victims and depleting more of their first priority groundwater and existing and future well water, thus creating a distinguishable situation compared with surface mining only on the miner's wholly owned property. For example, Rise cannot engage in any mining business with only surface uses, because the only economic activity it has claimed for vested rights is for underground gold mining for which it has proven no vested rights. E.g., Exhibit G (especially #II.B.25 announcing a Rise plan to use courts and government allow Rise to invade the surface parcels about the 2585-acre underground IMM to support underground dewatering and mining), as well as other rebuttals and uses for admissions evidence from Rise's SEC "2023 10K."

(iii) Most of the legal and factual disputes on the merits about such dewatering and mining issues are discussed in such Comprehensive Objections and related evidence. Neverthless, since there was brief discussion of such issues in *Hardesty2,* we note part of that case was addressing a summary judgment issue on which there was conflicting evidence and the other part was the judge evaluating the jury verdict versus that county team's motion for a new trial etc. In this case, however, even if the surface mining rules applied somehow to underground mining (which objectors have disputed as legally impossible because no court can expand the agency's jurisdiction limited in SMARA), there can be no doubt, for example, about the overwhelming **"expansion"** [e.g., the existing underground mine had 72 miles of underground tunnels, which Rise would expand with 76 miles of new tunnels in its EIR/DEIR admissions], ***"changes in location"*** [from what Comprehensive Objections (Id.) called the "Flooded Mine" underground parcels to the "Never Mined Parcels"], or increased **"intensity"** [such doubling of the size of the mine is indisputably an increase in intensity, as is the 24/7/365 mining and dewatering of that expanded mine compared to such minor activity levels on 10/10/1954 as the IMM and the rest of the industry was shutting down. See Exhibits C, D, E, and F.] Remember that such impacts (e.g., intensity) for underground mining would have to include not just gold ore volumes per *Hansen*, but instead the increased harmful impacts of such

dewatering and mining on the overlying surface parcel owners, which was never an issued addressed (or that could have been addressed) in the SMARA surface mining cases on which Rise relied (and, at least in public, the County team focused.) Clearly, as so proven by objectors, Rise cannot succeed on its Rise Petition, EIR/DEIR, or other Rise Reopening Claims even using the easier surface mining rules because it is way beyond any vested rights and CEQA standards of tolerance, such as those *Hardesty2* cited from **SMARA #2776(a) as including: "no substantial changes…made in the operation except in accordance with [SMARA]."** The Comprehensive Objections proved with law and evidence, including Rise admissions (e.g., Exhibits E, F, and G, including from SEC filings, and the Prior Ind. 254/255 Objections to the EIR/DEIR), massive changes and increases in intensity and expansions, especially because the legal issue is what was the situation on the October 10, 1954, "vesting date" as the IMM mining was winding down to its operations to historic low point (never having fully recovered from the WWII closure) as Idaho-Maryland Mines Corporation for the second closure, discontinuance, dormancy, flooding, and abandonment of the IMM like the entire gold mining industry because the $35 legal gold price cap made any such mining chronically uneconomic. To justify its expansion incorrectly, Rise wrongly used pre-WWII volume mining rock removal numbers to increase its erroneously calculated expansion capacity contrary to any applicable law or authority when the test was what the situation was on the vesting date of 10/10/1954. Exhibits E, F, and G.

f) Since The County Team Has Not Yet (At Least in Public) Properly Embraced the Comprehensive Objections' Cited Applicable Law That Defeats All Rise Reopening Claims (And Should Save the County Team From Rise's Disputed "Bias, Etc." And "#1983 Etc. Claims"), Objectors Offer More Illustrations of How Such Objections Must Prevail Even Apart From the Governing Underground Water And Mining Laws By Drilling Down Deeper (Beyond Exhibit C) Into *Hansen* Linked Cases Illustrating The Flaws In Rise Reopening Claims And Why the County Team Analysis Should Expand.

As explained in a line of cases like *Hansen* following ***Edmonds v. County of Los Angeles*** (1953), 40 Cal.2d 642, 651 (prohibiting the enlargement of a trailer court from 20 trailers by adding 30 more because that is "clearly a different of their property from that… allowance of the continuance of the 'particular existing use'," also thereby requiring expansion of the significant increase in the size of that community "utility house" with the sanitary facilities) ("***Edmonds***"**):"[I]n determining whether a nonconforming use is the same before as after the application of a zoning ordinance 'each case must stand on its own facts."** (emphasis added) See also (at 653) the application of **"promissory estoppel"** to the change in the operator's position before the county, which is authority for challenging Rise's change in position from its EIR/DEIR and permit and approval applications to the Rise Petition, which is addressed in the

Comprehensive Objections (e.g., Exhibits E and F, "Evidentiary Objections Parts 1 and 2). Citing *City of Yuba City v. Cherniavsky*, 117 Cal. App. at 573, where the court denounced the need to limit the "character and location of a nonconforming business" to prevent it from moving to the opposite end of the same lot to construct "an elaborate mercantile establishment" in place of the modest nonconforming use, that ***Edmonds*** **court stated at 652 (emphasis added): "In either situation the enlargement of the nonconforming business would involve a detrimental effect on the surrounding property values in a residential area…"** That problem is magnified in this IMM dispute, where Rise not only threatens to double the size of the underground mine (e.g., increasing existing 72 miles of tunnels with 76 miles of new tunnels) thereby more intensely involving and harming many more different legal parcels that had no prior underground mining (what Comprehensive Objections call the "Never Mined Parcels"), but that will double the volume of Rise's disputed dewatering depletion of the groundwater of overlying surface owners with first priority rights not to have such water flushed away down Wolf Creek 24/7/365 for 80 years, but kept to support the surface with subjacent and lateral support to prevent subsidence and preserve our water table essential to our forests and other vegetation. E.g., Exhibit C-G and Prior Ind 254/255 Objections. Also, the Comprehensive Objections prove in rebuttal to the disputed County Economic Report that Rise's such underground and surface dewatering and mining activities will depress surface owners' property values, as the ***Edmonds*** court did not wish to allow. Id.

As part of this supplement of the record to begin to mitigate the County's denials of due process to objectors, we also make the following further uses of the ***Paramount Rock*** precedent cited with approval in ***Hansen*** *and* previously used in the Comprehensive Objections to frame and illustrate some matters objectors would have used further to rebut and counter Rise (and correct the County team) if we had been permitted by the disputed County process to do. ***Paramount Rock Co. v. County of San Diego*** (1960), 180 Cal. App. 2d 217, 221-222, ***("Paramount Rock***"), **discussed with approval in *Hansen***. Following *Edmonds*, the court focused on the "particular facts of the case," meaning that *Hansen's* use of *Paramount Rock* as the key guidance prevents it from being distinguished away as miners try to do. That is especially important because of the correct policy followed by that and many other cases that miners try to ignore, many of which are listed by *Paramount Rock* for this conclusion: **"Given the objective of zoning to eliminate nonconforming uses courts throughout the country generally follow a strict policy against their extension or enlargement."** (at 229, emphasis added) Those many cites also allowed *Paramount Rock* to conclude: "**These decisions demonstrate the fallacy of petitioners' contention that an owner's business determines the scope of the nonconforming use to which he may put the property and that the addition of the rock-crushing plant was part of their existent nonconforming use to operate a sand pit and premixing plant."** (at 230, emphasis added) Also, for those and other reasons **the court rejected the claim that their prospective use of the site should be considered as part of the nonconforming use** existent at the time, claiming the miner had purchased the rock crusher and made plans for installation at the time of the zoning change. Id at 231. As the court stated (at 232-233, emphasis added):

> **The purpose of the landowner in purchasing the property must yield to the public interest in the enforcement of a comprehensive zoning plan. [cites] The intention to expand the business in the future**

> **does not give defendants the right to expand a nonconforming use.** [cites] The ordinance has made allowance for the continuance of the nonconforming uses existent in 1942; it does not give defendants the right to expand a nonconforming use. [cites] **It is immaterial that a property owner in an area zoned for residential purposes contemplated the maximum commercial utilization of his property previous to the zoning ordinance… [and] landowners were "confined in their nonconforming use to the activities carried on at the time their property were zoned."**
>
> **The activity of the owner in the uses of his property at the time it becomes subject to a zoning ordinance and not his plans regarding the future use of that property determines the scope of the nonconforming use excepted from the restrictions imposed by the ordinance.** [cites]
>
> From the record before this court …petitioners did not commence installation of the rock crusher until almost two years after the installation of the premixing plant and a year after the zoning ordinance became effective. Use of the site for a rock-crushing plant was a new activity.

As discussed throughout the Comprehensive Objections, especially Exhibit D, "Overlying Surface Owners Rebuttals," what neither Rise nor (at least in public) the County addressed are the many unique factors that must apply when the disputed issues are not just for surface mining vested rights disputes, but, as here, for disputes about underground dewatering and mining beneath and around the overlying surface parcels owned by objecting surface owners with directly competing and irreconcilable constitutional, legal, and property rights no less powerful (and objectors contend superior) rights, such as their first priority right to their groundwater, proven by *City of Barstow, Pasadena, Keystone, and Marin Muni Water*, and Id.

Among the reasons that objectors remind the Board here of such *Paramount Rock* rulings on such facts in further detail is to further rebut and clarify our Comprehensive Objections (especially Exhibit C, demonstrating what Rise's and the County team's fragmentary discussion of *Hansen* missed by objectors presenting a more comprehensive analysis that included the importance of *Paramount Rock* but in more detail.) In this Petaton/Objection, as in such Comprehensive Objections, we are focused on the application of the *Hansen* requirement (interpreting *Paramount Rock*) that each "component" like such rock-crusher plant must have its own vested right for use on a specific parcel where it pre-existed. Following that rule, the Rise Petition, the EIR/DEIR, and other Rise Reopening Claims must fail, among other things, because of the following Rise admitted and incontrovertible realities (e.g. Exhibit E and F, "Evidence Objections Parts 1 and 2," as well as EIR/DEIR (Id.) and SEC admissions addressed in Exhibit G objections) that: (i) Rise cannot operate or mine underground without 24/7/365 dewatering of the entire underground mine, including its expansions from 72 miles of underground tunnels (plus side mining) in the existing "Flooded Mine" to the 76 miles of underground tunnels (plus side mining) in the new, "Never Mined Parcels;" (ii) that 2585-acre underground IMM (aka part of what Rise incorrectly calls the "Vested Mine Property") lies entirely beneath surface parcels each owned by an objecting or nonconsenting surface owner (not ever by Rise-admitted in the 2023 10K and other SEC filings, see Exhibit G at # II.B.25), who claims first priority groundwater

rights (including as to existing and future well water) beneath the boundaries of his or her surface parcel in accordance with Exhibit D, "Overlying Surface Owners Rebuttals," discussing *City of Barstow, Pasadena, Keystone, Marin Muni Water, Gray v. Madera County,* and other authorities, including the local underground miner versus underground miner boundary dispute in ***Empire Mines*** that confirms that underground mine boundaries are set by surface legal parcel boundaries projected down into the earth; (iii) Rise cannot lawfully flush away our dewatered groundwater down Wolf Creek (Rise's practical EIR/DEIR way to deal with all that constant water flow) without, among other things, building (over massive local objections) a new and unprecedented water treatment plant (i.e., a *Hansen* "component" requiring its own vested rights) that is equivalent to that *Hansen/Paramount Rock* rock-crushing plant; and (iv) Rise has not even attempted to prove that any such water treatment plant predecessor existed on that targeted parcel on 10/10/1954, much less that there was a corresponding dewatering system then in place and use for such Rise dewatering system at that time when there was little IMM gold mining activity even in the "Flooded Mine" area because the whole gold mining industry was closing down due to the $35 per ounce legal cap on gold prices that was too far below the cost of recovering the gold, as proven (even with Rise admissions) in Exhibit E and F, "Evidence Objections Parts 1 and 2." See also Id., proving that such 1954 predecessor owner of the IMM not only liquidated the movable mine equipment and assets and closed, discontinued, and abandoned the flooded and dormant mine by 1956, but then (name and trademark changed) Idaho Maryland Industries, Inc., moved to the LA area to become an aerospace contractor that later filed Chapter XI under the old Bankruptcy Act in 1962 and then sold the mine cheap at auction in1963, without any proof by Rise whatsoever that anyone intended to continue mining after that closure, change in business (and necessarily management), and move, and especially not after that further bankruptcy management change and liquidation auction. Rise offers no proof of any such future mining plans by Idaho Maryland Industries, Inc. after that move and change to a new business, and especially not after that predecessor's bankruptcy. Moreover, even if the alleged future mining intentions of Rise objectors dispute by Rise's noncontinuous, disputed "snapshot" purported history of the title holders before Rise began its IMM acquisition in 2017, there too many massive gaps for any proof of continuous unconditional intent to mine, which as now addressed in the Rise SEC filings (e.g., Exhibit G) require massive investment both to restart the mine and operate it to breakeven in future years, but also providing the financial assurances for the eventual reclamation plan. Id. Also, as proven by such Comprehensive Objections, plans conditional on future events beyond control of any such wannabe miner, such as being willing to mine if conditions change to the subjective satisfaction of the miner, such as the Idaho Maryland Mining Corporation conditioning its plans on a change in the longstanding $35 legal price cap on gold and its effects (that lasted another decade) [which is different than temporary "market conditions"], because such conditionality of future intent would, in effect, allow anyone and everyone an indefinite future option to extend their alleged vested rights by simply requiring some "perfect" future conditions beyond their control or reasonable present expectations.

To prevent more evasion by Rise (and require more completeness than the County team's narrow approach), note that **those facts** at issue in **Paramount Rock** (at 221-222) involved a landowner and its lessee surface sand miner which were engaged in the business of mining sand from an open pit for a ready mix-concrete business, but, since there was no

suitable rock or gravel on the property to mix with sand and imported cement, the miner-ready mix operator (i) had the sand washed off-site at a neighbor's processing plant and returned, (ii) imported from off-site rock crushing seller's gravel and rock, and (iii) then the operator-lessee mixed those ingredients in a concrete pre-mixing plant for placement in transit-mix trucks to take to buyers' sites for use. When the zoning changed, that became a nonconforming use. A year later after the zoning change, the operator-lessee "constructed a rock-crushing plant on the site" that then "the rock, gravel, and sand used in the operation of the existing concrete premixing plant are crushed, washed, and processed in the site… The [new] rock-crushing plant is larger than the [existing] concrete premixing plant"; e.g., the new plant had a replacement cost of $186,000 (versus $65,000 for the existing plant), used 576,000 gallons of water per day with a 250-horsepower machine (versus 21,000 gallons of water and a 30-horsepower machine for the existing plant), and "occupies an area about twice that occupied by the premixing plant." That new rock crushing plant is located by a State Highway, an elementary school, a rest-home, a golf course, and a junk yard. The operator-lessee filed an abandoned, unsuccessful writ of mandate and prohibition on appeal and persisted with injunctive relief appeal and related evidentiary and other disputes, focusing on the question of the reasonableness of the ordinance as applied to the "nature and extent of those existing nonconforming uses." Id. at 226-235. The trial court ruled that the "erection of a rock crushing plant was an unlawful expansion or extension of a nonconforming use and in violation of the zoning ordinance." Id. The appellate court rejected attempted distinguished cases and **concluded that "the use of the property for the operation of a rock crusher is not substantially similar to its use for a sand pit and premixing plant." Id.** (Remember that *Hansen* cited this ruling with approval, even though the operator tried all the usual miner dodges, each of which failed on the facts or law, such as when the court rejected that claim that any "use" that is "substantially the same or similar" should be permitted.)

Likewise, and to demonstrate that such older cases still are current law, as another part of this supplement to our IMM dispute record for beginning to mitigate the County's denials of due process etc. to objectors, objectors make the following use of the more recent precedent, *Point San Pedro Road Coalition v. County of Marin* (2019), 33 Cal. App. 5th 107 ("***Point San Pedro***"), awarding attorneys' fees to the coalition (CCP #1021.5) and following and confirming ***Hansen* and *Paramount Rock by confirming the trial court grant of the writ of mandate to compel the county to rescind its amendment to a quarry's quarry surface mining permit*** for a nonconforming but post-rezoning continuing operation that included on-site "asphaltic concrete production" (with nothing but sand imported) **because the amendment (even after a disputed CEQA review) impermissibly allowed the miner to change and unnaturally enlarged/expand, intensify, or increase its nonconforming use (or the applicable area of land involved) by allowing the "importation of asphalt grindings." In particular, the courts rejected the miner's disputed claim that such importation of such asphalt grindings did not "enlarge, increase, or intensify" the use, noting that "neither the superior court nor this court are bound by the County's analysis of the law or its implied findings of fact."** (at 1078-1080, emphasis added) Key to that last ruling is the evidentiary rule the Court (at 1079-1080) quoted from *Hansen* that applies here [where Rise and [at least in public] the County] ignored our Comprehensive Objections, leaving them undisputed). The court also stated (at 1080-1081, emphasis added):

> …Because the issue present here can be resolved on the evidence in the administrative record which is undisputed, **"the ultimate conclusion to be drawn from the evidence is a question of law.**" [citing *Hansen* at 560] "The [County's implied] findings of fact are not determinative. **The court must make its own decision as to the legal impact of those facts … the [County] lacks the power to waive or consent to [a] violation of the zoning law."** [*Hansen* at 563-564.]
> … **"The ultimate purpose of zoning is …to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected," and "that given this purpose. … a strict policy against extension or expansion of those uses" is warranted. [***Hansen*** at 568]
> …[after discussion of the details of such asphalt grinding operations involving significant new equipment and activities estimated to cost "somewhere near $350,000,"] the court found that was a "new and additional operation … on property not presently zoned for industrial use."
> ***
> …However, appellant's assertions as to the benefits of the importation and processing of asphalt grindings on the Quarry site are not germane to the issue before us—namely, whether the activity is an impermissible expansion of the nonconforming use of the property that was extant at eh time of the 1982 zoning.

The court also rebutted the miner's argument that everyone would be better off with the new process by finding that would just wrongly prolong the nonconforming use. However, in this IMM case, objectors also prove with Comprehensive Objections (e.g., Exhibit C and D, rebutting the County Economic Report, and Exhibit D, Overlying Surface Owners Rebuttals, demonstrating the harms to overlying surface objectors, such as from 24/7/365 dewatering of our groundwater for 80 years) that leaving the closed, flooded, discontinued, and abandoned IMM dormant is in the best interest of everyone (perhaps besides Rise.) While Rise tries to bully the County with its threats of litigation, allowing Rise to reopen the mine as it demands would create much worse problems of many kinds for the County, especially to those locals most impacted. See, e.g., *Varjabedian.*

The Comprehensive Objections also include many key objections to the disputed EIR/DEIR, especially those most relevant to that ***Point San Pedro*** case, where objectors demonstrate the many harms from reopening the mine and all the new components and uses that would be involved, both admitted by Rise but incorrectly evaluated and those obscured or omitted by Rise. Among those latter addressed in detail in Exhibits __-__, are Rise's obscured attempt to gain approval for creating insufficiently considered (e.g., "no good faith reasoned analysis" [Vineyard, Banning, etc.] or "common sense" [Gray v. County of Madera) toxic hexavalent chromium water and air pollution risks by piping down such cement paste into the underground IMM (aka Rise's disputed "Vested Mine Property") for a new mining technique and "use" by cementing mine waste into support/shoring columns to reduce the cost of removing that mine waste. As such objections proved, despite Rise obscuring where it deficiently addressed that toxic menace in the EIR/DEIR in what objections demonstrated to be a "hide the ball" tactic, that toxic hexavalent chromium has not just been denounced by EPA

and CalEPA website studies, but that is what killed the town of Hinkley, CA, and many citizens as illustrated in the movie, Eric Brockovich, and, despite years of massive effort and expense, www.hinkleygroundwater.com proves Hinkley has still been unable to remediate that polluted groundwater. E.g., Prior Ind 254/255 Objections.

II. Objectors Do Not Wish To Suffer More Disputed County Denials Of Our Due Process And Other Constitutional, Legal, And Property Rights On Account of Rise "Bullying" The "County Team" Into Incorrect Or Worse "Accommodations" With Rise's Threatened "#1983 Etc. Claims" Incorrectly, Seeming To "Play The Victim" of Disputed "Bias. Etc." Claims, Because Objectors Are the Real Victims of That Disputed County Process, Especially Those Overlying Surface Owners Above And Around the 2585-Acre Mine Whose Groundwater Would Be Wrongly Depleted By Dewatering 24/7/365 for At Least 80-years And Flushed Away Down the Wolf Creek. See Exhibits A, B and D.

There can only be one "victim" side in this **multi-party** dispute (unlike the inapplicable two-party surface mining only cases on which Rise exclusively focused and (at least in public) and that the County team keeps "accommodating"). Such ignoring, disregarding, and evading of objectors Comprehensive Objections makes objectors, NOT RISE, the victims. Comparing **Exhibits A and B** reveals how objectors are the victims, not Rise, explaining (like the last section below rebutting Rise's **"Alt 2 Letters")** how Rise seems falsely "playing the victim" and threatening to misuse the inapplicable, disputed, and controversial *Hardesty2 litigation* model from that surface mining, vested rights dispute to "bully" the County team into "accommodating" Rise by denying objectors our competing constitutional, legal, and property rights for our Comprehensive Objections**. So, comparing Exhibits A and B demonstrates objectively what should be incontrovertible: compared to Rise, objectors have suffered much worse treatment in the objectionable County process that has disproportionately favored Rise. While Rise screams "bias, etc." and worse, that is just not just wrong, but "playing the referee" (the adjudicator here) to get away with its wrongs demonstrated in our Comprehensive Objections that Rise does not even attempt to rebut and that is a wrongful approach Rise has somehow convinced the County team to "accommodate." For example, Exhibits A and B compare (a) many Comprehensive Objections, such as to denials of objectors' US and California constitutional rights of substantive and procedural due process, of equal protection, and for redress of grievances, to (b) the imagined "bias, etc." and threatened *Hardesty2* litigation and other grievance claims Rise seems to be using to intimidate the County team, which objectors rebut in detail. For instance, among the many reasons why such Comprehensive Objections are unrebutted by Rise and incorrectly unappreciated by the bullied County team are that such UNDERGROUND MINING disputes are fundamentally different than the non-controlling SURFACE MINING authorities (e.g., disputed *fragments* of *Hansen, SMARA*) on which Rise and (at least in public) the County team incorrectly rely. Yet, UNDERGROUND MINING is at the core of all these disputes and is radically different in many critical ways that have not been rebutted, but instead just ignored, disregarded, or evaded (which reactions are herein collectively sometimes just described by the term "ignored").**

Most importantly, overlying surface owners above and around the 2585-acre underground IMM have competing constitutional, legal, and property rights making them at

least equal and indispensable parties-in-interest in these multi-party disputes against any underground miner beneath or around them (with many superior rights for those surface owners, such as first priority rights to groundwater, including existing and future well water, beneath each surface legal "parcel," as well as rights to subjacent and lateral support, including from groundwater, to prevent subsidence. E.g., Exhibit D ("Overlying Surface Owner Objections"), discussing indisputable authorities nevertheless ignored by Rise and (at least in public) by the County team, such as *City of Barstow, Pasadena, Keystone, Marin Muni Water, Empire Mines, Gray v. County of Madera,* etc. Such overlying surface owners don't ever exist in such SURFACE mining disputes with neighbors, making the entire disputed Rise proof, evidence, and argument largely inapplicable and defeated by our Comprehensive Objections, which the disputed County process has not yet properly accommodated, because, instead, the apparently "bullied" County team has been accommodating Rise to the contrary, although not sufficiently to satisfy Rise's demands for more errors and worse. See the last section herein to illustrate the Rise game for inventing incorrect or worse "bias, etc." claims relating to Alt 2 Letters, as well as Exhibits A, B, and D. Without any discovery or other rights to investigate the situation, objectors cannot be sure why these adverse and incorrect limitations and disregard/evasion circumstances continue to exist, but their objectionable existence is clear. Id. Unless there is "bullying" at issue, objectors cannot help but wonder: why else would the County so disproportionately favor and "accommodate" Rise's meritless claims, while consistently (at least in public) ignoring, disregarding, or evading objectors' competing constitutional, legal, and property rights and Comprehensive Objections, both procedurally, substantively, and otherwise? E.g., Exhibits A and B and the rebuttals of the Alt 2 Letters in the last section below.

For example, the disputed EIR/DEIR (including its Use Permit), to which the Comprehensive Objections all apply, would allow Rise to dewater the 2585-acre underground IMM, 24/7/365 for at least 80 years, thereby depleting the first priority groundwater owned by each surface parcel owner above and around that underground IMM and flushing it away down the Wolf Creek. E.g*., City of Barstow, Pasadena, Keystone, Marin Muni Water, Empire Mines, Gray v. County of Madera,* and Exhibit D ("Overlying Surface Owners Rebuttals"). However, as proven already in the Prior Ind. 254/255 Objections, that whole dispute has been incorrectly ignored, disregarded, and evaded, as well as our cited concerns about Rise causing *Varjabedian* and other inverse condemnation, nuisance, water trespass, etc. claims for such surface owner victims. See, e.g., Id. and EIR Ind. 254, which rebuts each EIR "Response" and "Master Response" to such objectors' "DEIR Ind. 254" objections about that and many other things to which there was no legally tolerable response by the EIR (or Use Permit.) Even worse, by such EIR/DEIR/Use Permit preparers ignoring, disregarding, and evading such meritorious objections in that disputed process, the County Planning Commissioner and Board of Supervisor decision-makers would not necessarily even know those were problems from such deficient staff reports that accommodated Rise and so mistreated objections, unless they closely read all those thousands of pages of objections in (or incorporated into) the record, which (consistent with Fairfield) such Board members need not explain, although any such attempt to dodge conflict with the bully Rise creates a problem for objectors when and if Rise attempts to re-litigate all their incorrect County disputes in the inapplicable *Hardesty2* model without that Federal court having any reason to know that our prevailing Comprehensive Objections are in the unheralded

part of the County dispute process record. Will the County team finally tell the court about such Comprehensive Objections?

Unfortunately, compared to objectors, so far, Rise has been too often incorrectly "accommodated" too much (and grossly disproportionately) by the County team for whatever reason, not too little. By trying to be more than "fair," generous, and "accommodating" to the bully Rise, some of the County team thereby have been objectionably unfair and worse to objectors, as detailed in Exhibits A and B and the last section below regarding the Alt 2 Letters, explaining why objectors, not Rise, are the only "victims" here. What matters is the County and any relevant courts doing the "right" things in this dispute, and the reality is that objectors are right and Rise is wrong, as proven by the Comprehensive Objections that too often have been disregarded, ignored, or evaded (at least in public) by some on the County team in favor of "accommodating" Rise. Note that Rise itself does not rebut the ignored, disregarded, and evaded Comprehensive Objections, thus preventing Rise from attacking later in the next stages in these dispute processes what Rise has so ignored, disregarded, or evaded, even under *Hardesty2.* As to the County team's disputed "accommodations" for Rise and disputed EIR "Responses" and "Master Responses," consider, among other Comprehensive Objections, Prior Ind. 254/255 Objections, which rebut item-by-item each such "Response" and "Master Response" because, among other things, they often incorrectly ignored, disregarded, evaded the objection, rather than attempting any serious counter on the merits with what CEQA requires as a matter of "common sense" (e.g., Id., including *Gray v. County of Madera*) and with a "good faith reasoned analysis" (e.g., Id., including *Vineyard, Banning, Costa Mesa,* etc.)

III. Objectors' Full And Equal Participant Standing And Competing Constitutional, Legal, And Property Rights of Objectors, Especially Those Overlying Surface Owners Above And Around the 2585-acre Underground "IMM" (Incorrectly Called by Rise Part of Its Disputed "Vested Mine Property"), Cannot Continue To Be Denied, Ignored, Disregarded, Or Evaded As They Have Been By the County Team, Especially Since Rise's Default And Failure To Rebut Them Makes Then Undisputed.

A. Objectors Have Many Types of Standing Which Require Full Due Process And Other Such Rights So Far Disregarded by the County Team In The Objectionable County Process Disproportionately Favoring Rise Despite Rise's Failure To Rebut Such Comprehensive Objections.

As directly threatened, indispensable, and impacted parties-in-interest with meritorious Comprehensive Objections undisputed by Rise, objectors have much more personal standing than only general "public interest standing" assumed by the disputed County process accommodating Rise's desire to ignore, disregard, and evade objectors. Such objectors (but not Rise) are the ones denied substantive and procedural due process, the right to redress of our grievances, and equal and adequate protection for enforcing and defending objectors' constitutional, legal, and property rights competing against Rise independently of the County. Objectors' such Comprehensive Objections, evidence, and proof are broader, more comprehensive, and more powerful for defeating each of Rise's disputed Rise Reopening Claims comprehensively. Every Comprehensive Objection is also applicable for objectors' such rebuttals

of each Rise Reopening Claim, whether in the incorrectly disaggregated EIR/DEIR/Use Permit record or the Rise Petition for vested rights record, or otherwise, all of which objectors combine into an integrated record for so defeating all Rise Reopening Claims with each Comprehensive Objection. County team's narrower approach and evidence is correct and sufficient versus the narrow Rise's cases presented in the County processes. However, like the County, Rise's much narrower and deficient Rise Reopening Claim cases must be defeated by objectors' Comprehensive Objections that have been so ignored, disregarded, or evaded, whatever the fate of the County team's cases.

Also, while Rise threatens the County team with meritless "bias, etc." and "#1983 Etc. Claims," such as discussed herein for allegedly denying Rise's disputed Rise due process, equal protection, and other constitutional rights, objectors worry that Rise was so "bullying" the County team into being so much more than "fair" and (in the sense of that term implying incorrect, extreme, and disproportionate favoritism) "accommodating" to Rise that Rise has caused the County team to deny, ignore, disregard, and evade objectors' competing constitutional, legal, and property rights in this "zero-sum game" context, whereas so explained herein every such County excess for Rise meant a corresponding loss by, for, or to objectors. By another quick analogy to illustrate such impacts of such false Rise accusations of County "bias etc." and "#1983 Etc. Claims," the County team is like the bullied referees in a sports contest, where the bullying and constantly fouling player on the doomed-to-lose-on-the-merits team (Rise) falsely and ostentatiously "plays the victim" constantly complaining about the meritless wrongs the fouler causes in order to blame and intimidate the referees (the adjudicatory County team) as meritless "evidence" of "bias, etc." as a means of intimidating the referees into ignoring or minimizing such bullying player's (Rise's) fouls, resulting in the innocent, other team (objectors, with at least equal competing rights) suffering through a one-sided game with constant bully fouling without the required relief for victims and accountability for the fouler-bully. While the sports leagues limit victim "challenges" to such incorrect or deficient rulings, due process, equal protection, and other rights for objectors, such enhanced Comprehensive Objections must allow us to "throw the challenge flag" every time.

B. Standing To Counter Rise Or Any Enablers In Its Disputed "Test Case" For Its Inapplicable And Meritless Rise Reopening Claims, Including Threatened Litigation Claims, Because Impacted Objectors Are Entitled To Insist On "Reality" (e.g., Underground Mining Threatening Our Groundwater) Instead of Merely Rebutting Rise's Inapplicable "Alternate Reality."

The interests that objectors seek to protect are indisputably germane to their purposes as organizations, and (notwithstanding any attempt by Rise to misread or misconstrue Comprehensive Objections by insisting on Rise's "alternate reality" and ignoring, disregarding, and evading "reality") neither the claims, the defenses, nor the relief asserted herein require the participation of individual members in any relevant dispute process or lawsuit, although some individuals may join. Again, the Comprehensive Objections require (as explained) the County team process to expand properly with the correct and comprehensive legal, factual, and evidentiary analysis and proof so that each Board resolution ruling for or against any Rise Reopening Claims or Comprehensive Objections has correct and comprehensive findings of fact

and conclusions of law so that our future is not endless disputes (as we now fear with Rise and its enablers) over what disputes were and were not decided, what issues, facts, and law were addressed and resolved and how, and what will be the scope, meaning, and effect of each decision, so that the disputing parties are fighting the right battles through the courts, rather than, for example, Rise going off to attempt to prove its "alternative reality" in some "#1983 Etc. Claims suit," while objectors insist on "reality" in the normal, local writ process. What objectors require is that whatever the County team may do, it stops the objectionable "accommodations" for the Rise "bully" so that the scope, meaning, and effect of each County team decision is never narrower than, and never denies, ignores, disregards, or evades, any Comprehensive Objection, such as unfortunately was the case with respect the Rise Petition process and resolution (which was correct far as it went in its narrow way against Rise, but which was too narrow to enable our Comprehensive Objections to defeat all the Rise Reopening Claims for objectors, so that we can prevail on them whatever the County team's fate may be on their own.) See, for example, the **hypothetical case example discussed above** for these problems that would normally never exist in a regular Court process where it would be hard to imagine any court process so denying, ignoring, disregarding, and evading the objectors' competing constitutional, legal, and property rights and claims and allowing Rise Reopening Claims to go unrebutted by our Comprehensive Objections.

Rise Reopening Claims, including the disputed EIR/DEIR (including the Use Permit) menace our local community in all the ways explained in our Comprehensive Objections that neither Rise, nor its enablers, nor the County team have rebutted or disproven in their sole focus on the Rise alternate reality that now Rise's threatens to make real ("law of the case" "legal fiction") by some threatened "test case" litigation that objectors must resist to preserve such objectors' (and entity members') competing constitutional, legal, and property rights preserved by Comprehensive Objections. Consider one simple example of many addressed in such documents (and in more detail in the Exhibits). Rise seems to be following the inapplicable, distinguishable, and disputed *Hardesty2* model by, for example, arguing (incorrectly) that the **County team (i)** denied Rise due process, equal protections, first and fourteenth amendment rights, etcetera, (ii) was guilty of "bias etc.," and (iii) did not prove or support its rejection of the Rise Petition (or the Planning Commission's recommended denial of the EIR/DEIR) with sufficient evidence, cause, and legal authority. Therefore, Rise incorrectly claims that the disputed Rise Reopening Claims (e.g., the disputed EIR/DEIR and Rise Petition) must prevail, ignoring, disregarding, and evading (incorrectly) all the nonoverlapping Comprehensive Objections of objectors and their members and others, as if this were only a two-party dispute between the County and Rise, instead of the multi-party dispute it is against objectors with at least equal (if not superior) competing constitutional, legal, and property rights. The County team has not addressed or cured that error (and should do so), but, in any event, the Board should not repeat that error, which would further deprive such objectors of due process, equal protection, redress of grievances, and their other constitutional, legal, and property rights (Exhibit C). The County team should ask themselves what they would expect to happen if Rise were ever to prevail over (or just as badly settle with) the County and attempt to begin mining. Whatever the County team imagines that answer to be, it needs to remember that what Rise Reopening Claims threaten would be intolerable to objectors who one day and one way or

another will also "have their own days in court." Again, see the above hypothetical case illustration.

However, although ignored, objectors have filed comprehensive, detailed, and meritorious evidentiary and legal objections to each of the material Rise Petition Exhibits 1-429 and Appendices, thereby defeating not just the Rise Petition (which cannot ever satisfy its burden of proof against those objections). Objectors also dispute Rise's incorrect attacks on the alleged deficiencies of the County's separate evidence against Rise Reopening and on the County's disputed denial of due process and equal protection, and on the County's disputed "bias etc." These Comprehensive Objections are necessary because whenever the objectors finally have our "days in court" on the Comprehensive Objections (with more to add on account of incorrect limitations in these processes), the Rise Petition, EIR/DEIR, and other Rise Reopening Claims must be defeated on the merits and procedurally. But what happens if disputes occur in separate actions, like Rise's expected federal court suit for its disputed "#1983 Etc. Claims," and the County were to lose or settle some part of its separate dispute with Rise (which should not happen, but objectors should not have to "bet their homes" on the bullied County team's narrower legal position with its lesser evidence, authorities, and claims (compared to objectors' broader and more comprehensive evidence and objections in the record and that must be heard by some court sometime)? That concern is especially troubling if (as some fear) Rise bullies the County into a settlement or other use permit resolution objectionable to objectors, particularly if such a deal negatively impacts objectors or impairs any Comprehensive Objections. As discussed elsewhere, the Rise strategy of ignoring all objections seems to be somehow (incorrectly) to attempt to: (incorrectly) prevail over the County team, and then (incorrectly) assert issue, claim preclusion, and collateral estoppel etc. theories against objectors. This and other Comprehensive Objections should make that disputed result legally impossible.

Fortunately, because both (a) Rise and (at least in public) the County have ignored, evaded, and disregarded objectors and our Comprehensive Objectors, which now should prevail (since objectors are not only correct on the merits, but we have rebutted all Rise's material evidence and arguments), and (b) we also should prevail by default on account of Rise's failure to exhaust its administrative remedies without being entitled now to counter objectors later with any new counter-evidence or arguments. (This Petition/Objections [e.g., discussions of *Fairfield*] explains in some detail such "at least in public" references with regard to the County team, because each Supervisor on the Board may (and should) consider anything in the record, even if not in the Rise or County staff hearing presentations, such our Comprehensive Objections, to support his or her decision to deny any Rise requested relief, and with such Board Resolution findings that need not fully present his or her reasons for doing so with any detailed citations to the record. Id. However, it is not clear how any reviewing court would know what Comprehensive Objections (including massive evidence) were even in the record that was so ignored, disregarded, or evaded by Rise and (at least in public) by the County team. Therefore, these Comprehensive Objections do what we can now to prepare for such situations, such as demonstrating our broader rights and standing in what follows.

C. A Brief Summary of Many Different Kinds of Standing For Objectors to Enforce And Defend Our Comprehensive Objections And To Rebut Rise Reopening

Claims (And County Team Errors Or Accommodations Favoring Rise) In Every Possible Situation And Process In Every Possible Forum.

Thus, each such objector has multiple bases for legal "standing" described herein and is "beneficially interested," with clear, present, direct, substantial, and beneficial rights to the performances of duty and other relief requested of the county herein and any following court. For example:

1. ***Calvert v. County of Yuba (2006), 145 Cal. App. 4th 613 ("Calvert")*** is an example of such a group like objectors of impacted, public citizens seeking a similar writ of mandate like our case against the County incorrectly authorizing vested rights without providing impacted citizens the required due process the Court of Appeals. See other cases below [In that case it was a plaintiff, "nonprofit organization that includes Yuba County residents and taxpayers" and an adjacent, impacted neighbor plaintiff.] Initial objector members are (and others will be) no less such impacted residents and taxpayers in Nevada County, and, furthermore, Plaintiffs have many more such "beneficial interests" and bases of standing. The duty of the County included both (i) providing objectors and other potential victims with comprehensive and timely due process and equal protection opportunities for full prosecution of our Comprehensive Objections consistent with our constitutional rights to redress of our grievances (and what we would have done had the County properly allowed objectors to do so in the dispute processes), and (ii) defending such local objectors and our community by doing what would be required of the County by Comprehensive Objections to both defeat Rise and protect the County from being bullied into improper concessions, favoritism, and accommodations sought by Rise and so far too often suffered by objectors.
2. Some current, general standing rules are specified in more detail by ***Save the Plastic Bag Coalition v. City of Manhattan Beach*** **(2011), 52 Cal. 4th 155, 165-170 ("*Save the Bag*") ("strict rules of standing that might be appropriate in other contexts have no application where broad and long-term [environmental] effects are involved [citing Bozung] … [although] here it was unnecessary to resort to the public interest exception…[because] Plaintiff plainly possesses the direct, substantial sort of beneficial interest required to seek a writ of mandate.") (**emphasis added) Likewise here, objectors satisfy all the requirements and do even more for standing. Accord, *Property Owners of Whispering Palms, Inc. v. Newport Pacific, Inc.* (2005), 132 Cal. App.4th 666, explaining how objecting entities are entitled to standing on behalf of members under the circumstances demonstrated in the Comprehensive Objections, including because such persons would have standing to sue in their own rights, such as those objector-members filing Comprehensive Objections, such as those constituting such "Groundwater

Victims," "Subsidence Victims," and other "Impact Victims" addressed in Exhibit D.

3. In addition, ***Save the Bag*** (at 166) and applicable law also reconfirmed the "public right/public duty" exception that *Save the Bag* (at Id.) expanded and called **"public interest standing"** to the requirement of beneficial interest for such a writ of mandate in order to "promote the policy of guaranteeing citizens the opportunity to ensure that no government body impairs or defeats the purpose of legislation establishing a public right," among other things addressed by *Save the Bag* and its progeny, such as making public interest standing available in such cases because "maintaining a quality environment is a matter of statewide concern" (Id.), further noting that, "As we have noted, 'strict rules of standing that might be appropriate in other contexts have no application where broad and long term (environmental) effects are involved." Id. at 170. While (as *Save the Bag* explains in overruling Waste Management and clarifying the standing rules), objectors would prove standing in any event under earlier rulings, such as *Property Owners of Whispering Palms, Inc. v. Newport Pacific, Inc.* (2005), 132 Cal. App.4th 666, (approving the standing of an association representing members with standing, even if it included some members who lacked standing, which as far as objectors know is not a problem anyway in this case.) Objectors may have some members with less direct public interest standing but also with varying (but each sufficient) degrees of "direct" impact standing, depending on where they reside compared to the 2585-acre underground IMM. Nevertheless, as their EIR/DEIR and other objections or membership demonstrate, many objector members are in the direct impact zone (e.g., Groundwater Victims and Subsidence Victims) who are reasonably concerned their groundwater would be depleted 24/7/365 for 80 years (as Rise Petition demands at 58 "without limitation or restriction." E.g., Exhibit D and the Comprehensive Objections to the EIR/DEIR already in the record for this dispute on that issue.
4. Objectors also have standing through their members' potential future impacts and claims under ***Varjabedian v. Madera*** (1977), 20 Cal.3d 285 (***"Varjabedian")*** (granting inverse condemnation, nuisance, and other claims for those homeowners downwind of a new sewer plant who were disproportionately impacted more than the general public living at a safe distance), for the harms threatened by Rise (and not sufficiently defended by the County team only addressing Rise's claims with narrow law and evidence allowing Rise and its enables thereby to incorrectly ignore, disregard, and evade most of the Comprehensive Objections and incorrectly limit objectors rebuttal to Rise as equal, indispensable parties in interest in this multi-party dispute.). Not only are such Comprehensive Objection issues germane to the objector entities' purposes, but among such entities' highest priority concerns, as is certainly true of their such members, who may use those entities to do for them more cost-effectively what is not required of them to

do for themselves. While individual members may have personal claims in the future when and if claims against Rise ever become "ripe," as explained below, the point of those unripe claims now is only to demonstrate standing, so that such objector entities can save their members from ever having to suffer such harms that would be required for such threatened Rise wrongs to become "ripe" individual claims.

5. Objectors further have standing through such "**Groundwater Victims," "Subsidence Victims," and other "Impact Victims" with competing constitutional, legal, and property rights as overlying surface owners above or around the 2585-acre underground IMM where Rise proposes such disputed underground mining, dewatering, and other adverse impacts described in the Comprehensive Objections with more to come pursuant to this Writ.** See, e.g., Exhibit D, "Overlying Surface Owners Rebuttals" disputing Rise with authorities like *City of Barstow and Pasadena (whose surface victims illustrate such "**Groundwater Victims**"), Keystone and Marin Muni Water (whose surface victims illustrate such "**Subsidence Victims**"), Empire Mines and Gray v. County of Madera (whose victims illustrate such other "**Impact Victims**")*, etc. E.g., Keystone Bituminous Coal Assn v. DeBeneditis, 480 U.S. 470 (1987) ("Keystone"); City of Barstow v. Mojave Water Agency (2000), 23 Cal.4th 1224 ("City of Barstow"); City of Pasadena v. California Water & Tel. Co. (1946), 29 Cal. 2d 466 ("Pasadena"); *Gray v. County of Madera* (2008), 167 Cal.App.4th 1099 ("*Gray" or "Gray v. County of Madera*"); Marin Municipal Water Dist. v. Northwestern P.R. Co. (1967), 253 Cal.App.2d 83 ("Marin Muni Water");
Empire Star Mines Co. v. Butler (1944), 62 Cal. App. 2d 466 ("Empire Mines").
6. Objectors further have standing because for all these and other reasons and the proof provided by Comprehensive Objections, the County processes have denied objectors, our members, and other supporting objectors due process, equal protection, redress of grievances, and other constitutional rights, including also to require the bullied County to free itself from the disputed and meritless "#1983 Etc. Claims" (including claims of "bias, etc.") of Rise against the County team officials and staff so that such defendants can feel safe to do their legal duties in these circumstances for the objectors without fear of abuse and worse from Rise. While Rise seems incorrectly to be "playing the victim" and blaming without merit such County team defendants to coerce undeserved benefits to the prejudice of objectors in these "zero-sum games" by seeming to follow the disputed and inapplicable *"Hardesty2"* model in this distinguishable context (See Exhibits A and B), such objectors are the real victims here, as demonstrated in Exhibit A. Rise has disproportionately benefitted from its "bullying" in ways that deprived objectors and other victims of their own competing due process, equal protection, redress of grievances, and other constitutional, legal, and property rights. Those Exhibits A and B also prove how our Comprehensive Objections have the logical consequence of defeating all such disputed

"#1983 Etc. Claims" and "bias, etc." claims against the County defendants, since in this multi-party dispute there are three main sides, (1) objectors versus Rise with the bullied County team in the middle, (2) Rise versus the County adjudicating defendants, and (3) objectors versus any of County team to whatever extent any of them support anything from or for Rise that objectors dispute. However, there can only be one category of such "victims" of the County team, and those victims are objectors, but NOT Rise. Also, unlike Rise, what objectors want from the County team with their objectors is not money or public benefits, but just self-defense protection of our rights, property, and environment by the County team to doing its job fairly and correctly (without fear of or favor to Rise or its enablers) by (a) allowing the objectors to rebut all the Rise additions to the record we have not been allowed to contest, and (b) conforming and expanding each Board resolution to match our Comprehensive Objections against Rise.

D. When Rise Challenges Such Denials As It Has Threatened, This "2024 EIR Staff Report" (Like The "EIR/DEIR" And Other Rise Proposals And All "Rise Reopening Claims") Suffers From Continuing To Ignore, Disregard, And Evade The Unique Impacts on Such Overlying Surface Owners Above And Around the 2585-Acre Underground IMM As Described In the Comprehensive Objections To Such Threatened Violations of Such Objectors' Competing Constitutional, Legal, And Property Rights That Must Defeat All Rise Reopening Claims.

1. How Can The Underground Mining Occur When Rise Has No Right To Dewater The Underground IMM Because It Depletes Groundwater Owned in First Priority By the Overlying Surface Owner?

Just as with respect to the Board's correct denial of the Rise Petition incorrectly claiming vested rights also addressed in the attached Petition/Objections, the 2024 EIR Staff Report correctly recommends the denial of Rise's requested "EIR/DEIR" related proposals, but is too narrow in scope, law, facts, and coverage in order to protect such competing constitutional, legal, and property rights of such overlying surface owners above and around the 2585-acre underground IMM and also continues entirely to ignore, disregard, and evade our Comprehensive Objections. For example, the companion Exhibit D to the attached Petition/Objections proves (without any contradiction from the County team or Rise or its enablers) that the owner of each overlying surface parcel above and around the 2585-acre underground IMM has a first priority right to the groundwater beneath his or her parcel. E.g., *City of Barstow, Pasadena*, etc. See Gray v. County of Madera, rejecting a surface miner's proposed EIR and well mitigation that would likewise defeat the proposed EIR/DEIR well mitigation measures in this case. See also *Empire Mines* (the controlling case confirming that the surface parcel boundaries are projected into the earth to determine the underground mining boundaries and related mineral and water rights, resulting in a legal "checker-board" impact on such underground mines.) The disputed "EIR/DEIR" contemplates dewatering that

groundwater (to which Rise has no such right) and flushing it away down Wolf Creek 24/7/365 for at least 80 years.

While the 2024 EIR Staff Report (at 9) disclaims any "independent verification of Applicant's Mineral Rights" and of its "Underground Mineral Rights Boundary" description, that report does not address that groundwater conflict at all, although the disputed EIR addresses continue deficiently to discuss undercounted existing well depletion mitigation based on the entirely unproven assumption (disputed in our Comprehensive Objections) that somehow Rise can legally get away with "taking" objecting surface owner's groundwater by dewatering, whether or not in existing wells, with the staff apparently not noticing that any County support for such takings would have much more serious and adverse consequences for the County than any meritless takings claims threatened by Rise "playing the victim." E.g., *Varjabedian* and other such cases explained in Exhibit D. But this is about more than wells, since any drop in the surface water table (e.g., needed to preserve our forest and other vegetation and save us from living in the midst of a dead forest waiting for the next wildfire) is a taking of such groundwater from its owners, and (b) the surface owners have a right to "subjacent support" and "lateral support," including from the groundwater beneath us, to prevent "subsidence" which includes depletion of groundwater. E.g., *Keystone* (the US Supreme Court upholding the surface owners right to compel coal miners to leave half of the coal underground to support the surface and prevent subsidence, as well as protecting groundwater support; Exhibit D and *Marin Muni Water.* Thus, it seems as if Rise is "setting up" the County to make gifts of public funds (i.e., the cost of taking private owners' groundwater) for more profits for Rise's nonresident speculator-shareholders because otherwise, the EIR/DEIR admits there can be no mining without dewatering. In any event, none of the disputed EIR/DEIR, nor any other Rise Reopening Claims, nor any such staff report address what happens if and when the dewatering stops for any reason, including judicial injunctions.

2. How Can Rise And The County Team Refuse, As The 2024 Staff Report Continues To Do, To Consider The General Plan Impacts On The 2585-Acre Underground Mining Impacts On Our Overlying Surface Community, Instead Considering Only The Brunswick Parcels Impacts For Surface Mining?

The deficient 2024 EIR Staff Report discusses the impact of Rise dewatering and mining activities only for "surface mining" at the Brunswick parcels, almost entirely ignoring the much larger and more serious 2585-acre underground miner versus competing overlying surface owner issues consistently in dispute, yet only addressed by objectors in our Comprehensive Objections. For example, that deficient report addresses "Zoning And General Plan Consistency" at 28-29, but while it correctly discusses the issues for that Brunswick area, it does not address the many other even more incompatible residential and other surface areas above and around the 2585-acre underground. Likewise, the report's "Rezone" discussion (Id. at 29-30) speaks correctly against Rise's proposal as to the "Brunswick Industrial Site" (and mentioning the "Centennial Industrial Site") zoned M1, addressing the:

> … ME Combining District [that] allows for surface mining …[but to be] used only on those lands that are within any of the compatible Nevada General Plan designations and that are not in a residential zone. All uses in the ME Combining District are subject to approval of a Use Permit with a Reclamation Plan. The extraction of minerals by open mining, quarrying, dredging, and related operation of the **surface** … shall be conditionally allowed subject to regulations in the Nevada County Land Use And Development Code Section L-II 3.22—**Surface Mining And Permits And Reclamation Plans.** (emphasis added)

Notice that none of that relates to our more obvious and powerful Comprehensive Objections' reasons for denying dewatering and mining in the 2585-acre underground IMM, which lies beneath important and significantly populated RESIDENTIAL areas, realities ignored by Rise and its EIR/DEIR enablers and the staff reports. See Exhibit D. Yet, these disputed are not just about "surface mining," but about literally thousands of people living above and around the 2585-acre underground IMM who would be directly and materially adversely impacted as proven in their Comprehensive Objections. Many important other non-mining businesses for residential customers are also impacted by such UNDERGROUND MINING, such as our regional hospital, our regional (and fire-fighting) airport, shopping centers, a freeway and major road, and other important residential supporting infrastructure. None of that can possibly be consistent with any of what the staff addresses (at 30-31) as: "the Goals, Objectives, Policies or Implementation Measure of the General Plan" or the "Public interest, Health, Safety, Convenience or Welfare of the County." While the staff agrees it does so too narrowly and ignores, disregards, and evades the worse problems repeatedly prove in our Comprehensive Objections making a much more profound case against the disputed Rise Reopening Claims, such as the disputed EIR/DEIR.

Likewise, the deficient 2024 EIR Staff Report again grossly understates (at 31-37) the "Inconsistency With General Plan Central Themes And Goals, Objectives And Policies." Many areas above and around the 2585-acre underground mine have significant residential populations, many on wells and almost all objecting to the EIR/DEIR, Rise Petition, and other Rise Reopening Claims, especially focusing on maintaining their groundwater from depletion which is essential to both a "rural quality of life" and our "suburban quality of life." The General Plan's discussion (at 31) of the "desired land use pattern which balances growth between rural and urban areas" [with there being no "urban area "here, but rather underground and surface mining irreconcilable with any of our competing rural or suburban uses] and "balance between housing, employment, natural resources, and services is a key element …" Our problem with the deficient staff report is that it understates the scope and intensity of the problems by just discussing the area around the "Brunswick Industrial Site," while ignoring our bigger impacted communities above and around the 2585-acre underground IMM where there is no industry, just shopping centers, our regional hospital and airport, and other residential services support.

Indeed, the staff report also discusses the separation boundaries between Community Regions and Rural Regions. Once again, the staff ignores the issues for surface owners above

and around the 2585-acre underground IMM versus the underground miner, where the boundary is often vertical, rather than horizontal, and directly involves competing rights to the same groundwater. Worse, the staff discussion (at 36) misses the point in the discussion of "General Plan Policy 17.6- Mineral Management" because objecting overlying surface owners are not just adjacent to, but living directly above, the 2585-acre underground IMM, and most of them bought and invested in their property before Rise came to speculate at our prejudice in 2017, relying on the fact that no one could imagine in this day and age any responsible government allowing the reopening of such a mine closed, discontinued, flooded, dormant, and abandoned since at least 1956 in a community like ours. The very idea seemed preposterous.

The best test of compatibility is for the Board to apply what Gray v. County of Madera called "common sense" to ask what does a such home selling surface owner above or around the 2585-acre underground IMM tell his or her buyer? Is the inconvenient truth message, in effect: "Oh, by the way, Rise came to town in 2017 to speculate on reopening the giant underground IMM beneath this house that has been closed, discontinued, dormant, flooded and abandoned since at least 1956, which almost everyone in this community opposes for all the many serious reasons described in massive objections by qualified people disputing almost everything Rise and its enablers claim and complaining that the County team in the middle is going much too easy on Rise. However, you can read the massive alternative filings and presentations by Rise and make up your own mind. If you are still willing to buy the property and take your chances, let me know."

For the record, objectors note that the Comprehensive Objections are deficiently described in this new staff report, and objectors provided much broader law, evidence, and proof for rejecting the EIR/DEIR, related applications for permits, zoning, and variances, and other Rise Reopening Claims. While such narrower report is sufficient to prove the County's narrow case against the disputed EIR/DEIR and such other narrow Rise Reopening Claims, the report continues to ignore, disregard, and evade objectors' broader law, evidence, and proof in our Comprehensive Objections. If Rise is going to relitigate these disputes, Rise should have to confront the strongest and most comprehensive case against Rise, which is the Comprehensive Objections that should prevail against Rise, regardless of whatever happens in the Rise threatened litigation against the County team.

IV. In Terms Of Updates, Rise's Announced EIR "Alternate 2" To Drop Its Centennial Use Plan Creates Many Updated Objections, As Well As Reinforces Both Our Prior EIR/DEIR And Rise Petition Objections, Here Illustrated by Comprehensive Objections to the Disputed "Alt 2 Letters" of Rise's Counsel And Some Interactions With Exhibits A and B.

A. Some General Context For the Alt2 Letters Dispute.

Many meritorious Comprehensive Objections to the EIR/DEIR, including "Prior Ind. 254/255 Objections," have proven that the changes from the disputed DEIR to the disputed EIR required greater revisions and recirculation of the disputed EIR, especially on account of the Centennial issues. Now that Rise has opted to exclude Centennial further from its prior EIR/DEIR plan by electing Rise's also disputed Alternative 2, such objectors' arguments for such revisions

and recirculation are further enhanced. Indeed, that requirement for Rise revisions is further enhance by the many additional amendments, supplements, and other changes to the Rise story at the EIR Planning Commission hearing, all of which Rise surprises objectors were incorrectly prohibited by the County team from rebutting and countering, again denying our competing constitutional, legal, and property rights for at least equal party-in-interest rebuttals and counters to accommodate Rise. In particular, objectors dispute and object to each of the contentions by Rise's counsel in the Mitchell Chadwick letter to the Planning Commission dated May 5, 2023, (the "**1st Alt 2 Letter"),** as supplemented by the Hanson Bridgett letter to County Counsel Kit Elliott dated January 16, 2024, (the "**2d Alt2 Letter**" and collectively with that first letter called the **"Alt 2 Letters").** As usual, these comprehensively disputed "Alt 2 Letters" contain no proof, cited authority, or even reasoned arguments, but just state incorrect opinions with great conviction as if that were enough to overcome the massive, contrary Comprehensive Objections that Rise and those Alt 2 Letters continue to ignore, disregard, and evade, including the Prior Ind 254/255 Objections that rebut, distinguish, and otherwise object to those contentions. That objection applies not just as to Rise's 2d Alt2 Letter, which mentions only briefly Rise's disputed Alternative 2 claim and in passing "the variance" and the "headframe" presumably referencing the disputed 1st Alt2 Letter, but also to the Alt2 Letter, on which we shall therefore focus our dispute comments here. Objectors note, however, that, since Rise lawyers invest little effort in their unsubstantiated claims, we perceive no need to do much more than to reject them as meritless for all the reasons already stated in our Comprehensive Objections.

Besides that Rise change for Alternate 2 so increasing that need for revisions and recirculation, the many cited inconsistencies and contradictions between the disputed EIR/DEIR and the disputed Rise Petition demonstrated in the Comprehensive Objections also have that effect and others explained. For example, the disputed Rise Petition claimed that Centennial was not only a key part of the disputed "Vested Mine Property" claim for Rise's disputed vested rights, but that Centennial was so integral to the project that Centennial allegedly justified vested rights for the rest of the "Vested Mine Property." Recall that, before that Rise change in legal strategy for the Rise Petition, the EIR/DEIR also tried to exclude Centennial from the CEQA project (as Rise's counsel again attempted to do by their unsubstantiated claim in the Alt 2 Letter). **However, somehow nevertheless still tries to use Centennial for Rise's disputed vested rights project claim**. **Rise cannot have it both ways, and these Alt 2 Letters make the Rise Petition and the EIR/DEIR irreconcilable. Rise cannot be allowed at the same time (incorrectly) to claim that Centennial is such a core part of the Vested Mine Property for Rise's disputed vested rights theory, as a CONTINUING LINK through historical predecessors to somehow (incorrectly) give and preserve vested rights for Rise in that *whole* Vested Mine Property, and yet simultaneously claim (incorrectly) that Centennial is NOT part of the rest of that project for CEQA purposes. To do so would, in effect, misstate and misapply both the applicable law required for vested rights and for CEQA. If Rise wants a "test case" for litigation, this would be one that Rise must lose. IN ANY CASE, WHATEVER ELSE HAPPENS, THE EFFECT OF THE ALT 2 LETTERS IS TO "ABANDON" NOT ONLY RISE'S BOGUS CLAIM FOR VESTED RIGHTS IN CENTENNTIAL BUT, THEREBY, ALSO ON ALL THE REST OF THE VESTED RIGHTS THE RISE PETITION CLAIMED FOR THE REST OF THE VESTED MINE PROPERTY.**

B. Item-By -Item Rebuttal Of The Disputed "Alt 2 Letters" From Rise Counsel.

Briefly, since the Alt 2 Letters add no proof or substance in support of their disputed claims and opinions masquerading as "facts," objectors contend for the record our comprehensive disputes still apply from all the Comprehensive Objections, including the order in which they appear in the "**1st Alt1 Letter:** "

1. The challenges to the (from our perspective) too rare, useful parts of the County Planning Staff Report that Prior Ind 254/255 Objections and other Comprehensive Objections otherwise objective, because, as such letter said was "generally positive" to Rise and therefor was also rebutted by objectors for such reasons stated in such objections defeating that proposed variance and rezoning;
2. W**hen Rise refers to things like County staff comments and "inconsistenc[ies] with the conclusions in the County's own environmental documents," objectors note that such opinions are not binding on anyone or any more legally determinative than the many contrary opinions of equally qualified objectors in the Comprehensive Objections, reminding the Board that this deficient (as to objectors and excessively accommodating as to Rise) County process is supposed to be an adjudicatory process in which objectors are allowed to counter and defeat (as we have done) every incorrect claim of such staff and "environmental document" authors for the adjudicators to decide. Stated another way, Rise continuously and incorrectly cherry-picks the record from bullied or enabling non-decisionmakers who have incorrectly ignored objectors' Comprehensive Objections in favor of Rise as if that meritless pro-Rise data was somehow of special importance or somehow binding on the County decision-making adjudicators who are not only entitled, but required, to give at least equal weight to the meritorious Comprehensive Objections to the contrary**; (iii) the General Plan contains many things, and Rise cannot, as it and its enablers tend to do, just pick out the parts the like and disregard the rest and all the contrary Comprehensive Objections. Remember that, as proven item-by-item in the Prior Ind 254/255 Objections, the comprehensively disputed EIR/DEIR "Responses" and "Master Responses" were generally nonresponsive, evasive, incorrect, and otherwise objectionable, leaving Comprehensive Objections free of any meaningful dispute or rebuttal by Rise or its "enablers" (See Exhibit A). As to such "generally positive" (i.e., pro-Rise) staffers and other Rise "enablers" (e.g., the third-party consultants engaged by the County with Rise's money and influence, whose description as "independent" is debatable, as explained in Exhibit A.) In our adversary legal system there are consultants/experts/etc. who may be "independent," but their results are always predictable because of their "professional orientation" to one side or the other of the issues in dispute. No "independent" pro-labor consultant would produce the same result as a "pro-management consultant." No consultant or expert of the type hired by a criminal defense lawyer would produce a report by a "pro-prosecution" consultant or expert. Likewise, "pro-developer" (especially pro-mine) consultants or experts, however technically "independent" rarely say much with which community victims of such

the developments or mines would agree. That is why cases like this one end up in court in what is called a battle of experts. However, in this case many of the objectors themselves are equally qualified experts (or have engaged such experts) to rebut those Rise enablers, but notice that, like Rise, such enablers have ignored, disregarded, or evaded those Comprehensive Objections, proving that, however "independent" they may be it seems appropriate to consider them Rise "enablers." See, e.g., the Prior Ind 254/255 Objections rebuttals to the evasive, deficient, and otherwise objectionable EIR "Responses" and "Master Responses."

3. When such Rise lawyers incorrectly proclaim compliance with the General Plan and alleged acceptance by such staff or enablers, they are not proving independent corroboration by such staffers or enablers, but (for all objectors are permitted to see) simply acceptance without investigation by incorrectly just uncritically assuming that such claims by Rise or its lawyers or other enablers are correct when that is an incorrect and improper assumption disproven by Comprehensive Objections. What matters is not the source of the comments by or for Rise or its enablers, but rather the legal, factual, and evidentiary basis for such comments, which is lacking, deficient, or otherwise wrong;
4. Rise and such others citing the disputed DEIR about Alt. 2 as the "environmental superior alterative" is just comparing one bad alternative to an even worse one, when both are objectionable (i.e., saying on a scale of 1-10 where 7 is tolerable that 2 is better than 1, proves nothing useful), and all Rise alternatives are unacceptable and ignore massive Comprehensive Objections;
5. Since the Comprehensive Objections prove that nothing was "properly analyzed" under the DEIR, Alt 2 cannot be adopted without further review, especially since there are massive, demonstrated hazards properly analyzed by objectors to the contrary, and Centennial is a potential Superfund site that threatens our local community under circumstances where Rise's and its enables' credibility problems make it unwise to "just trust them." For example, when Rise's counsel incorrectly proclaims (as Rise spokespeople too often do and incorrectly) that "there is no question that the analysis found in the DEIR is sufficient…" that falsehood destroys their claim to any credibility because that ignores, disregards, and evades massive Comprehensive Objections proving that such faulty or worse analysis is worse than deficient. When Rise's counsel incorrectly cites the exception for not requiring more review, where there is a sufficient basis to "permit informed decision making and public participation," they false assume the adequacy of the DEIR/EIR which the Comprehensive Objections prove are incorrect, insufficient, and objectionable in many other ways, thus defeating the Rise excuse for any such exception. Public relations puffing about Alt 2 "serv[ing] the interests of the surrounding community and the environment, and directly addresses many of the comments received on the DEIR" is utter nonsense in the proven and better-informed view of the Comprehensive Objections from that "surrounding community" almost entirely united in opposition to the mine. Postcards from "who knows who" purported Rise supporters living at a safe distance from the IMM or Centennial are meaningless, because as proven by the CA Supreme Court in ***Varjabedian*** (where local owners

downwind of the new local sewer plant were granted inverse condemnation, nuisance, and other claims for their disproportionate suffering compared to others at a safe distance who received benefits without such burdens and harms);

6. The project does need a variance and does not satisfy the applicable requirements, as explained in Comprehensive Objections. Note Rise incorrectly just assumes the correctness of the disputed EIR/DEIR rebutted by those objections and then claims that it wins. Without their imaginary foundation on which to stand, their case sinks back into the alternative reality from which it came;
7. When Rise's counsel threatens again (at 4) to bully the County team with "takings" claims, about a variance, the Rise team and enablers are continuing to ignore the competing rights of the local objectors with at least equal and opposite constitutional, legal, and property rights described in the Comprehensive Objections. This is a zero-sum game between Rise and the local objectors in which Rise keeps ignoring the fact that whatever is granted to Rise is a loss to such local objectors. Our competing interests and rights are incorrectly ignored, disregarded, and evaded in these disputes. By the way, see also Exhibit A hereto in rebuttal to Rise claims that the County staff did not coordinate more with Rise, because that staff did not coordinate nearly as much with objectors as with Rise, who had no more right to such coordination or advance information than did objectors, especially since Rise was given much more opportunities to pad the record at and for the hearing from which objectors and their rebuttals were excluded (except for three minutes per person of limited and censored "public comments" for which none of us had any prior knowledge of what the County or Rise would say, and we still don't have those disputed additions to the record in a transcript for rebuttal.)
8. Rise claims bias because the County "routinely approves variances based on findings that are scant and questionable compared to the findings justification for the Project." That is outrageous because it again ignores the massive opposition of Comprehensive Objections that are not present in those imagined comparison cases, and Rise has no right for the County to ignore, disregard, or evade such objections just because Rise chooses to do so. Stated another way, as the Comprehensive Objections prove, this is not just the two-party dispute between the County and Rise that Rise pretends, but rather a multi-party dispute on which objectors have at least equal (and we contend superior) constitutional, legal, and property rights to battle against Rise whatever the County team may do or not do.
9. Since the Rise letter (at 5 plus) announces some incorrect arguments about its comprehensively disputed variances, consider these rebuttals using Rise's letter numbering:

    a. To the contrary of such Rise contention, everything Rise seeks would be granting a "Special Privilege Inconsistent with Limitations Placed on Other Properties in the Vicinity…" This is a suburban community above and around the 2585-acre underground IMM and adjacent to the surface mine areas. What Rise forgets is there is more at issue than just height for visual impact, that headframe is part of a system that massively impacts

our community. Disaggregating parts of a system and saying each part must be OK would be allowing the combined operating system composed of those parts to devastate our community. Moreover, height is not just a visual issue, but it also affects sound. In any case, notice how incorrectly Rise just dismisses the interests of competing residential and commercial objectors because we "do not require structures taller than 45 feet." So what? Rise is wrong to claim that the variance "is not a special privilege," because that privilege comes from being allowed to harm all of us local objectors whose competing rights Rise keeps ignoring, disregarding, and evading. None of the false comparisons cited by Rise have any meaning because Rise keeps ignoring the impacts on us locals that are not as great from its cited and totally irrelevant "communications towers." Remember also that this mine is a no net benefit project for the profit of nonlocal investors, not something that can be tolerated as a public benefit. See Comprehensive Objections rebutting the disputed County Economic Report (e.g., Prior Ind. 254/255 Objections.) We are entitled to be protected against the impact of such variances, not to mention the locals' horror everyday of being reminded by that headframe eyesore of the massive problems that Rise would be causing to our local community. (Consider the polluting exhaust fume towers in Richmond or Benicia for comparison.)

b. The Rise arguments appealing to the "Special Circumstances Applicable To the Property" are likewise wrong by ignoring the local impacts that make those circumstances a horror to us impacted local, not a basis for rewarding Rise for the harms it will cause us as detailed in the Comprehensive Objections. Rise's arguments may appeal to miners, although they are still incorrect, but this local area has not been a mining community for generations. The adjacent Empire Mines is a historical park! What may be "uniquely" desirable for miners, is a unique horror for us homeowners and non-mining commercial business because such intolerable mining is not compatible with what the rest of us are entitled to do. What gives the Rise speculators the right to come here in 2017, buy the closed, discontinued, dormant, flooded, and abandoned mine since at least 1956, and bully the County into subordinating, evading, and disregarding the competing constitutional, legal, and property rights of us local objectors, especially those overlying surface owners above and around the 2585-acre underground IMM.

c. Notice how this Rise letter at 7 slips into its disputed, "authorized use" argument the qualification (emphasis added): "WITH THE PROPOSED REZONE, gold mining and processing ON THE SURFACE WOULD ALSO BE AN ALLOWED USE." But that assumes disputed rezoning, and only mentions ON THE SURFACE, when the core disputes are about the 2585-acre underground mine activities beneath objecting overlying surface owners. Why would anyone give a variance for a surface matter when the

only economic use of the surface is to mine underground where the Comprehensive Objections prove Rise cannot mine gold? (For example, Rise cannot dewater the groundwater owned in first priority by those overlying surface owners so that the mine will stay flooded. See Exhibit D.)

d. If anyone doubts the reasons Rise has no credibility with local objectors, we direct you to the following absurd on its face quote at page 7:

> **The use facilitated by granting a variance is entirely consistent with the character and history of the property and the surrounding properties and uses, as the site has historically been a gold mine, and there is no proposed change from the historic use. (**emphasis added)

First, it is indisputable that this 2585-acre IMM underground mine has been closed, discontinued, dormant, flooded, and (objectors proved in the Comprehensive Objections) abandoned since at least 1956. Any such historic use relates back to that ancient date, and the surface community has obviously changed radically above and around that underground IMM, including not only thousands of residents but many non-mining commercial businesses, our regional airport, our regional hospital, a freeway, major roads, and important other infrastructure. That mining is utterly incompatible with those surface uses. For example, since each overlying surface parcel owns first priority rights to the groundwater (Exhibit D) that Rise dewatering 24/7/365 for at least 80 years would flush away down the Wolf Creek, Rise can only dewater if some authority rips those groundwater rights away from such surface owners' creating massive inverse condemnation and other liabilities. See Id and ***Varjabedian.***

Second, the Comprehensive Objections prove that this component in this objectionable project causes many prohibited adverse effects on public health, safety, welfare, and the integrity and character of the district, and especially on the utility and value of nearby property. See Prior Ind 254/255 Objections, including a rebuttal of the County Economic Report that not only ignored local realtors' opinions in favor of an absurd comparable, but worse, never asked any actual appraisers whether they would be lowering their appraisal of our local homes in the mine impact zones, which would collapse our market, since banks only lend a percentage (e.g., 80-90%) of that appraised value, thus reducing the capped financing available for buyers.

Third, again, Rise incorrectly tries to isolate the headframe component from its function and impact by enabling the mining horrors. Likewise, Rise tries to isolate the issue to Brunswick and ignore that the only reason for doing anything there is to mine underground in the 2585-acre

underground IMM, which would be somewhat enabled by the headframe component of that disputed, integrated system that must be considered as a functional whole, not just an isolated component with no relation to the problems in causes in operating context. For an extreme example, to make the point. Rise's argument is the equivalent of saying let me build a nuclear bomb structure, which cannot cause in harm because I have not yet inserted the plutonium. *Gray v. County of Madera* (a key groundwater rights case for defeating these EIR/DEIR claims) was right to insist on "common sense" which is utterly lacking in these Rise arguments (which also fail the related requirements for a "good faith reasoned analysis by *Vineyard, Banning,* etc.).

e. As discussed in the Comprehensive Objections this variance is not consistent with the General Plan. Most of the Rise arguments at page 8 have already been rebutted above. What is of special importance is that the only way Rise can get away with that disputed argument is to ignore both those many objections and the words it quoted: **"in a manner that does not create land use conflicts."** (emphasis added) Again this is not just a debate about aesthetics but irreconcilable dispute between in land use conflicts between thousands of impacted local residents versus one speculator trying for its nonresident investors to reopen a 2585-acre underground mine closed, flooded, dormant, discontinued, and abandoned since at least 1956 while our surface community grew over and around it. See Exhibit D.

f. This is not a "minimum departure" from the requirements because what is "necessary" is compliance in this "zero-sum objectors versus Rise game" with all applicable laws and the competing constitutional, legal, and property rights of such objectors as explained in the Comprehensive Objections. Rise's argument here incorrectly assumes that, somehow, it's not just the County that must accommodate Rise's speculations, but somehow all the rest of who have at least equal and opposite rights to Rise (and we contend superior rights).

C (at 9). This project variance is **not** similar to other granted variances because, as noted above, this objectionable mine is a unique burden and risk to the local community, as proven in the Comprehensive Objections. More importantly, when Rise incorrectly cites distinguishable (as to Rise) Willowbrook, complaining without merit about its denial equal protection for being treated differently from "others similarly situated" for "no rational basis," Rise again ignores how objectors and our Comprehensive Objections are what makes this case (i) different, (ii) with no one similarly situated, and (iii) rational to defeat Rise's claim. There is no other case Rise can cite as relevant or comparable with our facts and law once you include objectors and our Comprehensive Objections. Likewise, there is no arbitrary or intentional discrimination under *Sioux City Bridge* for the same reason. More importantly, if anyone is being denied equal protection it is

objectors, especially those local overlying surface owners living above and around the 2585-acre underground IMM with competing constitutional, legal, and property rights who are being denied such equal protection.

D (at 10). Again, the IMM Project is NOT "Consistent with the General Plan," as described above and in the Comprehensive Objections. The staff approval is of no more legal importance or power than our objections thereto, which may be why Rise and its enablers keep ignoring, disregarding, and evading our Comprehensive Objections and contrary constitutional, legal, or property rights. The correct County team change in course from mistaken accommodations of Rise's mistakes and worse is not some shocking mistreatment Rise claims, but, instead, is exactly what such people are supposed to do when they have been wrong (e.g., by excessively accommodating Rise) and are persuaded to do the right things for a change to do by following at least part of what is required by objectors' Comprehensive Objection. Exhibit A. As also explained in Exhibit A, when Fairfield proves that the County officials do not have to explain on what they relied for their decisions from the record, that includes our Comprehensive Objections and why, when objectors note that the County team has been ignoring, disregarding and evading our Comprehensive Objections "at least in public," we add that qualification because we presumed that some County team members properly gained some wisdom from our part of the record so ignored by others. That is a reasonable part of any fair process. That is not, as Rise falsely claims, "a pretext to justify a recommendation of denial."

Rise's argument about the Brunswick boundary missed the point and worse. First, is nothing that could be done with any of the property that would nearly as "intense" as what Rise proposes in the disputed EIR/DEIR or the Rise Petition. That is especially true because intensity relates to the impact on the adjacent properties and people it impacts, especially the connected 2585-acre underground IMM intensely impacting the overlying surface owners above and around that underground IMM. Second, what is "unsupported and nonsensical" is not industrial use causing much less harm to the community, but the absurd idea of reopening such a mine underneath an objecting suburb for the profit of nonresident mining speculators who came to town in 2017 to reopen an underground mine flooded, closed, discontinued, dormant, and abandoned since at least 1956.

This "Project" is obviously **not** (as Rise claims at 11) "consistent with the **overall rural quality of the life** in the County" (emphasis added), but such an absurd claim illustrates why Rise has such a credibility problem. **FIRST, only part of this massive mine can be called "rural," one of the most harmful parts of the Project is the 2585-acre underground IMM, which is underneath thousands of overlying or adjacent homeowners, many shopping centers and other commercial businesses, our regional hospital, our regional airport, and our suburban infrastructure (e.g., freeway, major roads, utility systems, etc.) However, Rise incorrectly tries to harmonize its mining with rural situations around Brunswick, which is a small part of the Project, it is impossible to reconcile the "way of life" of us objecting locals above and around the 2585-acre**

underground IMM, among many other things BECAUSE THE INTERESTS AND RIGHTS OF US OVERLYING SURFACE OWNERS ABOVE AND AROUND THAT UNDERGROUND MINE ARE COMPETING, ADVERSE, AND UTTERLY INCOMPATIBLE, SUCH AS BECAUSE RISE IS THREATENING TO DEPLETE OUR FIRST PRIORITY GROUNDWATER BENEATH EACH OF OUR SURFACE PARCELS TO DEWATER AND FLUSH IT AWAY 24/7/365 FOR 80 YEARS DOWN OUR WOLF CREEK. RISE CITES NO CASE WHERE THOSE INTERESTS CAN BE RECONCILED, AND THE OTHER PLACES WHERE SUCH SURFACE OVERS CONFLICT WITH UNDERGROUND MINERS (EXHIBIT D CITING KEYSTONE ETC.) PROVE WHY SUCH INCOMPATIBILITY EXISTS PERPETUALLY. (In coal country the issues are resolved by agreements and deed reservations allowing such underground mining burdens and worse, but those do not exist here, which means as elsewhere in the absence of such consensual accommodations that Rise cannot force us objecting surface owners to tolerate such mining, regardless of Rise's meaningless threats to use government or courts to force Rise's will on objecting surface owners in Rise's "2023 10K" that we rebut in Exhibit G at #II.B.25.) The Boca Quarry is not comparable, because, among many other differences, SURFACE QUARRY MINING IN RURAL AREAS CANNOT BE COMPARED WITH UNDERGROUND MINING BENEATH SUBURBAN HOMES. See also the letter at 13 where Rise again tries to judge the whole IMM as if it were only Brunswick, disregarding the 2585-acre underground IMM, such as when Rise wrongly claims (at 13) "the only area that could possibly be classified as semi-urbanized near the Brunswick site is the Cedar Ridge rural neighborhood." But what about the thousands of us living and working above and around the 2585-acre underground mine that Rise's argument intentionally ignores, disregards, and evades despite our repeated Comprehensive Objections to that objectionable Rise distraction tactic?

SECOND, any reading of the Comprehensive Objections proves that this is not any mining, but the worst kind of incompatible mining for all those reasons ignored by Rise and the disputed EIR/DEIR, including (at least in public) the bullied County team members who just incorrectly accommodated Rise for most of their comments without any of the required "common sense" (e.g., *Gray v. County of Madera*) or "good faith reasoned analysis" *(e.g., Vineyard, Banning,* etc.). See, e.g., Prior Ind. 254/255 Objections and other Comprehensive Objections that rebut every place where the County staff tolerated Rise's meritless claims, especially those bogus mitigation proposals that ignore most of the problems Rise would create so that Rise does not have to talk about mitigating them. Notice that Rise never once attempts seriously to address any of our objectors' Comprehensive Objections, and, as a matter of law, staff opinions have no more legal force than those of objectors.

Rise cannot have it both ways at page 12. FIRST, the cases on which it relies (e.g., Hansen), as well as the ones cited by objectors that Rise and (at least in public) the County team ignore, disregard, and evade from our Comprehensive Objections, all discuss intensity as part of the concepts of forbidden expansion and change. Again, Rise continues incorrectly to analyze the IMM as if it were a surface mine, and continues to ignore not only our Comprehensive Objections, but also the fact that its disputed excuses and justifications do not apply to this underground mining. How in the world can Rise rationally discuss the underground mining threat to us overlying

surface owners, but saying, in effect, don't worry, Rise will comply with "Comprehensive Site Design Standards" for "building design and even the paint color." That nonsense cannot evade Rise's accountability, for example, by so dewatering and depleting our groundwater 24/7/365 for at least 80 years and flushing it way down the Wolf Creek. When one considers the whole project and its impacts as do the Comprehensive Objections, the County's denial is not "bizarre" at Rise claims at 12, and there is no material industry in the relevant area and circumstances that is more "intense" than this disputed EIR/DEIR underground mining, especially when judged (as the law requires for such underground mining that Rise ignores by only addressing surface mining cases) by the intensity of the impact on the objecting surface owners about and around the 2585-acre underground IMM.

Second, Rise, whose frequent and objectionable "hide the ball," bait and switch and other disputed tactics, incredibly dares to accuse the staff of making up justifications, when Rise is the worst offender by far. For example, here, Rise's letter at 13 again tries to judge the whole IMM as if it were only Brunswick, disregarding the 2585-acre underground IMM, such as when Rise wrongly claims (at 13) "the only area that could possibly be classified as semi-urbanized near the Brunswick site is the Cedar Ridge rural neighborhood." But what about the thousands of us living and working above and around the 2585-acre underground mine that Rise's argument intentionally ignores, disregards, and evades despite our repeated Comprehensive Objections to that objectionable Rise distraction tactic? Rise's entire Alt 2 Letter must be rejected not only for the narrow reasons stated by the County team, but also for all the broader reasons asserted in the Comprehensive Objections that Rise fails to address and to which Rise must therefore lose, not just on the merits because Rise is wrong, but also because Rise has defaulted on its obligations to deal with actual reality instead of insisting on its disputed "alternative reality."

Again (at 13), Rise is wrong by trying to pretend this underground IMM project can be judged by Rise's inapplicable surface mining comparisons like the distinguishable and inapplicable Boca Quarry. When one judges the "impact" the law requires a focus on who is being impacted by the mining, which Rise never does and continues to deny the impacts on us objecting overlying surface owners above and around the 2585-acre underground IMM, who have no counterpart to be evaluated for a quarry. Unlike those Rise surface cases, this UDERGROUND MINING BENEATH AND AROUND OBJECTORS IS DIFFERENT THAN WHAT RISE DISCUSSES, AS IT OBVIOUS FROM THE WAY RISE CONTINUES TO IGNORE US OBJECTING OVERLYING SURFACE OWNERS' COMPREHENSIVE OBJECTIONS.

THUS, WHEN RISE INCORRECTLY CONCLUDES (AT 14) THAT THE COUNTY TEAM'S RECOMMENDED DENIAL "IS NOT BASED ON FACTS OR UNBIASED INTERPRETATION OF COUNTY POLICY," OBJECTORS HAVE PROVEN BY COMPREHENSIVE OBJECTIONS IGNORED, DISREGARDED, AND EVADED BY RISE THAT THE REVERSE IS TRUE AND RISE IS THE ONE INSISTING ON ITS "ALTERNATIVE REALITY," WHO IS COMPREHENSIVELY WRONG AND WORSE ON THE MERITS, AND WHO IS WORSE THAN "BIASED." We hope that this meritless, bullying effort by Rise does not again coerce the County staff into more meritless and worse "accommodations" to or for Rise to the further prejudice of

objectors, but if the next staff report to the Board regarding the EIR/DEIR agrees with Rise about any such things (or anything else contrary to our Comprehensive Objections), consider this another objection to that mistake or worse.

C. Some Interactions With Exhibits A and B, As Well As Other Parts of the Comprehensive Objections Records

Although ignored, disregarded, and evaded by Rise and (at least in public) by the County team, objectors' members filed comprehensive, detailed, and meritorious evidentiary and legal objections to each of the material Rise Petition Exhibits 1-429 and Appendices, thereby defeating not just the Rise Petition (which cannot ever satisfy its burden of proof against those objections), but also Rise's disputed attacks on the alleged deficiencies of the County's separate evidence and on the County's disputed denial of due process, equal protection, etcetera and on the County's disputed "bias, etc." claims to support Rise's threatened "#1983 Etc. Claims" for their disputed, distinguishable, and inapplicable *Hardesty2* model. That pattern is followed above as to the "**Alt 2 Letters"** and in **Exhibits A and B** with other such examples. This Petition/Objection is necessary because whenever the objectors have their "days in court" on the Comprehensive Objections (with more to add for whatever Rise and, to the extent that it accommodates Rise, the County staff), the disputed Rise Reopening Claims, including the disputed EIR/DEIR (including the Use Permit), must be defeated both on the merits and procedurally. But what happens if that has to occur in separate actions by objectors if they (and through objectors, their members) or others were denied full party in interest equal participation in this dispute process and the County were to lose its separate battle with Rise (which should not happen, but none of objectors' members are willing to "bet their homes" on the bullied County's excessively narrower legal position with its lesser evidence, authorities, and claims (compared to objectors' members and other far more comprehensive evidence and objections in the record and that must be heard by some courts sometime), especially if the bullied County were to "cave in" to a disputed settlement or other objectionable use permit resolution intolerable to objectors? As discussed elsewhere, the Rise strategy of ignoring, disregarding, and evading all objections seems to be somehow (incorrectly) to: attempt to: (i) prevail over the County's narrow case and evidence (e.g., which, like Rise also narrow case, focused only on surface mining authorities and ignored our Comprehensive Objections about the 2585-acre underground IMM mining beneath objecting overlying surface owners that is at the core of the dispute in reality), and then (incorrectly) (ii) assert issue and claim preclusion (e.g., collateral estoppel) theories against objectors. This Petition/Objection should make that objectionable tactic legally impossible.

Either the court must do the right things for objectors' full and equal participation to present all Comprehensive Objections (including such supporting evidence and our additions to the record obstructed by the bullied County to accommodate Rise), or else, if objectors are (incorrectly) denied that right, that must defeat any Rise issue or claim preclusion, collateral estoppel, or other such Rise strategy. The courts would then have to deal somehow with a situation where there could be thousands of conflicting victim suits and decisions again disputing the Rise Petition and other Rise Reopening Claims. The present situation is bad enough where in Rise's expected and threatened forum shopping and efforts to escape having

to confront its real victim objectors and their Comprehensive Objections, Rise apparently contemplates its "#1983 Etc. Claims" suit in Sacramento federal district court, while objectors correctly pursue their competing claims, defenses, and rights in a normal, local writ action, potentially resulting in inconsistent decisions; i.e., one where objectors and our member and others defeat Rise on our enhanced Comprehensive Objections, versus another where Rise (incorrectly) prevails against the County on its narrower theories and disputed *Hardesty2* model. Fortunately, because: (a) Rise and (at least in public) any County team support for Rise both have ignored, evaded, and disregarded objectors and our Comprehensive Objectors, which now must prevail on the merits (since we are not only correct on the merits, but we also successfully disputed all of Rise's material evidence), and (b) objectors also prevail by default on account of Rise's failure to "exhaust its administrative remedies" without being entitled now to counter us with any new counter-evidence or arguments. (This Petition/Objection [e.g., discussions of *Fairfield*] explains in some detail such "at least in public" references, because each Supervisor on the Board may consider anything in the record, including the Comprehensive Objections, to support his or her decision to deny the Rise Petition or EIR/DEIR or other Rise Reopening Claims with such Board resolution findings without having to present his or her reasons for doing so from any detailed citations to the record. However, without this Petition by objectors, no reviewing court would even know what Comprehensive Objections (including our massive evidence) were even in the record that were so ignored, evaded, or disregarded by Rise and (at least in public) by the County team.

Rise is shifting its disputed "story" back again, but Rise is now stuck with its admissions as to **Centennial** in its Rise Petition , EIR/DEIR, and even in its SEC filings (Exhibit G). As the *City of Richmond* case proved, Rise's EIR/DEIR and other Rise Reopening Claims cannot survive such inconsistencies and contradictions, certainly without revising and reconciling all of its inconsistencies and contradictions. E.g., Exhibits E and F ("Evidence Objections Parts 1 and 2"); Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235. If Rise insists on its "alternative reality," Rise must at least choose one "story" and be consistent. See the discussion above addressing the problems with Rise pursuing inconsistent or contradictory "alternative realities" on appeals of the Rise Petition, while also processing the disputed EIR/DEIR, including the Use Permit, and other Rise Reopening Claims.

V. Concluding Comments.

Whatever else happens in these irreconcilable disputes between Rise and its Rise Reopening Claims versus objectors and our Comprehensive Objections, someday objectors must be entitled to a fair and equal hearing for our Comprehensive Objections consistent with our competing constitutional, legal, and property rights as indispensable and necessary parties-in-interest in these multi-party disputes. The fact that Rise has chosen consistently to ignore, disregard, and evade objectors and our Comprehensive Objections proves that (i) Rise has no answer to our such objections that should defeat all Rise Reopening Claims, plus Rise's wrongful attacks on the innocent County team members, and (ii) Rise cannot have a *Hardesty2* model battle because it has defaulted on rebutting our Comprehensive Objections and cannot claim to be the victim of County misconduct, when that role belongs solely to objectors whose competing constitutional, legal, and property rights have been ignored, disregarded, and

evaded so that Rise can incorrectly attempt to have its “alternative reality,” two-party dispute without objectors.

Engel Law, PC
/s/ Larry Engel
G. Larry Engel

Table of Exhibits

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EXHIBIT A: Mistreatment of Objectors' Rights Defeats Any Possible Disputed Rise Claims of "Bias, Etc." For Rise "Playing the Victim" With Disputed "#1983 Etc. Claims."

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EXHIBIT A: Mistreatment of Objectors' Rights Defeats Any Possible Disputed Rise Claims of "Bias, Etc." For Rise "Playing the Victim" With Disputed "#1983 Etc. Claims."

1. **Opening Statement:**

This Is The "Who Is The Real Victim With Meritorious Claims" Exhibit. While Rise Incorrectly Postures Itself by "Playing the Victim" Incorrectly Claiming County "Bias Etc.," The Reality Is That, By The Bullied County Team Being "More Than Fair" In Favoring Rise In This "Zero-Sum Rise Game" Against Objectors, The County Team Has Been Reciprocally Unfair And Worse To Objectors In These "Rise Reopening Claim" Disputes. Objectors Are The Real Victims Denied Full, Competing, And Equal Due Process, Equal Protection, Redress of Grievances, And Other Constitutional, Legal, And Property Rights In These Multi-Party Disputes Versus Rise That, Unfortunately, Catch The County "In the Middle." As Demonstrated, If The County Team Had Any Such "Bias, Etc." Against Rise Or Wished To Defeat Rise As It Incorrectly Claims, All That County Team Had To Do Was Give Objectors "Our Day In Court" Before The Board To Defeat Rise With Our Comprehensive Objections. But Instead, The County Team Generally "Accommodated" Rise And (At Least In Public) Ignored, Disregarded, And Evaded Our Competing Comprehensive Objections, Thus Incorrectly Sparing Rise From Our Broader And More Comprehensively Evidenced And Briefed Objections.

This Exhibit does not constitute a comprehensive list of all the instances in which the "bullied" County team has so ignored, disregarded, or evaded the Comprehensive Objections while favoring Rise's disputed, incorrect, and worse "Rise Reopening Claims" in the visible record. That main attached Petition/Objection also contains the key definitions of terms used here as well as many other matters as to which we try to limit repetition, although, as explained, objectors blame Rise and its "bullying" for the unsatisfactory responses and conduct so far by the County teams' persistent favoritism to Rise at the prejudice to objectors. That prejudice is unavoidable in this "zero-sum game" (i.e., where any disproportionate Rise "gain" comes as a reciprocal "loss" to objectors) in which Rise has "played the referee" County team, and the County team has not visibly considered or adjudicated our broader Comprehensive Objections, proof, and evidence required for the findings of facts and conclusions of law that objectors require for our self-defense from Rise and its disputed mine reopening ambitions. The other issues and matters addressed herein have more backup in the record from our Comprehensive Objections, so we relegate them to this Exhibit and Exhibit B (illustrating in rebuttals how Rise incorrectly "plays the victim" to "bully" and manipulate the County team) as supporting proof for our concerns. As the related defined terms confirm, what matters to objectors in our Comprehensive Objections are the negative impacts on us from Rise's and the County team's disputed approaches, regardless of their innocent or more aggressive intentions. In part, that is because this is a contest between the disputed, "alternate reality" of "Rise

Reopening Claims" versus the reality of our "Comprehensive Objections" in which the County team too often seems to be limiting the dispute process (at least in public) to those Rise Reopening Claims without proper consideration of objectors' contrary law, evidence, and proof.

As we demonstrate, **this dispute cannot be limited by Rise or the County team to the surface mining law (SMARA) or those surface mining cases (e.g., *Hansen*),** although the Comprehensive Objections (like the correct parts of the County team analysis thereof) are still sufficient also to defeat Rise on that basis. That is because, among other things, **the core, YET TOO IGNORED, dispute is about UNDERGROUND MINING IN THE 2585-ACRE UNDERGROUND IMM** (part of what Rise incorrectly calls the "Vested Mine Property") **BENEATH AND AROUND OBJECTING SURFACE PARCEL OWNERS WHOSE FIRST PRIORITY GROUNDWATER WOULD BE BEING DEWATERED BY RISE 24/7/365 FOR 80 YEARS WITH MASSIVE CONSEQUENCES NOT CORRECTLY ADDRESSED IN THE DISPUTED EIR/DEIR AND NOT CORRECTLY EVADED BY THE RISE PETITION CLAIMING (AT 58) THAT RISE CAN DEWATER AND MINE UNDERGROUND THERE AS RISE WISHES "WITHOUT LIMITATION OR RESTRICTION." Unlike Rise, objectors assume the County team is trying to do its job in this dispute as it mistakenly perceives its duty, presumably trying to avoid being too intimidated by the Rise "bullying," and Rise and its enablers may be just deluded innocents crusading "aggressively" for their incorrect alternative reality. The reasons for such errors, omissions, and other objectionable conduct are not the objectors' focus here, but, instead, the Comprehensive Objections are focused on exercising our independent constitutional, legal, and property rights to insist on the correct application of the rule of applicable law in this "reality," where truth, facts, applicable law, and science must matter, even at the most basic levels to expose and defeat such "alternative realities."**

In any event, this Exhibit illustrates both (i) how objectors have been treated much worse than Rise, including by comparisons of how Rise was generously accommodated and favored for and at each of the hearings on the disputed EIR/DEIR, the Rise Petition, and other Rise Reopening Claims, while objectors were denied our substantive and procedural rights to due process, to equal protection, and to redress of our grievances, among other constitutional, legal, and property rights to compete against Rise as equal parties-in-interest on a "level playing field," and (ii) how Rise's comparative complaints about County team "bias, etc." and mistreatment are meritless and worse, thereby denying Rise any pretext for any threatened "#1983 Etc. Claims." See the Exhibit B comparison, rebutting Rise's purported examples of such "alternate reality" alleged mistreatment of Rise by the County team. The correct recommendation of the bullied Planning Commission on the disputed EIR, like the correct ruling of the bullied Board of Supervisors on the disputed Rise Petition for vested rights, is still too narrow and oblivious to our Comprehensive Objections to protect fully such objectors who are entitled to more protective findings of facts and conclusions of law to preempt any Rise presumed attempt to relitigate such Rise Reopening Claims in some disputed "#1983 Etc. Claims" action that Rise might incorrectly imagine binding objectors to the County's fate, such as by (incorrectly) creating imagined "claim and issue preclusion" (e.g., collateral estoppel) threats for objectors. Fortunately, objectors' competing constitutional, legal, and property rights asserted in our Comprehensive Objections should prevail against Rise and its Rise Reopening Claims independent of the County's fate, whatever that might be (although the correct result would be for the County still defeating all Rise Reopening Claims, even on its limited basis.)

What should be irrefutable is that there can only be one type of "victim" of the County team
in these various Rise Reopening Claim disputes, and that "victim" is not ever Rise or its enablers. Each such dispute is a "zero-sum game" between Rise versus objectors in which (at least in public) the County team has incorrectly ignored, disregarded, and evaded objectors' Comprehensive Objections, presumably attempting to soothe and "accommodate" the Rise bully with excessive fairness, all to the harm of objectors, whose competing constitutional, legal, and property rights have been denied, ignored, disregarded, and evaded by the "County team's" narrow approach (we assume to appease Rise.) Whenever objectors are given a fair and proper hearing, our "Comprehensive Objections" must defeat both on the merits and procedurally all of the disputed "Rise Reopening Claims," including not only (i) the disputed "EIR/DEIR" and disputed the Rise Petition incorrectly asserting vested rights (and grossly exaggerating what such disputed vested rights would mean and accomplish), and (ii) Rise's incorrect claims of "bias, etc." for any imagined "#1983 Etc. Claims" against the County team that cannot co-exist in any reality with such Comprehensive Objections.

Stated another way, such Rise Reopening Claims are irreconcilable with such Comprehensive Objections against them, such that, by proving objectors' such constitutional, legal, and property rights and claims competing against such Rise Reopening Claims, objectors also thereby disprove all of Rise's disputed claims of "bias, etc." against the "County team" as a disputed basis (presumably) for Rise's anticipated "forum shopping" effort to relitigate everything it losses in the County processes in front of a jury on imagined and disputed "#1983 Etc. Claims" in federal court under 42 USC #1983 following its inapplicable *Hardesty2* model. Considering the extraordinary "accommodations" for Rise by the County team and Rise enablers (e.g., authors of the disputed EIR/DEIR, 2023 County Staff Report, and County Economic Report), that prove the old saying of cynics that "no good deed goes unpunished" when trying to appease a bully. However, Rise cannot succeed in that disputed effort, among other things, because this Exhibit disproves such Rise Reopening Claims (as do the reciprocal Exhibit B and the objectors' "Petition/Objection" to which such Exhibits are attached and incorporated to import definitions and other relevant matter). However, by so favoring Rise and its enablers some of the County team have instead incorrectly treated objectors less equal compared to Rise, and objectors are entitled to more comprehensive legal recognition of the Comprehensive Objections to compete effectively with what objectors expect to come next from Rise. By incorrectly so ignoring, disregarding, and evading (at least in public) Comprehensive Objections that should have been accepted and applied against each Rise Reopening Claim (such as in the Board Resolution denying the Rise Petition and the Planning Commission recommendation denying the EIR/DEIR etc. with more comprehensive and broader findings of facts and conclusions of law), the County team has frustrated objectors' more comprehensive bases for exercising, defending, and enforcing our independent and personal such competing constitutional, legal, and property rights that must prevail against Rise and its Rise Reopening Claims, regardless of whatever the County team does or does not do in the process, and whatever happens in that teams' disputes or dealings with Rise.

This must be a multi-party dispute in which, considering our equal standing and indispensable, independent party-in-interest rights (proven in the main, attached Petition/Objections), objectors must be treated at least equally (although we contend that we

also have superior rights) to Rise in each of the County's various adjudicatory processes addressing Rise Reopening Claims. However, as illustrated herein, objectors have never yet been so correctly treated by the County team processes in any of such disputes with Rise. Instead, (at least in public) the County team has disproportionately accommodated Rise's (incorrectly) ignoring, disregarding, and evading our Comprehensive Objections as if they were just inconsequential "public comments" in a two-party dispute between just Rise and the County and that wrongly excluded us from our proper such roles and opportunities. See how *Calvert* and other authorities forbid such treatment, even with objectors in such cases with far less standing and rights than objectors have proven for ourselves in these disputes. See the main, attached Petition/Objections discussions of our standing and independent rights and Exhibit C. (The good news from Rise's such disregard or evasion of, and failure to debate, Comprehensive Objections is that Rise must lose "by default," because Rise's disputed evasion tactic leaves Rise and its enablers with no sufficient record on which to rely against our Comprehensive Objections.) THE KEY POINT HERE IS THIS: IF, AS RISE INCORRECTLY CLAIMS, THE COUNTY WERE SOMEHOW GUILTY OF "BIAS, ETC." OR WORSE (I.E., IF THERE WERE ANY BASIS IN REALITY FOR RISE'S THREATENED "#1983 ETC. CLAIMS," ALL THE COUNTY TEAM HAD TO DO WAS THE RIGHT AND PROPER THINGS FOR OBJECTORS BY ALLOWING OUR COMPREHENSIVE OBJECTIONS IN OUR MASSIVE RECORD THE OPPORTUNITIES WE REQUIRE TO DEFEAT THE RISE REOPENING CLAIMS.

2. The Context of this Exhibit In Relation to Other Comprehensive Objections.

The undersigned objectors have previously filed four objections as to the EIR and DEIR record incorporated herein and called collectively "**Prior Ind. 254/255 Objections,"** which also included some objections to the 2023 County Staff Report to the Planning Commission and to the County Economic Plan. See the **Table of Exhibits** attached to Exhibit D, including Exhibit 1 thereto with key incorporated cross-referenced other filings and exhibits, such as (at #II.A) "**EIR Ind 254",** "**DEIR Ind 254"** and, together with that EIR Ind 254, collectively called the **"Ind 254 Objections,"** "**EIR Ind 255,"** "**DEIR Ind 255,"** and, together with that EIR Ind 255, collectively called the **"Ind 255 Objections". Nothing that has happened since those filings has cured or reduced any issues referenced in those "Prior Ind. 254/255 Objections," but, to the contrary, all such objections still apply with at least equal force, and many have become more serious.** For example, subsequent to the 2023 "Planning Commission Hearing," Rise falsely accused the County team of various kinds of misconduct which are rebutted in Exhibit B-Part 1 hereto (the **"Planning Commission Hearing Accusation Rebuttals"**). Objectors assume those disputed claims are part of Rise's objectionable strategy to "play the victim" as Rise is also incorrectly replaying with similar false accusations in the **"Rise Petition Vested Rights Rebuttals"** in four more objections incorporated herein from the Table of Exhibits as Exhibit E **("Evidence Objection Part 1"**), Exhibit F ("**Evidence Objection Part 2,"** and together collectively called **"Evidence Objections Parts 1 and 2"),** Exhibit C ("**Objectors Petition For Pre-Trial Relief, Etc."),** and Exhibit D (**"Overlying Surface Owners Rebuttals").**

What Rise seems to be attempting to do is rewrite history to accommodate its "alternate reality" "Rise Reopening Claims", so that Rise can incorrectly claim to be the victim of what objectors call a "throw all the mud at the wall" collection of disputed misconduct by the County

and its officials and staff called **"bias etc.",** presumably in hope of being able to "model" the disputed strategy of another (although surface) miner in the **"Hardesty2"** 42 USC #1983 action for asserting what are collectively called **"#1983 Etc. Claims"** as discussed B in Exhibit discussing what is collectively called the **"Rise Victim Tactics."** Among many other counters to such disputed Rise complaints in the incorporated "**Comprehensive Objections"** are the facts that (i) the real victims are objectors who have been denied due process, equal protection, petition for redress of grievances, and other constitutional, legal, and property rights in that **"Rise Petition"** dispute by the County and its officials and staff, who were trying so hard to be "more than fair" to Rise that they were consequently unfair and worse to objectors. We are entitled to compete fully against Rise and each Rise Reopening Claim in each County dispute process with at least equal (and we contend superior) competing constitutional, legal, and property rights to prove Comprehensive Objections that have been denied, ignored, and evaded in the County process for accommodating the bully Rise to which the County team provided grossly disproportionate and disputed "accommodation" opportunities and benefits. See that attached Petition/Objections for details about such "Comprehensive Objections," which include many others' objections and evidence incorporated therein, such as the EPA, CalEPA, www.hinkleygroundwater.com, and other websites' proof of disputed EIR/DEIR and other Rise Reopening Claim errors, omissions, and worse, as well as the self-defeating admissions throughout the Rise record in these County proceedings and also in Rise's SEC filings, especially Rise's latest "2023 10K" that Exhibit G rebuts and demonstrates is not only contradictory to, and inconsistent with, for example, the disputed Rise Petition and EIR/DEIR. Such Comprehensive Objections also reveal how, for example, the Rise Petition and EIR/DEIR are contradictory to, and inconsistent with, themselves and impeach each other.

While the County team has incorrectly often chosen to reject, ignore, or disregard such Rise admissions and other evidence, objectors persist in those objections for all the reasons explained in Exhibits E and F(Evidence Objections Parts 1 and 2, rebutting each material Rise Petition Exhibit for reasons that are equally applicable to the disputed EIR/DEIR, such as those applicable to all such rebutted inconsistencies and contradictions, especially from Rise admissions (e.g., Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235) and as illustrated in the cited *City of Richmond* case, where the court rejected Chevron's EIR because of such contradictions and inconsistencies with Chevron's SEC filings. Objectors contend that, contrary to the bullied County's disputed accommodations to or for Rise, this is one integrated dispute over the collective **"Rise Reopening Claims," not the series of disaggregated fragments of the disputes** that the County has (incorrectly) separated to accommodate Rise and force objectors to keep insisting to the contrary by incorporation by reference and continuous consolidation (as objectors do here) of all their separate objections to each such disputed fragment.

To illustrate why that is so important, consider, for example, this one core "Comprehensive Objection" that applies to each of the disputed EIR/DEIR and Rise Petition for rebutting various disputed "Rise Reopening Claims" relating to groundwater. Objectors are especially focused on the disputed Rise plan to dewater the 2585-acre underground IMM 24/7/365 for at least 80 years and to flush our groundwater away (after purported "treatment") down the Wolf Creek (in that part of what Rise incorrectly now calls the "Vested Mine Property," where the Rise Petition asserts [at 58] the vested right to mine as it wishes and where it wishes "without limitation or restriction"), depleting not only the local community

groundwater thereby, but also the groundwater beneath each overlying surface parcel which has first priority rights to that groundwater as demonstrated in *City of Barstow, Pasadena, Keystone, Empire Mine,* etc. discussed in Exhibit D ("Overlying Surface Owner Rebuttals.") Also, such overlying surface owners have rights of subjacent and lateral support to prevent subsidence of each such parcel as demonstrated by *Keystone, Marin Muni Water*, and Id., including by such groundwater depletion. Furthermore, the disputed Rise planned water treatment plant "component" Rise imagines would enable it to so flush away our groundwater 24/7/365 for at least 80 years cannot possibly have any vested rights, because it had no historical precedent in October 1954, and that vested rights claim would even be contrary to *Hansen* relying on the similar case of *Paramount Rock*, where there could be no vested right to add a rock crusher to any Rise parcel that did not previously have one, even though the business involved importing crushed rock from others. Moreover, besides the Comprehensive Objections to the disputed EIR/DEIR addressing those issues, Rise proposes to risk polluting our groundwater with toxic hexavalent chromium in cement paste piped into the underground mine to create support pillars from the EIR/DEIR objections (e.g., the "Ind 254 Objections," especially EIR Ind 254's rebuttal to the EIR "Response 1," trying inappropriately to evade that objection, including as to Rise's failure to include that toxic issue as required in the DEIR section on "Hazards And Hazardous Materials" Id.). Those Comprehensive Objections proved that such hexavalent chromium menace (e.g., what killed the town of Hinkley, Ca. and many people, as shown in the movie, "*Erin Brockovich" and the subject of many scary studies on the EPA and CalEPA websites)* was both obscured (i.e., a "hide the ball" tactic) and not properly or sufficiently analyzed by Rise or the disputed EIR/DEIR. For example, consider as a case study and rebuttal evidence www.hinkleygrounwater.com, where those victims explain how, after all these years of effort and vast expenditures of toxic tort litigation settlement money, they still cannot remediate that CR6 toxic groundwater.

3. Some Examples of Ignored, Disregarded, Or Evaded Comprehensive Objections. For Comparison To How Rise "Plays The Victim" In Exhibit B.

Consider this simple example as proven in the attached Petition/Objection and its companion Exhibit D (the "Overlying Surface Owners Rebuttals'): (a) the disputed EIR/DEIR incorrectly claims (like it seems the disputed and strategically ambiguous Rise Petition asserting, without merit, exaggerated "vested rights") the right constantly to dewater the "2585-acre underground IMM" (the underground part of what the disputed Rise Petition calls its "Vested Mine Property,") claiming incorrectly that Rise has a "vested right" to so operate [at 58] "without limitation or restriction" 24/7/365 for at least 80 years, but (b) each overlying surface owner above or around that underground IMM owns the first priority groundwater rights (plus rights to subjacent and lateral support) beneath his or her parcel. Thus, by so "accommodating" such disputed Rise Reopening Claims for such dewatering and depleting our groundwater by flushing it away down Wolf Creek, the bullied County team and enablers would be giving away such surface owner groundwater to Rise for the profit of Rise's nonresident investors without any right to do so, and thereby creating even more claims that would otherwise be created by Rise Reopening Claims under Exhibit D authorities. E.g., *Varjabedian* (where the CA Supreme Court allowed the downwind homeowners' inverse

condemnation, nuisance, and other claims for allowing a new sewer plant that disproportionately so impacted them, regardless of benefits to others at a safe distance.) Without the disputed right to so dewater, deplete, and flush away such surface-owned groundwater, the disputed EIR/DEIR cannot function as it proposes, and yet, there is no "common sense" (e.g., *Gray v. County of Madera*) or "good faith reasoned analysis" (e.g., *Vineyard, Banning,* etc.) of those issues as CEQA and other applicable law requires. **That is a much bigger problem for both the County team and Rise and its enablers than the additional disputes by surface owners (grossly undercounted by Rise) whose existing AND FUTURE wells are at risk in places and ways that Rise cannot satisfactorily mitigate, especially under the applicable *Gray v. County of Madera* rules, even if Rise's deficient EIR/DEIR mitigation measures were not as illusory as they seem, considering financial admissions in Rise's SEC filings that consistently reveal insufficient financial resources to do anything material Rise proposes in the comprehensively disputed EIR/DEIR. See the *City of Richmond case (rejecting the Chevron EIR because it was inconsistent with Chevron's SEC filing admissions.)***

If there is any doubt about the objectionable nature of Rise's tactics, one need only read Exhibit B, the rebuttal of Rise Counsel's "Alt 2 Letters" in the above Petition/Objection, or the hundreds of item-by-item rebuttals of the disputed EIR/DEIR in "Prior Ind. 254/255 Objections" in this record, where the disputed EIR "Reponses" and "Master Responses" to objectors DEIR objections Ind. #'s 254 and 255 were a massive evasion of objections by comprehensively disputed, nonresponsive, and evasive EIR posturing that failed to meet the minimum CEQA requirements for "common sense" (e.g., *Gray v. County of Madera*) or "good faith reasoned analysis" (e.g., *Vineyards, Banning,* etc.) [Please note that the disputes regarding the Rise counsel's "Alt 2 Letters" regarding EIR Alternative 2 about Centennial, regarding rezoning and variances, and regarding various other disputed matters are addressed in the attached main Petition/Objection and Exhibit B, without much duplication here. Objectors did that because it was not possible to rebut them at the hearing in our limited three-minute public comments.] The same is true for the Rise enablers' disputed County Economic Report rebutted in the EIR objections in that Ind. 254/255 record and the 2023 County Staff Report for the EIR that was analyzed above in the attached Petition/Objection. Below we do add some more detailed rebuttals to the especially outrageous Rise counsel attacks on the correct and proper Planning Commissioners and certain critics.

This pattern of errors and worse by or for Rise creates the kind of credibility problem so consistent as to justify its description (when being polite) as an "alternate reality." In any event, this Exhibit does not constitute a comprehensive list of all the instances in which some in the bullied County team have so ignored, disregarded, or evaded the Comprehensive Objections while favoring Rise's disputed, incorrect, and worse Rise Reopening Claims. However, this Exhibit illustrates both (i) how objectors have been treated much worse than Rise, including by comparisons of how Rise was generously accommodated and favored with disproportionate opportunities for and at the hearings, while objectors were denied our substantive and procedural rights to due process, to equal protection, and to redress of our grievances, among other constitutional, legal, and property rights, and (ii) how Rise's comparative complaints about County team "bias, etc." and mistreatment are meritless and worse, thereby denying Rise any pretext for any "#1983 Etc. Claims" that it may be planning. See the Exhibit B comparisons rebutting Rise's purported examples of such "alternate reality" mistreatment. **By proving the**

Comprehensive Objections, objectors thereby defeat all the Rise Reopening Claims, including the disputed EIR/DEIR (including the Use Permit) now at issue, while consequently proving that Rise is not a "victim" and has no meritorious claims against the County team, whether for "bias, etc." or "#1983 Etc. Claims." Whatever Rise's intentions in such conduct of "playing the victim," it is natural for the County team to feel intimidated by the threats, which such presumed targets (and objectors competing for equal treatment from such County team members and being consistently disappointed) assume is likely a meritless attempt to posture Rise as like the distinguishable **surface** miner model in the inapplicable, disputed *Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist.* (6/8/2016), 2016 US Dist. Lexis 75552, (E.D. Cal.), mod. by on 2016 US Dist. Lexis 78852 (6/15/2016) ***(the "6/15/2106 Hardesty2 Modification" and, with that modified case, called "Hardesty2 Summary Judgment"),*** and together with the also inapplicable, distinguishable, and disputed follow-up, post-trial decision ("**Hardesty2 Final Order"),** 307 F. Supp.3d 1010 (E.D. Cal. 2018) (collectively called "**Hardesty2"). While we address some aspects of *Hardesty2,* this EIR hearing is not the occasion for a full briefing on those issues, so we just mention enough here to prove some relevant points among many that distinguish that case from this one.** [Objectors note that a *different*, depublished "*Hardesty* "case, involving a different mine, facts, and defendants, was discussed earlier in the administrative record by objectors and mentioned by the County's counsel at the prior Board hearing, which is why we call the Rise model "Hardesty2" to distinguish between the case aggressive miners like versus the one everyone else likes.)

The correct recommendation of the bullied Planning Commission on the disputed EIR etc., like the correct ruling of the bullied Board of Supervisors on the disputed Rise Petition, is still too narrow and oblivious to our Comprehensive Objections to protect such objectors' rights. Objectors urge the County Board to expand and reform its approach in this hearing, as required by applicable law, to consider fully our more comprehensive rights, concerns, and issues so ignored, disregarded, and evaded in denial of our constitutional, legal, and property rights proven in our Comprehensive Objections.

4. **Consider This Hypothetical That Attempts To Frame These Unusual Disputes By Analogy To The More Common Judicial Context Where It Is Hard To Imagine A Judge Being So Manipulated By Rise Into Denying Objectors' Constitutional. Legal, And Property Rights By Ignoring, Disregarding, And Evading the Comprehensive Objections of Objectors Who Are Indispensable And Necessary Parties-In-Interest In This Multi-Party Dispute. See, e.g., the "standing" and related rights discussion in the attached Petition/Objection.**

While the narrow County Board Resolution based on narrow findings and corresponding evidence correctly denied Rise Petition regarding vested rights and some other Rise Reopening Claims of concern to the County, that Resolution did not address as required the Comprehensive Objections, much less the additional objections we would have added if allowed that were (and continue to be) of great concern to objectors. Likewise, the Planning Commissioners' recommendations to the Board did not expand from and correct (consistent with our Comprehensive Objections) the 2023 County Staff Report presented to the

Commissioners that was disputed (a) by objectors in many ways in Comprehensive Objections (e.g., Prior Ind. 254/255 Objections), and (b) by Rise also as to some narrow Rise issues (addressed and rebutted in the attached Petition/Objection and Exhibit B). [The 2024 County Staff Report to the Board is an improvement and sufficient correctly to deny the disputed EIR/DEIR, including the Rise requested Use Permit, rezoning, variances, other applications, etc., but that report still ignores, disregards, or evades too much of the Comprehensive Objections, to that extent still being subject to objections.] While the Commissioners and Supervisors can be assumed by law to have become familiar with the massive record that included thousands of pages of Comprehensive Objections (e.g., *Fairfield* and similar cases), when and if Rise carries out its meritless litigation threats incorrectly claiming to be the "victim" of "bias, etc." and some other disputed bases for any "#1983 Etc. Claims," how is that court supposed to even know about our Comprehensive Objections in that massive record that would defeat every Rise Reopening Claim on the merits with our more comprehensive law, evidence, and proof? Will the "bullied" County staff that so far (at least in public) too often accommodated Rise, but ignored, disregarded, and evaded such Comprehensive Objections and the equal rights with which objectors are entitled to rebut Rise comprehensively on an equal basis, now correct their course use our whole record to defeat Rise's meritless claims against the County team? We hope so. But until objectors are sure of such more comprehensive protections objectors elect directly to exercise our independent rights to defeat Rise's disputed EIR/DEIR and other Rise Reopening Claims ourselves and to protect our constitutional, legal, and property rights. In any such case, Rise cannot blame the County team for violating Rise's its such non-existent rights that objectors' Comprehensive Objections would defeat, if the decision-makers noticed and expanded their findings of facts and conclusions of law accordingly.

Consider this hypothetical to illustrate concerns of objectors:

(1) **Assume** the following context that: (a) this Rise Petition dispute is instead litigated in a nonjury, local state court, "quiet title" action (for these purposes by analogy assume that what now exists as a hypothetical potential dispute is then "ripe," as distinct from the current theoretical dispute that is not yet "ripe" for such litigation, but is still relevant to defeat the EIR/DEIR and Rise Petition that each contemplate as conditions precedent certain future events). Assume also that case was launched by a Rise complaint like the Rise Petition (at 58) claim that Rise's disputed vested rights entitle Rise to mine as it wished anywhere in the disputed "Vested Mine Property" (including what we call "Brunswick," "Centennial," and the "2585-acre ***UNDERGROUND*** IMM" beneath or around objecting and nonconsenting overlying surface owners) "without limitation or restriction;" (b) the County is a party defendant and cross-complainant to protect what it wanted of the relevant public rights at stake that are threatened by such Rise mining related activities, (c) objectors add a hypothetical judge acting for comparison to the current dispute in place of the County now acting in its adjudicatory capacity, so as to avoid confusion over different County roles; and (c) the impacted objectors in the local community answered with comprehensive affirmative defenses and cross-complaints for enforcing the Comprehensive Objections, especially those objecting overlying surface owners owning parcels above and around the "2585-acre underground IMM," each objecting

owner asserting a first priority groundwater rights beneath each overlying surface parcel of each such surface owner above and around the 2585-acre underground IMM, plus also for subjacent and lateral support to prevent subsidence, including by depletion of supporting groundwater, all violated, for example, by Rise's plan to dewater the mine 24/7/365 for at least 80 years and to flush such groundwater away down Wolf Creek with illusory and disputed mitigation (after deficient treatment in a disputed water treatment plant for which there could be no vested rights even under *Hansen* citing *Paramount Rock*). See, e.g., ***City of Barstow and Pasadena*** (discussing each overlying surface owner's first priority rights in groundwater beneath his or her parcel against underground "appropriators" like Rise, applying the ***Empire Mines*** precedent that determines underground mine boundaries based on surface boundaries projected into the earth); ***Keystone*** and ***Marin Muni Water*** (discussing each surface owner's rights to subjacent and lateral support from the underground beneath and adjacent to prevent subsidence, including, as the US Supreme Court explained in ***Keystone,*** by such surface support from the groundwater); and ***Gray v. County of Madera*** (discussing in detail in the EIR **surface** quarry mining context how the kinds of well mitigations propose by Rise in this disputed EIR/DEIR cannot meet the requirements for true equivalence imposed by that court to assure that such impacted well owners are not prejudiced by the miner's depletion of their groundwater.)

(2) **Assume** also that the judge (by analogy here the County in its adjudicatory capacity) correctly granted the County's motion for summary judgment as to its narrow claims and defenses based on its narrow but sufficient evidence therefor, and correctly denied the corresponding Rise defenses and counter-claims, **without either Rise or the County addressing the broader Comprehensive Objections in the objectors' defenses and cross-complaints parts of the case.** Worse, further assume that the court had limited the hearing on summary judgment to just Rise and the County, allowing objectors to file (before the hearing and reply briefing) objections to Rise and corrections against the County team, but disallowing or disproportionately limiting the objectors their rights to either (a) participate in the County/Rise hearing (apart from a three-minute per person limited comment with judge restricted content and scope), or (b) respond to or rebut the reply briefs of Rise or the County or the additional evidence and argument added at or for the hearing to the record. In other words, assume (as here) the objectors were also refused (over their objections) the right to supplement their record to dispute, counter, or correct what Rise and the County each added to the record, such as further briefing, evidence, and oral arguments. Further, assume that the court then dismissed that entire quiet title case based on the County's motion, based on that court's limited statement of decision and limited finding of facts or conclusions of law that also ignored, disregarded, and evaded the many different and broader legal and factual issues and evidence that were uniquely raised only by those objectors and were never addressed or rebutted (at least in public) by the narrow summary judgment issues of law or fact or evidence that only concerned the County's narrower and less evidenced case that objectors corrected and supplemented. Thus, the court did not

address such broader Comprehensive Objections (either as law or evidence) as useful to proving the objectors' far broader case involving legal, factual, and evidentiary filings from the objectors' (in their unrecognized, but asserted, separate and independent capacities from the County) proving objectors' meritorious, constitutional, legal, and property rights cases that would be violated by the approval of the disputed EIR/DEIR (including the related Use Permit, rezoning, variances, and other applications) and other Rise Reopening Claims. For example, among those unaddressed disputes was (i) Rise's claimed (but just assumed and never proven) right to dewater and deplete groundwater (and existing and future wells) 24/7/365 for at least 80 years throughout the "2585-acre underground IMM," thereby depleting each such overlying surface owner's groundwater and wells beneath his or her surface parcel and flushing such groundwater away down Wolf Creek (e.g., the disputed EIR/DEIR dewatering, purported treatment, and flushing plan), and (ii) such Rise Petition's claim at 58 (also just assumed and never proven) to so operate as Rise wished throughout the "Vested Mine Property" "without limitation or restriction," whatever that means, (i.e., a Rise "strategic ambiguity " that objectors also dispute). While all of such issues were comprehensively disputed by Comprehensive Objections asserting objectors' unaddressed, competing, constitutional legal, and property rights that must prevail, regardless of the County's fate in the litigation, objectors never had their "day in court" on those broader Comprehensive Objections, thereby denying objectors substantive and procedural due process, equal protection, the right to petition for redress of their grievances, etc.; and (finally)

(3) **Assume** that Rise goes "forum shopping" by filing an objectionable 42 USC #1983 suit (requesting a jury) in the Federal District Court against the County team, based on the inapplicable and distinguishable surface miner's model in ***Hardesty2,*** where Rise asserts various kinds of disputed "bias etc." and other bases for "#1983 Etc. Claims" (See the attached Petition/Objection and Exhibits B--G, where objectors rebut such claims in the process of enforcing and defending their own Comprehensive Objections.) In that hypothetical action Rise "plays the victim" seeking to relitigate those Rise Reopening Claims before a jury (following that ***Hardesty2*** model, because to prove a violation of a vested right or other constitutional right the alleged victim has to first prove that such a right exists to be violated, while continuing to ignore the objectors and their Comprehensive Objections and grievances. **Even though their Comprehensive Objections, rights, and evidence have been so ignored, disregarded, and evaded, objectors worry that they will later confront disputed and incorrect "issue and claim preclusion" fights (e.g., incorrect collateral estoppel claims) with Rise over everyone somehow (incorrectly) being bound by any decisions that Rise may (incorrectly) win from the County team, even though under applicable law and justice objectors must still be entitled to defeat Rise on their own independent rights and claims, regardless of the fate of the County, because, among other things, the County team made no effort to present such broader Comprehensive Objections or allow objectors to fully do so themselves. In effect, without any ruling, analysis, or discussion of such**

treatment (or any basis therefor), assume the court acted (incorrectly) as if the only legally relevant, necessary, and indispensable party-in-interest was the County. But see the attached Petition/Objection demonstrating many bases for objectors' standing and rights as necessary and indispensable parties-in-interest to such state court disputes.

(4) **Questions** (putting aside the many procedural problems from shifting our current disputes to this court-based hypothetical to better illustrate the legal issues muddled by administrative law complications regarding the complex, adjudicatory and other roles of the County): What do the objectors do now, since we are the real "victims" in the County process (see the attached Petition/Objections and Exhibits B-G), and, because of the County's narrower approach (although sufficient to defeat Rise for County purposes), we need to protect all our own rights ourselves with our Comprehensive Objections, such as, for example, to prevent such mining and dewatering underneath each objectors' overlying surface parcel? (Those are some many problems objectors raise that **Rise and the County ignore, disregard, and evade in their exclusive reliance on surface mining law [e.g., *Hansen and SMARA, where there are no overlying surface owners with such competing and at least equal constitutional, legal, and property rights*] that is inapplicable to govern such underground mining beneath objecting surface owners' parcels. This Rise UNDERGROUND mining cannot occur without Rise's threatened, constant, 24/7/365 dewatering, depleting, and flushing that surface-owned groundwater (and existing and future well water) away down Wolf Creek pursuant to the disputed EIR/DEIR plan. Therefore, there is an irreconcilable surface versus underground conflict that Rise and (at least in public) the County have consistently chosen incorrectly to ignore, disregard, and evade, but that impacted objectors keep raising in our Comprehensive Objections.** How does that get resolved? Rise claims by merely assuming (without proof or authority) its disputed EIR/DEIR rights and other Rise Reopening Claim rights without substantiation or opportunities for our rebuttals with such Comprehensive Objections (with Rise just ignoring, disregarding, and evading them.) Therefore, in any local writ process now Rise would have nothing in the record to rebut those Comprehensive Objections and must lose by default, as it would on the merits as well, in any event. But, from what objectors hear and surmise, Rise apparently wants to "start over" (still without addressing such Comprehensive Objections) in such a Federal "#1983 Etc. Claims" action against the County team. Therefore, **one corollary question is:** What happens to objectors' rights then? Some objectors may feel uncomfortable bringing the usual local writ of mandate action when the narrow County decisionmakers' results at this stage (i.e., denial of Rise's claims) are agreeable as far as they go. However, other objectors wish to protect ourselves by preserving these Comprehensive Objections beyond any credible contrary claims by Rise or the bullied County team and free of any issue or claim preclusion risks, especially since objectors must prevail by default by Rise's failure to rebut our such broader Comprehensive Objections.

(5) **Appeal To the Board:** Objectors again request (as in the incorporated Exhibit C that is equally applicable here and all other Rise Reopening Claims) that the Board do the

right things before more such narrow County decisions trigger such "brain teaser" disputes and, instead, provide us all with more comprehensive solutions that are consistent with objectors' broader Comprehensive Objections. Failure to do so means a denial of objectors' competing constitutional, legal, and property rights. Therefore, the Board should create such a result that protects objectors' from any later Rise (or others') claims of collateral estoppel or other issue or claim preclusion on account of the County's narrower surface mining cases on any Rise Reopening Claim disputes, because our broader Comprehensive Objections are not being adequately represented so far by the County team in a way visible for the legal dispute processes to come, even though such narrower County cases should be sufficient to defeat Rise's equally and comparably narrow case.

EIR/DEIR Impacts: Some may ask how such disputed Rise Petition vested rights objections apply to the current EIR/DEIR disputes. These Comprehensive Objections answer that question, which answers often relate to the disputed EIR/DEIR (and other Rise Reopening Claims) in many ways being contradictory to and inconsistent both internally (e.g., the Prior Ind. 254/255 Objections) and versus other Rise Reopening Claims and SEC filings, especially with respect to the Rise Petition and related governmental filings, all of which are self-defeating Rise admissions that CEQA forbids as proven in our *City of Richmond* precedent, where the court rejected Chevron's EIR because of inconsistencies with Chevron's SEC filings. E.g., Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235; Exhibits C and E—G. For example, the disputed EIR/DEIR contemplates such disputed dewatering of the 2585-acre underground IMM 24/7/365 depleting such surface owner groundwater for at least 80 years, but that involves flushing our groundwater away down Wolf Creek, thereby "taking" the groundwater from, among others, each overlying surface owner who has first priority rights to that groundwater beneath or around his or her parcel (e.g., *City of Barstow and Pasadena and Exhibit D*), which would violate such objectors' competing constitutional, legal, and property rights. See, e.g., Exhibit D, as well as *Varjabedian* and other such inverse condemnation, nuisance, etc. authorities. This is a broader dispute than simply applying *Gray v. County of Madera* to defeat illusory and disputed EIR/DEIR well mitigation proposals. Any depletion of such surface owned groundwater beneath a parcel can be proven by the lowering of the water table (risking turning our forests into match sticks and causing subsidence), among other things. Since that depletion would be wrongful but is assumed incorrectly by Rise and the disputed EIR/DEIR to be occurring by Rise's disputed operations, no such EIR can be lawfully approved without addressing that issue with the "common sense" required by *Gray v. County of Madera* and the "good faith reasoned analysis" required by *Village, Banning,* and other cases addressed in Comprehensive Objections, such as the Prior Ind. 254/255 Objections. Stated another way, the disputed EIR/DEIR just assumes away all the meritorious Comprehensive Objections with meritless, evasive, and nonresponsive EIR "Responses" and "Master Responses" (Id.) without ever addressing even the CEQA and environmental impact of such errors, omissions, and other consequences of such false EIR/DEIR assumption, assertions, and claims. What happens then to the environment and such disputes then? The disputed EIR/DEIR never addresses anything outside the bubble of its "alternative reality," and never explains what happens when such mining operations stop for any of the many potential or expected reasons, including because of dewatering disputes.

5. Rise Cannot Successfully "Play The Victim" of Non-existent "Bias, Etc." In Disputed "#1983 Etc. Claims," When The Disputed County Processes Obstruct Objectors From Defeating the Disputed EIR/DEIR Etc. And Other Rise Reopening Claims With Our Comprehensive Objections.

As discussed herein and Exhibit B, Rise has made various disputed litigation threats and accusations against the County team (and some others), and other clues also exist, all implying, among other things, that Rise may assert disputed **"#1983 Etc. Claims"** on account of incorrectly alleged **"bias etc."** claims of misconduct by some or all of the "County team" in the federal District Court action under 42 USC #1983 in Sacramento. If so, it seems a reasonable deduction from Rise's conduct and communications to assume that Rise may try to follow the disputed and inapplicable ***"Hardesty2"*** model in any such litigation, whether Rise actually believes in those meritless claims (e.g., another feature of Rise's "alternate reality") or whether Rise has some other even less tolerable motivation for intentionally or unintentionally manipulating the County team defendants in what seems to be "bullying." In terms of disputed **"bias, etc."** and alleged misconduct or mistreatment of Rise of any kind by the County team (i.e., whatever the Rise "#1983 Etc. Claims" may be), the only party with meritorious grievances are objectors, not Rise. E.g., attached Petition/Objections and its Exhibit B. Why is the County team still so disproportionately accommodating to Rise and its enablers, compared to objectors? That answer may be explained by Rise "bullying" the County team with such threats of its meritless "#1983 Etc. Claims," such as by using the controversial and inapplicable here *Hardesty2* case distinguished in this Petition/Objections. That *Hardesty2* surface miner also used disputed claims of "bias etc." in that two-party sided dispute process (i.e., miners and mine owners versus the county team, without impacted any third party victims like objectors opposing such miners team in this kind of multi-party case, or correcting the county's positions as objectors would have done if we had been involved) in order to evade the normal writ of mandate process under state law to attack that Sacramento County team in that more expensive, burdensome, and otherwise intimidating for the county team jury trial. Rise "playing the victim" with such similar, disputed "bias, etc." claims could be modeling for a similar forum shopping strategy for such "#1983 Etc. Claims" jurisdiction in that federal court.

However, from the perspective of objectors, the County team has been accommodating "almost" everything Rise wants, while generally ignoring, disregarding, or evading most of our Comprehensive Objections that more broadly and thoroughly defeat each Rise Reopening Claim. **That contrast, with the County team incorrectly being too excessively "accommodating" to Rise (yet, what such team still incorrectly calls "fair"), should defeat any such Rise "bias, etc."/"victim"/"#1983 Etc. Claims," which are not even credible (e.g., Exhibit B), especially because the parties-in-interest working hardest to defeat the Rise Reopening Claims are objectors**. **If anyone on the County team had any "bias, etc." against Rise and wanted to defeat most effectively any such Rise claims, all such County team parties had to do was allow objectors to have the more fair and proper (to objectors) process we (and applicable law) require, so that objectors could better defeat Rise Reopening Claims by allowing us to prove our broader, meritorious Comprehensive Objections with our more comprehensive evidence and independent standing, regardless of what the County team did or did not do.**

Whether or not Rise pursues that litigation and regardless of Rise's actual intentions, the County team is likely feeling "bullied" and intimidated by such impacts, threats, burdens, and risks, even though such threats would appear to be meritless and are certainly inconsistent with the public conduct visible to everyone else. To the contrary, the County team has grossly and disproportionately favored the undeserving Rise throughout the County processes addressing EIR/DEIR etc. and other Rise Reopening Claims compared to the reciprocal mistreatment of objectors and their Comprehensive Objections. See Exhibit B, explaining how some bullied County team members have denied objectors our competing constitutional, legal, and property rights in favor of being much too "accommodating" to Rise, as if such County team members were "appeasing" what they may fear as the Rise bully, whether or not any of them realized or intended such things. In any event, the resulting impact of whatever is going on is an unacceptable denial of objectors' competing constitutional, legal, and property rights to defeat all the Rise Reopening Claims with all our Comprehensive Objections, whatever meritless reasons, intentions, or motives of Rise, or whatever excuse any such County team member may have for so disregarding, ignoring, or evading such objections in so disproportionately, incorrectly, and objectionably favoring and "accommodating" Rise, and thereby directly causing such "zero-sum game" prejudice to objectors.

Perhaps by expressing these concerns and adding Exhibit B and other Comprehensive proof rebutting Rise's disputed claims and accusations against the County team, objectors can prevent more suffering from further such denials of objectors' competing constitutional, legal, and property rights in these continuing disputed Rise Reopening Claim processes. **Therefore, since there can be only one such "victim" side not receiving proper treatment from the County team, objectors prove our case for so adding to the Board Resolutions for this EIR/DEIR dispute and the other Rise Reopening Claims disputes, objectors' enhanced, broader, and more comprehensive evidenced and proven findings of fact and conclusions of law consistent with our proven Comprehensive Objectives and objectors' constitutional, legal, and property rights.** By any fair comparison of our objectionable treatment by County team versus their competitive, far "more than fair" treatment of Rise, it is indisputable that we are the victims—not Rise, who seems to be focused on incorrectly "playing the victim" and "intimidating the referee" so that such referee-adjudicator fails to call the Rise "fouls" against objectors on our opposite team with irreconcilable rights, interests, and claims too often so ignored, disregarded, or evaded. Stated another way, objectors wish the County team to feel "safe" to do their jobs "fairly" and "right" for all parties-in-interest without fear of Rise "bullying" or other abuse, whatever may be the intent of Rise or its enablers.

Objectors' competing self-defense, rights, interests, and property should benefit in the continuing and foreseeable disputes, if objectors are allowed now to prove each of our Comprehensive Objections that exist or those to come as additions when objectors are finally allowed all of those denied constitutional, legal and property rebuttal rights to enhance our record cases for rebutting all of the Rise Reopening Claim cases' incorrectly fragmented dispute processes. See, e.g., Exhibit B, exposing the incontrovertible facts of how Rise (and its County staff enablers) have consistently imposed an unconstitutional and objectionable dispute process system in which (and objectors dispute): (a) Rise or its enablers (e.g., the EIR/DEIR etc. team) has been unfairly allowed to present and use at each Planning Commission and Board of Supervisors hearing whatever Rise wanted without any meaningful opportunity for objectors to

rebut it (apart from a three-minute per person "public comment" as to which the County's rules limited and censored the scope and content of such short rebuttals); (b) Rise has been able to answer questions from, and make arguments and documented presentations to, the Planning Commissioners and Supervisors at such hearings without any equal or other opportunities for rebuttal or counters by objectors; (c) the County staff has presented their often incorrect and Rise supportive comments at such hearings without any equal or other opportunities for rebuttal or counters or corrections by objectors, and, worse, such staff reports, comments, and presentations (like Rise's) too often ignored, disregarded, and evaded all of objectors Comprehensive Objections, as if they were inconsequential; (d) the County Commissioners and Supervisors did not allow objectors to address their questions or comments as Rise and the staff were allowed to do, much less to register disagreements or offer corrections to such Rise or staff errors, omissions, or other disputes; (e) the result was that the record of these disputes for court appeals contain significant amounts of new, incorrect, and otherwise objectionable matter added by both Rise and some County staff to which no response, counter, or rebuttal from objectors was allowed. Because objectors still do not have access to any citable transcripts of those Rise and County additions and presentations to officially cite [with the possible exception of the attachment to the new 2024 Staff Report addressing the Planning Commission EIR hearing that objectors have not yet had time to study], objectors request the opportunity to prove those objections with transcripts when available.

Also, while the County staff incorrectly refused so far to consider any objections or evidence as to Rise's lack of financial feasibility (which objectors added anyway to preserve our record to litigate the issues.) Even if CEQA were interpreted to bar such issues, which we disputed under the circumstances in Comprehensive Objections, such rebuttal evidence is always appropriate and admissible, especially when Rise itself raised the issue in the disputed EIR/DEIR and "opened the door" for rebuttal, such as at DEIR at 6-14 admitting that the whole project is financially infeasible if Rise were denied the (disputed) right to operate as it proposed 24/7/365 for 80 years. While Rise seems to propose in the disputed EIR/DEIR and other Rise Reopening Claim the minimum "reveals" Rise and its enablers incorrectly thinks they can get away with, as distinguished from what far more the applicable law should require to be disclosed with "common sense" (*Gray v. County of Madera*) and "good faith reasoned analysis" (*Vineyard, Banning,* etc.) consistent with the Comprehensive Objections, none of such things should be approved if Rise's performance of whatever is required is illusory, such as, for example, because as admitted in Rise's SEC filings (e.g., Exhibit G) Rise lacks the financial resources to accomplish them. E.g., *City of Richmond,* where the court rejected the EIR for SEC filing inconsistencies. In effect, RISE KEEPS ASKING FOR AN OPTION TO DO WHAT IT PROPOSES SO THAT IT CAN THEN EITHER TRY TO RAISE THE FUNDING TO PERFORM at least for a while, or to flip the option for a profit to someone else who can fund such performance. E.g., Exhibit G. The Board should not permit that evasion. No locals should suffer prolonged property devaluations by the mere stigma of a possible such mine just so the nonresident speculator-investors can have an indefinite option to mine if they like whatever they may someday find (or not) if this Rise "exploration" proceeds.

6. Examples of Contrasting County Team Treatment of Objectors Versus Rise Expected Misuse of Incorrect "Bias, etc." Allegations for "# 1983 Etc. Claims" in the Inapplicable Hardesty2 Model Objectors' Rebut.

a) Rebutting Rise's Disputed, Challenges To the County Team's Immunity Defenses With Objectors' Comprehensive Disputes; Exposing the *Hardesty2* Illusions.

(1) While Rise Can Be Expected Incorrectly to Attempt to Evade Governmental Immunity Defenses By Oversimplifying The Disputes With Its Misinterpreted Fragments of *Hansen, Hardesty2,* and SMARA, As If the 2585-acre Underground IMM (aka the Bulk of Rise Petition's Disputed "Vested Mine Property") Were Governed by Surface Mining Laws, The Complexity of Our Comprehensive Objections Defeats Any Such Rise Claims.

Our County officials and team satisfy the requirements for at least "qualified immunity from Rise "# 1983 Etc. Claims." The *"Hardesty2 Final Order"* (at 1055-55, emphasis added) acknowledges the Supreme Court's qualified immunity test from *Pearson* and *Harlow* protecting government officials "from liability for civil damages insofar as their conduct does not violate **clearly established statutory or constitutional rights of which a reasonable person would have known."** The two implementing factors in that test are stated to be: **"(1) whether the facts 'make out a violation of a constitutional right;' and (2) 'whether the right at issue was 'clearly established' at the time of defendant's alleged misconduct." Id**. (emphasis added) Considering those factors in any order, qualified immunity exists "if either factor is missing." Id. **For such a right to be "clearly established," "a reasonable official …[must] underst[and] that what he is doing violates that right" "under case law existing at the time of the conduct at issue" [and] … "existing precedent must have placed the statutory or constitutional question beyond debate. [citing *Ashcroft*]" Id**. (emphasis added)

The Comprehensive Objections prove the County teams' cases for such qualified immunity by objectors' proving our own Comprehensive Objections against Rise, and Rise cannot fairly even argue against that because Rise has ignored, disregarded, and evaded our Comprehensive Objections, in effect defaulting in that dispute. While Rise may try to claim excuses for not doing more in the administrative record, none of those Rise excuses apply to our Comprehensive Objections under these circumstances. Even if Rise could assert some excuse against objectors, which we dispute is possible, Rise could never satisfy the test for overcoming qualified immunity against objectors' proof to the contrary, defeating all such Rise claims. Also, even if Rise incorrectly could (incorrectly) apply those **surface** mining rules to this **underground** mining here (like that *Hardesty2* court just applying [and incorrectly from fragments] the inapplicable SMARA and *Hansen* surface mining rules), both the Comprehensive Objections (especially Exhibit D) prove to the contrary that none of such exception to qualified immunity exists in this case. Rise did not (and now cannot) cite any authority for the application, relevance, or impact for these purposes of SMARA and *Hansen* (or any other cited surface

mining cases), for example, to this underground mining of the 2585-acre underground IMM below or around our objecting overlying surface owners who have their own constitutional, legal, and property rights independent of the County. Consider especially our consistent record opposition to the depletion of overlying surface parcel-owned groundwater (including existing and future well water) in which the surface parcel owner has a first priority right to stop dewatering 24/7/365 for at least 80 years and flushing such water away down the Wolf Creek (after disputed treatment in a new and unprecedented water treatment plant for which, even under *Hansen* and *Paramount Rock*, there can be no vested right.) Exhibit D including *City of Barstow, Pasadena, Keystone, Marin Muni Water, etc. See also Varjabedian and Gray v. County of Madera*. If there is any "precedent" that is "beyond debate" here, it is what objectors have cited here and in the other Comprehensive Objections; not in what has been cited by Rise.

Rise cannot succeed by "playing the victim" when objecting local surface owners are the real victims, as described herein and proven further in Exhibits A and B, comparing the treatment of Rise versus objectors in the County dispute processes for the disputed EIR/DEIR, Rise Petition for vested rights, and other Rise Reopening Claims. As to Rise's "playing the victim" for incorrect, false, and worse claims of "bias etc." and "#1983 Etc. Claims" for bullying the County team into ignoring the true victims (i.e., objectors), the motivation of the County team (and objectors) includes not only "legitimate regulatory concerns," but also legitimate concerns about the competing independent constitutional, legal, and property rights asserted by such objectors in the Comprehensive Objections, all of which are no less important than (and objectors contend to be superior to) any alleged rights or claims of Rise. See, e.g., Exhibits C and D. Our competing concerns are not the kind of "political pressure" at issue in *Hardesty2* as demonstrated in this Petition/Objection, but, as we prove elsewhere, if any such disputed Rise theory were permissible, then objectors have no less right to apply that same standard in reverse against Rise. Objectors have suffered disproportionately worse deprivations of our competing constitutional, legal, and property rights (to the opposite of Rise) from (we suspect) Rise's "bullying" the County team and other objectionable conduct (especially as to the Planning Department staff and Planning Commissioners; see Exhibits A and B) than Rise allegedly has, especially because on the ultimate merits the disputed EIR/DEIR fail to satisfy the legal requirements and Rise cannot have any meritorious vested rights or other Rise Reopening Claims. Whatever the County's fate may be in its disputes with Rise, objectors have separately provided what is required to defeat Rise's disputed EIR/DEIR, vested rights, and other Rise Reopening Claims on the merits, despite our Comprehensive Objections being ignored, disregarded, and evaded. As even *Hansen* confirmed (as we prove other ways as well), objectors can defeat (and we contend have proven the right to defeat) Rise on every material issue in these disputes with prevailing legal authorities and superior evidence. E.g., Exhibits E, F, and G, as to such evidence, Exhibits C and D, as to such law, and Prior Ind. 254/255 Objections as to such EIR/DEIR objections. As ***Fairfield*, *Calvert, City of Barstow, Pasadena, Keystone, Varjabedian*,** and other authorities recognize any of Rise's rights, whatever they may be in its disputes with the County team, cannot prevent the successful exercise of objecting property owners' own competing constitutional, legal, and property rights.

Stated another way, even if the court were to mistakenly treat commercial competitors as somehow obstructed from their competing political rights (as in the questionable *Hardesty2* case), objecting overlying surface owners have no less constitutional, legal, and property self-

defense rights than does Rise to compete both at law, law reforms, and rights to redress of grievances by petitioning our governmental officials and staff against Rise by exercising our own competing constitutional, legal, and property rights, especially as against the Rise bullying and other objectionable tactics against the County team doing their duty for objectors and the impacted community. See Exhibits A, B, and C. For example, objectors would be wrongly denied own constitutional rights (e.g., to petition our government officials for redress of our grievances against Rise, for due process, and for equal protection) to compete against Rise and Rise Reopening Claims, if Rise could bully the County team with meritless lawsuits like what is apparently threatened for the alleged wrong of responding to the meritorious concerns of their impacted local victims of Rise mining as the applicable law requires. See rebuttals of Rise's disputed "bias, etc." claims and "#1983 Etc. Claims" that appear crafted for an attempt to follow the inapplicable Hardesty2 model. Remember, unlike the real miner in *Hardesty2*, Rise is a speculator (aka "exploration company") new to the scene in 2017 whose SEC filings (e.g., Exhibit G) admit that Rise is focused on "exploration" and has done no real mining at the site and could not, since the relevant 2585-acre underground IMM has been continuously close, discontinued, dormant, flooded, and abandoned since at least 1956. Meanwhile, objectors, especially overlying surface owners have been purchasing and developing their properties above and around the 2585-acre underground IMM in reasonable reliance on that underground mine never reopening (e.g., see Comprehensive Objections based on estoppel, laches, waivers, etc.), just as the Empire Mine next door never reopened and became a historic park. (As Exhibit E and F prove, the whole gold mining industry never recovered from being closed during WWII and again shut down voluntarily in the 1950's because of the $35 legal cap on gold prices perpetually exceeding the recovery costs. Even extremely risk tolerant, previous speculator-predecessors (like Emgold) gave up on fantasy that Rise bought into in 2017 and is attempting to impose on our unwilling local community for its "alternative reality.")

(2) The Applicable Writ Requirements Reveal Why Objectors – Not Rise--Are The Ones Entitled To Relief On Account of the Disputed County Processes That Are More Than Sufficient For Defeating Rise, the Disputed EIR/DEIR, and Other Rise Reopening Claims, But NOT Adequate For The Comprehensive Objections.

Any writ filing pursuant to CCP # 1094.5 (also subject to CCP # 1094) as to these proceedings would focus on questions of whether the respondent (the County and Board) has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Such an "abuse of discretion" under that statute is established when respondent (the County and Board) has not proceeded in the manner required by law, or when the decision is not supported by the findings, or when the findings are not supported by the evidence. #1094(b). What makes this multi-party dispute somewhat unique (but see *Calvert* and other cited authorities affirming muti-party objectors' entitlement to due process and other constitutional, legal, and property rights that could be asserted in such a writ (on even more fundamental and broader grounds for this dispute) is that the bullied County team has accommodated Rise in incorrectly treating these proceedings as if they were

just two-party disputes between Rise and the County in which such objectors and their Comprehensive Objections could somehow be ignored, disregarded, evaded, or limited to non-party-in -interest "public commentators," contrary to the legal realities, including that objectors have asserted such Comprehensive Objections to enforce our such broader and different competing constitutional, legal, and property rights no less powerful (and objectors contend superior) to those narrower claims and evidence of Rise. Indeed, if Rise were to somehow overcome the County decisionmaker's narrow rulings, findings, and evidence that also so disregarded objectors and our such Comprehensive Objections (and more to come), a hypothetical which should not be possible, Rise and its EIR/DEIR and other Rise Reopening Claims would still be comprehensively defeated by objectors enforcing such Comprehensive Objections independent of the County team's narrower concerns and evidence in the Board Resolution at issue (and, absent reforms, the next to come.)

Consider the following hypothetical illustrating these dynamics in the more common litigation context, although such law applies equally in these administrative proceedings, as explained in cases like *Sweeny v. California Regional Water Quality Control Board* (2021), 61 Cal. App.5th 1093, 1111 et seq., mod. 202 Cal. App. Lexis 235 (3/18/2021) ("***Sweeny")***, citing and applying *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974), 11 Cal.3d 506 ("***Toganga")*** (rejecting for deficient evidence etc. a zoning variance approved by the agency [and on appeal the county board of supervisors] for a mobile home park in a single-family home residential area as a prohibited "special privilege"), where the court granted the procedurally correct writ of mandate for the objecting local association, holding [in an non-vested rights context but legally relevant situation] (at 513-15, emphasis added):

> …[W]e hold that regardless of whether the local ordinance commands that the variance board set forth findings, that body **must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise the reviewing court of the basis of the board's action. We hold further that a reviewing court must … scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decisions.** In making these determinations, the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.
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> … [CCP] Section 1094.5 clearly contemplates that at a minimum, the reviewing court must determine both whether substantial evidence supports the administrative agency's findings and whether the findings support the agency' decision. …1094.5[(b)] prescribes that when petitioned for a writ of mandamus, a court's inquiry should extends, among other issues, to whether "there was any prejudicial abuse of discretion" … define[d] … to include instances in which the administrative order or decision "is not supported by the findings, or the findings are not supported by the evidence." …"[A]buse of discretion is established if the court determines that the findings are not supported by substantial evidence **in the light of the whole record."**

> **…[I]mplicit in the section 1094.5 is a requirement that the agency which renders the challenged decision must set forth the findings to bridge the analytic gap between the raw evidence and ultimate decision or order. …[**T]he Legislature sought to direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action …leav[ing] no room for … [making] a reviewing court speculate as to the administrative agency's basis for decision.
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> ***
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> Moreover, **courts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which the variance is sought**. [discussing how "mutual [zoning] restrictions can enhance total community welfare"] If the interests of these [impacted neighboring] parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests.
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> ***
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> …**Vigorous judicial review thus can serve to mitigate the effects of insufficiently independent decision-making**. [A comment explained later when the court at 521 stated: "**Moreover, the grant of a variance for nonconforming development of a 28-acre parcel in the instant case is suspect." And "Since there has been no affirmative showing that the subject property differs substantially and in relevant aspects from other parcels in the zone, we conclude that the variance granted amounts to the kind of 'special privilege explicitly prohibited**…]

However, at fn1 *Topanga* cited with approval **vested rights cases** (i.e.,*Strumsky, Bixby, and* Temescal *Water Co*.) for the rule that: "**If the order or decision of a local administrative agency substantially affects a "fundamental vested right," a court to which a petition for a writ of mandamus has been addressed upon the ground that the evidence does not support the findings must exercise its independent judgment in reviewing the evidence and must find abuse of discretion if the weather of the evidence fails to support the findings." See *Sweeny* discussed below. Here the Comprehensive Objections show that it is NOT RISE, but INSTEAD OBJECTORS (especially those owning overlying parcels above and around the 2585-acre underground IMM who own first priority groundwater rights and subjacent and lateral support rights) that would be such "fundamental" constitutional, legal, and property rights. E.g., Exhibit D, *explaining City of Barstow, Pasadena, Keystone, Gray v. County of Madera, Varjabedian*, and other authorities. Neither Rise nor the County team site any evidence, authorities, or even reasoned arguments against the broader Comprehensive Objections, so there can be no such contrary decisions against such Comprehensive Objections or our related evidence or authorities.**

As the court stated in *Strumsky v. San Diego County Employees Ret. Ass'n* (1974), 11 Cal.3d 28, 32: "If the order or decision of the agency substantially affects a fundamental vested right, the trial court, in determining under section 1094.5 whether there has been an abuse of discretion because the findings are not supported by the evidence, must exercise its

independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the evidence." *Sweeny* applied and defined that "**independent judgment standard"** in a cleanup and abatement environmental order, which (like a wide variety of courts in many contexts) **used the term "vested rights" far more loosely and generally than in the Rise mining context, so as to include fundamental vested rights of us objecting overlying surface owners above and around the 2585-acre underground mine, as discussed below)**. As Sweeny explained, the trial court "must weigh all the evidence for itself and make its own decision about which party's position is supported by a preponderance. [citation] **The question is not whether any rational fact finder could make the finding below, but whether the reviewing court believed the finding was actually correct."** (at 1111, Emphasis added) How, for example, could Rise or the County team possibly be believed (especially without **relevant** evidence or authorities) that such **surface** mining cases like *Hansen* or SMARA could allow Rise to dewater and deplete groundwater in the underground mining beneath those objecting surface parcels in which the objecting overlying surface owner has such first priority? Not only does that defy "common sense" (*Gray*), but there is no "good faith reasoned analysis" (*Vineyard, Banning,* etc.) at all to counter the Comprehensive Objections.

As usual, Sweeny follows the rule that: ("**we review issues of law de novo."** at 1112 emphasis added). The "fair trial" requirement applies to an administrative hearing under CCP # 1094.5(b). As Sweeny stated (at 1142, emphasis added), citing *Doe* and *TWC Storage*: **"Because the ultimate determination of procedural fairness presents a question of law, we "review the fairness of the administrative proceeding de novo." What any such writ (and the Comprehensive Objections) prove as such a matter of law is that (i) Rise and its enablers received an excessively fair trial at substantial prejudice to objectors, and (ii) objectors failed to get a fair trial for most of our Comprehensive Objections for all the many reasons demonstrated therein (as even predicted in advance in Exhibit D (Objectors Petition For Pre-Trial Relief, Etc.) and this Petition/Objections.**

(3) The Rise Petition And Rise Reopening Claims Are Not Only Defeated By Applicable LAWS Demonstrated By the Plaintiffs' Comprehensive Objections, BUT ALSO BY THE EVIDENCE Plaintiffs, Their Members, And Other Objectors Have Presented To Rebut Such Rise Petition And Claims.

Rise attacks the sufficiency of the County team's proof, for example, against the Rise Petition and for abandonment of the Vested Mine Property's vested rights. However, the Comprehensive Objections prove that Rise has failed to satisfy its burden of proof as required on the use-by-use, component-by-component, parcel-for-parcel basis, instead relying on Rise's bogus, unprecedented, and wrong "unitary theory of vested rights" refuted by Comprehensive Objections discussed above. See, e.g., Exhibits E and F, Evidence Objections Parts 1 and 2. On 10/10/1954 the diminished mining at the IMM was winding down for the coming total IMM shutdown that was coming by early 1956 at the latest, because as objectors have proven even with Rise's own admissions (Id.), the cost of gold recovery in 1954 and for most of the next decade was far greater than the $35 per ounce legal price limit on gold that had long been in effect and that everyone expected to continue indefinitely (and such profit problems for gold

mining would continue for another decade longer). Id. More importantly, because Rise has never proved on what parcels that alleged 1954 vesting date mining was occurring, it cannot satisfy its parcel-by-parcel burden of proof. Remember according to **Empire Mines**, each surface parcel boundary imposes itself on the underground mine beneath it. Even if Rise could prove on what IMM parcels that limiting and diminishing mining was still being conducted, there would be no vested rights for all the other parcels on which there was then no mining and none was expected. Exhibits C and D. Moreover, Rise's disputed theory of preserving vested rights without mining based on waiting for market conditions to improve cannot apply in this case, not only because of Rise's lack of such proof, but also because of the fact that this delay is not about "market conditions." Id. The reason the whole gold mining industry shutdown was because post-war perpetual inflation raised mining costs above that $35 legal price cap. Compliance with law is not a discretionary deferral for the market to improve. Rise has cited no case (and cannot cite any case) that such legal price fixing and inflation constitute "market conditions" to justify the continuation of any vested rights.

Furthermore, in Exhibits E and F (Evidence Objections Parts 1 and 2) objectors rebutted each of the material Rise Petition Exhibits 1--429 and the Appendices on an item-by-item basis. Instead of responding to rehabilitate that evidence for which Rise has the burden of proof, Rise ignored those objections as did (at least in public) the County team. Indeed, objectors have proven their case against Rise by the most powerful evidence of all, i.e., admissions by or for Rise that have significant adverse impacts on Rise's disputed and incorrect claims to have satisfied their burden of proof. Id. and especially Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235 as set up by Exhibit E to Exhibit G applying applicable law to the self-defeating Rise admissions in its SEC "2023 10K" and other filings, such as have been demonstrated to be effective in our *Hardesty* vested rights case and in *City of Richmond* (where the inconsistencies in Chevron's SEC filings defeated its conflicting EIR.) As a consequence, Rise lacks the admissible evidence that would be required to prove its vested rights and must lose on its asserted Rise Petition and Rise Reopening Claims. When, as here, the County staff presentation has not sufficiently proven the case that may be needed to prove such objectors' case, objectors must be allowed to do it ourselves. The objectors' and others' due process rights "to be heard" by the courts means more than just our filing massive objections (against the much larger, disputed, and incorrect record created by Rise (with what Exhibits E and F demonstrate to be lots of "filler"), a significant part of which were new and disputed presentations and oral argument at the Board Hearing at which objectors were denied due process participation except for deficient, 3-minute per person "public comments") disregarded by Rise and (and in public) the County staff. For example, the Rise and County staff arguments were limited to surface mining presentations, while Comprehensive Objections' legal and evidentiary presentations uniquely also focus on the underground mining issues from the perspective of the overlying surface owners above and around the 2585-acre underground IMM with the constitutional, legal, and property rights to prevail over Rise, whether or not the County would by its narrower case alone. The corollary of those truths means that, just are objectors must be allowed to prevail over Rise on our own under applicable law, objectors must be able to present our Comprehensive Objections for ourselves.

What the uncontradicted evidence proves is that, on such a required, parcel-by-parcel basis, there cannot possibly be any vested rights for the whole of the disputed "Vested Mine

Property" alleged in the Rise Petition. Indeed, even if such disputed, Rise's "unitary vested rights theory" somehow was (incorrectly) considered, even it would have to fail because nothing could be done continuously in or above the 2585-acre underground IMM mine and whatever Rise might do would be a massive "expansion," "substantial change," and increase in "intensity." That underground mine has been dormant, closed, discontinued, and abandoned since at least 1956 and for decades the surface above that mine has been owned by overlying surface owners most of whom have objected to, or do not consent to, the dewatering, mining, and other disputed EIR/DEIR activities beneath them. While Rise has made threat for the first time in its SEC "2023 10K" dated October 30, 2023, after the Rise Petition was filed, (see Exhibit G at #II.B.25 and Exhibits D) to try to access that surface by purchase or by governmental or court compulsion, Rise has never offered any proof or even substantiated argument that any of its predecessors had any such intention of acquiring such surface rights. Exhibits E and F. (And the County team has not respond to protect surface owners from that and other direct threats to such objectors explained in the Comprehensive Objections, again proving the necessity for objectors to assert Comprehensive Objections to expand the Board Resolution to include and implement such defenses.) For example, even Emgold's and Rise's disclosed mining plans were to access the underground mine only from the small Brunswick sites wholly owned by them without those threats for miners to invade the surface, and the BET Group showed no interest in provoking the residential and non-mining commercial buyers of that surface that BET Group were selling by disclosing, as they would have been legally required to do, for example, that: "Oh, by the way, we want to encourage mining underneath your homes and businesses, so be aware that a miner may try to force his or her way onto your surface property to support dewatering and mining underneath your surface property.") Rise has proven no such right (and still cannot prove any such right, even by Rise after its 2017 acquisition) for such miners to force access to that overlying surface by such objecting surface owners (or even any intent by any predecessor miner to attempt to claim such surface invasion rights.)

Again, objectors cite that as another example and reason why objectors are at peril from Rise, the dispute EIR/DEIR, and other Rise Reopening Claims, because the County team has not even attempted to defend (at least in public) such rights and interests of objectors expressed in the Comprehensive Objections. Ironically, Rise's claim that the County team is "biased etc." against Rise as absurd, considering both (i) how the County team has shielded Rise from objectors and Comprehensive Objections, and (ii) such repeated inaction by the County team to protect objectors and publicly ignoring, evading, or disregarding the Comprehensive Objections that on their merits must prevail over the disputed Rise Petition and Rise Reopening Claims. The County team's mistaken excuse that instead it was trying to be "neutral" and "fair" to both sides, is contrary to the team's disproportionate favoritism to Rise. As demonstrated in the Comprehensive Objections, from objectors' perspective that approach has unfairly favored and accommodate Rise's bullying to the prejudice of objectors. Even worse, too often some on the County team have treated Rise's correctly disputed "alternative reality" as the false equivalent of reality.

7. There Can Be No Doubt That Objectors Have Done Everything Reasonably Required To Prove And Preserve Their Due Process And Other Standing And Rights To Enforce And Defend Our Competing Constitutional, Legal,

And Due Process Rights (a) To Dispute And Defeat Rise, the EIR/DEIR, And Other Rise Reopening Claims, And (b) Supplement And Expand Any Too Narrowly Correct County Board Resolutions, Each On The Basis of Our Comprehensive Objections As Enhanced In The Continuing Dispute Proceedings, Especially Since Objectors Have At Least As Much "Fundamentally" At Stake As Rise, And Objectors Have Done More Than *Horn, Calvert,* And Other Precedents Require.

While the County team may, and Rise likely will, try to excuse such denials of due process, equal protection, redress of grievances, and other constitutional, legal, and property rights to objectors in this process by claiming incorrectly that we had sufficient notice and opportunities to be heard. This entire Petition/Objections proves that wrong and worse. Indeed, Exhibit C("Objectors Petition For Pre-Trial Relief, Etc.") even tried to raise some of these objections in advance of the previous Board Hearing on the disputed Rise Petition in order to prevent a repetition of similar due process violations impacting objectors at the Planning Commission's disputed EIR earlier hearing. While objectors prove many more such objections (Id.), consider the following simple illustrations at the Board Hearing that cannot be reasonably evaded by Rise or the County team:

(i) Although Rise and the bullied County prepared scripts in advance for their presentations to the Board Hearing, they were not posted in advance of the Hearing (and still have not been posted) for "notice" to objectors, so we could rebut and object to those Rise additions and supplements to the record at the hearing (or the County team's incorrect accommodations of some of them), after the Board cut off objections being added to the record at the start of the hearing, apart from a three-minute per person "public comment" that the disputed County rules limited and censored as to its content and scope, despite the fact that there were not such time limits or content limitations or other censor rules imposed on Rise. So, Rise was empowered to rewrite/edit its disputed case and no objector could rebut or counter (apart from that almost useless three-minute public comment). Objectors also had no opportunity to correct some pro-Rise errors and many pro-Rise omissions in the County staff's presentation, although their narrow case was sufficient to beat Rise's narrow case.

(ii) "Notice" that in what Rise implies will be "test case litigation" is not just the "macro" matters addressed by County and Rise in their narrow, two-party case, but also all the critical details that matter in any such "real test case litigation" Rise presumably contemplates as a do-over for a federal court jury considering Rise's disputed "# 1983 Etc. Claims." What is clear is that Rise, the County team, and objectors each believe that "vested rights" for the IMM plus Centennial (or what Rise calls the disputed "Vested Mine Property"—Query: how is Rise purporting to attempt to reconcile its Alternative 2 EIR/DEIR exclusion of Centennial with the Rise Petition inconsistently claiming that Centennial is the key to all its disputed "Vested Mine Property" theories?) mean entirely different things as a matter of law and require entirely different proof. However, only

objectors are addressing those disputes in Comprehensive Objections, while Rise and (at least in public) the bullied County team are ignoring such objections and those "details." Because objectors will be battling Rise indefinitely on an issue-by-issue and item-by-item of evidence basis (e.g., Exhibits E and F, "Evidence Objections Parts 1 and 2," as well as Exhibit D, Overlying Surface Owners Rebuttals), objectors will be contesting every finding of fact and conclusion of law asserted by Rise for its later attempt to use them later against objectors and our local community for incorrect Rise theories of claim preclusion, issue preclusion, collateral estoppel, and otherwise, especially because can respond to the contrary in kind with our own such counters at our chosen level of detail. (As an environmentalist once observed, a polluted site doesn't look as bad from a plane at 10,000 feet as it does standing in the muck and worrying about the adequacy of your hazmat gear.) As objectors have proven and briefed, vested rights must be proven by Rise on a "use"-by-"use" and "component"-by-"component" basis for each "parcel" on a parcel-by-parcel basis, each of which "parcels" is determined (as in ***Empire Mines)*** by the surface legal "parcel's" boundaries projected down into the earth. (That court considering the underground miner's battle over boundaries in that neighboring mine [that is now a park] noted the legal effect of that law was to create a checkerboard of underground mines in different ownership.) That means Rise's underground mining is adverse to each overlying surface owner above and around the 2585-acre underground IMM, and each such parcel owner contends that vested rights do not allow Rise to do anything it or the disputed EIR/DEIR or Rise Reopening Claim assert the right to do beneath his or her parcel that besides permitted recovery of minerals consistent with surface rights (e.g., *Keystone* and Exhibit D) and that is not contrary to the Comprehensive Objections. Meanwhile, the bullied County team (at least in public) ignores those disputes (like Rise does) for different reasons, but with the same impact on such objectors, who have never sufficiently had their "day in court" on any of their objections and still do not have any clear "notice" of the issues in dispute at the important and legally required level of detail, perhaps because Rise craves ambiguity for exploiting exaggerated claims in later surprises (e.g., who can guess what the Rise Petition means at 58 when Rise claims the right to mine any way and anywhere Rise wishes in the Vested Mine Property "without limitation or restriction"). While the bullied County team may be trying "to be fair" and to avoid "conflict" by appeasing Rise and ignoring the objectors, who are insisting on these dispute issues being resolved now in public detail, not later by surprise litigation by Rise over technical claims like issue and claim preclusion, that in any case should be applied against Rise, for example, for not exhausting its administrative remedies, not against objectors.

(iii) To illustrate the gulf among the parties, Rise and the bullied County team rely entirely on ***surface*** mining law (SMARA and fragments of **surface** mining cases like ***Hansen***), despite the fact that Comprehensive Objections prove that the primary dispute is about ***underground*** mining beneath our community as to which neither SMARA nor *Hansen* **surface** mining authorities govern. See, e.g.,

Exhibit D, Overlying Surface Owners Rebuttals discussing cases ignored by Rise and (at least in public) the County team. But whatever the reason, the bullied County team process has not required Rise (or permitted objectors to compel Rise with our Comprehensive Objections) to expose and dispute all the real issues from our Comprehensive Objections. As the **mining hypothetical below** demonstrates, it appears that Rise is seeking overbroad and general ruling that it can later misuse against the objectors, who Rise apparently intends to ignore entirely until direct and "ripe" conflict is unavoidable, at which time Rise may attempt its disputed claim and issue preclusion and other disputed strategies, which objectors now try to preempt by proving in this Petition/Objections how different the objectors' Comprehensive Objections and positions are from those of the County team, thereby saving objectors from any risk of being bound by the County team's fate. For example, the disputed Rise Petition at 58 claims, in effect, both (A) a false, legally incorrect, unprovable, and unprecedented "unitary theory of vested rights" (i.e., any use or component that Rise claims somehow relates to mining allows Rise to mine underground or elsewhere as Rise wishes anywhere in its disputed "Vested Mine Property" "without limitation or restriction.") Objectors fear that ambiguity to be a claim, for example, that Rise can by 24/7/365 dewatering of the underground mine (i) deplete groundwater owned first priority by each overlying each surface owner above and around the 2585-acre underground IMM (e.g., ignoring all applicable laws to the contrary-e.g., Exhibit D), and (ii) flush such groundwater away down Wolf Creek. Exhibit D, Overlying Surface Owners Rebuttals and cases like *City of Barstow, Pasadena, Keystone, Marin Muni Water, Gray v. Madera County*, etc. proving that Rise cannot do any such things over such Comprehensive Objections.

(iv) Stated another way, **unless such impacted objectors are given equal time and other opportunities as the miner with no greater (and objectors contend miners have lesser) rights and property at issue, there is also a constitutional denial of equal protection of the law for objectors' self-defense, since the bullied County team has failed to protect objectors equally as we would be as equal, necessary, and indispensable parties-in-interest in any court dispute process that could violate any of our constitutional, legal, or property rights. If and when that dispute is ever "ripe," for such surface owners disputing Rise mining beneath and around such surface owners with quiet title (e.g., as to groundwater, subsidence, etc.), nuisance, declaratory relief, inverse condemnation, trespass, and other claims (e.g., as in *Varjabedian*), there could be no doubt of such victims' rights to equal treatment in that court process. How then could Rise or the bullied County team now allow Rise in such a disputed County process (much less in federal court trying Rise's threatened "#1983 Etc. Claims" against the County team) to so ignore objectors and their Comprehensive Objections, so that Rise could (incorrectly) seek issue and claim preclusion and other disputed litigation advantages by such stealthy evasions without objectors ever having their equal "day in court" on our Comprehensive Objections? Therefore, where, as here, such a disputed miner has more rights,**

better treatment, and greater opportunities in such a County dispute proceeding than such impacted objectors, that is "arbitrary" and otherwise wrongful denial of due process for such objectors entitled to equal treatment.

(v). Since objectors' such correct Comprehensive Objections arguments based on *Calvert and other Court of Appeal precedents,* etc. have not yet had much impact on the County team (and since Rise is ignoring objectors until later), objectors suggest now going back to the California Supreme Court "roots," prohibiting the County team and Rise from ignoring such objections in *Horn v. County of Ventura* (1979), 24 Cal.3d 605, **("Horn")(** in that county "adjudicatory" proceeding approving a tentative subdivision map, which *Calvert* correctly applied to such vested rights disputes, there was both "constitutionally inadequate" "notice" and "opportunity to be heard" by the objectors, whose property interests as impacted neighbors to that new subdivision were affected, even as to those who purchased adjacent property after the surprise planning department approval of the map; also allowing attorneys' fees to that successful victim under CCP # 1021.5). Here, as there, there can be no claim that objectors failed to exhaust our administrative remedies, although Rise has failed to exhaust its administrative remedies by ignoring our Comprehensive Objections and others. **As *Horn* stated at 611 (and many courts followed, including *Calvert)*, "One need not exhaust inadequate remedies in order to challenge their sufficiency," which Comprehensive Objections do. Moreover, under the *Horn* standard for what is required of such objectors under the circumstances (especially with our Exhibit C "Objectors Petition For Pre-Trial Relief, Etc." and other filings and appearances disputing the process), objectors pass the Horn test for exhaustion, including because we did what we were permitted to do (and more), while Rise fails any such test.**

(v) **Also, as *Horn* stated (at 612, emphasis added): "DUE PROCESS PRINCIPLES REQUIRE REASONABLE NOTICE AND OPPORTUNITY TO BE HEARD BEFORE GOVERNMENTAL DEPRIVATION OF A SIGNIFICANT PROPERTY INTEREST." Moreover, the court stated (at 617, emphasis added): "The general application of due process principles is flexible, depending on the nature of the competing interests involved. [cites] … [W]here, as here, prior notice of a potentially adverse decision is constitutionally required, that notice must, at a minimum, be reasonably calculated to afford affected persons the realistic opportunity to protect their interests." Also (in addressing standing in a way that supports Plaintiffs), *Horn* added (at 619-620, emphasis added): "[The] hearing must be afforded at some 'meaningful' point in time in the approval process. *** AT THAT HEARING, THE BOARD CONFINED ITS REVIEW TO THE ISSUES RAISED BY THE DEVELOPER [HERE RISE] AND REJECTED ALL REQUESTS BY THE PLAINTIFF AND OTHER LANDOWNERS [for] RECONSIDERATION… The 'notice' received by plaintiff obviously led to no 'meaningful' vindication of his due process rights." What all that means here includes that all of objectors' Comprehensive Objections (as expanded in due course for what rebuttals the County's due process denials incorrectly prevented from being in the record) must be fully**

litigated so that it too is an EQUAL PART of Rise's "test case litigation" to allow it [or NOT as objectors contend] to mine wherever and however Rise wants in the disputed "Vested Mine Property" "without limitation or restriction." Rise Petition at 58. See also Exhibit G #II.B.25, disputing Rise's admitted plan to use such disputed court and governmental claims to invade objectors' surface properties to support Rise's underground mining beneath and around such surface parcels.

(vi) **As objectors have proven in Comprehensive Objections, Rise's vested rights cannot legally impose anything on such private parties, and would, if they existed, be (at most and we contend much less) limited to a defense to the County team enforcing its laws against nonconforming Rise uses without the otherwise required use permits. Such due process denials are especially serious in this case, where Rise and the County team de facto limit and narrow their vested rights disputes (including the Rise Petition and other Rise Reopening Claims) entirely to SMARA and *Hansen* SURFACE mining (only applicable to Brunswick), while entirely ignoring and disregarding (at least in public on the record) record Comprehensive Objections, disputing also (and more importantly) Rise's UNDERGROUND MINING in the 2585-acre underground IMM beneath and around objecting overlying surface owners above and around that IMM, such as to the first priority groundwater surface owners' groundwater (including existing and future well water) that Rise would deplete by dewatering 24/7/365 for 80 years and flushing our groundwater away down Wolf Creek. No such Rise and the County de facto two-party process can be allowed such exclusions of such objections, especially since if Rise has its disputed way (and the bullied County team continues its disputed accommodations for Rise to such prejudice of Plaintiffs and other objectors), this "test case litigation" by Rise would not test the Comprehensive Objections disputes at all, even though they were in the record unknown to any future court because Rise and the County continue to ignore them.**

(vii) **Consider this hypothetical analogy. Imagine this vested rights dispute was a declaratory relief action in state court at a trial where: (1) Rise asserted its disputed Rise Petition and other Rise Reopening Claims, including (a) Rise's disputed, exaggerated rights to the right to mine wherever and however it wants in the disputed "Vested Mine Property" "without limitation or restriction" (Rise Petition at 58), otherwise ignoring all objections besides those limited and narrow objections of the County that Rise matched with its disputed, limited, and narrow counters; and (b) to use such disputed vested rights to invade objectors' surface properties to support Rise underground mining beneath and around them (Exhibit G #II.B.25); versus (2) the bullied County team just disputing Rise's vested rights on a narrow and limited bases with correspondingly narrow and limited evidence by citing SMARA and *Hansen* and ignoring all the underground mining and other Comprehensive Objections; and versus (3) objectors also presenting many nonoverlapping Comprehensive Objections all supported by massive evidence that not only**

proves objectors' case against Rise (and the denials of due process, equal protection, redress of grievances, etc. by the County team as addressed in the Comprehensive Objections), but that also rebuts and eliminates (e.g., as inadmissible, incompetent, unsubstantiated, and otherwise objectionable and noncredible) all the material Rise evidence, including by Rise's self-defeating admissions that are contradictory to, and inconsistent with, Rise's disputed vested rights claims and evidence. Assume (like in the main Petition/Objection hypothetical) in that analogy, the trial court ruled in favor of the County's narrow (but sufficient to beat Rise case), but ignored entirely the case presented by the objectors, such that the court's findings of facts and conclusions of law did not address any of those issues of greatest importance to such objectors and that objectors would have to continue to assert in every dispute we would have in the future with Rise, if Rise's appeal writ or # 1983 Etc. Claims federal jury trial redo, were ever mistakenly successful. Clearly, that trial court (doing what the bullied County team has incorrectly done here in its adjudicatory role) would be unable to prevent such objectors from having our "day in court."

(viii) **The lesson of *Horn* and other such cases in this context is that "one size does not fit all." That County dispute process to keep every objector at what the bullied County team incorrectly sets at the minimum quality and quantity of due process to accommodate Rise, regardless of the extent of the varying harmful impacts of the Rise menaces to such objectors or to his or her property or competing constitutional, legal, or property rights. That legally incorrect approach is forbidden by *Horn, Calvert,* and many other cases that require due process to be calibrated for each impacted objector by the extent of the impact that his or her objection contends that he or she would suffer. While objectors would dispute that the County team's disputed, minimal approach for Rise appeasement is even sufficient for objectors more distant from the IMM, that disputed County approach clearly cannot be tolerated for those suffering the greatest impact in our community on the surface above and around the 2585-acre underground IMM, especially those whose groundwater (including existing and future well water) would be depleted 24/7/365 for 80 years despite their first priority rights proven, for example, in *City of Barstow, Pasadena,* and Exhibit D, "Overlying Surface Owners Rebuttals." See Varjabedian.**

(ix) **Moreover, the bullied County team cannot, therefore, accommodate Rise in what seems like a covert effort to expand that "deprivation of a significant property interest" by limiting the County's denial of Rise's disputed claims to such narrower issues, while ignoring the Comprehensive Objections that insist on broader and comprehensive protection of "significant property interests" than those the County team was willing to address.** See, e.g., Exhibits A-F, as well as Exhibit G proving with quotes from Rise's "2023 10K" SEC filings (rebutted in that Exhibit G at #II.B.25) admitting Rise plans to use the County, other governmental authorities, and the courts to invade such objectors' surface

properties to force their use to support underground mining as among Rise's alleged rights disputed by Comprehensive Objections and others. Stated another way, the bullied County team cannot keep incorrectly accommodating Rise and ignoring objections without the County team being accountable for correcting such errors, omissions, and denials of due process, equal protection, and other constitutional, legal, and property rights. **It is not among the County's rights or powers to define or limit how objectors defend their constitutional, legal, or property rights against Rise or to limit objectors to having to trust the bullied County team's so far unsafe interpretation of what Rise is attempting to do with its Rise Petition and other Rise Reopening Claims. The County team can act or rule for or against objections to Rise's disputed claims, evidence, and schemes, but it cannot ignore or disregard such objections, so that Rise and the County also can evade having to confront such objections for due process, equal protection, and other constitutional, legal, and property rights resolution by the courts in accordance with the applicable law and our compelling evidence. For example, by any such evasion with Rise's threatened #1983 Etc. Claims in federal court where Comprehensive Objections are in the massive record, but there is no objector there to present them to that court, thus (but for other remedies) risking Rise incorrectly claiming issue and claim preclusion when the even more direct disputes surface owners and underground miners become "ripe**." While objectors understand the bullied County's temptation to avoid provoking the bully, such County team accommodations for shielding Rise from objectors' objections is not a tolerable option.

(x) **While there can be no doubt that these vested rights disputes with Rise are "adjudicatory," the County is incorrectly accommodating Rise's incorrect view of what that means for objectors in these disputes. As *Horn* ruled (at 614, emphasis added): "SUBDIVISION APPROVALS, LIKE VARIANCES AND CONDITIONAL USE PERMITS [AND *CALVERT* AND OTHER CASES WOULD ADD, VESTED RIGHTS], INVOLVE THE APPLICATION OF GENERAL STANDARDS TO SPECIFIC PARCELS OF REAL PROPERTY. SUCH GOVERNMENTAL CONDUCT, AFFECTING RELATIVELY FEW, IS 'DETERMINED BY FACTS PECULIAR TO THE INDIVIDUAL CASE' AND IS ADJUDICATORY IN NATURE." Unlike surface mining cases those specific parcels of real property are the same determined by each surface owner's parcel (e.g., *Empire Mines* and Exhibit D, Overlying Surface Owners Rebuttals) and create direct conflict over the objecting surface owner's first priority groundwater rights (e.g. *City of Barstow and Pasadena*; Id.) that Rise and the disputed EIR/DEIR propose to deplete 24/7/365 for 80 years and flush away down Wolf Creek.** Moreover, under the standard ***Horn*** **explained (at 615, emphasis added) for "land use decisions which 'substantially affect' the property rights of owners of adjacent parcels may constitute 'deprivations' of property within the context of procedural due process," Plaintiffs and other objectors more than qualify as "sufficiently 'substantial'" as proven in the Comprehensive Objections.** As *Horn* added (at 615-616, emphasis added), the **objectors' such case is even stronger because their objections are "not directed**

to the fact of the subdivision itself, but rather [their complaint] avers that the particular details of the current plan have caused him injury." Likewise, as described in the Comprehensive Objections, in this dispute objectors have not just disputed the mine itself, which is utterly incompatible with the many existing, competing, overlying surface uses none of which involve any mining activities, most of which long preceded Rise's acquisition in 2017. Such surface owner and other objections also prove all the many details of how Rise, the disputed EIR/DEIR and the other Rise Reopening Claims would affect, harm, and risk such surface properties and owners, among other consequences at issue in these disputes that have been consistently ignored and disregarded by Rise and (at least in public) by the County team.

The mistake the bullied County makes (and which Rise is trying to exploit) is to assume incorrectly there are only two categories of objectors: (i) the general public, who can comment to their elected officials as to such policy controversy issues, but who also Rise incorrectly contends (without authority or countering objectors' contrary cases) can be ignored as just "public comment" providers without sufficient legal standing to matter in any real legal dispute (which does not apply to objectors in this dispute); and (ii) impacted objectors who are entitled to three-minute "public comments" at the hearing and to file objections "for the record" until the start of the hearing that are theoretically considered, but also can be ignored or disregarded in practice, even on legally incorrect reasons, all without any explanation or notice to the objector so that he or she could appeal or correct that incorrect decision. See, e.g., in this case, Prior Ind. 254/255 Objections to each of the County EIR "Responses" and "Master Responses," which were all legally deficient, incorrect, or otherwise objectionable, illustrating the problem. By applying that latter category to such objectors, the County team is denying them due process, equal protection, and other required constitutional, legal, and property rights as explained both elsewhere in the Comprehensive Objections. In effect, there are more categories of impacted objectors than those two on the County list, all of which are entitled to much more than objectors have received so far in this process.

8. Further Examples of Denials of Objectors' Due Process And Other Personal Constitutional, Legal, And Property Rights.

Consider also the following due process and other constitutional, legal, and property rights of objectors that the County team ignored, disregarded, or evaded, while instead, incorrectly accommodating Rise for disproportionately favorable treatment (e.g., disproving Rise's bogus "bias etc." claims and entitling objectors to "catch up" on such missed opportunities for rebutting Rise, the disputed EIR/DEIR, and other Rise Reopening Claims). [This discussion addresses both the vested rights and EIR/DEIR disputes in this hearing because of their interaction and cross-over significance in rebuttals against Rise (and, where correction is needed for conformity to the truths in the Comprehensive Objections, for corrections required of the County team. For example, the Rise Petition and EIR/DEIR each contain many inconsistencies and contradictions with each other that must be self-defeating (e.g., ***City of Richmond*** and Exhibits C, D, E, and F) and provide rebuttal evidence by such admissions. See

Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235. Moreover, Rise is continuing to assert both the Rise Petition (despite its correct denial by the Board) and this disputed EIR/DEIR creating utter confusion if (which we contend would be legally incorrect) some parcels, but not others, were ultimately determined to have vested rights free of applicable permits assumed (especially and improperly for deferred EIR/DEIR mitigation or other requirements). Furthermore, because Comprehensive Objections prove massive errors, omissions, and worse in the disputed EIR/DEIR and the Rise Petition that Rise may claim to evade one way or the other, objectors wish to be comprehensive so that Rise cannot "restructure" its disputed theories and proof to create some third path from the broken pieces of its various Rise Reopening Claims.]

(i) **The County Disproportionately Limited And Censored Objections Unfairly Compared To Rise Being Without Such Scope Or Content Boundaries, Even Denying By Ignoring Objector Rebuttals Using Rise's Self-Destructive, Inconsistent, And Contradictory Admissions, Whether Inside Each Rise Filings, Between Different Rise Filings (e.g., the Disputed EIR/DEIR Versus the Disputed Rise Petition for Vested Rights), Or In Rise SEC Filings (e.g., Exhibit G, see especially #II.B.25.) See, e.g., *City of Richmond*, where the inconsistencies and contradictions in Chevron's SEC filings defeated Chevron's disputed EIR, just as should happen in this case.)** Like Rise, (at least in public) the County team has not only ignored, disregarded, or evaded legally appropriate objections (or otherwise failed to respond appropriately to them), but the County team has imposed radically disproportionate limitations, obstacles, and prohibitions on most of objectors' Comprehensive Objections, such as by not only excluding participation (and even follow-up) for rebuttals, but also by even incorrectly restricting the scope and content of objectors' three-minute "public comments" as the only permitted rebuttals of Rise or corrections of the County team after the start of the hearing. Literally, even many relevant rebuttals of Rise's presentations beyond those objector boundaries were so prohibited and even if objectors tried to use Rise's own admissions for impeachment. This Petition/Objection (including its extensive Exhibits and incorporations by reference) is partly a catch up on those missed opportunities to balance the record against the incorrect Rise additions and any disputed County team failures to correct Rise or its disputed EIR/DEIR or other Rise Reopening Claims. Thus, the County team's disputed double standard allowed Rise grossly disproportionate time to say and file whatever it wished without any such limitations or restrictions the County imposed on objectors, thus both impairing objectors' rebuttals of Rise and justifying both objectors' anticipatory Comprehensive Objections and these delayed rebuttals.

For example, to be more specific, Rise was allowed over two hours at the prior Board Hearing to present whatever Rise wished in support of the Rise Petition claiming vested rights, while the County rules both limited objectors' participation at and after the Board Hearing [e.g., only three minutes per objector of limited scope and content oral rebuttal at the hearing to counter substantial new and additional, purported evidence and arguments by or for Rise

at the Board Hearing and some County staff presentations that needed corrections]. For instance, the County team denied objectors due process, equal protection, redress of grievances and other constitutional, legal, and property rights in so limiting the scope, topics, and content of permitted objections [e.g., limitation to certain "history" but excluding not only many inseparable issues, rebuttals, and concerns, such as the reclamation plan and financial assurances, but also not even allowing rebuttal against what admissions and new evidence, claims, and things Rise itself added to the record at the Board Hearing outside of those inappropriate boundaries.] That repeated the similar, earlier mistakes in similar, both unfair accommodations for Rise and incorrect limits for objectors at the 2023 Planning Commission EIR and DEIR hearings that inspired Exhibit C (the "Objectors Petition For Pre-Trial Relief, Etc."), wherein objectors accurately predicted those procedural wrongs (and requested objector relief (denied) from the County team to mitigate such unfairness) that so favored Rise, who is not the "victim" it incorrectly claims to be here, but, instead, Rise is the cause of our (and, by Rise "playing the victim," even its own) problems, including by bullying the County team.

(ii) **Rise And the County Keep Missing That The Core Dispute Is About Underground Mining In the 2585-Acre Underground IMM And The Disputes Of Overlying Surface Owners Versus Such Underground Rise Dewatering And Other Operations, Not Just Rise Surface Activities At Brunswick Or Centennial Versus the County.** By Rise bullying the County team (we fear) into incorrectly ignoring, disregarding or evading the Comprehensive Objections, Rise and the County team have wrongly (a) limited the public dispute, in effect, to ***Hansen*** and **SMARA surface** mining, and (b) evaded the Comprehensive Objections in these Rise provoked disputes, apparently a strategy for evading them in its expected test case litigation (e.g., Exhibits C and D), such as about such **underground dewatering and mining versus the competing rights of overlying surface owners** above and around the 2585-acre underground IMM. Id. The County team and Rise exposed objectors to the risks of insufficient consideration by the reviewing courts to many of the important legal and factual disputes contained only in Comprehensive Objections that must be at issue in any "test case litigation" involving Rise or the disputed EIR/DEIR and other Rise Reopening Claims. Even worse, such objectionable limits, disregard, and evasion also incorrectly diminished objectors' constitutional, legal, and property rights standing for mandatory full participation on an equal basis as Rise. Exhibit C.

(iii) **Rise And the County Team Also Missed That The Core Dispute Is About The Disproportionate Impact On Local Objectors That Cannot Be Tolerated Under *Varjabedian* And Other Constitutional, Legal, And Property Law, Especially As to Groundwater And Existing And Future Wells Subject To Such Surface Owners' First Priority Rights And Rights of Subjacent And Lateral Support (Including by Groundwater) Under *City of Barstow, Pasadena, Keystone, And Exhibit D.*** The County team has incorrectly accommodated Rise by ignoring such due process and other rights and standing of Plaintiffs' members and other objectors under

Calvert and other controlling cases asserted in the attached Petition/Objections and other Comprehensive Objections. Even worse, Rise and (at least in public) the County team ignored and disregarded the even stronger rights and standing of such objectors under ***Varjabedian*** and other cases forbidding such disproportionate harm to locals for the imagined (and disputed) benefit of the broader and less impacted community. See, e.g., Id., including Exhibits C--F. Even worse than that, they also ignored and disregarded the unique rights of overlying surface owner objectors living above and around the 2585-acre underground IMM explained in Exhibit D (the "Overlying Surface Owner Rebuttal" and cases like ***Keystone, Marin Muni Water, City of Barstow, and Pasadena***), who have even greater competing constitutional, legal, and property rights at issue, none of which have been addressed by Rise or (at least publicly) by the County. Notice that, **among the many critical differences between such applicable underground mining and dewatering (to which SMARA and *Hansen* do not apply) versus surface mining (to which SMARA and Hansen are limited, with only some limited, related SURFACE activities that may support underground mining) is that objectors only to adjacent SURFACE mining are focused on HOW THE MINER MISUSES ITS OWN PROPERTY, whereas objectors to underground dewatering and mining (such as are at issue here for the 2585-acre underground IMM) ARE DISPUTING WHAT HARMS THE MINER WOULD BE DOING TO SUCH PROPERTY OF THE OVERLYING SURFACE OWNER.** (Here Rise and (in public) the County team instead (and deficiently) discussed only **surface** mining authorities, apart from a few incorrect, tricky, and objectionable additions by Rise at the prior vested rights Board Hearing (which objectors were prohibited from rebutting, not just by the incorrect County rules.) Also, for example, one objector rose at the hearing, as one does in a courtroom] hoping for an opportunity to contest a particularly outrageous claim by a Rise representative, but that standing objector was not recognized. (He understandably refrained from shouting out his objection for concern that might result in his removal from the meeting, and he could not afford to miss the rest of the disputed presentation.)

(iv) **Because It Is Indisputable That No Underground IMM Mining Has Occurred Since At Least 1956, Rise Has Incorrectly Invented An Unprecedented And Wrong Theory of "Unitary Vested Rights" That Must Be Defeated by Plaintiffs' And Others Comprehensive Objections To Better Protect Their Personal Rights And Interests Than The County Has (Publicly) Done**. See, e.g., Exhibits C-F. The Comprehensive Objections demonstrate that vested rights must be limited to the same continuous "use" action or "component" "use" on the same "parcel," on a use-by-use, component-by-component, and parcel-by-parcel basis continuously without changing or expanding the "use" or increasing its "intensity." Id. Comprehensive Objections prove that the Rise vesting plans would violate each of those vesting requirements and more surface owner constitutional, legal, and property rights of objectors. Id. Nevertheless, the disputed Rise Petition and other Rise Reopening Claims wrongly claim vested rights based on some

predecessors' (e.g., North Star—see Exhibits E and F) alleged "mining-related" **surface** activities (none of which in this case involved any actual mining "use," and most of what Rise cited was not even related to underground mining at all, such as Rise's rebutted surface crushing and sale of discarded waste rock "uses" in surface dumps, with only Emgold and Rise occasional, minor "exploration drilling" on a few of the many parcels having any relevance to underground mining, although that drilling is not "mining" for vested rights). Id. That incorrect Rise theory claims that such insufficient and noncontinuous activity anywhere on the disputed "Vested Mine Property" incorrectly justified vested rights to mine underground anywhere and everywhere on any parcels of that 2585-acre underground IMM. Id. But as such authorities demonstrate, even actual surface mining is a different "use" for vested rights than underground mining "uses," such that neither can create any vested rights for the other. Even then, even vested rights "uses" on one parcel cannot create any vested rights for even the same "uses" on another parcel. Id. **As *such authorities* explained, underground mining is a different "use" for vested rights analysis than surface mining "uses."** None of the alleged uses of the surface parcels at issue in this case could vest rights for any underground use (or even a surface mining use.) Id.

(v) That Legal Reality Even Defeats Rise Vested Rights Claims For New "Component" "Uses" On Parcels Where They Had No Such Prior "Use."

Moreover, even *Hansen* confirmed that reality (also proven at length in Comprehensive Objections) by discussing with approval ***Paramount Rock*** (denying vested rights for the addition of a surface rock crusher "component" to a parcel that had not previously had one.) Id. In this case that is authority, for example, for denying any vested rights for the disputed, new, water treatment plant planned by Rise in the disputed EIR/DEIR) and by refusing to grant vested rights in that *Hansen* case for some other "parcels" (as distinct from other parcels to which the majority granted vested rights) for lack of sufficient evidence. E.g., Exhibits C-F (especially the exhibit thereto comprehensively and correctly explaining *Hansen* with key quotes to rebut Rise's misuse of fragments and Rise's misreading and omissions). Without that water treatment plant, Rise cannot dewater the 2585-acre underground mine 24/7/365 for 80 years as Rise and the disputed EIR/DEIR admit would be required for that underground mining, which dewatering would also be a massively and improperly more intense and expanded "use" compared to what little Rise has proven existed when Idaho-Maryland Mines Corporation was winding down its mining to a close and liquidation on the alleged vesting date of October 10, 1954. Exhibits E and F. See also objectors' disputes in Exhibits C and D (and Prior Ind. 254/255 Objections) of the more intense and expanded, proposed, unprecedented technique of piping cement paste with insufficiently addressed risk of toxic hexavalent chromium into the underground mine to shore up mine waste in columns to save the cost of removal, thereby repeating the mistake of the utility that polluted the groundwater in Hinkley, CA, exposed in the movie, *Erin*

Brockovich, and which no one there has been able to remediate in all these years of expensive efforts, as discussed in www.hinkleygroundwater.com.

(vi) **Not Only Has The 2585-Acre Underground IMM Been Dormant, Flooded, Closed, Discontinued, Abandoned, And INACCESSIBLE To Miners Since At Least 1956 (Explored Only By Occasional Drilling By Some Rise Predecessors), But The SURFACE Above And Around That Underground IMM Has Also Been INACCESSIBLE To Rise And Many of Its Predecessors For Many Years As Each Surface Parcel Was Gradually Sold Off For Residential And Non-Mining Business And Infrastructure As The Community Grew And Developed With Incompatible Users Objecting Or Not Consenting To Any Such Mining. Thus, Rise's Entire Case For Its Disputed Claims Of Irrelevant And Unqualified For Vested Rights And Other Rise Reopening Claims Must Fail Because It Depends On Non-Mining, Surface Uses Only By Rise's And Its Predecessors' Activities On The Separate Parcels At the Brunswick Site And Even Less Credibly At the Toxic Centennial Site.** See, e.g., **Exhibit G, especially #II.B.25 threatening Rise's invasion of such overlying surface parcels to facilitate its disputed dewatering and mining beneath them,** as well as other Comprehensive Objections, including with just these few samples of many grounds to defeat the Rise Petition and other Rise Reopening Claims:

(a) the *Hansen* and other cases limiting vested rights to a "use-by-use" and "component-by-component" basis for each "parcel" on a parcel-by-parcel basis that Rise never even attempted to rebut with what the CEQA law calls "common sense" (*Gray*) and "good faith reasoned analysis" (*Vineyard, Banning*, etc.), incorrectly relying instead on its unprecedented and false "unitary theory of vested rights," that ignores all the key cases and reasons why underground gold mining is a different "use" than "surface" mining uses, and why Rise's water treatment plant is a new, unprecedented (for its planned parcel), and different "component" that could never qualify for vested rights, even its role in the new and different dewatering system operating 24/7/365 for 80 years to deplete the local groundwater and wells owned by objecting surface owners [e.g., Exhibit D, the Overlying Surface Owners Rebuttals] were not massively more "intense" than the trivial gold mining that still continued on October 10, 1954, as the IMM admittedly wound down to its expected closing and liquidation, because the $35 legal cap on gold prices made the whole gold mining industry indefinitely uneconomic in the face of chronically inflated and increasingly higher cost of mining [which is not the "market condition," but instead a disputed and incorrect claim by Rise that it inherited from 1954 "vesting" an option for vested rights in perpetuity, conditioned in Rise's discretion on a change occurring in that applicable law that defeated mining indefinitely (and that continued for another decade), all as proven with Rise Petition Exhibit admissions in Exhibits E and F ("Evidence Objections Parts 1 and 2");

(b) Those Exhibits (Id.) also proved that such prohibition on any increased "intensity" of vested mining uses defeats the disputed and unprecedented Rise Petition claim that such "intensity" for ***underground*** mining "uses." To the extent

that such intensity is measured by averaging historical mining rock removal (or, even what *Hansen* actually did [that Rise rewrites]: the gold volume extracted from that rock on the surface), the question should be focused on that volume intensity at the vesting date (10/10/1954) when the entire gold mining industry that was shut down for WWII, never recovered when it was allowed to resume but gradually diminished to a voluntary end because the cost of gold mining chronically exceeded that $35 legal cap on gold prices discussed above (Id.), which set the "intensity" legal calculation limit to what little gold ore volume was being mined on 10/10/1954 (or, alternatively as objectors assert, no greater than on a parcel-by-parcel basis from when the IMM shut for WWII to that 10/10/1954 claimed vesting date). In other words, like abandonment, since some parcels could be abandoned, even if others were not, this all requires that parcel-by-parcel analysis that neither Rise nor the County team attempted to do, and which (since Rise has the burden of proof which Rise failed to satisfy) objectors do not need to prove to the contrary.

(c) **Moreover, that is especially true because "intensity" for *underground* mining must be measured by that mining's impact on the surface owners, especially on the surface owners' first priority rights to each parcel's groundwater and existing and future well water (NOT as Rise claims, and Plaintiffs dispute even for surface mining on the volume of extracted rock or minerals)**. See, Id., Exhibits C and D (the "Overlying Surface Owners Rebuttal"), and other Comprehensive Objections, demonstrating how surface mining cases (even the self-defeating surface cases Rise tries to ignore by disregarding or evading objectors' Comprehensive Objections that also argue them) cannot be used by Rise (or the County team) to limit the competing, personal, constitutional, legal, and first priority property rights of each surface owner above and around the 2585-acre underground IMM.

(d) Those Exhibits (Id.) and other Comprehensive Objections further prove such facts and demonstrating why none of such surface activities of Rise or its predecessors on their such wholly owned "parcels" could support vested rights for any such actual mining on or underground below any surface parcels owned by such objecting and nonconsenting third parties, including Plaintiffs' members, especially the long-dormant, discontinued, closed, abandoned, and toxic "Centennial" parcels that Rise admitted in its EIR/DEIR were entirely separate and disconnected from the rest of the IMM [now incorrectly rebranded in the Rise Petition by Rise as disputed "Vested Mine Property"] as not being part of the EIR/DEIR "project," so that no EIR was allegedly required for those isolated, Centennial parcels.)

(e) Thus, for example, the Comprehensive Objections prove that nothing ever done on any Rise surface parcels or even underground in the "Flooded Mine" could ever create any vested right for the "Never Mined Parcels" in the 2585-acre underground IMM. Id. Also, because Rise and (in public) the County team incorrectly focused exclusively on surface mining cases that cannot ever prove vested rights for underground mining (e.g., *Hardesty*), they miss the key

legal prohibitions requiring the "same" **"uses"** with the same **"components" "continuously"** on each parcel with no forbidden "**expansion"** or increase in ***"intensity."*** Id. As noted, each such comparison is between what Rise proposes to do compared to what was happening in the diminished and winding up of IMM mining on 10/10/1954, and also what applicable law requires now that the disputed EIR/DEIR incorrectly underestimated, deferred, and has not proposed. Id.; Exhibits C, E, and F. What the County missed, even in its analysis of parts of *Hansen* (and not enough else for protecting objectors as needed for our greater Comprehensive Objections, although [correctly] more than Rise's use of *Hansen* fragments—see Exhibits C and D), is what Rise admitted planning in its EIR/DEIR to dewater and mine and incorrectly asserted in its disputed Rise Petition (at 58) claim to entitlement to mine as Rise wishes anywhere in the "Vested Mine Property," without regard to objectors' competing constitutional, legal, and property rights. But such expansion and greater intensity that defeats any vested rights on 10/10/1954 is obvious in shifting from (i) a winding up of the 2585-acre underground IMM with 72 miles of underground tunnels with another 150 miles of offshoots, soon by 1956 to be flooded, closed, dormant, discontinued, and abandoned, that (ii) Rise now expects to expand into the "Never Mined Parcels" and "expanding" with 76 miles of new underground tunnels plus offshoots for vastly more "intense" underground mining and dewatering 24/7/365 for 80 years beneath now many more overlying surface parcels owned by objectors and other nonconsenting owners.

(g) "Intensity" for neighbors adjacent to a surface mine cannot ever match the much earlier triggered, greater, and more sensitive "intensity" for overlying surface owners above or around such an underground gold mine, just as for such "intensity" variations such adjacent neighbors' nuisance claims against the miner are less powerful and "intense" than the overlying surface owners' trespass, inverse condemnation, and other claims. E.g., *Varjabedian*. For example, by Rise (and, in public, the County team) ignoring such underground mining and other arguments in Comprehensive Objections, they cannot now contest objectors' first priority either (A) rights to groundwater (including existing or future well water) or (B) rights to subjacent and lateral support (including groundwater support) to avoid subsidence above or around the 2585-acre underground IMM, as proven in e.g., *City of Barstow, Pasadena, Keystone, and Marin Muni Water; Exhibit D; and*

(h) In summary, it is indisputable that none of the objectors and other nonconsenting owners of any surface parcels above or around the underground mine have allowed any surface use for any underground mining by Rise or its predecessors since there has been no underground mining since at least 1956. Neither Rise nor its predecessors have claimed to have been mining in or using for mining any of that flooded, closed, discontinued, dormant, and abandoned IMM underground mine since at least 1956. However, that was not countered even with argument (as objectors did with Comprehensive Objections, including the attached Exhibits) at all by Rise (or sufficiently by the County team). Likewise,

Comprehensive Objections (Exhibits C and D; Prior Ind. 254/255 Objections) disprove that Rise's invented, unprecedented, incorrect, and unproven theory of "unitary vested rights," where any kind of what Rise calls "mining activity" on any "parcel" of the disputed "Vested Mine Property" with any "component" (e.g., at Rise's incorrect and disputed oral argument at the Board Hearing it was surface rock crushing and sales) somehow supposedly creates vested rights to do any other kind of mining activities or uses, even underground in the 2585-acre underground IMM that has been flooded, dormant, discontinued, closed, and abandoned since at least 1956. Id.

(vii) **The Indisputable Parcel-By-Parcel Legal Analysis Must Defeat Rise Both On the Merits And Because Rise Ignores The Issue, By Default**. Even *Hansen* required the focus on vested rights as a "parcel-by-parcel" issue, although Rise (and, at least in public, the County team) ignored that requirement by apparently **simply assuming** (incorrectly and without any proof, authority, or "good faith reasoned analysis) that the Vested Mine Property could be treated as one parcel when it never has been, even under that *Hansen* precedent that Rise only addressed falsely by Rise's favored fragments. Id. But Rise has lost that argument with objectors and Comprehensive Objections by default, and the indisputable reality is that each legal surface parcel controls everything beneath its surface boundaries, especially its first priority groundwater and existing and future well water rights and any mineral rights are limited on that same parcel boundaries. As the controlling ***Empire Mine*** court and other authorities have confirmed (e.g., Exhibit D, "Overlying Surface Owners Rebuttals"), **the underground parcels (and sub-parcels) are determined by the boundaries of the "parcels" (and "sub-parcels") projected down into the earth. Id. Consider, for example, that objectors' parcel-by-parcel analysis analyses reflect the legal necessities of fundamental property law, just as one surface owner cannot sue for a trespass (above or below the surface) on another owner's parcel, the same limit applies to a underground miner seeking vested rights on different parcels of such different owners by such miner's water or other trespasses on one parcel incorrectly being claimed as a basis for expanding to other properties. Notice that Rise has not even attempted to prove by any good faith reasoned analysis that even an (incorrect) ruling in favor of the Rise Petition could have bound any overlying objector, since the Comprehensive Objections prove that objectors have independent constitutional, legal, and property rights not represented by the County team (and entirely, at least in public, ignored, disregarded, and evaded by the County team), thus preventing any issue or claim preclusion, collateral estoppel, or other theories limiting or impairing any such rights of objectors by whatever the County team does or does not do or whatever the County's fate may be in disputes with Rise. Because overlying surface owners and underground miners are in perpetual competition on a parcel-by-parcel basis what the miner does on one parcel also cannot prejudice in any way the surface owners of other parcels who the law does not empower**

to sue for such trespass or inverse condemnation, etc. on others' properties until such wrongs impact his or her own parcel.

(viii) **Among the Comprehensive Objections That Will Defeat The Disputed Rise Petition, the EIR/DEIR, And Other Rise Reopening Claims Are Those Personal Constitutional, Legal, And Property Rights of Objectors.** As ***City of Barstow, Pasadena,*** and many other groundwater precedents confirm (Id.), each of the objecting, overlying, surface owners and all the others who have not consented to their surface or groundwater being dewatered and misused for the IMM underground mining beneath or around them):

(a) own first priority rights in the groundwater (including existing and future well water) beneath and around them within the boundaries of each of their surface parcels that Rise plans to so deplete by 24/7/365 dewatering for 80 years. E.g., Exhibit D, the "Overlying Surface Owner Rebuttals." See also ***Gray v. County of Madera***, rejecting the kind of mitigation for depleted wells proposed by Rise, in Exhibits C—G; Prior Ind 254/255 Objections). Rise incorrectly assumes away the problem by a disputed EIR/DEIR claim that somehow its dewatering does not require its surface owners' consent and will not have that prohibited impact, and now in the disputed Rise Petition's covert and incorrect claim (at 58) to do whatever it wishes in the disputed Vested Mine Property, somehow as the disputed inheritor of predecessors' vested rights, empowers Rise to operate "without limitation or restriction." There is no legal right by Rise to do so, whether under any vested rights claim, any EIR/DEIR, or permit, rezoning, or variance from the government (unless the County "takes" objectors' surface property rights by eminent domain or inverse condemnation *[Varjabedian*] as an improper gift of public funds to this Canadian gold mining speculator for the imagined profit of nonresident speculator-investors, which is hard to imagine happening and which would be quickly undone by the court if it were tried), or otherwise. Stated another way, there is no such thing in the law as such a miner obtaining such advance permission from a court to trespass on or take other people's property on any such disputed theory in these kinds of administrative processes, so that somehow whatever occurs in the future as an actual trespass could be imagined by such a miner not to be a trespass, which is another way of proving objectors' standing and right to independent relief consistent with the Comprehensive Objections.

(b) have rights to subjacent and lateral support (including by groundwater support) to prevent subsidence, which, for such depletion of the surface owners' groundwater that is itself "subsidence" because that groundwater is as essential to such support as is the rock and dirt (e.g., *Keystone, Marin Muni Water*, and Exhibit D.) Consider in detail what the Supreme Court ruled in *Keystone*, where the court denied the miner's takings claim against the state for requiring the miner to leave half the coal in the ground to support the surface, as well as acknowledging the need for not depleting the groundwater that supports the surface. Moreover, that Court upheld the rights of the surface owners against underground miner in ways that will enable objectors not only to defeat the Rise

Petition, EIR/DEIR, and other Rise Reopening Claims with existing legal rights, but also to enhance objectors' protections with new laws that Rise cannot (incorrectly) evade by bullying the County team, such as with disputed "takings" claims (see *Keystone*); and

(c) have rights to prevent the kinds of pollution and property harms addressed in Comprehensive Objections, such as Rise's disputed plan to "use" cement paste apparently containing toxic hexavalent chromium (referenced in the disputed EIR/DEIR- See objectors' Prior Ind. 254/255 Objection rebuttals) to shore up mine waste in the underground mine into bracing columns that risk turning our local community into another Hinkley, CA (the subject of the memorable movie, "***Erin Brockovich")***, which, after all these years and extensive remediation efforts funded by that record utility liability settlement fund, that community still has been unable to clean its groundwater as described at www.hinkleygroundwater.com. See, e.g., Id.; Exhibits C and D (exposing the deficient way that reality has been obscured and evaded with "hide the ball" tactics in the disputed DEIR/EIR that are an additional ground for objections and which objectors have made a part of the Rise Petition record as rebuttal evidence. Id. In particular, consider how that Comprehensive Objection to that EIR Objection Ind 254 dated April 25, 2023, exposes and rebuts the improper way EIR "Response 1" (and otherwise) evades that objector's objection labeled Ind. # 254 to the DEIR, with "back-to-back" "hide the ball" tactics and which (with other similar examples from attached Exhibits and otherwise) the laws of evidence will enable Plaintiffs to prove evidence an objectionable pattern and practice. See, e.g., Id.; Exhibits E and F, Evidence Objections Parts 1 and 2. While Rise may have bullied the County team into trying to exclude the EIR/DEIR dispute record from being incorporated into the Rise Petition dispute, Plaintiffs members nevertheless incorporated that and more anyway to include in the record for this dispute, as is objectors' rights to use all such evidence from every record to impeach, rebut, and dispute Rise for each part of the Rise Reopening Claims disputes that neither Rise nor the bullied County team can evade or prevent.

(ix) **Those And Other Rebuttals Are Proven In Comprehensive Objections, Not Only By Applicable Law, But Also By Disproving All of Rise's Material, Purported Evidence By Objectors' Exhibits E and F, "Evidence Objections Parts 1 And 2."** In summary, with this one last illustration, Rise and (in public) the County team have evaded, ignored, and otherwise avoided any attempt to disprove, dispute, or otherwise respond to the Comprehensive Objections, especially regarding the underground dewatering and mining issues and by authorities Rise evades by discussing only surface mining issues and authorities, while incorrectly just asserting that any irrelevant uses Rise or its predecessors in title interest may have made of surface parcels when owned by such predecessors now allow Rise to mine as Rise wishes "without limitation or restriction" anywhere on the disputed "Vested Mine Property" (Rise Petition at 58), including in the 2585-acre underground IMM beneath overlying surface property parcels owned by objectors and others who have not consented thereto. Besides what has been

stated already, much more has been proven in those Comprehensive Objections, such as, for example, Rise's disputed attempts to misuse irrelevant surface uses as a false basis for disputed "vested" underground mining "uses," including irrelevant sawmill operations, occasional drilling explorations on some parcels, surface rock crushing of waste rock dumped on the surface and sales without any excavation of the surface (none of which is "mining" uses for any vested rights analysis), as proven even from Rise admissions exposed and applied in unanswered objector rebuttals in Evidence Objections Parts 1 and 2 (Exhibits E and F) that also rebut every "material" Rise Petition Exhibit 1-429 and Appendices. ("Material" for that purpose throughout these Comprehensive Objections means substantively important, as distinct from what objectors just dismiss as useless Rise "filler" (Id.) that proves nothing or is only a "snapshot" of a moment in a time period where the activity must be proven to be continuous and is not so proven.)

(x) For any disputed vested rights for any "use" or "component" to exist for Rise on any "parcel" in its disputed "Vested Mine Property" Rise must prove it continuously existed through the chain of tile of each of Rise's predecessor before its 2017 acquisition of the IMM and its 2018 acquisition of Centennial, and Rise has failed to do so as to each of those predecessors and as to Rise itself, especially on the required "use-by-use," "component-by-component," and "parcel-by-parcel" basis which the Rise Petition never even attempts to do. Any break in that chain of vested rights by any predecessor denies any vested rights to any successor. Thus, while the Rise Petition Exhibits try to prove vested rights for the initial predecessor, Idaho-Maryland Mines Corporation, at the October 10, 1954, disputed vesting date, Rise fails to do so, much less to prove there was no abandonment or discontinuance that would cut off further vested rights. E.g., Exhibit E and F, "Evidence Objections Parts 1 and 2."

(xi) **The Rise Petition's Attempt Fails To Use the Centennial Site To Create Vested Rights Either For Itself Or, Even More Preposterously, The Rest of the Disputed "Vested Mine Property."** Moreover, Exhibit B reveals how the disputed EIR/DEIR now with choosing "Alternative 2" tries to separate Centennial parcels again from the project, thus creating another self-defeating inconsistency for all the "Rise Reopening Claims," since the true history matters and the record of Rise has created exposes a pattern and practice of Rise inconsistently and, therefore, incorrectly retelling the Centennial situation differently and irreconcilably for each different use Rise wishes Centennial to play in each disputed "story," which according to the *City of Richmond* precedent is sufficient to defeat the EIR/DEIR. As explained in detail throughout the Comprehensive Objections (See Exhibit B disputing Rise's EIR "Alt 2"), in *City of Richmond* the court rejected the Chevron EIR because it was inconsistent with the Chevron SEC filings. Also, the Rise Petition Exhibits fail to prove any continuous vested rights for any predecessor for the Centennial parcels, which were not acquired in the same transaction as the 2017 Rise acquisition of the IMM, but separately in 2018. Moreover, that toxic site has long been subject to legal limitations on its "use" and operations

that make it impossible to be a source for vested rights as to itself, much less the rest of the Vested Mine Property, also because no one has ever expected that Centennial site to be mined ever again even if and when somehow Rise could win approval for regulatory reclamation permits that Rise's SEC filings, including its 2023 10K (Exhibit G), prove Rise cannot afford.

(xii) **The Board Should Reflect In Findings Of Fact And Conclusions of Law The Comprehensive Objections That Defeat the Disputed EIR/DEIR, the Rise Petition, And Other Rise Reopening Claims And Otherwise Prevent Rise From Harming Objectors In the Future, Even If Rise Incorrectly Overcomes The Narrower Case Made By the County Team for the Prior Board Resolution, Especially Because Objectors Insist on Preempting Expected Disputed Issue Preclusion Strategies by Rise**. **The disputed EIR/DEIR, Rise Petition, and other Rise Reopening Claims (incorrectly) imply by such Rise ignoring, disregarding, and evading of Comprehensive Objections that those irreconcilable conflicts between Rise and objectors, especially such overlying surface owning objectors above and around the 2585-acre underground IMM, must be somehow (incorrectly) be resolved in favor of Rise. The reverse is true,** but without the County team trying (at least in public) to reconcile such objectors' truths with its narrower focus or to do anything more than the unduly narrow things in the limited prior Board Resolutions denying vested rights that do not consider most of the Comprehensive Objections. Indeed, even if Rise had some vested right use or component on parcel somewhere (which Rise has not even tried to do on that required use-by-use, component-by-component, parcel-by-parcel basis, and which omissions objectors comprehensively apply in the Comprehensive Objections), vested rights do not empower Rise in any way against, overcome, or even adversely impact or affect any of the competing, constitutional, legal, or property rights of, or asserted for, objectors, including those in any Comprehensive Objections, but Rise's continuous claims for such vested rights must undermine the disputed EIR/DEIR that is irreconcilable with the disputed Rise Petition (and other Rise Reopening Claims) in many ways**. Stated another way, when we dispute each part of the Rise Reopening Claims Rise cannot require objectors or the County team to give the option to choose in the future after years of complex litigation among one or an unpredictable mix of Rise's conflicting "alternative realities": (A) the disputed EIR/DEIR and related Rise Reopening Claims (e.g., rezoning, variances, permits etc.) or (B) the disputed Rise Petition and its Rise Reopening Claims, or (C) some combination that Rise seems to favor but only discusses in its SEC filings (e.g., Exhibit G, where Rise describes all manner of alternative realities inconsistent and never reconciled with Rise's record in the County filings, such as, for example, the "2023 10K" filed after the Rise Petition contradicting Rise's own such petition (e.g., describing many required permits and environmental reports that the Rise Petition at 58 insists are not required because Rise's vested rights are "without limitation or restriction" and listing many relevant "risk factors" ignored in its EIR/DEIR and other Rise Reopening Claims, such as what we rebut in Exhibit G**

at #II.B.25 where Rise confesses that it needs to invade objecting surface owners parcels above and around the 2585-acre underground IMM to support the surface mining, which is a highly material omission not addressed in the disputed EIR/DEIR or other Rise Reopening Claims.

(xiii) While such Rise disputed vested rights (as properly defined) could at most just give Rise a disputed legal excuse against the County [not objectors at all, all of whose Comprehensive Objections would still apply in our reality, if not in Rise's disputed alternative reality] for not having to comply with the Nevada County ordinance taking effect October 10, 1954. However, Plaintiffs objectors are informed and believe that the comprehensively disputed, dangerously vague and ambiguous, and otherwise objectionable Rise Petition and other Rise Reopening Claims are asserting such greater impacts against objectors and their Comprehensive Objections, and Rise seems to be attempting to manipulate the bullied County team into facilitating disputed issue preclusion claims. Board, please don't tolerate that. Those Comprehensive Objections are personal and independent disputes of objectors that cannot be controlled, resolved, or otherwise compromised by or for the County or Board, especially because Rise is challenging them directly with these disputed Rise claims, none of whom the County has even tried to defend or protect. See, e.g., *Varjabedian, Calvert, Keystone, Marin Muni Water, City of Barstow, Pasadena,* and other cases cited in the Comprehensive Objections, including Exhibits hereto, particularly Exhibits C and D.

Stated another way, in summary, the County team has no right to lose, settle, or give away any personal rights of objectors, because to do so would be a massive "taking" by the County of at least all the property (including dewatering and depleting of objector owned groundwater and existing and future well water) of thousands of local surface owners above and around the 2585-acre underground IMM. Id. Whatever the result may be in the County's disputes with Rise, that cannot affect in any way the Comprehensive Objections defeating Rise for such Plaintiffs and other objectors, which must survive any County fate and prevail over Rise. Id. This is a "zero-sum game." Whatever the County or the courts give to Rise comes directly as a taking from such competing, overlying surface owner objectors with superior rights. Id. See also *Varjbedian, City of Barstow, Pasadena, Keystone, Marin Muni Water, Calvert, Gray v. County of Madera*, and Exhibits C, D, E, F, and G, including the "Overlying Surface Owners Rebuttals," "Objectors Petition For Pre-Trial Relief, Etc.," and "Evidence Objections Parts 1 and 2," proving, among other things, that the surface owner has the first priority right to the groundwater, wells, and rights of subjacent and lateral support to prevent subsidence, such as Rise wrongly threatens cause by depleting them by dewatering 24/7/365 for 80 years. Id. Objectors are informed and believe that one of the Rise bullying tactics against the County is to threaten the County with massive, imaginary "takings" liability, premised on lost profits from imagined and speculative gold deposits that the "2023 10K" and other Rise SEC filings admit (Exhibit G and earlier Rise 10K filings) are not proven or probable reserves. Id. But the County could not allow Rise such relief without in effect taking away the competing constitutional, legal, and property rights of such objecting thousands living above and around the 2585-acre underground IMM,

none of whose damages for loss of value of their homes or businesses or worse are speculative, and that total Varjabedian and other liability would dwarf the disputed, imagined, and inflated Rise claims. Indeed, objectors and others contend the Rise's Vested Mine Property is more of a liability than an asset. As repeatedly demonstrated, this is a multi-party dispute in which objectors and others have no reason to dispute with the County as long as the County does the "right things," which means not siding with Rise and allowing objectors our fair and constitutionally required rights effectively to prove our Comprehensive Objections in an equal dispute process with Rise.

9. Another Objectionable Consequence of the Incorrect, Rise-County Two-Party Dispute Model Is That It Overlooks The Competing Political Rights of Objectors Under the State And Federal Constitutions To Compete Against Rise Equally For the Consideration of the County Team's Correct Decisions And Responses.

As demonstrated in this Petition/Objections, while Rise tries to complain about political influence (of which objectors consider Rise as guilty as anyone, if that were wrongful), objectors assert both that we are correctly enforcing our competing constitutional, legal, and property rights, especially those of overlying surface owners above and around the 2585-acre underground IMM, that are no less meaningful than Rise's (and we contend are superior, especially as to first priority groundwater rights of such surface owners). Our political rights to compete against Rise in every lawful way are indisputable and not wrongful. Rise's claims just assume without proof or authority (even though it had more opportunities to present proof than did objectors) that Rise is right, and everyone else is wrong. However, when, as here, objecting residents are "right" (and Rise is "wrong") on the merits, it is not wrongful for our elected officials and their staffs to "do the right things" in response to our correct Comprehensive Objections. Consider the guidance of ***"Fairfield"*** and other controlling California court decisions on such disputes. ***Fairfield v Superior Court of Solano County*** *(*1975), 14 Cal.3d 768 ***("Fairfield")*** (following cited *US v. Morgan* and *State of CA v. Superior Court (Veta)* and rejecting a shopping center developer's attempt to use civil discovery to support an attack on two councilmen who voted against the use permit application and related environmental impact report they had previously criticized, one as a candidate), stating:

> As we shall show … even if … [the developer] could prove that … [the councilmen] had stated their views before the hearing, that fact would not disqualify them from voting on the application. (at 779)
> ***
> A councilman has not only the right but an obligation to discuss issues of vital concern with his constituents and to state his views on matters of public importance. [citing *Todd v. City of Visalia* (1967), 254 Cal.App.2d 679 … (at 780)
>
> … Campaign statements, however, do not disqualify the candidate from voting on matters which come before him after his election. … "[It] would be contrary to the basic principles of a free society to disqualify the candidate from service in the popular

> assembly those who had made pre-election commitments of policy on issues involved in the performance of their sworn …duties. Such is not the bias or prejudice upon which the law looks askance. The contrary rule of action would frustrate freedom of expression for the enlightenment of the electorate that is the very essence of our democratic society." (at 781)
>
> … We conclude ... The voters …were entitled to discover the views of the candidates for the city council concerning … variances from zoning requirements, and the candidates were entitled to express those views….[To do otherwise would have] thwarted representative government by depriving the voters of the power to elect councilmen whose views on this important issue of civic policy corresponded to those of the electorate. (at 782)

Another application of ***Fairfield*** to our case is that, when Rise is incorrectly attacking the County team for "bias, etc." with "# 1983 Etc. Claims" threats for allegedly violating Rise's imagined and disputed constitutional rights, Rise is claiming, among other incorrect or worse things, that the Board Resolution was arbitrary and contrary to the evidence. But if the County team had allowed objectors our equal due process and other rights to participate fully in the hearings, our existing Comprehensive Objections and new rebuttals, evidence, authorities, and proof would have proven such Rise claims wrong by proving ourselves correct instead (and the consistent core of the County's narrower position) and fully supported by substantial evidence. Thus, in order to be sure that Rise's bullying does not result in some court incorrectly agreeing with Rise without considering objectors' Comprehensive Objections and proof with such required additions, this Petition/Objections is intended to enhance the County's narrow and minimum case with our broader, more compete case that not only prevails for the County team on its narrower concerns but also for objectors on our broader concerns.

Likewise, the California Supreme Court also prevented such disqualification of governmental decision-makers by land use parties like Rise for political contributions and other what Rise mistakenly calls conflicts. E.g., *Woodland Hills Residents Assoc. v. City Council of LA* (1980), 26 Cal. 3d 938, ("**Woodland Hills**"), where the court rejected that campaign contributions to voting council members did not deny the petitioners a CCP # 1094.5 "fair trial" on their development, noting the exceptions from financial interest conflicts for such contributions in Govt. Code #82030(b) and explaining (at 945-948):

> …Absent a showing of bribery or conflict of interest, the law does not render it improper for members of [the council] to vote on projects of developers who have given campaign contributions to committees controlled by those members, and the law does not require them to disqualify themselves in such circumstances.
>
> Expression of political support by campaign contribution does not prevent a fair hearing … Plaintiffs' accusation that receipt of a campaign contribution inevitably results in the appearance of bias or prevents a fair hearing is unwarranted.

> ***
>
> Political contributions involve an exercise of fundamental freedom protected by the First Amendment…To disqualify a city council member from acting on a development proposal because [of]… a campaign contribution…would threaten constitutionally protected political speech and associational freedoms.
> ***
> …While disqualifying contribution recipients from voting would not prohibit contributions, it would curtail contributors' constitutional rights. Representative government would be thwarted…

That is objectors' point that Rise evades and that the County team keeps missing in its insistence on treating this multi-party dispute with EQUAL competing overlying surface owner objectors above and around the 2585-acre underground IMM and other objectors with no less (and we contend, superior) constitutional, legal and property rights as Rise, as if this were just a two-party dispute between Rise versus the County. Having ignored objectors and our Comprehensive rights entirely, Rise has failed to rebut any of the many Comprehensive Objections (with more to come because of "catch up" additions on account of the County accommodating Rise in denying objectors due process and other rights), thus failing to exhaust its administrative remedies, being limited to its deficient record, and defaulting on any attempts to rebut our such Comprehensive Objections and other "catch up" objections. While objectors are confident that the County can protect itself from Rise's unfair or worse attacks, we remind the Court that Rise's meritless bullying is not just harming the County and its people, Rise is interfering with the constitutional rights of objectors under the US Constitution's and our corresponding California Constitution's provisions to petition our government for redress of our grievances against Rise as proven in our Comprehensive Objections. That right is meaningless if Rise can bully them with meritless "# 1983 Etc. Claims" into ignoring our such petitions and grievances. Again, this is not just about whether or not Rise has vested rights in accordance with its disputed Rise Petition (it does not), but also about how that Rise Petition and Rise Reopening Claims impact the competing constitutional, legal, and property rights of objectors, especially those overlying surface owners above and around the 2585-acre underground IMM who have been continuously ignored and disregarded by Rise (and, to an objectionable extent, the County team) in this multi-party dispute process too often treated like a two-party process in which objectors are inconsequential.

One way to prove the difference between the satisfactory County treatment of Rise versus the unsatisfactory treatment of Plaintiffs and other objectors is that Rise is entitled to no relief under **CCP #1094.5** (or its Federal counterpart), but the due process violations for such rebuttals of Rise (and corrections of the County) create the opportunity **CCP # 1094.5(e)** for more evidence from Plaintiffs to complete the record, since the County improperly excluded objectors' evidence at the hearing and the County's rule limitations on objections and objectors prevented them in the exercise of reasonable diligence from being able so to rebut Rise and correct the County in order that there would be a complete record for Rise's "test case" record in which every material disputed Rise Reopening Claims is disputed with all applicable law,

evidence, and proof of Plaintiffs and other objectors with such supplemented Comprehensive Objections.

10. In Order For Rise To Succeed On Its "#1983 Etc. Claims" Rise Must Prove That It Had Constitutionally Protected Vested Rights (That Rise Does Not Have). If the County's Case Is Not Sufficient For Any Reason To Defeat That Rise Claim, Objectors' Opposition To the Rise Petition And Other Rise Reopening Disputes Are More Than Sufficient To Defeat Rise.

Objectors believe that by again "playing the victim," and what Rise has threatened is likely a meritless attempt to posture Rise as like the distinguishable surface miner model in the inapplicable, disputed *Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist.* (6/8/2016), 2016 US Dist. Lexis 75552, (E.D. Cal.), mod. by on 2016 US Dist. Lexis 78852 (6/15/2016) ***(the "6/15/2106 Hardesty2 Modification" and, with that modified case, called "Hardesty2 Summary Judgment"),*** and together with the also inapplicable, distinguishable, and disputed follow-up, post-trial decision ("**Hardesty2 Final Order"),** 307 F. Supp**.**3d 1010 (E.D. Cal. 2018) (collectively called "**Hardesty2").** [Plaintiffs note that a different, depublished *Hardesty* case, involving a different mine, facts, and defendants, was discussed in the administrative record by objectors and by the County's counsel at the Board hearing. We do not address that depublished decision here, except to note that in this test case litigation triggered by Rise, while Rise is following *Hardesty2* miner tactics, objectors will be replicating the correct, applicable law stated in that unpublished case.)

This rebuttal subsection disputes the context of Rise's #1983 **substantive** due process claim, referring readers to the other Comprehensive Objections proving on the merits as to how the applicable law, evidence, and other matters both prevented Rise or any of its predecessors from having any vested rights (e.g., Exhibits C-F), and, to the extent any vested rights existed for any "use" or "component" on any "parcel" of the disputed "Vested Mine Property," it was abandoned, discontinued, or otherwise lost by Rise predecessors (e.g., Exhibits C, E and F), especially as to the 2585-acre underground IMM, where Rise (and also, in many ways, the County) ignored entirely in this process the competing constitutional, legal, and property rights of the objecting and nonconsenting overlying surface owners above and around that underground mine (Exhibit D). However, objectors' case does more than defeat Rise on such substantive merits. Because that **underground** mining dispute cannot be won by Rise citing only to its irrelevant **surface** mining authorities supported only by Rise's comprehensively rebutted and fatally deficient and inadmissible, incompetent, or non-credible evidence, Comprehensive Objections must prevail. Objectors also prove with Comprehensive Objections and evidence, including Rise admissions, objectors' rights to defeat Rise as a matter of procedural due process and law, as to each of: (i) what Rise has failed to do, (ii) what the County denied objectors procedural due process and other rights to do, and (iii) what objectors have done that the County has not (at least publicly) treated properly in the process, so that our objections and proof are properly addressed in the test case litigation that Rise is expected to cause.

This section's part of that effort involves a brief introduction to objector's use of the applicable law, evidence, and other proof to so defeat all Rise's claims for substantive due process and other violations of Rise's nonexistent vested rights (not just by abandonment, but

on the merits as to each Rise predecessor and Rise itself, beginning with Rise's expected, incorrect "#1983 Etc. Claims" theory alleging a **substantive** due process violation based on a disputed vested right in *Hardesty2* (at 107-119 and in the *Hardesty2 Modification*). That Hardesty2 Modification was limited to clarification as to the court's rejection of those miners' claims that the government defendants "drove their sand and gravel mining operations out of business by arbitrarily enforcing the California Surface Mining and Reclamation Act of 1975 (SMARA), Cal. Pub. Res. Code #2710 et seq., at the behest of legislators and the Hardestys' competitors." The court just explained that the miner's failed to offer sufficient evidence to satisfy the 9th Circuit's *Shanks v. Dressel* test at 540 F.3d 1082, 1087-1088, discussed below (quoting from *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846…(1998)): "[O]nly 'egregious official conduct can be said to be arbitrary in the constitutional sense': it must amount to an 'abuse of power' lacking any 'reasonable justification in the service of a legitimate governmental objective.'" As proven in Comprehensive Objections, unlike *Hardesty2* where this was a two-party dispute with non-party competitors and legislators causing the alleged problem, this IMM case is a multi-party dispute in which the County must also address the Comprehensive Objections that include overlying surface owners with at least equal competing (and we contend superior) constitutional, legal, and property rights to defeat Rise and who claim that Rise is just "playing the victim" because such objectors are the real victims of Rise's mining scheme. Furthermore, while the miners in *Hardesty2* were the only parties with procedural due process claims against that defendant county, in this IMM case, objectors in this IMM case are the ones suffering the real, procedural due process wrongs not only as demonstrated in Comprehensive Objections, but as predicted by objectors in advance in Exhibit C, "Objectors Petition For Pre-Trial Relief, Etc.

First, objectors note that *Hardesty2* (e.g., at 109-111) correctly denied the summary judgments for miners because the miners "have not shown as a threshold matter that they possessed a vested right to mine," requiring a trial on those issues. That court in "dicta" offered some general comments on *Hansen* that, like the discussions in the Rise Petition and other Rise Reopening Claims (and even the 2023 County Staff Report), failed to address the most important parts addressed in Exhibits C and D, from the Comprehensive Objections that easily defeat any such claims by Rise even if somehow that ***surface*** mining law were applied to Rise instead of the far less pro-miner laws that apply to ***underground*** mining. As so explained, among other things, objecting overlying surface owners have competing first priority rights in groundwater (e.g., *City of Barstow* and *Pasadena*) and for subjacent and lateral support to prevent subsidence (e.g, *Keystone and Marin Muni Water*) that objectors asserted, and that Rise ignored without any attempt at contrary proof. In the expected Rise dispute case, summary judgment should be impossible if the County were to use the Comprehensive Objections effectively, as objectors seek in this objection, especially if we can correct the County's due process violations when it prevented objectors from effectively adding our rebuttal evidence to what was added by Rise at and for the prior Board Hearing (and with some corrections and clarifications of the County presentation at that Board Hearing). (The same applies to this coming Board hearing, absent reforms.) In any event, the Rise tactic appears to be to file its bullying "#1983 Etc. Claims" in Federal court against the County following the distinguishable and inapplicable Hardesty2 model, so as to continue to be able to attempt to prove its vested rights claims **as an incidental part of** those disputed "bias etc." and #1983 claims, without

having to confront such Comprehensive Objections from objectors. This objection is objectors' effort to avoid that wrongful tactic and "have our day in the correct court."

In describing "substantive due process" (Id. at 112-114) *Hardesty2* recites the usual rule that:

> The Due Process Clause prohibits government officials from arbitrarily depriving a person of her constitutionally protected property or liberty…[including] the **right** to devote land to any legitimate use… But "only 'egregious official conduct can be said to be arbitrary in the constitutional sense': it must amount to an "abuse of power" lacking any "reasonable justification in the service of a legitimate governmental objective." *Shanks*, 540 F.3d at 1088 (quoting *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846 … accord N. Pacifica, 526 F.3d at 484 ("The irreducible minimum of a substantive due process claim challenging land use regulation is failure to advance any governmental purpose.") Only conduct that "shocks the conscience" violates the Due Process Clause. See, e.g., *United States v. Salerno*, 481 U.S. 739, 746 …(1987).

In this Rise case the Comprehensive Objections prove that, while those requirements would be satisfied if the Rise Petition were granted by the County or the court against objectors, none of those *Hardesty2* conditions apply against the County's **denial** of the Rise Petition, EIR/DEIR, or any Rise Reopening Claims, which is "right," not "wrong," and certainly not so "shocking to the conscience," "egregious," "arbitrary," or an "abuse of power." Unless Rise could meet that threshold, which it did not (nor did the miner in Hardesty2 on summary judgment), there can be no substantive due process violation regarding Rise's disputed vested rights. Conversely, if the Rise Petition or Rise Reopening Claims were allowed to succeed in this dispute, that each of those requirements would be satisfied as to Plaintiffs and other objectors for all the reasons proven in such Comprehensive Objections.

For example, in *Hardesty2* the miners attacked the entire county team with meritless claims, with many such targeted victims winning summary judgments defeating the miner claims, such as the county expert witness-consultant (at 115-117) where the court dismissed the charges the court correctly said, "had little to do with Bieber's actions and everything to do with the County's decisions about the Mine's reclamation plan and financial assurances." Thus, the court found the following not to meet the "shocking the conscience" test: preparing "a report in line with the count's instructions, perform[ing] inspections and calculations, …[giving] testimony to explain his conclusions, and otherwise follow[ing] through on the assignment for which he was hired." As applied in *Hardesty2 (at 113)*, an official sending one miner a cease-and-desist letter did not "deprive the miner of any property interest." As to another (at 113-14), the miner alleged "a politically-motivated scheme" with other governmental defendants "to drive the Hardestys out of business." However, as here, there is no sufficient evidence that could be allowed to go to the jury. More importantly, **in this case there is no Rise business**. By its own admission, **Rise is just exploring** to determine whether the underground mining at issue was economically viable to raise the hundreds of millions of dollars needed to reopen the IMM closed, discontinued, flooded, dormant, and abandoned mine since at least 1956, despite Rise's SEC filings (see Exhibit G) that admit Rise has no "proven reserves" or "probable reserves" and

has no sufficient financial resources to accomplish any mining or even to dewater the underground mine to be able to access and evaluate it. Id. In other words, there was no ongoing "business" to stop, only at most a claim for discouraging speculation and exploration of the possibility of a possible future business. In any event, as demonstrated, Rise's theory again ignores both the multi-party nature of the dispute and the fact that the competing, overlying surface owners above and around the 2585-acre underground mine have even greater rights to protect with their own competing, constitutional, legal, and property rights, especially as to their first priority ownership of the groundwater (including existing and future well water), as well as their rights to subjacent and lateral support to prevent subsidence, from Rise's threatened depletion by 24/7/365 dewatering for 80 years. Protecting such property owners from such Rise threatened menaces is not a "politically motivated scheme," but is instead officials "doing their jobs" and responding to such property owner complaints against Rise's threatened harms. In any case, if Rise's bullying were to succeed, such Rise claims could be matched by any such objectors countering with reverse claims that Rise was abusing process with meritless litigation to coerce the County into accommodating its meritless Rise Reopening Claims to spare the County the expense and burden of such meritless litigation. The point is, not to assert unripe claims, but to demonstrate that in such multi-party dispute conflicts always exist between overlying surface owners versus the underground miners beneath and around them (with the government caught in the middle), because such underground mining is an irreconcilably incompatible and conflicting nuisance or worse, against the "quiet enjoyment" of the impacted surface properties and our superior water rights.

As applied in *Hardesty2 (at 117-119)*, where the miners attacked the Sacramento County defendants for allegedly "strip[ing] them of their **vested right** to operate a surface mine, which deprived them of their right to pursue their chosen profession and to devot[ing] their land to a legitimate use," the court stated that for overcoming defendant's summary judgment motion: "Plaintiffs' substantive due process claims may proceed if the evidence viewed in the light most favorable to their case, shows **the County lacked any legitimate purpose for its actions.** *Shanks,* 540 F.3d at 1088.**"** (emphasis added) That test focused on the dispute over the question of whether those county defendants were "motivated by political pressure rather than a legitimate government purpose," focusing on a comment from the Ninth Circuit's *Del Monte Dunes* case that such a claim was possible if "a local government's arbitrary land use decision was …motivated by 'political pressure from neighbors…'." The Court allowed that dispute to go to trial on the miner's disputed theory that such pressures came from the miners' competitors trying to drive them out of business with the County's help. **But in this Rise case**, there is no "competitor" except Rise's objecting, potential surface victims defending their property, health, and welfare, and no existing Rise operating mining "business," i.e., just exploration and other activities to determine if a viable business would be possible. Besides, the County cannot ignore (as Rise keeps doing) the Comprehensive Objections, which the County has a legal duty to consider as proven in the Comprehensive Objections, what are COMPETING CONSTITUTIONAL, LEGAL, AND PROPERTY DISPUTES AGAINST RISE—not "political pressure," although what about Rise's competing political pressure and bullying? Once again as on almost every issue in dispute with Rise, objectors ask and argue back, "what about them (i.e., Rise)?" Objectors have no less (and we contend more and superior) competing constitutional, legal, and property rights at

issue than Rise does, as our Comprehensive Objections prove, especially as to our groundwater that Rise proposes to dewater, deplete, and flush away down Wolf Creek 24/7/365 for 80 years.

Rise again wrongly tries to play the imagined victim in a two-party dispute between Rise and the County, ignoring in Rise's official process (but not in Rise's manipulations by "playing the referee" [the County] to ignore their fouls, to the prejudice of us on the competing team) the nature of objectors and their Comprehensive Objections (and more to come) in this multi-party dispute, demonstrating how the County has to consider not just local political policy concerns, but official rebuttals by overlying surface owners asserting their own competing constitutional, legal, and property rights to defeat the Rise Petition, the EIR/DEIR, and Rise Reopening Claims. Would a court consider our prior lawful Comprehensive Objections just "political pressure," and, even if it were, which we dispute, how would that be any different (besides being meritorious) than what Rise has done or a disputed Rise #1983 suit to bully the County team? (Indeed, objectors make a better case for Rise's actions being worse "political pressure" by Rise's bullying abuse of process, if and to the extent Rise's bullying works, as this objection and Exhibit B already demonstrate some such Rise bullying seems to have been effective by the County giving objectors less than the required due process and other rights for our Comprehensive Objections.) The indisputable reality is that Comprehensive Objections as a matter of law cannot be considered "arbitrary" or "shocking to the conscience," or otherwise illegitimate, and, therefore, the County must be presumed to be responding to its legal obligations to consider and rule on such objections, which the County failed to do (at least in public) adequately, but presumably did, in part, because there were overlaps between such objections and the Board Resolution. See, e.g., *Fairfield,* explaining why the County does not have to explain why it made the findings and ruling in the Board Resolution, which Rise's disputed claims is an indirect way of trying to maneuver into forbidden discovery. In any case, politics is also a two-sided blade, and objectors can counter-charge Rise's political pressures (e.g., including litigation bullying) in return, because such objectors' counters are not just defending the County from Rise as a useful side-effect to blunt Rise's bully leverage, but defending objectors' own competing constitutional, legal, and property rights.

The *Hardesty2* court (at 119) also noted that "excessive and unreasonable [law] enforcement schemes may violate the Due Process Clause," **as (reciprocally) objectors would contend in this zero-sum game would be a violation by ruling for Rise contrary to our Comprehensive Objections here, i.e., Rise can only prevail if there is such an "excessive and unreasonable" failure to enforce the law against Rise to protect objectors, justifying these Comprehensive Objections to prevent the County from allowing Rise to prevail against any Comprehensive Objections. That Court stated: "whether O'Bryant intended to drive HSG out of business or merely to enforce the law is a question not for this court, but a jury," but the reverse Comprehensive Objections claims of objectors must also be heard in competitive opposition to Rise, such as, for example, whether Rise's seeming abuses of process and other bullying of the County and its staff and officials was intended to deprive us overlying surface owners of our competing constitutional, legal, and property rights as demonstrated in our Comprehensive Objections. However, since Rise has not even attempted to rebut any of our Comprehensive Objections, while objectors have proven such competing Comprehensive Objections against Rise (also protecting the County from Rise in the process by justifying its narrow Board Resolution decisions and actions as far as they went against Rise), Rise must**

lose in any dispute with objectors, thus proving what the County did was correct and proper (although its too narrow rulings against Rise do not satisfy objectors entitled for even more against Rise consistent with the Comprehensive Objections. More importantly, by Rise ignoring objectors and our Comprehensive Objections in the County process, Rise must lose by default to objectors, and that Rise loss to us must also save the County in our process. It is reasonable under any standard to so deny the reopening and doubling the size of such a 2585-acre *underground* mine that has been closed, flooded, dormant, and discontinued since at least 1956, and now beneath or adjacent to such a large community of homes, non-mining businesses (e.g., the regional airport, hospital, shopping centers, etc.), and massive surface non-mining infrastructure (our major freeway and roads, utilities, etc.), especially when such impacted surface owners object and assert their competing constitutional, legal, and property rights against Rise, as in the Comprehensive Objections. Conversely, it would be intolerable by those standards to ignore such Comprehensive Objections and allow the meritless Rise Petition or other Rise Reopening Claims.

11. Rise Also Has No Meritorious First Amendment Claim Against County Defendants For Retaliating Against A Person for "Speaking Out" Or "Retaliatory Animus" Incorrectly Modeling *Hardesty2, And, Again, Ignoring Objectors, Comprehensive Objections, And The Fact That Rise Should Consider Its Own Vulnerability Under Any Standard Its Set, Because Objectors Have At Least Equal Competing Constitutional, Legal, And Property Rights*.

As *Hardesty2* (at 119-123) addressed the key issues for these meritless Rise complaints that objectors not only dispute, but Rise also invites counters with reciprocal grievances against Rise from Comprehensive Objections. In that case the miners alleged retaliation by "demanding much larger financial assurances for the Mine" and "to prevent them from filing any lawsuits at all by crippling them financially." [Rise's comprehensively disputed allegations are addressed throughout this Petition/Objection.] For Rise to succeed even by those debatable standards, Rise must prove both (and more) that: (a) "the defendants' actions … [would] have deterred a 'person of ordinary firmness' from engaging in that activity," (b) the "defendant's actions were motivated by an intent to deter her from asserting her First Amendment rights," and (c) "defendant's 'retaliatory animus' must be the but-for cause of its actions; if, without any intent to retaliate, the defendant would have done the same thing, the plaintiff cannot succeed." While the *Hardesty2* miners had problems proving any causation, not just a "but-for causation relationship," but even an ordinary "cause-effect relationship, Rise fails that required causation proof in even more deficient ways. To take that last, "but-for cause" issue first here, the Comprehensive Objections are intended (and entitled on the merits) to assure that the County defendants did at least the same things in the narrow Board Resolution and 2023 Planning Commission recommendation (i.e., rejecting the Rise Petition and recommending rejection of the EIR/DEIR) not just because the County only intended be at least somewhat responsive Comprehensive Objections and to do its job by protecting such competing objectors from such Rise threatened menaces, but also because objectors made it clear to everyone by our Comprehensive Objections that we would enforce our own competing constitutional, legal, and

property rights to compel the County to do what the law requires for our protection. (e.g., Consider the hundreds of objections to the disputed EIR/DEIR and earlier processes before Rise abruptly changed its meritless legal strategies to the even more meritless [and inconsistent] Rise Petition vested rights strategy on September 1, 2023, after the Planning Commission correctly recommended against the Rise EIR wrongly denounced by Rise's disputed allegations of "bias etc.") Also, as demonstrated in Comprehensive Objections (and more to come) Rise bullying is the problem **causing not County's "retaliatory animus," but instead the seemingly bullied County's *timidity* in doing too much to accommodate Rise (and doing too little of its duty to impacted objectors) by not properly responding to objectors' counter complaints against Rise in Comprehensive Objections.**

Objectors contend that Rise has been the cause of its own complained about problems. "Playing the imagined victim" constantly threatening about "bias etc." and the other disputed claims at issue seems to have been one of Rise's primary strategies all along. As demonstrated by Comprehensive Objections, Rise is like the constantly fouling player in the football game who constantly and falsely claims errors, bias, and other wrongs by the referee in order to intimidate the referee from doing his or her job, which has the necessary consequence of depriving the opposite team of their reciprocal rights to have the referee enforce the rules against the bully manipulating the referee. In any evaluation of the conduct of such a referee (Rise's County defendants or targets) the court must not just consider Rise's disputed "story" but the counter complaints of the actual victims of the Rise manipulations, such as objectors. Everything in these Rise disputes occurs in a multi-party context because Rise (and too often, at least in public, the Rise bullied County and its staff and officials) ignores, disregards, and evades the Comprehensive Objections. The cases on which Rise relies just discuss two-party disputes (on which the County should still prevail against Rise), but to defeat Rise "right," which is to say comprehensively, may require that objectors be allowed to make our own case for what the County was required by law to do in response to the Comprehensive Objections (and more to come.) Unlike the Sacramento defendants (at Id.) where the dispute was over whether a person of "ordinary firmness" would be deterred by the proven government such misconduct, Rise also cannot avoid summary judgment by the County defendants because Rise cannot prove that "deterrence" case, especially considering the extraordinary generosity and accommodation provided to Rise and its enablers by the County team in this case, particularly by comparison to the disputed treatment by the County team of objectors in this case as demonstrated in the Comprehensive Objections (e.g., Exhibit C, "Objectors Petition For Pre-Trial Relief, Etc."). Every Rise complaint needs to be evaluated in the whole context (see Exhibit B rebutting specific Rise claims of "bias, etc." one by one), and when that is done, Rise's meritless claims are the sports analogy equivalent of a soccer or basketball player "flopping" and hoping for a meritless foul call. As that *Hardesty2* court noted, the County defendants in this case could prevail over Rise "by showing they would have done exactly the same thing had the Schneiders never filed a civil rights action."

And it is even more true here, as with the Sacramento defendants in *Hardesty2* (at Id.), that any Rise disputed claim that the County "intended to avoid a civil rights lawsuit by financially ruining the Mine," is "nothing but speculation." Indeed, because of what has been admitted by Rise and proven by objectors in Comprehensive Objections, Rise began their ownership in 2017 and continued thereafter at all times without any sufficient financial

resources to accomplish anything material that Rise proposed, even what Comprehensive Objections prove were deficient Rise proposed mitigations and other health, safety, and environmental protections for our community. E.g., Exhibit G. Moreover, and indisputably fatal to any such Rise claims is the fact that the County not only allowed Rise to proceed in this process with Rise admissions (Id.) that indisputably defeated any possibility of financial feasibility, thereby excusing Rise's preposterous chronic financial condition incorrectly over the continuous Comprehensive Objections. Indeed, when objectors used Rise admissions in its SEC filings indisputably to prove Rise's lack of financial feasibility (Id. and Prior Ind. 254-255 Objections), the County process proceeded with the County incorrectly disregarding that evidence on the incorrect theory that it was irrelevant and rejecting such SEC admission rebuttal evidence even when objectors proved (Id.) the same case even more strongly as illustrated in the *City of Richmond* case, where Chevron's EIR was defeated by inconsistent admissions in Chevron's SEC filings. See, e.g., Exhibits C-F. Recall that the 2023 County Staff Report (see Exhibit B) proposed incorrectly to approve the massively disputed EIR/DEIR even though objectors proved, for example, Rise's admissions in DEIR at 6-14 that the whole project was financially infeasible unless Rise could underground mine beneath and around objecting overlying surface owners 24/7/365 for 80 years, including by such constant dewatering depleting such overlying surface owners objectors' groundwater (including existing and future well water) and flushing it all away down Wolf Creek, despite such surface first priority rights (e.g., *City of Barstow, Pasadena,* and Exhibit D) and in the face of clear authority in the *Gray v. County of Madera,* that Rise's proposed mitigation measures were legally unacceptable as even worse than those ruled intolerable in *Gray.*

Thus, under all these facts and circumstances proven (and even many admitted by Rise) in the Comprehensive Objections, the only legal conclusion and factual finding is that the County team has "bent over backward" for Rise to keep Rise's lack of financial resources from being used by objectors to defeat Rise. Stated another way, if the County team wanted to stop Rise in these processes, all the County team had to do was the right things the law requires for objectors, and just apply the applicable law to Rise's such admitted financial incapacity, other proven deficiencies, and other objectionable conduct detailed in Comprehensive Objections. And, therefore, the County must do what the law requires for objectors consistent with the Comprehensive Objections to defeat Rise in all the many ways where the County targets have proven their lack of "bias etc." against Rise by constantly and wrongly giving Rise "a pass" on many things where the law required the County to give Rise a failing grade as required to afford objectors their competing constitutional, legal, and property rights.

12. Concluding Comments.

As a result, because Rise and the staff's ignoring, disregarding, and evading the Comprehensive Objections and there being no effective or meaningful rebuttal allowed for objectors to rebut Rise and correct the staff, the Commissioners and Supervisors have not even presented with our broader and updated Comprehensive Objection law, evidence, and contentions to be comprehensive in objections against Rise Reopening Claims and to fully correct, supplement, and improve the staff presentations when incorrect or otherwise

objectionable. Thus, when the previous Board Resolution (like the Planning Commissioners' recommendations) ignored, disregarded, or failed to mention our such Comprehensive Objections and what we would have added in opposition to Rise Reopening Claims and corrections or supplements to improve each County staff's presentations if objectors had been allowed to do so as the applicable law required, the results would have provided better protections against Rise Reopening Claims and defeated Rise on the merits more comprehensively for objectors' constitutional, legal and property rights. Objectors hope this next resolution is more helpful for such important goals.

The Comprehensive Objections must prevail on every disputed issue, even if Rise were to somehow (incorrectly) defeat the County team on any issue in their mistakenly limited two-party disputes that incorrectly too often excluded objectors and ignored, disregarded, or evaded objectors' constitutional, legal, or property rights. However, instead of supporting (or even allowing objectors to fully make their cases for) the Comprehensive Objections, the County team has consistently, mistakenly, and incorrectly deprived objectors of our such competing constitutional, legal, and property rights, as demonstrated in our Comprehensive Objections. Petition/Objections, including Exhibits A-G. In any event, in any rational reality where the rule of law prevails, Rise cannot possibly complain about being the victim of any "bias, etc." from the County team, and there can be no merit to Rise's threatened "#1983 Etc. Claims," which are disproven by Comprehensive Objections, including by an issue-by-issue refutation (Id.) of Rise's presumed, inapplicable, and disputed *Hardesty2* model.

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February 9, 2024

EXHIBIT B: Part 1: Rebuttals To Various Meritless Attacks By Rise Grass Valley, Inc. ("Rise"), Such As In Rise's Disputed Letter To the County Board of Supervisors Dated June 1, 2023 (the "Rise PC Letter"), Wrongly Accusing the Planning Commissioners And Others About Their Correct (Although Too Narrow) Decisions And Permissible Actions Regarding the Disputed EIR for the Idaho-Maryland Mine ("IMM") And Related Rezoning, Variances, Use Permits, And Other Applications For Permits, Benefits, Or Approvals (Parts of the "Rise Reopening Claims".)

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I. Opening Comments For Context And Integration With Many Comprehensive Objections.

The defined "objectors" (as well as any other objecting residents or representative groups impacted by the IMM) have filed, incorporated, or supported many **"Comprehensive Objections"** to the disputed **"EIR/DEIR"** (including the disputed **Use Permit** and other Rise applications for permits, rezoning, variances, or other approvals) and other **"Rise Reopening Claims,"** all of which are considered related and interactive by objectors as parts of disputed Rise plans for the "IMM," including "Brunswick" and the "2585-acre underground mine" [or "IMM"], and for Centennial (what Rise incorrectly called collectively the "Vested Mine Property"), as explained in the unified record described in objectors attached and incorporated **"Petition/Objections."** [FN 1] There should be one consolidated record for one all-inclusive dispute in which Comprehensive Objections collectively rebut all Rise Reopening Claims, including by using the many inconsistent, contradictory, or otherwise objectionable Rise admissions in each such Rise-related document or communication to rebut the others from or for Rise. Thus, in the Comprehensive Objections re-aggregating everything that the County disaggregated, such as by objectors adding to the extensive EIR/DEIR record (**and vice versa**) the related record from what the County incorrectly considers the separate dispute process for the Rise Petition asserting vested rights, including **"Evidence Objections Part 2" (Exhibit F),** which also updated and incorporated those EIR/DEIR objections, as well as **"Evidence Objections Part 1" (Exhibit E),** and **"Objectors Petition For Pre-Trial Relief, Etc." (Exhibit C), "Overlying Surface Owners Rebuttals" (Exhibit D),** and for convenience (because it is already an exhibit to other such Exhibits) objectors' **Exhibit G** rebuttal and use of self-defeating Rise admissions in **Rise's SEC "2023 10K"** filing (all incorporated herein, as they are to each other for unified objections.) Such Exhibits E and F explain how the law of evidence applies to each of these disputes, including by allowing rebuttals by any relevant admission by or for Rise. E.g., Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235; the ***City of Richmond*** precedent rejecting Chevron's EIR because of inconsistencies and contradictions from Chevron's SEC filings.

Objectors also support the Planning Commission's actions and decisions about which Rise complains in its disputed **"Rise PC Letter,"** but which Planning Commission decisions and actions are correct and proven or substantiated by those many "Comprehensive Objections" providing a comprehensive basis for the actions by the Planning Commission**, none of which is "new" or "last minute" as Rise incorrectly claims. (But if they were new or last minute, by that standard objectors have even more such complaints in reverse which objectors assert as Comprehensive Objections.)** Moreover, objectors contend that nothing in the actions, opinions, or commentaries of the Planning staff, consultants, or enablers that are contrary to, or inconsistent with, any Comprehensive Objection have any more legal force, effect, or importance in these disputes than do objectors' Comprehensive Objections, on which the Planning Commission (and, likewise, the Board of Supervisors) would be entitled to rely for their decisions because objectors" Comprehensive Objections are "right" and such County staff and Rise enablers are "wrong" whenever they conflict with each other. Rise has no right to punish or complain about anyone correctly doing their job and insisting on truth, facts, correct application of the truly applicable law, and "reality" as distinct from what supports the Rise "alternative reality" we call the **"Rise Reopening Claims."**

This is not (as Rise and the County team incorrectly treat these disputes) just a two-party dispute between Rise and its enablers (e.g., the disputed EIR/DEIR and County Staff Report teams) versus the Planning Commission (and the similar replay by the Board in the Rise vested rights dispute and now again in the EIR dispute.) See the extensive discussion of objectors' standing and related rights in the attached Petition/Objections, proving even more than ***Calvert*** standing. Exhibit C. This is a **multi-party** dispute in which objectors like us have filed hundreds of objections containing or incorporating thousands of pages of meritorious rebuttals to the "EIR/DEIR" (all part of our Comprehensive Objections.) See, e.g., the cases like *Calvert* and even *Hansen*; Exhibit C (**"Objectors Petition For Pre-Trial Relief, Etc.");** and the foregoing Petition/Objection and its incorporations. Those record objections have at least equal rights against Rise and its enablers, and the Planning Commission (like the Board) has no obligation to give any deference or respect to the disputed EIR/DEIR, disputed parts of the County Staff Report, or disputed parts of the County Economic Report or to give them any more consideration than to the rebuttals and counters from our hundreds of Comprehensive Objections. [Depending on the context (e.g., discussion of the EIR/DEIR process hearing with the Planning Commission in 2023 or with the Board of Supervisors in 2024 or with respect to the Rise Petition), the term **"County Staff Report"** can refer to one or more reports, therefore inspiring identifiers for clarity such as by year or subject.] That multi-party character of these dispute processes is one key difference between the true, legal realities at issue, versus the objectionable "alternative reality" crafted in the disputed Rise PC Letter. It may seem strange to be critical of the disputed EIR/DEIR here, while objectors are also using admissions in those EIR/DEIR filings as rebuttal evidence against the Rise Petition. However, like for other disputed claimants who tell different "stories" (i.e., present different "alternative realities") to different audiences for different benefits, there seems to be no limit on such "alternate realities," if one is (like Rise) careless about exploiting or enduring all such contradictions and inconsistencies. As the *City of Richmond* case demonstrates, the consequences of such inconsistency and contradictions are not that the wrongdoer gets to choose which disputed claim or evidence to assert, but rather that they all fa. T and the claimant cannot prevail under either theory.

In any event, there is only one "reality" for speaking the truth (e.g., facts, science, and what CEQA cases like *Gray v. County of Madera* call "common sense" and those like *Vineyard, Banning, and Costa Mesa* call "good faith reasoned analysis") contrasted against all such untruths, errors, omissions, misleading statements in the disputed and irreconcilable Rise Petition (see Exhibits C-G), EIR/DEIR, and related permit or approval applications, Rise's 2023 10K (see Exhibit G) and other SEC filing, and such other Rise reports, communications, and other objectionable Rise tactics. That truth telling does not show or constitute "bias, etc." against Rise or its enablers (as Rise incorrectly claims) or other evidence for any "#1983 Etc. Claims," because that is the job and duty of the Planning Commissioners and the Board of Supervisors in their adjudicatory roles; not just to accommodate the bully Rise and its enablers, which have the burden of proof, but instead (at least equally to us impacted objectors) fairly defending objectors threatened residents, families, homes, property (including groundwater and existing and future wells), environment, and community way of life from the intruding Rise menace (beginning in 2017) explained in the Comprehensive Objections. Moreover, **failing to speak such truths against Rise and its enablers would be showing reverse "bias, etc." against us impacted, resident objectors (who must have at least equal rights from the opposite side of**

these many disputes and more, since Rise and its enablers have the burden of proof). As explained herein, the term "enablers" is used broadly in this Petition/Objection to include those, like the EIR team (and, to the extent of their concurrence with Rise, the County Staff Report team or County Economic Report team, who uncritically accepted and incorporated too much data directly or indirectly from Rise or the disputed EIR/DEIR that contain material errors, omissions, and worse, including by ignoring, evading, or failing to appreciate the inconvenient truths in the "Comprehensive Objections" and others.

Objectors have already suffered too much from such objectionable bias from the DEIR/EIR team and the other Rise enablers consistently ignoring, disregarding, evading, and worse Comprehensive Objections and others. **Suppose the Board now gives any consideration to Rise's disputed Rise PC Letter. In that case, the Board must give at least equal consideration to its impacted residents' contrary Comprehensive Objections**, including this Petition/Objection and its exhibits like this one. Furthermore, **whatever standard the Board applies, if any, against the Planning Commission for Rise must also be applied in reverse equally for our opposite objections against the EIR/DEIR and County Staff Report errors and worse in Rise's favor as well as against the worse, disputed presentations of each of the Rise enablers who improperly have evaded, ignored, and deficiently considered our hundreds of objections which are entitled to defeat on the merits the disputed EIR/DEIR and most of the County Staff Report, County Economic Report, and the Rise Petition.**

While objectors focus on selected issues in this Rise PC Letter rebuttal for various reasons, including our expectation that others will expose the rest of the Rise letter's objectionable "alternative reality" with their own other objections, please know that, as the facts and case law cited by objectors demonstrate, there is nothing in the Rise Letter which the Board should consider on the merits as cause for any discontent with the Planning Commission or its members. Instead, the Board should now be even more concerned about the objectionable conduct of Rise and its enablers, especially as to the matters exposed in the attached Petition/Objection and other cited Comprehensive Objections. If the disputed Rise PC Letter is permitted to be considered part of the record, then so must objectors' such rebuttals and counters. Note that the incorrect foundation of the Rise PC Letter's disputed "alternative reality" is the false assumption that such disputed, incorrect, and worse Rise Petition, EIR/DEIR, and other Rise Reopening Claims somehow should somehow (e.g., based on disputed and incorrect staff or enabler opinions or assertions) be presumed to be correct or otherwise entitled to any respect as evidence or analysis, despite being incorrect or worse and improperly ignoring, disregarding, or evading Comprehensive Objections and others.

Rise's improper grievances (e.g., "bias, etc." or #1983 Etc. Claims") can be summarized as that somehow that Planning Commission's agreement with, or respect for, the truths from our fact, reality, and law-based objections are somehow evidence of bias, arbitrariness, partisanship, etc. against Rise or its enablers, who have not earned any such respect by their disputed conduct, and who deserve none for their objectionable, disputed claims. Belief in truth, reality, and facts is neither "bias, etc." nor partisanship, and it is time to "close the door" that Rise has opened by wrongly attacking the Planning Commission (and likewise the Board) for doing its job and not accepting the incorrect, deficient, and worse disputed EIR/DEIR and (disputed, pro-Rise parts of the) 2023 County Staff Report and County Economic Report the Board or the courts think there was "bias, etc." or partisanship by the Planning Commission for

objectors. In that case, objectors will insist on applying that same (though disputed) standard for "bias, etc." or partisanship against such pro-Rise staff or enablers, who by that same standard are much worse offenders against objectors. Suppose there is some "scandal" in this situation. In that case, any "scandal" is against Rise for trying, whether intentionally or by belief in Rise's incorrect "alternative reality," to "construct" a fake "scandal" as an excuse for filing another disputed brief that again ignores the hundreds of meritorious Comprehensive Objections. If this were the court setting (where Rise seems to be headed for more such disputes), Rise would have had to obtain permission to file what amounts to a late-filed (and disputed) further reply brief we call the "Rise PC Letter." We ask the County either to (i) reject the Rise PC Letter brief (with its disputed "new data") as contrary to the process rules, or (ii) declare that Rise has, in effect, made a motion to reopen everything for debate with us objectors, and, therefore, we objectors also must be given both equal and opportunity before the Board for (a) time to dispute anything and everything in the meritless Rise PC Letter, and (b) the right to make more serious counter-complaints against Rise and its enablers under any standard determined to apply to the Planning Commission (or, likewise to the Board as to the Rise Petition disputes.) See, e.g., Exhibit C Objectors Petition for Pre-Trial Relief, Etc.; Exhibits E and F (Evidence Objection Parts 1 and 2.) Giving Rise this undeserved chance to supplement the administrative record with more of its disputed propaganda would be intolerable without that equal rebuttal and counter opportunity, and objectors insist on a level playing field for their such counters to the disputed Rise letter on equal terms. Id. To be clear, objectors are making a distinction between the separate (i) substantive disputes over the merits of the EIR/DEIR now before the Board, versus (ii) this Rise PC Letter dispute which incorrectly challenges the correctness and merit of the Planning Commission recommendations based on false charges of wrongdoing by members of the Commission and others. Again, objectors insist on our competing constitutional, legal, and property rights to dispute with our Comprehensive Objections each of the Rise Reopening Claims, including this Rise PC Letter.

A. Rise Mischaracterizes The Roles of the Parties, Especially By the Disputed EIR/DEIR And By Rise Too Often Evading Or Ignoring Meritorious Objections From Us Objecting Victims In These Disputes: A Response To Rise PC Letter #1 And Overview Of Selected Issues in Dispute.

1. This Is A Multiparty Dispute In Which Objectors Have Equal Rights And Standing. The County Owes Even Fewer Duties To Rise Than To Us Objecting Neighbors With Greater Rights And Causes For Complaints, Especially Those of Us Living On the Surface Above And Around The 2585-Acre Underground Mine Generally Ignored By The Disputed EIR/DEIR, which we generally do not repeat here as to such "standing" and other proof.

a) Introductory Comments And The Foundation of "Comprehensive Objections" [FN #1 below] Too Often Improperly Ignored By Rise And Its EIR Enablers, All Of Which Objections Dispute Rise's Claims (And the Rise PC Letter) And Instead Support The Planning Commission Recommendation.

(i) This Is A Multiparty Dispute With Rise That Must Equally Include Objectors Filing Directly Or Through Groups Hundreds Of Meritorious Objections Improperly Ignored By Rise And Its "Enablers" In Their Rise Reopening Claims, Including Both (1) the Disputed Rise Petition, And (2) the Disputed EIR/DEIR, County Staff Report, County Economic Report, And Rise Permit And Approval Applications.

Rise asserts false and misleading claims in its meritless Rise PC Letter and elsewhere as if (as in its disputed case cites) this were merely a two-party dispute between Rise and its "enablers" versus those who **incorrectly** calls the Planning Commission "**decisionmakers"** in a **"tribunal."** See Exhibit A below. (The term "Rise" includes either or both Rise Grass Valley or Rise Gold Corp as the context suggests, since objectors consider them to be "alter egos" or joint actors with joint capability, such that any admission by one binds both.) To the contrary, this is a **multi-party** dispute in which those hundreds filing objections against the EIR/DEIR, other Rise Reopening Claims, and the Rise mining project (supported by thousands more impacted locals who share our concerns) have no less standing and rights than Rise or its enablers. See the attached Petition/Objections proving broad standing for many reasons. Those objections must count as much as any such disputed opinions or other decisions of any pro-Rise County staff or enabler acting (incorrectly) in support of any Rise Reopening Claim. Indeed, while Rise purports to be the victim here of the "County team," the reality is that us objectors have proven that we are the potential victims of Rise here, especially those thousands of us living on the overlying surface above and around the 2585-acre underground mine who Rise and its enablers would (if permitted) doom to 24/7/365 EIR dewatering and mining menaces for 80 years, harming our environment, but also (no less important to us) harming our property values, wrongly depleting our groundwater and existing and future wells, harming our families health and welfare, and compelling a protracted conflict within our community to which there can be no resolution until the EIR mining threat is eliminated. Besides, the current legal status of the disputed pro-Rise parts of the disputed EIR/DEIR and County Staff Report is that they are just disputed opinions and claims of their "enablers," which opinions and claims have no more legal or other rights to significance than our hundreds of contrary objections. See our discussions of contrary legal authorities below and in Exhibit A to the attached Petition/Objections rebutting such Rise claims.

Rise's disputed Rise PC Letter is part of the disputed, incorrect, and worse "alternative reality" which we have exposed in our Comprehensive Objections (and do so again below) presenting "actual reality" based on a foundation of the correct science and facts and the true, applicable law. The Board must assess much more in dispute than the comparatively few disputed issues raised in the Rise and defeated in this Exhibit, because this is about a choice

between that "alternative reality" versus the "reality" detailed in our massive, Comprehensive Objections. And in making that choice, Rise (and its "enablers") must somehow try to defeat all our objections **on the merits** (with what our cited CEQA cases required by "good faith reasoned analysis" [e.g., Vineyard, Banning, etc.] and "common sense"[e.g., *Gray v. County of Madera),* since any one of our thousands of pages of objections is fatal to the disputed EIR mining. Rise and its enablers cannot do so based on their current record by just incorrectly claiming the disputed EIR/DEIR or staff report opinions are correct and by just evading, ignoring, disregarding, or otherwise deficiently addressing that mass of meritorious objections. This Exhibit B reminds the Board that this dispute is about much more than the few erroneous and worse Rise PC Letter disputes, and we explain why Rise, once again, is wrong about almost everything. **Rise's distracting, meritless "scandal" claims, and bullying of the Board and the Planning Commission cannot defeat any of our Comprehensive Objections, which must ultimately prevail on the merits in any event, regardless of the acts or fate of the County team and their decisions.**

For example to set the stage, in this multi-party dispute the Planning Commission is in between Rise and its **"enablers"** (defined below) versus many thousands of us "**objectors"** (both those directly objecting and their respective members or supporters), including those (or their groups) filing hundreds of meritorious objections with literally thousands of pages of detailed rebuttals against the disputed EIR/DEIR dewatering and mining menace, citing ample evidence to expose the errors, omissions, and worse in Rise's claims and the disputed EIR/DEIR and much of the County Staff Report just parroting Rise (and disputed County Economic Report, if its relevant in the Board's analysis). The Rise PC Letter (like its enablers' disputed EIR/DEIR and County Staff Report) evades, ignores, disregards, or deficiently addresses our such Comprehensive Objections, despite our such equal rights (or better/superior rights) to those asserted by Rise and its enablers. Rise incorrectly presumes that somehow the Planning Commission, Board, and others are adversaries who somehow need to prove the disputed EIR/DEIR or County Staff Report wrong, when all the cases (even those cited by Rise) impose the "burden of proof" on Rise as the applicant, not on us objectors, the Board, or the Planning Commission. Nevertheless, CEQA and other applicable law we cite here and in our objections rebut comprehensively the disputed "**EIR/DEIR**" and the disputed "**County Staff Report**" to the Planning Commission plus, to the extent that the yet to be filed County staff report or the future staff's hearing presentation is the same or otherwise conflicts with our Comprehensive Objections, then we add those future additions as disputed matters to that defined "County Staff Report," since we may not be permitted an opportunity to do so later). Those Rise Reopening Claims both improperly: (i) fail to present the required "good faith reasoned analysis" (as we demonstrated is required by the controlling cases like *Vineyard, Banning, and Costa Mesa*) with "common sense" (as required by *Gray v. County of Madera),* in various ways, but especially regarding groundwater and existing and future well mitigation, the most useful California surface mining case that defeats the disputed EIR/DEIR by itself); and (ii) incorrectly "enable" Rise by improperly ignoring, disregarding, evading, or mischaracterizing the more meritorious, competing rights and thousands of pages of Comprehensive Objections by objecting residents' hundreds of filed objections to the disputed EIR/DEIR (and, therefore, to the disputed bulk of the County Staff Report, which is not just wrong, but improperly "rubber stamped" the disputed EIR/DEIR without appropriate consideration of our meritorious

objections). E.g., see the disputed EIR objections to the EIR's Responses and Master Responses failing to overcome any of the many DEIR objections cited as Ind. 254/255; all parts of the "Prior Ind. 254/255 Objections discussed in the Petition/Objections. See also the discussions of our "Comprehensive Objections" below and in **FN#1**. Most importantly for the Board, proper responses to those thousands of pages of our meritorious objections are both (a) essential to CEQA compliance by the disputed EIR/DEIR (which must fail simply by its default in required responses, as well as on the merits), and (b) no less important and impactful as a matter of law than such disputed EIR/DEIR, the mostly incorrect County Staff Report, the deficient County Economic Report, and, now, the disputed claims in the Rise PC Letter and other presentations to come only mentioning a tiny fraction of the issues we objectors have properly put at issue for the Board.

(ii) Whatever Disputed Complaints the Board Considers From the Disputed Rise PC Letter About the Planning Commission, The Board Must Equally Consider From Opposite Objector Complaints In This Exhibit And Other Objections Against Rise And Rise's Such "Enablers."

Objectors have often used the term Rise **"enabler"** with reference to the EIR/DEIR team, the County Economic Report authors, and the County Staff Report team. That is a concept that we define in detail below in any analysis of the different kinds of "bias, etc.", "#1983 Etc. Claims," and "partisanship" (i.e., the opposite of Impartiality) after we illustrate the more important problems where it is actually exposed. See Exhibit A to this Petition/Objection where objectors demonstrate how they are the only "victims" with any meritorious complaints. We use the more neutral and broader term "enabler" (for now) to cover a wide range of possible types of objectionable conduct, which Websters defines as "to provide with the means or opportunity, to make possible, practical or easy," or "to give legal power, capacity, or sanction." Unlike Rise, our goal here is not to embarrass, bully, or harass such "enablers," but instead to reserve our objections to insist that the application of the same standards to those harming the objectors that Rise seeks to apply incorrectly to the Planning Commissioners and the Board, also be applied to the "enablers," so that the Board (and any court which Rise threatens to involve) **has the whole context of these disputes from all three sides**, including the problems which the Planning Commission and Board have confronted from Rise and its enablers. Under these "reality" circumstances (as distinct from Rise's "alternative reality"), how can the Planning Commissioners or Board members best do their jobs (i) to find the truths missing from, or misrepresented in, the disputed EIR/DEIR or other Rise Reopening Claims, such as those in the mostly rubber-stamped by the County Staff Report presented to the Commissioners for Rise and its enablers, and (ii) to present the correct, right, and just recommendations to the Board that reflects the truths from the thousands of pages of objections from us hundreds of filing objectors? The law has not yet fully caught up with how to deal with such partisan enablers advocating such "alternative realities," but the best way to do now is for the Board to recognize that we objectors have comprehensively rebutted the claims of Rise and its enablers. Therefore, objectors insist on application of our Comprehensive Objections to provide us with a "level playing field" for these multi-party disputes, just as the courts must finally do to end this EIR

and Rise Reopening Claims dewatering and mining misery. That means, among other things, not just judging the conduct of the Planning Commissioners or the Board, but also judging the conduct of Rise and its enablers, which must be done in a context where the Board treats our hundreds of objections as no less relevant, important, and impactful as the Rise Reopening Claims, such as the disputed EIR/DEIR and County Staff Reports for the DEIR, EIR, and Rise Petition, which have both the "burden of proof" and the duty to respond appropriately to our such filed objections.

Whatever concerns, if any, the Board may have about the Planning Commission under whatever standard the Board applies, it must have ever greater concerns under that same standard about Rise and its enablers, applying not just this Petition/Objection (and others from objectors) against the disputed Rise PC Letter, but our Comprehensive Objections and others against the disputed enabler EIR/DEIR and County Staff Reports. In this and every other dispute with Rise and its enablers, objectors insist on equal time, treatment, opportunities, and terms from the Board to match our comprehensive offensive and defensive objections against each and every Rise or enabler claim. We do not accept the EIR/DEIR or staff enablers as any kind of representative of (or adjudicator for) our objector community or reality for the reverse of the reasons Rise resists the Planning Commission, except that we are right and Rise is wrong and worse (and Rise has the burden of proof). Unlike Rise, who attempts to craft false "scandals" (and which we refute) and bully the County team to accept or tolerate them, we have limited interest in denouncing the EIR/DEIR, County Staff Report, or County Economic Report teams and even less interest in criticizing the County staff for their objectionable conduct in uncritically approving or advocating for the incorrect, deficient, and worse EIR/DEIR, while evading, ignoring, and otherwise deficiently responding to our hundreds of meritorious Comprehensive Objections. What we want is our fair opportunity to defend and enforce our competing constitutional, legal, and property rights, so that we can end the Rise Reopening Claims once and for all. Because the disputed EIR/DEIR and the disputed parts of the County Staff Report will certainly be defeated (ultimately) in any court where applicable law, truth, science, and evidence matters, and because (contrary to Rise's disputed claims) such disputed EIR/DEIR and report have little legal significance at this stage, objectors see no reason yet to "get personal" about enablers. Indeed, as discussed in our counter "bias" claims explanation section below, we are inclined to give those "enablers" (especially the County staff, but perhaps sometimes even some on the EIR/DEIR team, although that is a more complicated discussion) some benefit of the doubt in our disputes about their massive errors, omissions, and other noncompliance, because their objectionable conduct may be due to "bullying" or what might be called "ideological" or "professional" "partisanship/bias."

Therefore, we refrain here from the kind of abuse and worse Rise asserted in its Rise PC Letter against innocent critics and officials speaking "inconvenient truths" against Rise's EIR or other Rise Reopening Claims or the dewatering or mining menace we resist. For now, it should be sufficient that Comprehensive Objections prove that Rise and such enablers are consistently wrong for whatever reasons in their disputed and objectionable conduct, perhaps from living too much in Rise's "alternative reality," where, perhaps, decent people sincerely (but erroneously) believe, for example, that such dewatering groundwater or exploitive and dangerous mining is somehow the "greater good" for "progress," "jobs," or other Rise imagined project goals (rarely mentioning that this is mainly about maximum fantasy profits for

speculating nonresident Rise investors.) However, such disputed claims must always be legally (and, when the votes are counted for our objecting majority, as to the correct public policies and values) subordinate to the paramount, constitutional, legal, and political rights of us objectors, especially those living on the surface above or around the 2585-acre underground mine competing with Rise's mining (e.g., to groundwater and wells in which each surface parcel owner has a first priority right under *City of Barstow* and *Pasadena*, and to lateral and subjacent support, as the Supreme Court explained in *Keystone) and* who, therefore, *would have inverse condemnation, nuisance, and other claims as described by the California Supreme Court in Varjabedian*), as well as having all of the rights of potential victim objectors under CEQA pursuant to a long line of cases that objectors briefed to rebut Rise in this and other objections, especially the somewhat similar mining case of *Gray v. County of Madera*, which by itself defeats the disputed EIR/EIR, especially on the well and groundwater depletion issues.

(iii) Besides Being Wrong on the Merits As To The Facts, Science, And Realities, Rise And Its Enablers Are Wrong On the Applicable Law.

Notice that, for example, none of the cases cited by Rise, are entitled to prevail (or often even to apply) in this controversy for reasons explained below (including **Exhibit A below)** and in Comprehensive Objection rebuttals. Among other things, like our legal debates herein, those Exhibit A below objections distinguish, dispute, and overcome the Rise and enabler cited cases with our contrary court decisions discussed below, which do address such competition between objectors like us and the applicant and its disputed EIR/DEIR in such cases. Those objector cases countering Rise's meritless claims (repeated by its enablers) also expose how the disputed EIR/DEIR, County Staff Report, and Rise's enablers too often disregarded realities in our objections in violation of CEQA and other applicable law, even when we objectors are rebutting by quoting Rise or EIR/DEIR admissions in our objections, such as those admissions Rise's enablers incorrectly refuse to consider from Rise Gold Corp's SEC filings (e.g., our Petition/Objections Exhibit G), despite the rulings in *Richmond v. Chevron* discussed below, where Chevron's SEC filings defeated its EIR in Richmond when (like Rise here) Chevron tried to tell its investors more damning truths in the SEC filings than Chevron was willing to reveal in its EIR. The courts must ultimately agree with objectors, because our evidence and law are superior and often incontrovertible (once it is no longer ignored, evaded, or mischaracterized by Rise or the disputed and noncompliant EIR/DEIR or the misguided parts of the County Staff Report.)

Unlike the Rise PC Letter, which totally ignores our more applicable cases below and in our ignored objections, we tackle some the more notable of Rise's cites in this Exhibit B and the rest in Exhibit A below, for example illustrating below how Rise's favorite cited case (***Clark, but only in Rise chosen fragments***) not only fails to prove Rise's claims, but (when the Board reads **the whole case** and considers our analysis) ***Clark*** **disproves many of Rise's claims**, especially as to the fantasy remedy Rise imagines for its purported scandals. In any case, the Rise PC Letter incorrectly postures Rise as the "victim," even with Rise now ungratefully complaining about its bullied enablers on the EIR/DEIR team and on the County staff, as if their mistaken, pro-Rise accommodations of 90% [?] (compared to the correct view of informed objectors familiar with

the Comprehensive Objections and others would argue only at most 10% disappointed Rise's incorrectly demanded accommodations) were somehow intolerable, despite those enablers having evaded, ignored, or deficiently addressed most of our meritorious Comprehensive Objections and others, thereby intentionally or unintentionally protecting Rise from the truths in such objections. Like some predators in the animal kingdom, Rise incorrectly postures itself as the victim, as if somehow it were entitled to the full 100% incorrect support from its enablers instead of only the current 90% plus such wrongful ignoring, denial, evasion, or disregard of almost all such meritorious objections. How can Rise be a victim of anything under those circumstances, when the true victims are the thousands of residents above or around the 2585-acre mine who would suffer massive adverse impacts from this EIR dewatering and mining menace 24/7/365 for 80 years? Perhaps the absurdity of Rise's claims is one reason why, with limited exceptions (like critics attacked by Rise), a reader of Rise's fiction would never even know there were thousands of pages of meritorious objections filed by hundreds of objecting local citizens proving why Rise's EIR and mining must be rejected on the merits; not just on the issues raised in this Petition/Objections but also on hundreds of others in the filed objections.

(iv) Miscellaneous Process Issues To Consider About Comprehensive Objections Refuting The Rise PC Letter And Reframing the Legal Context Distorted By Rise And Its Enablers.

Objectors' focus is also about pointing the Board to what is right, correct, and applicable law, not only on exposing Rise's errors, omissions, and worse too often incorrectly adopted without sufficient evaluation or supported by Rise's such enablers. For example, near the end of this section I.A.1 (which addresses the corresponding section 1 of Rise's disputed Rise PC Letter) we explain in subsections "d" and "e" below both (i) the controlling California Supreme Court decision (***Fairfield v. Superior Court of Solano County, aka "Fairfield"***) that Rise ignores because it defeats Rise's disputed claims against the Planning Commissioners, **[FN #2]** and (ii) how Rise's favorite ***"Clark"*** case fragments and others are both distinguishable from this IMM dispute for Rise's cited purposes, while also incorrectly disregarding rulings (unmentioned by Rise) contrary to Rise's claims. See subsection "e" below and Exhibit A below. [We generally follow the flow of Rise's corresponding letter-numbered topics.] However, objectors vary from that sequence for some exceptions that seem efficient for our purposes of balancing what the Board should know that is "right," versus exposing what disputed Rise and enabler claims are "wrong" or worse.)

As the entire IMM administrative record reflects in the context of our Comprehensive Objections, there are hundreds of material, unmitigated, environmental impacts and other harms affecting us objecting neighbors that have been improperly evaded, ignored, or mischaracterized by the disputed EIR/DEIR and its enablers. See, for example, the "Prior Ind. 254/255 Objections" (see FN#1) and other "Comprehensive Objections." While this counter Petition/Objection and other Comprehensive Objections mention some key court cases to illustrate our objector side of these disputes, many other counters to the Rise case cites can also be found in **Exhibit A below**, since we prefer not to be distracted by Rise's attempts to waste our time disputing further with their irrelevant or inapplicable case theories, preferring instead to focus the Board both on our better and more applicable court decisions (almost always ignored by Rise and its enablers), and on what is right, correct, and just about our positions that

Rise and its enablers rarely confront on the merits in any Rise Reopening Claims. Our thousands of pages of Comprehensive Objections should be sufficient already to expose what is wrong, incorrect, and unjust about Rise Reopening Claims and about the many errors, omissions, and worse in the disputed EIR/DEIR, which are too often just incorrectly accepted or repeated in the County Staff Report.

Prior Ind. 254/255 Objections to the EIR should remind the County, by incorporating and integrating many selected key Group and Agency Comment Letters also objecting to the DEIR (plus any follow-up objections filed as to the EIR, collectively, together with such Prior Ind. 254/255 Objections, all called parts of the "**Comprehensive Objections,"** as explained in FN #1), that there are also state and other local governmental objectors which also will suffer harms from EIR dewatering, mining, and other disputed activities, and such objectors have their own rights and claims. See, for example, the State Dept of Parks And Recreation (as to property adjacent to the IMM, like the Empire Mine), the City of Grass Valley, and NID. The reason for occasionally citing herein to the four Prior Ind. 254/255 Objections is that in their almost 1000 pages they are individually those most comprehensive, integrated objections to each of the DEIR, the EIR, the County Economic Report, and the County Staff Report, and they also provide a comprehensive road map and cross-references for their incorporated agency evidence websites and other Comprehensive Objections. As a result, the Comprehensive Objections document many material objections to errors, omissions, worse in every section of the EIR and DEIR, any one of which objections should defeat both the disputed EIR, as well as the County Staff Report that generally accepts those EIR without critical analysis properly considering Comprehensive Objections or others. Many Comprehensive Objections also anticipated and exposed errors, flaws, and worse in the disputed Rise Reopening Claims in its disputed letter to the Board dated June 1, 2023, and well as providing the basis for the requests herein for equal time and terms from the Board to rebut and counter the disputed Rise letter claims, including by demonstrating (by whatever standard the Board chooses) objectors' reverse complaints about the Rise enablers responsible for the disputed EIR/DEIR and County Staff Report.

Stated another way, if the Board is going to judge the alleged conduct of the Planning Commissioners in response to the disputed Rise PC Letter, then, at least for fairness and compliance with applicable law, the Board must also add to the record for the ultimate trial all these related disputes addressed in this letter (and others like it) as well as in our such Comprehensive Objections, as **explained in subsection "c" and "2" below.** Rise's disputed attacks on the Planning Commissioners (and innocent, public-spirited citizens speaking truths) must be judged in full context, which (contrary to Rise) includes the Planning Commission properly responding to objections (and perceiving the truth and merits in objections) exposing EIR/DEIR and County Staff Report errors, omissions, and worse. For example, when a Planning Commissioner votes against the disputed EIR/DEIR he or she is not committing "bias, etc.", unethical conduct, or unfairness to Rise as it claims, but instead the Commissioners are doing "the right thing" in accordance with applicable law, which also requires treating us competing objectors fairly and properly. As proven many times and ways in Comprehensive Objections, this is not as Rise postures (and the County too often "accommodates" a two-party dispute, but instead is a multi-party dispute where us objectors have no less importance and rights than Rise. To accomplish that official duty means rejecting the disputed EIR, County Staff Report, and Rise Reopening Claims for all the reasons stated in the Comprehensive Objections and others.

Moreover, **since the Comprehensive Objections on the massive objection record are so comprehensive (far more than 1500 pages, plus web links to more (e.g., to the EPA, CalEPA, www.hinkleygroundwater.com, etc.) [FN #3] and other cites to massive incorporated evidence, there can be no meritorious Rise claim that any Commissioner (or Supervisor) could have considered anything else that was "new" or outside the record. The objection record covers everything at issue against Rise and its enablers, and, for reasons stated by the California Supreme Court in *Fairfield,* no relevant official (as distinct from Rise's staff enablers) can be required to explain or reveal any more of their decision-making reasoning than they may choose to do so from time to time.**

B. While Such Comprehensive Objections Provide Ample Support for the Planning Commission (And Board) Rejecting the Disputed EIR, the Rise Accommodating Parts of the County Staff Report, and "Rise Reopening Claims," Especially Rise's New Claims, Such Comprehensive Objections Also Contain Entirely Ignored Violations of Objector Constitutional, Legal, And Property Rights That Are Both Separate From, And Yet Part of, the CEQA Disputes, Especially (For Illustration) As Claims of Overlying Surface Owners Above And Around the 2585-acre Underground IMM Disputing EIR Dewatering And Mining Depleting Exiting And Future Wells And Groundwater And Other Ignored Rise Threats, Such As the Toxic Hexavalent Chromium Menace Rise Threatens To Add To The Mine Shoring Cement Paste Pollution Without Proper CEQA Disclosure (see FN #3).

Many of us objectors are not merely public interest commentators, but directly impacted neighbors asserting CEQA objections and much more competing constitutional, legal, and property rights proven in our Comprehensive Objections. See the discussion of our special standing and ignored, disregarded, and evaded rights herein, such as in this Petition/Objections Exhibit D (the **"Overlying Surface Owners Rebuttal"),** providing a recently updated and detailed list of many Comprehensive Objections and especially focusing on the first priority groundwater rights of overlying surface owners above and around the 2585-acre underground IMM. See, e.g., ***City of Barstow and Pasadena*** (discussing each overlying surface owner's first priority rights in groundwater beneath his or her parcel against underground "appropriators" like Rise, applying the *Empire Mines* precedent that determines underground mine boundaries based on surface boundaries projected into the earth.); ***Keystone* and *Marin Muni Water*** (discussing each surface owner's rights to "subjacent support" and "lateral support" from the underground beneath and adjacent to prevent subsidence, including as the US Supreme Court explained in *Keystone* to the support from the groundwater); and ***Gray v. County of Madera*** (discussing in detail in the EIR surface mining context how the kinds of disputed mitigations propose by Rise in the EIR/DEIR cannot meet the requirements for true equivalence imposed by the court to assure that such impacted well owners are not prejudiced by the miner's depletion of their groundwater.) As discussed in the disputed EIR/DEIR, Rise proposes wrongly to deplete that groundwater by 24/7/365 dewatering for at least 80 years and flushing that groundwater away down the Wolf Creek, creating another reason for standing and rights for such overlying surface owners, but here also raising critical CEQA disputes. The entire Rise underground mining project requires such massive, constant dewatering to prevent the mine from flooding again.

THE EIR JUST INCORRECTLY ASSUMES THAT RISE SOMEHOW CAN JUST TAKE AWAY THAT GROUNDWATER FROM ITS FIRST PRIORITY SURFACE OWNERS ABOVE AND AROUND THAT UNDERGROUND IMM, BUT RISE MAKES NO EFFORT TO PROVE ANY RIGHT TO SO DEWATER AND OFFERS NO ANALYSIS OF WHAT HAPPENS TO ALL ITS EIR PLANS AND GOALS WHEN SUCH SURFACE OWNERS STOP THAT DEWATERING. THE CLOSEST RISE COMES IS IN A DISPUTED THREAT IN ITS SEC "2023 10K" FILING REBUTTED IN EXHIBIT G AT #II.B.25, WHERE RISE ADDRESSES THE NEED FOR ACCESS FOR MINING SUPPORT TO OBJECTIONABLE USES OF THE PRIVATE SURFACE PARCELS ABOVE AND AROUND THE 2585-ACRE UNDERGROUND IMM AND ASSERTS A RIGHT TO USE GOVERNMENT AND COURTS TO COMPEL THAT DISPUTED RESULT. HOWEVER, IF THE COUNTY OR OTHER GOVERNMENT WERE TO TAKE FOR RISE TO FLUSH AWAY DOWN THE WOLF CREEK NOT ONLY OUR OBJECTING SURFACE OWNERS' GROUNDWATER, BUT ALSO TO INVADE OUR HOME PARCELS FOR MINING ACTIVITIES, THE MASSIVE "TAKING" AND OTHER CONSEQUENCES TO THE COUNTY FROM ANY SUCH ATTEMPT TO "TAKE" SUCH LOCAL OBJECTORS' PRIVATE PROPERTY AND GROUNDWATER FOR THE PROFIT OF NONRESIDENT RISE INVESTORS WOULD BE MUCH MORE SERIOUS THAN THE EXISTING COUNTY RISKS UNDER *VARJABEDIAN* AND OTHER "TAKING" CASES FOR COMPENSATING RISE VICTIMS. AND THAT ALSO WOULD BE MUCH WORSE THAN RISE'S THREATENED TAKINGS CLAIMS, WHICH DISPUTED CLAIMS, INCIDENTALLY, WOULD BE DEFEATED BY THE FACT THAT THE IMM HAS NO POSSIBLE MINING VALUE WITHOUT SUCH DEWATERING THAT RISE HAS NO RIGHT TO DO. WHILE OBJECTORS' HEADS SPIN THINKING ABOUT HOW ARGUMENTS OVER SUCH IMPROPER GIFTS OF PUBLIC FUNDS FOR RISE SPECULATORS COULD EVEN BE IMAGINABLE, WE NOTE THAT RISE AND ITS ENABLERS AND THE STAFF CONTINUE TO IGNORE, DISREGARD, AND EVADE OUR COMPREHENSIVE OBJECTION ISSUES. WHEN IS THE COUNTY GOING TO CONFRONT THAT REALITY? HOW CAN THE BOARD APPROVE THE DISPUTED EIR/DEIR UNDER THESE CIRCUMSTANCES? THE WHOLE RISE PROJECT AND CEQA ANALYSIS IS BASED ON THAT FALSELY ASSUMED RIGHT TO DEWATER THAT RISE HAS NOT PROVED IT HAS (OR COULD GET WITHOUT A COUNTY TAKING THAT THE COUNTY COULD NEVER AFFORD EVEN IF IT WERE LEGAL), AND OBJECTORS HAVE PROVED RISE DOES NOT HAVE.

For example, how would CEQA treat a potential miner who did not own a mine asking for permits and EIR/DEIR approvals for a project that such miner imagined doing if and when such miner acquired the legal right to do so? Or, what if Rise had done everything as it has except that it only owned the Brunswick parcels and was planning to acquire the 2585-acre underground IMM in the future with no right to do so? Such a miner or Rise would not be entitled to create such a CEQA option for itself as a hypothetical owner. How then can Rise insist on approval of this EIR/DEIR where Rise likewise lacks at least one key ingredient for its IMM underground project to even be able to begin; i.e., Rise does not have the legal right to take the groundwater (with each surface owner's "surface" extending generally down 200 feet below the top) beneath any surface parcel owned by anyone else and flush it away down the Wolf Creek? The same principles are applicable by such Comprehensive Objections to potential violations of surface owner property rights by the unauthorized EIR/DEIR dewatering and mining threats, which Rise and its EIR/DEIR and staff enablers incorrectly have entirely refused even to consider properly, despite Rise enablers neither having, nor even trying to cite, any legal authority to deny, evade, or ignore such property rights. See, e.g., *City of Barstow, Pasadena, Keystone,*

Marin Muni Water, Varjabedian, Gray, and other objector cites below. But see Exhibit G #II.B.25 rebutting Rise's SEC "2023 10K" admissions and threat ignored by Rise, its enablers, and (at least in public) the County team. Instead, Rise and its enablers pretend that such disputed EIR/DEIR dewatering and mining of the 2585 acres underneath objectors' surface-owned properties 24/7/365 for 80 years is no different than a routine real estate project, when, instead, this is much more complicated and riskier (even for the County itself. See *Varjabedian*.) than the usual disputes when neighbors try to stop harmful uses of an adjacent, wholly-owned surface mining property. As merely one example, unlike in normal groundwater disputes where the drop in the surface water table proves a taking, the EIR mine dewatering is not just depleting each surface owner's parcel's groundwater and community groundwater, but the EIR/DEIR has Rise taking the first 10% well depletion of (grossly undercounted) objectors' **existing** well water (plus all **future** well water) before Rise even pretends to begin its illusory mitigation of such "takings." See, e.g., *Keystone, Varjabedian, and Gray.* Indeed, such disputed EIR/DEIR denying, evading, or ignoring of such "inconvenient truths" is one incontrovertible reason that the EIR/DEIR cannot be approved as a matter of law, especially since nothing in the EIR/DEIR record even attempts to dispute such property rights or respond to such objections. **FN #4.** See Rise's SEC 10K filings admitting some of such surface owner rights down 200 feet (i.e., the "surface" at issue is at least the first 200 feet, plus groundwater), as well as the extensive briefing of these issues in the Exhibits D and G and other Comprehensive Objections.

Rise and its EIR team and staff enablers offer no property law authority (or even CEQA authority, although CEQA or County permits for any EIR/DEIR cannot overcome such surface owner property law rights in any event) for disregarding such surface owners' competing constitutional, legal, or property rights versus EIR underground miner claims in dispute by Comprehensive Objections (or even for the full range of legal rights of such objectors against such EIR well and groundwater depletion threats objectors addressed in *Keystone* and *Gray* with constitutional empowerment against such takings, such as in *Varjabedian*.) On the other hand, for example, the Prior Ind. 254/255 Objections cited illustrative cases and legal principles that the Board must consider to prevent the disputed EIR from creating even worse problems for everyone, none of which are even mentioned in the disputed EIR or DEIR or by Rise, even when the EIR ignored and evaded them, for example, in the disputed 101 EIR "Responses" to the DEIR Objections marked Ind. #254. Consider among many cases discussed herein and in Comprehensive Objections and others, for example, the Supreme Court's analysis in ***Keystone Bituminous Coal Ass'n v. DeBenedictis,*** 480 US 470 (1987) ["***Keystone***"] (upholding protections for surface owners against underground mining below or adjacent to them as to rights of lateral and subjacent support, which protections against "subsidence" include prohibitions on depletion of the groundwater that supports the surface); **Gray v. County of Madera** (2008), 167 Cal. App. 4th 1099 ***["Gray***"] (a legally comparable but surface mining case rejecting groundwater mitigation proposals with similar deficiencies to those in the IMM disputed EIR/DEIR, among many other flaws we objectors also assert against the EIR/DEIR). See ***Varjabedian v. County of Madera*** (1977), 20 Cal. 3d 285 ["***Varjabedian"]*** (allowing inverse condemnation, nuisance, and other claims [where property value losses are part of the recoverable damages] by homeowners downwind of the new sewer plant in reliance on, among other things also relevant here, the protections of the California and US Constitutions against government disproportionately sacrificing some more impacted locals' property rights **for the court approved** (not just miner

asserted) common good of those not so seriously impacted, which we note applies even more strongly here, where such objections prove even greater environmental harms from the "no net benefit" IMM mine as a private project providing no net "common good," just bigger profits imagined by nonresident speculator-investors. While the Rise PC Letter incorrectly threatens about its allegedly violated "due process" and other constitutional rights, there is no such "due process" or other rights for Rise or the EIR that overcomes such surface owners' and other objectors' competing constitutional, legal, and property rights, such as so protected by such inverse condemnation and other claims. See discussion of *BreakZone* below. Even Rise's cited *Clark* case addressed below denies "due process" status for such application claims (which are not "property rights.") If Rise is allowed consideration of its disputed Rise PC Letter claims against the Planning Commissioners, objectors demand equal time, terms, and respect for our reverse objections against any EIR/DEIR team and County staff claims that have enabled Rise by so ignoring, disregarding, evading, and deficiently responding to most of our meritorious objections without any legally sufficient excuse, as demonstrated in the Comprehensive Objections and as discussed further below in subsection I.A.2.

Thus, those objectors living on the surface above or around the 2585-acre mine (whose issues are so generally and non-compliantly ignored, disregarded, evaded, or mischaracterized in the disputed EIR/DEIR and other Rise Reopening Claims, which primarily purports to deal with the smaller, Brunswick and Centennial mine land wholly owned by Rise, too often ignoring the 2585-acre underground IMM creating massive CEQA and other deficiencies), have not only CEQA objection rights, but also such objections to violations of our surface property rights (including for groundwater and existing **and new wells**) by the 24/7/365 EIR mining plans for 80 years in the 2585 acre underground mine. As ***Keystone*** explained, the EIR/DEIR would violate surface rights to lateral and subjacent support from the underground mine (e.g., to avoid "subsidence," which includes not just harm to surface infrastructure, but also 80 years of 24/7/365 depletion of the groundwater support for the surface that would be flushed away down the Wolf Creek because of dewatering.) Worse, that dewatered groundwater could mixed with Rise's addition of the toxic, hexavalent chromium cement paste as it flows toward Wolf Creek. How can the disputed EIR/DEIR allege adequate treatment in the imagined new water treatment plant when the EIR/DEIR evades even dealing with that hexavalent chromium risk. That "CR6" is what killed Hinkley, California, as shown in the movie, "Erin Brockovich," and as described in www.hinkleygroundwater.com, those survivors still have not been able to remediate that toxic groundwater pollution after all these years, raising the question of who trusts Rise's disputed "treatment facility" enough to drink that risky water as it flows away in the Wolf Creek. See, e.g. EIR's disputed "Reponses" To Comment Letter Ind. #254-1 (to which Prior Ind. 254/255 Objections countered, including a detailed summary in Exhibit D to such EIR Objection dated April 25, 2023, referencing massive, adverse scientific studies and data on the EPA and CalEPA hexavalent chromium websites (not to mention Google search results, like www.hinkleygroundwater.com). Such Comprehensive Objections demonstrated how the DEIR improperly failed to address this hexavalent chromium threat in its "Hazards And Hazardous Materials" discussion, only mentioning that indisputable carcinogen in a few grossly insufficient, obscure sentences in another DEIR section merely mentioning the existence of hexavalent chromium in the mine paste cement that Rise would pump into the mine to create shoring columns with mine waste for underground mine support. That toxic shoring could be exposed

to 24/7/365 dewatering actions for 80 years as that water is flushed away into the Wolf Creek, all so as to reduce the amount of mine waste that needs to be exported from the mine.) Worse, what happens whenever the mining stops and the mine again floods, but this time that cement is leaching into that water indefinitely. **[FN 5].** That Comprehensive Objection also disputed the EIR purported, deficient, incorrect, and otherwise noncompliant "responses" buried in unexplained Appendices Q, R, and O at the end of the EIR [each of those studies for Rise before the DEIR filing that were not addressed in the DEIR, but only after such Prior Ind. 254/255 Objections to the DEIR] and in EIR "Response" Ind. 254-1 to that DEIR Objection, both deficient EIR responses placed where no reader would be likely to find them, contrary to well settled CEQA case law requirements prohibiting such "hide the ball" tactics. See also the new CalEPA ban on hexavalent chromium for various applications announced after the EIR objection deadline. (Note also that there was no answer in the EIR or otherwise to the question in those Prior Ind. 254/255 Objections (see also that Exhibit addressing hexavalent chromium) about whether Rise intended to file a "**Proposition 65 warning notice**" for the mine after their disputed approval of the EIR evading, ignoring, and denying that threat. See **[FN 5.]**

Also, for obvious reasons ignored in the EIR/DEIR and contrary to CEQA, such hexavalent chromium threats may become another unaddressed EIR factor in further depressing property values [including in ways not considered by the deficient and largely disputed County Economic Report because it has not been properly addressed anywhere by Rise and its enablers]. What do impacted, surface owners say to buyers when they realize that they have even more reasons to question whether they can trust the disputed Rise water treatment process sufficiently to clean dewatered groundwater flushed into their Wolf Creek water? Note, for example as a case study, that, as reported in that Prior Ind. 254/255 EIR Objection Exhibit D and in www.hinkleygroundwater.com, after all these years it is still not safe to drink that Hinkley groundwater, despite the semi-ghost town's attempts for many years to remediate such groundwater after the utility settling pond leaked hexavalent chromium into the groundwater and killed the town and many residents resulting in a record liability settlement but no solution for the community.

Contrary to the claims of the Rise enablers on the EIR team and staff, the probable property value losses that the EIR/DEIR, County Economic Report, and the County Staff Report ignored are relevant and admissible evidence, such as to rebut the errors, omissions, and worse in the EIR/DEIR (e.g., to rebut the EIR/DEIR claim of tax benefits, where our depressed, local property values will reduce property taxes by larger amounts than the small mining tax gain alleged and disputed in the deficient County Economic Report). As noted above, property value losses are also part of the surface owner claims that would be created for *Varjabedian* type inverse condemnation, nuisance, and other claims, as well as from the EIR wrongly taking 10% of objecting surface owners' well water before Rise even attempts to begin replacing the additional groundwater losses in its illusory mitigation (which mitigation Rise's SEC 10Q and 10K filings admit it lacks the financial resources to afford, and which SEC admissions *Richmond v. Chevron* proves are admissible evidence that should defeat the EIR). *Gray* and other cases prove that is not compliance with CEQA. To apply inverse condemnation (or property tax value losses) minimum exposure examples addressed in Comprehensive Objection for a hypothetical sense of scale, if 3000 impacted homes lost each lost an average of $100,000 in value or groundwater value, the inverse condemnation or nuisance core damages (or property tax value losses) would

be at least $300,000,000. These and other noncompliance with CEQA and other applicable law are proven in the Comprehensive Objections and those of many other neighboring mine victims. More details are provided below, but when will objectors get their day in court to assert them to some adjudicator would consider such objections?

C. Our "Comprehensive Objections" Also Counter Rise With Complaints About Rise Enablers Ignoring, Evading, And Responding Objectionably To Such Objections. If the Board Were To Consider The Disputed Rise PC Letter Attacking the Planning Commission (And the Board Members For Their Correct, Although Too Narrow, Vested Rights Decision), Then The Board Must Likewise Address on the Same Basis The Contrary Objections Complaining About Such Rise "Enablers" On The Teams for the Disputed EIR/DEIR And 2023 County Staff Report For Ignoring, Disregarding, And Evading Meritorious Comprehensive Objections And For Other Noncompliance With CEQA And Other Applicable Law To Favor Rise's Meritless Claims. See I.A.2 below.

As to CEQA, the disputed rights claimed by Rise to due process, fairness, and other things are countered by the competing (and often superior) rights of us objectors in this multi-party dispute. See Exhibits A and C, and elsewhere in this, Prior Ind. 254/255 Objections, and other Comprehensive Objections. In the disputed court decisions cited by Rise and rebutted herein, such Rise cases are addressed merely as two-party disputes between a project applicant and the governmental decision-makers. Id. However, here the EIR team, County staff, Planning Commissioners, and Board decision-makers also have competing duties to address the competing rights of hundreds of us objectors filing and citing thousands of pages of rebuttals and counters entitled to equal consideration, which the disputed EIR/DEIR and (generally) County Staff Report failed to consider sufficiently and compliantly, but which the Planning Commission could have properly considered without having to explain (see *Fairfield)* and suffer more Rise abuse. Many sections herein address that broader conflict between the Rise and its enablers' disputed EIR/DEIR and 2023 County Staff Report versus us objectors' thousands of pages of meritorious objections, including the Comprehensive Objections that comprehensively defeat the disputed EIR/DEIR (and, therefore, the Rise uncritical and disputed support in the 2023 County Staff Report) on meritorious objection grounds with evidence admissible under the Evidence Code. (Much of what Rise and its enablers claim will not survive evidentiary objections at trial, and their improper exclusion of objector evidence, such as Rise's SEC admissions, will be reversed at trial because, as demonstrated in *Richmond v. Chevron* and other cases, our evidence is at least proper rebuttal evidence. See, e.g., the law of evidence discussions and authorities in Exhibits E and F, such as applying Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235 to Rise admissions.) **Since the Comprehensive Objections and others on the massive, objection record are so comprehensive (far more than 1500 pages, plus web links (e.g., the EPA, CalEPA, www.hinkleygroundwater.com, etc. and other cites to massive, incorporated evidence), there can be no meritorious Rise claim that any Commissioner considered anything else that was "new" or outside the record. Such objections here comprehensively covered everything at issue. Rise claims to the contrary are the result of either wishful thinking or failing to read the applicable Comprehensive Objections. If necessary, the Board should either evaluate that entire objection record itself or allow us a fair opportunity to prove Rise's or**

enablers' errors once Rise is required to be more specific about its vague, disputed claims. Incidentally, as the California Supreme Court has ruled in the *Fairfield* case discussed and quoted herein, among other objections, in these EIR disputes, there can be no discovery by disappointed applicants against the Board (or Planning Commission) as on what they relied in their decisions. [FN 6]

Note that such Comprehensive Objections and others both (i) prevent Rise and any enablers from satisfying their burdens of proof for the EIR/DEIR, and (ii) provide admissible, substantial evidence, and offers of proof that are fatal to the EIR/DEIR and (Rise tolerating or supporting parts of) any County Staff Report, which objector evidence and proof have been improperly denied, ignored, and evaded in the disputed EIR/DEIR and 2023 County Staff Report on which Rise's disputed Letter tries to rely. That disputed Rise reliance is baseless at present since such nonbinding/unapproved EIR/DEIR and Staff Report documents are (i) neither legally binding nor immune from our objector rebuttals, nor even credible, sufficient, nor complaint, and (ii) merely represent erroneous, deficient, unsubstantiated, noncompliant, and worse opinions of such Rise enablers that the Planning Commission and Board are free to dismiss as meritless (as objectors have requested and proven correct in Comprehensive Objections.) Regardless of whatever the Planning Commission decided, those objectionable, Rise/enabler opinions can and should be defeated by the Comprehensive Objections and others before the only "decision-makers" or "tribunal" in this 2024 process: i.e., the County Board of Supervisors (and, if somehow the Board were to mistakenly approve the disputed EIR/DEIR, the courts on mandamus challenges by objectors should reverse that result on the merits.) We address in more detail below that process for rebutting the Rise letter and for how the Board should address the merits of objectors' counters to Rise and its enablers.

Objectors now remind the Board in these introductory rebuttals to the Rise letter that those Planning Commissioner recommenders (like the Board decision-makers) must balance their duties in that competition and disputes between (i) objectors (the real victims with independent and equal or superior rights and meritorious grievances) versus (ii) the disputed Rise applicant and its such enablers. The demonstrated reality is that in these disputes Rise's such enablers have incorrectly allowed Rise many unfair and legally inappropriate advantages over us objectors, such as being allowed to have Rise's incorrect, deficient, and non-compliant data allowed in the (still unapproved) DEIR/EIR and record, while denying, evading, ignoring, and worse, without meritorious grounds, our meritorious Comprehensive Objections, as explained herein and in our EIR/DEIR objections. [**FN 7.]** However, as the Comprehensive Objections and others demonstrate, objectors have equal and many superior legal rights to Rise, including to insist both on compliance by the EIR/DEIR with applicable law, and on the EIR team and County Staff Report team properly and fairly addressing our Comprehensive Objections and others in accordance with applicable law, which has so far not been occurring. Moreover, this is not just about how Rise would misuse its own mining property (Brunswick) under the disputed EIR/DEIR to harm objectors, our groundwater, wells, property, and community, and our environment, but also especially about the generally ignored and deficiently analyzed 2585-acre underground IMM and its impacts on overlying surface owning objectors. Exhibit D. As discussed herein and in Comprehensive Objections, this dispute is also how that EIR/DEIR mining would harm such surface owner objectors and our property above and around that 2585-acre underground mine (which "surface" the Rise SEC "2023 10K" (Exhibit G) and earlier

10K filings in the record admit [as do Rise Petition deed Exhibits addressed in Exhibits E and F hereto] generally extends down 200 feet), including our groundwater that Rise cannot take without triggering legal consequences of direct concern to the County. See, e.g., Exhibit D, discussing *City of Barstow, Pasadena, Varjabedian, Keystone, Marin Muni Water, Gray, and other authorities.* Besides direct and CEQA allowed indirect environmental impacts, such objections also prove (e.g., as rebuttal or impeachment evidence against false and misleading EIR/DEIR and Rise claims) loss of tax revenue from loss of property values and questions about who must ultimately pay for objectors' inverse condemnation, nuisances, trespass, and other claims resulting from the disputed EIR mining harms demonstrated in far more than 1500 pages of Comprehensive Objections. Id.

Incidentally, as explained herein and in many Comprehensive Objections, and as not effectively or properly rebutted in the deficient and noncompliant EIR "Responses" (or "Master Responses"), in our democracy we objectors have the Constitutional right to "petition" our governmental officials under the State and US Constitutions for redress of our such grievances and to prevent the "takings" contemplated by the disputed EIR without just compensation (e.g., inverse condemnation claims like in the California Supreme Court's "*Varjabedian"* and other cases discussed in the Comprehensive Objections). Our County team (especially the officials seem to be attempting to bully) are not just entitled to consider those "petitions" (i.e., our record Comprehensive Objections) from us impacted residents and voters (e.g., *Fairfield*), they have a duty to do so, and to consider our counter evidence and legal briefings in an effort to reach the truths against the disputed EIR/DEIR and other Rise Reopening Claims. Finding truth through our record objections, as well as finding cause to doubt or disagree with the disputed EIR/DEIR and other Rise Reopening Claims, is not (as Rise falsely claims) evidence of "bias, etc." "ethical lapses," or other wrongs by the Planning Commissioners or any pretext for "#1983 Etc. Claims." Instead, that official consideration is proof the Commissioners are doing their jobs well and saving our community from the demonstrated harms and risks that we would otherwise suffer 24/7/365 for 80 years from the disputed EIR/DEIR dewatering and mining menace and Rise's noncompliance with CEQA and other applicable laws demonstrated in the record for this process.

Collaborations among us objecting victims are not violations of any Rise rights, but, instead, are the proper and lawful exercise of our own competing rights as CEQA contemplates (and other laws protect, including our state and federal Constitutions) and which evidence democracy in responsible and proper action. Ad hoc joint defense and prosecution groups are common and desirable many such multiparty legal contexts, such as occur in every major bankruptcy case (ad hoc interest groups). See, e.g., Bankruptcy Rule 2019. No one but Rise would be so "wrong" as to imagine and incorrectly blast such lawful, proper, and useful collaborations as a "conspiracy." There is no such thing in applicable law as what Rise's letter claims as a "conspiracy" by objecting victims to collaborate in exercising, defending, and enforcing our individual and collective constitutional, legal, and property rights against the disputed EIR/DEIR and other Rise Reopening Claims, in expressing concerns to officials or staff (which Rise has done, although, instead, for bullying threats), and defending our properties from the disputed EIR/DEIR or Rise dewatering or mining threatened wrongs, including with our special standing as surface owners living above or around the 2585-acre underground IMM mine discussed below. None of the Comprehensive Objectors, including in that capacity NID and

such other governmental objectors, owe any special duty to Rise or its enabling EIR team. Instead, the duty of such objecting officials is to all their constituents, not just Rise who came to town in 2017 to assert disputed Rise Reopening Claims, most of which surface owners living in the impact zones above or around the IMM are objectors. Many local objectors, for example, are the customer-residents of NID, and NID would not be doing its legal duty to such customers if it did not consult with us about, and protect us all from, the many harms and risks that disputed Rise dewatering and mining would cause us, as well as the NID system on which we all depend. Consider, for example, who downstream will evaluate the EIR/DEIR record and trust Rise or its enablers enough to dare drink the allegedly "treated" groundwater from Rise's disputed IMM treatment plant? In any event, as this Petition/Objections and Prior Ind. 254/255 Objections demonstrate in incorporating each other and all the other Comprehensive Objections, there is now a comprehensive record for the benefit of all objectors, the Planning Commission, and the Board. See the above introduction and **FN #1.**

D. Rise Is A Mere Applicant With No Constitutional, Legal, Property, Or Other Right To the Disputed EIR Approval. Also, Rise And Its Enablers Have Massively Failed to Satisfy Their Burdens Of Proof, Not Just As To Compliance with CEQA, But Also Failing To Overcome Meritorious Comprehensive Objections And To Comply With Other Applicable Law. The Planning Commission, Unlike the Disputed EIR/DEIR And County Staff Report Team Members Or Consultants Enabling Rise In Objectionable Ways, Should (And May) Have Recognized The Need Properly To Consider Our Comprehensive Objections And Others. Such Correct Commission Actions Are Not Evidence For Rise's Disputed Claims of "Bias, Etc.", "#1983 Etc. Claims," Or Other Impropriety, But Instead Demonstrate That The Commissioners Were Correctly Doing Their Jobs Consistent With Applicable Law For Competing Objectors Entitled To Such Results.

(i) Rise And Its Enablers Cannot Shift Away Their Burdens of Proof, And Other Introductory Comments.

Even the court decisions cited by Rise assign the burden of proof to such applicant in processing such EIR/DEIR applications for governmental approvals, not to mention the better cases cited by us objectors to rebut the Rise letter claims, such as mentioned here, in other parts of this Exhibit B, and in Exhibit A. See, e.g., *BreakZone,* discussed below, as well as *Russian Hill Improvement Ass'n v. Board of Permit Appeals*, 66 Cal.2d at 38. More importantly, there is no legal right that Rise can claim to compel such discretionary governmental approval of this disputed Project, especially over our meritorious Comprehensive Objections. This is not some government permit that can be claimed by merely satisfying minimum standards like a driver's license. Even if Rise enablers' EIR had fully complied with CEQA and other applicable laws (which objectors have proven that Rise and its enablers have comprehensively failed to do), that does not compel the Planning Commission in its discretion to recommend approval to the Board, which Board itself retains vast discretion to deny such approvals. Of course, even if the Board were incorrectly to approve the EIR, the courts must still overrule any EIR approval for

noncompliance with applicable laws and inappropriate conduct by Rise and its enablers, as demonstrated in our Comprehensive Objections and others. Thus, this is a different situation than in the disputed cases cited by Rise and distinguished here, in other parts of Exhibit B or in Exhibit A, where the Rise cited administrative proceedings were often taking something away from the complaining parties, rather than where the applicant party like Rise is complaining because it was not granted discretionary approvals to which they were not entitled, especially on the merits, as demonstrated by such Comprehensive Objections and others.

As was too often the case with incorrect or misleading information apparently supplied by of for Rise for the disputed EIR/DEIR and other Rise Reopening Claims, the EIR/DEIR team and some County staff uncritically accepted the disputed Rise positions without properly considering our meritorious Comprehensive Objections that counter and defeat Rise, as demonstrated in the Prior Ind. 254/255 Objections (e.g., where such EIR objections rebutted each of the EIR "Responses" and "Master Responses" to each such DEIR objection), other Comprehensive Objections, and others. As explained above and **FN 5,** that included the disputed EIR wrongly ignoring, evading, and mischaracterizing scores of meritorious objections on obviously incorrect pretexts. The EIR/DEIR cannot refuse to consider such meritorious objections in accordance with applicable laws (not just CEQA, but also the law of evidence) allowing our lethal rebuttals, such as based on Rise's SEC filings (e.g., Exhibit G) and other admissions and inconsistencies in quotes from different parts of the DEIR/DEIR and other Rise Reopening Claim documents. Those admissions have been fatal to such EIR applications in our cited court decisions the Rise enablers wrongly have ignored, such as *Richmond v. Chevron* discussed herein. Such objectionable conduct is repeated (and escalated) in Rise's new letter to the County, at a minimum, both (i) causing what the law calls "unclean hands" and worse, and (ii) making everything Rise accuses against the Planning Commissioners far more applicable to Rise and its enablers themselves under any equal standard the Board adjudicator or follow-up court chooses to apply. For example, Rise "screams" about alleged (and disputed) due process, fairness, and ethical objections by citing decisions that are inapplicable, distinguishable, and otherwise contrary to California Supreme Court's "Fairfield" decision and other more applicable, and better reasoned, cases in our meritorious Comprehensive Objections, all ignored by Rise and (at least in public) the County team. See below, the other parts of Exhibit B, and Exhibit A for some illustrations of the battles between Rise letter cases and some of the many such objector cited cases.

(ii) Some Basic CEQA Principles That Defeat Claims By Rise And Its Enablers As to the Roles of the Officials Which Affect The Standards for Their Conduct And Clarify That the Rise Letter Gives False Importance to the Currently Nonbinding EIR/DEIR And Pro-Rise Parts of the 2023 or 2024 County Staff Report Prior To Approval By The Board.

Before analyzing disputed Rise cites, and the more applicable and better cases Rise, its enablers, and (at least in public) the County team have chosen to ignore (see below, the other parts of Exhibit B, and Exhibit A), we note some basic CEQA rules confirmed, for example, by the basic case of *POET. LLC v. State Air Resources Board (*2013), 218 Cal.App.4th 681 ("***POET***"**)(**addressed in various Comprehensive Objections, because it confirms climate change

applications on EIR's that (i) Rise and its enablers on the EIR/DEIR team deny, such as Rise claiming such concerns are too "speculative," and (ii) the 2023 County Staff Report ignores in its thoughtless support of too much of the disputed EIR/DEIR). POET explained why it held (citing *Sundstrom and Kleist* precedents discussed below) that:

> Based on our reading of the case law, the principle that prohibits the delegation of authority to a person or entity that is not a decisionmaking body includes a corollary proposition that CEQA is violated when the authority to approve or disapprove the project is separated from the responsibility to complete the environmental review. [citing *Sundstrom*] This conclusion is based on a fundamental policy of CEQA. For an environmental review document to serve CEQA's basic purpose of informing governmental decision makers about environmental issues [citing Guidelines #15002], that document must be reviewed and considered by the same person or group of persons who make the decision to approve or disapprove the project at issue. In other words, the separation of the approval function from the review and consideration of the environmental assessment is inconsistent with the purpose served by an environmental assessment as it insulates the person or group approving the project "from public awareness and the possible reaction to the individual member's environmental and economic values." [citing *Kleist at 779* below]

The key *POET* cited cases focus on the conduct of "decision-makers," or officials or agencies acting as "quasi-judicial decisionmakers" in "tribunals," which labels Rise incorrectly applies without supporting authority to the Planning Commission, which is not acting in any of those roles, but is instead merely as an advisory body making recommendations to the Board. Following the California Supreme Court's guidance in *Save Tara v. City of West Hollywood* (2008), 45 Cal. 4th 116, 121-22 (a "conditional agreement to sell land for private development, coupled with financial support, public statements, and other actions by its officials committing the city to the development, was, for CEQA purposes approval of the project"), POET begins at 717-19) with the word "approval" which it notes was not defined in CEQA. The court adopts the Guideline definition #15352 stated as follows (emphasis added): "'**Approval'** means the decision by a public agency which **commits the agency** to a **definite course of action** in regard to a project intended to be carried out by any person. The exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances. Legislative action in regard to a project often constitutes approval." Furthermore, Guideline # 15356 defines **"decision making body"** as any person or group of people within a public agency permitted by law to "approve" or disapprove the project at issue, which here is only the Board. Thus, the Planning Commission recommendation to the Board is not an "approval," since neither the EIR/DEIR, nor any County Staff Report, nor does the Planning Commission decision "commit" the County to anything (which power is limited to the Board). Thus, the disputed "EIR/DEIR" and other Rise Reopening Claims, applications for rezoning, variances, permits, and other benefits do not yet have any "approval," such as by the POET standard rejecting alleged existence of an "approval" of the low carbon fuel standards regulations.

To defeat Rise's claims, we cite ***POET*** citing to ***Sundstrom v. County of Mendocino*** (1988), 202 Cal.App.3d 296, 304, 307, **involving a neighbor's suit to prevent a use permit for construction of a "private sewage treatment plant," where the county board of supervisors' approval required a "hydrological study" "subject to review and approval by the county planning commission" and incorporation of any study recommended recommendations into the project's plans. (Emphasis added).** The appellate court reversed the trial court and rejected the permit, explaining that those use permit conditions "improperly delegate[d] the County's legal responsibility to assess environmental impact by directing the applicant himself to conduct the hydrological studies subject to the approval of the planning commission staff." The court **ruled that "The county's board of supervisors could not delegate its responsibility to assess the project's environmental impacts to the staff of the planning commission."** (Emphasis added).

To further defeat Rise's claims, we cite *POET* (at 728-29) pointing to Guideline 15025(b), which states that: The decision-making body of a public agency [here the Board] shall not delegate the following functions: (1) Reviewing and considering a final EIR or approving a negative declaration prior to approving a project, (2) The making of findings required by Sections 15091 and 15093…." Even if the Board tried to delegate these issues in dispute here to the Commission (or, worse, to the staff or even worse than that, to the EIR/DEIR enabling consultants), that would be forbidden by *POET*-cited cases like ***Kleist*** *v. City of Glendale,* which correctly denied the city council's delegation of the EIR review, consideration, and certification to a special city ordinance created board, stating at 56 Cal. App. 3d at 779: "Delegation is inconsistent with the purpose of the review and consideration function since it insulates the members of the council from **public awareness and possible reaction to the individual members environmental and economic values**. Delegation is inconsistent with the purposes of the EIR itself." (Emphasis added.) Likewise, the California Supreme Court was even more emphatic in *Sierra Club v. County of Fresno* (2018), 6 Cal. 5th 502 (EIR for a partial retirement community with air quality impacts not properly addressed) stating (at 512): **"'Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action with which it disagrees.' [citing *Laurel Heights I* at 392] The EIR 'protects not only the environment but also informed self-government.'"** (emphasis added). See also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007), 40 Cal. 4th 412 (**"Vineyard**"), which (like that *Sierra Club* precedent) sets many CEQA standards with which this disputed IMM EIR/DEIR fails to comply and which the staff fails to hold the EIR/DEIR and Rise properly accountable. Every elected official enabling Rise will "be so held accountable," because the voting majority here will be watching and will accept no excuses, evasions, or other failures to do the right things as described in the Comprehensive Objections. See *Fairfield,* confirming the rights of voters to know (and candidates to reveal) the position of candidates on such disputed EIR and permit issues so that they can exercise their constitutional rights wisely that Rise would somehow without any applicable deny objectors as if somehow Rise had some right to proceed undisputed.

In essence, the courts recognize that it is the right of us objecting local voters for "**accountability**" about such "**environmental *and ECONOMIC*" values** (emphasis added) to

replace any Supervisor or other elected officials who would join the Rise enablers in sacrificing the health and welfare, property values, environment, and other interests of our community for such a no "net benefit mine" subject to all the horrors forecast in our Comprehensive Objections and others. Again, another flaw in the Rise arguments where it purports to talk about "democracy" is that none of us thousands of local objectors are bound or limited by whatever the Rise and its enablers may say in the disputed EIR/DEIR, any County Staff Report or County Economic Report, or even any mistaken, bullied approval by the Board sought in the disputed Rise letter. That means objectors cannot only defeat any EIR dewatering and mining approvals by the Board in the courts, but also by exercising our political rights to remove and replace any officials who do not share what **Kleist** called our "environmental and economic values." By us objectors filing hundreds of objections detailing our concerns in thousands of detailed pages, it should be obvious that there is no higher priority for us locals than defeating this disputed EIR/DEIR dewatering mining menace, and nothing in Rise's disputed and distinguishable *Hardesty2* (addressing business competitors influencing results) can be read as denying objectors exercise of our competing constitutional, legal, and property rights.

(iii) Contrasting Some of the Key Cases Ignored by Rise (e.g., *Fairfield, BreakZone*, etc.) With Inapposite Or Worse Rise Cites, As A Prelude To the General Principles Discussed In The Next Subsection As Confirming Rise's Errors And Worse Noncompliance.

Compare and contrast, for example, when Rise relies on its disputed and distinguishable interpretation of the *"Cohan"* decision and others (see *Hardesty2* and Exhibit A) its inapplicable arguments are irreconcilable with the controlling California Supreme Court case of ***Fairfield v. Superior Court of Solano County*** (1975), 14 Cal.3d 768 **("*Fairfield*")** discussed in the next section, and in the much more relevant decision expressly distinguishing and rejecting the *Cohan* and Rise reasoning in our cited ***BreakZone Billiards v. City of Torrance*** (2000), 81 Cal.App.4th 1205 ["***BreakZone***"**)** (where the council rejected on a de novo basis its planning commission's recommended approval of a liquor license grant to an existing business under some accused "bias" circumstances superficially similar in some ways to what Rise incorrectly alleges in this disputed case. If any Rise-cited cases survive *Fairfield*, those Rise cases were actually determined by distinguishing facts that are not present here, a point illustrated by the long list of allegations that were rejected by the *BreakZone* court as NOT disqualifying bias or unfairness.) As noted in the following discussions, certain facts matter, and Rise cannot prevail even on the disputed facts it incorrectly alleged.

In *BreakZone*, in a de novo hearing after the planning commission voted to support the project, the decisionmaker city council rejected the license application (like Rise's EIR here) as having no "property rights" to such a discretionary permit approval (e.g., adding a liquor license to an existing business is not like a driver's license anyone can have who passes the test), i.e., such permits are not a right that can be claimed merely by compliance with the applicable law (although we objectors dispute any compliance by Rise or its disputed EIR/DEIR as demonstrated in the Comprehensive Objections and others). While the local law in *BreakZone* called this shift from the planning commission to the council as an "appeal," the court followed a long line of cited cases proving that term was misleading, because there was just (as here) a

preliminary, planning commission screening reaction/recommendation to set up a de novo review by the only real decisionmaker: the city council. Thus, for example, that applicant lost its complaint about the notice of "appeal" (which could not be a real appeal, because the planning commission made no CEQA defined "approval" decision as a "decision making body," as was also the case here). Also, that planning commission consideration did not limit, narrow, or otherwise affect the issues to be considered by the city council, and, therefore, the *BreakZone* court correctly rejected that complaint ruling (at 1221). Obviously, since the council hearing was de novo, no issues were lost or resolved by the planning commission vote, and, therefore, the entire record and all its issues were before the council as just another "opinion" for consideration like any objection. Moreover, the city council did not have to enumerate any issues for decision as the applicant demanded, since in that de novo city council hearing "all issues are before the reviewing body, in this case the city council."

Applying that to this IMM dispute case means, for example, that the Board of **Supervisors must consider de novo the entire record,** which means (just like any court that deals with challenges after this Board's de novo decision) every single issue raised by hundreds of objectors filing thousands of pages of Comprehensive Objections (to match against the more than 10,000 plus pages of the EIR, DEIR and their Appendices and Exhibits plus other Rise Reopening Claims in the record), depending on how you count them. In the case of the single most comprehensive, individual IMM objection (almost 1000 pages in the four Prior Ind. 254/255 Objections, plus their incorporation of more than three dozen selected other Comprehensive Objections and incorporated evidence on many cited websites), something in every DEIR and EIR section is disputed and challenged in some material respects by objectors, who collectively (and in some cases individually) critically read every EIR/DEIR and other disputed Rise record documents sentence-by-sentence for noncompliance, errors, omissions, and rebuttal opportunities, noting also in a similar process objections to each County Staff Report and County Economic Report that the EIR or Rise made relevant for such rebuttals and impeachment under the law of evidence**.** *See Exhibits E and F.* **FN 8.**

Since the EIR was required to properly respond to each DEIR objection as required by CEQA and other laws (including the laws of evidence) and the disputed EIR failed to do so properly, the Prior Ind. 254/255 Objections and other Comprehensive Objections must win rejection of the EIR by that default, as well as on the merits of all those objection issues. (As demonstrated in cases cited in such objections to such EIR attempts to evade, ignore, disregard, or deficiently address objections on bogus grounds [e.g., the disputed EIR falsely claiming objections as too "speculative," even when using Rise or EIR/DEIR admissions for impeachment or rebuttal pursuant to, for example, Evidence Code #'s 623, 412, 413, 1220, 1230, or 1235.], as demonstrated, for example, in the Prior Ind. 254/255 Objection's detailed rebuttals to each of the EIR's 101 purported "Responses" (and Master Responses) to the [DEIR] Objection that the EIR called Individual Comment Letter Ind. # 254 or 255.) It is important for the Board to consider that, while some issues on the inevitable appeal from the Board's decision may involve disputes about whether there was "substantial evidence" about a particular, decided issue, hundreds of our objections, especially those from objecting lawyers raise "questions of law" that must be addressed first de novo by the Board and then de novo by the courts. Also, even when confronting factual disputes, the objection must often prevail by reason of the disputed EIR/DEIR so evading, ignoring, or otherwise deficient responding to such factual disputes; i.e.,

such a noncompliant EIR purported "Response" to the DEIR objections (or likewise also EIR objections) must suffer the rejection fate of all failures by the disputed EIR/DEIR to provide "good faith reasoned analysis" (e.g. *Vineyard, Banning, and Costa Mesa*) and "common sense" (*Gray*) to each of the thousands of objection items at issue.) Any one of the objectors' "arrows" is sufficient to slay this EIR/DEIR menace, and, since there are hundreds of such objectors shooting full "quivers" of "arrows," the disputed EIR/DEIR (and each disputed part of each County Staff Report) cannot possibly hope to evade them all in this process.

If the Board has any doubts about, or wishes confirmation of, those or other contentions in this letter, our proof is in the Comprehensive Objections and others. Because of the massive number and contents of such meritorious objections, we suggest as a starting point that the Board begin by examining the parts of the most current Comprehensive Objections to the disputed EIR, where the EIR purports to present such a "Response" to each of its arbitrary cut ups/divisions of each identified DEIR objection (like, for example, the EIR's deficient and worse "Response Ind. #254-1 [one of the 101 example EIR Response rebuttals in the Prior Ind. 254/255 {EIR] Objection mentioned above], where the EIR obscures its purported and wholly noncompliant reply to that detailed [DEIR] Prior Ind. 254/255 Objection numbered Ind. 254 on the subject of the toxic hexavalent chromium [the "Erin Brockovich" case study, where they still cannot remediate that groundwater toxin that killed Hinkley, CA, as described in www.hinkleygroundwater.com]. As explained in the disputed DEIR that almost entirely ignored this hexavalent chromium risk, ignoring it entirely in the "Hazards and Hazardous Substances" section of the DEIR, according to the DEIR/EIR that CR6 carcinogen would enter the underground mine in the cement paste Rise plans [with improperly deferred regulatory approval expectation fantasies] to use to create braces/shoring columns in the 2585-acre underground mine, so as to reduce Rise's cost of removing the mine waste [rebranded as "engineered fill"] creating a water pollution risk for Wolf Creek from the 24/7/365 dewatering for 80 years that Rise partially admits in dismissal of its "significance," not where required and where that risk might be noticed, but instead in disintegrated EIR Appendices Q, R, and O at the very end of the EIR, where few exhausted readers are likely to notice them.)

What those objections illustrate is that, besides the general pattern and practice of the disputed EIR being generally wrong, deficient, or worse on the many disputed issues, such examples illustrate how rare it is that the disputed EIR satisfied either such "common sense" CEQA test of *Gray* or the "good faith reasoned analysis" CEQA test in cases like *Vineyard, Banning, and Costa Mesa.* As often demonstrated in such objections, many disputed EIR claims fail all such CEQA tests, defeated not just from a lack of "reasoned analysis," but also from a lack of "good faith" and of "common sense" (see, e.g., Prior Ind. 254/255 Objections' such repeated disputes of the EIR/DEIR's grossly noncompliant discussion of the hexavalent chromium water and air pollution, where under the circumstances "good faith" can be challenged and there is no "reasoned analysis" or "common sense" attempting to reassure critics about an obviously ignored problems confirmed by ample evidence to which objections cited in the ERA, CalEPA, and other websites, but also creating credibility doubts about the EIR/DEIR's repeated "hide the ball" tactics. Also consider the EIR/DEIR's lack of "common sense," for example, in the disputed EIR bragging about how it is dewatering our clean groundwater owned by us overlying surface owner-objectors above and around the 2585-acre underground mine by flushing it down the

Wolf Creek to NID customers elsewhere downstream, who Rise foolishly expects to drink it in reliance upon Rise claims of sufficient future "treatment.")

As a result of the *BreakZone* analysis, that rejected applicant had (like Rise) no claim for a denial of "procedural due process" (since there was no "property right" to be protected, citing cases like *Russian Hill Improvement Ass'n v. Board of Permit Appeals*, 66 Cal.2d at 38, at 1224:

> BreakZone had no property right to a CUP….A CUP is discretionary by definition….An applicant is not entitled to a building permit merely because it complies with the building code….[citing *Clark v. City of Hermosa Beach* discussed below in detail, the court added that, therefore:] Because there is no due process right, our analysis is limited to whether BreakZone was afforded a fair hearing….For reasons discussed … notice given was sufficient.

Also, after citing *Woodland Hills,* the BreakZone court even questioned whether any common law conflict of interest laws could even be claimed, as Rise apparently is doing (apparently without realizing it or choosing "to swing wildly for the fences," a baseball analogy about players who strike out by gambling everything in hopes for the glory of a home run.) When government political activity is restrained as attempted in *BreakZone* (and by Rise here), such restraints must be "strictly construed" and justified by a "compelling state interest" that the court ruled did not exist under the circumstances, such as Rise alleges here. As that *BreakZone* court also explained, creating conflict of interest rules is a "legislative function," and not for the courts to make up on their own. (While Rise cites to County generalized training materials and ethics rules [see Exhibit A], they have no demonstrated application in this case, even the one alleged in Rise's fantasy letter.) That *BreakZone* court also addressed and rejected a longer, itemized list of more serious claims against those officials than the ones Rise imagined in its disputed letter.

***BreakZone* makes many important distinctions that *specifically reject* the application of Rise cited cases and distinguish them as inapplicable to that case (far more extreme than ours), thereby likewise distinguishing our case from Rise's disputed cites. See *Clark* discussed below as Rise's favorite case, and Exhibit A.** That *BreakZone* precedent is particularly important in its rejection of the Rise arguments, for example, about: (i) alleged prejudgment of adjudicative facts (at 1235-41), (ii) alleged "new" matters improperly raised at the hearing before the city council with too little time to address them at the "last minute" (at 1242-43), and (iii) alleged cumulative appearance of bias at the council hearing allegedly violating substantive due process rights (at 1243-44). **Consider, for example, as to such alleged "new" matters that there can be nothing "new" at issue not only because of the comprehensive scope of the Comprehensive Objections, but also because the EIR (incorrectly) claims that it added nothing important to what was presented in the DEIR, just mere clarifications and embellishments that the EIR claimed do not require recirculation. The EIR cannot have it both ways, making our already broad Comprehensive Objections to the DEIR provide adequate notice of objections long in advance of the EIR filing.**

Since the EIR claims there is nothing of importance "new" from the DEIR, our additional objections to the EIR cannot be prejudicially "new," even if those timely objections

came shortly before the deadline, which in any event is not evidence (as Rise falsely contends) of bias, conspiracy, ethical gamesmanship, or other meritless claims by Rise, especially since many of us objectors were understandably waiting for each County Staff Report to object to any support of the meritless EIR/DEIR or other Rise Reopening Claims. (As we expected, except for part of the strange staff conclusion, objectors had even more reasons than the Rise to object to much of each County Staff Report, since each Report ignored most of our meritorious objections and too often incorrectly "rubber stamped" most of the meritless claims in the EIR that we have fully disputed.)

While there is no such cause of action or objection in the applicable law as a "conspiracy" to file shortly before the legal deadline (as to our objection now to this late-filed Rise extra briefing), objectors are more prejudiced in many ways than Rise by such mostly disputed 2023 County Staff Report, not by just by the staff's weak and deficient conclusions, but also by all the things they refused to report about or from the meritorious objections so as to favor Rise and the disputed EIR/DEIR full of massive errors, omissions, and noncompliance with CEQA and other applicable law. Indeed, the *BreakZone* court found (like any court later evaluating Rise's meritless claims here will find) "little that was new" and "more of the same." **FN 9.** More importantly, the *BreakZone* court reminded the complaining applicant that the public also had the right to comment at that de novo hearing, and no one could properly ignore that public input even if it were "new" and presented at the hearing. If any citizen could properly do what Commissioner McAteer could do, so can the Commissioner as an investigating truth seeker who was NOT a CEQA or other "tribunal" or "decisionmaker," as falsely claimed by Rise. Likewise, the *BreakZone* court exposed and disposed of the cumulative, appearance of bias/substantive "due process" claims for the meritless complaint it obvious was.

That brings us to the *BreakZone* analysis of the "prejudgment conduct" dispute, which also defeats Rise's disputed claims and overcomes Rise's inapposite and worse-cited cases. See Exhibit A and other parts of this Exhibit B. That court's primary focus was characterized as the commonly debated difference between court proceedings versus administrative proceedings that necessarily include both investigative and adjudicatory functions by the administrators (but subject to our earlier discussion about our IMM Planning Commission being neither a decisionmaker/adjudicator/tribunal nor someone making quasi-judicial decisions.) What Rise never explains is any authority for its so-called logic that seems to demand that the Planning Commissioners simply listen to what is said at the hearing and not read the thousands of pages of meritorious objections, but somehow only consider and follow the disputed EIR/DEIR and mostly disputed County Staff Report, like Rise's enablers apparently did. **That Rise claim not only contradicts CEQA and applicable law, but Rise also makes one wonder what Rise imagines to be the purpose of allowing the public to file our objections as CEQA and other applicable law invite us to do. Why would CEQA allow our such objections, if the Planning Commission is unable to consider them fully de novo without having to suffer meritless charges of wrongdoing like those alleged in the baseless Rise letter. Rise "shouts" about "fair hearings" and "due process," but competing objectors with at least equal (and often superior) standing have no less right to "fair hearings" and "due process" IN REVERSE, especially since, as discussed above, we also have "property rights" at issue as well as CEQA concerns as discussed above and, for example, in *City of Barstow, Pasadena*, *Keystone, Marin Muni Water, Varjabedian, and Gray.* In any event, and contrary to Rise's attempt to rely on *Witbrow v.***

***Lakin* (Rise's cited, but irrelevant, medical misconduct license enforcement case distinguished in Exhibit A), BreakZone rebutted Rise's theory (often quoting *Witbrow*):**

> [T]he crucial issue for the [*Witbrow*] court [in that investigative versus adjudicatory function conflict claim] was as follows: "The contention that [such] … combination necessarily creates an unconstitutional risk of bias in administrative adjudication … must overcome a presumption of honesty by those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human ___ investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *[Witbrow* at 47]
>
> … "The mere exposure to evidence presented in non-adversary investigative procedures is insufficient in itself to impugn the fairness of the board members at a later adversary hearing." (*Witbrow* at 55)
>
> *Witbrow* stands for the proposition that advance knowledge of adjudicative facts that are in dispute, as well as participation in the charging function do not disqualify the members of the adjudicatory body from adjudicating a dispute; nor does the combination of such functions disqualify them from (1) determining that further investigation is warranted, (2) issuing the order to appear, and (3) making the ultimate decision after hearing on the merits. The teaching of *Witbrow* is that there must be more, a commitment to a result (albeit, perhaps, even a tentative commitment), before the process will be found violative of due process."
>
> *Witbrow* focuses on the applicable legal inquiry: whether (or the probability that) a participant is the adjudicatory process has an actual bias toward a party.
>
> To prevail on a claim of bias violating fair hearing requirements, *BreakZone* must establish "an unacceptable probability of actual bias on the part of those who have actual decisionmaking power over their claims." [cite] A mere suggestion of bias is not sufficient to overcome the presumption of integrity and honesty. [cites].
>
> The rule under California law is similar….
>
> ***

We could (but don't) continue these long quotes because, for the same obvious reasons Rise didn't cite the truly relevant California cases discussed in *BreakZone* (or *BreakZone* itself), they don't support Rise's meritless claims. The reason for quoting *Witbrow* here is to shame Rise that it has to find such an irrelevant medical misconduct licensing case to cite, and, even then, that case doesn't help Rise advance its disputed theory when one closely examines that case. In such "fair hearing" cases, even those with due process properly included (unlike for Rise here), what matters are both the details and the context. It has long been irrefutable that conflicts of interest and other Rise complaints cannot be applied to elected officials like our system does to judges. E.g., *Todd v. City of Visalia* (1967), 254 Cal. App. 2d 679 (councilmember owning property in area proposed for a special district). But even within different types of administrative proceedings, there must be substantial differences as one considers the context: such as Rise's wrongly citing a two-party medical licensing case to rule what happens in this massive, multiparty EIR/use permit dispute, where hundreds of objections containing or

incorporating by reference thousands of pages of data provide an ample foundation for the Planning Commission to reject the disputed EIR/DEIR on the merits, although as *Fairfield* holds the Commissioners do not have to explain or justify their reasoning to Rise.

(iv) Because Our Planning Commission's Function Is Merely As An Investigator/Advisor Making Recommendations To the Board, Rise's Disputed Cases Are Inapposite Or Worse Because Such Cases Apply Only To "Tribunal," Quasi-Judicial Decisionmakers Like The Board, Which Will Be Making De Novo Decisions From the WHOLE RECORD That Must Include Full And Equal Consideration of All Our Comprehensive Objections And Others.

To summarize and explain in another way with more general principles what was just illustrated above in ***BreakZone*** and in our quotes and analysis of the CEQA Guidelines, none of Rise's cases are applicable in this situation. **See Exhibit A and other parts of this Exhibit B. The Rise PC Letter complaint is against the Planning Commission, which Rise incorrectly claims (without any authority) is somehow here a "tribunal" and a "quasi-judicial decisionmaker" (or what the CEQA Guidelines quoted above, but never cited by Rise, call the "decision making body" granting "approval"), which is a mischaracterization of the Commission's mere advisory/investigatory role in this case.** Rise misstates the Commissions' roles in order incorrectly to assert the stronger limits applied in Rise's cited, but inapplicable and disputed cases, where those other planning commissions in other legal contexts were acting as such "tribunals" or "decisionmakers." (Each County or other local agency decides for itself who decides what, so the fair hearing and bias laws vary for each agency, which for the purposes of this "bias, etc." dispute is the Board, not the Commission.] For example, as *BreakZone* and Exhibit A demonstrate, **none of the Rise cited cases are comparable to this IMM dispute, especially because none of them involved any such comparable local "decisionmakers," "tribunal," or objections to Rise from what is in the "whole record" here, such as our Comprehensive Objections that Rise ignores, disregards, and evades.**

Thus, Rise tries to rely incorrectly on simpler, distinguishable, and disputed cases (i.e., **irrelevant cases**) **where the sole focus of the dispute** was between the disputed conduct of such a "**decisionmaker"** functioning as a **"tribunal"** versus the applicant, **with no comparable Comprehensive Objections in this multi-party dispute at issue as here**. While the *BreakZone* planning commission process was even closer to a "tribunal" of "decisionmakers" than is the IMM case with our Planning Commission merely providing an advisory recommendation after investigation, ***BreakZone* is ample authority to defeat Rise's claims**. **FN 10.** Again, in this case, all that the Planning Commission did was to vote to recommend disapproval (as was correct on the merits demonstrated in Comprehensive Objections and others) to the real, de novo, and only decisionmakers at the Board of Supervisors. Therefore, that advisory Planning Commission opinion has no such legal force, although it is more proper, helpful, and correct in rejecting the disputed 2023 County Staff Report and disputed EIR/DEIR "opinions" on which Rise attempts to rely, as if they were "facts" and had some legal right, power, or effect that they lack because they lack the required substantiation, "common sense" (*Gray*), and "good faith reasoned analysis" (*Vineyards, Banning,* etc.)

In any case, the EIR/DEIR team and other Rise enablers (with the burden of proof) have no greater right, credentials, or wisdom than any objectors to prevail in these disputes, and objectors include competent and impressive witnesses with (in many cases) equal or better credentials and experience than the disputed EIR/DEIR sources, especially when they so often (a) lack any sufficient onsite investigation (which is not easy to do in this closed, discontinued, dormant, flooded, and abandoned mine since 1956, based on disputed claims from "historical records" whose authenticity, accuracy, completeness, meaning, effects, and other evidentiary admissibility has not been proven—just alleged and assumed—and is disputed), or (b) rely on inadmissible evidence, unsubstantiated assumptions, and inapplicable theories from Rise and its enablers and their chosen consultants. Moreover, the Comprehensive Objections and others make such a far stronger case than the EIR/DEIR and 2023 County Staff Report. Indeed, the Rise "enablers" (e.g., the disputed EIR authors of its "Responses" and "Master Responses" to the DEIR Comprehensive Objections, such as those rebutted item-by-item in the Prior Ind 254/255 Objections as nonresponsive, evasive [e.g., incorrectly alleging the detailed objections, often quoting inconsistent or contradictory Rise admissions, and otherwise incorrectly dismissive as "speculative," "unclear," or some other bogus excuse], and otherwise legally deficient and noncompliant) often did not even try to challenge on Comprehensive Objections on the merits. That lethal comparison should be indisputable in this case, since Comprehensive Objections provided the "good faith reasoned analysis" with "common sense" lacking in the disputed competing EIR/DEIR and 2023 County Staff Report that instead just incorrectly and non-compliantly ignored, evaded, or mischaracterized our such objections based on such meritless excuses.

(v) Examples Of the Flaws In Rise And Its Enablers (And Mistaken County Staff) Using Invalid And Worse Excuses To Evade Meritorious Comprehensive Objections To the Disputed EIR/DEIR And Other Rise Reopening Claims.

In evaluating that debate, please compare item-by-item (as did such Prior Ind 254/255 Objections): (a) the exact claim in dispute from the disputed EIR/DEIR or 2023 County Staff Report (too often just uncritically repeating the enablers' disputed errors), matched against (b) the specific Comprehensive Objection. What that reveals is that what such EIR?DEIR and other enablers claim as "too speculative," "too unsubstantiated," or "too nonspecific" or otherwise unsatisfactory (and therefore excusing such Rise enablers from having to respond in the EIR to such DEIR objections) was objecting as best as possible to something in the DEIR or 2023 County Staff Report that suffered from much worse such defects. Literally, for example, the Board would find in that comparison situations where the disputed, Rise supporting statement itself is so "speculative," "unsubstantiated," "nonspecific," or "unsatisfactory" that it is often not feasible to do better disputing it. Consider, for example, a situation where the DEIR relies on "speculation" deducing from the general data (not actual site investigation) that the underground fractured rock conditions "expected" at such IMM dewatering system should act like a dam in preventing that lower-level underground mine from depleting the water from uphill neighbors' parcels and wells. One of such Comprehensive Objections disputed that unsubstantiated speculation in turn by the "common sense" analogy to filling a can full of fractured rock equivalents, adding comparable water, punching a hole in the bottom in a

manner simulating the disputed DEIR/DEIR dewatering system, and watching the water table drop as water flows out the hole in the bottom. That objection was dismissed as too "speculative," but it is no more "speculative" than the DEIR assumption or theory of an imperviable underground dam preventing the underground flow downhill of water sucked away on the Rise side of the dam by a dewatering system operating 24/7/365 for 80 years. Indeed, even if there were such a unreliably hypothesized, underground, imperviable dam today sufficient to resist such objectors' groundwater depletion, that "fractured rock" condition is not proven (just falsely and unwisely assumed without the required "common sense" or "good faith reasoned analysis") to be immune (remember this is occurring in an admitted fault zone, and it is called "fractured rock" for good reason) to the underground forces that could easily create a leak in that dam. Does the Board expect objectors to bet our homes against such implausible, unsubstantiated, and worse Rise enabler speculation simply accepted without apparent verification by the 2023 County Staff Report (both as to the current, insufficiently diagnosed, situation and as to the next 80 years of 24/7/365 dewatering)? Remember that Rise's own SEC filing admissions (e.g., the **"2023 10K"** analyzed in Exhibit G to this Petition/Objections and earlier Rise 10K's analyzed in the Prior Ind. 254/255 Objections) prove that Rise's mitigation measures are illusory, because Rise lacks the financial resources to accomplish even any such existing well mitigation required by the **Gray v. County of Madera standard**, much less the liability for "taking" (e.g., *Varjabedian*) the many overlying surface parcel owners' groundwater (e.g., lowering the whole water table needed to preserve our forests from becoming dead "kindling" for the next forest fire) in violation of *City of Barstow, Pasadena*, and other authorities and proof in Exhibit D hereto and Prior Ind. 254/255 Objections. See also, for example, other such Comprehensive Objections to the disputed EIR "Responses" and "Master Responses," such as Id. proving such wrongs with dozens of specific examples. See **FN's 1 and 5**.

Rise cannot make a credible legal argument that the Planning Commission would ever be obligated by law under these circumstances to ignore such Comprehensive Objections and instead defer as Rise demands to such disputed Rise enablers, mistaken staff, or intolerable EIR/DEIR, who incorrectly too often so relied on Rise's or enablers' errors, omissions, and worse, especially over our massive, meritorious Comprehensive Objections. Whatever disputed complaints Rise makes in its disputed letter about the Planning Commission (even if they were true, which we dispute) are minor "harmless errors" compared to those of Rise and its enablers addressed herein and in our objections about what the EIR team submitted, and what the staff incorrectly allowed in their toleration of those massive EIR errors, omissions, and noncompliance in the 2023 County Staff Report, as established by such meritorious objections.

(vi) This Unique IMM UNDERGROUND Mine Menace Cannot Possibly Claim A Right To Be Treated By the County Like Any Other Ordinary Project, Because This Disputed EIR/DEIR Mining Is More Dangerous, More Objectionable, And Worse Documented And Unevaluated Than Any Other Project In Our Modern History, Especially Considering the Ignored, Disregarded, And Evaded Impacts On Objecting Overlying Surface Owners Above And Around the Underground IMM (e.g., Objectors Who Do Not Exist In the Surface Mining/SMARA Cases On Which Rise, Its Enablers, And (At Least In Public) The County Team Exclusively Relies.

When Rise or its enablers wrongly complain or evade about rejections of the "alternative realities" on which they incorrectly insist, ignoring, disregarding, and evading the contrary "realities" proven in Comprehensive Objections, Rise incorrectly also claims that Rise or its project has been treated worse by the County team than other projects incorrectly cited as comparable. On the other hand, objectors complain to the contrary that this uniquely harmful, massive EIR/DEIR mining project had been given too many improper advantages by such Rise enablers and too often uncritical County staff in the disputed EIR/DEIR and 2023 County Staff Report. Furthermore, in terms of scope and intensity of the IMM project, when has the County ever (in modern times relevant here) ever approved, for example, either (a) a toxic clean-up site like Centennial being integrated into a reopened mine (before [also disputed] Alternative 2 was later elected, but still relevant rebuttal evidence for why Rise's disputed accusations are wrong), or (b) 24/7/365 disputed mining on this massive scale for at least 80 years with massive dewatering constantly flushing away into a stream dedicated to human use in a public water system (here NID's Wolf Creek connected system)? When has the County ever allowed an underground miner to so deplete the groundwater owned in first priority (e.g., *City of Barstow, Pasadena*, *Keystone, Varjabedian*, *Gray v. County of Madera*, and Exhibit D) by each objecting overlying surface parcel owner? Rise does not and cannot cite any other County approved project in modern history in which our community was asked to suffer such Comprehensive Objections exposed 24/7/365 environmental and other abuses for at least 80 years and risks for even longer (since the disputed and inadequate Rise remediation plans are non-compliant and illusory, even if Rise could afford them or adequate financial assurances (see Exhibit G analyzing Rise SEC filings that *City of Richmond* confirms as a relevant basis for rejecting EIRs). What the courts would require (see, e.g., Exhibit D and *Gray v. County of Madera*) appears to be unaffordable given Rise's admitted inadequate financial resources reported in its SEC filings (Exhibit G), especially to accomplish any of Rise's material mitigations or safety work, especially those relating to wells and groundwater (Exhibit D). Rise also admits (even more candidly and broadly in its SEC filings-See Exhibit G) that Rise has done no real (i.e., physical inspection) investigation, analysis, or evaluation of many underground (or underwater) issues of concern in objections, asserting disputed excuses that the Board should not accept (and that the courts will not ever accept) for evading many such risks, because they are mysteries about which Rise incorrectly claims it can evade because Rise does not have to "speculate" (even though most of the disputed EIR/DEIR and Rise Reopening Claims are based on Rise and enabler speculation and worse). Disputed EIR/DEIR enablers cannot require the Board or objectors to tolerate such errors, omissions, and worse in the disputed EIR/DEIR and 2023 County Staff Report). Why not

address and debate these Comprehensive Objections on the merits? The obvious and unacceptable answer is because Rise and its enablers choose to evade "inconvenient truths" revealed in the Comprehensive Objections and others for which Rise and its enablers have no purported answers that even they would dare to allege.

In effect, by not evaluating risks or realities, Rise is seeking improperly to shift the burdens of proof and the risk of the unknown or uncertain mine conditions and menaces (especially those underground) to us impacted, overlying surface owners and neighbors, when the whole point of CEQA (and even Rise's own cited cases like *Hansen*) is to place the burden of proof on Rise and the EIR/DEIR team and enablers, as well as the County staff when it incorrectly supports them. Consider the above rebuttals of Rise, the disputed EIR/DEIR, and the mostly disputed 2023 County Staff Report each incorrectly claiming to have escaped somehow their burdens of proof, such as by claiming too many objections can be evaded as too "speculative" or otherwise unsatisfactory and that they cannot be required to speculate or respond to objectors' alleged speculations or otherwise unsatisfactory objections. In effect, Rise and its enablers are saying the IMM mining conditions are too uncertain or unknowable to have to be addressed, thereby in effect transferring the burdens of proof from Rise and its enablers to us impacted local objectors who will suffer from those Rise gambles.

Such disputed Rise and enabler tactics are especially intolerable because Rise and its enablers improperly refuse to consider our meritorious Comprehensive Objections as allegedly "speculative," "unsubstantiated," or otherwise deficient objection counters (under Rise's mistaken view of the applicable law and facts improperly adopted by its enablers), when our such objections are rebutting much worse speculations, unsubstantiated claims and deficient data from Rise and its enablers, as described above. In other words, if Rise and its enablers cannot prove everything in the disputed EIR/DEIR and other Rise Reopening Claims is safe, proper, and compliant, then such disputed EIR/DEIR and other Rise applications must fail, whether or not objections are alleged to be too speculative about the unknown, uncertain, or mysterious conditions in the IMM that Rise enablers would allow to be reconstructed and then doubled in size (e.g., adding 76 miles of underground tunnels to the existing 72 miles of tunnels) into even more unknown and uncertain conditions. (Hint for the Board: this Rise and enabler nonsense is why the burden of proof is imposed by law on EIR applicants, so that the risk of the uncertainties, mysteries, and unknowns only falls on the speculating miner and not on its objecting victims, especially on surface owners above and around the 2585 acre underground mine.)

For example, the EIR/DEIR, and such 2023 report each improperly disregarded, evaded, or otherwise inappropriately reacted to our many Comprehensive Objections and other filed objections to Rise's incorrect, misleading, and worse claims and deficient, misleading, or noncompliant data. Worse, the disputed EIR/DEIR incorrectly claim bogus excuses for why that they should not be required properly to investigate or evaluate with a "good faith reasoned analysis" and "common sense" the actual conditions of, and to respond compliantly to objections about, the IMM. Some ignored or evaded truths are obvious (*what Gray v. County of Madera* called "common sense"), beginning with such admitted, irrefutable, or undisputed facts that this underground mine has been closed, dormant, discontinued, abandoned, and flooded since 1956, and never properly investigated or evaluated as would be required to make the kind

of decisions that could be the difference between (i) merely intolerable burdens on our community for the imagined profit of nonresident speculators, and (ii) the kinds of devastating menaces predicted or proven in the Comprehensive Objections. (There is no tolerable possibility from the perspective of objectors, since underground mining is inherently incompatible with tolerable life and property values on the overlying surface, as such situations across the country have demonstrated throughout history, as demonstrated in this and other Comprehensive Objections.) Reopening that underground IMM now could expose our community to massive risks, dangers, and uncertainties that the disputed EIR/DEIR and (in most ways) the 2023 County Staff Report have **not satisfactorily proven** to be either nonexistent or full compliantly mitigated, especially as to the objecting overlying surface owners above and around the 2585-acre underground IMM.

What incomplete documentation and data is revealed by Rise or its enablers from before that 1956 closing, on which selected fragments they depend because they have done minimal, if any, (and wholly inadequate and disputed) such investigation, good faith reasoned analysis with common sense, and compliant evaluation, is, at best: (i) incomplete and unreliable, (ii) from a generally unregulated (i.e., lawless) time for miners before modern environmental science and laws, and (iii) not sufficient to predict the current condition of either the old underground mine or the new, expanded underground mine. Moreover, one cannot ever compare such a new project, even a new underground mine, with reopening such a huge, flooded underground mine beneath a semi-rural suburb that has been closed, flooded, dormant, discontinued, abandoned, and (in the ways that matter most [i.e., for safety and impact on locals, as distinct from all the Rise and predecessor remote studies or occasional drilling that were primarily exploring for gold data], unexplored and unevaluated) since 1956. Moreover, the key legal comparison is not between (A) what some surface miner in a different kind or place and situation managed "to get away with," but (B) to the comparative impact and dangers to the surrounding local properties and community, especially those above and around the 2585-acre underground IMM that still has not been so properly assessed with modern techniques or science or fully subjected to modern regulatory and other standards and documentation (not in some unreliable and deferred future process, but now at the start before the harm is done [i.e., considering, for example, that any conditional approval of the IMM, even subject to such contrary to applicable law future permitting processes] would destroy local property values and our market as long as that threat remained possible? Why? Because in this actual reality, as distinct from the "alternate reality" on which Rise and its enablers insist we must live or abandon our value trashed properties and flee, no rational person is going to pay the same price for a home above such a possibly operating underground mine as if it were closed, discontinued, flooded, dormant, and abandoned since at least 1956.

Rise and its enablers and gullible staff may think to try to force us locals to accept all these risks County approval would shift to us surface locals, but who is going to pay for the pleasure of suffering such risks if they are not forced to do so? Consider this analogy. Assume that a speculator company like Rise came to Richmond and insisted on constructing one of those new-style smaller nuclear power plants, arguing that it could not refuse because all the other local non-nuclear power plants had been allowed to operate. (That analogy is to the differences in the magnitude of impacts on local potential victims either "when something goes wrong" or in the stigma on property values when buyers consider whether or not to believe the

speculator-developer's press releases or consider the better data from all the objectors and the history of what has gone wrong in such situations elsewhere.) Those are not comparative situations in any legal or practical sense. No one will pay the previous current market price for the risk of living next to even a "new and improved" nuclear power plant, regardless of what some mistaken EIR may claim, and, likewise, no one will the pre-Rise market price for the risk of living above or around the 2585-acre underground IMM regardless of the disputed EIR/DEIR, staff reports, and other disputed data contradicted by the meritorious Comprehensive Objections. Even those at a distance will suffer from this project. Ask yourself, who is going to drink the Rise "treated" groundwater flushed away down Wolf Creek just because Rise and some mistakenly approved EIR/DEIR claims it is "safe?"

Worse, Rise even admits to various risks, harms, and problems in its SEC filings (e.g., Exhibit G) that are ignored in the disputed EIR/DEIR and County Staff Report, mistakenly ignoring how the court in *City of Richmond* correctly rejected the Chevron EIR of inconsistent and contradictory statements in the Chevron SEC filings. That EIR/DEIR team and some County staff enablers still haven't corrected their refusal to consider those SEC and other quoted Rise admissions inconsistent with and rebutting the disputed EIR/DEIR, still ignoring precedents like *Richmond v. Chevron*. For example, as demonstrated in exacting detail in Comprehensive Objections, some County staff and EIR/DEIR team have improperly allowed Rise to evade many meritorious objections by incorrectly ruling them somehow "out of bounds" for this CEQA process, despite objectors' such cited precedents demonstrating that Rise's SEC admissions are proper rebuttal evidence and irreconcilable with its disputed EIR claims (like objectors used Chevron SEC filing admissions to defeat the Richmond EIR in ***Communities for a Better Environment v. City of Richmond (*2010), 184 Cal. App. 4th 70, 82-90 [which is called "City of Richmond" or "*Richmond v. Chevron" herein and in other objections]***).

Similarly, such Rise and its enablers and disputed EIR/DEIR and other Rise Reopening Claims and some staff even ignored without relevant or apt comment the comparable defeated EIR mining case of ***Gray v. County of Madera*** applying its standard in rejecting a comparable groundwater/well depletion mitigation EIR proposal and other similar flaws that "defied common sense," because such proposals were obviously insufficient, deficient, and noncompliant in preserving the groundwater and well rights of the impacted neighbors. See also Exhibit D and the Prior Ind 254/255 Objections to the EIR/DEIR for a detailed, item-by-item rebuttal, exposing the evasive, incorrect, and noncompliant pattern and practice of the disputed EIR/DEIR teams, for example, in the disputed EIR's 101 "Responses" to such Prior Ind. 254/255 Objections, especially the DEIR objection labeled Ind. 254. As demonstrated above and in such cited precedents, Rise attempts (and its enablers would allow its disputed EIR/DEIR) to evade, deny, and otherwise ignore many meritorious objections on incorrect and worse grounds or excuses like their being too speculative, too unexplained, outside the EIR team's and County staff's incorrect interpretation of CEQA boundaries in defiance of the basic law of evidence, etc. (e.g., not even allowing rebuttal evidence to obvious, stated errors, omissions, and worse in the disputed EIR/DEIR, even from such Rise SEC admissions (Exhibit G) and even from internal DEIR quotes [e.g., **Rise admitting at 6-14 that the whole Project is economically infeasible, unless Rise can operate as it wished under the EIR/DEIR 24/7/365 for 80 years, another admitted fact that clearly makes IMM wholly unlike any other project application the County has confronted**.])

Also, as discussed above, recall that objecting neighbors do not just live or work on adjacent properties, but thousands are actually living and working above or around the 2585-acre underground mine that is violating not just their community environmental rights, but also their personal surface groundwater and property rights (down at least 200 feet), including as to owned groundwater (Exhibit D, such as *City of Barstow* and *Pasadena*) that would be flushed away down Wolf Creek by 24/7/365 dewatering for 80 years and such surface owners' rights to subjacent and lateral support (including with groundwater) to prevent subsidence as proven in Exhibit D and *Keystone and Marin Muni Water*. See Varjabedian as to inverse condemnation, nuisance, trespass, and other potential consequences. In any event, the disputed EIR/DEIR and other applications are doomed because they cannot possibly survive any court challenges that would follow any such mistaken approval. For the Planning Commission to see through Rise's or EIR/DEIR's "alternative reality," "smoke and mirrors," or "hide the ball" tactics to the "reality" demonstrated in our Comprehensive Objections is not "bias," "unfairness," misconduct, or lack of impartiality as Rise incorrectly claims, but instead that is Commissioners doing their jobs consistent with applicable law, although still too narrowly for not also adding the Comprehensive Objections and objectors' evidence, proof, and law.

E. The Board Cannot Ignore Rise Incorrectly Relying On Its Lower Court Cases of Disputed Application Here (See Exhibit A), While Ignoring Or Evading The Controlling, Rebuttal Decision of the California Supreme Court in *Fairfield v. Superior Court of Solano County ("Fairfield")* On the Rights And Functions Of Even Elected Decisionmakers Making Quasi-Judicial Decisions, Because *Fairfield* Permits What Rise Falsely Attempts To Call A "Scandal."

Many cases have ruled correctly that elected officials cannot be held to the same standards as judges, both because that would be contrary to applicable law, "separation of powers," and public policies required both (i) by our constitutional rights such as to free speech and association, the right to petition the government for redress of grievances (which obviously includes, the right for such officials to respond appropriately), equal protection, and due process, and also, (ii) as a practical matter, because, if Rise were correct in this case (it is wrong), our administrative system would be unable to function. E.g., *BreakZone*, *Todd, and Fairfield* discussed herein and in other Comprehensive Objections. Yet, that is what Rise incorrectly seeks here, even though under the circumstances, Rise has no right to any EIR/DEIR approval and no meritorious grievances against Commissioner McAteer, citizen critics, or other Planning Commissioners or officials properly doing their jobs. Id. Our advisory/recommending Planning Commissioner is not a "tribunal" in those court cases (or what CEQA Guidelines call "decision making body") making "quasi-judicial decisions" (what the Guidelines call "approval") as incorrectly alleged by Rise. *Id.* and Exhibit A. Worse, Rise claims that somehow, contrary to such applicable law and the merits of these disputes, that the EIR/DEIR team's and some staff's disputed "opinions" should control and be deemed correct, even though they are wrong when contrary to the Comprehensive Objections) and, in any event, they still could have no greater right, weight, or legal significance than our hundreds of objections, so that everything the Planning Commissioners and objectors contend to the contrary of Rise and its enablers and

some staff somehow Rise incorrectly claims must be evidence of unfairness and bias. Nonsense and worse.

Furthermore, none of Rise's cites provide any such illegal remedy as Rise seeks. Even Rise's cited *Clark* case forbids Rise's remedy, as demonstrated below, even if Rise's disputed claims had any merit, which they lack. Moreover, to the contrary of Rise's complaints, many objectors, for reasons explained in Comprehensive Objections and others, contend that any ethical, bias, and unfairness complaints lie instead with Rise's undue influence (e.g., "bullying") on its disputed EIR team and the staff enablers, who ignored applicable laws supporting Comprehensive Objections and incorrectly gave Rise the benefit of an "undeserved pass," despite massive doubts and worse that the disputed EIR/DEIR cannot properly have, justify, or deserve under the applicable facts, circumstances, and controlling law. **Stated another way, if Rise were allowed to disqualify the Planning Commission's recommendation or misuse it as alleged evidence of "bias, etc." if accepted by the Board, we objectors should still be equally entitled by that same logic to enforce our existing objections against the EIR team and staff enablers' to disqualify their work and Rise's disputed conduct and undue influence on them.** See subsection I.A.2 below. This is a "zero-sum game" in which whatever is mistakenly granted to Rise causes a loss to the objectors, especially those surface owners above and around the 2585-acre underground IMM. The goal of that objector counterattack would result in Rise not starting with any EIR or DEIR, but to begin back at a total restart for Rise for another doomed try at a compliant DEIR, which is the least severe of the remedies available to objectors in any court challenge that becomes necessary to protect our homes, community, and environment from the EIR mining menace and Rise. Note, however, that any compliant DEIR/EIR could never be approved because, for example, even complying alone with the groundwater mitigation requirement in *Gray v. County of Madera* would make the project economically infeasible. See, e.g., Exhibits G and D.

However, even if there were somehow found to be any truth or merit to Rise's incorrectly asserted remedy for its disputed claims (which should be legally impossible), the better result would be just to recognize (as any court would do) that the Board is the only decisionmaker who (so far) is not subject to such Rise complaints in the EIR context, although, abased on Rise's incorrect claims against Board members in the Rise Petition process for vested rights, that seem inevitable, if, as we hope, the Board correctly does its job. If anyone finds Commissioner McAteer or the other Planning Commissioners (or any Board member) guilty of anything alleged by Rise, then by that same standard Rise's such enablers and supporters would be even more guilty by that disputed standard. See, however, subsection I.A.2, where we assume any County staff accommodating Rise has an ideological or professional bias problem in favoring even unworthy applicants like Rise, rather than the more serious (and outrageous) kind of disputed allegations by Rise against Planning Commissioners for doing the "right things" for objectors correctly on the Comprehensive Objections' merits. Rise's disputed Rise PC Letter complaints seek to cancel the Planning Commission recommendation against the disputed EIR and project or to misuse Board acceptance of that recommendation as evidence of "bias, etc."

However, all that disputed remedy allows would be a "redo" by the Planning Commission (as so holds Rise's favorite, *Clark* case discussed below), although Rise presumably intends incorrect "#1983 Etc. Claims" against the whole County team as part of some incorrect litigation bullying strategy following the inapplicable and distinguishable *Hardesty2* model. At

the same time, however, Rise, having set that disputed standard, would simply entitle objectors to apply Rise's same disputed theories even more strongly against Rise and its enablers in reverse, to negate any alleged benefit for Rise from the disputed EIR/DEIR or any County Staff Report (see subsection I.A.2 below.) **By proving the Comprehensive Objections, objectors thereby defeat all the Rise Reopening Claims, including the disputed EIR/DEIR (including the Use Permit) now at issue, while consequently proving that Rise is not a "victim" and has no meritorious claims against the County team, whether for "bias, etc." or "#1983 Etc. Claims." Whatever Rise's intentions in such conduct of** "playing the victim," it is natural for the County team to feel intimidated by the threats, which such presumed targets (and objectors competing for equal treatment from such County team members and being consistently disappointed) assume is likely a meritless attempt to posture Rise as like the distinguishable **surface** miner model in the inapplicable, disputed *Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist.* (6/8/2016), 2016 US Dist. Lexis 75552, (E.D. Cal.), mod. by on 2016 US Dist. Lexis 78852 (6/15/2016) ***(the "6/15/2106 Hardesty2 Modification" and, with that modified case, called "Hardesty2 Summary Judgment"),*** and together with the also inapplicable, distinguishable, and disputed follow-up, post-trial decision ("**Hardesty2 Final Order"),** 307 F. Supp**.**3d 1010 (E.D. Cal. 2018) (collectively called "**Hardesty2"). While we address some aspects of *Hardesty2,* this EIR hearing is not the occasion for a full briefing on those issues, so we just mention enough here to prove some relevant points among many that distinguish that case from this one.** [Objectors note that a *different*, depublished "*Hardesty* "case, involving a different mine, facts, and defendants, was discussed earlier in the administrative record by objectors and mentioned by the County's counsel at the prior Board hearing, which is why we call the Rise model "Hardesty2" to distinguish between the case aggressive miners like versus the one everyone else likes.)

In judging the Planning Commissioners, the Board members, or other officials, consider that the even the law incorrectly imagined by Rise (as well as the actual, applicable law we objectors cite) imposes even less on the Commissioners (as not being the "decisionmakers" or a "tribunal") than on the Supervisors in that role. Therefore, if (as we contend and *Fairfield* and other cases would allow) a Supervisor were allowed to do what the Rise PC Letter alleges, such as by that California Supreme Court *Fairfield* precedent and other, better, and more applicable case law than what Rise asserts to the contrary (as explained throughout this Petition/Objections, including Exhibit A), then certainly the disputed Rise claims must be rejected both against the Planning Commissioners and against NID and other falsely accused critics and objectors. There is no legal cause of action for Rise's imagined "conspiracy" to respect or exercise objectors' own Constitutional and legal rights, which are even broader and stronger than what Rise claims for itself. If there were such a right, then what would prevent everyone from counter-claiming against Rise and its enablers on the same theory? Consider what the California Supreme Court has ruled on this subject in ***Fairfield v. Superior Court of Solano County (***1975), 14 Cal.3d 768 (rejecting a shopping center developer's attempts to use civil discovery to support an attack on two councilmen who voted in a 3 to 2 majority against the use permit application and related environmental impact report that they had previously opposed and criticized, one as a candidate and the other announcing his opposition to others in the council, at planning commission meetings, and in response to public questions in advance of the hearing), stating:

> As we shall show … even if … [the developer] could prove that … [the councilmen] had stated their views before the hearing, that fact would not disqualify them from voting on the application. (at 779)
> ***
> A councilman has not only the right but an obligation to discuss issues of vital concern with his constituents and to state his views on matters of public importance. [citing *Todd v. City of Visalia* (1967), 254 Cal.App.2d 679 … (at 780)
>
> … Campaign statements, however, do not disqualify the candidate from voting on matters which come before him after his election. … "[It] would be contrary to the basic principles of a free society to disqualify the candidate from service in the popular assembly those who had made pre-election commitments of policy on issues involved in the performance of their sworn …duties. Such is not the bias or prejudice upon which the law looks askance. The contrary rule of action would frustrate freedom of expression for the enlightenment of the electorate that is the very essence of our democratic society." (at 781)
>
> … We conclude ... The voters …were entitled to discover the views of the candidates for the city council concerning … variances from zoning requirements, and the candidates were entitled to express those views. (at 782) [The court expressly overruled contrary cases, like *Sachs & Co. v. City of Beverly Hills*.]

Even more practically, the Planning Commissioners (and, likewise, the Board) are not captive to, or limited or affected by, their Rise enabling staff or EIR/DEIR consultant team. Also, the Commission goals must be truth and fairness, not just to Rise, but also in reverse to all of us resident objectors who would be harmed by the EIR/DEIR mining menace in all the ways explained in the meritorious Comprehensive Objections that defeat on the merits the disputed EIR/DEIR and the other Rise Reopening Claims. Therefore, it cannot be "bias," misconduct, lack of ethics, or otherwise wrong for the Commissioners each to seek out the truth and facts in our duly filed objections and evidence that cannot be found in the disputed EIR/DEIR and generally deficient 2023 County Staff Report, such as by reading the massive Comprehensive Objections and others that comprehensively expose hundreds of disputed EIR/DEIR errors, omissions, and noncompliance with CEQA and other applicable law. **[FN 11.]** Because the Commissioners cannot get sufficient truth, reality-based facts, and needed data from the disputed EIR/DEIR or such staff report from Rise enablers, the Commissioners are entitled to examine our many objections for that truth and data. That conflict between our meritorious objections versus the disputed EIR/DEIR errors, omissions, and such noncompliance in such staff report and its adoption of most of the disputed EIR/DEIR, both should raise many serious questions in the Commissioners' minds. Such proper concerns cannot reflect "bias," unfairness, misconduct, or anything inappropriate, but rather, to the contrary, show that the Commissioners are wisely doing their jobs correctly for all their constituents. See our rebuttals to the disputed Rise PC Letter incorrectly attacking the County process, including those herein **(especially in section 3 rebutting the attacks on critics and Commissioner McAteer)** and those anticipated in

Comprehensive Objections and others. **Also note that the California Supreme Court in *Fairfield* also freed the Commissioners from having to justify or debate with Rise about which of those thousands of pages of Comprehensive Objections or others they found convincing.** As that court correctly stated at 772:

> Commercial [the project developer-applicant like Rise] may not question the councilmen to determine what evidence they relied upon, or what reasoning they employed, in voting against the permit application. Commercial's attempt to elicit proof that the councilmen stated their opposition to the permit in advance of the administrative hearing is equally improper; a councilman has a right to state his views on matters of community policy, and his vote may not be impeached because he does so.

When this Rise dispute is litigated in courts, objectors can also cite to our massive Comprehensive Objections as a comprehensive basis for both (i) rebutting the EIR/DEIR and 2023 County Staff Report bases for supporting Rise, as well as their exposing massive errors, omissions, and worse in ways that should eliminate any pretense of Rise credibility (see also subsection 3 below), and (ii) proving that neither the disputed EIR/DEIR, nor other Rise Reopening Claims, nor such Rise mining could be approved consistent with applicable law and sound public policy. The disputed EIR/DEIR (and the disputed, to the extent enabling Rise, 2023 County Staff Report and County Economic Report) are also full of errors, omissions, and worse that also rebut Rise PC Letter, thereby creating the reasons cited in the massive Comprehensive Objections why, if anyone is subject to criticism for "bias," unfairness, and worse it should be Rise and its enablers, not the wrongly accused Commissioners, critics, and others. See **FN 11.** See also the discussion in subsection 2 below of bias, unfairness, and other objectionable conduct by Rise and its such enablers, and in subsection 3 illustrating more examples of credibility problems with Rise's letter.

F. While Rise Incorrectly Imagines Its Favorite *Clark v. City of Hermosa Beach* Decision (Perhaps Second Favorite, After Rise's Not Yet Cited, Expected Though Inapplicable, *Hardesty2* Model For Rise Threatened, Bullying Litigation Strategy), *Clark* Only Appears To Supports Rise's Disputed Claims, Because *Clark* Is NOT ONLY Distinguishable And Inapposite Here As To Rise Claims, BUT IT IS ALSO, UNDISCLOSED BY RISE, MORE AUTHORITY DIRECTLY CONTRARY TO SOME OF RISE'S DISPUTED CLAIMS. (That is another Rise "curated reality" tactic [i.e., "hide the ball"] among many that objectors cite where Rise so evades "inconvenient truths," creating more "credibility problems" for Rise. When Rise's favorite cited case is demonstrated to be both irrelevant at best to help Rise, and lethal to various other Rise claims, that also should sabotage the credibility of Rise's other, even less convincing cites as to the EIR/DEIR, JUST AS WAS THE CASE WHEN THE RISE PETITION TRIED TO RELY ON FRAGMENTS OF *HANSEN*, WHEN A FULL AND CORRECT READING OF *HANSEN* LIKEWISE DEFEATED SUCH VESTED RIGHTS AND OTHER RISE REOPENING CLAIMS, as demonstrated in Exhibit C and others and evidencing the pattern and practice for more rebuttals as discussed in Exhibits E and F.)

(v) An Introduction to *Clark* in the Context of This IMM Dispute.

The Rise PC Letter ends its disputed opening section by highlighting ***Clark v. City of Hermosa Beach*** (1996), 48 Cal. App. 4th 1152, which Rise calls "eerily similar" for its limited use, but which, instead, is both (a) entirely distinguishable from this case as to Rise arguments, and (b) often contrary in some important ways (not revealed by Rise) to Rise's own disputed claims. Ask yourself, for example: (i) If this favorite Rise cited EIR/DEIR related case (like Rise's favorite *Hansen* cited fragments, vested rights case) not only fails to prove Rise's arguments but even rebuts some Rise's arguments as demonstrated thorough this critique, how weak must Rise's other cited precedents be? And (ii) Is that Rise citation to *Clark* without addressing its only applicable rulings an admission by Rise to the *Clark* court's treatment of such disputes, for example, as a questions of law, not fact, and as a "conclusion of law," not a "finding of fact"?) This subsection explains why, this is an illustration of an objectionable "pattern and practice" creating "credibility problems" with Rise's disputed claims. E.g., Exhibit A part #1, which refutes Rise's allegedly "similar" cases and reveals more of our contrary or controlling cases that Rise has ignored, including our Supreme Court's controlling ***Fairfield*** decision quoted above that lower *Clark* court incorrectly tries to "limit" to allow this *Clark* Court of Appeals in correctly to evade some of *Fairfield's* contrary rules. **[FN 12]** See also Exhibit C and D, exposing a similarly Rise pattern and practice with the Hansen fragments Rise tries and fails to use to support its disputed vested rights claims. To begin, *Clark* is one of those decisions **where the planning commission is a "decisionmaker" (or what the CEQA Guidelines call a "decision making body" for "approvals"), unlike here, where our Planning Commission only investigates to make an advisory recommendation to the Board of Supervisors (and, therefore, is not the "tribunal" to which Rise's complaints could apply if they had any merit, which Rise claims we comprehensively dispute.) See *Clark's* basing its ruling on the right to a fair hearing under Code of Civil Procedure (CCP) #1094.5(b), which applies to a "tribunal," which is not our Planning Commission's role here.**

Note that Rise understates and ignores the many unique wrongs and misconduct alleged in *Clark*, including the small fractions on which the *Clark* court based its decision (most not even alleged here in Rise's disputed, EIR/DEIR fantasies). Apparently, Rise is ignoring many parts of its cited *Clark* decision because they defeat Rise arguments, such as the following quote from the more extreme and distinguishable *Clark* case (compared to our IMM case to which *Clark* case does not apply) that is still counter to Rise's IMM allegations: **"regardless of whether the city council decision was proper under state law, we cannot say its conduct, for due process purposes, was arbitrary or oppressive or that it shocks the conscience."** (Emphasis added.) Thus, the less extreme and much disputed Rise claims in this IMM case cannot, even by Rise's own cited authority, support Rise's "due process" claims. (However, again recall that, as demonstrated in our Comprehensive Objections and above, objectors also have our own, competing constitutional, legal, and property rights that are violated by the EIR/DEIR team and ignored by the Rise, staff, or enablers, not just in objectors' capacities as concerned citizens (e.g., ***Calvert*** and ***Save the Bag*** discussed in the attached, main Petition/Objections, but also as competing overlying surface parcel owners living above and around the 2585-acre underground mine whose first priority groundwater (e.g., *City of Barstow* and *Pasadena,* Exhibit D) would be depleted by mine dewatering and threaten those surface parcels' rights of subjacent and lateral

support (including by groundwater) to prevent subsidence (e.g., Keystone, Marin Muni Water, Exhibit D). That is indisputably true, since the disputed EIR/DEIR would allow Rise, for example, to take the first 10% of each existing well's groundwater free, without any mitigation provided, thus violating such surface priority property rights in groundwater and creating inverse condemnation and other claims [e.g., *Varjabedian,* where, incidentally, the loss of property value from the EIR mining is an element of our damages and not irrelevant as Rise, the staff, and the EIR team enablers incorrectly claim). In addition, the disputed EIR/DEIR would also violating the CEQA rules specified in the similar surface mining case of ***Gray v. County of Madera*** (2008), 167 Cal. App. 4th 1099, 1119-20 (rejecting the mine's EIR, among other things, emphasis added) on:

> …the County's [incorrect] conclusion on the water issues because **we have concluded that the mitigation measures that were proposed to address the potentially significant adverse impacts on the water levels of private wells of neighboring landowners are not viable or effective. The mitigation measures [similar to those proposed by Rise and disputed by impacted objectors] do not allow the landowners to use water in a manner substantially similar to how the landowners are currently using water… The only mitigation option that would address many of these problems is the proposal to build a new water supply system, but there is no substantial evidence to conclude that this option is even feasible. Thus, the mitigation measures are inadequate under CEQA.**

Stated another way, the Planning Commission was wise to heed our Comprehensive Objections, because the County team has much more legal exposure to such impacted, objecting residents than to Rise bullying threats and has many more reasons we explain for doing the "right things" in rejecting the disputed EIR/DEIR dewatering and mining. In weighing the consequences to the County and those citizens safely distant from the local impacts of this IMM mining, none of which are correctly, sufficiently, or compliantly disclosed in the disputed EIR/DEIR, the Board should also read the analysis of **Varjabedian** and other cases on this topic, for example, in the Comprehensive Objections. See, e.g., ***Varjabedian v. Madera*** (1977), 20 Cal.3d 285 (relying on the Fifth Amendment and cited Supreme Court precedents like *Richards v. Washington Terminal Co*, and noting even broader protections under our California Constitution, the California Supreme Court confirmed in *Varjabedian* the inverse condemnation, nuisance, and other claims of those living downwind of the new sewer treatment facility project.); **Uniwill v. City of LA** (2004), 124 Cal. App. 4th 537 (a private party, there a utility, and the approving government authority can be jointly liable in inverse condemnation for depriving the resident of property rights.) See Exhibits C and D and further discussions of this topic later in discussing inverse condemnation and nuisance damages, where instead of facing the trivial damages that Rise could recover even if it were correct (which Rise is not) under the circumstances, where Rise's alleged lost profits are too speculative and unprovable to ever be allowed as a matter of law. However, homeowners have the right to recover, among other things, the loss of property value, illustrated in a hypothetical where (to use round numbers of 3000 victims and low average losses of $100,000 each, or 1000 victims with average losses of

$300,000, depending on where one draws the class boundary, would produce a $300,000,000 liability.)

Consider also the following subsections providing examples of **three** incorrect arguments that Rise makes in its "incorrect finish" to section 1 of the Rise PC Letter (only one of which arguments is about *Clark, although the letter incorrectly implies that all three are related to Clark)* and that are both inapplicable to our Planning Commission and also wrong on the merits. That Rise PC Letter also ignores/fails to reveal (because that court tolerated them, as should the Board and courts here) many other alleged bias, legal noncompliance, and other factors in that much more extreme *Clark* case or that are not present here at all. See [**FN 13],** among other things (on which *Clark* is actually based) discussing the "personal animosity" and "conflict of interest" of the subject council member whose ocean view would be blocked by the project. Next, also consider some of the many flaws in Rise's such analysis and what important rulings Rise ignores in the *Clark* ruling against Rise's disputed theories. All the while, the reader should remember that the burden of proof is on Rise to show entitlement, so that Rise is not entitled (as it incorrectly demands) to any "benefit of the doubt" or presumptions (which Rise enablers seem incorrectly to have allowed), like those that should favor the many objectors filing thousands of pages of detailed Comprehensive Objections that should give any competent and worthy governmental decisionmaker ample reasons to doubt Rise and its enablers, or at least to be suspicious of everything in the disputed EIR/DEIR and in Rise's related, disputed arguments. That "wise and correct judgment" is not "bias" or "lack of impartiality;" rather that is called doing the official's job to protect the residents who have properly demonstrated massive risks, harms, and impacts from the disputed EIR mining risks, threats, and noncompliance.

(ii) Rebutting The Portions of Clark That Rise Incorrectly Addressed.

Rise's *Clark* argument begins with this claim: (i) "a councilmember met in private with other councilmembers before the public hearing [was completed], and raised new concerns after the close of public comment" upon which the council then based its denial of the project; and (ii) the hearing was "based on comment upon which the parties were not apprised and which they had no opportunity to controvert, [which] amounted to a hearing 'in form but not in substance.'" That is not our IMM situation here in any respect. For example, unlike in *Clark (and other Rise cited cases--see Exhibit A and other parts of this Exhibit B)* where any objectors had little relevant role and were ignored in the relevant judicial analysis, objectors here filed (or incorporated or cited to evidence in) thousands of pages of detailed, admissible, and credible Comprehensive Objections from many qualified potential witnesses (see discussions of such "offers of proof" and the law of evidence, including in Exhibits C, D, E, and F), **many based on issues of law** or on admissions by Rise (e.g., Exhibits E, F, and G) or by inconsistencies in the deficient EIR/DEIR themselves (Id. and Prior Ind. 254/255 Objections.) The fact that all those objections have been ignored, evaded, or otherwise non-compliantly addressed by Rise and its enablers on the EIR/DEIR team or by some County staff does not prevent the Planning Commissioners from relying on such correct objections to recommend against the disputed EIR/DEIR dewatering and mining as required by CEQA and other applicable law. The Planning Commission's duty is to investigate and analyze de novo that ***entire record,*** and the California Supreme Court in ***Fairfield*** excused those Commissioners from having to explain or justify their

reliance on specific parts of that objection record (which is to what objectors refer when we add the **qualifier "at least in public"** to what the County team considered.) Consider, for example, the broadest Comprehensive Objection: almost 1000 pages in (or incorporated into) four Prior Ind. 254/255 Objections (two for each of the EIR and DEIR), plus scores therein of other incorporated Comprehensive Objections by many key governmental agencies and public interest groups.

Those many objections alone mean that there can be nothing "new" as Rise alleges for tardy consideration by our IMM Planning Commissioners (or the Board of Supervisors), because such comprehensive objections in that foundation record (plus other more specialized Comprehensive Objections) are sufficient for any possible advisory or decision-making agency and court to refuse the disputed EIR/DEIR dewatering and mining (and to disregard the Rise enabling parts of the disputed 2023 County Staff Report and County Economic Report.) The only new things not covered by the Comprehensive Objections at that time were what objectors were not allowed by the bullied County accommodating Rise to add at or after the hearing when our permitted record closed. But Rise can hardly complain because it was given ample time to present its scripted hearing case and comments without objections from objectors (apart from the three-minute per person public comments) and with the County staff mostly (and then incorrectly) supporting the Rise case objectors wished they could have disputed but were not permitted to do so.

Rise's apparent argument is worse than incorrect, when it contends that the Commissioners are somehow limited to, or affected at all by, the disputed EIR/DEIR and staff comments or to what was said in the three-minutes each of hundreds of oral objections at the two public hearings. [See **FN 13.]** The whole point of CEQA is to require comprehensive consideration de novo of every single objection as briefed in those Comprehensive Objections and others to provide decision-makers on the Board (and its Planning Commission mere investigator/advisors) with the truths too often not found in the disputed EIR/DEIR or the largely disputed 2023 County Staff Report that just rubber stamped most of such EIR/DEIR errors, omissions, and noncompliance. If there were ever a situation where Rise's such complaints might be found applicable, it is not this dispute. Rise and its enablers have presented the weakest/worst possible case, and the objectors have not only exposed massive errors, omissions, and deficiencies in their item-by-item/section-by-section rebuttals of that "alternative reality," but objectors have also provided many counter truths, facts, and reality in the Comprehensive Objections that should have prevailed.

The second Rise argument in that concluding *Clark* segment is that Rise was guaranteed **"due process,"** requiring that "**decision-makers" on its "tribunal"** (e.g., allegedly the Planning Commissioners, but actually only the Supervisors now) remain "unbiased" etc. when conducting hearings and rendering decisions on land use permits. Note again that our Planning Commission (unlike the one in *Clark operating under different laws)* is not such a "tribunal" or "decisionmaker" (indeed, Rise is not even attempting to apply the CEQA Guidelines' defined terms "decision making body" for "approvals"). Our Planning Commission is only offering an advisory recommendation to the Board after its de novo investigation, which correctly must have been persuaded by our hundreds of correct objections, although *Fairfield* excuses the Commissioners from having to justify their decisions in favor of reality and against the alternative realities claimed by Rise and its enablers in the disputed EIR/DEIR and mostly

disputed 2023 County Staff Report and County Economic Report. (By the way, note our reverse complaint under that disputed Rise standard, if anyone who matters were to apply it, about our objector rights to unbiased and fair responses that we objectors never got from the Rise enablers on the EIR/DEIR team and County staff when, contrary to applicable law and fundamental fairness, they consistently failed to respond correctly to our DEIR/EIR objections and refused to accept our legally admissible evidence [even our cited Rise admissions in SEC filings and even internal quoted EIR admissions, like as to admitting the mine's financial infeasibility if it were not permitted to operate 24/7/365 for 80 years as stated in DEIR at 6-14]. See, e.g., *Richmond v. Chevron* discussed above, where the same kind of Chevron SEC filings and internal inconsistencies defeated that Chevron EIR. If the Planning Commissioners here were [incorrectly] determined "tribunal" "decisionmakers" as claimed in Rise's disputed legal theories, then [until the courts correct that legal error] so must be Rise's enablers on the EIR/DEIR team and County staff for so denying, ignoring, and barring our meritorious record objections contrary to applicable law, thus dooming their disputed work product on which Rise tries to rely, by that same disputed standard.)

But also consider what the *Clark* court said about this "due process" dispute (and that, consistent with Rise's objectionable pattern and practice of "selective reporting" on only convenient parts of court decisions [see, e.g., Exhibit A and the *Hansen* example in the similar vested rights disputes Exhibits C-F], that Rise failed to report to readers): **"However, we conclude that while the city violated state law by failing to provide a fair hearing [as explained for more and different reasons than Rise cares to reveal to readers], it did not offend the federal Constitution, on either procedural or substantive due process grounds."** (emphasis added) [That means, for example, Rise loses if federal jurisdiction on such disputed bases for its disputed "# 1983 Etc. Claims."] Besides other things supporting ample precedents *Clark* cites (and more arising since then), the court also ruled that, on account of the significant discretion granted to local officials in land use matters and for imposing conditions, **there "is no federally protected property interest on which to base a procedural due process claim" in *Clark, and the project applicant owner "had no protected property interest in the requested permits."* Furthermore, the Clark court also concluded, "In sum, because the Council's decision did not violate a protected property right, and because its conduct was not irrational, the trial court erred in finding a violation of substantive due process." (Emphasis added.)**

Rise's third disputed argument in its disputed, "big finish" *Clark* discussion references some Nevada County legal ethics and Brown Act training materials of disputed application to our IMM case and of no relevance here or to any *Clark* precedent. However, if the Board wishes to consider ethical matters, our Comprehensive Objections include many such objections, such as to: (i) the conduct of Rise, the EIR/DEIR team, and whoever in the staff accommodated their noncompliance with applicable law in the (pro-Rise accommodating parts of) the County Staff Report and County Economic Report, (ii) improper exclusion of our Comprehensive Objections and of admissible (and especially rebuttal) evidence (even of Rise's SEC and other admissions that impeached and contradicted the disputed EIR/DEIR, as well as EIR/DEIR admissions that were internally contradictory, like that economic infeasibility admission in the DEIR at 6-14), (iii) noncompliant, disputed, and worse EIR evasive, ignoring, and otherwise nonresponsive CEQA required "responses" to meritorious objections, and (iv) by the Rise standard and sometimes anyway, other ethical or worse wrongs. See subsections I.A.2 and 3 below rebutting Rise PC

Letter claims. For example, the Prior Ind. 254/255 Objections (including its integrated objections to much of the 2023 County Staff Report and the County Economic Report), rebutted each of the disputed EIR's "Master Responses" and its 101 "Responses" to such Ind. 254/255 DEIR objections frequently refuting such evasions and other ethically questionable excuses, including (with detailed examples) objectionable "hide the ball," "bait and switch." and other objectionable tactics in the disputed EIR/DEIR to evade responsibly confronting such objections on the merits, such as (i) by, again, again, and again, refusing to respond as required by CEQA and applicable law with good faith reasoned analysis (e.g., *Vineyard, Banning*, etc.) and "common sense" (e.g., *Gray v. County of Madera*), and by incorrectly claiming that the objections lacked sufficient detail or were too speculative, etc., even when what was evaded was an admission by Rise or a quoted inconsistency in the disputed EIR/DEIR correctly rebutting a disputed Rise or enabler claim.) The complaint against much of the 2023 County Staff Report is about their inappropriate and continuous accommodations of such disputed EIR/DEIR errors, omissions, and wrongs and their general disregard of almost every meritorious objection, probably on the "ideological" or "professional" basis described in #I.A.2 below, such as where enablers incorrectly believed their function is to "help" applicants, instead of policing them and enforcing their burdens of proof, while denying proper consideration to objections of potential victims as required by applicable law in response to the Comprehensive Objections.

(iii) Another Example of What Rise Neglects To Disclose From *Clark* That Would Defeat Rise Claims And Counter Its Enablers' Work Products Regarding The Limited, Bias Remedy As A Mere Do-Over.

The most important, self-destructive ruling in Rise's chosen *Clark case* is the **limited, do-over remedy (**not revealed by Rise, presumably because it defeats Rise's whole bullying strategy, besides trying to bully and intimidate the Board, like some noisy sports players do to intimidate and co-opt their referees so they can escape accountability for fouls.) *Clark* held that (as provided in its reliance on CCP #1094.5 (f) where, unlike here, the planning commission was a "decisionmaker" under local law) no court can order such planning commission approval of the project as a remedy for such misconduct but can only order the planning commission to rehear the matter fairly. Even if the recusal of a biased council member would have produced a tie at the council, that remedy was not available to achieve that disputed result for the applicant. **According to Rise's chosen *Clark decision*, a tie only means "no action," not ever some automatic approval of the lower decision-making body's or staff's recommended prior approval.** Likewise, in this IMM case, recusal or disqualification would accomplish nothing because our Planning Commission is not the "decisionmaker" or "tribunal" (what the CEQA Guidelines call the "decision-making body" for "approval") but merely the investigator/advisor for the Board decisionmakers. Since Rise cited *Clark* and presumably read it, Rise must know its Rise PC Letter is just a disputed, bully's tactic that improperly would (if incorrectly tolerated) give Rise (and, properly for fairness, give us objectors in more counters) (i) another chance for more disputed Rise briefing to the Board, and (ii) a bad faith means for Rise evading deadlines, while wasting more of their SEC filing admitted, limited funds (Exhibit G) to exhaust us objectors

with the burden of preparing more such meritorious counters, while attempting again to scare the Board with Rise's disputed, incorrect, and inflammatory accusations.

When the applicable law of evidence or CEQA or other relevant laws or ethical duties require fair and non-biased consideration by government officials, that also applies equally to require such a response by the disputed EIR/DEIR team and staff Rise enablers to our Comprehensive Objections and others, such as where we objectors rebut or impeach errors, omissions, and worse in the disputed EIR/DEIR. If there is a victim, the Comprehensive Objections prove it is not Rise, but objectors. Where, as here, such EIR/DEIR team chooses not to so comply, they are guilty of worse things than what Rise alleges. See, e.g., ***Communities for a Better Environment v. City of Richmond (*2010), 184 Cal. App. 4th 70, 82-90 (which is called *"City of Richmond"* or "*Richmond v. Chevron"* in Comprehensive Objections), where the Richmond EIR was defeated (as this disputed EIR should be) because of the inconsistencies between what Chevron claimed in its EIR and what Chevron stated differently in its SEC filing admissions. In effect, (like Rise) Chevron's EIR was defeated because it was telling a different story to its investors and the SEC than it was pitching in its disputed EIR, exactly as Rise is doing in this IMM case, although with even more troubling Rise SEC and EIR internal admissions. See Exhibits G and C. Although some Comprehensive Objections to both the disputed EIR and DEIR make that same case in detail, the mostly disputed 2023 County Staff Report and EIR/DEIR team ignored those facts and legal briefing almost entirely, as somehow incorrectly ruling it outside the scope of what they were willing to consider** under CEQA, even when we were directly rebutting and impeaching Rise and EIR/DEIR claims and other Rise Reopening Claims. No court involved in any EIR etc. challenge will allow Rise or its enablers to get away with such evasions and noncompliance with applicable law, nor should the Board. CEQA does not preempt, overrule, or allow noncompliance with any of the other applicable laws or rules cited in the Comprehensive Objections, including the law of evidence always allowing rebuttals and impeachment of false claims like those cited in the disputed EIR/DEIR and much of the mostly disputed County Staff Report and County Economic Report. See Exhibits C, E, and F.

2. On The Subject Of Fair Hearings, the Board Must Provide Objectors With Equal Opportunities And Treatment To Rebut, Counter, And Defeat Every Disputed Rise Reopening Claim, Applying Whatever Same Standard the Board Applies, If Any, Against the Planning Commission In Response To Rise's Disputed Complaints, For Our Objectors' Counter-Complaints About Rise And Rise's Enablers In Rebutting The Disputed EIR/DEIR And The Mostly Disputed 2023 County Staff Report And County Economic Report. See also subsection 3 below rebutting Rise's disputed Rise PC Letter incorrectly attacking the Planning Commissioners.

a) While Comprehensive Objections Speak For Themselves As To The Character And Conduct of Rise And Its Disputed Rise PC Letter And Other Communications And Conduct, Objectors Hope For Some More Innocent Explanations For The EIR/DEIR Team's Enablers And Rise Accommodating County Staff's Objectionable Enabling Of Rise's Many Errors, Omissions, And Noncompliance in the Rise Reopening Claims. Nevertheless, While Objectors Are Only Addressing (At Present) A Less Offensive Kind of "Ideological" or "Professional" "Bias" And "Partisanship" Sufficient To Defeat The Disputed EIR/DEIR And Disputed Parts of the 2023 County Staff Report (i.e., For What Objectors Call Their "Unacceptable Professional Orientation"), Such Rise Enablers Must Be Held To Whatever Standard Is Applied, If Any, Against the Planning Commissioners. [Stated another way, objectors refuse to allow Rise to attack the Planning Commissioners And Board because they disagreed with the disputed EIR/DEIR team, County staff, or others who objectors' Comprehensive Objections prove were incorrect, wrong, and worse in their enabling and support of Rise. In this multi-party dispute whatever the "Rise side" does to attack the correct Commissioners or Board decisionmakers blow back at that disputed "Rise side" from objectors in reverse. In those counter disputes objectors must have not only at least equal standing and treatment to exercise, enforce, and defend objectors' competing constitutional, legal, and property rights against Rise Reopening Claims, but objectors' Comprehensive Objections are also "right," both procedurally and on the merits of the laws, evidence, and proof, while Rise Reopening Claims and enabler support therefor are "wrong."

As for the 2023 County Staff Report (and even, to an extent, the more culpable EIR/DEIR) team enablers, we do not yet choose to challenge them in reverse with the kind of extreme ethical or forbidden personal conflicts and conduct the way that Rise unjustly attacks the Planning Commissioners with such unsubstantiated and worse Rise claims. For objectors, although the legal effect should be the same disqualification of such Rise enablers' work product, if that remedy were applied against the Planning Commission at Rise's disputed request, there is a difference between the staff having an "**Unacceptable Professional Orientation**" versus what disputed "bias, etc." and ethical, legal, and other misconduct allegations Rise asserts against the Planning Commissioners. Being generally wrong by applying a stubbornly improper legal and factual perspective from such Comprehensive Objections and others (e.g., consistently, without merit, and improperly evading, dismissing, and ignoring meritorious objections as done here to favor unworthy applicants like Rise) does not make such enablers "bad people," but it must defeat their resulting work product and disregard, evasion, and other objectionable conduct by any standard that may be applied against the Planning Commissioners. Objectors bring that up here not to punish or embarrass those enablers, but instead to defend the Planning Commissioners and Board (and therefore Comprehensive Objections and objectors' such rights) from Rise misusing such enablers' errors, omissions

against the Commissioners (or now against the Board), such as, for example, in an attempt to model Hardesty2 attacks or worse. Rise cannot "have it both ways," by claiming the benefit of such enablers favoritism to Rise and its disputed EIR/DEIR, Rise Petition, and claims, while incorrectly slamming the Planning Commissioners (and indirectly objectors and our Comprehensive Objections) with the disputed charges in the Rise PC Letter. Indeed, since Rise's various kinds of incorrect data and objectionable conduct can be blamed for errors, omissions, and worse in the disputed EIR/DEIR and mostly disputed County Staff Report and County Economic Report, Rise and its enablers have caused the permissible, but too narrow, Planning Commissioner actions that then became necessary for objectors to correct for broader such Rise errors, omissions, and worse as demonstrated in Comprehensive Objections and others. If it becomes relevant in any subsequent litigation that Rise may launch, cause, or incite, Rise's "unclean hands" and "playing the victim" role in causing its own complaints must also be part of that dispute. At present, objectors perceive such Rise enabler "biases" and lack of "impartiality" as of that type of "Unacceptable Professional Bias" unfortunately too common among certain professionals. Such Unacceptable Professional Bias is like, by analogy (and as one example of several discussed below), a criminal or tort claim judge always refusing to allow the defendant to prove who actually committed the crime or wrong instead in his or her defense, because such judge incorrectly does not believe such legally correct defenses should ever be permitted in such judge's stubbornly unrepentant, mistaken view of the applicable law and facts. The point of the analogy here is that (as also shown in the hypothetical in the attached Petition/Objections) such a trial judge or administrator or official can be right or wrong about accepting or rejecting Comprehensive Objections, but he or she cannot properly ignore, disregard, or evade objectors right to assert them so that the higher courts can consider any writs or appeals that may be required for a fair hearing, due process, equal protection, the right to petition for redress of grievances, and other constitutional rights of objectors to comprehensively counter Rise and all is Rise Reopening Claims.

We also address here from Comprehensive Objections what we call: (a) such enabler "bias, etc." as evidence for rejection of the disputed and consistently non-complaint EIR/DEIR and mostly disputed 2023 County Staff Report and County Economic Report (e.g., because of their wrongful refusal to consider our such meritorious objections, while they uncritically accept and support Rise's meritless claims and worse; e.g., allegations, speculations, unsubstantiated opinions, and other substitutes for facts, truth, and science which fall intolerably short of the CEQA required "common sense" [as in *Gray v. County of Madera*] or such required "good faith reasoned analysis" (as in *Vineyard, Banning, and Costa Mesa*); and (b) objectionable "partisanship" (e.g., lack of impartiality) by the disputed EIR/DEIR team and some staff enabling Rise in Rise's disputed, objectionable, misjudgments, and improper approach to these EIR/DEIR and 2023 County Staff Report disputes. In reflecting on the propriety of whatever corrective things, if any, the Planning Commissioner actually may have done relevant to any of Rise's disputed complaints (i.e., reality instead of Rise's disputed, alternate reality claims), the Board should consider how wrong, deficient, and otherwise objectionable were the disputed EIR/DEIR and 2023 County Staff Report and County Economic Report to which the Planning Commissioners were compelled to react.

However, if Rise's disputed misconduct standards were allowed to apply against the Planning Commissioners, then objectors reserve our rights to apply that same standard in

reverse for our objections against the Rise enablers on the EIR/DEIR team and staff, until the court corrects the erroneous Rise standards that objectors challenge. Nothing Rise does that we find objectionable can ever be left unchallenged, because, unlike Rise, impacted, objecting locals are resisting existential EIR/DEIR dewatering and mining threats to our families' health and welfare, our homes, our property values and functionality, and our community environment and much more we cannot afford to lose. Therefore, we insist on equal opportunities, rules, standards, and treatment for our meritorious objector side of these disputes, so that there is a "level playing field," where objectors can both contest our such grievances against Rise, Rise Reopening Claims, and Rise enablers' work products, while countering Rise's unjust attacks on the Planning Commissioners and the Board, as well as any refusal to address the merits of our objections as required by applicable law on account of objectors' competing constitutional, legal, and property rights. See the subsection below regarding such an appropriate Board process for consideration of the objections incorrectly ignored, disregarded, and evaded by Rise and its enablers.

While the law (too often for many of us critics) indulges in a legal concept referred to as "legal fictions" that arise from legal "presumptions," those can be rebutted by proof, as we hope to do here without having to get as personal or hysterical about our complaints as Rise has done in its disputed Rise PC Letter and other threats and bullying. However, if the Rise enablers refuse properly to consider and respond to our such rebuttal objections, as they have consistently done so far, they are improperly allowing Rise to craft its "alternate reality," such as in accordance with such disputed Rise PC Letter, EIR/DEIR, and other Rise Reopening Claims, as well as the mostly disputed 2023 County Staff Report and County Economic Report. The situation is unfortunately common by analogy to what happens when professionals become partisans not necessarily for a particular party, but rather for a professional ideology or "side" in particular enduring professional conflicts. For example, there are football referees who almost never call even obvious pass interference, because their bias is "to let the players play," while other referee's will be quick to throw the penalty flag on any clean (i.e., legal), but hard, hit, because of their bias against injuries. This is part of life, where the rules are the same, but how they are applied can be so different that we encounter objectionable, professional "bias" at the extremes. In criminal law some would observe that there are some judges who no prosecutor wants hearing his or her case, because they always have "reasonable doubts" and incorrect interpretations of applicable law. Likewise, there are other judges no defense lawyer wants on his or her case, because they never have any "reasonable doubts" and also insist on incorrect interpretations of the law in opposite ways. Such many partisan divides are not necessarily because such partisans are bad people or necessarily intend to break the impartiality or bias rules, because most (presumably) incorrectly (and subjectively) imagine they are somehow as "impartial" and "unbiased" as they are required to be. But such incorrect self-perceptions by such disputed actors are not necessarily reality, which is why these Comprehensive Objections refer to them as "alternate realities."

In any case, the problems here arise (so far) outside the courtroom, because in our partisan/adversary system of justice (that includes administrative law disputes, as here) lawyers and other relevant dispute players are expected to be somewhat partisan, but, presumably, to be acting within ethical and legal boundaries. Nevertheless, such unrealistic, professional "orientation"/aka "bias" and lack of impartiality concerns are common. Consider by further

analogy, the general partisan divide between criminal prosecutors versus criminal defense lawyers, or between pro-union labor lawyers versus pro-management labor lawyers, or between debtor focused bankruptcy lawyers versus creditor focused bankruptcy lawyers, etc. If an expert witness (or someone like the disputed EIR/DEIR team or consultants enabling Rise) wants to work for one side of those strict, partisan divides, he or she likely will not ever be hired by the other side and will be resisted as a purported neutral. We objectors shake our heads in dismay every time the County staff keeps announcing these EIR/DEIR team enablers as "independent," because they will only be popular with project applicants, and we suspect they would not be chosen by anyone who cared about fairness to impacted, objecting neighbors. In any case, when such competing lawyers and their chosen partisan experts and enablers are in court in any such context, they rarely agree on much, among many other things, because they too often consider different things to be important in their competing "professional orientations." For example, in bankruptcy the debtor lawyers generally consider the "fresh start" for the bankrupt party to be the almost sacred thing that matters most, while the creditors lawyers disagree and believe in debtors paying their debts as much as possible, rather than allowing clever, legal evasions and other excessive ways to hold assets back for the debtors' "fresh starts."

In this IMM case, despite ignoring, disregarding, and evading Comprehensive Objections while offering much more narrow evidence and analysis on few issues against Rise addressed below, while improperly recommending the certification of the noncompliant EIR, **[FN 13]** the 2023 County Staff Report seems unjustifiably and extraordinarily partisan in favor of Rise by supporting most of the noncompliant and worse EIR/DEIR errors, omissions, and worse without any compliant legal or merit basis, as demonstrated in Comprehensive Objections and others. Now, Rise seems to be threatening to use those staff mistakes to incorrectly attack the Planning Commissioners (and presumably next the Board) for declining to accept such mistakes. The proof is to be found the same way the courts will proceed in this case, if necessary, by comparing the meritorious Comprehensive Objections and others to the disputed EIR/DEIR and 2023 County Staff Report that generally evade, ignore, or finesse such objections (e.g., with bogus excuses and defenses) in ways that such objections demonstrated to be both contrary to applicable law, truth, and reality and harmful to the health and welfare of objectors' families, objectors' homes and property values, and the local environment. Objectors just require the opportunity for making that happen. The point is not that the staff (and, perhaps, even some EIR team enablers) are guilty of the kinds of ethical challenges as Rise incorrectly and hysterically alleged in its disputed Rise PC Letter against the Planning Commissioners and critics, but rather that such partisan Rise enablers act radically beyond any permitted rule of law boundary from a biased ideological perspective, like such differently "oriented" lawyers and experts discussed above.

b) If The Board Considers the Disputed Rise PC Letter Claims, Then, Besides Our Defenses And Counters For the Planning Commissioners in Subsection 3 Below, The Board Must Provide A Fair Process For Equally And Concurrently Considering Objectors' Such Counter Claims Against the Disputed EIR/DEIR And Most of the 2023 Count Staff Report, Not To Punish Such Rise Enablers, But Rather To Hold Their Disputed Work Product to the Same Standard, If Any, Imposed Against the Planning Commissioners And As A Justification for The Commissioners' Rejecting the Objectionable EIR/DEIR.

As explained above, if the Board wishes to seriously consider any of the disputed Rise allegations against the Planning Commissioners and other innocents, then fairness, applicable law, and the County's self-interest in protecting our community and rule of law must allow equal time in an appropriate equal reverse process for objectors both: (i) to make the opposite case against Rise and its enablers and their work products (e.g., the disputed EIR/DEIR and much of the 2023 County Staff Report and County Economic Report), as well as in defense on a "level playing field" of the Planning Commissioners (and, in turn, the Board) doing the right things that Rise wrongly alleges to be problematic, and (ii) to challenge the disputed EIR/DEIR, such disputed reports, and Rise and its enablers under whatever same standard is allowed, if any, to apply against the Planning Commissioners. For such a "level playing field," objectors must have equal time and opportunity to rebut and counter Rise and its enablers, including by using self-destructive admissions, errors, omissions, wrongs, and other noncompliance by Rise and its enablers to explain and justify whatever the Planning Commissioners or Board is accused of having done, if anything, that any adjudicator considers requiring such a legal excuse or counter. See objectors' rebuttal to the recent Rise letter in subsection 3 and elsewhere below. (That self-defense option for the Planning Commission was available to do right and correct things, especially mitigating what Rise and its EIR/DEIR did wrong, deficiently, and worse, because, as demonstrated above [e.g., in *Fairfield* and *BreakZone* etc.], the Planning Commission is not the alleged, limited decisionmaker/tribunal, and Commissioners have even greater rights to do their jobs when such disputed Rise enablers so thoroughly fail properly to do theirs by ignoring, disregarding, and evading our Comprehensive Objections on which the Commissioners and Board are entitled to rely to correct any enabler or staff errors, omissions, or oversights.)

Rise obviously plans to try to litigate for their "alternative reality" in court (probably with the disputed Hardesty2 model) when they are disappointed again (as they must be on the merits in a fair and just, rule of law system that considers the merits of all Comprehensive Objections versus the errors, omissions, and non-compliance of the disputed EIR/DEIR and other Rise Reopening Claims incorrectly so supported in most ways by the mostly disputed 2023 County Staff Report and County Economic Report). Also, the Board should expect that objectors will continue to counter Rise and any enabler in defense with expanding Comprehensive Objections of our families' health and welfare, local homes and businesses (including groundwater and existing AND FUTURE wells—Exhibit D), property rights and values, the local environment, and our local way of life for 80 years from this IMM EIR's 24/7/365 intolerable dewatering and underground mining threats in the 2585-acre underground IMM beneath objectors. To be clear, we know of no impacted objectors who are willing to sacrifice anything

for, or suffer anything from, this no net benefit EIR/DEIR mine for the benefit of this [fundamentally] Canadian future miner's shareholders' profits at harm and expense to objectors personally and our local community as proven in Comprehensive Objections. Consider, for example, the harmful, historical traditions, customs, and practices in the mining industry that have caused so much harm and misery to so many other local communities, both before and after the miners' resources or gold profits were exhausted and they then exited, leaving even worse messes behind. Moreover, unlike the cases cited by Rise which all involved operating mines, this is a 2017 acquisition by a speculator (describing itself as an exploration company) for a proposed total restart and huge expansion (e.g., 72 miles of underground tunnels to 76 more miles) of a closed, discontinued, dormant, flooded, and abandoned underground mine requiring 24/7/365 dewatering and depleting of surface parcel owned groundwater and existing and future well for at least 80 years, while flushing all that precious water away down the Wolf Creek. Therefore, since both sides (besides the County in the middle of these crossfires, i.e., Rise and its enablers versus objectors) are irreconcilable (hard to imagine any surface owner tolerating the underground miner beneath or around his or her surface parcel accepting the problems exposed in the Comprehensive Objections), the Board needs to fashion whatever process it deems appropriate to so accommodate objectors for our constitutional, legal, and property rights to defeating the disputed Rise PC Letter accusations and the other disputed EIR/DEIR and other Rise Reopening Claims.

Clearly, the facts, law, and circumstances described in the Comprehensive Objections must at least create a serious credibility problem for the disputed EIR/DEIR and other Rise Reopening Claims, and anyone who fails to see that seems to be objectionably blind to such applicable facts, law, and objections' evidence that even includes self-destructive Rise admissions (e.g., Exhibits C, E, and F and Evidence Code #'s 623, 412, 413, 1220, 1230, and 1235) that Rise enablers cannot rebut, so they just ignore, disregard, and evade them. The Board can also examine some of that mining history for itself on the EPA and CalEPA websites, since they are part of the Key Objections in the record, identifying more than 40,000 abandoned California mines on the EPA and CalEPA list as proof of such objectionable mining industry patterns and practices. If Rise's enablers wish to treat Rise as an exception to such objectionable mining traditions, that can only be after Rise satisfies it burden of proof with the required "common sense" (e.g., *Gray v. County of Madera*") and good faith reasoned analysis" (*Vineyard, Banning,* etc.) to overcome our Comprehensive Objections on the merits. For example, the Board can hear from our experienced bankruptcy expert, whose objections include an offer of proof on how these mining situations usually end, especially when the miner (like Rise) admits in its SEC filings that it lacks the financial resources to perform any significant part of what is contemplated in its disputed EIR, even for the admitted to be needed safety or mitigation work, as distinguished from the much larger and more comprehensive safety and mitigation work that the Comprehensive Objections and others show must be required by law. Again, even if one were to ignore our cited precedents (e.g., *Richmond v. Chevron*) and applicable law (e.g., the law of evidence cited above allowing rebuttal of incorrect, deficient, or misleading statements abundant in the disputed EIR/DEIR) requiring the disputed EIR/DEIR to deal with Rise's contrary SEC admissions in the record Comprehensive Objections (Exhibit G) or in the DEIR (e.g., at 6-14, itself impeaching the whole IMM project as not economically feasible by Rise admitting the

project is not feasible unless Rise can mine the way Rise wants per its EIR/DEIR 24/7/365 for at least 80 years.)

c) If Rise Were Somehow Allowed On Its Disputed Accusations Basis To Defeat the Planning Commission's Correct And Proper Recommendation Against Such EIR/DEIR Mining, Then, BY THAT SAME DISPUTED STANDARD OBJECTORS APPLIED IN Reverse, Also Must Be Allowed To Defeat the Disputed EIR/DEIR And the Disputed Parts of the County Staff Report By Applying the Comprehensive Objections And Others.

Contrary to CEQA and other applicable law, Rise, the EIR/DEIR team, and its enablers have behaved in objectionable ways far more relevant by their own disputed or misapplied standards than what Rise alleges against Planning Commissioners. Therefore, if the Board were (we contend incorrectly) to disregard the Planning Commission's recommendation (or the staff's 2024 Staff Report analysis consistent with that Commission recommendation) as Rise incorrectly demands, then the Board must also reject the disputed 2023 County Staff Report and County Economic Report and then reject both the disputed EIR/DEIR and the disputed Rise and enabler comments in favor of objectors' Comprehensive Objections. See, e.g., the above rebuttals of Rise's own favorite *"Clark"* fragments (as well as *BreakZone, Fairfield*, and other objector cited authorities), which would only allow a "replay" by the Planning Commission as a remedy, but never a default approval of the disputed EIR/DEIR or 2023 County Staff Report. Even if the Planning Commission were somehow at fault (which we dispute), in this multiparty dispute, no such Rise alleged wrong by the County or its personnel can force approval of the disputed EIR/DEIR mining menaces, because our hundreds of meritorious Comprehensive Objections still must prevail. Other objectors may address alleged Rise Letter misconduct allegations they may have investigated, [such as, for example, what some rumors suggest as forbidden ex parte contacts with County officials under rules that would have to apply equally to Rise as the EIR applicant, but not to us objectors und*er Fairfield, BreakZone, Gray,* and other cited precedents.]

However, our Comprehensive Objections instead focus on demonstrating with law, proof, and evidence, including offers of proof thereof, not merely (i) false, misleading, and worse statements by and for Rise in the disputed EIR/DEIR (e.g., like the inconsistencies in Chevron admissions between that comparable EIR and SEC filings that *Richmond v. Chevron* ruled lethal to that Chevron EIR—See Exhibit G), but also of (ii) massive noncompliance with CEQA and other applicable law by Rise and its enablers in the disputed EIR/DEIR too often accepted or tolerated in the 2023 County Staff Report contrary to Comprehensive Objections and others. For example, Rise, Rise's EIR/DEIR team enablers, and some County staff enablers incorrectly refused even to consider damning admissions by Rise Gold Corp in its SEC filings, as detailed, for example, in Exhibit G and other Comprehensive Objections exposing how Rise Gold Corp was telling the SEC and its investors a different risk story (e.g., admitting more risks and adverse facts than in the disputed EIR/DEIR and mostly disputed 2023 County Staff Report and County Economic Report), although still not sufficiently, especially regarding the applicable situation in connections with the Planning Commission recommendation and 2024 County Staff Report analysis than were disclosed as required in the disputed EIR/DEIR that was accepted in

too many ways by the 2023 County Staff Report with deficient consideration of the details, among other such inconsistencies and worse exposed in Comprehensive Objections even in the improved but too-narrow 2024 County Staff Report.

That exact type of inconsistent statement/conduct versus SEC filing admissions by Chevron was held to be grounds for rejecting the EIR in ***Communities for a Better Environment v. City of Richmond (*2010), 184 Cal. App. 4th 70, 82-90** (a case and principles described in Exhibits G, F, and E and other Comprehensive Objections and referred to as "*Richmond v. Chevron" or City of Richmond*). There, Chevron's admissions in its SEC filings both were contrary to its disputed EIR and were not only properly admitted in evidence by the court, but were key bases for the court's ruling against the Chevron EIR. The same is true for other exclusions of, rebuttals to, the disputed EIR/DEIR and other Rise Reopening Claims by Comprehensive Objectors, such as the exclusion of evidence not only from such cited SEC admissions, but even in the DEIR itself (e.g., at 6-14, where Rise admits that the whole project is economically infeasible if it were not allowed to mine 24/7/365 for 80 years in the disputed ways it proposed in the DEIR/EIR). Moreover, as proven in Exhibit D, explaining each surface parcel owner's first priority right to the groundwater beneath each parcel (e.g., City of Barstow, Pasadena, etc.) and such parcel's right to subjacent and lateral support, including by that groundwater, (e.g., Keystone, Marin Muni Water, etc.), Rise's disputed dewatering, depletion, and flushing away down Wolf Creek of our groundwater (even by lowering the water table to kill our forests and create even bigger wildfire threats) are objectionable and create problems both for Rise and the County (e.g., *Varjabedian*).

Those authorities and realities also rebut much of both (i) the disputed and incorrect EIR/DEIR, and (ii) the mostly disputed 2023 County Staff Report, each falsely claiming that, for example, even referenced mitigations [e.g., to replace depleted existing [but not future] well groundwater after wrongly taking the first 10% without legal right and as inverse condemnation and other wrongs] are somehow "adequate," when they are wholly illusory, among other things, because Rise admittedly lacks the financial resources to perform them as shown in its such SEC filings (e.g., Exhibits G, F, and E). That is especially powerful in the context of groundwater dewatering and depletion impacts on both relevant wells (including Rise disregarding all future wells and deficiently addressing the many existing, ignored, and undercounted wells by the disputed EIR/DEIR, by the 2023 County Staff Report, and even by the County Economic Report [that itself lists more wells in more places than the disputed EIR/DEIR which the disputed staff report incorrectly blessed without regard to the better informed County Economic Report]). See the comparable mining case of ***Gray v. Madera County*** analyzed in detail in Comprehensive Objections. Those objections prove the disputed EIR well/groundwater mitigation proposal (among other disputed mitigations that are disclosed in the EIR and more that are not addressed in the disputed EIR/DEIR but should be) is insufficient, incorrect, and noncompliant as a matter of law. As the *Gray* court explains in setting that rule for CEQA compliance, such EIR/DEIR claims are noncompliant even because they "defy common sense."

3. Selected Examples of Rise Credibility Problems, Such As Rise's Bullying And Worse Disputed Attacks on An Asbestos Expert Critic, Exposing Rise's Objectional Tactics To Discourage Truth Telling. (This is also an appropriate, out-of-sequence rebuttal to the disputed Rise PC Letter section III.B.1 (at 8), entitled with this incorrect accusation: "The Planning Commission Relied on a Retracted Sierra Air Quality Management District Letter.")

The many credibility problems of Rise and its enablers are obvious from any fair and detailed comparison: (i) between the disputed EIR/DEIR and other Rise Reopening Claims versus Rise's SEC filings and other admissions cited and quoted in many of the Comprehensive Objections (which Rise's EIR enablers incorrectly dismissed as "irrelevant," "speculative," or unsatisfactorily explained, despite comparable court decisions like *Richmond v. Chevron* above, where such similar SEC filings and other admissions not only were admitted as key evidence, but defeated that EIR), (ii) between the disputed EIR/DEIR or Rise Reopening Claims versus Comprehensive Objections, and (iii) between the Rise PC Letter attack and other "bias, etc." and #1983 Etc. Claims" threats versus this Petition/Objections and other such objector rebuttals. However, we begin with this detailed, specific factual dispute because it shows how Rise apparently not only bullied the Air Quality agency for its meritorious objection (NSAQMD Letter 12), but then "targeted" an asbestos expert objector with many outrageous allegations, some of which objectors dispute here in hopes of mitigating the harms Rise has done to him and discouraging Rise from more such bullying.

Before addressing that expert's issues (also properly raised by others in Comprehensive Objections), we set the stage by rebutting the following Rise accusation at the start of Rise PC Letter section III.B.1 at 8-9 (using brackets for some of our quick annotated corrections inserted inside Rise quotes with incorrect complaints) as each disputed issue arises in turn (emphasis added):

> The Planning Commission **relied on known inaccurate and impermissible evidence**, [**disputed**: Not only is this irresponsible speculation, because Rise does not know on what the Commission relied, but the California Supreme Court in its *Fairfield* decision discussed (above at #I.A.1.e) forbid discovery by disappointed use permit seekers like Rise into examination of what the officials or decisionmakers relied upon. Any official can deny a permit or EIR simply based on the **whole record**, which here includes thousands of pages of Comprehensive Objections], [**FN 15**], including a **retracted** letter [**disputed**: That "NSAQMD Agency Letter 12" was not "retracted," but only (to quote it) "superseded and replaced," which is a critical distinction explained below] from the Northern Sierra Air Quality Management District ….[here is an admission that this Agency 12 letter Exhibit to the EIR was from the NSAQMD, **contrary to Rise's accusations about it being "unsigned" as if that authenticity were instead also being challenged by Rise in its Attachment 1 at 21-22,** as addressed below.]
>
> The letter in question was originally submitted by the Air District on April 4, 2022, 13 months *before* the Hearing, and had been **retracted** [**again disputed: only**

"superseded and replaced," which is different] a year prior to the Hearing by the Air District [Yes, but **this is grossly misleading, because that Agency Letter 12 was soon replaced by another EIR Exhibit Agency Letter 11 dated April 29, 2022, after a disputed, bulling letter from Rise's attorney, discussed below, which Agency Letter 11 both continues and adds objections to the DEIR without any corrections or explanations of its position regarding Agency Letter 12,** as discussed below] due to its **factual inaccuracies and highly prejudicial and subjective tone.** [**disputed:** apparently the truth hurts enough to inspire such worse Rise rants. **The only thing in the EIR record about "factual inaccuracies" or "highly prejudicial and subjective tone" were in the (disputed) bullying letter from Rise's counsel,** making those and other disputed charges under another disputed Rise letter cover sheet, stating: "Attachment 6 Rise Response to NSAQMD letter dated April 12, 2022, which resulted in **retraction** of Agency Letter 12 of the FEIR." **Again, there was no "retraction," but only an unexplained statement of "superseded and replaced"** discussed below. **There is no Agency express or implied admission that anything was "factually inaccurate," incorrect, or otherwise wrongful about Agency Letter 12, and, as discussed below, there are experts and other objectors (like the objector who Rise unfairly attacked, who believe Agency Letter 12 was correct about the asbestos menace** discussed below. **As to highly prejudicial" or "subjective" in "tone," most of us think Rise "got off easy," and, in any case, the truth must be told for an agency to do its job, especially to be certain that forbidden asbestos pollution is "highly prejudiced" as it should be.**] The **author of the letter subsequently left the Air District for reasons unknown to Rise, although Rise can speculate.** [**disputed: Objectors can also speculate to the opposite of Rise's insinuation** as discussed below, and **objectors suspect that departure was not because the author was feeling guilty or fired for cause, but rather, and more likely, because he was ready to retire and "life was too short" to suffer being bullied by obnoxious applicants like Rise, especially if the agency was likewise reluctant to fight the Rise bullies for the truth of Letter 12**. **A bullied environmental agency deciding to do something else than defend the truth is sadly all too common,** as illustrated by the fact that, for example, the entire asbestos industry (and many of its insurers) had to go be forced into scores of bankruptcies by continuous, massive civil liability judgments before the regulators were willing to do their job and admit the obvious truths about asbestos. Likewise, here, **too often the agencies just say nothing, neither approving nor disapproving the obvious problem, but trying to avoid getting caught in this crossfire and hoping someone else defeats the disputed EIR/DEIR.** In any case, **the facts and reality remain applicable both in and independent from Letter 12, as known to be correct by that asbestos expert who Rise incorrectly denounced**. If the Board or the courts want to try that question on the merits and resolve the truths on these disputed issues, so be it. But **Rise cannot correctly claim that its disputed Rise PC Letter has been accepted as true by the NSAQMD or anyone else who matters, and to do so is**

worse than wishful thinking.] Although Commissioner McAteer was aware the letter had been **retracted** [**disputed again**: **This is false because Letter 12 was not "retracted," just "superseded and replaced" (which is not confirmation of any disputed Rise claims), but Letter 12 was still in the EIR record and can properly be cited together with Letter 11, not because the NSAQMD said Letter 12 was true, but rather because Comprehensive Objection agreed with its author that Letter 12 was correct**, **which is their right and only thing to do so when (as here) protesting Rise bullying the NSAQMD**. Rise has no right to prevent objectors from proving the same things stated in Letter 12, which various Comprehensive Objections have done.], **he falsely stated that the letter had been submitted on May 8, 2023, [disputed: That is when we assume the critic submitted his objection. However, Letter 12 has its original date prominently stated at the top of the letter, so that either Rise is wrong or there is confusion about to which letter Mr. McAteer referred**], two days prior to the Hearing and one year after it was **retracted [disputed**: **Letter 12 was never "retracted"** as explained]. **Commissioner McAteer then relied on the letter as evidence** [**disputed again**: the Rise footnote cited to that part of the EIR record that was actually reaffirmed and quoted by various Comprehensive Objections as true and correct. **So, (as Rise footnote 36 states) MR. MCATEER IS PROPERLY STATING THAT AS A BASIS FOR A REASONABLE QUESTION, I.E., HOW DO YOU RESPOND TO MY FRIENDS FROM THE EIR TO THAT STATEMENT FROM THE AIR QUALITY DISTRICT? Stated another way, it is undisputed that the quote was an official part of the STILL EXISTING EIR RECORD, not just in Letter 12, but also as it was adopted and ratified by Comprehensive Objections and others who themselves validated that content to be accurate, even if "superseded and replaced" by the NSAQMD, just as this Petition/Objection does now. Truths exist, whether or not they are acknowledged by NSAQMD or it retreats from Rise bullying into a "no comment defensive posture," and NSAQMD will be far from the last word on this subject. To avoid controversy, was Mr. McAteer to be faulted from quoting from Letter 12 or from objectors, instead of from the various other Comprehensive Objections or others that quoted and then independently ratified Letter 12? Rise cannot possibly be seriously claiming that somehow those of us who agree with the facts in Letter 12 can be forbidden from citing and proving those facts, or to complain about Rise's objectionable bullying, or requiring Rise to answer questions about those facts in response to our objections. THIS WHOLE, MANUFACTURED RISE SCANDAL IS NONSENSE AND MERITLESS] that the EIR was insufficient, inaccurate, and therefore could not be certified. [disputed: The true facts asserted in the Comprehensive Objections and other agrees that the disputed EIR is insufficient, inaccurate, and much worse, and, therefore, cannot be certified. All Rise proves here is that Commissioner McAteer asked a question citing to the NSAQMD for the same truths he could have cited to from various Comprehensive Objections and others citing Letter 12 (even this Petition/Objection now) and independently agreeing with the facts contained there, which they had a right to do, whether**

or not Letter 12 was "superseded and replaced" by NSAQMD after the Rise attorney's bullying letter. However, we doubt that, if deposed and questioned on this subject, that NSAQMD will dare repudiate the truths in Letter 12, as opposed to just admitting it was running scared from unnecessary conflicts with the Rise bully. However, if NSAQMD were to shift from its "no comment defensive stance" to actually agree with Rise (which would be worse than incorrect), the science and truth will prevail because others can prove what Comprehensive Objections have independently put into issue for any trial on the merits.]

[After discussing the confusion over the letters] …Upon later review, **the letter Mr. McAteer was reading from had just been resubmitted by a Project opponent a few days before the Hearing under a different name and date, with a forged agency signature [disputed: the agency letter was not "signed" or "forged" as discussed below in more detail when these issues are repeated in the Rise letter Attachment 1 commentary on this subject.** At the end of Letter 12 the objector typed the name of the NSAQMD for clarity, and the only fault is that he didn't put that name in brackets to clarify that the insert was added by him, which is **"harmless error**" for an asbestos scientist not used to such formalities in this legal context.] and why **Commissioner McAteer misrepresented what the letter was and where it came from**. [**disputed again: Mr. McAteer asked a question referencing Letter 12, just as others did in their Comprehensive Objections and others. In substance there was ample other bases in the record for Mr. McAteer asking such questions as was his right and duty based on that foundation of the facts contained not just in Letter 12 but also reaffirmed by such others in Comprehensive Objections. If he cited to Letter 12 directly for his question, as opposed to quoting the Comprehensive Objections also citing Letter 12 directly, that should be a most harmless error, especially considering that there were thousands of pages of objections for Mr. McAteer and others to read in massive rebuttals to the hundreds of material errors, omissions, and noncompliant claims in the disputed EIR/DEIR to be considered for that hearing.]**

Note also, as discussed in earlier legal cites in this letter (e.g., *Fairfield, BreakZone,* etc.), none of Rise's hyperbolic and worse complaints have any merit, both because Rise is wrong and (because it incorrectly restates the facts to suit Rise's bullying theory, such as incorrectly translating as a "retraction" what the NSAQMD said was only "superseded and replaced") worse and because this Planning Commission is neither a "tribunal" nor a "quasi-judicial decisionmaker" (nor what the CEQA Guidelines call a "decision making body" for "approvals") but only an agency investigating and making recommendations to the Board, which alone serves that tribunal role. See, e.g., subsections 1.A.1.a, d, e, and f above.

Besides those disputed Rise claims in its Rise PC Letter section III.B.1, Rise repeats and changes some of them in the letter's Attachment 1 at 21-22, to which the foregoing counters, rebuttals, and disputes equally apply, but which deserve further objections because of the

meritless personal attacks on the objecting asbestos expert qualified to refute Rise's asbestos claims and who can independently validate the content of bullied NSAQMD Agency Letter 12's facts. There are few directly impacted, informed, and rational locals who are supporting Rise, but some of those few are extremely partisan and scary to some outspoken, local truth-tellers like that resident critic, who should be more convincing than Rise's disputed "consultants" on the subject of the asbestos menaces from the disputed EIR mining operations, including the DEIR/DEIR admitted Centennial (and perhaps also Brunswick) toxic dust suppression that objectors understand would requires frequent daily watering to save the locals from asbestos and other pollution, not just because of Agency Letter 12, but because the threat is raised in the disputed EIR/DEIR and the truth belongs to us all to state as a constitutional right. It is an unfortunate litigation tactic some lawyers (usually calling themselves "aggressive" for marketing purposes, but generally known by other adjectives by opposing counsel) who imagine purported "scandals" to discredit experts in advance by incorrect or exaggerated allegations. This Rise PC Letter seems to be an example of such "aggressive" and objectionable tactics, but, even worse, because of the personal circumstances of the unfair and worse attacks on such an individual critic. By so attacking such an objector in such disputed and outrageous ways Rise changes this from just another objectionable, debate tactic into a possible "targeting" of for any of Rise's frustrated minority partisans who may be dangerous to those whose comments Rise "brands" as offensive to Rise or the disputed IMM EIR/DEIR or other Rise Reopening plans. (The same is true for the truth speaking Mr. McAteer, although we expect others to correct that wrong for him.) In any case, that kind of Rise bullying is intolerable, and is an evidentiary basis for more objections to these Rise Reopening Claims. See, e.g., Exhibits E and F applying the rules of evidence to more such bullying and objectionable conduct. Therefore, this section further exposes some of those Rise abuses in order to clarify the realities of this non-scandal.

Also consider the Rise attack, including its Union newspaper excerpt, such as alleged in Rise PC Letter Attachment 1 on page 21-22 (the first attachment "one" since there seem to be two "Attachment 1"s) where Rise lists a column for the "Letter" from NSAQMD:" and a column for the "Rise Response." Those sections address the NSAQMD Agency Letter 12 dated April 4, 2022, attached to the EIR record at 2-350, NSAQMD Agency Letter 11 dated April 29, 2022, attached to the EIR record starting at 2-339, and, at page 2-362 under a heading that "Agency Letter 12: Sam Longmire, Northern Sierra Air Quality Management District," the EIR states: **Response to Comment Agcy 12-1** (emphasis added): "**This letter is superseded and replaced** by Agency Letter 11. Please see comments made in Agency Letter 11 and Responses to Comments Agcy 11-1 through Agcy 11-20 above." **First, note that the EIR NSAQMD Agency Letter 11 does not state anything about "superseding or replacing" Agency Letter 12 (much less about "retracting" Letter 12 as Rise incorrectly alleges in its letter) and makes no confession of anything being wrong with Letter 12. The only thing in the EIR record is that quoted EIR Response to Comment Agcy 12-1 which uses only the terms "superseded and replaced," not the Rise term "retract," which is just a false and misleading Rise's incorrect "translation" of that EIR Response.** See that Rise PC Letter Appendix 1 "Rise Response" that cites that Agcy 12-1 Comment and **Rise adds its incorrect interpretation (**emphasis added)**:**

> "The NSAQMD chose to **retract** this letter and the County Planning Department and County Council [sic] are well informed on this issue. The NSAQMD **retracted** this

unsigned letter in April 2022, within days after Rise Grass Valley sent a public records **request and analysis detailing the outrageous tone and substance of this letter and the belief that it was written by a project opponent rather than an unbiased and neutral government agency. The author of this letter, Sam Longmire, soon after retired suddenly from the NSAQMD in June 2022.**" (emphasis added.)

Besides our comments above in response to the main text of the Rise PC Letter at 8-9, also consider the following, more plausible, alternative interpretations of this non-scandal Rise again imagines as a scandal in that disputed Attachment (emphasis added):

(i) **"retract"** is what the media does when it corrects an error, or as **Webster's Dictionary** states **"to recant or disavow."** There is nothing in the EIR record from NSAQMD admitting or even implying any error or need for correction. **Nothing is "recanted" or "disavowed." The only basis for that claim is Rise's "wishful thinking" and disputed tactical "bait and switch" incorrect "rebranding" of the words "superseded and replaced," as if somehow, they meant "retraction,"** which they don't. (Recall that the Rise enablers crafting the EIR/DEIR often followed Rise's objectionable "rebranding" tactics, like calling what is ordinary, and perhaps toxic, "mine waste" to be "engineered fill" in order to make it sound more marketable than it will ever be in reality. Most likely buyers can be expected to know suspect or toxic mine waste for what it is, not what Rise rebrands to call it.) If this Rise bullying dispute ever becomes a serious issue, objectors can brief it and prove that critical legal distinction, for example, from estate and trust law, where wills and trusts are often so "superseded" or "replaced" without implying retraction, guilt, or mistake, but rather merely updating changes in circumstances or other motivations, such as here those noted below. Many commercial contracts and other legal documents are likewise "superseded" and "replaced" by newer versions without implying any mistake, guilt, or remorse, such as replacing and superseded an expired loan agreement with a different version for an extended period. **Indeed, the relevant history of such documents is always admissible evidence in interpreting the later document, and it is routine in litigation to take discovery on such issues and depose the relevant witnesses,** as noted below. (As also noted above, objectors assume the NSAQMD would be less likely to shame themselves by disclaiming truth and science (as Rise demands and claims by its rewriting insertion of "retraction," when NSAQMD was more likely just trying to avoid the coming crossfire between Rise and its many objectors and their experts, while hoping the problem "goes away," probably assuming objectors defeat the disputed EIR mining menace.)

(ii) As to the possible motivations of the NSAQMD in "replacing" Agency Letter 12 versus 11, Rise's admitted "speculation" discussed above is the most implausible explanation. NSAQMD did not retract anything in Letter 11 that was stated in Letter 12, but simply narrowed the scope of its comments, still including some objections fatal to the EIR, with some updates. That NSAQMD "replacement" also does not state or even imply any reason to doubt the truth or accuracy of

Letter 12 comments, about which objector experts can still testify were correct as Comprehensive Objections also assert, and which are based on admitted facts in the disputed DEIR/DEIR. It is clear from those DEIR/EIR admissions that there will be a toxic "fugitive dust" problem at Centennial that could have, under some possible DEIR/EIR stated circumstances, migrated to Brunswick if the Centennial dumping of mine waste moved to Brunswick in the disputed guise of "engineered fill." (See the Alternative 2 issues arising later.) It is also clear that the alleged and disputed EIR/DEIR mitigation of the menace of asbestos is frequent watering of the toxic dust each day. Therefore, the key issues in Letter 12 do not depend on NSAQMD's letter, but rather are facts that any objector could address independently on his or her own (as other objectors have done in Comprehensive Objections), so there is neither a secret here, or nor a scandal.

(iii) As to NSAQMD motivations, if this becomes important to the Board or the courts, objector discovery can reveal the truth to rebut Rise. For example, most of us would expect that any investigation would prove that this Sam Longmire was just doing his job by accurately stating his correct opinion (that many objecting experts share) in his Letter 12. Then Rise's lawyer bullies the NSAQMD with his letter dated April 12, 2022, as Attachment 6, whose relevant claims are all correctly disputed by objectors, as here. The agency is either intimidated into ignoring key issues in order to "duck" a cross-fire fight, or else the agency decides that now is not the time for some reason for them to risk having that fight, when the whole problem should go away when the disputed EIR is rejected on many other grounds established in the Comprehensive Objections and others, as most informed and rational people expect to be the end result of all this conflict with Rise and its enablers. As to Mr. Longmire's retirement that the bully Rise finds so suspicious, most of us assume he may have been annoyed at the agency from "wimping out" by his agency ducking their responsibility to expose the true and accurate problems that Mr. Longmire addressed in Letter 12 and to help defeat the disputed EIR/DEIR, whether as just a guy doing his job and deciding life is too short to have to deal with bullies like Rise as he nears retirement, or as a whistle blower exposing Rise and the DEIR/EIR who was fed up with lack of agency support for the truth, or many other such possibilities that would each defeat Rise's disputed self-serving "speculations." Whatever the relevant motivations, there is nothing but Rise's meritless opinions in the record to support Rise's disputed and implausible theory. If the truth is important, let's get it from NSAQMD witnesses under oath on the record, who can be asked sentence by sentence in Letter 12 the key question: "is this statement true, as objector witnesses contend?" When those agency witnesses admit those truths that our experts will also support, that should eliminate this Rise propaganda maneuver once and for all.

(iv) As to Rise's incorrect and worse "forgery" accusation disputed above, the Rise letter Attachment 1 (at 22) seems now to "back off" to describe their claim as a "modification" by the objector "with the insertion of a date of May 8, 2023, on the top right corner of the letter and insertion of a signature on the bottom of

the letter (the original letter was unsigned)." These are obviously "harmless errors" in good faith by a scientist (who is not a lawyer or a person accustomed to such administrative formalities) who was trying to be helpful by using the current date of his objection on his exhibit, since there is no possible confusion about the April 4, 2022, date of the agency letter at the top of the document. Moreover, that objector added the typed name of the NSAQMD at the end, which should have been put in brackets for clarity that he added it, but that is neither a "signature" nor a "forgery" as a matter of law. In any event, as another objectionable tactic, Rise tries to **imply** that somehow Letter 12 was not the intended position of the agency at the time of its filing. However, there is no reason on the record to doubt that Letter 12 was properly filed at that time by authorized personnel, and there are better "speculations" than those of Rise as to why NSAQMD replaced Letter 12 with Letter 11, such as suggested above. Many emailed objections in this matter did not contain manual "signatures," and they are still effective and part of the record. Again, no substantive issue or "scandal" has been proven by Rise, but, to the contrary, all this proves, together with similar, disputed Rise claims, is that Rise has a pattern and practice of incorrectly "playing the victim," which we assume is to set up its disputed "# 1983 Etc. Claims" for a chance to relitigate its disputed Rise Reopening Claims in a federal court action following the inapplicable and disputed *Hardesty2* model.

(v) As to what was or should have been provided (or not provided) when by the County staff to Rise, we leave that to other objectors to address, except to note that Rise has had much more timely and extensive accommodations from such staff than have objectors. See Exhibit A. But again, we dispute the incorrect, implied Rise accusation that somehow the staff was favoring the objectors when the reverse is true. Id. Any objective comparison of the disputed 2023 County Staff Report or County Economic Report supporting most of the disputed EIR/DEIR and other Rise Reopening Claims reveals that each such Report is vigorously contested by Comprehensive Objectors, for most of the same reasons as objectors have disputed the EIR/DEIR and other Rise Reopening Claims in Comprehensive Objections. The evidence of the thousands of pages of DEIR objections in the EIR record is that the DEIR was grossly biased in favor of Rise and against the objectors. Id. The EIR was even more biased and non-compliant in not correcting the DEIR as required for the EIR to survive the other massive objections filed again against the EIR, especially disputing the way the EIR evaded, ignored, and otherwise failed to comply with applicable law in responding to objections, such as by the disputed EIR "Responses" and "Master Responses" to the disputed DEIR. Exhibit A. Like the Rise enabling EIR/DEIR team exposed in such Comprehensive Objections, those 2023 staff Reports too often incorrectly accommodated and enabled Rise the disputed EIR/DEIR. Any comparison of those disputed documents to the Comprehensive Objections and others makes that clear.

4. Concluding Comments In Rebuttal To The Rise PC Letter Part #1.

Somehow Rise incorrectly assumes, without any sufficient basis, while ignoring, evading, or otherwise deficiently addressing Comprehensive Objections and others, that the disputed EIR/DEIR is correct, compliant, and sufficient. Likewise, that the disputed 2023 County Staff Report incorrectly assumed that disputed EIR/DEIR was mostly [90%?] correct, because such a Report simply (but from our objector perspective incorrectly) ratified most of the disputed EIR/DEIR (and other Rise Reopening Claims) with Rise's disputed positions, filling in the rest of the Report with disputed Rise commentary. Based on such false staff assumptions, Rise falsely claims that any Planning Commission interest in our Comprehensive Objections or others in our massive official record must somehow evidence bias, lack of impartiality or ethics, or other wrongdoing. That illogical thinking is at least wrong, unsubstantiated, and worse. Instead, the reverse is true. Because the disputed EIR and 2023 staff report so improperly failed to consider the meritorious Comprehensive Objections and others, justice requires that the Planning Commission and Board do so themselves by hearing from the objectors themselves (with equal time to Rise, not just three minutes), and not just the biased and partisan Rise enablers who have so far demonstrated they too often improperly ignore, disregard, or evade the meritorious objections. As explained, this is not a two-party dispute between the County and Rise, but rather a multi-party dispute that includes thousands of objectors represented by those filing hundreds of Comprehensive Objections. If the Board were incorrectly to be bullied into approving this disputed EIR mining menace, the court process must directly involve us objectors to defeat Rise mining and the disputed EIR, so the Board should include objectors now on an equal basis, such as for rebutting the Rise PC Letter as described in the attached Petition/Objections and Exhibit D.

The Planning Commissioners were correct to perceive the lack of merit in the disputed EIR/DEIR and Rise's disputed supporting claims (which EIR/DEIR is what one experienced land use lawyer opined at the hearing, among the worst EIRs she had ever seen for such a major project.) To pay any attention to this disputed Rise letter arguments and bullying approach requires the incorrect assumption, contrary to all proof and law demonstrated in our Comprehensive Objections and others, that there somehow is merit to the disputed EIR/DEIR and other Rise Reopening Claims. But such objections' demonstrated truths are that we objectors are right, that the EIR/DEIR team enablers are wrong and worse, and that the mostly disputed 2023 County Staff Report and County Economic Report should not have been so supportive of Rise and so dismissive of meritorious Comprehensive Objections. A comparison of the disputed EIR/DEIR (and much of the County Staff Report) to the thousands of pages of objections from witness-qualified quality objectors (i.e., often qualified witnesses in any coming litigation) reveals massive errors, omissions, and worse (i) in the disputed EIR/DEIR, (ii) in the 2023 County Staff Report and County Economic Report or supporting approval of such noncompliant and worse EIR/DEIR, and (iii) in Rise's incorrect attempts in its disputed Rise PC Letter somehow to rehabilitate the disputed EIR/DEIR by wrongly blaming the Planning Commission. That is one ample cause, among many others, for the correct Planning Commission recommendation to reject the EIR etc. Having laid this foundation for contrasting "reality" versus the disputed Rise "alternate reality," objectors turn to a briefer rebuttal of the less

substantive balance of the rest of the Rise PC Letter on a point-by-point basis, since there is no merit to anything in that Rise letter.

II. More Counters To Other Rise Errors, Omissions, And Worse in Parts II to V of the Rise PC Letter, Such As Additional Attempts To "Rebrand" As "Bias" Or "Partisanship" The Planning Commission's Proper Respect for Truth And Disagreement With False, Misleading, And Worse Claims By Rise Or Its Enablers Proven In Comprehensive Objections.

A. In Part II.A Rise Incorrectly Alleges County Bias Prior To the Hearing, And the Rise PC Letter Continues To Mischaracterize Truth And Merit In Objections As "Bias, Etc." And Tries Again to Shift Rise's Burden of Proof To Objectors And Others.

In #II.A Rise begins with a false headline: "The County Was Biased During the Environmental Review And Permitting Process." (emphasis added) Again, as demonstrated above, our Comprehensive Objections demonstrate that, if anyone is prejudiced by "bias, etc." it's objectors, but not Rise or its enablers. But consider the following quotes of false and disputed allegations from the Rise PC Letter (at 3-4), in which we again use inserted brackets and bolding to expose such errors, omissions, and worse with brief rebuttals:

> As the Project went through the environmental review process, Rise has consistently sought to address both the County's and public's concern regarding the Project's potential environmental impacts **[disputed, self-serving and incorrect opinion that is easily impeached by Comprehensive Objections and others that have been massively evaded, ignored, disregarded, and deficiently addressed by Rise and its enablers, as proven by, for example, how objections to the DEIR were so evaded, ignored, and deficiently addressed by the EIR, as Comprehensive Objections to the EIR demonstrate, such as the Prior Ind 254/255 Objections in which such two objections to the EIR's "Responses" and "Master Responses" were defeated item-by-item for not addressing the DEIR objections Ind. 254 and 255 in a proper and compliant manner. Rise purporting to care about the "public's concerns" would be "funny if it weren't so sad," as the saying goes.]**, and has worked collaboratively with various local agencies to ensure the Project has a net benefit to the County and local community. **[disputed again: for the same reasons and more, although Rise obviously collaborated with its enablers in ways to which we object, such as where Comprehensive Objections prove there is no net benefit to this disputed EIR/DEIR project and how, for example, the EIR/DEIR dewatering and mining would trigger not only competing constitutional, legal, and property right violations against those living on the overlying surface parcels above and around the 2585-acre underground mine (see, e.g., the above discussion of City of *Barstow, Pasadena, Keystone, Marin Muni Water, Gray v. County of Madera, Varjabedian, and many more authorities explained in Exhibit D*), but also would trigger inverse condemnation, nuisance and other issues addressed above in discussing *Varjabedian, all of which could impact the County, making self-defense concerns by the County team against Rise Reopening Claims***

reasonable. This is not just about illusory EIR/DEIR mitigation for undercounted existing wells, ignoring many uncounted existing and all future wells plus the inability of Rise to satisfy the mitigation requirements in Gray v. County of Madera, but also Rise never haven proven any right to its EIR/DEIR dewatering depleting and flushing away down Wolf Creek groundwater in which each surface owner has a first priority ownership right as well as rights to subjacent and lateral support of his or her surface parcel, including by that groundwater, to prevent subsidence. See Exhibit G at #II.B.25, rebutting Rise's "2023 10K" for the first time claiming that it somehow would use the government and courts to force surface owners to surrender their surface property to accommodate Rise's underground dewatering and watering. **]** However, Rise's efforts …were all too often met with resistance from the County, belying an intent to stonewall the Project as opposed to genuine effort to produce a thorough EIR. **[disputed again for the same reasons and more: Also, Rise didn't want a "thorough EIR," since that would guarantee EIR rejection on the merits in accordance with many broader Comprehensive Objections that the County team has also ignored, disregarded, and evaded to accommodate Rise. As the Comprehensive Objections prove by comparison to the disputed EIR/DEIR, the Rise enablers filled the disputed EIR/DEIR and 2023 County Staff Report with errors, omissions, and worse (only some corrected in the 2024 County Staff Report), while evading, ignoring, and deficiently addressing hundreds of meritorious objections broader than any County team analysis, which is hardly "resistance" to Rise from those enablers with whom it dealt before the Planning Commissioner brought welcome and responsible (although too narrow) fairness for objectors to the process. What Rise continues to ignore (as discussed throughout this Petition/Objections) is that this is not a two-party process in which Rise can win approval for its disputed EIR/DEIR mining menace just by somehow incorrectly bullying or winning accommodations from its EIR/DEIR enablers County staff accommodators. This is a multiparty CEQA process and dispute in which each impacted objector has no less rights than Rise (and, actually more rights), especially those objectors living on surface parcels above or around the 2585-acre underground mine and those entitled to such well water and groundwater protections like those required in *City of Barstow, Pasadena, Keystone, Marin Muni Water, Gray v. County of Madera,*** and others **discussed above. As the Exhibit D and C and other Comprehensive Objections demonstrate, the only way this disputed EIR/DEIR could possibly survive even the *Gray* precedent alone, would be for Rise to somehow fool another court to repudiate *Gray, City of Barstow, Pasadena, Keystone, Marin Muni Water,* and escape our California Supreme Court rebuttals against such challenges, both hypotheticals impossible to imagine could ever occur. The fact that the disputed EIR/DEIR is not "thorough" is Rise's fault, not the County team's or objectors' fault. In any case, since the errors, omissions, and worse in the EIR/DEIR are so serious and numerous on account of Rise and its enablers, "thoroughness" is the least of Rise's problems. Also, if anyone has been**

"stonewalled" in this process, it is us objectors by Rise and various Rise enablers who persist in ignoring, disregarding, and evading our broader Comprehensive Objections that far exceed those of the County Commissioners and Supervisors. In any case, if the County team were actually biased, etc. against Rise or its project, all the County had to do was what we keep asking and they keep resisting, which is to allow objectors to present our broadest Comprehensive Objections case to defeat Rise and its project once and for all. Continuing incorrectly to ignore, disregard, and evade our Comprehensive Objections in a fair and equal process where we defeat Rise and its project, is not the act of a government agency biased, etc., but instead seems to be the action of a bullied government mistakenly trying too hard to appease the bully.]

In addition … the County consistently delayed key milestones and disregarded statutory deadlines set forth pursuant to CEQA. **[disputed: whatever timing problems may have arisen, besides the County's own good reasons, we note that Rise has caused all delays in many ways on its own, such as by supplying massive, disputed and suspect documentation that was full of errors, omissions, and worse, as rebutted, exposed, and demonstrated by hundreds of impacted objectors filing thousands of pages of Comprehensive Objections to which the County team had to respond. Moreover, although primarily Canadians, Rise should have noticed many massive acts of God or man-made disasters occurring locally in this period, such as massive wildfires, floods, snow closings of highways for weeks, and other distractions. While Rise may think it exploitive, no net benefit mine should be a priority for our community, objectors disagree and demand contrary equal time and rights for our own time-consuming priorities and complaints in what must be complex multi-party disputes (not just the two-party dispute Rise pretends between itself and the County). In any case, objectors blame any delays on Rise and its enablers, not the County team. Rise may have bullied the County team into accommodating Rise in converting into a de facto two-party dispute what the law requires to be a multiparty dispute in which the County is supposed to consider our reverse objector grievances as well as Rise's, but that time allocation for objectors to evaluate and rebut all those many thousands of pages of the disputed EIR/DEIR and Rise Reopening Claim records full of such Rise errors, omissions, and worse cannot be used by Rise as an excuse to blame the County team for delays for which Rise and its EIR/DEIR enablers are solely accountable.]** These delays were numerous, lengthy and without good cause, cumulatively causing years of delay and substantially and unnecessarily increasing costs. **[disputed again for the same reasons and more, as demonstrated in the Comprehensive Objections and others. Although Rise and its enablers incorrectly refused to consider the lethal to Rise admissions in Rise's parent's SEC filings (proven in discussions of *Richmond v. Chevron and Exhibit G, F, and E*), Rise and its EIR/DEIR enablers at all relevant times admittedly have had insufficient resources to fund any its project goals, or even the too small, admitted portion of the massive required**

safety and mitigation work that would ultimately be required. Thus, Rise's actual complaint seems to be a Rise desire to hurry up and wait, while it tries to raise the money needed to perform itself or to "flip" the project to a buyer "behind the curtain" with adequate resources, but apparently also with some reasons not to be "visible." In any case, because objectors have at least equal rights in this dispute process in resolute opposition to this disputed EIR/DEIR dewatering and mining menace, the County team cannot do the impossible and hurry for Rise, while still giving us hundreds of objectors our fair, equal opportunity to counter Rise's and its enablers' massive errors, omissions, and worse with our Comprehensive Objections and others.] Considered within the context of the County's other actions **[disputed again, as demonstrated herein and in Comprehensive Objections and others, the disputed Rise "context" is full of Rise errors, omissions, and worse, and the actual "context" is the reverse stated in Comprehensive Objections and others]**, the extremity of his drawn-out process appears to rise to a level of intentionality. **[We do not dispute that the disputed and objectionable conduct of Rise and its enablers caused delays that "may rise to the level of intentionality," but Rise cannot blame the County team (and certainly not the County Planning Commissioners or Board) for such delays and problems for which Rise and its enablers are solely responsible, as discussed herein and in Comprehensive Objections and others in the correct "context," not in the "alternative reality" "context" alleged by Rise and disputed by us.]**

Unlike any other project considered by the County **[disputed again as a false and misleading comparison, because in modern, relevant history there has never been any comparable project to this disputed EIR/DEIR mining menace in reopening an UNDERGRPOUND mine closed, discontinued, dormant, abandoned, and flooded since at least 1956 for 24/7/365 operation for 80 years beneath an objecting suburban surface community, especially without adequate or credible investigation or studies, based on Rise's self-selected disputed, incomplete, ancient, and (for many reasons) not credible historical records, instead of with more sufficient, modern, and credible studies required for any new mine, especially where Rise Gold Corp's SEC filings (e.g., Exhibits G, F, and E) admit Rise has no sufficient financial resources to accomplish their disputed project goals, much less even the disputed lesser portion of the required EIR/DEIR safety and mitigation work that Rise acknowledges.],** the County Executive Team also commissioned an economic study …released on November 15, 2022, as part of the decision-making process. **[The Comprehensive Objections demonstrate massive errors, omissions, and worse in the County Economic Report (e.g., Prior Ind 254/255 Objections for the EIR and this Petition/Objections Exhibits C, E, and F), and its disputed authors appear to be more Rise enablers, because they denied consideration of many issues and sources of information essential to a competent job and, again, ignored, disregarded, and evaded many Comprehensive Objections and others. For example, as Comprehensive Objections demonstrate, that generally**

incorrect report's disputed "comparable" cannot even pass the *Gray* "common sense" test, and, when it came to evaluating the property value losses caused by the mine (which we note will also be relevant for *Varjabedian* inverse condemnation and nuisance claims discussed above), THE STUDY FAILED TO CONSULT ANY APPRAISERS. SINCE MOST HOMEOWNERS NEED MORTGAGE LOANS TO BUY THEIR HOMES, AND SINCE MORTGAGE LENDERS ONLY LEND A MAXIMUM PERCENTAGE OF THAT APPRAISED VALUE, IF THE EIR MINING DECREASES THE APPRAISALS, IT WILL DIRECTLY REDUCE THE AVAILABLE MORTGAGE LOAN AMOUNTS AND, THEREFORE, WHAT BUYERS CAN AFFORD TO PAY. THUS, THE REPORT IS TOO OFTEN JUST USELESS ENABLING OF RISE WITHOUT ANY CREDIBILITY ON SUCH KEY ISSUES IN OUR OBJECTIONS. While Rise and its enablers incorrectly try to exclude consideration of the disputed EIR mining's impact in crashing home values, that reality is obvious and relevant evidence, at a minimum to rebut and impeach the net value of the mining tax calculation, which will be far exceeded by the greater losses in property taxes caused by the drop in home prices so caused by the disputed EIR mining.] … To Rise's knowledge, no other project in the County has been subjected to similar treatment**. [disputed again as a false comparison, since there has been no comparable UNDERGROUND DEWATERING AND MINING project, and the economic study was, in theory, a way to check Rise's exaggerations (and their mistaken acceptance by disputed EIR/DEIR team and generally accommodating County Staff Report) about the purported net benefits of the mine. The alternative to the County Economic Study (which did catch a few of the many serious errors in Rise's claims uncritically repeated in the EIR/DEIR and County Staff Report) would have been to choose between Comprehensive Objections and such false and disputed claims of net benefits by Rise and its enablers, which, sadly, because of the disputed and inaccurate County Economic Report methodology, is where we end up anyway on key issues in Comprehensive Objections, like impacts on property values and the consequent adverse effects on County economics.]** Although the County … the economic report ultimately supported Rise's claims of a positive effect on the County. **[again false, since the Report corrected some massive Rise exaggerations and misleading claims, and its ultimate conclusions (which our Comprehensive Objections and others still dispute) depend on uncertain assumptions with ranges of possible results and other questions, not to mention the pro-Rise Report's incorrect assumptions and exclusions of key objections and evidence and other reasons to discount its analysis.]** The RDN Economic Study **[aka in Comprehensive Objections and here called the County Economic Study]** confirmed that the Project would not negatively affect property values. **[Disputed in Comprehensive Objections and others, and because of such flaws exposed therein failing both the Gray "common sense" test and the CEQA requirement for a "good faith reasoned analysis" stated in *Vineyard, Banning, and Costa Mesa*. Only a Rise enabler would purport to address the impact local property values by disregarding the local real estate brokers' negative opinions**

AND NEVER ASK ANY REAL ESTATE APPRAISERS WHO WILL DETERMINE WHAT FINANCING IS AVAILABLE, IF ANY, FOR BUYERS OF SURFACE PROPERTY ABOVE OR AROUND THE 2585-ACRE UNDERGROUND IMM. Also, that disputed report results depend on what assumptions one makes about ranges of possible results. In any case, if the Board were mistakenly to approve the disputed EIR for dewatering and mining, the actual market crash reaction would prove us objectors right, and Rise and its enablers wrong, long before the subsequent litigation would be resolved. In the real-world reality, it is the buyers and their mortgage lenders who will determine the economic result, and few of them will pay the pre-Rise market price for homes above or around the 2585-acre underground IMM and trust that Rise and its enablers are right and everyone else is wrong about the risks addressed in the Comprehensive Objections. See also Exhibit G at #II.B.25, rebutting the SEC 2023 filing where Rise threatens to invade the surface parcels above and around the underground IMM to support its dewatering and mining.]

Actions taken by the County prior to and after the release of the RDN Economic Study also support an inference of bias. **[Yes, but only in reverse, as bias in favor of Rise and against us objectors, as noted in Comprehensive Objections, some of which included detailed objections to that Report. See Exhibits C, D, E, and F.]** … Rise notes that economic factors are not considered under CEQA. [**false and disputed by Prior Ind. 254/255 Objections and other Comprehensive Objections, including both by CEQA quotes and cases, and more importantly by the applicable law of evidence. See Exhibits E and F. Rise and its disputed EIR/DEIR make the false claims, such as of economic benefits from the mine, but objectors have exercised our rights to rebut those falsehoods by proving that there is no net economic benefit to the EIR mining, especially if one considers all the unaddressed liabilities Rise and that generally disputed Report ignore, such as, for example, how is Rise going to mine when it has no right to "take" the overlying surface parcel's groundwater and flush it away down the Wolf Creek to dewater the underground mine? See Exhibit D. What Rise incorrectly attempts to do here, and what Rise convinced its enablers to "rubber stamp" in the disputed EIR/DEIR, and the mostly disputed the 2023 County Staff Report and the County Economic Report, is to claim that they can make any false economic or feasibility claim they want, but that falsehood cannot be corrected on rebuttal, as Comprehensive Objections and others attempt to do; i.e., Rise claiming that somehow it and its enablers can ignore CEQA boundaries that they ignore but can somehow still impose such disputed boundaries on objectors, contrary to the law of evidence that allow objectors to rebut each statement and claim by or for Rise or its enablers regardless of the CEQA boundaries that Rise and its enablers keep ignoring for their own claims. The exclusion of such rebuttal objections by Rise and its enablers will ultimately be fatal to the disputed EIR/DEIR and other Rise Reopening Claims, since, when such evasions of objections are defeated by the courts (and hopefully by the Board), the result will be a deficient EIR that**

cannot possibly be certified, because it fails to comply with CEQA requiring such better responses to such meritorious objections.] Therefore, any economic review is intended to be restrictive. **[disputed for the same reasons and more, including as a false Rise deduction from a false Rise premise, ignoring the law of evidence allowing such rebuttals by objectors.]** The extent to which the County mined for negative economic information data was unusual in the context of both normal project review and CEQA. **[disputed again for the same reasons and more. Consider what Rise just implied: that confronted with data that defies "common sense" without "good faith reasoned analysis" and disputed by many Comprehensive Objections, somehow the County is not supposed to do a more thorough "review" than "normal"? Absurd. Also, as noted above, there is no project comparable to this disputed EIR dewatering and underground mining menace, and no other project has had hundreds of objectors filing thousands of pages of Comprehensive Objections and others, many properly objecting to and rebutting the disputed Rise and enabler claims with contrary legal and other authority consistently ignored, disregarded, and evaded by Rise and its enablers here. Since the County must deal with our meritorious objections, even if Rise and its enablers ignore, disregard, and evade them, it is natural for the County to want more data to address that inevitable economic dispute that cannot be evaded.]** Rise understands that after the Hearing, the County extended …[the] contract without a clear explanation as to the scope of additional work**. [disputed as hearsay evidence and, especially considering Rise's "credibility issues," both with respect to the Rise PC Letter and elsewhere as addressed in Comprehensive Objections and others, as to how Rise characterizes this false claim for its innuendo effects. However, we hope the County team follows our approach to get at the truths that Rise and its enablers are desperately attempting to exclude from the record but cannot ultimately succeed because they are not just wrong on the facts but also wrong on the applicable laws they keep ignoring or mischaracterizing.]**

In addition, the County published its Staff Report prior to the Hearing … The dissonance between the Staff Report and the Final EIR's conclusions regarding the General Plan and Zoning Ordinance consistencies is seemingly a pretext to justify a recommendation of denial, **[disputed again. That "dissonance" is resolved by the reality that our Comprehensive Objections and others defeat not only the disputed EIR but also most of the disputed County Staff Report that incorrectly favors Rise or the disputed EIR/DEIR or that improperly ignores, disregards, or evades our meritorious Comprehensive Objections. Again, the "bias, etc." and partisanship is mostly in favor of Rise and its disputed EIR/DEIR and against our meritorious Comprehensive Objections. As a result, the Rise argument here seems to be that such staff and EIR enablers finally may have found a limit on their mistaken accommodations for Rise at, say, 90% (compared to what a lawful and proper EIR/DEIR would have stated for Rise at 1%), but Rise is complaining because its enablers did not wish to be 99% wrong.],** and was not based on the General Plan or Zoning

Ordinance. **[disputed again, for the same and other reasons, but also because there is no authority cited for Rise's disputed legal conclusion, and our Comprehensive Objections and others prove the disputed EIR/DEIR mining would violate both the plan and ordinance.]**

B. Part II.B of the Rise PC Letter Alleges "Organized Opposition" Among County And Community Representatives (Incorrectly, As If Somehow That Were A Bad Thing), And the Rise PC Letter Continues To Mischaracterize Perception of the Truth And Merit In Comprehensive Objections As "Bias, Etc." And Rise Incorrectly Tries Again to Shift Rise's Burden of Proof To Objectors And Others.

In #II.B Rise begins with another false headline: "Organized Project Opposition Between County Agencies And Anti-Mining Community Groups Demonstrate Bias." Again, our Comprehensive Objections demonstrate that if anyone is prejudiced by "bias, etc." it's objectors, but not Rise or its enablers. Moreover, we cite case precedent in section I above (e.g., *Fairfield and BreakZone*) that defeats this whole Rise theory as to the Planning Commission, and none of the Rise PC Letter cited cases create a basis for such disputed Rise claims. Remember, the only possibly relevant "tribunal" or quasi-judicial decisionmaker in this dispute is the Board itself. Agencies like NID owe their duty to their customers, not to Rise, and NID has a right to defend its system from the Rise's EIR/DEIR mining menace, as do all the community organizations. Collaboration in joint defense arrangements is not only proper, but State and Federal Constitutional rights called freedom of association and freedom of speech, freedom of assembly, collective rights to petition government for redress of grievances, etc. Joint defense and prosecution groups are common and beneficial in such situations and others, where many similarly situated people and agencies are impacted by the same threats or worse. This occurs in most major bankruptcy cases where similarly situated creditors band together pursuant to Bankruptcy Rule 2010. Remember, our Comprehensive Objections (unrebutted by Rise) prove that surface parcel owners above and around the 2585-acre underground IMM have groundwater rights, existing and future well water rights, and rights of subjacent and lateral support to prevent subsidence, including by depletion of groundwater support, all threatened by this proposed EIR/DEIR dewatering and underground mining (e.g., 24/7/365 for 80 years), without any proven right to do so Rise would flush it all away down Wolf Creek after purported "treatment." Also, without CEQA compliant disclosures (see Prior Ind. 254/255 Objections), Rise also plans to shore up the underground mine with cement paste that appears to contain the toxic hexavalent chromium that polluted Hinkley, CA, in the movie, *Erin Brockovich*. We note that, after all these years of trying with massive settlement funds, Hinkley has still not been able to remediate its hexavalent chromium polluting its groundwater, and here Rise refuses even seriously address the risk. See www.hinkleygroundwater.com. Remember, the CEQA goal is discovery of the relevant truths and impacts from the disputed EIR/DEIR mining, and that is best done when those impacted pool their various expertise and information, especially since there are ample documented reasons in the Comprehensive Objections and others not to rely on Rise or its enablers.

In any event, consider the following quotes of false and disputed allegations from the Rise PC Letter (at 3-4) in which we again use brackets and bolding to expose such errors, omissions, and worse with brief rebuttals:

> Evidence of organized Project opposition between County representatives and community organizations prior to the Hearing is evident based on statements made by Nevada Irrigation District ("NID") Directors … and Wells Coalition members at NID Board meetings. **[This is not only proper and right under *Fairfield* and *BreakZone*, but none of Rise's cited and disputed cases would prohibit such conduct. There is no such wrong in the law as petitioning your government agency for help about grievances, which is a constitutional right of the objectors to petition and for the relevant government to response. However, if Rise were somehow correct, Rise would be no less guilty of the same conduct, and Rise has no more right to seek redress of grievances than do us competing objectors with at least equal constitutional, legal, and property rights to Rise. There are, however, bases for objecting to Rise so bullying its potential victims for exercising their legal rights.] …**
>
> The County also took actions to exclude supporters of the project from speaking during public comment. … **[Our contrary witnesses include the third person to line up just before 7am, since he was not sure how long the line for tickets would be and he needed to be early in his opposition to take his wife to a heart doctor appointment in the afternoon**. He offers to testify that he did not see anyone being excluded or treated unfairly, and, in fact, there were two mine advocates in line behind him arguing with him as apparent Rise job seekers. He will also confirm that the objectors lined up for entry at 830am hugely outweighed the comparatively tiny number of Rise supporters. Perhaps that was because they were still enjoying Rise's free breakfast across the street. **While some numbers were distributed before 830am, the point is that all numbers were distributed on a first come/first served basis in accordance with the attendee's position in line. Since he was third in line what was the point on waiting to give him ticket 3? Therefore, only the reason Rise's small band of supporters would not have gotten tickets on the same basis as us objectors is because they lined up too late. That is not the fault of the County, who also reserved a second day for people, including Rise supporters to appear**. Having arrived late on day one, the Rise supporters should have been able to attend on day two, and they could have participated from the adjacent room to the first day's talks. **This is Rise again trying to manufacture a "scandal" when there is none. If Rise wishes to debate the unfairness of the process, us objectors were each allowed only three minutes to speak, but the Rise enablers for the disputed EIR/DEIR and the County team for the mostly disputed 2023 County Staff Report repeated Rise's disputed propaganda for almost the entire morning on the first day. Even worse, Rise's lawyer and CEO were each apparently allowed to speak as long as they wished, because they spoke their**

disputed opinions and worse for more than an hour before they finished their presentations objectors would have comprehensively disputed, if we had been allowed more than three minutes to do so.]

As further illustrated above, the County's actions prior to the Hearing demonstrate that some County employees were, at a minimum, biased. **[Again, there is no objectionable "bias, etc." demonstrated against Rise unless insistence on truth and compliance with applicable law and equal treatment for us hundreds of objectors in this multi-party dispute is somehow wrongful. (Rise cannot even argue that because Rise has ignored all our broader objections throughout the process, and, therefore, has no rebuttal case it can present, unlike objectors.) Our foregoing section I precedents (e.g., *Fairfield* and *BreakZone*) demonstrate why Rise is all wrong. Indeed, even Rise's distinguishable favorite case (*Clark*) shows Rise to be wrong about many of its claims, as proven above. See also Exhibit A. Contrary to the next Rise claims, these Rise and enabler actions are inconsistent with the Constitutional guarantees to OBJECTORS for a fair hearing conducted by impartial, unbiased, and uninvolved decision-makers and violated the County's own policies regarding hearing procedures.]** These actions are inconsistent with Constitutional Guarantees to a fair hearing conducted by impartial, unbiased, and uninvolved decision makers, and violated the County's own policies regarding hearing procedures. **[dispute again and wrong, as proven in section I above, by our cited cases (e.g., *Fairfield, and BreakZone), and by our rebuttals to each of Rise's incorrectly cited cases. The Planning Commission is not the tribunal or quasi-judicial decisionmaker Rise claims. That is only the Board. The goal here is to find the truth and right in this situation, which means every such seeker won't find it in the Rise claims or its enablers repeating such errors or worse in the disputed EIR/DEIR or (most of the) County Staff Report incorrectly favoring Rise and disregarding meritorious Comprehensive Objections. Again, this is a multi-party dispute, and whatever rights are afforded to Rise, objectors must have equal counter rights against Rise and its enablers. Holding Rise accountable is appropriate, since Rise and its enablers have the burden of proof; not objectors.]***

The Rise PC Letter (at 4) blasts its enablers on the County staff for publishing its Staff Report prior to the Hearing without first discussing its negative determinations with the applicant as is customarily done)." However, the staff also did not discuss the report with us objectors, who have at least equal constitutional, legal, and property rights to compete against Rise. Did Rise ever stop to think that the County did them a favor, because so accommodating Rise would have either required equal treatment of objectors or else that would be one more objection to add to our list of situations where Rise was consistently treated better than objectors by the County team. Since Rise has no more rights than we do, especially by Rise's alleged standards for "impartiality" and bias, the staff has no right to favor Rise and to do so would be more bias in favor of Rise. Therefore, Rise in effect is complaining that its enablers on

the staff acted impartially, which Rise somehow incorrectly claims to be bias because Rise incorrectly refuses to consider objectors' such rights.

Next the Rise PC Letter alleges: "The dissonance between the Staff Report and the Final EIR's conclusions regarding General Plan and Zoning Ordinance consistencies is seemingly a pretext to justify a recommendation of denial, and was not based on the General Plan or Zoning Ordinance consistency." Nonsense. First, besides being incorrect about "consistencies" (i.e., the disputed Rise claim seems to be that one error or worse requires more errors or worse to be "consistent"), that absurd Rise claim assumes that the only things that matter are the disputed EIR/DEIR and the mostly disputed County Staff Report, but neither has any more status than our thousands of pages of Comprehensive Objections, including against the EIR/DEIR, other Rise Reopening Claims, and most of the disputed County Staff Report with the opposite noncompliance with the General Plan and Zoning Ordinance to what Rise incorrectly claims.

C. In Part III the Rise PC Letter Incorrectly And Worse Alleges "Member of the Planning Commission's Bias During the Hearing Were On Display." If That Is True Then Objectors Have An Even Stronger Case Against Biases Displayed By Rise's Enablers Presenting the Disputed EIR As If They Were Advocating 100% for Rise On The EIR/DEIR in Total Disregard of the Comprehensive Objections And Others, While The County Staff Likewise Advocated for 90% of the Disputed EIR/DEIR In Its Mostly Disputed Staff Report And Likewise In Almost Total Disregard of the Comprehensive/Objections And Others.

1. Objectors Dispute Rise's False Claim that: " A. That Inaccurate Evidence Was Presented Without Opportunity For Rebuttal." (Note the entire Rise presentation and its staff rubber stamp of most of that presentation were inaccurate and no objectors were given any opportunity to rebut Rise or such staff, except for a limited three-minute public comment. Thus, if that is objectionable bias about which Rise can complain, objectors have the opposite complaints with much greater merit and importance.)

This disputed Rise attack on Commissioner McAteer is despicable and wrong, as other objectors will address better in other objections. However, as noted above if what, **if anything, Mr. McAteer is found to have done wrong, then the same standards must be applied against Rise and its enablers based on the record also reflecting opposite biases by Rise's enablers on the EIR/DEIR team and the County Staff Report team in favor of Rise and against Comprehensive Objection filers and others. Whatever Rise is entitled to, objectors must also be entitled to that and more in reverse in this multi-party dispute, where we must have at least equal rights. Those Rise enablers wrongly disregarded all the hundreds of meritorious objections without proper cause and didn't even bother to explain that such disputes existed; i.e., broader objections were ignored, disregarded, and evaded**. The Rise enablers recited the disputed Rise talking points as if they were somehow meritorious when the courts, if necessary, will find against Rise and its enablers, because the disputed EIR/DEIR (and therefore, 90% of the

County Staff Report) were full of the errors, omission, and worse revealed in such ignored, disregarded, and evaded Comprehensive Objections and others. Consider the following rebuttals of Rise in these charges for the reverse effects as to Rise and its enablers, remembering that at this stage the disputed EIR/DEIR and the mostly disputed County Staff Report have no more claim to be right than do our hundreds of Comprehensive Objections to the opposite effect. Consider also, that **asking hard questions of Rise and its enablers is called investigation—not bias. Asking smart and hard questions, all of which have solid support and foundations in the thousands of pages of our Comprehensive Objections and others is not bias, but instead is properly doing the Commissioners' jobs. If that is wrong somehow, which we dispute, the same standards must be applied against Rise and its enablers who are worse offenders against objectors.**

In any event, consider the following quotes of false and disputed allegations from the Rise PC Letter (at 6-8), in which we again use brackets and bolding to expose such errors, omissions, and worse with brief rebuttals:

> Throughout the two-day Hearing, Commissioner McAteer consistently took actions that demonstrated a clear bias against the Project**. [disputed again,** and a desire for truth and good policy is not bias but exactly **their jobs. The proof against this is how much Rise has been allowed to get away with that was objectionable, especially in comparison to objectors. In any contest between objector and Rise as to who has suffered the worst, objectors would prevail by a huge margin. In any contest between objectors and Rise over who has the most meritorious grievances, objectors win by an even greater margin. In any event, even Rise's cited case law is clear that administrative hearings are less strict than courts, both for policy and practical reasons. But the kind of "bias, etc." conduct Rise complains about would be tolerated by even stricter standards for judges, who are also supposed to ask hard questions of the parties and then get at the truth. Rise insists not on truth or merit but on everyone accommodating Rise's objectionable ambitions.]** As discussed below, these actions included testifying instead of deliberating **[disputed and mischaracterized: laying a foundation for questions with the other side's positions (here any of our thousands of pages of objections from hundreds of filed objections improperly ignored, disregarded, and evaded in the DEIR/DEIR process and most of the County Staff Report) is a proper way to investigate and question Rise and its enablers to discover the truth. That is exactly what the judges will correctly do when this moves into the courts. Remember, the Planning Commission is not a tribunal or quasi-judicial decisionmaker here and is not subject to Rise's disputed standards as to what is proper. See *Fairfield* and *BreakZone.],*** presenting false and inaccurate evidence during the Hearing **[disputed because everything Rise complains about has a solid basis of support in meritorious Comprehensive Objections, none of which Rise has even tried to rebut. However, the reverse is not true. Rise's representatives and enablers stated many disputed things during the hearing that are contrary to the truths and facts presented in the Comprehensive Objections and others.]** waiting to

present evidence until public comment was closed **[disputed, and there was ample evidence in the Comprehensive Objections and others for any such evidence that was already in the record. More importantly, what about the new evidence presented by the Rise representatives at and for the Hearing after the public objections and comments were closed (apart from the useless three minutes)? Indeed, Rise then added even more disputed evidence in its improper Rise PC Letter brief that we are belatedly rebutting. Worse, unlike our three minutes each, Rise and its enablers were allowed to present comprehensively disputed "evidence" to the record for hours with handouts and slide shows that many cases were new material. If Rise is prejudiced, we objectors are even more prejudiced in reverse.],** failing to allow Rise an opportunity to rebut or clarify the false or inaccurate evidence or testimony **[disputed again, and we objectors were likewise not allowed in reverse to rebut or clarify the false or inaccurate evidence or testimony from Rise and its enablers.],** failing to disclose new evidence to Rise or the County Staff prior to the Hearing **[disputed again, and the evidence was not new but in the Comprehensive Objections and others. However, the reverse is not true, and Rise added new disputed "evidence" at the Hearing to which we object and which we would like to dispute properly, but based on what we heard, we dispute that Rise "evidence."],** preparing to utilize prepared remarks (i.e., a script) to recommend Project denial **[disputed! Most judges, who are held to a much higher standard than administrators, prepare tentative rulings on issues in dispute before the hearing. That is right and proper. Rise makes its unfounded accusations without knowing whether such a tentative ruling by Mr. McAteer here was one of several which included some matters favoring Rise, which objectors dispute. But the California Supreme Court in *Fairfield* forbid Rise to pry into such matters even in discovery, and this Rise ambush speculation is the worst kind of such objectionable tactic. Shame on them.]**

We expect other objections to dispute the Rise claims about Commissioner McAteer's discussion of the school tax issues, but Rise's criticisms are misplaced both on substance and on procedure, as demonstrated in section I above and cases like *(Fairfield* and *BreakZone*). However, it is obvious that Rise is again "playing the victim" by mischaracterizing these situations to manufacture more "scandal" where none exists, besides the objectionable tactics exposed in the Rise letter. For example, the Planning Commissioners are supposed to investigate. Rise again mischaracterizes the role of the Planning Commissioners by incorrectly insisting that they follow the disputed Rise concept of a "neutral decision-maker" and rubber stamp the disputed and incorrect opinions of Rise enablers), which, if that were the standard, then all the Rise enablers at the Hearing were much worse offenders in their rubber stamping of Rise errors, omissions, and worse. Like judges (who are subject to much stricter standards) it is common and appropriate for such investigators to state an opinion when the arguing party (as Rise here) states a position with which they disagree. That is how judicial, oral arguments are done; by testing the advocates theory. Rise could have countered, if they wished. They cannot claim surprise as an excuse, because Mr. McAteer was responding to the Rise/enabler claims to

which objectors had already complained in Comprehensive Objections. Moreover, that disputed conversation was about the disputed County Economic Report—not the EIR/DEIR or permit/rezoning/variance applications at issue in the hearing. In any case, whenever objectors have addressed such economic issues in writing or oral arguments in such opposition, we have been incorrectly ruled out of order or out of bounds, and our objections have been incorrectly ignored, disregarded, or evaded by Rise and its EIR/DEIR team and staff enablers. Allowing Rise to hassle either the County over the County Economic Report, or Commissioner McAteer from responding to such economic claims for Rise at the Hearing, would confirm our reverse bias claims. It is legally impossible to keep allowing Rise and its enablers to make false or misleading economic claims, but deny the rest of us, whether Commissioners or objectors, our right to rebut and counter those disputed claims. Since objectors do that, so can the County and the Commissioners who are supposed to consider and respond to objectors, not just Rise.

However, Rise's hypocrisy and worse on these economic disputes (see, e.g., the disputed Rise PC Letter [at page 4 at fn 18 and accompanying text] where Rise protested the County Economic Report (but less extensively and differently than our Comprehensive Objections did), Rise claimed: "Rise notes that economic factors are not considered under CEQA. Fn18. Therefore, any economic review is intended to be restrictive.") forbids them to make such economic claims at the Hearing and then complain when the Commissioner responds. Stated another way, Rise is also incorrect to claim that the only words that may come out of a Commissioner's mouth (unless it is County personnel incorrectly praising Rise and the mine without consideration of our meritorious objections) must end every sentence with a question mark. In any case, Comprehensive Objections blast most of the disputed County Economic Report, the EIR/DEIR, and most of the 2023 County Staff Report, so there is a foundation for our economic arguments. Rise cannot have it both ways. Either Rise's economic complaints are irrelevant, or Rise admits that we are right and Rise enablers' failures to respond to our economic objections allow us to prevail over the disputed EIR/DEIR (and corresponding mostly disputed County Staff Report) by default. Either way, these incorrect Rise complaints are just an annoying digression from the material issues in dispute.

Other objectors will dispute Rise's continued complaints about the second day of testimony by the NID General Manager Jennifer Hansen. Therefore, we will reduce our many disputes here to the following. There are few controversies more contested and disputed than the effect on our impacted groundwater, undercounted existing wells, and future wells (constitutional, legal, and property rights of the objecting surface owners above and around the 2585-acre underground mine that survives any approvals sought by Rise and which create more inverse condemnation and nuisance claims under Varjabedian, as discussed above but never discussed in the disputed EIR/DEIR, County Staff Report, or County Economic Report. The disputed EIR/DEIR and those reports also ignore the *Gray v. County of Madera* precedent that already defeats the disputed EIR/DEIR well mitigation measure that Rise's SEC 10Q and 10K filings already prove to be illusory (Exhibits D and G), since Rise admits it lacks the financial resources to fund much of anything that is required to perform even the EIR/DEIR, much less what would ultimately be required at the end of these disputes in the final court resolution. As to Rise's disputed "experts" in "three independent hydrogeological firms, one of which reportedly works exclusively for the County," the Comprehensively Objections defeat them, although they are flawed and objectionable in many other ways. (As for "independence," as

discussed in section I.A.2 discussing "bias, etc." many believe the outcome of an EIR applicant's so-called "independent" expert opinions can be predicted by both their demonstrated professional orientation [e.g., like the "independent" pro-prosecution psychiatrist who never finds any criminal insane or the "independent" pro-defense psychiatrist who never finds any criminal sane], and by the scope and nature of their instructions from the EIR/DEIR applicant.) In any case, that will be a battle of experts in which objectors will prove Rise and its "experts" wrong, opining on the basis of insufficient local or relevant information and other false assumptions that make many opinions at best "educated guesses" that no impacted objectors should or can be required to trust under these circumstances. Those and many other disputes with the EIR/DEIR, other Rise Reopening Claims, and other Rise enabling reports are comprehensively proven in Comprehensive Objections and others providing ample basis for concern by the Planning Commission.

However, what Rise fails to consider in its letter is the fact that NID has its own process for dealing with these disputes. NID opposition would make the IMM EIR mining infeasible in many possible ways, and the objectors will be no less fierce in their opposition for any NID approvals for the IMM than we have been in our Comprehensive Objections and others so ignored, disregarded, and evaded by Rise and its disputed EIR/DEIR and staff enablers on these disputed topics. This goes to the core reason why any impartial/non-biased/fair Planning Commissioner would want to know the opinion of such a NID expert, not just on the science in dispute, but in understanding how NID would deal with the mining approval disputes that would certainly follow any County approval with objections from its own customers, like objectors. Stated another way, consider the problems Rise would dump into NID's lap if the IMM disputed EIR/DEIR mining were allowed to start when the Comprehensive Objections and others prove correct, and Rise and its enablers are so proven wrong, including as to their insufficient and illusory mitigation. What happens, for example, when Rise fails to mitigate in the next drought as required, and all the existing and new wells (many more than counted by Rise or its enablers) demand service from NID? Who will pay for that massive hook-up expense? What shortages would all those extra customers all at once cause NID (and, when that litigation starts, not just Rise but also the County)? What would happen then if Rise files its Canadian insolvency proceeding and US Chapter 15 (and 11?) case to delay or evade payment of what it could owe impact victims under *City of Barstow, Pasadena, Keystone, Varjabedian*, and other cases discussed above in section I.A.1 and in Comprehensive Objections?

There are scores of such unaddressed questions, many asked in Comprehensive Objections and either evaded, ignored, or deficiently addressed, but objecting NID customers will not be blocked by disputed CEQA interpretations either in courts or in NID processes, thus making the Commissioner's extra concerns with NID both relevant, important, and unsatisfied by Rise and its enablers. While Rise incorrectly denounces the NID General Manager for not being an expert, her opinions on the key questions could not be answered by Rise's experts or anyone else because they speak to that core problem unaddressed in the disputed EIR/DEIR or mostly disputed 2023 County Staff Report, which is what happens when objectors block Rise from getting what it wants from the separate NID process?

As to the timing complaints, Rise should blame itself for monopolizing the two-day agenda with its lengthy filibuster following the lengthy, disputed pro-EIR/IMM mining commercial by the EIR/DEIR and County Staff Report enablers. Hundreds of objectors were all

equally entitled to their comment time of an insufficient three minutes each, and there was too little time for everyone. The correct answer under the circumstances was not (as Rise suggests) to give them even more disproportionate time for its propaganda and thereby deny objectors their equal rights.

The Rise demand for more time for Mr. Pappani, the much-disputed EIR consultant and Rise enabler, is even less justified. His wrongful exclusion of the relevant data cited by Comprehensive Objections and others is what caused this problem in the first place. Indeed, if Rise had tried to put on its so-called experts or Mr. Pappani data into evidence at the end, hundreds of objectors would have demanded cross-examination or rebuttal evidence opportunities for equal time and to "level the playing field," and then, if denied, it would be objectors with the bias/partisan complaints. That is the point Rise keeps choosing to ignore. This is a muti-party dispute in a zero-sum game. Whatever extras Rise gets come to the prejudice of objectors, and objectors have already suffered too much from Rise's disproportionate benefits at objectors' prejudice in the County's thankless effort to be "more than fair" to Rise and its enablers. While Rise always incorrectly demands more than its share, enough is enough.

Rise again falsely claims that Commissioner McAteer's statements (or allowed statements) were "false or misleading evidence," an opinion disputed now and by many Comprehensive Objections and others (again not rebutted by Rise). But Rise then announces its disputed and incorrect speculation if it were a fact: "His" [Commissioner McAteer's] inaccurate statements inappropriately swayed deliberations." Not only does Rise not know that, but inquiry into the reasoning process of such officials is expressly forbidden by the California Supreme Court in the ***Fairfield*** decision discussed above in section I.A.1. In any event, for all Rise knows our Comprehensive Objections or others evaded, ignored, or deficiently addressed by Rise and its enablers could have been what "swayed" the Commissioners since they were seeking truths and reality not to be found from Rise or in the disputed EIR/DEIR and the bulk of the 2023 County Staff Report that echoed the disputed EIR/DEIR in enabling Rise, but instead in our Comprehensive Objections and others provided such truths and reality.

In any case, the "reality" is that there is ample basis for rejecting the EIR/DEIR and Rise applications for permits/rezoning/variances/etc. in accordance with applicable law based in the Comprehensive Objections alone. Even if there were any issues subject to what the CEQA cases (e.g., *Gray, Vineyard, Banning, Costa Mesa*) call "good faith reasoned analysis" on both sides of the debate in a "battle of experts" over such groundwater or well disputes, the policy questions for the Planning Commission and the Board would still remain. What level of risk is it appropriate to impose on impacted locals, especially those of us living above or around the 2585-acre underground mine, for the profit of nonresident Rise speculators? Notice that all the actual experts qualify or limit their disputed opinions in many ways, such as about risk being low or harms being less than significant. Those disputed opinions do not say there is no risk. Therefore, at a policy level for the County, whether the risk of harm to us impacted local objectors is too large (as objectors and their experts believe and will prove) or purportedly tolerable for the profit of Rise's nonresident speculating investors (as Rise and its enablers incorrectly claim), what happens when those risks create harm to us living above or around the mine? The Constitutional answer is what the California Supreme Court stated in *Varjabedian*: local victims will have many claims for inverse condemnation and nuisance, among others. See #I.A.1 above. Since Rise Gold Corp's SEC filings admit it lacks the financial resources to pay for

the harms it causes us locals or even to accomplish the insufficient mitigations in the EIR (Exhibit G), that risk is intolerable, and the County must also consider victims turning to any others who may be legally responsible.

In summary, reopening this dangerous mine that's been closed, discontinued, dormant, abandoned, and flooded since 1956 based on deficient investigation and unreliable and insufficient documentation is a gamble that no responsible government could fairly (or we contend legally) impose on the thousands of us living above or around this 24/7/365 mining for 80 years. Such dewatering and mining are an exploitive business, and our experts can explain why there are more than 40,000 California abandoned mines on the EPA list creating uncompensated misery for their communities as the miners retreated (often to other countries, unless the foreign parent company just abandons or bankrupts its worthless local subsidiary as the scapegoat). We urge our elected representatives to be clear that we must continue these objections until they are resolved on the merits in court, because local objectors will receive no net benefit from this mine, and it will certainly depress our property values and make our lives miserable 24/7/365 for 80 years (or as long as it continues before the mining stops for many possible reasons, such as Rise's investors decide the mine is no longer a profitable risk for them). Therefore, this is not just about the debates about 300 jobs and incidental revenue Rise touts versus the huge losses and liabilities objectors calculate. This is about whether this IMM EIR project is rejected, or whether our community devolves into perpetual litigation and political conflict, which cannot be justified by any responsible leaders, not to mention anyone who truly cares about the health, welfare, and environment in our community. What Commissioner McAteer did was his job, and he did it well.

2. Objectors Dispute Rise's Claim That: "B. Planning Commission Relied on Impermissible Evidence."

Our rebuttal to the Rise PC Letter's first claim in "B.1" is addressed above in our section I.A.3, where we refute the Rise claim that" "1. The Planning Commission Relied on a Retracted Northern Sierra Air Quality Management District Letter."

We likewise dispute here Rise's second claim that: "2. Geotechnical Report Submitted After the Close of Public Comment." Again, we expect others to rebut these Rise claims in more detail, but we represent the following here for clarity. Rise claims this report is "unsubstantiated," but its content was substantiated in Comprehensive Objections or others in the record, which rebutted the disputed EIR/DEIR claims of no "seismically active fault." We also note that. As Comprehensive Objections and others have noted, most of the "historical records" (i.e., pre-1956, when the mine flooded and was closed) on which the disputed EIR/DEIR and its supporting reports are based will be disqualified as evidence as being worse than "unsubstantiated," because they are incomplete, unvalidated, arising from a time before modern science and mining and analytic techniques, and otherwise unreliable. Recall that Rise admits (more in its SEC filings [Exhibit G] than in the disputed EIR/DEIR, which SEC admissions are valid impeachment evidence as confirmed in *Richmond Chevron,* as discussed in section I.A.1 above) that Rise's actual, physical investigation of that closed, discontinued, dormant, abandoned, and flooded mine since 1956 is nonexistent or limited (depending on the issue),

thus making the credibility of reports based upon the credibility of the source of the data, and our objections rebut the EIR/DEIR support on that basis as well.

Again, what Rise claims is true and false in this part of the letter regarding such report/fault etc. issues have been rebutted in our Comprehensive Objections, not just in the report to which Commissioner McAteer cited. Thus, when Rise complains that it was not given a chance to rebut the Commissioner's contentions, neither were objectors given a chance to rebut Rise's incorrect complaints on the merits from our Comprehensive Objections that defeat Rise's claims. What Rise continuously overlooks again is that objectors have exercised our equal rights to comprehensively dispute with evidence (or offers of proof equivalences) almost every material claim by or for Rise in the disputed EIR/DEIR, the other Rise Reopening Claims, and the bulk of the 2023 County Staff Report that parrots those errors, omissions, and worse from such disputed EIR/DEIR. Strangely, near the end of Rise's disputed rant (at 10) Rise admits that this report it complained at issue was already part of the EIR record, but was added again by an objector creating an appearance of being new, as with the disputed addition of the NSAQMD Letter 12 discussed in section I.A.3 above. That Rise admission is inconsistent with its prior complaints, creating a net result of the Rise complaint seeming to boil down to the Commissioner allegedly speaking of the geotechnical report as if it were new, when it was old and newly introduced properly by an objector. Since these inconsistent Rise claims are wrong and contrary to each other, they are subject to even more dispute.

In any case, the worst part of Rise's disputed argument seems to be that somehow Rise must be right about its disputed geotechnical claims because: "The evidence is not new, and had actually been analyzed by the EIR." So, what? The disputed EIR/DEIR is no truer or binding on anyone than our Comprehensive Objections that dispute every major part of it. This is a deadlock, just like when Rise denounced the Commissioner for correctly stating truths backed by Comprehensive Objections just because Rise claims they are "indeed proven false based on the very EIR he was deriding." Wrong again. The contrary proof to Rise and its disputed EIR/DEIR has been in the ignored and evaded Comprehensive Objections and others all along. Truth and fairness matter, and require that objectors cannot be ignored, disregarded, or evaded as competing comprehensively against Rise and its enablers. Commissioners do no wrong when they try to be fair to and balanced for objectors for the first time in this disputed process too often favoring or disproportionately accommodating Rise.

3. Objectors Dispute Rise PC Letter's Claim in # II.C That: "C. Commissioner McAteer Prepared A Script that he Used to Provide Closing Opposition Remarks."

Rise falsely claims misconduct by the Commissioner at the close of the Hearing what we objectors contend is right by objectors as is proper in response to our meritorious Comprehensive Objections. Consider, for example, the false Rise accusations are that "McAteer ignored the conclusions and analyses in the EIR prepared by the County and gave an impassioned speech in opposition to the Project…" which is exactly the right thing, and what hundreds of objectors will be doing when we finally get equal time and opportunity in this disputed County process. The disputed EIR/DEIR prepared by the EIR consultant enabling Rise is comprehensively proven to be wrong and worse in thousands of pages of such meritorious

objections. Neither that disputed EIR/DEIR, nor the mostly disputed 2023 County Staff Report that accommodates most of the disputed EIR/DEIR, have any legal status except as disputed opinions of those enablers, and our Comprehensive Objections and others have as much right (and much more merit) than those disputed documents that Rise incorrectly insists should bind the Commissioners. Passion for truth and justice is not a vice or "bias, etc.", and a negative reaction is appropriate given the extremely wrong character/nature of the errors, omissions and worse in the disputed EIR/DEIR (and the corresponding bulk of the County Staff Report that uncritically adopts most of that disputed EIR/DEIR and ignores our Comprehensive Objections and others). We are confident that any competent judge will agree with us and react no differently than the Commissioner. Rise simply cannot bully those who matter into accepting Rise's "alternative realties" exposed in the Comprehensive Objections and others.

Rise also complains that "McAteer had a predetermined opposition to the Project [prepared in a document] prior to the Hearing." We dispute that Rise claim that to be "inconsistent with his role as an impartial and unbiased decision-maker, and is factually similar to cases that have invalidated a local agency decision due to bias." Nonsense. First, as proven by cases Rise ignored and we discussed in section I.A.1 above (e.g., *Fairfield, BreakZone,* etc.) and our rebuttals to Rise's inapplicable and mischaracterized cases (see, e.g., Exhibit A), the Planning Commission is not the decision-maker like the Board, but a recommending investigator-advisor. The Planning Commission's result was a recommendation, not a "decision" by a "tribunal" or "quasi-judicial decisionmakers" like those in such disputed Rise cases. More importantly, the Commissioner's preparation of a script (e.g., a "tentative ruling") is something all the best judges do when they must "rule from the bench." **Most judges, who are held to a much higher standard than such administrators, prepare tentative rulings on issues in dispute before the hearing. That is right, wise, and proper. Rise makes its unfounded accusations of "predetermined" "bias" without knowing whether such a tentative ruling by Mr. McAteer here was one of several which included some things perhaps favoring Rise. However, no one will know because the California Supreme Court in *Fairfield* forbid Rise to pry into such matters even in discovery, and this Rise ambush speculation is the worst kind of objectionable tactic. Moreover, the burden of proof is on Rise under all the relevant cases, and those cases give the benefit to the Commissioner of a presumption of innocence to such charges.**

In one of Rise's most outrageous of the disputed allegations, Rise incorrectly claims (at 10-11) that Commissioner McAteer's comments about Rise profits and the little benefit, if any, to the community for suffering this high risk 24/7/365 misery for 80 years of mining under or around our homes "amounted to a very public display of extortion in violation of California and federal constitutions…" Rise also accuses Commissioner McAteer of "highly coordinated" "monetary attack." The Rise summary conclusion just repeats each of these disputed and refuted Rise charges, and again ignores our Comprehensive Objections and rebuttals, which are entitled to at least equal standing to anything Rise and its enables claim to the contrary. Such Rise claims are absolute nonsense, irresponsible, and defamatory, all based on incorrect speculation. In fact, that is a version of a political public policy argument made by many objectors in the record well before the hearing. Objectors contend that this is worse than a "no net benefit mine" for the community. This EIR mining is high risk, dangerous, environmentally damaging, and worse as detailed in literally thousands of pages of meritorious Comprehensive Objections and others. Rise is asking our elected officials to make

us impacted locals suffer all those objectionable EIR/DEIR risks for no net benefit in a "head I win, tails you lose gamble." If Rise makes huge profits (which its SEC filings admit is a high-risk bet under the circumstances—Exhibit G), its nonresident shareholders could make a "killing," and at the end the community is left with an exploitive mine expected by Comprehensive Objections to cause misery and harm 24/7/365 for 80 years (potentially twice as large underground [e.g., adding 76 miles of new tunnel to the existing 72 miles] and much more dangerous and harmful than before). Who trusts Rise not to leave a mess behind when it retreats to Canada when the mine is no longer profitable? What is the risk that Rise (whose SEC filings [e.g., Exhibit G] admit it lacks the financial resources to accomplish any of its material project goals, much less its safety, mitigation, and reclamation obligations) fails to clean up is mess? There are more than 40,000 abandoned California mines on the EPA and CalEPA lists that linger as an enduring menace to their communities. What protections do we have from that risk here? Indeed, Rise even refused NID's modest demand for surety bonds to cover even a small part of the well mitigation obligations (which, as Comprehensive Objections and *Gray v. Madera County* prove, are insufficient and noncompliant with CEQA in any event). The point is not that Rise should get to mine and pay higher taxes or fees (i.e., Rise's disputed "extortion" claim exaggeration), but that no rational official could possibly justify as a policy matter imposing such risks, burdens, and misery on our objecting community, as detailed in thousands of pages of impacted locals' objections, especially for no net benefit to the community, especially to the huge majority of the impacted local residents living on the surface above or around the 2585-acre underground mine who have no choice but to resist in perpetuity to save their families' health and welfare, their property values, their existing and future wells, groundwater, and environment, and the quiet enjoyment of our community free of this disputed EIR/DEIR mining menace. If all of us objectors are somehow wrong (which should be impossible on the legal merits), Rise may lose some of its modest investment in the mine price. If any of our Comprehensive Objections are right, thousands of locals will suffer far worse.

One of those things that Rise said that would be funny, if it were not so sad, is Rise accusing (at 10) Commissioner McAteer of "inflam[ing] tensions in the audience, especially among the Project opponents." The contrary reality is obvious to anyone reading the thousands of pages of Comprehensive Objections to the DEIR and then EIR (and some also to much of the 2023 County Staff Report and County Economic Report). It is not possible for anyone to increase the justified negative feelings and informed opinions of impacted locals against the mine, because objectors are at our maximum capacity for outrage, as would any rational and informed such potential victims be under the circumstances. If the Commissioner wanted "flames" all he had to do was give us the opportunity we have been requesting to battle Rise directly, which the County team, including theses Planning Commissioners, have consistently and incorrectly resisted.

D. Even If The Planning Commission Were Somehow a "Tribunal" Or "Decisionmaker" (Contrary To "Reality" And Cases Like *BreakZone* On Which We Rely Above), Rise's Own Cited Cases (Like *Clark*, Discussed Above at I.A.1.f) Hold the Only Permitted Remedy Would Be To Require The Commission To Redo The Hearing. (While Rise may imagine that it could escape that fate in a "#1983 Etc. Claims" federal suit on the inapplicable and distinguishable *Hardesty2* model, Comprehensive Objections should defeat as well.)

Once again, the Rise PC Letter incorrectly reads as if Rise would be entitled somehow to prevail, if only they could have avoided these few disputed and incorrect alleged problems. However, the fact remains that there are literally hundreds of meritorious objections in our Comprehensive Objections alone, not to mention the many others, any one of which will be fatal to the disputed EIR/DEIR, other Rise Reopening Claims, and Rise mining ambitions, most of which are improperly evaded, ignored, or non-compliantly addressed by Rise and its enablers on the disputed EIR/DEIR team and 2023 County Staff Report staff. As demonstrated in the opening section of this Exhibit, the Planning Commission is neither a tribunal nor a decisionmaker for the purposes of the cases cited by Rise. If Rise or its enablers are entitled to complain about additions to the record at the Hearing or the lack of prior consultation etc., those complaints, even if they were not disputed, are trivial compared to the reverse complaints described in this Exhibit and in our Comprehensive Objections about the reverse mistreatment of our constitutional, legal, and property rights and objections. So, there can be nothing "new" to surprise Rise. However, in reverse, whatever Rise is allowed to assert, and whenever and however Rise is allowed to do so, objectors must be allowed comprehensively to continue to counter and dispute.

However, if there were any merit to such Rise claims, Rise's own favorite *Clark* case (discussed at #I.A.1.f above) rejects any remedy for Rise but a rehearing by the Planning Commission. As *Clark so ruled,* the EIR applicant cannot prevail by such complaints, because the result is "no action," not approval (here just a recommendation) by default. More importantly, unlike in *Clark* and other Rise cited and distinguishable cases, in this IMM case there are hundreds of objectors filing (or incorporating) thousands of pages (and websites) of opposition (most evaded, ignored, or non-compliantly addressed by the Rise enabling EIR/DEIR team and County staff), and any one of those thousands of objections on those pages could be fatal to the EIR. In any such redo, we would urge (as described elsewhere herein) that the County procedures be changed to address not only our objections (e.g., allow the Commissioners to choose from our thousands of objections perhaps the top 100 hard questions the Rise enablers have evaded, ignored, or deficiently addressed, and, if it matters as Rise claims, the Commissioners can begin each issue by asking expressly, rather than implying as they sometimes may have done: "What is your response to the following objection?").

Objectors' own reverse grievances against Rise and the Rise enablers on the EIR/DEIR team and staff supporters must also be allowed under whatever standard is applied to the Planning Commissioners, not only to provide us equal impartial treatment and responses from Rise enablers as Rise insists on from the Commissioner, but also to explain any controversial Commissioner actions trying in the limited time available to make up for such wrongs by Rise and its enablers. Then, we would also expect equal time and terms for a representative group

of objectors to match whatever is allowed to Rise and its enablers, including with access to the same visual equipment they use. And, for that purpose, objectors should be allowed to use our objections to rebut any of the literally thousands of cited errors, omissions, or worse in the EIR/DEIR, 2023 County Staff Report, or County Economic Report cited from any of our Comprehensive Objections or others, including by using Rise and other admissions, such as from Rise SEC filings [e.g., Exhibit G and others which are included in some Comprehensive Objections, but incorrectly have been ignored, disregarded, and evaded by Rise and by Rise enablers] as such SEC filing evidence was approved in the *Richmond v. Chevron* precedent discussed above in section I.A.1 and used to defeat that EIR.

E. In Part IV of the Disputed Rise PC Letter, Rise Incorrectly And Worse Claims: "The Planning Commissioner's Biases Were Further Demonstrated After the Hearing."

Again, I will defer to others disputing these Rise claims in more detail. However, first, reread the *Fairfield* and *BreakZone* decisions quoted and discussed in section I.A.1 above, as well as objectors' rebuttals to Rise's disputed cases in that section and Exhibit A. The Commissioner is neither a judge, nor a "tribunal," nor a "quasi-judicial decisionmaker" (nor acting in a Guideline defined "decision making body" for "approvals") like those in the inapplicable cases on which Rise incorrectly attempts to rely. He is an official acting in an investigatory and advisory capacity with constituents that equally include objectors to whom he owes no less duties (in that different capacity) than to Rise, and those objecting constituents filed (and incorporated) hundreds of objections with thousands of pages on which the Commissioner was entitled to consider and rely instead of the disputed EIR/DEIR and mostly disputed 2023 County Staff Report and County Economic Report by Rise enablers, who ignored those meritorious objections. Stated another way, since Rise and its enablers have not even attempted to rebut such objections supporting the Commissioner's conduct, it is worse than wrong to attack him in that manner, which is not just incorrect bullying, but groundless.

In *Fairfield* (discussed in section I.A.1.e above) the California Supreme Court allowed even the actual decisionmakers (equivalent to the Board here, unlike our advisory Planning Commissioners) to rally voters against the project and much more that Rise incorrectly finds offensive. Indeed, if the Commissioner were somehow found by the courts or Board to have done anything improper (which we dispute is possible under *Fairfield* and applicable law that respects objectors' constitutional, legal, and property rights to oppose Rise and its enablers), then (by that disputed standard that equally must apply to them) the Rise enablers on the disputed EIR/DEIR and 2023 County Staff Report or County Economic Report teams (who have done more objectionable things against objectors) are even more guilty of objections to their own "bias, etc." and partisanship. Rise and its enablers have both the burden of proof and less legal justification for their disputed conduct than the Commissioners have for being the first in this process to properly address the concerns of their constituent objectors so continuously evaded, ignored, and worse by the disputed EIR/DEIR, 2023 County Staff Report, County Economic Report, and other Rise Reopening Claims and Rise enablers.

Moreover, this is not yet a judicial proceeding. Even Rise's disputed cases acknowledge that ultimate public officials are at most making only "quasi-judicial decisions" and are never held to the same standards as judges, among other things, because their function is both legal

and legislative/policy/political in nature. Those like the Planning Commissioners here, who are just investigating advisors providing recommendations, are entitled by Constitutional and legal rights to much greater latitude than even the Board decision-makers here, as demonstrated in section I above in *BreakZone, Fairfield,* and other precedents. Consider all the reasons why the public is required to be directly included with legal standing in the CEQA process to dispute the projects. More importantly, consider the special standing and competing (against Rise) connotational, legal, and property rights of objectors proven in the attached Petition/Objections. [Hint: consider objectors' constitutional rights to petition our such officials for redress of our grievances, plus the due process right to be heard with equal protection, plus the right to vote in officials who make wise policy decisions against the disputed EIR/DEIR and other Rise Reopening Claims threats exposed in local objectors' thousands of pages of Comprehensive Objections, and others, plus more. None of those rights are possible to exercise if Rise were correct that such officials could only consider the disputed interests asserted by Rise and accommodated by Rise enablers. Therefore, what Rise is really arguing, in effect, is that somehow, contrary to the applicable law and facts and all such locals' rights, our officials are guilty of misconduct unless they ignore everyone and everything else and just do what Rise demands for the benefit of its speculative 2017 mine acquisition seeking profits for nonresident speculator-investors entitled to no greater rights than the objecting locals.]

Why have Rise and its enablers so continuously and comprehensively evaded, ignored, and deficiently responded to meritorious Comprehensive Objections? [Hint: the answer is that impacted objectors have no less constitutional, legal, and property rights (and we contend more) to object to such projects than Rise has to attempt to gain approval for such disputed projects, and Rise and its enablers have no way to prevail over our objections on the merits, especially because we not only have the law on our side, but also wiser public policy, as the Planning Commission is correct to appreciate.] These and other hard questions, like thousands of inconvenient truths about the applicable (reality-based) facts, law, science, and policy against this disputed EIR/DEIR mining and other Rise Reopening Claims, are demonstrated in our Comprehensive Objections and others that all County participants in this process (like the courts to come) must heed. **When our state Supreme Court approves decision-makers campaigning for election and speaking to citizens against a project as in *Fairfield,* how can Rise possibly make this into a scandal?** And, if it be a scandal, then the disputed EIR/DEIR, the 2023 County Staff Report, and the County Economic Report must also be discarded for the conduct of those Rise enablers. Rise cannot have it both ways, where what Rise defines as "bias, etc." is proper for them, but somehow "bias, etc." for us objectors is not proper. The applicable law gives at least equal standing for objectors against Rise and its enablers (plus more benefits as overlying surface owners living above and around the 2585-acre underground mine {Exhibit D], plus the burden of proof on Rise and its enablers [Exhibits E and F].)

F. In Part V of the Disputed Rise PC Letter, Rise Incorrectly And Worse Claims: "Given the Counties Prior Actions, Mine Has Legitimate Concerns Regarding the Upcoming Board of Supervisors Hearing."

As demonstrated in our Comprehensive Objections and others and in this rebuttal letter, **we thousands of local, impacted objectors have reversed "legitimate concerns regarding the**

upcoming Board of Supervisors Hearing." We fear instead that the proper, correct, and wise decision of the Planning Commission will be undercut by Rise's meritless bullying, its disputed letter, and the many errors, omissions, and worse by Rise and its enablers on the EIR/DEIR team and generally accommodating 2023 County Staff Report team. Just as Rise apparently bullied the NSAQMD into "replacing" its Letter 12, Rise seems to want to bully the Board as well by incorrectly disregarding the Planning Commission. Just as Rise incorrectly rebranded possibly toxic or suspected mine waste as "engineered fill," Rise incorrectly attempts in its letter to "rebrand" "bias" and "impartiality," so that meritorious objections and policy questions can be falsely denounced by Rise to distract from the many errors, omissions, and worse in the disputed EIR/DEIR and mostly disputed 2023 County Staff Report and County Economic Report demonstrated in our meritorious Comprehensive Objections and others that have been continuously, improperly, and incorrectly ignored, disregarded, evaded by Rise and its enablers, whose such disputed conduct is far worse than what it accuses against the Planning Commission. Realities must prevail over Rise's disputed "alternative reality."

Rise insists that there is "bias, etc." against the Project, but by any such disputed Rise standard we have demonstrated the reverse in our objections; i.e., that their worse bias in favor of the disputed Project and against our meritorious Comprehensive Objections from such Rise enablers. Strangely, by applying equally that disputed Rise standard, objectors can quote almost every charge that the Rise PC Letter makes in its section "V" against the Planning Commissioners in reverse against Rise and its enablers, but on stronger grounds, since again the burden of proof is on Rise and its enablers. Note that any fair and appropriate CEQA process should have required the disputed EIR/DEIR and other Rise Reopening Claims to respond properly to the Comprehensive Objections and others, because the accommodating EIR/DEIR consultants and County staff were supposed to be dealing with the facts and law in compliance with applicable law but failed to do so to enable Rise. By contrast, the Planning Commission is allowed (and we contend required) by applicable law and facts in its investigatory/advisory role to consider (for law, policy, and correct science) all those Comprehensive Objections and others that have been so previously evaded, ignored, and deficiently addressed by Rise and its enablers.

The Rise bully letter accuses (at 12) the County of risking "an unlawful taking of private property to achieve their political goals." We objectors again insist that the reverse is true. Rise's whole "taking" claim is falsely premised on the disputed and rebutted theory that somehow the unapproved and comprehensively disputed EIR/DEIR and the legally insignificant 2023 County Staff Report and County Economic Report somehow bind the Planning Commission, but that all our hundreds of meritorious Comprehensive Objections (which have at least legal weight and right) must be evaded, ignored, or otherwise disregarded. **Why? Because Rise is trying to bully our elected officials into approving its disputed EIR/DEIR mining threat by such false claims, when that would actually cause a true "unlawful taking" (what our California Supreme Court in Varjabedian called inverse condemnation, nuisance, and other claims discussed in Section 1.A.1 above and briefed in Exhibit D and other Comprehensive Objections). Objectors own private surface property impacted by disputed EIR/DEIR underground dewatering and mining, especially those of us living on the surface parcels above and around the 2585-acre underground mine at issue whose groundwater and well water Rise would "dewater" 24/7/365 for 80 years, even though Exhibit D proves the surface**

parcel has first priority groundwater rights beneath that parcel (e.g., *City of Barstow, Pasadena*, etc.) as well as rights to subjacent and lateral support, including by groundwater (e.g., *Keystone, Marin Muni Water*), which Rise and the disputed EIR/DEIR and Rise Reopening Claims entirely ignore in their unproven assumption that Rise can somehow (without permission or consequences—see *Varjabedian*) dewater 24/7/365 for 80 years beneath each such objector surface parcel and flush that groundwater away down Wolf Creek. As the US Supreme Court explained in *Keystone* (Id.), the mine would be taking our groundwater and existing and future well water (even the first 10% of our well water, without even pretending to provide replacements and under an illusory and disputed EIR/DEIR mitigation measure that, as demonstrated above in section I.A.1, *Gray v. County of Madera* has already denounced as noncompliant with CEQA and other applicable law.)

Among the many problems with Rise's disputed "alternate reality" is when we have to suffer Rise's pious, concocted lectures about "ethics." To quote the County Counsel back at Rise: Yes, "[w]hen you are a public servant, it's not just about your own sense of personal ethics --- it's about the *public's perception* of your ethics." That is why us impacted locals have filed hundreds of meritorious objections to the disputed DEIR, the EIR, the County Staff Report, the County Economic Report, Rise Reopening Claims, and now this Rise PC Letter, offering thousands of pages and evidence incorporations of details. Whatever the legal or ethical standards apply, Rise and its such enablers on the EIR/DEIR team and 2023 County Staff Report team are the ones the impacted local public perceive as the problem—not the Planning Commissioners. Those objections and this Petition/Objection demonstrate why, and the cause is not the Planning Commission, but rather Rise and such enablers. It's obvious that Rise intends to continue its meritless quest to reopen this dangerous mine that has been closed, dormant, discontinued, abandoned, and flooded since 1956 for threatening objecting locals 24/7/365 EIR/DEIR dewatering and mining misery for 80 years. It should be equally obvious that the thousands of us objecting, impacted residents will resist those disputed Rise threats, as are our competing constitutional, legal, and property rights

So, in considering this deadlock between the objectors, an objective lawyer would look at this dispute as follows. Even *Clark,* Rise's own cited case, states (in a part Rise again failed to share as explained above in #I.A.1), that Rise has no "property right" in an application, and its remedy is not a damage taking claim against the County, but at most just a replay until the courts are satisfied with the process, which must continue to include all our existing objections, plus more objections as time passes and the climate change, and other "inconvenient truths" that Rise and its enablers try to deny become even more irrefutable, and, at last, Rise is defeated on the merits. But assume for the sake of argument, what are Rise's damages, if it could prove its Rise PC Letter alleged (disputed) "taking" claim? What is the legal value of this "no net benefit mine" that Rise could theoretically recover, since the mine is more of a liability than an asset? The answer is between zero and the small purchase price Rise paid for the mine. Why so low? The answer is because the law in California and elsewhere is that lost profits by such a miner cannot ever be recovered when they are (as here) speculative, which Rise even admitted in its SEC filings exposed, for example, in Exhibit G. There can be no doubt about that legal result, because in any court the Rise admissions in its SEC filings doom its claims. For example, consider (all quoted and discussed in Comprehensive Objections, so here just translated for simplicity, but available on SEC's Edgar website and illustrated in Exhibit G) that

Rise has not done sufficient investigations to know if there even is any profitable gold to be had on an economic cost basis. Therefore, this is admitted by Rise to be a high risk/speculative investment for many such stated risk factors. Id. However, on the opposite side for us local objectors, the inverse condemnation damages for us impacted objectors include (at a minimum to start) the loss of property values for each impacted home. See, e.g*., Varjabedian, Keystone, Gray, Fairfield, and BreakZone* in that order, if you don't have time to read all the many cases and authorities we cite in the Comprehensive Objections. Now consider everyone's risk. If the Project somehow proceeds, but objections are correct as we contend (and because Rise and its enablers have failed to rebut them by evading, ignoring, and deficiently ignoring most objections), the County and us local victims could all suffer catastrophic losses. If the Project fails to overcome the meritorious objections, but somehow Rise were wronged in the process (which we consider legally impossible, especially considering the massive number of lethal Comprehensive Objections), Rise should not even recover its purchase price, which may not even cover its attorney's fees.

Rise has asked the Board to conduct its "own independent inquiry" based on this disputed Rise PC Letter. We ask that the Board give equal time and effort in any such inquiry into this and other rebuttals to the Rise PC Letter, which should give special attention to the Comprehensive Objections that Rise and its enablers have so neglected. In that regard, the Board should also note that Rise has cherry-picked a few concocted scandals it could imagine, ignoring our thousands of pages of objections in (or incorporated in) the record (and still not yet addressing our rebuttals here and elsewhere.) For the IMM dewatering, mining, and other disputed EIR/DEIR and other Rise Reopening Claims to prevail in these dispute processes, Rise must (but cannot possibly) overcome all our objections, each one of which is lethal for the disputed Rise quest. By giving at least equal weight to our rebuttals, the Board should be convinced to **do the opposite of what Rise asks** of you and to join the Planning Commission in rejecting the EIR/DEIR, the other Rise Reopening Claims, and the IMM dewatering/mining project. The Comprehensive Objection parties request equal hearing opportunities, time, and access to the Board to counter Rise's requesting meeting and disputed claims. As your voting constituents with at least constitutional, legal, and property rights against Rise and its project, we request the due process with equal protection, free speech and association, and right to petition the Board for redress of our grievances against Rise and its project. So far, the record is clear that Rise has never been the victim, but the one most successful at "playing the victim" to manipulate the process, thousands of impacted local resident objectors, and why those objections sooner or later must be heard and prevail and expose how wrong and worse this Rise PC Letter is in Rise's effort "to bully the referee." Thank you for considering our views.

Sincerely,

/s/ Larry Engel
G. Larry Engel
Engel Law, PC

B. Footnotes

FN #1. G. Larry Engel is a semi-retired bankruptcy lawyer with extensive experience with failed/bankrupt mines, living one property above Wolf Creek and then over a ridge just above Idaho Maryland Road. His property is impacted by Rise's 2585-acre underground mine that is generally and too often ignored and never compliantly analyzed in the disputed **"EIR/DEIR"** that too often evades that underground IMM and instead attempts to prevail based primarily on its flawed focus on the separate Brunswick parcels. See Exhibits D, E, and F. This Exhibit B uses such combinations of "EIR" with "DEIR" as "EIR/DEIR" because the EIR ratifies and incorporates the DEIR without required corrections or revisions, while incorrectly claiming that the EIR add nothing "new" or "materially changed" to the DEIR except purported, nonmaterial, "clarifications" and "embellishments," which grossly understates the impact of those changes. That makes all this Petition/Objection and other "Comprehensive Objections" apply not only to the disputed Rise Petition, but also to both the disputed EIR and DEIR, which is emphasized by terms like "EIR/DEIR."

The "Prior Ind. 254/255 Objections," include with the initial DEIR objection addressing what the objector perceived as the EIR's 100 worst flaws, which objection was designated by the EIR record as "Individual Comment Letter Ind. 254" dated March 30, 2022. Another extensive brief followed on key cases and issues, such as contesting the incorrect County staff/DEIR team's exclusion of (i) Rise SEC's and other admissions, despite the cited *City of Richmond* precedent (where the court denied the Chevron EIR based on inconsistencies and contradictions in Chevron's SEC filings like those demonstrated by Rise here in this Petition/Objection's Exhibit G), such as economic and feasibility rebuttals to false DEIR claims (e.g., as to admitted "risks" reported to the SEC but not revealed in the DEIR/DEIR and Rise's lack of resources to afford to accomplish even its recognized safety and mitigation obligations, making them illusory at least to the extent economically infeasible), in the DEIR rebuttal evidence designated in the EIR/DEIR record as "Individual Comment Letter Ind. 255" dated April 4, 2022. See also DEIR at 6-14 admitting that the whole Rise project is economically infeasible if Rise were not permitted to dewater and mine as it proposed 24/7/365 for next 80 years, and other economic issues as to which Rise "opened the door" to such rebuttals but the DEIR/EIR team has incorrectly refused to allow rebuttals. The EIR's next purported "response" to that Ind. 254 objection was also incorrect, noncompliant, nonresponsive, and worse, resulting in objectors filing a 500-page EIR objection dated April 25, 2023, that included item-by-item rebuttals to both each purported EIR "Master Response" and each of 101 EIR "Reponses" to those specific Ind. 254 DEIR objections, as well as to much of the "County Economic Report." Likewise, the EIR's purported "responses" to Individual Comment Letter Ind. 255 were also incorrect, noncompliant, nonresponsive, and worse, resulting in the filing of a similar rebuttal dated May 5, 2023, to that part of the EIR, including disputes to each purported EIR "Master Response" and each of the EIR "Responses" to specific Ind. 255 objections, as well as to the mostly disputed, "last minute" "County Staff Report."

Those four "Prior Ind. 254/255 Objections," together with many therein incorporated or referenced other DEIR and EIR objections, plus evidence he referenced or incorporated from relevant governmental and other websites, are all collectively incorporated in this

Petition/Objection and called the **"Prior Ind. 254/255 Objections"** and part of the "Comprehensive Objections." Not only are those objections comprehensive, containing extensive evidence and offers of proof, supportive court decisions and other legal authorities, and rebuttals, but those objections also expressly incorporate many specific objections or evidence of other objectors to avoid duplication and provide more detail on technical issues and knowledge of other such objectors. All such objections make the administrative record so comprehensive that, for example as discussed in this objection to the Rise PC Letter, those objections alone are sufficient defeat any EIR and other Rise relief. **Contrary to Rise's disputed Rise PC Letter complaining about anything "new" after the record was closed or at the "last minute," such thousands of pages of such Comprehensive Objections are so comprehensive that nothing can be "new," especially the issues about which Rise incorrectly complains from NSAQMD Agency Letter 12, whose content facts have been replicated and supported independently in various Comprehensive Objections. Any one of those many Comprehensive Objections should be fatal to the approval of the EIR/DEIR or to the credibility of the disputed allegations and opinions inappropriately adopted therefrom in the County Staff Report or County Economic Report.**

FN #2. See the Prior Ind. 254/255 Objections and other Comprehensive Objections which both (i) refute, rebut, and counter errors, omissions, and worse in the EIR/DEIR, the County Staff Report, and the County Economic Report with evidence, offers of proof, and legal briefing, and (ii) support the correct decision of the Planning Commissioners to disapprove the disputed EIR and IMM mining on the merits, contradicting Rise's personal attacks on the County team (exclusive of Rise enablers) before those rebutted here. While each Commissioner may choose from thousands of pages such Comprehensive Objections which of the hundreds of fatal EIR/DEIR flaws he or she considers important in his or her decisions, the ***Fairfield*** case held that Rise cannot compel discovery from any Commissioner about the basis on which he or she made the relevant decisions that have upset Rise and pleased the objectors. See section I.A.1.e above.

FN #3. The Prior Ind. 254/255 Objections, in particular, exposed the improper ways that the disputed DEIR/EIR have failed properly to address the **hexavalent chromium** menace that killed Hinkley, California, as illustrated in the movie, "*Erin Brockovich."* Indeed, after all these years Hinkley groundwater still has not been remediated, despite massive settlement funding and efforts described in the community website (www.hinkleygroundwater.com), which present a compelling case study for why it is worse than improper for the EIR mining to use hexavalent chromium cement paste to "shore up" the 2585-acre underground mine with such cemented mine waste that will be dewatered 24/7/365 for 80 years, ultimately flushing the supposedly "treated" groundwater away down the Wolf Creek into the NID system. See, e.g., the Ind. 254 parts of the EIR blast as an illustration of objectionable "hide the ball tactics" the disputed EIR "Response 1" to such DEIR Ind. 254 Objection's belatedly attempting (and failing) to cover for the shocking DEIR's failures to disclose this threat (just two passing DEIR references to the words "hexavalent chromium" in obscure places. As those objections demonstrate, the grossly inadequate and disputed "Hazards And Hazardous Materials" discussion in the DEIR entirely ignored this clear and indisputable threat, which was only detected by reading every line in another section that (i) discussed that briefly mentioned hexavalent chromium in mining

technique discussion for saving money by leaving such cemented mine waste shoring/braces in the mine, rather than removing the waste and adding expensive conventional shoring, and (ii) included in obscure reference to hexavalent chromium in a list of other chemicals. No court could possibly consider such deficient, obscure, and misplaced references to the hexavalent chromium risks to be a "good faith reasoned analysis" with "common sense" as required by CEQA as interpreted in many controlling cases, such as *Vineyard, Banning, Costa Mesa, and Gray.* **When DEIR Comment Letter Ind. 254 objected to that failure properly to disclose the "CR 6" menace (and mentioned it at the initial DEIR County hearing), the Rise enablers added a disputed, incorrect, and grossly inadequate EIR "Response" called Ind. 254-1 (plus adding, without the required integration or cross-references in the main EIR document, at the very end of the massive EIR, APPENDICES Q, R, AND O THAT PREDATED THE DEIR and reveal that such deficient DEIR/EIR disclosures do not appear to be innocent mistakes.) Indeed, the EIR obscuring those unadmitted and deficient corrections to the DEIR in such an obscure EIR Response to such an individual objection no one was likely to notice, is itself objectionable "hide the ball tactics" that should defeat the whole EIR/DEIR. As to the merits, the Prior Ind. 254/255 Objection dated April 25, 2023, (especially Exhibit D) counters to that nonresponsive and worse EIR response, demonstrating why Rise enablers' such "hiding the ball" tactics and obscuring or worse this dangerous admitted carcinogen, are ample grounds alone to reject the EIR/DEIR.** See, e.g., the cited discussions of hexavalent chromium on the EPA and CalEPA websites, including a new CalEPA ban on certain hexavalent chromium applications since the objections were filed.

FN #4. The EIR/DEIR and County Staff Report are doomed by their incorrect assumptions that they can ignore, evade, or violate without consequence the legal property rights of objecting surface owners above and around the 2585-acre underground mine, including the surface owners' property rights to existing **and future** well water and groundwater, as well as to lateral and subjacent support, including to prevent subsidence which includes depletion of groundwater. See **Petition/Objection Exhibit D**, **including City of Barstow, Pasadena, *Keystone, Gray, and other cites* above. Note this is not just about the general threat to groundwater pollution wherever it goes after exposure to this toxin, but this is adding a dangerous chemical to the groundwater owned in first priority by each overlying surface owner's parcel above that part of the 2585-acre underground IMM**. Id.

Enforcement and defense of such property rights and groundwater can both block some of what Rise, the EIR/DEIR, and the County Staff Report incorrectly assume can be done in accordance with the disputed EIR, but which they ignore (or belatedly and deficiently evade). For example, taking the top 10% of surface owners' well water before Rise even tries to mitigate with disputed replacement approaches (that *Gray v. County of Madera* has already ruled to be legally insufficient) creates inverse condemnation, nuisance and other claims as addressed in Comprehensive Objections. See Petition/Objection Exhibit D; *Varjabedian and other cites.* And Rise taking even more groundwater and existing and future well water and failing to provide the *Gray* required equivalence in mitigation is almost as bad. Since Rise falsely claims how beneficial this disputed EIR mining will be for the community, even without considering these property rights claims and remedies (id.), that claim is irreconcilable with reality for what Comprehensive

Objections prove is “no net benefit mining,” not just for the impacted adjacent and surface neighbors, but for the whole community. E.g., Prior Ind. 254/255 Objections.

FN #5. The disputed EIR/DEIR and disputed parts of the County Staff Report seem incorrectly to imply as to these and many other “inconvenient truths” that they can ignore or dismiss such objections without the CEQA required “common sense” (e.g., *Gray*) and “good faith reasoned analysis” (*Vineyard, Banning, and Costa Mesa*). The disputed EIR/DEIR must so acknowledge and debate all of these Comprehensive Objection issues in accordance with CEQA and other applicable laws. The DEIR failed to do that at all, and the EIR failed to do it sufficiently (e.g., as discussed above, burying insufficient, incorrect, and worse hexavalent chromium comments in obscure EIR Ind. 254-1 “Response To Comment Letter Ind. 254” to that Objection and dropping in unexplained Appendices Q, R, and O obscurely at the end of the massive EIR package.) That “hide the ball” tactic itself confirms the truth of the objections, as an admission by conduct that there was either (i) some meritorious objection they needed to obscure, or, at a minimum, (ii) there was material “new information” that, if noticed, CEQA would require to be addressed more compliantly in a revised DEIR.

FN #6. While Rise or its enablers may try to create more controversy with discovery hassles, they should beware, since objectors will (as here) insist on being able to counter requiring equivalence from Rise with whatever Rise is allowed to do to others. And, since the law of evidence is so clear on this point, Rise can be, for example, required to explain its many admissions in SEC filings and elsewhere that are inconsistent with or contrary to what is in the disputed DEIR/EIR that came from Rise. The Rise enablers on the EIR/DEIR team and staff incorrectly chose to ignore those Rise admissions (see, e.g., *Richmond v. Chevron*), but the courts will not ignore such admissions. E.g., Evidence Code #’s 623, 412, 413, 1220, 1230, 1235, and this Petition/Objection’s Exhibits E and F (Evidence Objections Parts 1 and 2).

FN #7. For example, those comprehensive Prior Ind. 254/255 Objections, incorporating other Comprehensive Objections, systematically exposed errors, omissions, and worse in each section of the disputed DEIR and then in the disputed EIR. Id. When the EIR presented its disputed “Master Responses” and disputed, individual objection “Responses” to such Prior Ind. 254/255 Objections, particularly Ind. #’s 254 and 255 to the DIER, such follow-up EIR objections then refuted each of those nonresponsive, incorrect, deficient, and worse EIR “Responses” (and Master Responses) on an item-by-item basis. Among other things, such as creating serious credibility problems for both the disputed EIR and DEIR (Id.), such Comprehensive Objection rebuttals proved how the disputed EIR (like the disputed DEIR) violated CEQA and other applicable laws in non-compliantly responding to such meritorious objections. For example, the disputed EIR improperly disregarded, evaded, and otherwise failed so to respond as required by incorrectly and worse claiming that such Comprehensive Objections and other objections to the DEIR failed sufficiently to explain the objection, or was speculating, or was commenting beyond the Rise enablers’ disputed and incorrect CEQA “boundary” (even though such meritorious objections were rebutting false, misleading, and incorrect statements in the EIR/DEIR, often using admissions [e.g., Rise SEC filings confirmed as admissible and lethal to EIR’s in *Richmond v Chevron*] and quotes from Rise or the EIR/DEIR themselves, such as [at DEIR 6-14] about the

economic infeasibility of the mining unless Rise were allowed to do everything it demands 24/7//365 for 80 years.) By such failures to properly rebut such Comprehensive Objections (and those objections of many others subject to the same EIR/DEIR offenses) those objections stand unrebutted. Therefore, such unsuccessfully challenged rebuttals must defeat the disputed EIR/DEIR by their such failures to respond properly to such objections as required by applicable law.

FN #8. Moreover, as explained in FN's 1 and 5 and elsewhere in this letter, CEQA requires a "common sense" and "good faith reasoned analysis" to rebut objections. And when, as they often do, the EIR/DEIR fails that requirement with doomed attempts to evade objections with meritless and worse evasions, ignoring, or other non-compliant responses, that means all objectors must do is to defeat that meritless excuse and win the objection by Rise or enabler default. As the Prior Ind. 254/254 Objections (especially EIR objections) illustrate in rebutting each of the EIR's 101 meritless Ind. 254 "Responses" (not counting the also disputed Master Responses) to the DEIR Objection Ind. 254, such meritless EIR excuses will never survive any serious judicial scrutiny, for example, (i) claiming that such objections are not "adequately explained" in the more than 1000 pages of detailed objections, often quoting the objectional EIR statements with annotations or Rise admissions, or (ii) claiming that objections are too "speculative," even when they quote Rise or inconsistent or contradictory other provisions of the DEIR/EIR or cite to incorporated Comprehensive Objections of others that prove the point, or (iii) too "unsubstantiated," even when coming from a qualified witness in what amounts to an offer of proof. Reading the mass of such EIR evasions to many different objectors in that context proves a noncompliant pattern of evading meritorious objections (e.g., hide the ball, lack of common sense, good faith reasoned analysis, Evidence Code # 623, 412, 413, 1220, 1230, 1235, and Exhibits E and F) for which the EIR has no escape, especially when such supposedly deficient rebuttals are addressing much more deficient DEIR/EIR claims.

FN #9. There can be no legitimate claim of prejudice by Rise or its enablers. **First,** there was ample time for Rise and its enablers to analyze the hundreds of DEIR objections before the Planning Commission hearing, and Rise and those enablers allege (although incorrectly) that there is nothing "new" in the EIR compared to the DEIR, except mere clarifications and embellishments. Therefore, either Rise and its enablers must admit to that untruth about nothing being "new" added to the DEIR (in which case the EIR must be revised and recirculated as many objections proved was necessary because of new information), or else they must suffer the consequences of Rise and its enablers not anticipating from the objections to the disputed DEIR what objectors could be expected to say (and repeat) about the disputed and uncorrected EIR**. Second,** except for its strange conclusion (which is not a time-consuming read**) most of the County Staff Report read like it was written by the EIR enabler team or Rise, which is why those objectors who had the time objected to most of the County Staff Report before the Planning Commission action. Third**, there is no basis for disregarding our many Comprehensive Objections based on anything done (or not done) by the Planning Commission, even if any of the disputed Rise allegations were correct (which we dispute), because our Comprehensive Objections independently prove the Planning Commission's result was both legally and factually correct and that such EIR dewatering and mining cannot ever be approved.

FN #10. Every local agency has its own approval authority structure and process for such land use issues. The Rise cited cases (see them rebutted in Exhibit A below) deal with situations in which the planning commission is functioning as a "tribunal" making "quasi-judicial," administrative decisions (what the CEQA Guidelines define as a "decision making body" giving "approvals"), so that the higher-level local officials (e.g., the city council or supervisors) become involved on "appeals" from the planning commission "approval." Here the Planning Commission only made a "recommendation" after its de novo investigation (free of the burden of staff errors or omissions to consider our Comprehensive Objections incorrectly ignored, disregarded, or evaded by staff or Rise enablers), without functioning as such a tribunal or making quasi-judicial decisions. The Board now hears this dispute de novo, **based on the entire record,** in which the disputed EIR/DEIR and County Staff Report have no more legal right, power, or effect than our Comprehensive Objections or others. Thus, the Rise cases are at best inapplicable and often worse, as illustrated by Exhibit A below and by our illustrative, detailed examination in this Exhibit B rebuttal of Rise's favorite fragments from the *Clark* case (which, like Hansen, Rise cherry-picks because, when correctly read, the whole case defeats Rise on these facts.)

FN #11. Any objective, reasonable, informed person who reads this administrative record will conclude, as the Comprehensive Objections demonstrate, that the EIR/DEIR failed to satisfy their burdens of proof and compliance with CEQA and other applicable law, including by massive evasion of any proper, required responses to Comprehensive Objections and others. For example, the Prior Ind 254/255 Objections to the EIR did that by exposing systematically the EIR's 101 disputed "Responses" (plus additional disputed "Master Responses") to those [DEIR] Objection the DEIR called Ind. 254, exposing a shocking pattern and practice by the EIR team enablers (then improperly accepted or tolerated by too much of the disputed County Staff Report) claiming bogus excuses for evading, ignoring, and deficiently responding to Comprehensive Objections. Clearly, such Rise enablers were attempting to excuse and justify the noncompliant and worse EIR/DEIR on indefensible bases and the County Staff Report generally allowed them to "get away with" most of that. That raises a question to which only *Fairfield* provides satisfactory answers, which is: what does a planning commission do to make its recommendation to the Board when confronted with both (i) such massive and meritorious Comprehensive Objections and others, and (ii) such noncompliant and worse EIR/DEIR and County Staff Report? The correct answer must be that the Planning Commission has to be allowed to do whatever it actually did, which no one should assume is the same as the disputed and incorrect Rise accusations. Commissioners must certainly be allowed to ask questions raised in Comprehensive Objections, even about Rise's mischaracterization of the NSAQMD Letter 12 situation rebutted in subsection 3. As *Fairfield* ruled, none of the Planning Commissioners' analyses have to be justified or explained to Rise.

FN #12. *Clark* states its incorrectly narrow interpretation of the higher, CA Supreme Court's ***Fairfield*** decision as: "Of course, a public official may express opinions of community concern (e.g., the height of new construction) without tainting his vote on such matters as they come before him." **See our discussion of *Fairfield* in subsection I.A.1.e above. Rise's incorrect interpretation does not even allow for that exception, much less the many others required by**

a correct reading of that California Supreme Court case that Rise never mentions and, yet that controls over (and we contend is contrary to) all Rise's Court of Appeal's cites. What *Clark* does is focus on the key **personal** conflict of interest and **demonstrated** bias of that subject councilmember, listing only there the project's harm on the quality of his ocean view from his neighboring rental unit and his "personal animosity," which two factors caused the court to find he was "not a disinterested, unbiased decisionmaker." **Exposing the truth of Rise claims or EIR/DEIR mining claims is not evidence of bias, animosity, or other partisanship for a party, but rather is officials doing their jobs in favor of the applicable truths, science, and facts, all of which are against Rise and its EIR/DEIR. Indeed, if Commissioners had not done the right things, objectors could have sought writ relief for the court to compel the Commissioners to do so consistent with our Comprehensive Objections. Every worthy person should be a partisan for truth, science, and facts, and against errors, omissions, and worse by any EIR/DEIR. What Rise has done is attempt to provoke officials in outrageous ways in hopes of manufacturing some excuse to blame them for "bias, etc." A cynical person might wonder if Rise is just looking for excuses to try to allege incorrect "facts" to fit Rise into the inapplicable Hardesty2 model that cannot prevail over our Comprehensive Objections for which there was no parallel in that two-party side dispute (versus this at least three-sided, multi-party dispute, where objectors must prevail regardless of the County teams' fate.) Correcting applicant wrongs is not ever true "bias, etc." but is instead doing right for us competing objectors who have no less constitutional, legal, and property rights than Rise (and often superior rights).**

FN #13. Besides the councilmember's private, pre-meeting pitch of "**new information"** to the other council members after the close of the public hearing comments and before the close of the hearing (also denying the timely motion of the applicant to reopen the hearing for their rehearing response), also factors in Rise's disputed allegations, the *Clark* court listed many other violations of State and local law in finding the hearing to be unfair. Also, this was the second time the applicant had to apply for permits, because the council majority added a new "setback" ordinance that delayed the project, so the applicants' existing permit expired, and they had to reapply. Other problems noted in the *Clark* ruling that were not disclosed by Rise as justification for the *Clark* ruling included, for example: (i) why the subject councilmember had personal animosity and a disqualifying personal interest (e.g., blocking his view of the ocean), and (ii) why the procedures were unfair (e.g., not just no opportunity to respond to the new objections from that councilmember, but also council majority imposing on an ad hoc property-by-property basis the policy height and other limits that the council could not generally require for lack of the required supermajority). Also, the councilmember raised issues about open space requirements and whether, contrary to the historical practice and interpretation of lot covering space, a landing above a subterranean garage was a "deck" that should be counted as part of the building. **When examined in their totality, the only similarity between *Clark* and this IMM dispute is in Rise's disputed fantasy.**

FN #14. Obviously, objectors do not dispute the result of anything that the staff rejects in the Rise applications, although that is a fraction of the objections to disputed Rise Reopening Claims in which the staff should have joined objections and about which the staff's supporting analysis for even correct conclusions are on the weaker or narrower grounds than the stronger grounds

objections assert. Whether such staff were bullied or incorrectly partisan or whatever the explanation may be, the fact is that, as proven throughout this Petition/Objection and other Comprehensive Objections, too often the staff and Rise enablers just incorrectly and uncritically accepted from Rise what objectors so proved to be incorrect or worse. Too often, the County Staff Report basically both accepted or tolerated massive errors, omissions, and worse in the disputed EIR/DEIR that the staff somehow incorrectly recommended be certified by ignoring all such meritorious objections that should have made that impossible, as the courts should ultimately find. When asked at the Planning Commission hearing why the staff recommended that the disputed EIR be certified/approved, but not yet the use permit mining, the response confirmed the enabler "bias, etc." and partisanship about which we objectors are protesting. The staff's reply was, in effect (since we don't have a transcript yet for that problematic quote): [Well, Rise spent a lot of money on this project, and the staff thought approval of the EIR was a fair consolation prize.] That, of course, is worse than improper, wrong, and incorrect as a matter of law and fact, among other things, because the EIR has the burden of proof that it failed to satisfy as to each such objection.

Notice that here Rise is "playing the victim" because the staff and enablers did not "go all in for Rise," but the real victims here are our local objectors, especially those surface owners living above and around the 2585-acre underground IMM whose Comprehensive Objections should have succeeded in comprehensively defeating the EIR/DEIR and prevented Rise from now treating those disputed staff and enabler "opinions" as if they somehow created some kind of entitlement for Rise and some kind of constraint on Planning Commissioners, but they don't. Those disputed staff and Rise enabler opinions are no more legally important than our competing Comprehensive Objections, which will ultimately prevail because we are right and Rise and its enablers (and to the extent of their incorrect accommodations to Rise or such enablers) the staff are wrong. Such inconsistent staff decisions like that should not be permissible as if somehow the County owed something to Rise for buying the IMM in 2017 for launching this no net benefit to our community, divisive speculation that would harm locals for the profit of nonresident speculators. In effect, the staff enablers proposed to certify that noncompliant and worse EIR as a forbidden, future "short cut" Rise could use later or sell to a successor in the future. Such "tactical tricks" are objectionable, and they would trigger more wasteful disputes with objectors in trying improperly to escape accountability in court for ignored, dismissed, and evaded objections with merit.

Such inexcusable, enabler maneuvers by or for Rise should be sufficient grounds alone both to prove the enabler staff's objectionable "bias, etc." and "partisanship," **against objectors** (not against Rise or its enablers.) [This occurs, for example, when pro-union labor lawyers and compared to pro-management labor lawyers, or debtor bankruptcy lawyers are compared to creditor bankruptcy lawyers, or criminal defense lawyers are compared to prosecutors.] The least objectionable type of such bias we call **"Unacceptable Professional Orientation,"** and it should be sufficient to reject the EIR and other Rise Reopening Claims, although there are as many additional grounds as there are Comprehensive Objections. Such "Unacceptable Professional Orientation" is the kind of incorrect ideological bias that creates an "alternative reality," for example, by imposing legally incorrect standards that are disproportionately favorable to one side of policy disputes versus another side. For example, if some deluded EIR enabler or misguided staffer thinks to himself or herself that such mining should be approved at

almost any cost for some imagined "greater good" of people personally living at a safe distance from the IMM and Centennial, and those staffers or enablers ignore, disregard, or evade the superior competing constitutional, legal, and property rights of such surface owners above and around the 2595-acre underground IMM (as they have done here), that evidences an "Unacceptable Professional Orientation." It defies logic and common sense for Rise now to claim those staffers and enablers are "biased, etc." or worse against **Rise** (e.g., because they showed some respect for the applicable law in a fraction of their mostly incorrect, pro-Rise decisions or comments), because the bulk of what they decided and did was incorrectly ignoring, disregarding, and evading **objectors,** for whatever reasons, such as perhaps some "Unacceptable Professional Orientation."

FN #15. As discussed in earlier legal cites in this Petaton/Objection or Exhibit (e.g., *Fairfield, BreakZone, Gray*, etc.), none of Rise's hyperbolic complaints have any merit or even credibility, both because Rise is wrong and worse and because this Planning Commission is neither a "tribunal" nor a "quasi-judicial decisionmaker" (not what the CEQA Guidelines call a "decision making body" for "approvals"), but instead is only an investigatory agency making recommendations to the Board, which alone serves that role de novo without regard to the disputed opinions of Rise or its staff sympathizers or Rise enablers that have been proven comprehensively incorrect or worse by our Comprehensive Objections. See, e.g., subsections 1.A.1.a, d, e, and f above.

Rather than suffering Rise wrongly to condemn it critics, those doing the right things consistent with our Comprehensive Objections should be (as they justly are) thanked for their service in saving our community from this EIR dewatering and mining menace that the Comprehensive Objections and others prove valid criticisms based on thousands of pages of evidence (including cites to scientific studies, EPA, CalEPA, and other websites, and other sources countering disputed EIR/DEIR and staff reports), offers of proof, rebuttals, and commentaries. Such a disputed EIR cannot be lawfully certified or approved because of such massive errors, omissions, and worse. Also, note that while Rise and its enablers choose to assert counter-objections to only a few of the hundreds of fatal flaws exposed by objectors in the EIR/DEIR, and more than enough others stand on their merits in the Comprehensive Objections without any sufficient Rise or enabler counter responses that could possibly save the disputed EIR/DEIR from rejection. While the Rise PC Letter seems to be trying to manufacture a scandal to create an excuse for Hardesty2 model "# 1983 Etc. Claims," the only true scandal is in the objectionable ways the Rise PC Letter and other Rise Reopening Claims are incorrectly claiming a scandal to exist.

Whatever else happens in these irreconcilable disputes between Rise and its Rise Reopening Claims versus objectors and our Comprehensive Objections, someday objectors must be entitled to a fair and equal hearing for our Comprehensive Objections consistent with our competing constitutional, legal, and property rights as indispensable and necessary parties-in-interest in these multi-party disputes. The fact that Rise has chosen consistently to ignore, disregard, and evade objectors and our Comprehensive Objections proves that (i) Rise has no answer to our such objections that should defeat all Rise Reopening Claims, plus Rise's wrongful attacks on the innocent County team members, and (ii) Rise cannot have a *Hardesty2* model battle because it has defaulted on rebutting our Comprehensive Objections and cannot claim to

be the victim of County misconduct, when that role belongs solely to objectors whose competing constitutional, legal, and property rights have been ignored, disregarded, and evaded so that Rise can incorrectly attempt to have its “alternative reality,” two-party dispute without objectors.

C. Exhibit A (to Exhibit B-1): Illustrative Examples of Errors, Omissions, And Worse In Court Case Cited by Rise Grass Valley, Inc.'s Letter dated June 1, 2023, To the Nevada County Board of Supervisors Regarding the Planning Commission Recommendation Against the Idaho-Maryland Mine EIR And Mining.

The following rebuttal examples are arranged roughly in the order in which each case issue is stated or otherwise implied or raised in the Rise Letter, rather than in order of importance or magnitude of the objection. As shown above the only Rise cited case even worthy of debate (*Clark v. City of Hermosa Beach)* is much more harmful to Rise than to us objectors, although the fragments on which Rise relies again fail to reveal the full impacts of that case against Rise. The disputed Rise cited cases are arranged by topic or flaw (and within topic by most recent date), rather than by Rise footnote or other order, and Rise entirely ignores our more applicable and controlling cases.

1. **Rise Claims violations of "due process," from the Planning Commission Or Commissioners acting as a "tribunal" or "quasi-Judicial decisionmakers" (when, to the contrary, the Commissioners are just investigating advisors making a recommendation to the Board, and not what the CEQA Guidelines call a "decision making body" for an "approval").**

    a. **Rise factors/bases that we dispute in its cited cases (Rise PC Letter Part # I: FN 1-14):**

Rise cited disputed, distinguishable, and inapposite **Court of Appeal** cases where the planning commission or other decisionmaker was **acting in the role of a "tribunal" or "quasi-judicial decisionmaker" (unlike in our Planning Commission in this IMM case, which is not what the CEQA Guidelines call a "decision making body" for an "approval") and** where (unlike in this IMM case) in that case there was no: (i) discussion of resident objection counters (unlike ours here), nor (ii) objectionable conduct by the applicant (unlike Rise and its enablers here), nor (iii) extreme noncompliance with local or other laws (unlike here), nor (iv) recognition or consideration of our objections' contrary controlling and more applicable counter-cases (like our cited ***"Fairfield"*** or "***BreakZone***"). For example, none of the Rise cites are applicable or similar here because, e.g., in Petrovich the decision-making planning commission's approval of the use permit was appealed to city council and ordered by the court to be redone where two councilmen decisionmaker prejudged the issue by expressing prehearing negative views to the neighborhood group etc.[a case directly contrary to *Fairfield*]); in *Woody's Group* (the city council was judged to have violated two principles of fairness in overturning permit applications approved by the planning commission decisionmakers under more distinguishable essential facts not present here: (a) the council cannot violate its own procedural ordinance and then "change the rules in the middle of the game" and "be the judge of its own case" [ignoring *Fairfield* because it focused on those unique issues, not those Rise cites contrary to the controlling *Fairfield* case); in *Nasha* (setting aside for a redo a planning commission "quasi-judicial decision" due to "unacceptable probability of actual bias" by one decisionmaker who authored a hostile article, introduced a project adversary at a homeowners group, and did other

adverse conduct which he falsely denied, but while acknowledging that the standard for such officials was less strict than for judges and required proof of actual concrete facts," that court again ignored the contrary controlling cases we cite, like *Fairfield); Clark* (see our text discussions above correcting Rise's #1 text discussion, where under extreme circumstances not present in the IMM disputes, as the "decisionmakers" [unlike the Planning Commission here] a councilmember with conflicts of interest met with other councilmembers before the public hearing to add new concerns after the close of public comments and denied the applicant a chance to respond, but that case is not only distinguishable from the IMM disputes, but *Clark* also includes rulings contrary to Rise's claims that Rise has not mentioned, as we note in our rebuttals above at #I.A.1.f); in *Cohan* (where the planning commission decisionmakers approved a subdivision map and development applications [with 500 conditions], the city council appealed that decision to itself and rejected that approval, all rushed in violation of its own procedural ordinances with an incorrect declaration of an emergency under the Brown Act and no required findings and other compliance in what was explained as a "council appealing to itself," and where the court explained its position [pro and con] on a long list of alleged "bias, etc." factors and explicitly distinguished this case from those contrary cases we consider more applicable here like *BreakZone* [and *Hagan v. City of Lake Elsinore and Aviv v. Sun Valley Area Planning Commission*], but still ignoring the controlling *Fairfield* case.)

Note that the other Rise cited cases are wholly irrelevant, but apparently cited for some disputed dicta, because the cases don't support the Rise claim. E.g., *Withrow v. Larkin* (state examining board as a tribunal ruled against doctor on his professional misconduct, but the Supreme Court there ruled that the dual role and procedures of that board were NOT an unconstitutional violation of due process, since "the combination of investigative and adjudicative functions does not, without more, constitute a due process violation as creating an unconstitutional risk of bias"); *People v. Harris* (irrelevant capital murder case dispute over juror voir dire alleged as prosecutor misconduct and judicial bias in examination of witnesses, where the defendant lost that challenge); *Hass v. County of San Bernardino* (irrelevant due process challenge to the "ad hoc" manner in which the county selected "temporary administrative hearing officers" for a massage parlor license sex violation case involving conflicting financial interests of the official); *Monongo Band of Mission Indians* (whatever Rise considers relevant, which we dispute, it must be dicta because the court **rejected** a due process challenge by the tribe water licensee alleging an unfair and unbiased "tribunal," and the court added comments contrary to Rise's contentions here, such as: (a) adjudicators are presumed to be impartial, and there needs to be specific evidence demonstrating actual bias and prejudice, (b) rejection of any per se rule of bias or unfairness, and (c) again, that was in the contest of a "tribunal" in a two party dispute, unlike here where the Planning Commission is not such a "tribunal," and the key to our multi-party dispute is Rise and its enablers versus us hundreds of objectors filing oppositions who are incorrectly ignored, disregarded, and evaded, making objectors the victims, not Rise.)

b. **Objector counters to Rise cases, besides such distinguishing and defeat of Rise cited cases and other rebuttals in Comprehensive Objections:**

The CA Supreme Court decision in Fairfield v. Superior Court of Solano County (1975), 14 Cal. 3d 768 (**"Fairfield**"), must control the subordinate court decisions on which Rise incorrectly

relies. See section I.A.1.e in the above Exhibit B. None of the Rise cited cases can overrule or evade that case, and ***Fairfield's*** holdings and analysis quoted and discussed in the foregoing Exhibit B (Id.) are irreconcilable with Rise's complaints, not only because the Planning Commission is not a "tribunal" or "quasi-judicial decisionmaker" (e.g., a not a Guidelines "decision making body" for "approvals"), but also because this is not a two-party dispute in a trial court, but rather a multiparty administrative proceeding where we objectors have our own competing constitutional, legal, and property rights to protect and enforce with the help of our elected representatives to whom we have collectively in our right of "association" "petitioned for redress of our grievances." If that were not enough, the *BreakZone* case discussed in our attached Exhibit B also defeats the Rise complaints, including by countering the Rise cited cases, none of which say that its wrong, but only that its different/distinguishable from them (which are all distinguishable not applicable here). See also *Todd v. City of Visalia.*

2. **Other Issues of note [Rise PC Letter FN's 13-14]:**

Rise also cites required ethics and Brown Act training by the County, but those general principles never have the meanings or applications that Rise incorrectly assigns to them. To pay any attention to this Rise argument requires the incorrect assumption, contrary to all our Comprehensive Objections and others, that there somehow is merit to the disputed EIR/DEIR and Rise Reopening Claims, when the demonstrated truth is that we objectors are right and the EIR/DEIR team, Rise, and Rise's enablers are wrong and worse. Stated another way, as discussed in our accompanying objection and other Key Objections, Rise incorrectly assumes that the pro-Rise EIR team and County staff were mostly [90?] percent correct and that, as to the rest, Rise's disputed positions were part of Rise (incorrectly) being correct and sufficient on everything disputed in our Comprehensive Objections. Based on that false Rise assumption, Rise also incorrectly claims that any Planning Commission interest in our Comprehensive Objections or others supported by our massive record must be "bias, etc.", lack of impartiality or ethics, or other wrongdoing. The reverse is true, and the Planning Commissioners were correct to perceive the disputed EIR/DEIR and Rise Reopening Claims as (what one experienced land use lawyer at the hearing opined as) the worst EIR she had ever seen for such a major project. Any comparisons of the thousands of pages of Comprehensive Objections from qualified objectors (many qualified to be witnesses in the coming litigation) reveal massive errors, omissions, and worse in the disputed EIR/DEIR (and in the Rise PC Letter's incorrect attempts to rehabilitate them.) For example, the four Prior Ind. 254/255 Objections alone (which include objections to the County Staff Report and the County Economic Report) detail in almost 1000 pages (and incorporate evidence from cited EPA, CalEPA, and other websites) many comprehensive errors, omissions, noncompliance, and worse (what that loosely calls his "top 100 objections," although there are many more than that, depending on how one counts the details) in every section of the disputed EIR/DEIR, plus incorporations by reference and integrations of the also massive supporting and supplementary objections by most of the governmental agencies and public interest groups also filing contributions to the "Comprehensive Objections."

3. More objections may be added before the hearing, but we are stopping here in order to make the deadline for inclusion in the Board package for the hearing.

EXHIBIT C

Petition And Motion To Nevada County For A Status Conference And To Clarify Issues, Rules, And Procedure For This And Other Oppositions To Rise Grass Valley, Inc.'s Vested Rights Petition Dated September 1, 2023, (the "Rise Petition"), Based on These Illustrative, Preliminary Rebuttals ("Objectors Petition")

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[other participants may join or file joinders]

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September 29, 2023

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Petition And Motion To Nevada County For A Status Conference And To Clarify Issues, Rules, And Procedures For This And Other Oppositions To Rise Grass Valley, Inc.'s Vested Rights Petition Dated September 1, 2023, (the "Rise Petition"), Based on These Illustrative, Preliminary Rebuttals ("Objectors Petition").

1. **Introductory Comments And Request For a Status Conference To Facilitate Advances By Objectors With Special Standing For Our Comprehensive Disputes Regarding Rise's Vested Rights Petition, Including To Clarify Issues, Procedures, And Rules In This Administrative Process.**

    a. **Preliminary Statement of Objectors' Foundation For Requested Relief, Reflecting The True, Multi-Party, Litigation Nature of This Dispute Process Considering Objectors' Standing, Among Other Things, Based On Our Competing Constitutional, Legal, And Property Rights As Surface Owners Above Or Around the 2585-acre Underground IMM, As Acknowledged by *Calvert, Hardesty,* And Other Authorities.**

        (i) **Some Brief Introductory Comments To Frame The Core Context For the Requested Status Conference And The Need For Greater Clarity And Other Relief For Objectors, Including Some "Coming Attractions" From Objectors Exposing Some Rise Petition Artifices And Worse, Such As About Rise Relying On Inapplicable SURFACE Mining Theories Versus the IMM UNDERGROUND Mining Realities And Ignoring The Use-By-Use And Parcel-By-Parcel Rules For Vested Rights.**

Rise Grass Valley, Inc**.** (together, as applicable, with Rise Gold Corp., collectively called "**Rise**") has filed a meritless, deficiently "evidenced," and confusing Vested Rights Petition dated September 1, 2023, (as amended or supplemented, called the "**Rise Petition").** However, **this comprehensive dispute involves more than objectors merely asserting contrary, applicable laws and admissible evidence about the true facts (especially critical details!) and history that must protect objectors from this disputed Rise Petition. This is a dispute about reality itself. Some objectors also have special legal "standing" and property and witness rights, because we own the "surface" (at least 200 feet deep) above or around the 2585-acre underground "IMM" mining, and objectors have our own, personal, constitutional, legal, and property rights to protect directly and independently from the County. See, e.g., *Calvert* and *Hardesty.*** Consider some illustrative, disputed Rise Petition claims on which Rise has crafted its **disputed "alternative reality," asserting without merit: (a) [starting at 55] "The facts surrounding the Vested Mine Property are indisputable"; and (b) [summarizing for disputed conclusions beginning at 74-75] "The facts relating to the history and operation of the Vested Mine Property are both extensive and indisputable, and conclusively establish that the Vested Mine Property carries a vested right to mine." The reverse reality is true, as objectors' "fact-checking" and counter legal briefing and evidence will demonstrate further before the Board hearing, although this Petition (and particularly in its Exhibits) itself illustrates sufficient objector rebuttals to justify this requested pre-trial relief and to defeat the Rise Petition.**

Such subsequent objector filings will expose and rebut that disputed Rise Petition attempt to rewrite applicable law and IMM history and facts (often by Rise defying or rewriting the law of evidence—See Exhibit D) for this **underground** mining (e.g., misapplying and misconstruing both **surface** mining laws [i.e., SMARA] and surface mining precedents [e.g., *Hansen*] as demonstrated in Exhibits B and C). See the Surface Mining And Reclamation Act, California Pub. Res. Code # 2710 et seq., and related regulations **("SMARA")** and related surface mining court precedents, which do not apply (even by analogy) for such a miner to create vested rights for such IMM **underground** mining, as demonstrated below and in even more detail in **Exhibit C. That distinction between "surface" versus "underground" mining and the jurisdictional limits of SMARA cannot be rationally contested**. E.g., *Hardesty* (and even *Hansen* in Exhibit B.) However, even if such surface mining law somehow were applicable to the Rise Petition's comprehensively disputed claims, such disputed Rise Petition would still fail. Not only are Rise's authorities are easily distinguished and rebutted (e.g., **Hansen** in Exhibit B and SMARA in Exhibit C), but Rise continues to ignore entirely the contrary authorities cited both here and previously in many EIR/DEIR objections. Nowhere does Rise ever even attempt to explain how its surface mining-based theories [i] apply to this IMM **underground** mining, especially on "dormant," "discontinued," and "abandoned" underground parcels that have never yet been mined or such parcels that have been closed and flooded since 1956, and [ii] are supported by *Hansen if one bothers to read the entirety of the* court's own words and citations that have been strategically omitted by Rise or matched with incorrect, deficiently proven, or unsubstantiated "facts" (often really just incorrect opinions or false assumptions) or with other inadmissible so-called "evidence," as demonstrated below and in Exhibits D and B.) Thus, **exposing the following, worst falsehood in the disputed Rise Petition (at 58) is the focus of much of this Objectors Petition's rebuttals. Rise claims: "Therefore, as a matter of law, Rise is entitled to engage in mining operations throughout the whole of the Vested Mine Property pursuant to the California Supreme Court's holding in Hanson [sic] Brothers, as mineral rights that have been vested necessarily encompass 'without limitation or restriction' the entirety of the Vested Mine Property…" See more such disputed Rise Petition claims in Exhibit E. That disputed Rise Petition's claim translates to objectors living on the surface above and around the 2585-acre underground mine parcels as threats to our competing constitutional, legal, and property rights and standing, such as to deplete our existing and future wells and groundwater "without limitation or restriction," which is not just wrong but intolerable. Since the Rise Petition entirely ignores such competing and objecting surface owner rights, despite specific prior EIR/DEIR objections on that dispute with compelling authorities (some cited again below), objectors insist that the County allow us our competing due process rights to protect our surface properties, including our existing and future wells and groundwater.**

The County must be clear with objectors from the start about what the County will permit to be at issue (or to be incorrectly excluded) from any vested rights dispute process at the Board hearing, and the requested status conference and other relief detailed below will help that so-far neglected due process. Clarity is always an essential part of any due process for objectors, such as what the ***Calvert*** court assured for objectors such as us when it rejected the disputed idea that such a vested rights decision is merely a "ministerial" process (or otherwise one with limited objector participation rights and remedies.) Instead, **(as *Calvert* held) such dispute process must be an adequate "adjudicative" (or "quasi-judicial" or "administrative")**

decision procedure requiring full due process for the objecting neighbors and the other impacted public. See also *Hardesty* and Exhibit D addressing the Rise burdens of proof and evidentiary deficiencies and shocking omissions. Here that especially includes (although obviously not at issue in any **surface mining** case or SMARA rules) the constitutional, legal, and property personal rights and standing of **objecting surface owners above and around the 2585-acre underground mine**. See also the concluding section far below regarding **Rise's inability to evade CEQA** in such a vested rights process, such as where *Calvert* followed the analysis of SMARA #2776 in **"**Ramsey**"** (i.e., *People v. Dept. of Housing-Community Dev.* (1975), 45 Cal.App.3d 185, 193-94, holding that construction of a mobile home park was, at least in sufficient part, a discretionary act subject to CEQA) and cases cited therein (or thereafter following it, *Calvert, or Hardesty.)*

Before the coming Board hearing, objectors wish to systematically deconstruct the "alternate reality" of the Rise Petition, because Rise's most vulnerable illusions are obvious when they are exposed as we illustrate. See, e.g., the disputed Rise Petition quotes above that are worse than wrong, as are those rebutted in Exhibit E. One question for the County is: what procedural options can we persuade the County to provide for objectors as equal participants (not just three-minute public commenters) in what *Calvert* ruled must be a multi-party process among equals, but without delaying the schedule? In any event, experience shows the wisdom of beginning with such a quick status conference for **clarity about many missing or obscured details in the Rise Petition about its disputed claims and theories,** so that Rise, which seems to care nothing about the inconsistencies in its "stories," can be pinned down for an apples-to-apples match-up dispute. Objectors should not have to play "whack-a-mole" again (as in our disputed EIR/EIR objections, where Rise shifts to new positions again when its previous gambits are too exposed and never confronted rebuttals using Rise's own SEC filing admissions in Exhibit A.) Objectors' next brief should be able to end this Rise IMM threat once and for all, unless Rise shifts position once again. Objectors are confident that the courts will not tolerate what we've seen so far as targets for (the administrative equivalent of) judicial estoppels and more powerful relief to come in the next court process to hold Rise accountable for "contradictions," "inconsistencies," and worse admissions, such as (i) between Rise's disputed EIR/DEIR versus its SEC filings (Exhibit A), which such SEC filings the *City of Richmond* court cited below used to defeat Chevron's EIR, and (ii) between real versus alternative realities that the *Hardesty* court refused to tolerate as a "muddle" in defeating a vested rights mining claim on grounds applicable here. See Exhibit D. However, Objectors are impatient to persuade the Board to end promptly even our existing pre-operational IMM miseries, so that, besides demonstrating the need for clarity, we will also illustrate some of the Rise credibility problems that should inspire the Board itself to prepare the hard questions for Rise if, despite objectors' due process and special rights under *Calvert, Hardesty,* and more authorities, the deficient County process declines this request to allow objectors themselves some way to counter Rise properly for the Board, without delaying the schedule.

Lest objectors be thought as guilty as Rise is about claims of being short of correct and sufficient details, consider these teasers of coming attractions. Objectors cannot tell from the Rise Petition precisely how Rise purports to justify applying its cited **surface** mining law and authorities (many of which, like *Hansen*, help objectors more than Rise—See Exhibits B and C) to this IMM **underground** mining beneath objecting surface owners living above and around the

2585-acre underground mine. Even more mystifying is how Rise imagines it could have the benefits of such SMARA, surface mining, vested rights standards without Rise also having to comply with the corresponding SMARA burdens. For example, where are the required SMARA/*Hansen* "reclamation plan" and "financial assurances" (see below and Exhibit C) that are impossible for Rise to accomplish? See, e.g., SEC filing admissions in Exhibit A hereto, demonstrating that Rise lacks the financial resources to accomplish those or any of its other material proposals or obligations for protecting objectors and our community, and which deficiencies objector will offer to prove either by testimony, if permitted, or, if not, by equivalent offers of proof, once we understand "what in the world" Rise is claiming about that subject. Like many other problems for Rise's claims for which the Rise Petition seems to lack even some incorrect theory, the Rise Petition just ignores such critical and disputed issues, as Rise and its enablers ignored most of our EIR/DEIR objections.

To illustrate, consider how *Hardesty*, one of the most important cases ignored by Rise because it defeats such vested rights claims, dealt with the key issue of Rise surface mining theories versus IMM **underground** mining realities **(although the *Hardesty* court supported objectors' position from the reverse perspective of a miner trying to shift to surface mining instead of to underground mining, but still confirming that each type of mining is a different "use," and vested rights for one type of mining does not created any vested rights for any other type of mining.**) *Hardesty* ruled in part (with more to come below):

> [T]he italicized portion of the statute [SMARA #2776] speaks of vested rights to ***surface*** mining, **not *any* mining**. "Surface mining involves stripping off the top of an area to reach the minerals, in contrast to boring down through tunnels or shafts to extract them." ([People v.] *Rinehart*, supra, 1 Cal. 5th [652] at p. 671, fn. 10 …) (emphasis added)
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> ***
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> To the extent Hardesty contends he has a vested right to surface mine under section 2776, he simply **failed to carry his burden to prove any substantial *surface* mining on the property** had been conducted by that date. As the trial court found, substantial evidence shows that **prior mining had been hydraulic, tunnel, and drift mining, not surface mining,** which began in the 1990's, and **which represented a SUBSTANTIAL CHANGE,** contrary to former section 2778's requirement that no substantial changes may be made in any such operation except" according to SMARA's terms…. (emphasis added)
>
> ***
>
> … Hardesty failed to prove any mining was occurring on or even reasonably before the date SMARA took effect. **SMARA was designed to allow existing, operating surface mines to continue operating** after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to dormant mines.**
>
> ***Hansen*** *Brother Enterprises, Inc. v. Board of Supervisors* (1996), 12 Cal. 4th 533*…(Hansen Brothers*)—**consistent with a long line of zoning cases—holds that A USE MUST BE PRESENT AT THE TIME A NEW LAW TAKES EFFECT, TO BE CONSIDERED A NONCONFORMING USE…**. Communities for a Better

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

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

***

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

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799-812 ("**Hardesty**") (The miner lost at the Board, trial court, and on appeal in its mandamus action claiming SMARA vested rights as to an ancient, "19th century" federal mining patented gold mine that ceased operation during World War II and was "essential dormant" "through the 1970's" with "virtually no evidence that **those mining activities** (not just the nondeterminative, incidental or different work on the parcel on which Rise and that miner attempted to call "mining") 'continued' to exist at the time SMARA was enacted [effective January 1, 1976], apart from "sporadic," "unpermitted surface (open pit) aggregate and gold mining in the 1990's." Nevertheless, the miner claimed "vested rights to mine the property for gold, sand and gravel (as well as diamonds and platinum)" after he bought the property in 2006. The trial and appellate courts rejected that miner's vested rights claim, agreeing with the Board that "any right to mine had been abandoned," as discussed in the evidence analysis sections herein and in Exhibit D.)

More importantly, in setting up that decision, wherein ***Hardesty*** **forbid the kind of mining and use changes Rise tries to ignore between such different types of mining in incorrectly claiming vested rights for everything, the *Hardesty* court stated (Id.):**

> **The trial court found that in the 1990's unpermitted surface (open pit) aggregate and gold mining began different in nature from the 'hydraulic, drift, and tunnel' [i.e., underground] mining that historically had been conducted on the land.** The RFD alleged the new proposed open-pit mining was safer and better for the environment. *** As an alternative to the finding of no vested right based on the lack of mining [in the right way and at the required time] … the trial court **found that any right to mine had been abandoned**." (emphasis added)

Here, despite the Rise Petition's disputed claims to the contrary (often apparently based on the false, *Hardesty* rejected theory that any kind or type of mining related, useful "operational" activity on any owned parcel somehow allows Rise all desired mining operations on any parcels "without limitation or restriction:" Rise Petition at 58), the IMM was also **"abandoned" by 1956** (which "discontinuance" *Hardesty* described as "**dormant" and the legal equivalent to block vested rights)** sufficiently to destroy any future vested rights claim by the *Hardesty* (and even *Hansen*) standards. Rise cannot revive the IMM now, especially by arguing (like the *Hardesty* rejected miner) that Rise's new uses should be allowed because somehow it was "better" than the old one. (That unprecedented argument could not possibly work against surface owner objectors above or around the IMM, because the question would then be even clearer: "better for whom?" since us surface owners have no less rights than Rise as an underground miner, especially as to our existing and future wells and groundwater, and objectors argue they have some superior relevant rights of use to Rise's as an underground miner; i.e., Rise owns what property it owns, but this is about **competing uses**.) While there was obviously some IMM underground mining before 10/10/1954 at some of the IMM parcels, the point is that Rise is not arguing for vested rights **from underground mining cases and laws (as distinguished from the fragmented parts Rise likes of surface mining cases and SMARA**). Why? Perhaps that is because no one could possibly have done any **underground mining** anywhere in the IMM, since the "dormant" (i.e., abandoned) mine closed and flooded in 1956. Rise apparently imagines (incorrectly) that some surface or non-mining activity [like minor exploration/ testing even under a use permit] (which would have to be somewhere else than the surface objectors own above or around the 2585-acre underground mine) can save Rise from our obvious abandonment/dormancy/discontinuance/laches objection. Perhaps, that is because Rise continues to fear confronting objecting surface owners' competing constitutional, legal, and property rights that Rise keeps ignoring, as it has in the disputed EIR/DEIR and other Rise applications.

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

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

Notice that the Calvert court emphasized allowing "evidence" in its technical legal meaning, and **much of what Rise cites as "evidence" is not competent "evidence" at all**, either because it is just unsubstantiated opinion from an unqualified source, lacks sufficient foundation and other bases to be admissible, or is otherwise inadmissible. See Exhibit D and E. Consider among the scores of credibility problems from which the Rise Petition suffers, this example, where Rise incorrectly proclaims with its unsubstantiated conviction (citing *Hansen* at 556, where the actual *Hansen* quote wasn't fully included there by Rise to support its exaggerated and disputed claim was qualified and limited in *Hansen [emphasis added]* to **"a vested right to quarry or excavate [surface mining/not underground mining terms] the entire area OF A PARCEL…**" The correct law is all about use-by-use and parcel-by-parcel, but Rise persists in overgeneralizing, incorrectly asserting that any kind of operation or use is sufficient for vested rights as to all uses, operations, and parcels. Rise ignored the more important rulings quoted below, when Rise incorrectly insisted (at Rise Petition 58, emphasis added): "Therefore, **as a matter of law,** Rise is entitled to engage in mining operations **throughout the whole of the Vested Mine Property pursuant to** the California Supreme Court's holding in **Hansen Brothers**, as mineral rights that have been vested **necessarily encompass, "without limitation or restriction" the entirety of the Vested Mine Property** due to the nature of mining as an extractive enterprise **under the diminishing asset doctrine." That false Rise claim is comprehensively rebutted herein and especially in Exhibit B, C, and E. *Hansen,* for example, did NOT so apply vested rights for that exclusively surface mine either (i) to the "ENTIRETY" of that mine "AS A MATTER OF LAW" (but, instead, REMANDED some such issues, in effect, because of the LACK OF EVIDENCE as to various of the SEPARATE PARCELS as to the application of certain LEGAL AND FACTUAL ISSUES ignored by Rise), (ii) *Hansen* was grounded on SMARA, which EXHIBIT C SHOWS TO BE LIMITED TO SURFACE MINING AND ALSO TO CONTAIN MANY REGULATORY "LIMITATIONS OR RESTRICTIONS," ESPECIALLY AS TO THE NEED FOR AN APPROVED "RECLAMATION PLAN" AND RELATED "FINANCIAL ASSURANCES" for which Rise could never qualify or afford as illustrated by Rise admissions in Exhibits A and C, and (iii) even more importantly, among many ways Exhibit B hereto demonstrates that the actual, complete *Hansen* decision destroys the disputed Rise Petition claims citing *Hansen*.**

Consider this *Hansen* quote against such Rise's disputed cross-parcel/unitary operations claims (none of which disputed Rise theories apply to UNDERGROUND mining at all, as *Hardesty* demonstrates below and SMARA itself states in Exhibit C. *Hansen* stated (at 558, emphasis added):

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

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

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

> concluded:] **Hansen Brothers has failed to carry that burden insofar as its SMARA reclamation plan asserted a vested right to quarry a 60 plus acre parcel…The evidence is insufficient to support a finding that Hansen Brothers is entitled to a writ of mandate… [therefore referring to a further] determin[ation] by the superior court on remand.**

Moreover, Rise admits in its EIR/DEIR that this expansion mining would require a new, high-tech, massive dewatering system operating 24/7/365 for 80 years that those 1954 Rise predecessors could have never planned to duplicate. **As Exhibit B demonstrates, *HANSEN* DISCUSSED A CASE DENYING SUCH VESTED RIGHTS CLAIM (**at 566, emphasis added**) THAT THE MAJORITY SAID "ILLUSTRATED" ITS "APPROACH": *PARAMOUNT ROCK CO. V COUNTY OF SAN DIEGO* (1960), 180 CAL.APP.2D 217, 230, WHERE THE READY-MIX CONCRETE BUSINESS ADDED FOR THE FIRST TIME AFTER THE VESTING REZONING DATE A NEW "ROCK CRUSHING PLANT ON THE SITE"(REPLACING PRECIOUSLY OFFSITE CRUSHING), REJECTING THE ARGUMENT THAT SUCH A CRUSHER ADDITION WAS "AN INTEGRAL PART OF THE BUSINESS THAT THE [OWNER] PLAINTIFF HAD BEEN OPERATING," SINCE THAT CRUSHER WAS "NOT PART OF THE NONCONFORMING USE TO WHICH THE PROPERTY WAS BEING PUT AT THE TIME THE ZONING ORDINANCE WAS ADOPTED." STATED ANOTHER WAY, *HANSEN* (at 566, emphasis added) IN EFFECT STILL REQUIRED THAT SUCH "A COMPONENT OF A BUSINESS" MUST "ITSELF HA[VE] A VESTED RIGHT TO CONTINUE USING THE LAND ON WHICH IT IS LOCATED FOR OPERATION OF THE BUSINESS." That means Rise cannot now add that water treatment plant that it has already admitted in its disputed EIR/DEIR that it needs for its 24/7/365 dewatering of groundwater drained from objecting and competing surface owners' property and existing and future wells above and around the 2585-acre underground mine.**

While objectors illustrate many such rebuttals throughout this Petition and its Exhibits, this Petition's main mission is to address this question: what is the best way for us objectors now to begin exposing and "deconstructing" that Rise Petition's "alternative reality" plus using our full and equal *Calvert* due process rights without delaying the hearing? If objectors were now in the courts, where this dispute is headed, objectors would have their own equal rights to be full due process participants there in disputing Rise and any enablers, whatever the County decided. See, e.g., *Calvert* and *Hansen,* confirming objectors' equal standing in such mining, vested rights disputes, which precedents are ignored by Rise, like every other "inconvenient truth" and objectors' rebuttals). Objectors suggest that the County promptly begin with *pretrial* motions to dismiss the Rise Petition and compel more clarity and accountability from Rise before the Board hearing. However, objectors request a pre-Board hearing status conference because objectors do not wish to delay the process for eliminating the Rise Petition, and because Rise is **once again playing "hide the ball**" on its mysterious and deficiently substantiated claims for a general mandate and permission to do whatever it wants "without limitation or restriction" (Rise Petition at 58). Since the Rise Petition just chants "vested rights," as if that were some magic spell that required no sufficient proof or clarity (see objectors' record objections to the disputed EIR/DEIR about such tactics), objectors' status conference could at least compel certain pre-Board-hearing clarifications, among other relief addressed herein.

(ii) Some Additional Data And Issues For Such Status Conference Clarifications And Relief.

The "status conference" requested herein should explore, beginning with the need for more such clarity, what process, rules, and procedures will be constitutionally and legally sufficient for due process objections to the Rise Petition and for the protection of objectors' competing constitutional, legal, and property rights under the prevailing judicial authorities. For example, ***Calvert* was not only focused on the *MINER'S* due process rights, BUT RATHER INSTEAD PROCLAIMED THE DUE PROCESS RIGHTS OF THE NEIGHBORING VICTIMS of that surface mining and the other impacted public (which types of victims are herein called "objectors," some with special standing as discussed in a following subsection. See *Calvert v. County of Yuba* (2006), 146 Cal.App.4th 613 ("*Calvert*"), analyzed below. OBJECTORS WILL EXPECT NO LESS THAN WHAT *CALVERT* PROVIDED WHEN IT ADDRESSED (AT 622) THIS QUESTION IN THOSE OBJECTORS' FAVOR: "IS THE VESTED RIGHTS DETERMINATION REGARDING WESTERN'S SURFACE MINING OPERATIONS …SUBJECT TO PROCEDURAL DUE PROCESS REQUIREMENTS OF REASONABLE NOTICE AND OPPORTUNITY [FOR OBJECTORS] TO BE HEARD? OUR ANSWER: YES."** In that case, the county incorrectly approved the surface miner's purported, vested rights in an unconstitutional, two-party "ministerial" process without notice to, and adequate due process for, any impacted neighbors or other objectors, because such vested rights evasion of the normal permit requirements is not merely a "ministerial decision" for the County alone. As demonstrated in detail below, *Calvert* rejected as without merit many issues raised by that miner (and by Rise here) that would also defeat Rise's vested rights claims. Indeed, if *Calvert* had confronted an **underground** mine like the IMM, objectors would have been requesting (and we believe would have personal standing for) such clarity, rules, and procedures like those objectors are seeking in this Petition, especially considering the special, competing, constitutional, legal, and property rights of objecting **surface owners** above and around the 2585-acre underground IMM.

Remember its such objectors' owned groundwater and existing and future wells Rise is proposing to "dewater" and flush away down the Wolf Creek. Not only are such objectors' harms (and legal standing) personal, but, for example, even the existing, record objections protest Rise's disputed "mitigation" for such dewatered groundwater flushed down the Wolf Creek (after purported "treatment" by disputed new facilities and systems for which there can be no Rise "vested rights), where Rise EIR mining would wrongfully (i) take the top 10% of surface owner wells without any mitigation replacement, (ii) ignore many existing wells, all future surface wells, and even whole surface areas depleted by Rise's 24/7/365 dewatering impacts for 80 years, and (iii) otherwise violating surface owner rights with deficient mitigation as a matter of law, applying the "well water standard" set by ***Gray v. Madera County*** *(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.) Now that Rise appears to be trying to escape even more applicable laws and regulations with its disputed vested rights excuse, how much more surface owners' groundwater and existing and future wells will Rise now dare to deplete without even it such illusory mitigation? See, e.g., the Engel Objections and others cited therein (e.g., the Wells Coalition, CEA, Rudder Group, and more) in to the EIR/DEIR reserving the rights of such surface owning objectors to compete also

in the future for access their own ground water with new wells. See the discussion below of how *Keystone, Varjabedian,* and other property rights authorities cannot be defeated in any Rise process that continues to ignore those such constitutional, legal, and property rights.

The County should allow objectors even more procedural and rule protections and clarity than provided to objectors in *Calvert, when the court so required such* procedural due process, because, without SMARA's ***surface*** mining, statutory compromises blending of benefits and burdens into a comprehensive, integrated regime (see Exhibit C), Rise is (in effect) insisting that the County and courts craft piecemeal a new, comprehensive, common law, ***underground*** mining vested rights law through issue-by-issue litigation. (This attack on objectors' personal constitutional, legal, and property rights must allow objectors' full self-defense and counter processes, because the County cannot give Rise what Rise wants without wrongly "taking" such rights and interests away from objecting surface owners. See *Keystone* and *Varjabedian.* For the County to do so could potentially cause the County to suffer much higher liabilities, costs, and adverse consequences of every legal kind in a conflict that could evolve beyond conventional land use disputes into complex constitutional litigation supplemented and adapting during those disputes to include objecting voters also exercising their voting rights for political and law reforms. **Unlike Rise, this Petition does not threaten claims against the County (or anyone else), but we note the existence of any such claims proves the truth of objectors' standing and rights, thus entitling objectors to the relief we seek in this Petition.** Moreover**, nothing in this Petition could be any presently such asserted claim by any objector (as distinct from proof of rights that when violated could result in claims), but rather instead objectors just warn the County of the predictable consequences of tolerating or suffering the Rise Petition if such claims were to become "ripe."** (Until such actual harms become "ripe," the foreseeable threats of such potential harms may be too "theoretical" as far as the law is concerned to give rise to any such current causes of action for such threats of causing such harms.) However, objectors want to end these threats as quickly and cost-effectively as possible and before any mining starts, and, therefore, objectors will resist this IMM threat while the mining is still just a toxic theory, leaving to an unlikely future what objectors may do about rights and claims if and when any become "ripe" if actual mining ever were allowed to begin

Among other relief requested by objectors in this counter petition, that Rise Petition must be clarified for objectors, both for this dispute process that Rise has triggered and, more importantly, for the expected court proceedings to follow. While objectors do not wish to delay the elimination of the Rise IMM threats, from which objectors are already suffering depressed property values (that will consequently impact County property taxes), at least basic clarity must be achieved before the Board hearing. For example, precisely what **underground** mining and related activities does Rise claim that its disputed vested rights from 10/10/1954 will allow in disregard of otherwise applicable laws and regulations (and in disregard of objectors' competing constitutional, legal and property rights)? That is essential to know now, since **it is legally impossible for some new things (e.g., like Rise's proposed water treatment system) to be considered for vested rights**, even under Rise's favorite *Hansen* **surface** mining case, which objectors' comprehensive analysis in Exhibit B reveals to hurt Rise's disputed theories more than help Rise. Also, to what extent are we disputing the same, disputed Rise mining and related plans (and the same "reclamation plan," still lacking the required "financial assurances" that Rise cannot possibly satisfy) as what is described on the current record in Rise's disputed

EIR/DEIR? Does Rise now contemplate doing anything different, since Rise's disputed petition reads like Rise incorrectly imagines it can do whatever it wants, free of otherwise applicable legal limitations, just by chanting "vested rights," like they were some magic spell? Objectors presume Rise must be revising its planned "IMM" vested acts and omissions, because, if objectors only have to dispute Rise's existing (also defective) EIR/DEIR plans, the courts must (and the County should) grant our dismissal motions long before any Rise Petition trial (or adjudicatory hearing).

Those and other confusions from such repeated Rise "hide the ball" tactics (as likewise exposed in record objections to the EIR/DEIR) arise because Rise's apparent (and disputed) goal is to evade/override some (not yet clear which) laws and regulations, and then proceed without obtaining the use permit (and perhaps other normally required permits or approvals) for which Rise previously applied and without the still required CEQA and other legal and regulatory compliance protecting objectors. What Rise contemplated underground mining and related "IMM" activities, infrastructure, and equipment are claimed to be done or used and allowed (or excused) on each parcel (and applicable sub parcel) of such "Vested Mine Property" (or any broader scope" IMM") without the normally required use permit and other compliance with applicable legal requirements? Such required clarity about such disputed excuses for Rise's evasion of IMM legal compliance should begin on an item-by-item basis for each such act, omission, infrastructure, equipment, dangerous material or substance (e.g., blasting explosives and newly added hexavalent chromium mine cement paste for the new techniques for constructing underground shoring pillars from mine waste), and other relevant things that were revealed (or should have been) in the disputed EIR/DEIR or other Rise documentation for permits or applications or in Rise's SEC filings (Exhibit A). What are each of the laws and regulations and rights of others with which Rise claims to be entitled to disregard by its such disputed "vested rights" "incantation," including as to those listed in the EIR/DEIR related inventory or listed in the **"County Staff Report"** dated on or about April 26, 2023, addressed to the County Planning Commission and reciting some regulatory IMM history and applicable laws and regulations. (For objectors, those are maps to Rise admissions and inconsistencies that contradict the Rise Petition and Rise's disputed vested rights claims.) See also Exhibit A, quoting additional Rise admissions and inconsistencies from Rise's SEC filings, which, despite being incorrectly disregarded by the County staff and EIR/DEIR team, are not just admissible evidence, but in many cases (e.g., the *City of Richmond* case discussed below) are also outcome determinative, even in this context, as *Hardesty* demonstrated in likewise rejecting that miner's similar attempt at imposing its "alternative reality."

Fortunately, applicable law does not require objectors to guess what laws, regulations, permits, and other governmental approvals Rise incorrectly claims no longer apply for Rise's contemplated "IMM" reopening and related activities (and omissions) for its uncertain, but clearly massively expanded, more intense, and comprehensively disputed underground mining and related activities on or from what Rise Petition's calls the "**Vested Mine Property."** Note (surprisingly) that alleged "Vested Mine Property" now purports to include the toxic Centennial site that Rise had previously insisted in the disputed EIR/DEIR was a separate "project," one example of many inconsistencies and contradictory admissions that will defeat the Rise Petition, as Rise struggles radically to so change its legal and factual theories from the basis of Rise's prior records. In any event, **Objectors decline to accept that uncertain Rise project definition for**

whatever Rise imagines doing (or failing to do) at and around the Idaho-Maryland Mine, all of which objectors will herein collectively call the "IMM," because objectors prefer a fully comprehensive and functional definition. In other words, and more precisely, the **"IMM**" is whatever Rise at any time claims it may do, or be excused from doing, pursuant to its Rise Petition (as Rise may revise or supplement that petition during the process or hearings, such as Rise has previously attempted to do covertly in the disputed EIR/DEIR process under the guise of Rise "clarifications," many not even "flagged" for the Planning Commissioners). Again, note "IMM" here now includes without limitation everything done at, beneath, around, or from any of such so-called "Vested Rights Property," including the toxic Centennial property that now Rise implicitly admits was (as objectors previously objected for disclosure as distinct from vested rights, which is a different legal issue) part of the EIR/DEIR "project" all along. **Because (as objectors will demonstrate, even by using Rise's favorite *Hansen* case in Exhibit B) vested rights law is a legal parcel-by-legal parcel as and when acquired and used analysis, that vested rights claim for including Centennial is not only incorrect, but (like the new water treatment facility and other new additions after 1954) it dooms the Rise Petition, among other things, because vested rights must include both an approved "reclamation plan" and matching "financial assurances" neither of which is feasible, especially for Rise, whose SEC filing admissions (Exhibit A) expose its inability to afford to accomplish much of anything Rise proposes, much less the many greater requirement Rise does not yet acknowledge.**

b. This Petition Reminds the County of Such Surface Owners' Competing Rights Not To Bully The County, As Rise Seems Intent On Doing, But Rather For Economic Comparisons That Should Convince The County That Accommodating Rise Would Create More Problems Than Meritless Appeasement of Rise Would Solve.

Because this is a multi-party *Calvert/Hardesty* dispute in which objectors have their own rights, claims, and standing independent of whatever the County may do, especially objecting surface owners above and around the 2585-acre underground IMM, no surrender to Rise by the County could possibly resolve this dispute, but instead would merely create more. While Rise tries to bully the County with its Rise Petition, Objectors Petition only describes some illustrations of what much more powerful and meritorious rights, claims, and remedies could be asserted by any objectors (when ripe) to counter Rise mining in the future, if the County were mistakenly ever to allow the Rise Petition. As the *Keystone* and *Varjabedian* courts have explained below, "inverse condemnation" claims include a subset of "nuisance" claims, making discussion of both relevant is any such disputes of the consequences of granting the Rise Petition. However, one **present** consequence of even the current Rise threat is the reaction of buyers and mortgage lenders who (like sellers and borrowers) must already consider the adverse, foreseeable risks of Rise achieving its threatened goals in the future and causing the potential harms predicted in hundreds of existing EIR/DEIR record objections, plus more objections coming against the Rise Petition. Also, consider how the County recognizing any vested rights would inspire local voters and their properly responsive, chosen elected officials to use law reforms to enhance protections for such surface owners and others and their existing and future wells, groundwater, and other property from such IMM mining menaces, especially those beneath us from a disputed miner incorrectly claiming (Rise Petition at 58) the

right to mine underground "without limitation or restriction," since as *Keystone, Varjabedian, Hardesty,* and other cases note, even if such rights existed (which objectors' dispute) vested rights only would excuse Rise from some laws, not all or even most laws. See Exhibits C and E.

As the competing and objecting victims in any such disputed, new mining regime imagined by the Rise Petition, such surface owners above and around the 2585-acre underground mine must have a full and equal right and role in a process for effectively resisting Rise's such threats to objectors' constitutional, legal, and property rights, both in the County process and in the court proceedings that must follow. As demonstrated below (see, e.g., *Varjabedian, Keystone, etc.*), this is a "zero-sum" game. Anything the County allows to Rise to do (or not do) with disputed so-called vested rights, which would be over our resolute objections, actually would have to be "taken" away from objectors' competing and superior constitutional. legal, and property rights and interests, potentially raising the constitutional inverse condemnation and other claims allowed by *Varjabedian,* et al. Considering that reality and the need for a far more comprehensive record for this complex dispute's mix of public rights administered by the County plus private legal right conflicts between such surface versus underground miners, the County should adapt its rules and procedures now to avoid any delays. That relief should begin with objectors' requested status conference. Otherwise, the County may be required to do so by the courts in the later litigation as occurred in *Calvert* (and as a result of objectors' political and law reform efforts), which is the kind of delay objectors would like to avoid by the prompter defeat of the Rise Petition.

While Rise complains about delays, for which objectors blame Rise instead of the County (e.g., protecting objecting potential victims from such menaces is what government is supposed to do), objectors also suffer from delay. Indeed, timing is critical to objectors (and our whole community) at every stage in this dispute process because any delay in eliminating this Rise menace further continues the negative impacts on our property values and sale or financing opportunities, among other adverse consequences detailed in the record EIR/DEIR and other objections. See, e.g., Exhibit F, objections to the County Economic Report, which disputed report incorrectly discounted the correct analyses of local real estate brokers in favor of disputed and meritless "comparables." Even worse, the County Economic Report never bothered even to obtain advice from the relevant appraisers, whose opinions will determine what level of mortgage lending, if any, is available at all times to borrower/buyers while the disputed IMM mining remains a threat. Whatever Rise or its enablers may claim or its enablers may incorrectly disregard as speculative, the obvious reality is that buyers and mortgage lenders will always assess the IMM threat as a significant, negative factor depressing property values (and, therefore, County property taxes.) What does a surface objector living above or around the 2585-acre underground mine tell a potential buyer or mortgage lender's appraiser? Honest sellers could improperly report Rise's disputed propaganda, but they would also have to confess that few informed locals believe Rise or such disputed EIR/DEIR and other "stories," and, to the contrary, most impacted surface owners above or around the IMM have filed or supported massive and meritorious objections about Rise's serious IMM threats. The best thing most impacted surface owners can say is that the Rise menace is so bad that it cannot possibly survive the overwhelming, persistent objections in which disputes objectors' truths must prevail, if not at the County, then in the courts. Unfortunately, the old saying too often will apply

about it "being better to be safe than sorry." Therefore, the sooner objectors can defeat the IMM reopening the better.

c. Because There Are Ample Reasons To Dispute The Rise Petition's Purported, Historical "Evidence," Some Illustrated Here And Exhibit D And More To Come In the Next Briefing to Defeat Rise's Burden of Proof Attempts, Objectors Ask The County To Examine That Part of These Disputes From The Perspective of the Impacted Residents Our Government Is Supposed To Protect From Such IMM Threats.

In any litigation where the rules of evidence apply strictly (see some evidentiary discussion in Exhibit D), Rise's disputed vested rights theory of "similar uses," "same area," "no substantial changes," "no increased intensity," the future, "objective" "mining intentions" of unidentified, long dead predecessors in the chains of title on each parcel, etcetera must fail, even by Rise's own SEC filings and other admissions (see Exhibits A, B, C, and E). **As *Hardesty* explained at 812: "The continuance of a nonconforming use 'is a continuance of the same use and not some other kind of use'", citing "*County of San Diego v. McClurkin* (1951), 37 Cal.2d 683, 688; *Edmonds v. County of Los Angeles* (1953), 40 Cal.2d 642, 651; and *County of Orange v. Goldring* (1953) 121 Cal.App.2d 442, 446-47."** (emphasis added) As *Hardesty* quotes demonstrated above, Rise's alleged **surface operations are always different uses from underground mining**, and even *Hansen* acknowledged that **each "component" must have its own vested right**. **While Rise reports the volume of ore mined (as distinct from Hansen's calculation of rock moved—a key difference in impact from the perspective of the impacts on objectors above and around the IMM and the rest of the community), the intensity test is focused on protecting such impacted locals; i.e., the focus is on how much more suffering the rest of us have to endure compared to prior history, as distinct from how much more gold Rise recovers, if any, a fact not known for years, while the rest of us suffer the start-up miseries described in the disputed EIR/DEIR.** As demonstrated in various ways under every possible perspective (see Exhibit D), Rise cannot satisfy its burdens to prove with legally admissible, competent, and credible evidence even the base vested rights case of the old, pre-1956 mining to set the standard for comparison or modeling to SMARA surface modeling or other precedents.

Even based on facts Rise has admitted in its SEC filings (see Exhibit A) and elsewhere, the surviving alleged IMM relevant records for the parts of the abandoned IMM mine that flooded and closed in 1956 are vulnerable to the comprehensive challenge we assert as incomplete, unreliable, noncredible, and subject to many evidentiary and other disputes by objectors. So are the Rise Petition's Exhibit self-selected (i.e., cherry-picked) fragments of what Rise calls "history." See the similar *Hardesty case* example discussed above. (When the IMM predecessor owners were admittedly operating in distress on 10/10/1954 and when and after they so abandoned the IMM in 1956, how likely is it that they saved **comprehensive, complete, and accurate records** of everything they did and did not do or intend? Isn't it more likely that typical mine owners of that time (long before meaningful environmental reporting, laws, regulations, and enforcement), yet still fearful of prosecutions and claims when foreseeable problems arose, would be careful what they exposed to history, preferring not to have surviving records

confessing “inconvenient truths” or worse for possible salvage by their adversaries? (While the old-time miners may have been more fearful of blame for cave-ins than pollution, depleting wells and groundwater has always been a conflict issue.) Considering that Rise often seems to present fragment documents with little or no sufficient foundation that cannot satisfy its burden of proof, why cannot objectors dispute such things in the main counters to come with such historical and problematic “mining industry practices” of such times?”

Historical experience can show that abandoning miners before 1956 were likely as careful as retreating armies guilty of “problematic conduct” [e.g., even modern examples like Russia retreating from atrocities in Ukraine] to only leave behind records that do not expose them to wrongdoing claims or worse. That lack of a complete and accurate records doesn’t mean, as Rise seems to contend, that such uncertainty allows Rise to say or do whatever it wants from some cherry-picked fragment, especially since the County process does not (yet) allow court-type cross-examination and impeachment. To the contrary, that lack of a sufficient “base case” of competent, admissible, credible, reliable, and unambiguous evidence means that Rise cannot ever satisfy its burdens of proof on the key issues and requirements for the disputed vested rights Rise claims. See Exhibit D. That is especially true and important considering that Rise admittedly has chosen not to explore or investigate sufficiently the actual conditions in the existing underground mine, much less the unexplored expansion, new, underground mining areas that now are the core focus of these disputes by objecting surface owners above and around them. See Rise SEC filings in Exhibit A.

Objectors would investigate and advance, as appropriate, instead the most likely hypothesis that Rise’s predecessors would have left little behind of importance when they closed and abandoned the IMM. Even any residue may have been cherry-picked from a disputed and insufficient sampling of the portion of any such surviving, alleged, ancient (e.g., pre-1956) records that so far have apparently been incorrectly tolerated by more recent “investigators,” such as the EIR/DEIR team and Rise enablers who too often seem to have just repeated Rise’s disputed claims, giving Rise the “benefits of the many doubts” Rise does not deserve. However, Rise has massive, unsatisfied burdens of proof (Exhibit D), and it is more important for government to protect its impacted residents from such possible dangers detailed in hundreds of existing record objections (with more now to come) than facilitating (in practical terms) this undeserving, Canadian miner’s speculating shareholders’ profits. Hiding from dangerous reality and the risk of “inconvenient facts” will not work for Rise in court where the adversary/adjudicatory process allows objectors to expose the omission, flaws, and worse in Rise’s purported evidence and should not be allowed in this County process, especially since Rise admitted many in its SEC filings (Exhibit A).

Objectors may also attempt to prove that such IMM existing records are deficient and unreliable for many additional reasons, including because of the lack of regulatory reporting at that pre-1956 (and pre-10/10/1954) time (and the incentives back then for miner misreporting or worse with little accountability). Such realities would have disabled anyone now reasonably to rely on the old, fragmented, operations’ records that lack sufficient foundation, even if they had comprehensive sets of all those old, missing, or incomplete records for each predecessor and each parcel and could verify their “chains of custody,” sources, and other requirements for a sufficient foundation for admissibility and credibility. (How can Rise, for example, prove anything from a fragment from some now dead office scrivener whose “personal knowledge” is

at best from transcribing data as hearsay from now unknown others, who themselves may be reporting hearsay or be a miner covering up some mistake or problem no one wanted to know too much about.) Also, pre-1956/pre 10/10/1954 science was not capable of realizing, much less identifying, and analyzing, many critical problems that Rise may have inherited and that are exposed in the massive existing objections now in the EIR/DEIR record or about to be added. That problem would even exist to the extent Rise even dared to investigate such records admittedly "rediscovered" only in more recent years. See Exhibit D.

Therefore, old records, even if they were considered by miners then to be sufficiently complete and accurate for that ancient, often-lawless mining era (a very "low bar" or standard), would not be sufficient, credible, or reliable evidence for "safe" use today in such dangerous, impactful, and disputed IMM vested rights mining "without limitation or restriction," certainly not to satisfy Rise's burdens of proof, where the risks are so high for impacted objectors, especially those surface owners living above or around the 2585-acre underground mine. Moreover, since mining techniques and equipment have changed radically from 10/10/1954 (and the period before the mine shut down in 1956), it would not even be desirable (or legally possible) for Rise to revert to those deficient, unsafe, and noneconomic old mining methods before 1956 in hopes of escaping modern laws and regulations. While Rise incorrectly claims that it has the vested right "without limitation or restriction" to update to modern tools, equipment, techniques, and methods, that ignores objectors' contrary court cases cited herein, even *Hansen* in Exhibit B (citing Paramount Rock precedent and more to come in the main briefing) would forbid a new Rise water treatment plant that has no historical counterpart for vested rights. Increases in "intensity" also disqualify most modern upgrades. For example, would the County permit Rise workers now to work with the 1956 picks and shovels, dynamite, and manual pumps, even if Rise could afford that evasion of the other rules? "Substantial change" and increased intensity are inevitable and disqualifying for Rise, and such realities doom any vested rights claims by Rise.

2. Who Is Objecting? Objectors Include Those With the Special, Legal "Standing" as Surface Owners Living Above And Around the 2585-Acre Underground IMM With Competing Constitutional, Legal, And Property Rights, Including As To the Groundwater And Existing And Future Wells That Surface Objectors' Own And That the Rise Petition (at 58) Claims A Vested Right To Take Away.

a. The Objectors Are Not Just Impacted Members of the Public With Standing, But We Also Have Been Objecting Throughout Each IMM Dispute Process, And Objectors Incorporate Our EIR/DEIR Objections That We Will Supplement With Further Briefing Once Rise Is Compelled To Clarify Its Disputed Claims.

This Petition is submitted by G. Larry Engel, the undersigned, semi-retired bankruptcy lawyer with vast experience on many issues and disputes associated with failed, abandoned, and bankrupt mines, who retired to his IMM impacted home on Banner Mountain in Nevada City, located one property above the Wolf Creek at issue in this dispute. Engel Law, PC, is his post-semi-retirement professional corporation with its office on that property. Larry Engel/Engel Law, PC have previously filed four extensive objections (collectively the "Engel Objections") (i) to

the disputed EIR/DEIR (i.e., two DEIR objections by the undersigned labeled by the County's DEIR record as Ind. 254 and Ind. 255, respectively, plus two follow-up objections to the EIR dated April 25 and May 5, 2023, respectively, including comprehensive objections therein both to the deficient EIR disputed "Responses" and "Master Responses" to such DEIR objections, as well as including incorporations of and from: (a) many other parties' EIR/DEIR objections, (b) third party data bases (e.g., the EPA, CalEPA, and SEC Edgar files [Exhibit A]), and (c) others (e.g., www.hinkleygroundwater.com, evidencing after all these years, despite ample settlement money, the inability of that ghost town from the *Erin Brockovich* movie to remediate its toxic hexavalent chromium in the groundwater, a deficiently discussed menace Rise proposed to inject into the IMM in cement paste to make underground support shoring from mine waste to save money by not removing such waste from the underground IMM, as well as to (d) the mostly disputed County Staff Report and County Economic Report (to which such objectors filed a separate attached objection, here Exhibit F). Those "Engel Objections" are incorporated for such Engel and Engel Law objections herein because they demonstrate some of the reasons why the DEIR/EIR are fundamentally incomplete, deficient, and otherwise flawed, as full errors, omissions, and other objectionable content or evasions, meaning that such disputed EIR/DEIR cannot support, or be empowered by, any such Rise vested rights claims for reasons stated in this and other such objections and others. More importantly for this IMM dispute, the admissions in the EIR/DEIR and other Rise permit and other applications are powerful evidence against this disputed Rise Petition because those conflicts, contradictions, and inconsistencies between that prior existing record and the new Rise Petition will doom all of them, as illustrated in *Hardesty* and the *City of Richmond* cases.

As noted in a recent Engel Objections, there is also a nonexclusive group in formation called the "Ad Hoc Mine Opposition Group," which was originally contemplated for use in the coming court phase of these disputes, following the patterns and practices of such ad hoc groups in major bankruptcy cases throughout the US, as well as in Canada and other compatible countries. The concept is not to compete or conflict with any other opposition groups participating in the current process, but as a means to facilitate technical compliance with court procedural rules for interventions and to facilitate joiners by parties with common interests on special issues of less interest to the established groups. Depending on how this new Petition versus Rise Petition process evolves, that ad hoc group may be activated sooner.

As demonstrated below, all of us objecting to the IMM mine in our impacted community have their own legal standing and personal rights to object to the Rise Petition as such impacted objectors did or attempted to do against the disputed EIR/DEIR. See *Calvert* and *Hardesty* below. However, some objectors also have special standing and rights, such as those of us living on the "surface" above or around the 2585-acre underground IMM (defined here and in the applicable property documents and admitted in Rise's SEC filings/Exhibit A as extending at least 200 feet down, plus deeper for groundwater and other things besides the mined minerals), whose surface property rights include not only rights to "lateral and subjacent support" to avoid "subsidence" (defined to include our groundwater support and **existing and future wells**) as discussed below for surface owners' benefit, for example, in the US Supreme Court's ***Keystone*** decision. That special standing extends as well for any property owners who are disproportionately harmed by any such project as demonstrated in the California Supreme Court's ***Varjabedian*** decision, recognizing inverse condemnation, nuisance, and other claims

accruing to that portion of the public living downwind from the new sewer plant project. There can be no doubt that such impacted surface owners objecting here must be treated with equal due process to Rise or even to the County in any such vested rights dispute. E.g., *Calvert* and *Hardesty.* As discussed elsewhere, that due process requires more for such objectors than a chance (if they arrive before the speaking cut-off number) for a three-minute comment and to file something (so far generally ignored, as illustrated in the EIR objections disputing the EIR "Responses" and "Master Responses" and much of the County Staff Report) before Rise (and the County) have their long, last words that such objectors have no chance to rebut, even as a fact checker using Rise's own admissions, conflicting or inconsistent claims, or incorrect allegations to rebut Rise and its enablers.

Indeed, **given the need for speed in this process from objectors' perspective to eliminate the Rise IMM threats once and for all, any such inappropriate limitations on objectors' participation at least require mitigations to be discussed at the status conference, which will include the County at least accommodating offers of proof on a basis sufficient to protect the record for the next stage court process.** In that regard, the County should note the importance of Rise's massive evidentiary problems, especially considering Rise's burdens of proof (see Exhibit D) versus objectors' rights, including as party **witnesses** with no less right and standing to testify at length than Rise or its enablers, especially since many such mining dispute cases turn on such objecting witnesses testimony, plus the fact that many of us objectors have the professional qualifications and experience to testify as experts on a wide variety of issues to rebut the Rise Petition (as many did with offers of proof against the disputed EIR/DEIR). For example, as a witness the undersigned could rebut many of Rise's witnesses on particular issues, such as, for example, dispute Rise's vested rights "reclamation plan" and "financial assurances," based not only on his experiences with bankrupt or abandoned mines, but also from his experiences, for example, as lead counsel in liquidating the nations once market leading AAA rated insurer in issuing mining reclamation bonds as "financial assurances" for such reclamation bonds. The undersigned also dealt with those issues in the Lloyds of London restructuring as Equitas, and as the Chair of the American Bar Association (Business Law Section) Task Force on Insurance Insolvency. Once the County requires Rise to clarify its proposed reclamation plan and financial assurances, which should be a condition to any such disputed vested rights claim, how would the County like to address such rebuttal testimony? The same is true for many others with various specific and relevant experiences and expertise.

3. *Keystone* And Other Authorities Illustrate Various Ways How Competing Constitutional, Legal, And Property Rights of Objecting Surface Owners Above And Around the 2585-acre Underground Mine Can Defeat Rise's Vested Rights Threats, Especially By Exposing Rise's Inability To Satisfy Realistic Reclamation Plan And Financial Assurances Requirements.

a. Some Comments on Keystone And Concerns of Objecting Surface Owners Above And Around the Underground IMM.

As admitted in last Rise's SEC 10K filing (Exhibit A), objecting owners' "surface" constitutional, legal, and other property rights are comprehensive for at least the first 200 feet down, plus forever deeper as to anything not part of deeded "mineral" mining (e.g., such

as our surface owner groundwater and existing and future wells). Even then, subject to many other legal rights of such surface owners, such as for "lateral and subjacent support," including by surface owners' groundwater that must support our surface legal estate. See, e.g., *Keystone Bituminous Coal Assn v. DeBeneditis,* 480 U.S. 470 (!987) ("Keystone".) That leading Supreme Court decision upheld against coal miner challenges the Bituminous Subsidence And Land Preservation Act (the "Subsidence Act" as it's called in Pennsylvania and many places where it has been replicated), where mining was limited to prevent "subsidence" ignored by Rise (i.e., the loss of surface lateral and subjacent support and loss of groundwater or depletion of surface water, which are competing legal and property rights objecting surface residents already have here, although Rise may inspire others here to cause even more protective new laws (presumably triggering more, meritless, vested rights claims by Rise for objectors to defeat and creating incentives for test case litigation that prevents that not just for Rise, but for all its successors, since the modern speculators' greed for this imagined gold seems endless.) That *Keystone* decision defined (at 474-475) such objectors' "subsidence" concerns (also at issue here for this IMM project), especially because of the massive and objectionable groundwater depletion (24/7/365 for 80 years along and off 76 miles of proposed new tunnels in Rise's new, deeper, and expanded vested rights claims for blasting, tunneling, rock removal, and other mining activities in new, unexplored IMM underground areas, plus the 72 miles of existing tunnels and mined areas where the known gold supply was exhausted by the time the IMM was abandoned in 1956. Consider this summary, as applicable to gold mining here as to coal mining there:

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

While that *Keystone,* subsidence law generally required 50% of the coal to remain for support in strategic places, it did many other things to protect the surface and limit the mining, explaining that **the government was entitled to so act "to protect the public interest in health,**

the environment, and the fiscal integrity of the area," such as by "exercising its police powers to abate activity akin to a public nuisance," although the court made clear that the police power was broader than nuisances. (At 488**,** emphasis added**)** See SMARA # 2715 and 2714, Exhibits C and E, and discussions below, explaining how even valid vested rights to be excused from a use permit do not excuse Rise from other laws, and how the Rise Petition claim (at 58) to entitlement to operate "without limitation or restriction" cannot ever survive the challenges it will inspire. The actual laws that Rise ignores (see Id.) will govern as the applicable laws "limiting or restricting" Rise uses of the IMM, whether voters achieve such protections from such nuisances and worse by electing responsive officials, by initiatives/referendums, or, if necessary when ripe, by test case litigation.) Of special note, the *Keystone* Court (at 493-94) explained that this challenge was to the enactment of the law before it was enforced, meaning that it was premature to complain about how the law might be abused, since the facts of that surface and underground mining competition of rights were not yet established; citing its own precedent in *Hodel v. Virginia Surface Mining & Reclamation Ass'n Inc*, 452 U.S, 264 (1981), the Court explained:

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

Objectors cite that proposition because without a use permit, Rise does not have the protection existing laws, but is, instead, bound by them, especially all the police power, nuisance, inverse condemnation, environmental, and other laws that will constrain Rise's mining. Consider this simple and noncontroversial example raised in the earlier EIR/DEIR objections, reacting to the DEIR at 6-14 admission that the whole IMM project was economically infeasible unless Rise could operate 24/7/365 for 80 years. Rise has no vested rights excuse for noncompliance with many such new laws of "general application" (so that there is no Rise defense that it just discriminated against Rise) to prevent others from exploiting Rise's bad examples as wise public policy generally, and Rise is just the inspiration, not the sole focus. For example, what if a new law restricted certain kinds of problematic business operations after certain hours or on weekends or by continuous hours of operation to protect the surrounding community? Rise could complain, but such laws are common and valid, and Rise's disputed claims of discrimination are defeated by the fact that Rise was the inspiration to avoid the spread of Rise-like abuses of the public and surface owners (see the hundreds of record EIR/DEIR objections) by new, "me too" miners (i.e., those who argue that they should be allowed to do whatever Rise was allowed to do.) Consider this case study. When Richmond allowed construction of the Chevron refinery to pollute the areas air, soon there were more, new, neighboring refineries (i.e., in Benicia and Martinez) plus other such undesirable

businesses exploiting that perceived opportunity to pollute in an environment where they perceived lax law enforcement against pollution, if only from confusion about which polluter was guilty of the constant problems. However, wise governments in other area cities stopped the spread of such polluting businesses to their jurisdictions with a variety of laws that polluters found inconvenient or burdensome, which is why that part of the Bay Area mainly has only three city areas to blame when their citizens periodically suffer from harmful air pollution.

Objecting owners have such a *Keystone* "full bundle of property rights" to so defend and enforce by all legally appropriate means, and laws can protect each of them even from claims of vested rights by miners and other disruptive or worse businesses. What the County must consider as it plans for our future is that this present dispute about meritless vested rights may not be the end of these battles in which objectors must ultimately prevail to save our health and welfare, our environment, property rights, and values, and our community way of life. Even if somehow Rise were to do the impossible (on the merits) and win mistaken approval in this first vested rights process, such new and more protective laws would then be so enacted to counter the harmful IMM impacts, with every useful *Keystone* "strand" in objectors' "bundle of property rights." Then Rise would have to bring more vested rights claims that objectors would again dispute and counter and so on until the IMM menaces cease. Does the County really want to begin such avoidable and perpetual conflicts between our community and a "no net benefit" mine that all the locals will refuse to endure? See Exhibit F, countering the disputed County Economic Report? The present problem for the County and objectors is that the physical and environmental harms begin whenever IMM mining and related activities begin (as distinct from now-existing harms, such as the mine threats already depressing property values.) While such litigation continues during such impactful Rise actions, it would be hard for the miner to undue later the harms it does during the startup period before the courts finally stop them, if the County does not.

Therefore, in considering arguments about vested rights, reclamation plans, and financial assurances (see, e.g., *Hardesty* and Exhibits C and E), the County should not just assume that those reclamation and financial assurances disputes are only about that distant future 80 years from now. Instead, what happens in the most likely case when the courts stop the disputed mining during its several pre-revenue phase years. For example, if Rise were (incorrectly) to be allowed to begin its mining activities and then the courts stopped them, for instance when Rise drained the flooded mine and began Rise's disputed dewatering processes and other startup work, much Rise harm will have been done by the time Rise is stopped. Yet, Rise will then still have nothing to impress its speculative investors about the prospects for imagined gold still obscured (at best for Rise) in that unexplored new underground area in which Rise has not even yet begun to mine. That is an insufficiently discussed problem for Rise, because Rise's SEC filings exposed in Exhibit A [that the EIR/DEIR incorrectly has ignored] admit Rise still lacks the financial resources to do much of anything it proposes. See also DEIR at 6-14. Apparently, Rise's speculator investors just dole out money from time to time for what they consider Rise's current project needs. What then happens when Rise has exhausted those insufficient funds, when the courts stop the mining, and when Rise's investors no long like their odds on that Rise gamble? How is Rise going to remediate and cure the messes that Rise has already made when the courts stop Rise and the speculators cut off funding? Evidence will reveal that to be an old and too often repeated dilemma, and the reason there are more than

40,000 abandoned or bankrupt California mines on the EPA and CalEPA lists, like this IMM seems destined to be again. **That is also the reason Rise needs a realistic reclamation plan backed by sufficient and credible "financial assurances," not just at the theoretical 80 years end, but also continuously for whenever the courts (as they eventually must) agree with objectors and stop the IMM mining once and for all. Objectors doubt that Rise speculators will ever "go all in" and fund what would be legally required in cash and sufficient "financial assurances" (i.e., surety bonds or letters of credit, for which Rise is insufficiently credit worthy ever to qualify)**. Presumably, that is why this Rise Petition incorrectly neglects to address the required "reclamation plan" and "financial assurances" (see Exhibit C), apparently somehow claiming without authority that Rise Petition's claim (at 58) to operate "without limitation or restriction" somehow also means Rise can get the benefits of SMARA and *Hansen* without the burdens they both require for such an approved "reclamation plan" and "financial assurances." By analogy, an early demand for such financial assurances and working capital from Rise is like the poker game movie scene when the good player (hopefully the County, but, if not, the courts backing the objectors) "calls" and pushes "all in" that player's chips into the bet, and then the villain lacks the chips to match and loses his or her bluff. That is the quick and easy way to end this menace.

Although Rise has the burden of proof, despite its contrary claims (see Exhibit D), nothing in the disputed EIR/DEIR or Rise Petition sufficiently explains why surface residents above or around the 2585-acre underground mine need not worry about Rise's disputed mining contrary to our constitutional, legal, and property rights to insist on our "subjacent and lateral support and protection" or from "subsidence" either (a) from defective repair and restoration of the closed and flooded 2585-acre mine that has been abandoned since 1956 and that is in at best uncertain condition, or (b) from new and deeper expansion therefrom into unexplored areas that would now be blasted, tunneled, waste cleared (except for new shoring using toxic hexavalent chromium cement paste to create support pillars from mine waste in that place), and otherwise mined 24/7/365 for 80 years. Without permits, credible inspections, and other regulations (i.e., Rise Petition's claim at 58 to operate without "limitation or restriction") that Rise seeks to evade with its disputed vested rights claims, how can objectors judge such risks, when there are no clear and credible standards and timely and effective monitors to protect surface owners? That is why, even if Rise were able to somehow succeed with its disputed, vested rights claims, the law still allows surface owners many legal self-defense remedies, both legal and political law reforms (e.g., initiatives), which *Keystone* shows can be powerful counters to underground mining. See Exhibit C and herein.

History shows that most often it requires a crisis or damage event to trigger effective inspections and law reforms, but at that point the damage is done. (Remember the old Broadway musical that they made into a Clint Eastwood movie called "Paint Your Wagon" about Nevada City historic gold mining? It ends with the whole town collapsing into the miners' underground diggings. Then it's too late for an effective cure.) Generally, in such cases, all that would be left would be for victims to pursue legal remedies (when ripe) against the miner, who typically in mining history is some company with an insufficient financial condition to be financially responsible for the harms it causes (see Rise SEC filing admissions in Exhibit A) and is often based and managed in a foreign place (e.g., like Rise here, effectively from Canada, despite its Nevada incorporation) whose only reported material "asset" is the mine everyone

wants to close for such revealed problems. See, e.g., Exhibit A SEC filings, and **DEIR [e.g., admitting at 6-14] the project is economically infeasible unless it can operate 24/7/365 for 80 years in accordance with Rise's disputed EIR proposal).** As to why all this matters, besides objectors' peace of mind, environment, safety, health, and welfare, consider this question: what is your real estate broker going to tell a buyer or refinancing lender about this mess when you try to sell or refinance your house above or around the 2585-acre underground mine here? What amount of discount are the mortgage lenders' appraisers going to impose to lower what a buyer can finance? Such inconvenient truths are not hard to see, although Rise and its enablers seem to be unable to disclose them. See Exhibit F, correcting the disputed County Economic Report.

b. The Debate Over Who Is "Taking" What From Whom In The Disputes Between Surface Owning Objectors And Underground Miners, And Related Issues, Such as Potential Claims (When Ripe) For Inverse Condemnation, Nuisance, Etc., That Should Concern The County.

While Rise (like others before it) may attempt to argue that somehow such new regulations and laws reducing IMM potential profits are "eminent domain" "takings" or otherwise barred by its constitutional "vested rights," that meritless theory has long been rejected by courts and governments, both on the legal merits (e.g., such speculative "lost profits" are not recoverable as a legal remedy) and **because objecting surface owners also have competing constitutional, legal, and property rights that do merit protection from such underground mining threats.** Consider again (in this different context) how the Supreme Court explained in *Keystone* (at 493-94) its caution to any miner challenge to new laws, such as those that would become inevitable if Rise were somehow (mistakenly) allowed to proceed:

> "[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.]

While such "taking" legal issues could (and may) be debated among the adversaries' lawyers here at length, this Petition is not the place yet for that, and, unlike in that Supreme Court case, where surface owner had signed waivers in favor of the underground mining, the reverse is clear here, as demonstrated by the Rise deed limitations and absence of surface waivers, as admitted by Rise in its SEC Form 10K (Exhibit A). Objectors do note, however, that the California Courts have upheld such surface owner protection laws against underground mineral rights or other uses, such as in California Civil Code section 848(a)(2), upholding such surface owner protections challenged by oil and gas miners. *Vaquero Energy, Inc. v, County of Kern* (2019), 42 Cal. App. 5th 312 (including among protections some delegations of power to surface owners,

depending on Tiers classified by the extent of current mining domination vs competing uses dominating the area and many other interesting ideas, involving notice requires, 120-day delays of mining, etc.). The point here is that there are many things our local government (and other law reforms discussed above) can and should do by enhanced legislation (or, if need be, by voter initiatives) independent of any CEQA or other screening or permitting as to this IMM threat, to further protect us residents and voters above and around the 2585-acre underground mine. While the IMM could attempt to challenge such new protections for our community, they then (when ripe) could expose themselves to a whole different type of litigation than the usual CEQA fights. See, e.g., Varjabedian.

Especially considering that this multi-party vested rights dispute (like the EIR/DEIR dispute) is not just over how Rise uses its own property, but it is also about how that 2585-acree underground mine (with different and unexplored conditions and often uphill of those other Rise owned sites and where the only minor/limited exploration and testing was done) violates the constitutional, legal, and property rights of us surface owners and users. (Again, when the DEIR/EIR wrongly plans to lower our surface water table and confiscate the top 10% of our **existing** well water [and apparently all of **future** wells] before Rise even attempts its illusory EIR mitigation measure already rejected as insufficient by the mitigation proposals in ***Gray v. County of Madera***, remember that objectors' "surface" goes down at least 200 feet and further as to groundwater and other rights besides mining minerals, where Rise has no rights, but many duties). In any event, that is one of the many reasons that Rise's disputed vested rights do not exist here, and why the still applicable CEQA [see the last section in this Petition] and applicable law require the EIR to be revised and recirculated to distinguish and separately address both (i) when Rise's disputed statements or "evidence" purports to apply only to one part of the Project, such as the new, expanded underground mining area, and (ii) when and how Rise's vested rights "story" or the EIR/DEIR purports to apply to the whole project (and/or Centennial.) See Exhibits D and E. Besides *Gray v. County of Madera (defeating Rise's disputed EIR mitigation proposal),* see also, e.g., the Nevada Union story on December 15, 2022, "'Without water, my property is worthless:' Well owners want protection from Rise Gold Grass Valley," reporting on the testimony that there were "over 300 properties with wells within 1000 feet of the mines mineral right area" [i.e., literally including the 2585-acre underground mine's competing surface owners above that mine], as to which the owners have rights to lateral and subjacent support, including to groundwater as demonstrated in the case law cited in Engel Objections and Exhibit A, but as to which the DEIR/EIR fail to comply with CEQA and other applicable law, as the "Wells Coalition," Tony Lauria, and others complained at that session. See the Wells Coalition record DEIR objection at Group Letter 27/28 and their follow-up to the EIR, among others. **The relevant comparable is the example discussed in the Union story in 1995 at the North Columbia Diggins on the San Juan Ridge when Siskon Gold operations ruined many wells by breaching a water bearing fault-line. Furthermore, as the Union article also stated, over 100 well monitoring sites were required in 1996 by the County conditional use permit "to dewater the mine for exploration," in contrast to the EIR and DEIR ignoring that same or bigger risk, now different and larger because of changes over time and climate change.**

While such new local victim legal protections could have significant impacts on any vested rights/EIR mining (even at the overly generous level considered by Grass Valley in its DEIR Agency Letter 8), it is essential to remember that this is more than about how the miner

uses the property it owns. Again, this is about us surface owners and users protecting objectors own personal, constitutional, legal, property, and groundwater rights (owned at least down 200 feet above the underground mine that has been closed and flooded since 1956). See Rise's SEC 10K admissions quoted in Exhibit A. Such "taking" issues clearly arise if Rise were to persuade the courts or County of vested rights to anything that harms competing such surface owners' property rights for the benefit of this disputed mine, such as Rise's disputed EIR/DEIR plan to deplete the top 10% of surface owners' existing well water before the (illusory/not economically feasible) EIR well depletion mitigation replacement kicks in, plus apparently Rise Petition's disputed claim (at 58) for depleting future wells "without limitation or restriction." But see Exhibit C, the County General Plan, and *Gray v. County of Madera).* Any such groundwater abuse is also certain to trigger law reforms efforts by victims, as well as (when and if "ripe") claims for Fifth Amendment and California Constitutional taking, inverse condemnation, nuisance, trespass, conversion, and other claims. See, e.g., ***Varjarbedian*** *(allowing inverse condemnation, nuisance, and other claims for homeowners downwind of a new sewer plant)*; ***Vaquero Energy, Inc. v. County of Kern*** (2019), 42 Cal. App, 5th 312, allowing surface owner legal protections against underground oil and gas miners.

If the Rise vested rights "story" or noncompliant EIR/DEIR wants to claim that a disputed study or opinion regarding the Brunswick, Centennial, or East Bennett areas regarding some disputed condition should also apply to the separate, expanded, deeper, and generally unexplored new mining area of 2585-acre underground mine, Rise should say so expressly and present the required "common sense," "good faith reasoned analysis" required by *Gray, Banning, Vineyard, and Costa Mesa*. If that disputed Rise vested rights "story" or EIR/DEIR wants to assume that Rise's disputed claim or rights somehow override objectors' competing surface owners' rights and interests (down at least 200 feet and as to groundwater generally) above and around the 2585-acre underground mine, the Rise Petition mine must say so and contest that issue with objectors (not just the County) in a fair, due process proceeding. See Calvert and *Hardesty.* Likewise, in order to be considered, Rise's disputed vested rights claim somehow must prove with admissible and competent evidence not yet presented (See Exhibit D and the record EIR/DEIR objections) some right to prevail somehow over objectors' superior competing rights (see *Keystone*). See ***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.) ("***Varjabedian").***

Not just CEQA, but also other applicable laws, apply to the disputes between competing owners of the surface versus underground mines relying on deeper mineral rights, as well as regarding the management of the groundwater in which they share competing legal rights. See *Keystone*. This should be important to the County, because of potential adverse consequences if it were to participate incorrectly in violating such constitutional and property rights of objecting surface owners and users, such as by enabling Rise to take our groundwater for abusive 24/7/365 dewatering for 80 years, which Rise has no vested or other right to do. **E.g., *Keystone, Varjabedian*, and other cases explaining in some detail with controlling case law the legal perils affecting both the Rise miner and the County for such disputed vested rights/EIR/DEIR expanded and more intense underground mining. See, e.g., *Varjabedian v Madera* (1977), 20 Cal.3d 285 (relying on the Fifth Amendment holding in *Richards v. Washington Terminal Co*., 233 U.S. 546 (1914), and the even broader California Constitution, to allow nuisance and**

inverse condemnation claims for victims downwind of the new sewer plant, who suffered a disproportionate, direct, and peculiar burden for that public benefit. [Here the IMM is a private project with "no net public benefit mine, as demonstrated in Exhibit F.]

Stated another way, the disputed Rise vested rights claims incorrectly assume that Rise will be permitted to do as it wishes (Rise Petition at 58: for operating "without limitation or restriction") once Rise's disputed vested rights are voluntarily or involuntarily accepted by the County, but that ignores objectors' own personal rights that exist and should prevail no matter what the County does, as discussed in various contexts herein. See, e.g., discussions in this Petition, including Exhibits, and those in record EIR/DEIR objections, especially those exposing both (i) the illusion of Rise incorrectly alleged uniformity of mining and other environmental conditions and impacts from different parts of the IMM "Project," and (ii) fatal Rise inconsistencies between its vested rights claims versus either or both Rise admissions, contradictions, and inconsistencies in connection with the EIR/DEIR and Rise's SEC Filings (Exhibits A, D, and E). (This vested rights dispute also must address the proposed Centennial "dump," which Rise inconsistently claims is somehow both (a) separate from the IMM mining project for CEQA, but somehow also (b) the disputed source of their whole, meritless, vested rights theory of continuous use and not a new "expansion" for vested rights).

c. More Examples Of Surface Owner Constitutional, Legal, And Property Rights That Will Prevail Over Rise, Including Some of the Remedies of Local Victims Proactively To MITIGATE In Connection With Nuisance, Inverse Condemnation, And Other Claims (When Ripe), Including By Drilling Competing Deeper And New Wells, Especially Since Rise's SEC Filings And Other Admissions Prove Rise Lacks The Current Financial Resources To Accomplish What It Proposes At the IMM. See Exhibit A.

Objecting surface owners especially have important legal rights and remedies to **mitigate** objectors' damages, 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 and subsidence. While the disputed EIR/DEIR incorrectly dismissed all these matters as too speculative to merit any response, objectors note that such surface property owners are each competent witnesses to such matters, and objectors' evidence includes the rights to rebut and impeach every false or misleading assumption, erroneous speculation, unsubstantiated opinion, and other legal or evidentiary noncompliance in the disputed Rise Petition or EIR/DEIR or in Rise's vested rights claims' "evidence," especially as to admissions, contradictions, and inconsistencies in Rise's DEIR/EIR, SEC filings (Exhibit A), and now vested rights case (all likely to be at least somewhat inconsistent, as discussed in the section on evidentiary issues herein and

Exhibit D.) See, e.g., *Communities for a Better Environment v. City of Richmond* (2010), 184 Cal. App.4th 70 (where the court used Chevron admissions in its SEC filings to defeat its EIR, providing ample authority validating such evidence and proving the error of the County staff and other EIR/DEIR enablers in previously excluding, disregarding, or ignoring objectors' use of Rise's SEC admissions to rebut Rise's incorrect EIR/DEIR claims, especially as to the fact that Rise's SEC financial statements prove it lacks the financial capacity to do anything material it has proposed either in the EIR/DEIR or now in Rise's vested rights process since Rise's required "financial assurances" for even its deficient "reclamation plan" appear illusory. See Exhibit A.)

Furthermore, many objections complained that the EIR/DEIR misused, often in deficient and disputed ways, the concept of "**mitigation"** to purport to cure objectionable environmental impacts, typically without any "common sense" "good faith reasoned analysis" of the adequacy/sufficiency, feasibility, or likelihood of being able timely to afford (Exhibit A) and accomplish such asserted mitigation. See *Gray, Banning, Vineyard,* etc. Rise's even more unclear vested rights claims make that lack of clarity an even more serious harm, supporting the need for Summary Due Process Proceedings discussed in this Petition. Not only do those disputed EIR/DEIR mitigation ideas fail to comply with CEQA (which still applies despite Rise's contrary claim) and other applicable law, but those failures would also trigger a right by victims to undertake mitigation to minimize victim damages for such nuisance, inverse condemnation, and other claims. *Varjabedian, Smith,* supra. Rise's vested rights claims do not change that result or allow Rise to prevail in any such competition against objecting surface owners. Indeed, *Gray v. County of Madera* 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 the mine and other culpable parties for that mitigation cost as 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).

For example, consider ***County of San Diego v Bressi*** (1986), 184 Cal. App. 3d 112, where an aviation easement was imposed on homes at the end of a runway with approved authority for hugely abusive (although unlikely) uses (e.g., not only jumbo jets, but also "any other contrivance yet to be invented for flight in space"), the court rejected the defense claim to limit liability to the *current* use burden of small planes, ruling that "just compensation" for such taking is based on what the owner/victim has lost, rather than on what the taker gained, and that the jury must "once and for all fix the damages, present and prospective, [and the jury] must consider the most injurious us of the property reasonably possible … consider[ing] the entire range of used permitted…", which there included jumbo jets and space craft. See also ***Coachella Valley Water District v. Western Allied Properties*** (1987), 190 Cal. App. 3d 969

(refusing to limit the "before condition" valuation to the government' desired plan and allowing the jury to consider the value of the victim's property without being limited to the defendant's idea of solutions or consequences of doing things the defendant's way.) Consider such higher victim compensation, the more abuse surface owners and users could have to endure from Rise's vested rights or the EIR mining on such a theoretical, "worst case" basis of 24/7/365 for 80 years (e.g., 24/7/365 dewatering, groundwater and [existing and future] well depletion, vegetation loss from dryness and lowered water tables, and fire risk from dryness killing our forests, hexavalent chromium and other toxic water and air pollution, and all the other nuisances, risks, and harms which record objections have documented (or incorporated) and that depress such victim property values (and inflict pain and suffering on surface owners).

4. The Objectors Petition Seeks Required Due Process Participation And Greater Clarity In The County Process For Objections, To The Extent Still Practical Without Delaying The Process And Prolonging The Negative Impacts Of The Rise Mining Threats.

a. Some Examples of What Clarity And Other Relief Objectors Seek In The Requested Status Conference And Other Procedures.

This objectors' counter petition requests urgent relief, beginning with a status conference for **clarification** of the Rise Petition claims and County procedures and rules that will govern this unorthodox Rise process, including by requesting more specificity and clarity about the Rise Petition's existing and omitted allegations and claims in hopes of both (i) reducing otherwise certain procedural and other disputes (and potential changing Rise stories to evade objections), and (ii) planning for expediting a cost-effective resolution of these perpetual disputes by a requested County administrative procedure analogous or equivalent to a judicial pretrial motions, such as to dismiss/demurrer, motion for a more definitive statement, and/or motion for summary judgment, (collectively here, together with the status conference, called a **"Summary Due Process Proceeding")**. See *Calvert* and *Hardesty.* Whatever the County may decide, such relief in a sufficient Summary Due Process Proceeding would expedite and reduce long-term costs and burdens in the next, court litigation phases of this Rise caused ordeal. In any event, it seems prudent to use such pre-trial short-cuts to minimize the need for another massive administrative counter record (e.g., by avoiding or reducing the need for massive rebuttals to Rise's disputed allegations, claims, and supporting documentation, such as Rise's 1000-page disputed, obsolete, and perhaps now irrelevant, so-called reclamation plan and its missing and deficient "financial assurances" already rebutted by Rise's own SEC filing admissions in Exhibit A and our prior EIR/DEIR record objections). Objectors should be able to dispose of Rise's vested rights claims promptly as a matter of law, because they are without any legal merit and have no chance of surviving any objector court challenges that may be necessary. Rise reportedly is gambling that it can exhaust us objectors, but Rise is wrong about that, as well as almost everything else.

This **"Objectors Petition,"** and anything else objectors choose to do after the County response to this, will be followed in due course by more formal objections to the Rise Petition after objectors have a greater opportunity to prepare more comprehensive and detailed analyses, rebuttals, and other oppositions on the merits, hopefully after the County inspires Rise

to stop "hiding the ball" in its meritless and evasive Rise Petition that doesn't just assert erroneous or worse purported facts and legal theories, but carefully avoids addressing any of our objections that doom Rise's ambitions, even though many objections and counter authorities were previewed in hundreds of record objections. Among other things, this Objectors Petition explains:

(a) why the prompt, requested status conference is necessary to achieve fundamental clarification for objections to the Rise Petition, which is, among other things, another example (as demonstrated in objections to the disputed EIR/DEIR) of Rise's "hide the ball" tactics requiring clarity for cost-efficient and timely defeat of the Rise Petition, as well as to learn from the County the basic rules and procedures that will apply to this disputed, mid-stream, radical switch of legal theories by Rise, such as, for a simple example, is the County treating this Rise Petition as a new proceeding in which objectors must refile all their relevant EIR/DEIR objections, or is this regarded as part of that pending disputed EIR/DEIR process to which we just add more objections and evidence;

(b) both **why** the County's current procedure (which is deficient and objectionable by *Calvert/Hardesty* standards (as was the EIR/DEIR process so far) by denying at least surface owner objectors (and we contend many others as well) the required due process for full and at least equal to Rise participation in the Rise Petition dispute process (with at least minimum required clarity from Rise about the details of its recent "alternative reality") as the courts have required for mining objectors in defeating vested rights claims in *Calvert* and *Hardesty, **and how** the County should allow objectors what is still practical to do **before the hearing without delaying the timely progression to the courts which can finally end this IMM menace.*** In any event, this Petition at a minimum reserves objectors' procedural objections for the coming court process, for example, to rebut Rise's incorrect claims that we should be limited to the administrative record when that is not objectors' fault in this disputed procedure to the extent that objectors are denied the right to do more than, for example, three minutes each to speak and making "offers of proof" as to what testimony they would have provided in support of their objections and in impeachment and rebuttal of Rise and its enablers*;*

(c)** why this dispute must be treated **not as a mere two-party ministerial County process (where objectors can be limited to commenters, rather than equal due process parties in interest as the courts must and will do), but rather as the kind of due process adjudicatory proceeding required by Calvert and Hardesty, in which, while the County can and should object for the public*, **the County cannot deny the objectors' own, personal standing and constitutional, legal, and property rights to oppose Rise because we are living on the surface above and around the 2585-acre underground mine and insist as full parties in interest to compete against Rise as at least equals**. However, we contend objectors are superiors in interest, since, for example, it's objectors' groundwater and existing and future wells that Rise would be "dewatering" 24/7/365 for 80 years to flush away down the Wolf Creek somewhere else, all contrary to Keystone and Varjabedian* (as well as in objectors' EIR/DEIR objections)*;* and

(**d) why** objecting surface owners need speedy finality in eliminating the Rise Petition, especially because even the continuing Rise threat of its IMM menace depresses the value of objectors' properties above and around the 2585-acre underground IMM (which should concern the County because that also depresses property taxes), as discussed in objectors' rebuttals below and in Exhibit F, countering the disputed County Economic Report.

If such objectors' rights to equal opportunities for vested rights rebuttals and counters cannot be fully accommodated timely in such an enhanced and more satisfactory County process that includes all objectors' concerns and counters about their public and competing property, legal, and constitutional disputes, then the County should say so now at the outset and do what it still can to be fair and clarifying, so as to prevent Rise being able to complain that objectors had not "exhausted administrative remedies." That usual administrative "exhaustion" claim by miners would then be inapplicable, because **(citing CA Supreme Court authority in *Horn v. County of Ventura*) the *Calvert* court correctly held (at 622, emphasis added): "[o]ne need not exhaust inadequate remedies in order to challenge their sufficiency."** Since (as in *Calvert)* objectors' judicial challenge processes can include both procedural, evidentiary, and substantive objections, it seems reasonable for the County to do "right" now at the start what is still practical, rather than risk being later ordered to do so all over again by the courts (as the court did in *Calvert because of such objections*) in a less coordinated way.

Objectors are entitled now to full *Calvert* and *Hardesty*-type due process and fairness for such objections, which rights must be further enhanced for these more complex disputes against **Rise using surface mining theories for its attempt to assert underground IMM vested rights claims** against us surface owners above and around that 2585-acre underground mine (and for facilitating a record for procedural and substantive due process objections for the following judicial processes, especially if such minimum clarity and fairness is not accomplished here). See *Hansen's* evidentiary requirements (Exhibit B) that Rise fails to perform, as well as *Hardesty's* punishment of the miner for similar insistence on alternative reality allegations that made what that court called a "muddle" as the Rise Petition has just done here. Rise's Petition must also reveal in much greater comprehensiveness, detail, and specificity at least the following (with Rise required to cite, and, if the same is not readily available to objectors, by Rise attaching each referenced evidence or document, as appropriate):

(a) every relevant fact or claim on which Rise bases its disputed vested rights claims, including every piece of evidence and detail for evaluation and rebuttal, impeachment, and other counters, in each case clarifying what pertains to surface mining or to underground mining and where (in the cited 10 parcels and 55 sub parcels) and when such allegation relates and who was the so-called Vested Mine Property owner or operator of such part at the time; i.e., this is somewhat the equivalent of civil discovery from Rise, which must be adapted to be fair and appropriate under the circumstances. (Also, this deals with the tricky uses of Rise's differently defined (at p.1) terms "Vested Mine Property" (meaning where Rise claims such rights) versus "Mine Property" referring to alleged "multiple historical mines and operations" "before the Vested Mine Property was consolidated into the current configuration in 1941");

(b) every law, regulation, or competing property right (e.g., especially those of us surface owners above or around the 2585-acre mine and other objectors) that Rise contends vested right creates any Rise or mining immunity or excuse, or that Rise contends its (disputed) "nonconforming" vested uses can ignore, supersede, or defy, including as to any excuses Rise alleges for what objectors may perceive as noncompliance with applicable laws, regulations, and objectors' such competing and conflicting constitutional, legal, or property rights, especially to deplete such surface owners' groundwater or our existing and future wells above or around the 2585-acre underground IMM. Those objector rights include what have already been asserted in record objections to the EIR/DEIR, all of which EIR/DEIR objections are also now

applicable to oppose Rise's disputed vested rights claims and are incorporated herein by reference, plus any more such things relating to additional vested rights issue objector disputes stated or forecast herein;

(c) specifications of what normally required permits and other governmental approvals (besides the use permit for which Rise has already applied) are alleged by Rise no longer to be required (or that are now claimed by Rise to be inapplicable) because of alleged Rise vested rights, including, for example, those Rise has applied for or which are listed as applicable before the vested rights claim by the EIR/DEIR, by the County Staff Report, or by the Rise SEC filings (Exhibit A);

(d) what exactly is the (new or old?) mining project for which Rise seeks a vested rights determination and how is it to be achieved; e.g., to what extent are Rise's vested rights claims for mining and related activities the same or different now from what was described in Rise's disputed EIR/DEIR and Rise permit or approval applications, in Rise's SEC filings (Exhibit A), or in Rise's already outdated and inconsistent reclamation plan and financial assurances and other permit and other governmental applications that would be applicable but for Rise's alleged (but disputed) vested rights excuse to evade them. For example, when the Rise Petition lists in Conclusion #2 at 76 what Rise considers its vested rights "operations" allowed by Hansen, it must address each of those on a parcel-by-parcel/sub parcel-by-sub parcel basis and reveal what such operations were ongoing there on 10/10/1954, since (as demonstrated in Exhibit B hereto) even *Hansen* insisted on such detailed evidence and remanded some of that surface mining, vested rights dispute on account of that lack of sufficient such detailed evidence, while *Hardesty* was even more severe for such hide the ball tactics it called a "muddle" as explained below. Because, even under *Hansen* as explained in Exhibit B, any future uses must be "similar" to uses in operation on each such parcel or sub parcel 10/10/1954, with strict limits of attempted "expansions" and increases in "intensity," this must be a parcel-by-parcel/sub parcel-by-sub parcel dispute;

(e) if and to the extent that Rise's vested rights claims are intended to eliminate, amend, modify, or otherwise change what Rise has stated in its EIR/DEIR, its SEC filings (e.g., Exhibit A), or any such permits or governmental applications, that should be highlighted, especially if that could expand what Rise claims the right to do under its vested rights claims compared with what Rise planned under its EIR/DEIR, SEC filings, or any such permits or governmental applications; and

(f) when Rise specifies any such "expansions," "intensity" increases or other changes (or "variations" or "evolutions" or other comparable labels, such as what is sufficiently "similar" or too dissimilar) on account of its vested rights claims, Rise should specify and match the applicable timing of each alleged change as to the then-existing versions of applicable laws, regulations, permits, and governmental applications. (For example, to the extent that versions of laws or regulations or permits or applications existed before and after Rise claims vested rights began 10/10/1954, but Rise claims that somehow that it is free from compliance either with what previously existed or with amendments, modifications, or other new laws, regulations, permits or applications occurring after that alleged vested rights, trigger date of 10/10/1954, objectors must know in each such case such dates and such old versus new versions, so objectors' disputes can precisely match Rise's claims. Stated another way, what

versions of what laws, regulations, and rights does Rise admit can still be enforced against it under its disputed theories?)

Furthermore, to further advance that goal of fair, constitutional, and cost-effective dispute procedures, the County should allow at least some of the normal litigation processes, such as objectors being entitled to require Rise to respond to **"requests for admissions,"** so that objectors can clarify, narrow, and focus factual disputes and issues, while making Rise pay objectors' costs in proving anything that Rise incorrectly refuses to admit.

At such a requested County status conference, objectors would explain how the County should proceed to "do this right" with *Calvert/Hardesty* due process, beginning with Rise properly so reveal its contentions, claims, and allegations sufficiently to frame each of the many issues and disputes precisely. The County then could promptly allow objectors to defeat as many as possible of the disputed vested rights claim as a matter of law on the basis of some such pre-trial "Summary Due Process Proceeding." Without delaying the scheduled County hearing to follow shortly thereafter, the County could hear objectors' presentations of their case on video before a designated County official that asks the "hard" questions and presents the kinds of objector cases of law, undisputed or key facts (e.g., EIR/DEIR and other Rise admissions, conflictions, contrary positions, and other inconsistencies), and offers of proof or testimony by qualified experts, so as to match what may be expected from the County and Rise players at the Board hearing. While that may not be full due process, that pre-hearing will at least be a useful preview of what no one can stop from coming from objectors in the judicial process to follow and may enable correct-thinking County players to ask better questions of Rise or its enablers at the Board hearing. At a minimum, whether objectors can prevail by the equivalent of their motions to dismiss or for summary judgment, or even if Rise somehow imagines some disputed, material factual issues that survive such motions, the objecting parties will at least have somewhat clarified and narrowed the issues for the remaining processes. In any event, if Rise must comprehensively plead and prove its vested rights claims in sufficient detail as so required, it should be easier to demonstrate that, as a matter of law and consistent with the rules of evidence that Rise cannot state or prove a legally cognizable cause of action for such vested rights as alleged in the Rise Petition. While objectors would hope to end this Rise Petition threat once and for all, like the result in Rise's favorite *Hansen* case (see Exhibit B), at least many parts of the Rise Petition claims cannot possibly survive such rigorous objector challenge. For example, it is unimaginable even for cynics to imagine the EPA or CalEPA or any other responsible governmental authority, much less the courts tolerating the Rise Petition claim that an abandoned toxic site like "Centennial" (which Rise cannot possibly prove it can ever afford to remediate—See Exhibit A) can be used free of regulation by such a disputed vested rights theory, much less that cleanup (especially here just surface) work on such toxic sites could be considered continuing **"similar"** work for vested rights mining on adjacent parcels, especially those underground like this IMM. See also Exhibits E and D, illustrating some of the many Court and legal authorities expressly defeating Rise claims with matching quotes that Rise cannot evade.

b. Comments About What Is Contained In The Exhibits And Other References That Supplement This Petition, Considering The Multi-Party Due Process Nature of What Is Required By Calvert And Other Authorities.

This Petition is supported the following previews of some "coming attractions" before the Board hearing, either once Rise is compelled to clarify what is chose to obscure, or once objectors learn they must instead continue to counter Rise's uncorrected, "hide the ball" tactics: (i) by **Exhibit A** (admissions, contradictions, and inconsistencies by Rise, especially from Rise's quoted SEC filings, should block vested rights claims, especially because the required "financial assurance" for vested rights' "reclamation plans" are illusory), (ii) by **Exhibit B** (a critical analysis of Rise's favorite *Hansen* case, explaining how *Hansen* cannot save Rise's meritless vested rights claims, and instead, enhances objectors' counter objections), (iii) **Exhibit C** (illustrating some of the ways SMARA and Rise's citations are inapplicable to IMM's **underground** mining, even by analogy to such **surface** mining, but also exposing the reciprocal burdens that are beyond Rise's legal, financial, and practical capacities that Rise must undertake to even attempt to claim the disputed benefits of evading permit and other requirements, (iv) **Exhibit D** (a preview of coming objections for the County about Rise's burdens of proof and the law of evidence that defeat Rise's efforts to use disputed Rise Petition Exhibits and other purported "evidence" that is inadmissible (e.g., lacking in the necessary "foundation" and other legal requirements), incomplete, unreliable, and otherwise objectionable, noting such reasons why *Calvert, Hardesty,* and even in part *Hansen* [Exhibit B] similarly rejected vested rights claims), (v) **Exhibit E** (miscellaneous illustrations of how applicable law in other such situations defeated vested rights claims [or component requirements], such as reminding the County that *Gray v. County of Madera* rejected a surface miner's EIR proposed groundwater and well mitigations proposals similar to, and even better than those proposed by Rise in its disputed EIR/DEIR, which Rise mitigations suffer the added disability that Rise lacks the financial feasibility to accomplish them reliably in any event. See Exhibit A.) Exhibit E also illustrates some disputed ways that the Rise Petition's disputed final summary and conclusions overstate without substantiation the preceding, disputed content also based on disputed and mostly unsubstantiated by admissible evidence; and (vi) **Exhibit F** (a copy of one illustrative objection to the generally disputed County Economic Report (which is relevant for various purposes but, in particular, for reminding the County how the Rise threats needs to be eliminated promptly because they will depress property values, especially of surface owner objectors above and around the underground mine, until that threat is defeated once and for all), and (vii) **many record objections to the disputed EIR/DEIR** (all incorporated herein), including the four "Engel Objections" identified above and integrating more than a score of key opposition group objections, as well as EPA, CalEPA, and other databases with more supporting, opposition evidence against the Rise IMM.)

Why have objectors added so much substance to this Petition and its Exhibits, rather than just debating the procedural due process and related support for the requested procedural relief? Part of the answer is that it is most efficient and useful because the procedural issues in objectors' authorities that Rise ignores (e.g., *Calvert* and *Hardesty*) illustrate those rulings in the context of useful substantive disputes. Separating such procedure from substance is neither feasible nor desirable. More importantly, because the core of Rise's vested rights theories is derived from Rise's misreading of, and selective omissions from, Rise's favorite *Hansen* case*,* it is important to reveal how the correct and complete reading of *Hansen,* as objectors present in Exhibit B, actually defeats the Rise Petition. Thus, objectors present enough of the fundamental

legal disputes that the County should see the merit in accommodating objectors' requested procedures before the scheduled County Board hearing.

These Exhibits both (i) provide context and substantive support for objectors' procedural arguments here, and (ii) demonstrate why the County should allow us an opportunity for such requested relief before the Board hearing in the requested Summary Due Process Proceeding. Rise would have to defend the disputed Rise Petition from objectors in any following court process where objectors will be full and equal participants (e.g., *Calvert* and *Hardesty*), so why shouldn't the County begin that now? As noted herein, our most serious concerns are to make sure that (i) the County understands such objections so that they are fully considered in the Board process, and (ii) objectors can rebut and impeach Rise's changing and evolving "stories," especially in its "last word" monopoly "additions" at the Board hearing (where our three minutes each are insufficient due process as a matter of law, see *Calvert* and *Hardesty*) and particularly using prior Rise admissions and inconsistencies against the Rise claims. While objectors cannot imagine Rise's disputed claims and purported "evidence" being consistent with its prior record and other admissions in its SEC filings (Exhibit A) and even in its EIR/DEIR and other permit applications and filings, some "fact checker" needs to be able to hold Rise accountable for those contradictions, inconsistencies, and admissions. Besides the evidentiary objections discussed in Exhibit D, ***see Communities for a Better Environment v. City of Richmond (2010), 184 Cal.App.4th 70*** ("***City of Richmond"),*** where objectors defeated Chevron's EIR by use of inconsistencies in Chevron's SEC filing admissions far that were less serious than those here, especially about objections to come exposing the inevitable Rise inconsistencies, contradictions, and impeaching admissions resulting from (a) Rise's radical switch from its disputed EIR/DEIR, permit applications, and other activities to (b) this abrupt disputed vested rights claim. The main objections to follow soon will include a focus on such Rise exposures as part of their evidentiary objections that include judicial (and adjudicatory administrative) estoppel and other bases for depriving Rise of even more of what it incorrectly calls "evidence" required to satisfy its burdens of proof. See Exhibit D (as a preview of evidence disputes to come in more detail later, hopefully after the County inspires Rise to stop "hiding the ball" about what it actually is alleging and claiming. See Exhibit E.)

For avoidance of doubt, this is not just the preliminary part of objectors' oppositions to the Rise Petition, since our main oppositions will follow (hopefully) after Rise is required by the County (e.g., in a status conference or otherwise) to clarify its deficiently described, vested right claim, so that objectors can be comprehensive in addressing what is presently obscured in the disputed Rise Petition. This Objector Petition also stands on its own for **residents living on the surface above and around that 2585-acre underground mine who are asserting the reverse of what Rise Petition seeks, by asserting their own, personal, constitutional, legal, and property rights,** as allowed by cases such as ***Calvert, Hardesty, Keystone****, and* ***Varjabedian.*** If objectors were in court, as we soon expect to be as separate and independent full and equal parties in interest, objectors would be making many pre-trial (here pre-Board hearing) motions, such as to defeat the Rise Petition as failing to state a viable cause of action, not just on the applicable law, but even by failing to clearly allege the critical facts essential for an informed response. For example, Rise cannot prevail over objectors by Rise asserting such disputed **surface mining** vested rights theories based on Rises's "alternative reality story," when the indisputable realities are about Rise's IMM **underground mining**, especially as to how Rise fails both on the legal

merits and considering such objectionable Rise evidence and failing its burden of proof. See Exhibits D, C, B, and E.

Nevertheless, to avoid delay and more unnecessary harm, costs, and practical burdens, objectors hope to meet and confer with the County at the requested status conference as to how best to reconcile these **multi-party disputes** to the extent feasible within the County process, but consistent with objectors' due process and other constitutional, legal, and property rights, one way or another. Even if the County is unwilling to grant the full and equal requested relief requested in this Petition, objectors will still continue this Petition (and follow-up offers of proof and additional objections) for the record, because three minutes each to comment clearly is not what *Calvert* and *Hardesty* meant by "due process" for objectors, especially those surface owners living above and around the 2585-acre underground IMM. Stated another way, objectors are asserting our personal standing, among other things, based on our own, personal, constitutional, legal, and property rights (e.g., as surface property owners above and around the underground IMM) to: (i) contest each Rise Petition alleged fact, claim, and argument asserted for its vested rights or related claims, as well as those Rise failed to state as required by law for an effective Petition (e.g., To what extent, if any, is the IMM underground mining plan the same as what is disclosed in the EIR/DEIR, or different now? Where is Rise's required "reclamation plan" and matching "financial assurances?" etc.), and (ii) assert objector rebuttals as entitled to full due process, for us equal protection party participants, whether in any judicial dispute process and/or, if the County allows it, in our requested "Summary Due Process Proceeding" discussed herein. Experience shows the best way to begin such a serious, **multi-party adjudication or litigation process** is with such an all-party status conference. Please consider this Petition as such a status conference statement (as well as preliminary opposition to the Rise Petition.) While the County may consider this just another administrative process like its pending EIR/DEIR etc. proceedings, that is incorrect. *Calvert and Hardesty*, among other authorities, require much more for objectors like us personally impacted by the Rise Petition. Such vested rights disputes must satisfy constitutional due process not just for Rise, but also personally for each of such objectors. Id.

To those who object to this Objectors Petition as procedurally abnormal, we remind them that Rise started this, and that there is nothing "normal" about how Rise is attempting to violate the competing constitutional, legal, and property rights of us objectors living on the surface above and around the underground IMM. In the undersigned's considerable experience in bankruptcy and other mining and comparable disputes, where there are many aggrieved victims and creditors of mines or the like, the common practice is to have such status conferences, and the courts also encourage the formation of and coordination among "ad hoc" groups of victims and other creditors to battle the miner or other debtor on equal terms. That model should be followed here, as well as in the courts and any bankruptcy that may follow the denial of mining rights. That experience shows that early and fair discussion and coordination efforts produce the quickest, best, and most cost-effective result, which is what objectors desire here and request from the County whose duty is to protect every resident, including objectors, whereas each objector has his or her own personal right to protect from the Rise's IMM threats to his or her family's health and welfare, his or her groundwater, existing and future wells, and other property rights and values, his or her environment, and his or her community way of life. The disputed Rise Petition (like the disputed EIR/DEIR) is irreconcilable with all those rights.

c. Examples of the Missing Clarity Required of the Rise Petition That a Status Conference Could Help, Thereby Reducing Unnecessary Conflicts If Objectors Have To Guess How Radically Wrong And Threatening the Rise Petition May Be In Its "Hide the Ball" Tactics And, Therefore, Coercing Objectors With Uncertainty To Counter More Things Than Rise's Broad And Vague Vested Rights Theory May Intend To Assert.

Clarity is always an essential part of any due process for objectors, such as what the ***Calvert*** court assured for objectors when it rejected the disputed idea that such a vested rights decision is merely "ministerial" (or otherwise one with limited objector participation rights and remedies.) Instead, (as *Calvert* held) such dispute process must be an adequate "adjudicative" (or "quasi-judicial" or "administrative") decision procedure requiring full due process for the objecting neighbors and the other impacted public. Here that especially includes (although not at issue in any **surface mining** case or SMARA rules) the constitutional, legal, and property personal rights and standing of objecting **surface owners above and around the 2585-acre underground mine**. See also the concluding section below regarding **Rise's inability to evade CEQA** in such a vested rights process, such as where *Calvert* followed the analysis of SMARA #2776 in **"**Ramsey**"** (i.e., *People v. Dept. of Housing-Community Dev.* (1975), 45 Cal.App.3d 185, 193-94, holding that construction of a mobile home park was, at least in sufficient part, a discretionary act subject to CEQA) and cases cited therein (or thereafter following it, *Calvert, or Hardesty.)*

Because objectors intend our disputes to the Rise Petition to be comprehensive, the County should not wish our uncertainties about the Rise Petition to compel us to guess what the Rise Petition means (at 58) in its apparent claim to do whatever it wants at the IMM "without limitation or restriction." The County can predict what will happen if objectors' choice is either (a) to assume the worst about Rise's "hide the ball" tactic and dispute everything imaginable to be "safe" (again, see the record EIR/DEIR objections) or (b) suffer having to argue about whether Rise's "unhappy surprises" are new disputed additions or something obscure that Rise claims we should have anticipated from their broad claims. As demonstrated briefly below and in the attached Exhibits, with more comprehensive briefing to follow when sufficient clarity is required by the County, the Rise Petition cannot succeed as a matter of law. That is especially clear when the County considers that this will be a multi-party dispute where objectors' personal constitutional, legal, and property rights as surface owners living above and around the 2585-acre underground mine can defeat the Rise Petition. Therefore, the County should consider allowing us all to avoid the delay, burden, expense, and other consequences of having a full adjudication/"trial" on every vested rights issue, which must include not just objectors' defenses against the Rise Petition but also such counters as the law allows objectors as described in this Objectors Petition and whatever next becomes necessary and appropriate.

Objectors request transparency (as discussed herein) from both Rise and the County, because our objections are comprehensive, and objectors wish to be sure that every applicable Rise allegation, theory, argument, and claim is fully addressed, disputed, or rebutted with appropriate evidence (including offers of proof, if the County does not allow full testimony and presentations by objectors), so that objectors cannot be surprised later by a Rise claim in

whatever processes follow next that something "obscure" was somehow already "decided" "by implication" or otherwise "indirectly" as a consequence of some other, different decision. (The best and most cost-effective way to deal with such meritless [and all too common] miner "collateral estoppel" claim games is to require clarity in the initial process, as objectors are proposing now.) Indeed, Rise is already subject to many record objections about this new vested rights process, because of broad EIR/DEIR existing objections incorporated from the record, as to which objectors are reserving all their rights, at least pending further clarification (or else, especially if there is no satisfactory clarity and process, pending challenges to such legally improper Rise procedures that (as *Calvert* and Hardesty explain) would be a denial of objectors' due process rights to a fair and constitutional process in which each objector is able to present fully (not limited to three minutes, but equal to what is allowed to Rise and its enablers, even if just before the Board hearing) all of the counters and competing rights, claims, and evidence in such an adjudicatory process. The process must be sufficient to enable objectors' legal and political/law reform rights to protect the health and welfare of objector' families, our groundwater and property, our environment, and our community way of life from this newest Rise menace and restore peace (and our normal property values.)

For example, since the common law for such disputed, **underground** IMM mining is not as clear and comprehensive as for **surface** mining, Rise's claim basically appears to be a threat to compel the courts to create through issue-by-issue litigation a new body of applicable underground mining law (that objectors would likely resist because objectors have no less direct due process and other competing rights and interests than the County or Rise.) Rise cannot "take" away (and the County has no standing to "give away" to Rise, even by some ill-considered "compromise") the constitutional, legal, and property rights of objecting surface owners above and around the 2585-acre underground mine that are at issue in these vested rights/CEQA/EIR/DEIR etc. disputes. Note that, while Rise wishes to continue to ignore and surprise us objectors, our comprehensive objections should be no surprise to Rise or the County, considering objectors' record oppositions to the EIR/DEIR and related matters, such as disputes as to most of the County Economic Report (see Exhibit F) and County Staff Report. That incorrect Rise disregard of such competing, personal rights and objections cannot again be tolerated (or compromised or impaired) by the County without defying the applicable law in *Calvert, Hardesty,* and other cited authorities, even in Rise's favorite *Hansen* case objectors use against Rise in Exhibit B.

To overstate for clarity of the principle, the Rise Petition (at 58) cannot just generally allege some imagined vested right for IMM underground mining however Rise wishes "without limitation or restriction," especially without permits or compliance with current laws. Also, Rise must identify each permit or law it plans to evade based on imagined vested rights, so that objectors can specifically defeat each such Rise claim one-by-one. Clearly, the objectors cannot be expected to imagine the scope of Rise's overriding claims fantasies or all the many counters of objectors to resist or counter such threats, unless and until Rise states its case in the essential and comprehensive detail required by courts for such disputes interpreting such vested rights, due process, and other applicable laws. In particular, Rise must specify: (i) what laws, regulations, and obligations it claims to be entitled to eliminate, evade, or otherwise ignore for its disputed vested rights mining, (ii) what permits or approvals Rise claims it no longer needs for such vested right mining, (iii) how, where, and with what exactly Rise intends to conduct

such vested rights mining (e.g., what changes is Rise claiming the right to make both to what Rise proposed in its disputed EIR/DEIR and to what more objectors contend the law actually requires), and (iv) how in particular, for example, Rise intends to reconcile (and assert or abandon) what Rise now claims the vested right to do (or not do) versus what Rise previously asserted in the existing administrative record from its disputed EIR/DEIR, from its disputed existing "reclamation plan" and missing (!!!) "financial assurances," and from Rise's disputed permit and other governmental approval applications. Of course, the County must also consider what has been proved by the hundreds of EIR/DEIR record objections demonstrate, including the 1000 pages of four "Engel Objections" to the disputed EIR/DEIR and the mostly disputed County Staff Report and County Economic Report (Exhibit F), all of which aide disputes against any Rise vested rights claims

5. A Brief Discussion About Some Key Court Decisions That Rise Ignores And Evades, As Well As How Rise Misconstrues (And Worse) The Hansen Decision As the Core of the Disputed Rise Petition. See Exhibit B.

a. Some Introductory Context For The Dispute About What Rise Incorrectly Addressed Or Evaded And About What Objector Authorities Rise Ignored.

Besides all the substantial changes in mining uses, parcels, locations, intensity, etc., and the dormancy, timing, discontinuance, abandonment, and SMARA required (Exhibit C) reclamation plan, financial assurances, and other disputes discussed herein, consider here as well for procedural purposes what *Calvert actually* defined as the "diminishing asset doctrine" issues that objectors also dispute apply as Rise argues for its vested rights. As demonstrated below those procedures include various things, such as what that court suggested (at 625) (following even the *"Hansen"* process for a separate "public adjudicatory hearing**;"** see Exhibit B), that enables us competing surface owners above and around the 2585-acre IMM underground mining, other neighbors, and other objectors to expand beyond their many existing CEQA objections to also dispute and counter these new Rise vested rights theories and allegations in a more equal, satisfactory, due process, adjudicative proceeding following as many litigation rules and procedures as feasible, including the suggested status conference and Summary Due Process Proceeding discussed herein. See, besides *Calvert* and *Hardesty* discussed below, Exhibit B comprehensively describing *Hansen Bros. Enterprises, Inc. v. Board of Supervisor***s** (1996), 12 Cal. 4th 533, 540-46, 552-52, 556, 576 ("***Hansen***"), both on its own and as here explained in *Calvert and Hardesty.* Note that, because it is inevitable that objectors will dispute with Rise over the meaning and effect of *Hansen*, objectors have addressed that decision in detail in **Exhibit B** hereto, so that this debate about process and procedure does not yet have to divert into the full legal briefing on the substantive merits, which is certain to come following the required clarity from Rise. What matters now is simply that Rise's claims about *Hansen* justifying its vested rights claims are comprehensively rebutted and defeated in detail in Exhibit B and by facts and authorities cited here (e.g., *Calvert* and *Hardesty*), thereby supporting the relief requested in this Petition.

Moreover, as demonstrated herein, in Exhibit C and E, and in *Calvert and Hardesty (*and even *Hansen as shown in Exhibit B),* and because the Rise Petition is based on **surface mining**

authorities, Rise cannot be allowed to create and leave unresolved any uncertainty about the scope and boundaries of this new, vested rights dispute theory and process for IMM **underground mining**. That is especially critical since Rise has already created confusion by recently switching legal positions in this last stage of its disputed County EIR/DEIR process from Rise's doomed, disputed CEQA theories to these new, disputed vested rights theories, whether under a "diminishing asset doctrine" theory or otherwise. See Exhibits B, C, and E. For example, Rise previously admitted many things in the EIR/DEIR and other Rise applications for specific permits and approvals, some or all of which Rise now claims it has somehow a vested right to ignore, although the applicable laws and regulations at issue have amended, supplemented, or otherwise changed (and more have been added) since 1954, 1955, or 1956. Therefore, Rise and the County must be specific about which law and versions are the ones Rise seeks to evade or ignore and which ones, if any, the County incorrectly would tolerate (for objectors still to dispute.) See also the County Staff Report, to which objectors have objected in large part for incorrectly enabling Rise and its disputed EIR/DEIR, but that Report does at least contain a fairly comprehensive list of required permits and approvals that Rise admitted needing, but Rise now seeks to disregard or evade somehow, despite having applied for many of them and made admissions inconsistent at best with the Rise Petition to which Rise now wishes to switch mid-stream. Fortunately, whatever the County may do, those Rise prior admissions, conflicting allegations and claims, and inconsistencies will defeat the Rise Petition, just as Chevron's SEC filing admissions defeated Chevron's EIR in the *City of Richmond* case and conflicting miner evidence in *Hardesty* (what the court called a "muddle") defeated the miner's vested rights claims.

b. Some Illustrations Of How The Correctly Interpreted Law And Cases Defeat the Rise Petition Or Support Objections Petition.

For example, Rise incorrectly claims a unitary business somehow applies so that any kind of "operation"(defined from an out-of-context *Hansen* quote in Rise Petition Conclusion #2 at 76) done on any of the 10 parcels or 55 sub parcels of its alleged IMM allows all kinds of **"operations" everywhere without legal restrictions**, both on the surface and underground, even in the new, expanded, never explored or accessed for mining underground mining proposed in the disputed EIR/DEIR. To quote that disputed Rise claim (citing *Hansen* at 556, where the actual *Hansen* quote cited there by Rise to support its exaggerated and disputed claim was qualified and limited in *Hansen [emphasis added]* to **"a vested right to quarry or excavate [surface mining/not underground mining terms] the entire area OF A PARCEL…**" and Rise ignored the more important rulings to follow in the next pages Rise incorrectly ignored, instead incorrectly claiming (at Rise Petition 58, emphasis added): "Therefore, **as a matter of law,** Rise is entitled to engage in mining operations **throughout the whole of the Vested Mine Property pursuant to** the California Supreme Court's holding in **Hansen Brothers**, as mineral rights that have been vested **necessarily encompass, 'without limitation or restriction' the entirety of the Vested Mine Property** due to the nature of mining as an extractive enterprise **under the diminishing asset doctrine." That disputed Rise claim is comprehensively rebutted herein and especially in Exhibit B devoted comprehensively to *Hansen,* which, for example, did NOT so apply vested rights to that exclusively "surface mine" either: (i) to the "ENTIRETY"**

of that mine AS A MATTER OF LAW (but *Hansen* instead REMANDED, in effect, because of the LACK OF EVIDENCE as to various of the separate parcel as to the application of LEGAL AND FACTUAL ISSUES ignored by Rise), (ii) *Hansen* was based only on SMARA, which EXHIBIT C SHOWS TO CONTAIN MANY REGULATORY "LIMITATIONS OR RESTRICTIONS," ESPECIALLY AS TO THE MINER'S NEED FOR AN APPROVED "RECLAMATION PLAN" AND RELATED "FINANCIAL ASSURANCES" for which Rise could never qualify, as illustrated in Exhibits C and A, and (iii) even more importantly, among many ways Exhibit B hereto demonstrates that the actual *Hansen* decision destroys the Rise Petition claims, consider this *Hansen* quote against Rise's disputed cross-parcel/unitary operations claims (none of which disputed Rise theories apply to UNDERGROUND mining at all, as *Hardesty* demonstrates below and as SMARA itself states in Exhibit C. Instead, *Hansen* stated (at 558, emphasis added):

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

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

> Some of those parcels were conveyed to Hansen Brothers after 1954, however. **The record does not confirm that all of the parcels, over which Hansen Brothers claimed vested rights in its SMARA application, were part of the Bear's Elbow Mine in 1946 or 1954. The record is also devoid of evidence that the owners of those parcels themselves held vested mining rights in the transferred property at the time they were deeded to Hansen Brothers.** Examination of the record reveals that [the County's related admissions, including one obvious mistake that it could not correct in time]… encompassed only the parcel that was the original site of the …Mine and one of the three parcels conveyed to Hansen Brothers after 1954.
>
> ***

> Hansen Brothers does not dispute the absence of evidence in the record that the after-acquired properties were being used for mining purposes in 1954. Instead, it argues that its SMARA reclamation plan …[was sufficient and the County was estopped to object from subsequent use].
>
> ….**The court must make its own decision as to the legal impact of those facts and is not bound by any concessions of law that a party may have made. [citations]… Indeed, the county lacks the power to waive or consent to violations of zoning law. [citations]**
>
> ***
>
> [After analysis that is even more powerful here because IMM objectors here make no admissions or concessions of any kind to Rise, the court concluded:] **Hansen Brothers has failed to carry that burden insofar as its SMARA reclamation plan asserted a vested right to quarry a 60 plus acre parcel…The evidence is insufficient to support a finding that Hansen Brothers is entitled to a writ of mandate… [therefore referring to a further] determin[ation] by the superior court on remand.**

Moreover, Rise admits in its EIR/DEIR that this expansion mining would requires a new, high tech, massive dewatering system operating 24/7/365 for 80 years that those 1954 Rise predecessors could have never planned to duplicate. **As Exhibit B demonstrates, THE *HANSEN* DISCUSSED CASE DENYING SUCH VESTED RIGHTS CLAIM (**AT 566, EMPHASIS ADDED**) THAT THE MAJORITY SAID "ILLUSTRATED" ITS "APPROACH": *PARAMOUNT ROCK CO. V COUNTY OF SAN DIEGO* (1960), 180 CAL.APP.2D 217, 230, WHERE THE READY-MIX CONCRETE BUSINESS ADDED FOR THE FIRST TIME AFTER THE VESTING REZONING DATE A NEW "ROCK CRUSHING PLANT ON THE SITE"(REPLACING PRECIOUSLY OFFSITE CRUSHING), REJECTING THE ARGUMENT THAT SUCH A CRUSHER ADDITION WAS "AN INTEGRAL PART OF THE BUSINESS THAT THE [OWNER] PLAINTIFF HAD BEEN OPERATING," SINCE THAT CRUSHER WAS "NOT PART OF THE NONCONFORMING USE TO WHICH THE PROPERTY WAS BEING PUT AT THE TIME THE ZONING ORDINANCE WAS ADOPTED." STATED ANOTHER WAY, *HANSEN* (AT 566, EMPHASIS ADDED) IN EFFECT STILL REQUIRED THAT SUCH "A COMPONENT OF A BUSINESS" MUST "ITSELF HA[VE] A VESTED RIGHT TO CONTINUE USING THE LAND ON WHICH IT IS LOCATED FOR OPERATION OF THE BUSINESS," meaning that Rise cannot now add that water treatment plant that it has already admitted in its disputed EIR/DEIR that it needs for its 24/7/365 dewatering of groundwater drained from objecting and competing surface owners and existing and future wells above and around the 2585-acre underground mine.**

Also, since Rise relies primarily on *Hansen,* why did Rise neglect to address this *Hansen* ruling (at 564, emphasis added), **among others, that must be addressed first, before our dispute over abandonment: "The burden of proof is on the party asserting a nonconforming use to establish the lawful and continuing existence of that use at the time of the enactment of the ordinance", citing *Melton v. City of San Pablo* (1967), 252 Cal. App.2d 794. Among many incorrect Rise claims about evidence and the burden of proof that further objections will dispute in the coming briefing (see for now Exhibit D), objectors especially dispute Rise's falsely claiming without cited authority and incorrectly (at 1) that "the threshold for proving a vested right exists on the Vested Mine Property is low. It requires only that Rise illustrate that**

the vested right is more likely than not to exist … meaning that if Rise provided enough evidence to indicate a 50.1% chance that a vested right exists, the County has a legal obligation to confirm that right." Fortunately for justice, Rise cannot achieve even that low standard it sets for itself (even for the inapplicable surface mining), but this illustrates why this Objectors Petition is so necessary to end such meritless Rise threats. Even if Rise were correct about such disputed claims (which it is not), the County cannot BY ITSELF allow any vested rights for Rise mining, for example, such as that new, expanded, never mined or even accessed UNDERGROUND IMM area, because the courts must also address the objections of us surface owners who have our own competing constitutional, legal, and property rights (see the US Supreme Court analysis in *Keystone* discussed below) to block Rise from such IMM mining beneath objectors and depleting our groundwater and existing and future wells. If the County were to take away resisting surface owner' competing rights, then the County would be exposing itself to the kinds of inverse condemnation and other claims the California Supreme Court recognized in its *Varjabedian* decision discussed herein. Recall, for example, objectors EIR/DEIR challenging Rise's proposal to take the first 10% of every existing well and all future wells before even pretending to mitigate with measures already rejected similar to those in *Gray v. County of Madera* discussed below, with illusory mitigation proposals Rise's SEC filings admit (Exhibit A) it lacks the financial resources to afford.

For example, the Surface Mining And Reclamation Act, California Pub. Res. Code # 2710 et seq., and related regulations **("SMARA")** and related surface mining court precedents do not apply for a miner to create vested rights for such IMM **underground** mining and cannot be used by Rise, even by analogy to such **surface** mining, as demonstrated below and in even more detail in **Exhibit C. That distinction between surface versus underground mining and the jurisdictional limits of SMARA cannot be rationally contested**, among other things, especially because surface owners above and around have their own competing constitutional, legal, and property rights (see *Keystone* and *Varjabedian).* So, the question then remains: what, if anything, can Rise accomplish by its alleged "common law" vested rights disputed by objectors? Who knows, because the Rise Petition does not attempt to make any such common law case, but instead only cites incorrectly to *Hansen and SMARA* (on which Hansen is solely based), which cites defeat the Rise claims in any event? See Exhibit B and C. Objectors contend the answer is that Rise can achieve nothing, especially from the County who would be worse than foolish to try to give away surface owners' groundwater, wells, and property rights to Rise (see *Keystone* and *Varjabedian*) as a gift to its speculator shareholders, but, even if it could win some disputed vested rights, Rise's rights vested before 10/10/1954 (e.g., for old fashioned mining and in irrelevant places, which Rise incorrectly claims the right to "modernize" and expand, such as to add the obviously unvested water treatment plant contrary even to *Hansen,* as shown in Exhibit B) would not provide Rise with what practical rights it needs to mine today, especially considering its admitted weak financial condition revealed in Rise's SEC filings (Exhibit A). Rise could never even satisfy SMARA if it were somehow adapted for underground mining, especially as to the required "reclamation plan" and "financial assurances" and especially since Rise's disputed "Vested Mine Property" now includes the Centennial site. See Exhibit C, B, and E. Any common law for such underground mining by Rise would now have to be even more strict on the miner, not less strict, than either SMARA or surface mining cases like *Hansen, Calvert, and Hardesty.* See Exhibits B, C, and E. See also *Keystone* and *Varjabedian* about the disputes

between surface owners and underground miners, especially as to surface owner groundwater and both existing **and future** wells Rise threatens (in the disputed EIR/DEIR) to dewater and flush away down the Wolf Creek after purported "treatment" in some new treatment plant for which there can be no vested rights even under *Hansen* (Exhibit B).

However, (i) even if there were some relevant analogies for Rise (which objectors dispute) from SMARA or surface mining **for the miner** (**as distinguished from defensive and counter analogies that objecting victims can use regardless of the type of mining at issue**), and (ii) even ignoring (only for the sake of argument) that surface mining is fundamentally different from IMM underground mining, both (a) the incontrovertible or overwhelming facts, and (b) the applicable SAMRA cases and vested rights analogies, must defeat any Rise vested rights claims. See Exhibit C. Under the obvious facts and circumstances (as *Hardesty* demonstrates below) Rise cannot possibly prevail on any such vested rights theory for underground mining as a matter of law under existing precedents and laws. Therefore, deciding that inevitable reality early will reduce wasted time, cost, and effort, and allow inevitable Rise's court appeals to proceed, while objectors deal with whatever Rise tries next. As noted above, that early dispute resolution also helps end the stigmas sabotaging local property values and mortgage lending in the IMM impact zones above and around the mine. See Exhibit F, objectors' rebuttal to the disputed County Economic Report. Those and other things addressed herein demonstrate why the County should consider objectors' such legal and procedural issues for "short cuts" before the County Board hearing and when all parties next must begin what Rise seems to envision as some massive, protracted litigation dispute. However, whatever happens the substance of the Rise Petition's disputed vested rights claims are doomed on the full merits, and the only real question is how the County wishes to deal with objectors' rights for full due process participation in accordance with *Calvert* and *Hardesty.*

The requested status conference is a chance to seek some common ground on that topic for achieving more of a level playing field against Rise, who should have no greater rights in this dispute process than such surface owners above and around that 2585-acre underground IMM. For example, but for the fact that Rise has the burden of proof, litigating Rise's objectionable, mismatched, and inconsistent "reclamation plan" and noncredible "financial assurances" *Hansen* and other cases consider essential to miner vested rights (see also Exhibit C, as to SMARA's requirement of such plans and financial assurances) would be difficult, because (i) the Rise Petition has not presented (much less defended) its disputed reclamation plan (is it the outdated and disputed one now still on file with the County?), and, (ii) Rise has also failed to explain what its current mining plan will be, despite CEQA still being applicable, as described below) so objectors can match the uncertain mining plan to some matching reclamation plan. Also, there are no related "financial assurances" for anything, which is probably due to the fact that Rise's admitted SEC filing admissions (Exhibit A) expose Rise's inability to qualify for any such required "financial assurances" (see Exhibit C) or even the lesser ones correctly demanded by NID in its EIR/DEIR objections, as objectors expert is prepared to testify or, if not allowed, to submit an equivalent offer of proof as to Rise's financial infeasibility and related incapacities and deficiencies. Doing this the "hard way" (but a certain way) to defeat Rise's vested rights claims should not be necessary under these circumstances, considering the massive gaps and uncertainties in Rise's vested rights case and its burden of proof, and that "hard way" would be a very intensive process that everyone (besides Rise and its enablers) should want to avoid or

minimize. See the discussion in *Hardesty* below about what happened to a miner who insisted not only (as the expression goes) on his own opinions, but also insisted on his own unreal "facts." That doomed effort, such as by the *Hardesty* miner to insist on some "alternative reality" (as the objectors' existing record in this process shows Rise has already attempted in its disputed EIR/DEIR), cannot prevail. Nevertheless, if the County insists on allowing the Rise Petition to proceed to a "trial" Board hearing, there should at least be more clarity about Rise's position to fill in the massive errors, omissions, and contradictions in the Rise Petition as requested herein before that hearing so objectors can better target our evidence (Exhibit D) and due process oppositions which we cannot be denied the right to add to the record under *Calvert* and *Hardesty.*

In any case, it is essential that the County allow comprehensive rebuttals and impeachment of Rise's vested rights claims, including by record objector testimony, especially by use of Rise or EIR/DEIR admissions, contradictions, or inconsistencies, particularly where useful to support objectors' waiver, estoppel (including judicial estoppels or the administrative adjudicative equivalent), and other objections, such as, where the EIR/DEIR and other Rise applications have previously admitted that a permit or approval is required, but **now Rise claims its (newly discovered?) vested rights eliminate any need for those permits or approvals so that (to quote Rise's erroneous claim at 58 repeated at the start of this Petition) Rise can operate its IMM "without limitation or restriction."** See also, for example, **Exhibit A,** describing some relevant Rise admitted history, facts, and circumstances from Rise's SEC filings, which clearly admissible, rebuttal evidence Rise enablers on the County staff and EIR/DEIR team incorrectly excluded previously from consideration in the objector disputed EIR/DEIR process (but some of us added to the record with their objections anyway.) Such errors in the disputed EIR/DEIR process should not be repeated in this different and more complex litigation type of vested rights dispute. For example, Rise's SEC filing admissions (Exhibit A) must defeat such claims, and that rebuttal evidence cannot be excluded as demonstrated even by authorities cited in Engel Objections and others to the EIR/DEIR, such as ***Communities for a Better Environment v. City of Richmond*** (2010), 184 Cal. App.4th 70, **where objectors' use of Chevron's SEC filing admissions and inconsistencies defeated Chevron's EIR.**

In any event, whatever Rise's vested rights' reclamation plans/financial assurances requirements may be in these disputes, the related work and improvements will be impermissibly new, expanded, and more "intense" compared to the historical mine on which Rise purports to base its vested rights claims, and reclamation and financial assurances will be beyond Rise's capacity in every way. See discussion above of *Hansen* citing *Paramount Rock Co.* to disqualify from vested rights a rock crusher addition to a parcel (equivalent to Rise adding its new water treatment plant) and Exhibit A. Also, the rebuttals and counters to Rise vested rights claims by surface owners above and around the 2585-acre underground mine include all of those objections made on the record to the EIR/DEIR, plus many more defenses and (when and if "**ripe**") counter- or cross-claim rights on account of objectors' own competing constitutional, legal, and property rights, especially as to the groundwater and existing and future wells that objecting surface voters own that would be wrongly "dewatered," purportedly "treated" in a disputed, new facility and system (for which no such vested rights could exist), and flushed away down the Wolf Creek. See also **Exhibit B,** distinguishing expected Rise claims based on the usual miner mischaracterizations of *Hansen.*

For another example as to subjects incorrectly, previously forbidden to us objectors in the disputed EIR/DEIR process but now unavoidable in disputing the required "financial assurances" for the required "reclamation plan," it is time to allow objectors to demonstrate Rise's lack of financial feasibility, as in Exhibit A, by exposing Rise's SEC filing admissions contrary to, or inconsistent with, both its EIR/DEIR and its vested rights claims. (The Rise enablers on the EIR/DEIR team and staff ignored the controlling case and other others, like *City of Richmond* above that always allow such rebuttals from SEC filing admissions.) Refusal to do so means more, massive, counter "offers of proof" on the record to preserve those matters for the following court process that would then require a *Calvert/Hardesty* re-do by the County as discussed above. On the other hand, before objectors invest in massive disputes of guesses about Rise's **"Existing Rise Reclamation Plan,"** including its "**Reclamation Financial Assurances,**" objectors must know to what extent they are part of what Rise's unprecedented vested rights claim may be somehow either eliminated (as quoted above at 58 in the Rise Petition claiming the right to mine "without limitation or restriction") revised or added later by Rise for this vested rights gambit to better reflect applicable law and reality as essential parts of any vested rights dispute. At the status conference objectors would like to demonstrate why there can be no such vested rights as a matter of law, no matter what Rise argues about such disputed reclamation and financial assurance matters and its other "alternative reality" claims. See the discussion of *Hardesty below* and rebuttals to surface mining analogies by Rise in Exhibit C, even by Hansen in Exhibit B and other authorities in Exhibit E.

c. Some Illustrations of Objector Issues And Concerns That Mandate Such Improved County Rules And Procedures, Such As the "Summary Due Process Proceeding."

Like other such miners in such disputes Rise may protest (incorrectly) objectors' need for such clarity, favoring what such miners (probably like Rise) disingenuously call "flexibility," but which is actually game theory more aptly called "hide the ball" or "bait and switch" (tactics that too often previously seemed misused in the EIR/DEIR, as exposed in many objections). See, e.g., Hardesty, where the court correctly prevented such a miner from making what the court politely called a "muddle." Tolerating Rise's disputed approach would be a reversible error (e.g., *Calvert*), especially when combined with other sadly common game theory maneuvers (like some evident in the disputed EIR/DEIR process) and other objectionable tactics. Some might also wonder (incorrectly) if this Objector Petition is premature, expecting such objections instead to follow, rather than advance in parallel with, the threatened, Rise's presentation of its vested rights petition case. Also, the County may be tempted (incorrectly) to try and respond to the Rise Petition's vested rights claims in a conventional administrative process, like the unsatisfactory EIR/DEIR process that justly has drawn so many meritorious objections and would defy *Calvert* and *Hardesty*. However, because competing constitutional, legal, and property personal rights of objectors (demonstrated herein) could exceed County administrative jurisdiction but could also be embedded nevertheless in these vested rights versus defense/counter disputes, the normal land use administrative process is not satisfactory or sufficient. For reasons explained herein and based on objectors' unsatisfactory experiences so far (except for the Planning Commissioners correct final decision) with Rise's EIR/DEIR process detailed in record objections, objectors urge the County to discuss at a status conference

following and enhancing court-mandated due process and other rules (e.g., *Calvert and Hardesty)* for addressing such objections in this multi-party, vested rights dispute as requested in this Petition. This dispute is different, distinguishable, and more legalistic than normal administrative proceedings, like EIR approvals or disapprovals; i.e., for the County to allow what objectors call the "Summary Due Process Proceeding."

Always focus on the following fact that Rise, (so far) the County Planning staff, and Rise EIR/DEIR enablers have consistently (and wrongly) ignored, but admitted by Rise in its SEC filings (Exhibit A) and demonstrated again below as also in many EIR/DEIR objections: objectors own the "surface" (down at least 200 feet and even deeper as to groundwater and other things excluded from mining rights) above and around the 2585-acre underground mine. Such surface owners own, personal, competing constitutional, legal, and property rights and standing to defeat any Rise vested rights claims, whatever the County may decide, as described in *Keystone* and *Varjabedian.* As objectors illustrate below and in Exhibits with applicable case law, for example, if in a normal administrative process the County were to allow Rise to "take" away such surface owners' personally owned groundwater (e.g., depleting existing or future wells) by Rise's abusive (e.g., 24/7/365 for 80 years) dewatering for its disputed IMM underground project in order to accommodate Rise's meritless vested rights claims, that could (when "ripe") create counter, constitutional, inverse condemnation and other claims in favor of objectors. See, e.g., *Varjadedian and Keystone*. For a description of groundwater rights of even neighbors near **surface** mining, *read below Gray v. County of Madera,* which the Engel Objections and others demonstrated in the EIR/DEIR disputes rejected as legally insufficient that miner's groundwater mitigation measures (comparable to Rise's disputed EIR/DEIR proposals) with a detailed analysis that would be less than the minimum required for surface owners above and around the 2585-acre underground mine.

Failure to provide such due process for objectors by an insufficient or deficient administrative process will also burden everyone having to add in other ways to the already massive record, as objectors are compelled (at regrettable burdens and expense that should be avoided) to make their record sufficient for any judicial process, such as with objector offers of proof to guarantee that the courts' remands will allow objectors to do the second time what could have best been done the first time at less expense and burden to all. In any case, because of the endless litigation threatened by Rise that must be consistently defended and countered by objectors, it is now more essential than ever, at every stage in the process, to have clarity as to: (i) what precisely is at issue in the Rise versus objector disputes before the Board (or as to what is excluded by the County and set up for re-litigation in the following court process) on an issue-by-issue basis; and (ii) what evidence is allowed and excluded by the County on what basis, so that objectors can improve the process for a "level playing field" for objectors, who are legally entitled to match Rise in their equal rights and protections/equal time oppositions (e.g., such as preventing the Planning staff and EIR/DEIR Rise enablers from again (as with the EIR/DEIR) allowing Rise to fill the record with whatever disputed, purported "evidence" Rise wanted, but incorrectly excluding or ignoring objectors' rebuttal evidence even with Rise admissions, such as with respect to financial feasibility disputes which now even they cannot exclude because any vested rights claim requires "financial assurances" for required "reclamation plans.") See, e.g., discussions below and in Exhibit C, as well as in ***Communities for a Better Environment v. City of Richmond*** (2010), 184 Cal. App.4th 70 (where the court used

Chevron admissions in its SEC filings to defeat its EIR, providing ample authority proving the error of Rise enablers excluding and ignoring objectors' use of Rise's SEC admissions to rebut Rise's incorrect claims, especially as to the fact that Rise's SEC financial statements prove that Rise lacks the financial capacity to do anything material that it has proposed in the EIR/DEIR or must do under any vested rights' mining.) Now, against Rise's vested rights claims from Rise's own such admissions, objectors can prove that Rise's required "financial assurances" are illusory, even for its deficient "reclamation plan." This time objectors also must be allowed to prevail with DEIR pp. 6-14, where Rise admitted that the whole project was economically infeasible unless Rise could operate as it demanded 24/7/365 for 80 years, which intolerable result objectors contend is legally impossible to approve or sustain and cannot be allowed now by vested rights either.) Furthermore, to further advance that goal of fair, constitutional, and cost-effective dispute procedures, the County should allow at least some of the normal litigation processes, such as objectors being entitled to require Rise to respond to **"requests for admissions,"** so that objectors can clarify, narrow, and focus factual disputes and issues, while making Rise pay objectors' costs in proving anything that Rise incorrectly refuses to admit.

Also consider the thousands of impacted objectors who are also competent witnesses, especially those living on the surface above and around the 2585-acre underground IMM with much evidence to provide beyond what was possible in the three minutes each had in the EIR/DEIR process. Besides having personal knowledge relevant to these disputes, objectors include experienced professionals qualified to rebut Rise's disputed so-called "evidence" and "experts," especially about the situation on 10/10/1954 as to which Rise has no personal knowledge and their attempt to rewrite history is disputed, among other things, by the law of evidence on which there will be separate briefing. In any case, objectors should have an opportunity to do so for due process and fairness in this dispute process. See *Calvert, Hardesty,* and even **Hansen** (Exhibit B), as well as Exhibit D generally. This time there also may be many more and more extensive "offers of proof" about what objectors could have proven if allowed a satisfactory, equivalent, and constitutional due process opportunity to present such testimony and evidence as well as to rebut Rise's incorrect testimony and "evidence." Id. Allowing Rise a superior, quasi-monopoly position again in the County administrative process (aka denying equal evidence, protections, and time for objectors) will just result in the thousands more pages to add to those already in objections in the EIR/DEIR record that objectors fear were inappropriately neglected or incorrectly excluded by the prior EIR process.

The County should accommodate objectors now, since objectors' full case must nevertheless be allowed with equal time and dignity versus Rise's disputed presentations as part of any following court trial, where objectors' evidence and arguments cannot be so limited (e.g., as to Rise's lack of financial feasibility to accomplish what it proposes, such as its inability to achieve acceptable "financial assurances" for vested rights' reclamation plan requirements.) The County's rules and procedures for this vested rights and counter disputes need to account for that reality. Rise cannot continue to be allowed (as in the disputed EIR/DEIR staff process) to claim any incorrect or worse thing Rise wishes without allowing objectors full and comprehensive rebuttal responses in equal time that expose all Rise errors, omissions, inconsistencies, contradictions, and wrongs, including with rebuttals using Rise's own admissions and inconsistent claims (see, e.g., with Exhibit A: Rise's SEC filing admissions as in the City of Richmond example where SEC filing inconsistencies defeated Chevron's EIR; as well

as exposing inconsistencies between such Rise admissions and its disputed EIR/DEIR versus its vested rights' claims and its SEC filings). That way, if and when Rise plays the usual miner game of complaining that objectors did not "exhaust our administrative remedies" or put sufficient evidence or arguments into the record, objectors have winning counters by proving any denial of due process rights to do so (like the objectors did in *Calvert and Hardesty),* and the courts must then send this whole mess back for a do-over that no one (besides Rise and its enablers) should want.

6. Even Though Involving a Surface Mine, The Calvert Court Decision Defeats Rise's Vested Rights Claims And Recognizes the Impacted And Objecting Public's Right For Such Due Process Challenges To Rise's Disputed Mining And Theories; i.e., As Objectors Correctly Contend These Are Multiparty "Adjudicative" Disputes—Not Just Two Party "Ministerial" Or Other Disputes Where Objectors Are Effectively Subordinated To The "Main Dealings" Between The Miner And the County. Some Evidentiary Precedents Here Are Also Useful For Guiding The County In The Next Fair, Multi-Party Proceeding, As Discussed in Exhibit D.

a. While SMARA Is So Limited To "Surface Mining" And Rise Cannot Otherwise Create Its Imagined Vested Rights FOR RISE'S UNDERGROUND Mining, Such SMARA Cases (See Exhibit C) Can STILL BE USEFUL FOR OBJECTORS' DUE PROCESS AND OTHER REBUTTALS, Such As the *Calvert* Court's Multiparty "Adjudicative" Decision Recognizing the Impacted Public's Right For Due Process And Other Challenges To Rise Mining And Theories.

***Calvert* was not focused on the *MINER'S* due process rights, but rather instead on the due process rights of the NEIGHBORING VICTIMS of the mining and the other impacted public who we call "objectors." *Calvert v. County of Yuba* (2006), 146 Cal.App.4th 613 ("Calvert").** In that case, the county incorrectly approved the surface miner's purported, vested rights in an unconstitutional, two-party "ministerial" process without notice to, and due process for, any impacted neighbors or other objectors, because such miner's vested rights evasion under SMARA of the normal permit requirements was not merely a "ministerial decision" or otherwise one for the County alone. As the *Calvert* court held (Id.): **"Is the vested rights determination regarding Western's surface mining operations …subject to procedural due process requirements of reasonable notice and opportunity [for objectors to] be heard? Our answer: Yes." (**emphasis added) Therefore, **Calvert** court rejected the idea that such a vested rights decision is merely "ministerial," instead holding it to be a "adjudicative" (or "quasi-judicial" or "administrative") decision requiring due process for the objecting neighbors and other impacted public. *Calvert* followed the analysis of SMARA #2776 in **"**Ramsey**"** (i.e., *People v. Dept. of Housing-Community Dev.* (1975), 45 Cal.App.3d 185, 193-94, holding that construction of a mobile home park was, at least in sufficient part, a discretionary act subject to CEQA) and cases cited therein. Moreover, as demonstrated below and in *Calvert,* Rise cannot now just "switch positions" in mid-stage of its EIR/DEIR process from Rise's doomed CEQA theories to some disputed, new, vested rights theory, whether under a "diminishing asset doctrine" theory or otherwise, because that is both legally improper procedurally (e.g., estoppel) and (as *Calvert*

explains) that would be a denial of objectors' due process rights to a constitutional process in which they are equally able to present all of their counters and competing evidence in a sufficient, adjudicatory process much closer to what will occur in the following court process than the disputed and deficient CEQA process so far.

That *Calvert* court also rejected as without merit many issues raised by that miner that would also defeat Rise's IMM vested rights claims. **For example, the usual claim by miners that the aggrieved public objectors failed to exhaust their administrative remedies was inapplicable in that case because (citing CA Supreme Court authority in *Horn v. County of Ventura*) the court held (at 622): "[o]ne need not exhaust inadequate remedies in order to challenge their sufficiency."** However, in the IMM mine case, we expect the hundreds of EIR/DEIR objectors also to be even more comprehensive in resisting Rise, making such exhaustion of administrative remedies claims by Rise inapplicable, as objectors had prepared to prove if the disputed EIR had been approved. Nevertheless, *Calvert* is instructive for the County as to its need to upgrade its rules and procedures as noted in the aforementioned IMM status conference topics, especially as explained in one of the concluding sections below about preserving objectors rights to prevent Rise's lengthy "last words" at the Board herein from evading the "fact checking" needed to expose Rise incorrect or worse additions to its disputed "alternative reality," especially by rebutting them with Rise's own admissions (see below and Exhibit D) and inconsistencies between what Rise then claims versus its (or the EIR/DEIR's or enabler statements' based on Rise claims) prior record positions. That later section below suggests how the County can best deal with that in the suggested Summary Due Process Proceeding before the Board hearing.

So, what possible benefit does Rise imagine for its radical, mid-stream switch to these disputed vested rights claims, even from *Hansen* (which hurts more than helps Rise's disputed claims, as demonstrated in Exhibit B) much from other authorities like *Calvert and Hardesty,* where the miners lost badly on many grounds to comparable objectors? Apparently, besides Rise's desperation and habit of gambling on meritless, "long shot" theories, Rise seeks somehow to shout "vested rights" for doing whatever the disputed Rise Petition may want (still a mystery as to critical issues) as if those words (vested rights) were a magic spell that needed nothing more justification or substantiation to evade the contrary applicable law for Rise's purported vested rights than to invoke some disputed, inapplicable, distinguishable, or even contrary citations to Hansen and SMARA. See Exhibit B rebutting Rise's *Hansen* claims even with the courts own words, and Exhibit C rebutting any Rise reliance on SMARA for this underground IMM but reminding everyone that Rise cannot claim the benefits of SMARA, even by analogy, without assuming SMARA's burdens, such as an approved reclamation plan and financial assurances that Rise cannot possibly accomplish by its own admissions as to lack of financial capacity in Rise's SEC admissions in Exhibit A.

However, the Rise Petition is doomed on the legal merits and failed burdens of proof with essential, admissible evidence, and such flaws cannot be overcome by Rise claims about misused/rebranded "due process" empowering imagined vested rights to evade permitting and environmental requirements that Rise has earlier explicitly and implicitly already admitted being applicable. See the EIR/DEIR and Rise's other permit and other applications and filings, such as those detailed in the County Staff Report. Once again, as objections to the EIR/DEIR (especially the Engel Objections) have repeatedly argued correctly, Rise continues to ignore the competing

due process rights of the objecting neighbors and public (as upheld by *Calvert and Hardesty*), as if somehow Rise could (incorrectly) compress this massive, multi-party dispute into something like a "ministerial" two-party dispute by Rise with the County in which our objections could (incorrectly) be limited and while unlimited time and advantages are disproportionately permitted to Rise and its enablers. At least for this vested rights dispute, due process hearing rebuttal presentations by objectors cannot be limited to three minutes each, especially without some pre-hearing and other accommodations to match each Rise disputed claim and its purported evidence with objector rebuttals, especially from Rise's own admissions and inconsistencies. In any event, Rise's vested rights theories are not just wrong, but also legally impossible against such counters by the competing surface owner-objectors living above and around the 2585-acre underground IMM, whether the County allows them to be timely presented or objectors assert them in offers of proof that the courts must accommodate. When this dispute reaches the courts, objectors' due process will mean full participation on an equal protection and time basis. Why not follow *Calvert, Hardesty, and other authorities to allow that fair and level playing field now*?

b. Even If Rise Had Some Vested Rights, Which Objectors Dispute, That Excuse To Not Have Certain Permits COULD EXIST ONLY "SO LONG AS THE VESTED RIGHT CONTINUES AND SO LONG AS NO SUBSTANTIAL CHANGES ARE MADE IN THE OPERATION…" (SMARA # 2776.) See Exhibits B, C, D, and E. This Illustrates How Objectors Can Use More Detailed Facts And Correct Law, Including Rise Admissions, To Rebut The Rise Petition's "Story."

(i) Rise Cannot Prove the Required Continuance of the "Same Use" With Its Disputed, Historical Fragments Rise Calls "Evidence." See Exhibit D.

In any litigation where the rules of evidence apply strictly (see some evidentiary discussion herein and in Exhibit D), Rise's disputed vested rights theory of "no substantial changes" must fail, even by Rise's own SEC filings and other admissions (see Exhibits A, B, C, and E). **As *Hardesty* explained at 812: "THE CONTINUANCE OF A NONCONFORMING USE 'IS A CONTINUANCE OF THE SAME USE AND NOT SOME OTHER KIND OF USE'", citing "*County of San Diego v. McClurkin* (1951), 37 Cal.2d 683, 688; *Edmonds v. County of Los Angeles* (1953), 40 Cal.2d 642, 651; and *County of Orange v. Goldring* (1953) 121 Cal.App.2d 442, 446-47."** (emphasis added) As demonstrated in various ways under every possible perspective, Rise cannot satisfy its burdens to prove with legally admissible, competent, and credible evidence even the base vested rights case of the old, pre-10/10/1954 mining to set the standard for comparison or modeling to SMARA or other surface modeling or other precedents. Even based on facts **Rise has admitted in its SEC filings (see Exhibit A), disputed EIR/DEIR and elsewhere,** the surviving alleged IMM relevant records for the parts of the abandoned IMM mine that flooded and closed in 1956 are vulnerable to challenge as incomplete, unreliable, noncredible, and subject to many evidentiary and other disputes by objectors. Even if Rise were somehow able to get away with changing its legal theories in its Rise Petition "restart," Rise cannot escape its prior admissions and inconsistencies, as demonstrated in *City of Richmond* and *Hardesty* and

illustrated in Exhibits A, B, D, and E. Moreover, Rise cannot rewrite history with such disputed "evidence" as if its predecessors were somehow "different and better" than the rest of its problematic industry at such times, especially using Rise Petition's Exhibit fragments of what Rise calls history. See *Hardesty and even Hansen*.

For example, when the predecessor owners were admittedly operating in distress on 10/10/1954 and when and after they so abandoned the IMM in 1956, how likely is it that they saved **comprehensive, complete, and accurate records** of everything they did and did not do or intend? Isn't it more likely that typical mine owners of that time, fearful of prosecutions and claims when foreseeable problems arose, would be careful what they exposed to history, preferring not to have surviving records confessing "inconvenient truths" or worse for possible salvage by their adversaries? See Exhibit D. Considering that Rise often seems to present fragment documents with little or no sufficient foundation that cannot satisfy its burden of proof, why cannot objectors dispute such things in the main counters to come with such historical and problematic "mining industry practices" of such times?" Historical experience can show that abandoning miners are as careful as retreating armies guilty of "problematic conduct" [e.g., even modern examples like Russia retreating in Ukraine] to only leave behind records that do not expose them to wrongdoing claims or worse.) That lack of a complete and accurate records doesn't mean, as Rise seems to contend, that such uncertainty allows Rise to say or do whatever it wants from some cherry-picked fragment about which the County process does not (yet) allow court-type cross-examination. To the contrary, that lack of a sufficient "base case" of competent, admissible, credible, reliable, and unambiguous evidence means that Rise cannot ever satisfy its burden of proof on the key issues and requirements for the disputed vested rights Rise claims, especially considering that Rise has chosen not to explore or investigate sufficiently the actual conditions in the existing underground mine, much less the unexplored expansion, new, underground mining areas that now are the core focus of these disputes by objecting surface owners above and around them.

The *Hardesty* case quotes herein support objectors' arguments under these circumstances, but we add this supporting quote about such evidentiary issues:

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

Hardesty, 11 Cal.App.5th at 801. (This followed the court's earlier evidentiary findings [at 799] that, for example: "'There are no records presently available …to show what kind of mining business … the owner from 1921 to 1988 … conducted on the property after the war.' **The trial court found that through the 1970's, the property 'was essentially dormant.'")**

> However, Hardesty failed to prove *any* mining was occurring on or even reasonably before the date SMARA took effect [1/1/76]. SMARA was designed to

allow existing, operating surface mines to continue operating after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to truly dormant mines.**

Hardesty at 810. Also, even if Rise tries to allege some such resumed mining, Rise would not be able to claim immunity from all the then existing laws which would require substantial mining changes from the time operations ceased in the closed and flooded mine in 1956. As noted above and elsewhere, **that court ruled at 811 (citing Hansen at 12 Cal.4th at 564, and Calvert at 145 Cal.App.4th at 629): "IT WAS HARDESTY'S BURDEN TO PROVE HE WAS CONDUCTING A NONCONFORMING USE AT THE TIME THE LAW CHANGED." IT ADDED THIS CITE FROM MELTON V. CITY OF SAN PABLO (1967), 252 CAL.APP.2D 794, 804: "THE BURDEN OF PROOF IS ON THE PARTY ASSERTING A RIGHT TO A NONCONFORMING USE TO ESTABLISH *THE LAWFUL* AND CONTINUING EXISTENCE OF THE USE *AT THE TIME* OF THE ENACTMENT OF ORDINANCE [IT WISHES TO EVADE.]"** (emphasis added) See also the court's discussion at Id. and 812 of *Stokes v. Board of Permit Appeals* (1997), 52 Cal.App.4th 1348, 1351, 1352-53, 1355-56, and *Walnut Properties, Inc. v. City Council* (1980), 100 Cal.App.3d 1018, 1024.

(ii) Consider Some Disputed History, Including Where Rise's Prior Admissions Undercut the New "Story" In the Rise Petition.

Rise's 10K admits (at 34-35—See Exhibit A) that 1955 was "the final year of production from the mine." Thus, there has been no mining for vested rights acquisition since at least that time in 1955 (which because it is currently uncertain, objectors have "rounded up" to 1956, when Rise admitted the IMM closed and flooded), thus focusing on the comparison of the applicable law at that time to what Rise now proposes for vested rights underground mining in that new, expanded area part of the 2585-acre underground mine that objections prove was too often ignored in the disputed EIR/DEIR. Compare this to the Nevada County's 1954 ordinance and other State laws in 1954 laws versus what was done in that last 1955 year of mining operations, as discussed in *Hansen* in this Petition and Exhibit B. (Because *Hansen* is often a mischaracterized case by miners, it is more correctly described in detail in Exhibit B hereto.) To be clear, **none of the work done at the abandoned IMM since it closed and flooded in 1956 qualifies for Rise vested rights, since there has only been "exploration" or environmental testing, which even Rise's SEC 10K excludes from "mining" activities by its admission (Exhibit A) at pp. 28: "MINERAL EXPLORATION, HOWEVER, IS DISTINCT FROM THE DEFINITIONS OF 'SUB SURFACE MINING' AND "SURFACE MINING'" [MAKING THE POINT THAT MINERS IN THAT M1 DISTRICT ZONED LAND COULD EXPLORE WITHOUT A PERMIT.]** (emphasis added) While Rise cites aggregate gold production numbers from 1866-1955 in its 10K Table 3 at pp. 35, what matters for the vested rights dispute is what vested right uses and intensities existed when, for example, the 1954 Nevada County ordinance addressed in *Hansen* became effective compared to the nonconforming IMM uses, if any, that occurred in 1955 or 1956. Clearly, nonuse since at least 1956 cannot create any additional or enhanced vested rights, even under *Hansen (see Exhibit B),* much less under many other authorities that objectors cite [and more they will cite in later briefing] to defeat Rise's vested rights claims. While this is not the time or the place for briefing all objectors' facts, evidence, and law for our trial briefs defeating

the vested rights claims, it is instructive for the County to consider this Rise 10K admission at 34 (Exhibit A), demonstrating that not much happened in 1954-55 of helpful relevance for Rise's vested rights claims, especially considering all the additional and upgraded laws and regulations occurring after the mine closed and flooded by 1956 and even before since (Exhibit A**):"[mining was] forced to shut down by the US Government in 1942 (Shore 1943). Due to lack of development, a decline in gold production was experienced and recovery from war-time shutdown never occurred."** (emphasis added)

Rise's SEC 10K claims at pp. 34 (Exhibit A) that: "The I-M Mine Property and its **comprehensive collection of original documents was rediscovered in 1990** by Consolidated Del Norte Ventures Inc, the predecessor company of Emgold Mining Corporation, and efforts were made to reopen the historic mine." (emphasis added) However, during the period of what Rise there (Exhibit A) called "Exploration & Mine Development 2003-2004" [skipping over in dead silence the period of nonuse or anything from 1956 to 2003], that **Rise 10K also claims (at pp. 34):**

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

As described in this Petition and Exhibits D and E, **objectors dispute any such Emgold purchased documentary evidence as consistent with Rise's description (e.g., disputing that such "REDISCOVERED" in 1990 pre-1956 records that were a "COMPREHENSIVE COLLECTION"). Where is Rise's competent proof for such claims, or even the authenticity of such "evidence?"** What is the proof for the "chain of custody" of such so-called evidence? The law of evidence should exclude those purported records (lacking the required foundation and admissibility factors) as admissible proof for any Rise claimed vested rights, since we cannot imagine how Rise will now prove their disputed completeness, validity, and admissibility. As to that relevant "history" summarized by the Rise 10K (Exhibit A) starting at p. 34, using what are described as "**AVAILABLE** historic records" (emphasis added, to emphasize that **"availability" is a function both existence and the degree of diligence as to the search, which Rise has the burden to prove and objectors doubt)**. Objectors assume that **"available" means the portion of such once greater mass of historical records that Rise was willing and able to find.** What did Rise or its predecessors choose to hunt down and locate? What did Rise or its predecessors not seek, because, for example, it was from a source suspected of having possibly negative information? In any case, those matters are part of Rise's burden of proof, for later litigation or discovery about the question of what possibly available records Rise could have chosen to seek or investigate but didn't. [**Note that RISE'S SEC 10K ADMITS (EXHIBIT A), FOR EXAMPLE, THAT "[H]ISTORIC DRILL LOGS WERE NOT AVAILABLE FOR REVIEW AND NO HISTORIC DRILL CORE**

WAS PRESERVED FROM PAST MINING OPERATIONS…" (emphasis added). Objectors wonder what competent, admissible, reliable, or even credible evidence, if any, serves as the foundation for Rise's (and the EIR/DEIR's) purported analysis, and what deficiencies exist to invalidate or discredit such analysis? Another discovery question is whether and to what extent the prior Emgold owner stopped its reported investigation merely (as Rise claims at 34-35, see Exhibit A) "due to inability to raise necessary funding in the midst of unfavorable market conditions" or whether they may also have been discouraged by negative information, suspicions, or clues of risks that would have to have been awkward to address in the disputed EIR/DEIR (if Rise had chosen to search for or investigate them.) For example, **the SEC 10K reports (Exhibit A) that Rise purchased the "Emgold diamond drill program database" as distinct from all the historical documents of Emgold, as Rise did when it purchased from BET Group.** (emphasis added) Why not more? In any case, any applicable CEQA limitations on objector counter efforts, evidence, and arguments do not apply the same way, if at all, to such vested rights disputes, especially when these disputes also involve such objectors' competing rights and claims as surface owners above and around the 2585-acre underground IMM.

c. Even If Somehow Rise's UNDERGROUND MINE Were Treated By Analogy Like A "Surface Mine" Subject To SMARA Or Something Rise Incorrectly Calls the Common Law, Rise's Disputed "Diminishing Asset" Doctrine Theory Still Cannot Create Any Vested Right For Rise's (i) Not "Similar" Or "Changed" "Uses" Or "Operations," (ii) Separate Parcels/Different Areas, (iii) More "Intense" Activities And Impacts, (iv) Not "Objectively Intended" "Expansions," Etc.

The *Rise imagined "*precedents" cannot create any vested right for Rise to mine underground based on some analogy to the "diminishing asset doctrine" for surface mines under SMARA or wishful thinking Rise calls the "common law." The many exceptions recognized by Hansen alone (Exhibit B) are sufficient to defeat the Rise Petition, not to mention the other authorities like Hardesty that Rise ignores, plus the full opposition briefing still to come after status conference "clarity" before the Board hearing. Consider the *Calvert* court's comments (at 623) regarding objective manifestations of intent for expansions (as previously stated quoting *Hardesty* and *Hansen/Exhibit B* on a parcel-by-parcel basis):

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

Also, based on facts confirmed by EIR/DEIR and other Rise admissions, the new/never adequately explored, accessed, or accessible for mining parts of the 2585-acre underground mine into which Rise wishes to expand are **not the "same area" under that *Calvert* test**, but rather would double the IMM in size (and with much greater "intensity" and "change") into new and deeper areas with 76 mines of new tunneling, rather than just continuing to working off of

the 72 miles of existing, flooded tunnels (probably now in the extremely dangerous and nonfunctional conditions one would expect after being abandoned and flooded since 1956.) Such mining size, use, change, expansion, and intensity differences are even more important with IMM underground mining than with surface mining, for example, because that at least doubles both the impacts on objecting surface owners (with more, new surface owners above and around the new, expanded underground mining) and with more the groundwater and existing and future depletions, while involving new underground conditions that have not yet been properly explored or adequately analyzed. See Rise SEC admissions in Exhibit A.

Also, besides other such *Calvert* court's reasoning defeating Rise, which we apply below with even more power and right in this case of more harmful, dangerous, and impactful **underground mining (e.g., such as to "substantial changes" in "operations" and "uses" with much more "intensity" that each must disqualify any such alleged vested rights on a parcel-by-parcel basis), objectors also contend in this IMM case that many relevant laws Rise attempts to evade by purported vested rights are immune for many reasons, such as because they (i) are an exercise of police powers or otherwise not vulnerable to any vested rights claim, (ii) may have existed in some form even before 10/10/1954 (e.g., common law or property rights protections later codified), or (iii) followed after 1954 or after when the "abandoned" IMM mine closed and flooded in 1956 and before anything could "resume" that Rise could call "mining" for this purpose [as distinct from minor "exploration" or testing or other operations Rise incorrectly confuses with mining, none of which is any "mining" use or operation for vested rights. For example, as discussed below and in Exhibits A and B, Rise admissions enable objectors to prove that Rise's (or even predecessor Emgold's) "explorations" are not "mining" for vested rights purposes. (Objectors contend such IMM "mining" still has not, and cannot yet, lawfully resume. Thus, even if Rise's incorrect vested rights theory somehow applied [which we dispute], Rise would still also be bound at least by all of such existing laws and objector rights before Rise tries to start mining again in the future, which, considering the pace of existing and future litigation would probably allow ample time for more law reforms by objector initiatives and lawmakers.)**

Rise's fantasy theory that somehow it can evade all mining laws before 10/10/1954 will be defeated by abandonment by 1956. See *Calvert and Hardesty. Also, as demonstrated herein and in future briefing, even actual vested rights cannot override most applicable laws or regulations in any event,* since they are limited to certain land use laws and even then may be subject to objecting surface owner defenses (e.g., laches, unclean hands, estoppels, etc.), property rights (e.g., lateral and subjacent support against subsidence, existing and future well and groundwater, prescriptive easements, environmental protections, etc.), and other protections described in hundreds of record EIR/DEIR objections. Furthermore, Rise cannot satisfy its burden of proof that any applicable predecessor IMM miner in that historical chain leading to Rise for each parcel or sub parcel (each predecessor needing to prove its vested rights at the time of sale) had any "clear intent" to mine before each deadline or into the expanded, new, unexplored/not accessed, and deeper areas of the IMM's 2585-acre underground mine, especially with more "intense" mining and impacts planned by Rise that was not imaginable in 1954, 1955, or 1956. Thus, when any such post-1956 laws and regulations took effect as our community grew around the closed, flooded, and abandoned IMM, those laws and regulations should apply regardless of Rise's disputed vested rights claims. That is

"objectively manifest" under the *Calvert* test, because not all the predecessors before Rise on each parcel showed any interest in gambling the monumental cost, time, and effort of restarting the disputed IMM mining in hopes of finding gold in future years (especially in such new, never accessed or mined, unexplored areas) as to which Rise's SEC filings (Exhibit A) admit to being sheer speculation (i.e., not only with no proven gold reserves, but also no adequate exploration data from the new mining area.) **To quote that SMARA #2776 statute, there has been no such "good faith" reliance by Rise and its chain of predecessors on each parcel on any "permit or other authorization," no "surface [or other relevant] *mining* operations" have "commenced" (miner "exploration" of other areas besides the new expansion areas [or even parts of that expansion area] for mining does not create such vested rights to mine as Rise claims). Also, no "substantial liabilities for work and materials necessary" have been incurred for that *"commencement" of "mining" "operations"* in each applicable parcel of that underground mine.**

7. SMARA Is Limited To "Surface Mining," And Even Purported Rise "Analogies" Must Fail To Its UNDERGROUND IMM, Especially As to Such Mines That Were Closed, Flooded, And "Abandoned" by 1956, And Rise IMM Mining Could Not Even Satisfy The SMARA Conditions For Vested Rights Even If Treated Like SMARA "Surface Mines." See Exhibit C.

a. An Overview of *Hardesty* And Other Authorities And Reasons Why Rise's Vested Rights Claims For UNDERGROUND Mining Are Doomed At the "Dormant," "Discontinued," And "Abandoned" IMM, Supplementing the Preceding Discussion.

Rise's vested rights claims for "Vested Mine Property," especially for the 2585-acre underground IMM, must fail as a matter of law, because the Surface Mining And Reclamation Act ("SMARA") only applies to "surface mining." Public Resources Code # 2710 et seq. See Exhibit C. *Calvert*, *Hansen*, and other cases on which Rise incorrectly attempts to rely only apply to "surface mining" under SMARA, including what SMARA #'s 2736 and 2729, respectively, define as **"surface mining operations"** on "**mined lands." See Exhibit C. What Rise contemplates in its EIR/DEIR and otherwise is UNDERGROUND MINING that cannot possibly qualify (even by miner analogy) as such SMARA or such *Hansen* and other "surface mining" cases on which Rise relies for its such disputed vesting rights claims (i.e., the only Rise gold to recover, if any exists, is underground in the new, unmined, expansion area that Rise admits in its SEC filings—Exhibit A—that Rise has not even accessed for meaningful exploration). That underground Rise mining is especially impossible to treat as surface mining because objectors and others own that surface above and around that underground mine and Rise's admitted deed restrictions bar Rise from the "surface" (admittedly defined by Rise 2017 deeds to be at least 200 feet deep) without the surface owners' consent. See, e.g., Exhibit A SEC 10K filing admissions.**

While that statutory reality should be obvious on its face, Exhibit C demonstrates some of the many ways in which SMARA cannot even be applicable by analogy for underground miners, although all mining cases can be used defensively by objectors. Why? FIRST, because Rise has not even tried to satisfy its burden of proof for such disputed theories,

and no "common law" claim by Rise has any such statutory links or and Rise has not only failed to cite any such case authority, but Rise ignored contrary authority in *Hardesty* discussed herein. Indeed, neither Hansen nor any other Rise surface mining cases cite any common laws, even by analogy, for underground mining, but strictly limit themselves to following the SMARA statute. SECOND, because miners are not granted any vested rights to mine as they wish by the constitution, but only under specified terms and conditions not to be stopped from certain qualified, "nonconforming use" only by application of a specific kind of land use statute that interrupts either (i) certain otherwise LAWFUL kinds of existing mining in which the miner is actively conducting permissible existing operations on a PARCEL (see the above discussion of *Hansen* and Exhibit B counters against Rise's claim that work on one parcel creates vested rights on another), or (ii) certain "objectively" intended and permitted future mining expansions ON A PARCEL during such qualifying continuing operations. See the above discussion of *Hansen* and Exhibit B counters against Rise's claim that work or intentions on one parcel creates vested rights on another. See also Exhibit C.

That also means, for example, that Rise's vested rights still must comply with many other laws and regulations not constituting such a land use regulation "taking" to trigger the constitutional prohibition on applying that law to such qualifying operations. In other words, Rise seems to be demanding that objectors be disabled somehow from relying on each and every law Rise later claims to be empower by its disputed vested rights to ignore or evade, although as quoted above in the Rise Petition (at 58) Rise appears to claim the right to ignore all laws and regulations after 10/10/1954 by announcing its vested rights "operations" will be "without limitation or restriction." Fortunately, Rise has the burden of proof of that, which necessarily means its Rise, not objectors, who must identify each such law or regulation and how such vested rights apply to each such law and regulation as it existed at the relevant time, as distinguished, for example, by compliance by laws (like CEQA and environmental laws) which objectors future briefing will demonstrate apply independent of any such vested rights. THIRD, such vested rights do not overcome competing property owners' legal, constitutional, and property rights that may interfere with such mining, such as those of us surface owners above and around the 2585-acre underground IMM, such as to our existing and future wells and groundwater. That competition between underground miners and surface owners is not about vested rights of a miner displacing surface owner rights and protective laws but rather, as between competing surface vs underground owners, as to who has the superior legal right under all the facts and circumstances. However, if *Calvert* or *Hardesty* were somehow a relevant analogy (despite being legally inapplicable surface cases) for any such Rise claims of vested rights, *Calvert* SUPPORTS THE OBJECTORS, AND NOT THE MINER, in any analogous parts, as demonstrated herein. See also Exhibit B analyzing ***Hansen***, which also fails to support Rise vested rights for the IMM and even in some cases as to that *Hansen* surface miner. The reverse uses of surface mining cases in favor of objectors, of course, are different, because the competing objectors' oppositions aren't about qualifying like a miner for vested rights, but rather conversely use objectors' own constitutional, legal, and property rights as defenses and to counter any miner claimed vested rights claims however those vested rights claims may be imagined.

Nowhere in its EIR/DEIR, Rise's SEC filings (Exhibit A), or otherwise does Rise even allege any vested rights under SMARA or other law for **"surface mining,"** including what SMARA #'s

2736 and 2729, respectively, defines as **"surface mining operations"** on "**mined lands."** See Exhibit C. Instead, as admitted in the EIR/DEIR and Rise's SEC filings etc., the relevant lands to be mined by Rise are **underground** in the new, expanded, unexplored 2585-acre mineral rights areas, **not even** on the smaller surface owned by Rise at the Brunswick or Centennial sites. Rise's SEC filings admit that Rise's rights do not exist above 200 feet below the surface, and Rise's EIR/DEIR admits Rise does not intend to mine above 500 feet of the surface. See Exhibit A. Apparently, Rise imagines that it can make some incorrect, vested rights argument for **underground** mining either (a) by purported and incorrect analogy to SMARA **surface** mining (see Exhibit C), or (b) as if Rise somehow could create some new common law by such an analogy, but there is no sufficient legal authority for such a Rise claim or any description of how Rise could mine without compliance with applicable laws, or even provide the SMARA required "reclamation plan" and related financial assurances. Stated another way, "nonconforming uses" based on vested rights still must be "legal." Surface mining with vested rights must comply with the regulatory requirements in SMARA and many other applicable laws, and **SMARA expressly allows neighboring objectors and governments to sue the miner for nuisances and many other wrongs; i.e., escaping a use permit requirement doesn't free the SMARA miner to do as it wishes. See Exhibit C.**

b. Some Examples of Some Other Rise Petition Defeating Factors Further Explained With Others In Exhibit C, Such As Limiting Tolerated Changes, Separating Mining From Explorations And Other Operations For Limiting Vested Rights, Abandonment, And the Need For Reclamation Plans, Financial Assurances, Etc.

Moreover, it should be incontrovertible that Rise could never satisfy the SMARA or analogous conditions for a compliant reclamation plan, and Exhibit A SEC admissions prove Rise incapable of any satisfactory "financial assurances." To the contrary, as the *Hardesty* mining case ruled in defeating such disputed vested rights claims:

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

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

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

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

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

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799-812 ("**Hardesty**") (The miner lost at the Board, trial court, and on appeal in its mandamus action claiming SMARA vested rights as to an ancient, "19th century" federal mining patented gold mine that ceased operation during World War II and was "essential dormant" "through the 1970's" with "virtually no evidence that those mining activities 'continued' to exist at the time SMARA was enacted

[effective January 1, 1976], apart from "sporadic," "unpermitted surface(open pit) aggregate and gold mining in the 1990's." Nevertheless, the miner claimed "vested rights to mine the property for gold, sand and gravel (as well as diamonds and platinum)" after he bought the property in 2006. The trial and appellate courts rejected that miner's vested rights claim, agreeing with the Board that "any right to mine had been abandoned," as discussed in the evidence analysis sections above and below.) More importantly, ***Hardesty*** **forbids ignoring the kind of change Rise tries to ignore between different types of mining in incorrectly claiming vested rights. As that court stated:**

> **The trial court found that in the 1990's unpermitted surface (open pit) aggregate and gold mining began different in nature from the 'hydraulic, drift, and tunnel' [i.e., underground] mining that historically had been conducted on the land.** The RFD alleged the new proposed open-pit mining was safer and better for the environment. *** As an alternative to the finding of no vested right based on the lack of mining [in the right way and at the required time] … the trial court **found that any right to mine had been abandoned**." (emphasis added)

Here, despite the Rise Petition's disputed claims to the contrary (often apparently based on the false theory that any kind or type of mining useful "operational" activity on any owned parcel somehow allows Rise all desired mining operations on any parcels), the IMM was also "abandoned" by 1956 sufficiently to destroy any future vested rights claim by the *Hardesty* (and even *Hansen*) standards. Rise cannot revive the IMM now, especially by arguing (like the *Hardesty* miner) that Rise's new uses should be allowed because somehow it was somehow "better" than the old one. (That unprecedented argument could not true work against surface owner objectors above or around the IMM). While there was obviously some IMM underground mining before 10/10/1954 at some of the IMM parcels, the point is that Rise is not arguing for vested rights **from underground mining cases and laws (as distinguished from the parts Rise likes of surface mining cases and SMARA**). Why? Perhaps that is because no one could possibly do any underground mining anywhere in the IMM since the mine closed and flooded in 1956, so Rise has to imagine (incorrectly) that some surface or non-mining activity can save it from our obvious abandonment objection. Perhaps that is because Rise must continue to fear confronting us objecting surface owners' competing constitutional, legal, and property rights that Rise keeps ignoring in this Petition as it has in the disputed EIR/DEIR and other Rise applications. Perhaps the County should start asking Rise the hard questions in our ignored EIR/DEIR objections that have not been asked by the County enablers or have not been addressed sufficiently by Rise. Fortunately, *Calvert, Hardesty,* and other cases forbid us objectors to be ignored on these vested rights disputes.

Under such precedents it should be legally impossible for Rise to claim that there has been "no such change," because the EIR/DEIR (and presumably the Rise Petition, although it evades discussion of all such details to avoid comparisons between the 10/10/1954 mining with picks and shovels and manual dewatering systems versus what massive changes are unavoidable features of modern mining and clearly contemplated by Rise, unless it wants to confront more objector exposed inconsistencies to be added to our long lists), such as doubling the size of the existing underground mining area into new, unexplored, and

expanded areas as well as mining deeper (e.g., adding 76 miles of tunnels to the existing flooded 72), especially with Rise's disputed new 24/7/365 dewatering system and disputed water treatment plant facilities, plus radically different mining techniques and technologies (not to mention adding toxic hexavalent chromium cement paste for underground mine shoring columns to avoid the cost of removing mine waste, for a replay of the *Erin Brockovich* movie. See www.hinkleygroundwater.com and Engel Objections). In any case, neither Rise's SEC 10K (Exhibit A), nor the EIR/DEIR, nor other related Rise filings reveal the precise activities and intentions of the miners when Rise's predecessor periodically sold or acquired each of those 10 parcels (55 sub parcels) or any underground mining rights (since Rise has he burden of proof for each predecessor to prove it had at all times vested rights on each parcel to do what Rise proposes now to do).

In any case, Rise must prove such required data in each case, including the seller's prior objective mining intentions or to compare each such mine parcel or sub parcel unit's "expansion" for such vested rights analysis versus the continuously evolving and expanding applicable laws and regulations at each such relevant times. Instead, while Rise's inconsistent EIR/DEIR data never lays any factual foundation for vested rights (often the opposite), Rise just admits in the SEC 10K that "original mineral rights" were acquired "at various times" since 1851. Exhibit A. The SEC 10K also describes the Rise purchase of everything from the BET Group Estate (at pp.29) by quitclaim deed on 1/25/2017 (with the "Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) **"subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" NOTE THAT RISE (AT SEC 10K PP. 28) NOT ONLY SEPARATES SURFACE FROM SUBSURFACE MINING, BUT SEPARATES "MINERAL EXPLORATION" FROM BOTH SUCH TYPES OF MINING, CONSISTENT WITH THE M1 DISTRICT ZONING.**

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

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

***Hardesty v. Sacramento Met. Air Quality Management Dist.* (2011), 202 Cal.App.4th 404, 427…**

The *Hardesty* precedent (also citing *Hansen Brothers—see Exhibit B hereto*) not only rejected that similar miner's vested rights claim for those reasons (and others that follow in later discussions), but also "[a]s an alternative basis for decision, the Board and the trial court found any right to mine was abandoned" on such facts. The Court of Appeal agreed: "Here the evidence of abandonment was overwhelming…. Further, **a person's subjective "hope" is not enough to preserve rights; a desire to mine when a land-use law takes effect is "measured by objective manifestations and not by subjective intent." (*Calvert*, surpra, 145 Cal.App.4th at pl 623…)**

At this IMM trial, objections there will include overwhelming evidence of "dormancy," discontinuance," and "abandonment" defeating Rise vested rights claims. There will also be added **massive evidence of estoppel, laches, and waiver** and more against Rise now trying to assert such a vested rights claim, since this mine sat dormant, closed, and flooded (i.e., abandoned) since 1956, while our community grew up around the abandoned mine in reasonable reliance on the end of that mining (and that potential menace Rise now seeks to force on us.) **Also, as environmental, mining, and other applicable laws evolved during and after 1956, such requirements made legal compliance by any miner economically and scientifically infeasible, especially without the kind of "substantial changes" and "intensity" forbidden above for any such vested rights claim. No reasonable person in 1954, 1955, or 1956 could have intended such Rise proposed IMM mining, especially as contemplated in the EIR/DEIR and especially without permits and compliance with current laws (even those in effect in 1976, or, as the Nevada County ordinances at issue in *Hansen,* in 1954). Again, among other things, this is an UNDERGROUND mine (not a SURFACE mine subject to SMARA), and us objecting surface owners above and around the 2585-acre underground IMM mine have competing property and constitutional rights that, despite Rise's efforts to ignore them, the courts must ultimately respect whatever the County decides to do. See *Keystone.***

That *Hardesty* precedent also defeats Rise's vested rights claims for many other reasons discussed in various places herein, but (besides that similar "abandonment" reasoning applicable in both that dispute and this one) that Court of Appeal's analysis of SMARA itself (Exhibit C) is especially lethal to Rise's theories. For example, as *Hardesty* explained (at 801, emphasis added):

> **SMARA requires that all surface mining operations have an approved reclamation plan and approved financial assurances to implement the plan. (#2770, subd. (a)).** … Persons with existing surface mining operations were required to submit a reclamation plan by March 31. 1988. [Id.] **ABSENT AN APPROVED RECLAMATION PLAN AND PROPER FINANCIAL ASSURANCES (WITH EXCEPTIONS NOT APPLICABLE HEREIN) SURFACE MINING IS PROHIBITED. (#2770, SUBD. (D))**.

The disputes over **Rise's "Reclamation Plan"** and related "**financial assurances"** are addressed in Exhibit C and other places, but any such reclamation plan must relate to the reality of what is

to be done in the mine (which is still a mystery, especially under the Rise Petition, but also even under the disputed EIR/DEIR). What, if anything, does Rise propose, since the Rise Petition does not say? That uncertainty is even more serious because Rise's County filed "Existing Remediation Plan" is already long outdated, grossly deficient, and inconsistent with what is required regarding the EIR/DEIR plans, and it is even more wrong in every way for what will be required if this Rise Petition dispute continues its descent into such vested rights "free for all's," where objectors with *Calvert/Hardesty* due process rights can only guess about what disputed things will be allowed to happen in and around various parts of the mine and which of Rise's vaguely disputed laws and regulations may still apply. See Exhibits B, C, and D. That is why objectors seek **clarity** in the aforementioned "Summary Due Process Proceeding.**" First,** SMARA does not apply to create vested rights for any such **underground** mining, and whatever Rise tries to do (and almost everything Rise does without a permit, or, to quote the Rise Petition at 58, "without limitation or restriction") is subject to legal and political challenge and change by objectors and then also to more changes as new reform laws emerge, whether by political or legal reforms or by votes or initiatives, as each disputed use and issue, and the application of each otherwise relevant law or regulation, must be resolved in the courts. **Second,** Rise will have to react to enforcement of such changing legal and political realities in its operations (whether by right thinking government officials enforcing or enacting laws better to protect objecting surface owners from such underground IMM mining, or whether by self-defense, resident initiatives), thereby requiring more constant "changes" in the "reclamation plan" and greater need for better "financial assurances," as proven in Exhibit C and competent evidence/testimony. **Third,** not just such mining legal changes, but every deficient reclamation plan and financial assurances response by Rise may itself be subject to challenge and revision. See Exhibit C. Also, each change in any such reclamation plan requires a new financial assurance to match it, and, considering Rise's admitted financial condition in its SEC filings (Exhibit A), objectors cannot imagine Rise ever being able to obtain any such required financial assurances, even for its own proposed and deficient reclamation plan, whenever Rise confesses what it is.

On the other hand, while it is not legally possible or appropriate for Rise to use the courts to so invent some new, non-statutory, vested rights regime for its underground mining (probably incorrectly rebranded as the "common law"), **objectors may use SMARA precedents defensively**, such as the *Calvert, Hardesty, and even Hansen (see Exhibit B) to* defeat such Rise claims. See Exhibit C, D, and E. Objectors reason that, if Rise must fail under SMARA precedents, then Rise must fail as well under any purportedly comparable vested rights regime Rise (incorrectly) could possibly attempt to invent by judicial process for such underground mining. Also, correctly interpreted and used SMARA vested rights precedents and issue checklists are helpful guidance for the County in fashioning the requested Summary Due Process Proceeding and evidentiary rules for protecting objectors' due process and other rights to defeat such unprecedented Rise claims. Id. **Clearly, no court can ever justify providing less protection than the SMARA minimum (Exhibit C) for objectors facing such greater perils from such underground mining than from surface mining, especially objecting surface owners living above or around the 2585-acre underground IMM depleting our existing and future wells and groundwater 24/7/365 with no adequate mitigation. See, e.g., *Gray v. County of Madera* rejecting that mine's EIR and well mitigation proposals similar to those in Rise's disputed EIR/DEIR, leaving objectors to ask, since Rise (incorrectly) claims vested rights to operate**

"without limitation or restriction," what mitigations would be provided, if any, under the disputed Rise Petition? Thus, the County should consider, for example, some of the many aforementioned disabilities for RISE ATTEMPTING TO GAIN SMARA-TYPE VESTED RIGHTS BENEFITS WITHOUT SMARA AND OTHER LEGAL BURDENS TO PROTECT SURFACE OWNERS AND THE REST OF OUR COMMUNITY.

c. Besides All Those Reasons For Disputing And Doubting Rise's So-Called Evidence, Consider The Following Additional Reasons That Defeat Specific Elements of Rise's Vested Rights Claims, Especially Regarding Disqualifying Changes, Especially When the Rise Petition Fails To Reveal Or Obscures Its Future Operating Details By, In Effect (at 58), Claiming That Rise Can Operate Now "Without Limitation Or Restriction," Apparently Rise Incorrectly Imagines Without Required Disclosures To Allow Comparisons To 10/10/1954.

In any event, objectors can easily refute any Rise claim that there have been no "substantial changes" between that 10/10/1954 mine and what the disputed EIR/DEIR and related permits and other applications contemplate (or whatever else Rise now plans to attempt under disputed vested rights the Rise Petition at 58 claims "without limitation or restriction"). That Rise "hiding of the ball" technique should not be tolerated, including because Rise has the burden of proof. But, until Rise is compelled to "show its cards" when its bluff is called at the requested status conference or, in any event, in the next court process, assume that at least Rise won't dare stray too far from its SEC filings (Exhibit A), even if it tries to forget or "reinterpret" its EIR/DEIR and other admissions. On that basis, consider such proposed IMM changes as both: (i) doubling the size of the underground mine into new, unexplored, and deeper territories (e.g., off another 76 miles of tunnels and mining off that), and (ii) as to using newer mining materials, equipment, and techniques, many not even subject to Rise's vested rights evolution arguments because they had no historical counterparts (e.g., the new water treatment plant) and all such modernizations being prohibitively too "intense" or otherwise objectionable for many reasons.

For example, the four Engel Objections and others demonstrate that, according to the disputed EIR/DEIR, Rise now plans to save money by leaving much of the mine waste in the new underground mine by cementing it together with toxic hexavalent chromium cement paste into shoring columns exposed to the 24/7/365 dewatering process of 80 years (and worse, thereafter when, lacking any adequate "reclamation plan" and "financial assurances," such water is no longer purportedly "treated" when that new Rise system from that again abandoned IMM floods and leaks, thereby recreating that hexavalent chromium menace risk that notoriously killed the town of Hinkley, CA, and many of its people, as shown in the movie *Erin Brockovich* and as explained in that ghost town's reclamation website (www.hinkleygroundwater.com), reporting that still, after all these years of reclamation efforts, that groundwater is not yet safe. And yet, Rise still wants to risk flushing (or leaking whenever Rise abandons its system) such potentially polluted water into Wolf Creek, adding more reasons for NID customers downstream to be "skeptical" of such water quality.

What is the estimated cost of Rise creating and operating that treatment plant 24/7/365 for 80 years and beyond? What financial assurances for what reclamation plan could Rise ever feasibly imagine providing? How can Rise be trusted to pay for that water treatment,

considering its admitted, SEC filing reported, deficient financial condition (Exhibit A) and Rise's likely inability to obtain sufficient "financial assurances?" Any real, due process *Calvert/Hardesty* trial of these objector disputes must include consideration of what "reclamation" and "financial assurances" would be required, both judging from that Hinkley reclamation struggle and as to more realistic reclamation needs after Rise's mining ceases (and when such water treatment and other safety, mitigations, and protection measures stop).

Again, as further detailed in Exhibits D and E, none of such Rise Petition's or SEC filings' admitted Emgold activity could likely evidence of having created or preserved or otherwise supported any predecessor vested rights for any Rise vested rights claim. (Recall that everyone in the predecessor chain on each parcel must have vested rights for each type of use or operation to avoid a disqualifying lapse.) Even if Emgold had some objective intent to restart the mine (which objectors dispute and Rise has not proven), under the applicable circumstances of nonuse, dormancy, discontinuance, abandonment, etc., that intention could not support Rise's vested rights, since such conduct or intentions were not accompanied by any relevant mining or nonconforming uses (again on a use-by-use and parcel-by-parcel basis). Consider, among other things, that such miners could not comply with all the applicable laws and regulations (whether as amendments, upgrades, or new reforms) in effect since 1954 during the period of nonuse and abandonment before Emgold's 2003 acquisition. **Even if somehow predecessor Emgold were relevant to these disputes, Rise admits (Exhibit A) at SEC 10K pp. 35 that Emgold's intention was not to expand and do intensive mining like in the EIR/DEIR Rise plan, but rather (consistent with Emgold's admitted "exploration drill program"). That predecessor only explored on two different sites "both targeting near surface mineralization around historic workings" (and, again, this is a parcel-by-parcel vested rights issue as demonstrated in *Hansen* and *Hardesty),* whereas Rise's current plan is for deeper underground mining in different places never mined or even adequately explored.** (emphasis added) No one should imagine that anyone in 1954 or 1956 had any intention to do what Rise proposes to do now, and objectors will dispute any contrary claim by Rise, as well as any claim of Emgold's "exploration" activities providing any qualifying support for Rise's vested rights claim to mine as and where it now proposes.

Moreover, **applying the required "objective standard" for future intent (see *Hardesty, Hansen*, et al) ,** no one on 10/10/1954 or in 1956 (when the abandoned mine flooded and closed) could have had any intent to reopen the mine for what Rise wants to do now and where in that new, unexplored area of the 2585-acre underground mine. Not only was the mine abandoned, but no effort was made to preserve any restart opportunity, at least until that ineffectual Emgold dabbling in 2003 (which objectors contend was insufficient for Rise vested rights claims and not a "mining" "use"). Mining historians can prove how everything changed radically between the start of 1954 or 1956 (or the more precise date in 1955) and any relevant modern dates in dispute with Rise, since in 1954 and 1956 underground mining was largely still reliant on manual labor using hand tools and dynamite for excavation (as distinct from modern machinery and explosives). None of such equipment or explosives were at all comparable in any relevant ways or "intensity," especially where intensity considers the impact on the adjacent victims, not just the volume of what is taken from the ground. The primitive science at that ancient time was all progressively superseded by more modern science in every field, safety regulations and practices, and 1954-1956 environmental considerations were absurdly lax (and,

of course, resisted by the industry, to which Rise may discover is not the standard, especially consider the differences in the mindsets of the investors in 1954 versus now whose money funds these speculator miners. Who in 1954 would imagine funding this expensive, all-or-nothing gamble admitted in Rise's SEC filings (Exhibit A] where they must fund "upfront" years before any possible revenue, much less profits, the huge cost of dewatering, reopening, restoring the old mine, constructing infrastructure, and then exploring for possible gold in the unknown new underground mining area in 76 miles of new tunnels without any evidence of proven gold reserves, even assuming those investors and miners choose to ignore (as "someone else's problem" if the gold is insufficient) the cost of compliance with expensive regulatory requirements, legal conditions and mitigations, and, ultimately performing "reclamation plan" and "financial assurances."

How can objectors be so confident in our history versus Rise's alternative? Consider this additional circumstantial evidence. Because of the absence of meaningful laws and enforcement, ancient mine owners in 1954 generally did as they wished (like the words in the Rise Petition at 58: "without limitation or restrictions"). They would never have imagined in 1954 what changes law reforms would require of miners today, even from those claiming disputed vested rights like Rise. Centennial will be an effective case study to follow-up objections defeating the Rise Petition, which incorrectly bases its continuity of operations on the least possible toxic parcels: Centennial. Stated another way, even if Rise could somehow prove its predecessors intended the practical industry evolution for cost efficiency of mining science, infrastructure, equipment, and techniques (which objectors dispute), those predecessors would never have imagined the embedded and added changes required by parallel (but lagging since reform was invariably a reaction to disasters from abuses) evolving regulation and law reforms for environmental, worker, community, and other safety and welfare protections. That lack of "objective" "intent" by "aggressive" 1954 miners to comply with such future laws and regulations did not mean they were dutiful or correct about their record keeping, which is reflected in generally unreliable industry record keeping, where they recorded what they wanted known or what they chose to imagine, too often with little apparent regard for the applicable realities or comprehensiveness for modern vested rights purposes. See Exhibits D and E for more examples and rebuttal.

8. As A Discretionary Decision (Like the Denial of Vested Rights to the Blue Lead Mine), CEQA Applies To Any Rise Vested Rights Determination, Presenting Another Reason Why The Record EIR/DEIR Objections And Others Are Incorporated Herein And Applicable To Defeat the Rise Petition Also For Noncompliance.

Without CEQA to compel disclosure of what Rise plans to do in exercising its vested rights, there could be massive uncertainties complicating the litigation. Fortunately, the California Supreme Court held that approval (as distinguished from denial) of a vested right is a "discretionary act" that is adjudicative (and not ministerial) as established by *Calvert,* thereby triggering the County's obligation to comply with CEQA. ***Communities For a Better Environment v. South Coast Air Quality Management District*** (2010), 48 Cal. 4th 310 (existence of a vested right cannot insulate a project from a CEQA review: "That a particular mitigation measure may be infeasible or precluded, as by applicant's vested rights, is not a justification for not

performing environmental review; it does not excuse the agency from following the dictates of CEQA and realistically analyzing the project's effects….") Also, *Calvert* followed the analysis of SMARA #2776 in **"**Ramsey**"** (i.e., *People v. Dept. of Housing-Community Dev.* (1975), 45 Cal.App.3d 185, 193-94, holding that construction of a mobile home park was, at least in sufficient part, a discretionary act subject to CEQA) and cases cited therein. CEQA is critical here, where Rise plans to "expand" (double from 72 miles of tunnels to 76 more miles of tunnels) the size of the mine in a new and deeper area separate from prior mining, plus radically increase the "intensity" of that new mining (24/7/365 for 80 years of modern equipment, techniques, blasting explosives, etc. which did not exist in 1954, 1955, or 1956.) Compare Rise SEC filing admissions in Exhibit A with the objections to the EIR/DEIR. Also, by closing and allowing the abandoned mine to flood in 1956, especially under the known circumstances, is clearly a sufficient "abandonment" that defeats any vested rights claim by Rise.

9. Concluding Comments.

For those reasons and others that can be briefed and proven in legally appropriate, multi-party constitutional proceedings consistent with *Calvert, Hardesty,* and objectors' requests herein, objectors contend that Rise cannot have any meritorious vested rights claim, whether by false analogy to inapplicable SMARA or by other law. If the County nevertheless insists on considering such meritless Rise claims, then the County should equally consider the competing constitutional, legal, and property rights of objectors owning the surface above and around the 2585-acre underground mine. Objectors urge the County properly to address that dispute, as best it can within the time constraints, consistent with full due process and equal protection for objectors in the kind of constitutional process mandated by the *Calvert and Hardesty* decisions and other authorities. This is, and will continue to be, a multi-party dispute in which objectors are defending our families' health and welfare, our groundwater, environment, and properties, and our community's way of life from the IMM menace. Objectors will be no less resolute in such defenses than Rise is in its intruding impacts, and the County should recognize that reality in its planning as suggested above, including for a Summary Due Process Proceeding. Thank you for considering the objectors' views.

The undersigned execute this Petition as of this 29th day of September 2023, for themselves and on behalf of any groups they choose to represent for this process from time to time, which groups may evolve during these dispute processes. As with respect to the "Ad Hoc Mine Opposition Group" (in formation) announced in the Engel Objections, some groups may focus on particular disputes from time to time as the issues of greatest concern to them arise, in some cases planning, like the Ad Hoc Mining Group, to join in when these disputes either the court processes to come or the administrative process raises some special issue sooner where that group's support could be useful. In any event, the execution of this Petition by the leader or founder of such groups includes a placeholder reservation for his or her such group to join in the dispute if, as, and when desired from time to time. (That group reservation is intended to reduce any technical "intervention" disputes later in such court or other process.)

Engel Law, PC

_____
By G. Larry Engel

_____
G. Larry Engel

[Others May Sign Counterparts or Submit Joinders]

TABLE OF EXHIBITS

Engel Law, PC
G. Larry Engel
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September 29, 2023

Exhibit A: Selected Admissions From Current Rise Gold Corp SEC Filings And the EIR/DEIR, Often Inconsistently.

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, Especially When Rise Is Using Two Alternative Realities Inconsistent With Each Other, As Regards Centennial.

What follows includes **admissions by Rise** in its **SEC filings** that were incorrectly excluded by the EIR/DEIR enablers and County staff in the pending EIR/DEIR disputes with objectors, plus other filing admissions that are added to this Petition on account of their being relevant to additional issues in disputing Rise's vested rights claims. This error is now critical to resolve because of material inconsistencies between (a) the stories Rise is telling the SEC and its investors versus (b) the claims made in the EIR/DEIR and related presentations. While the County staff, the County Economic Report, and the County Staff Report all incorrectly enabled Rise's improper "alternate realities," the objectors nevertheless protested them, including in the massive Engel Objections (and its incorporations of key parts from a score of other objections), as incorporated herein. What needs to be added is the new game Rise is playing where it is now claiming inconsistently that at the same time: (a) the Centennial project is (and has been) physically, legally, and operationally separate in all material respects from the Brunswick project, including the 2585-acre underground mine, so 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 CEQA disclosures about Centennial), but (b) somehow for Rise's vested rights claims, massive and prolonged dumping of Rise mine waste from the new mining (and the related repairing of the flooded old mine) in the 2585-acre new mining areas are not an "expansion" or a "new operation" or a new "intensity" that would contradict and defeat Rise's vested rights story. Stated another way, Rise cannot have both CEQA exclusion for Centennial and vested rights for including Centennial in the new mining project. See section III below discussing Rise's SEC 10K filing admissions on this topic versus both the disputed EIR/DEIR and the Engel Objections and others thereto. Because of those inconsistencies 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 to Rise's new vested rights claims, Rise has created what the *Hardesty* court called a "muddle" that creates massive disabilities for Rise's burden of proof on all the critical vested rights hands as well as adding many new defenses for objections to the vested rights, such as "unclean hands," "bad faith," "estoppels," "waivers," evidentiary bars and exclusions, and many more in particular issues. (For example, under these circumstances and in this kind of administrative process, there cannot now be "substantial evidence" to support either Rise's vested rights claims or Rise's EIR/DEIR claims, and 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.) Whenever the law of evidence is allowed to apply Rise cannot prevail, and the County should basically insist that Rise start all

over with one comprehensive, consistent, sufficiently detailed, admissible evidentiary appropriate presentation of the reality to litigate with objectors. While it may be possible to litigate alternative legal theories, Rise cannot expect the County to approve and objectors to litigate "alternate realities" inconsistently asserted by Rise to suit each alternative legal theory.

Also, the base objections to the EIR/DEIR, including use of admissions in the EIR/DEIR against itself, are also incorporated by reference herein to avoid repetition, although some may be summarized to support arguments in this Petition against Rise's vested rights claims. Those include the 1000 pages in Engel Objections to the EIR/DEIR, as well as the more than a score of other objectors' filings cross-referenced and incorporated therein. For example, as noted in Exhibit __ and the foregoing Petition the following facts defeat Rise's vested rights claims, at least in relevant parts: (i) Rise admits that the ancient mining claimed by Rise before the 2585-acre underground mine closed and flooded in 1956 worked separate areas off a 72 mile tunnel system using ancient mining techniques, whereas what Rise proposes to mine will be an ***expansion into a different and deeper area*** off a different 76 miles of tunneling whose conditions Rise can only make disputed guesses about, just as Rise must guess about the conditions in the flooded existing mine; (ii) Rise admits (e.g., DEIR at 6-14) that the entire new mining project is not economically feasible unless it can so mine underground as it proposes 24/7/365 for 80 years, which is a dangerous and provocative ***intensity*** never before attempted in that mine or any comparable others Rise can cite; (iii) Rise admits that it is using new mining techniques (compared to the prior mine uses), including adding hexavalent chromium cement paste to shore up the new underground mine by creating mine waste bracing columns that will be exposed to dewatered groundwater traveling through the mine to in a new dewatering system to a **new** purported treatment facility and then to be flushed into the Wolf Creek and away downstream which is both new and more intense than the prior mining on which vested rights depend; (iv) Rise admits that when the new mining stops, whether because the **new project** is completed or abandoned by Rise or because the electricity or other mine dewatering features fail for any reason, the mine will again flood, except this time the flooded area could be twice the size as before and the water may be much more toxic, and no longer "treated," a serious issue because the ghost town of Hinkley, CA, which died with many of its residents from hexavalent chromium as shown in the movie *Erin Brockovich*, has still been unable to remediate its toxic ground water (e.g., www.hinkleygroundwater.com); (v) Rise admits that it plans to construct a **new water treatment facility** to treat the likely toxic water from the **new mine watering system**, unlike anything in the old mine; (vi) Rise admits that it plans to enter into a **new business of selling mine waste as purported/rebranded "engineered fill**," which is disputed by many objectors, but a new business compared to historical uses; (vii) Rise admits that it plans to **dump its mine waste on the already toxic, separate Centennial mine site surface**, where it must be watered frequently each day, 24/7/365, for years to suppress fugitive dust full of asbestos and other toxins, and now potentially the newly added hexavalent chromium, as described in the Engel Objections and others; (viii) all that new activity will require massive **new, expanded, and intense operations and other activities for mitigation, remediation, and reclamation**; (viii) many other things that are expanded, new, and much more intense, as noted in this Petition (including Exhibits) and the Engel Objections and others.

Because Rise cannot any longer incorrectly, exclude rebuttal and other objector evidence of Rise's admitted lack of financial resources to fund any of the material activities, construction, or operations it contemplates, much less the additional ones the County or courts may require in response to many objections, it is inevitable that mitigations, reclamation, and remediations will be much different and more intense, since it is always harder to fix a problem Rise creates than to avoid the problem in the first place. See the Engel Objections and others rebutting the EIR/DEIR with economic feasibility challenges, including based on Rise SEC admissions below. First, rebuttal and impeachment evidence is always allowed by the courts to defeat such claims, especially from admissions and from SEC filings, as demonstrated not in such objections, but by controlling court precedents such as ***Communities for a Better Environment v. City of Richmond*** (2010), 184 Cal. App.4th 70, where objectors' use of Chevron SEC filing admissions defeated Chevron's EIR. In any event, whatever the Rise reclamation requirements will be determined to be in these disputes with objectors, the related work and improvements will be new, expanded, and more intense compared to the historical mine on which Rise purports to base its vested rights claims.

More fundamentally, as demonstrated in the Engel Objections and others, Rise's disputed EIR/DEIR is full of errors, omissions, and worse, such that, when the reality is exposed at trial on the merits where the courts can and will consider all the evidence, the full extent of each factor in the Rise vested right claim will be much worse than what lesser portion Rise revealed in its EIR/DEIR and other filings. As discussed in the Petition, CEQA (as still applicable) and vested rights require what *Gray* calls "common sense" and *Vineyard, Banning, and Costa Mesa* call "good faith reasoned analysis," all of which Rise's claims lack. Thus, any vested rights dispute will include both what Rise admits and reveals, plus all the other realities that are exposed in the disputes. That means the real comparison for Rise vested rights claims is not just what Rise choose to reveal about the old underground mine versus the new underground mine and related things, but 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 many EIR/DEIR objections, including the Engel Objections, is that the groundwater impacts of the mining are grossly understated by Rise, both as to the number and locations of the existing wells, but also as to the right of us objecting surface owners living above and around the 2585-acre mine to create new 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 surface owner's groundwater. See the Supreme Court ruling in Keystone, discussed in the Petition and in such EIR/DEIR objections. To comply with the water wrongs Rise will be committing it would need to go into the new business of delivering replacement water as an interim mitigation of its damages, and ultimately, if Rise persists, it would have to create a replacement water system as the court required under similar circumstances in the controlling case of **Gray v. County of Madera,** that not only defeats the EIR/DEIR as such Engel Objections and others demonstrate, but also now will defeat Rise's vested rights claims. Failing that full mitigation in reality (not incredible fantasies), anyone (including a governmental authority) that allows Rise to "take" surface owner groundwater will be liable for inverse condemnation, nuisance, and other wrongs, as discussed in the Petition and other objections.

II. General Admissions from Rise's SEC Form 10Q for the Quarter Ending 10/31/2022 (Updating from the Prior 10Q Addressed in my DEIR Objection 254 #2). [Note that the lack of current SEC reporting data is another problem for Rise, for example, creating a basis for objectors to ask if Rise is trying to avoid admitting even worse facts by delaying filings.]

A. General Admissions About the Speculative Nature of Rise As a Hypothetical "Going Concern" from the Footnotes of Its Current Financial Statements Qualified By Its Accountant, Defeating Any Credibility For Reclamation And Demonstrating Why Sufficient Rise Financial Assurances Will Not Be Achievable.

As described in FN1 to the financial statements reporting the massive financial losses and problems described herein, with 10/31/22 working capital of only $66,526: "The ability of the Company to continue as a going concern is dependent on the Company's ability to maintain continued support from its shareholders and creditors and to raise additional capital and implement its business plan. There is no assurance that the Company will be able to obtain adequate financing in the future or that such financing will be on terms advantageous to the Company. These events and conditions cast significant doubt about the Company's ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern." While Rise, the EIR/DEIR team, and County staff (even the County Economic Report team) have tried to evade any consideration of Rise's financial condition, capabilities, or credibility, that is no longer possible because even SMARA recognizes that reclamation is the key to any vested rights, and reclamation cannot be satisfactory without credible and required "financial assurances" that Rise cannot provide, even for the less expensive reclamation plans disputed by objectors as grossly insufficient and non-compliant. Moreover, the County should also be more generally concerned about how it and others harmed by any Rise conduct creating liability can be compensated when Rise shows no ability to satisfy any significant judgment against it. That Rise lack of financial responsibility should be considered for governmental caution not sufficiently shown so far in these Rise processes, in effect not only justifying objectors' concerns about the harms from such Rise mining and related activities, but also who will bear the cost of remediating and cleaning up any such harms during operations, much less the ultimate reclamation burdens at the end of this ordeal.

B. General Financial Data as of 10/31/2022.

Rise reports little cash ($166,805) [even less than compared to the 7/31/22] for the period, and that cash will not be sufficient to fund any of its EIR/DEIR goals, especially those relating to the "aspirational" safety and mitigation issues of concern to the objectors and likely the lesser priorities for the miner once it has obtained its disputed EIR approval and has then begun its meritless defense to the objectors' legal, political, and law reform resistance to protect objectors' homes, groundwater and other property rights and values, our forests and environment, and our way of life in our community above and around the 2585-acre underground mine. Rise's other current assets are not material, and its noncurrent assets are

just the speculative mine and equipment that has little value absent massive additional investment needed even to begin mining (e.g., dewatering and updating to a starting position the mine condition from being closed and flooded since 1956, as to which there are insufficient reliable and useful information, many likely dangerous conditions unaddressed by the disputed DEIR/EIR, and massive admitted risks). That is why the disputed $4,149,053 "book value" of the mine (including Centennial, Brunswick, and the underground mine) and $545,783 equipment are qualified by the Rise accountant as dependent on the disputed assumption that Rise remains a "going concern" which the accountant and Rise itself admit is speculative.

Note that the most current reported information on expenses and losses (for the three months ending 10/31/2022, which is comparable to prior periods shown) declares an operating (expense) loss of $702,522 and a Net Loss for the period of $684,538, which losses will continue (and objectors expect to prove would dramatically increase) until at best the start of profitable mining which will be long delayed and may never occur for many reasons, whether for lack of working capital, lack of sufficient accessible gold, objectors resistance and resulting lack of investment or credit, worse than expected mining conditions, and other factors that Rise and its accountant admit cause this to be a highly speculative enterprise, as demonstrated above and in objections to the EIR/DEIR. For example, the 10Q reports for the most current reported three months of "Cash Flows From Operating Activities (showing a "loss for the period" of $684,538 and "net cash used in operating activities" of $305,113) that will quickly exhaust the current cash on hand long before not only any net cash flow is produced by the mining, but also long before the potential value of the long closed and flooded mine can even be evaluated for its actual, potential value. FN 1 reports working capital on 10/31/22 of only $66,526. But see other data on page 19. Note also from FN 1 that its "accumulated deficit" (loss) is $23,693,142. [However, note that on 10Q at p. 18 in the "Results of Operations" discussion of "expenses" for that period ending 10/3/1/2022 there are different numbers reported that are larger but still comparatively small, i.e., $105,570 for consulting, $123,989 for geological, mineral, and prospect costs, and $154,096 for "professional fees."]

C. Mining And Other Risk Related Admissions by Rise.

For any such EIR/DEIR mining and related activities, legal compliance, vested rights' reclamation, and other operations, Rise needs (and lacks) vastly more financial resources, especially working capital and the credit needed for compliant "financial assurances" for vested rights reclamation. This SEC 10Q filing admits various things that are directly or indirectly contrary to or inconsistent with the EIR/DEIR or which support any or all of the four Engel Objections, as well as those of others, including the admitted reality that Rise lacks the working capital, financial resources, and capacity to perform its material obligations with respect to the mine, especially regarding the CEQA, vested rights duties (e.g., reclamation and related financial assurances), and other safety or mitigation "aspirations" proposed or required by the EIR/DEIR and other Rise presentations. In effect, if the County were to approve the EIR or vested rights it would be imposing massive harms, risks, and problems on us local objectors for no net benefit to us or the community that Rise admits are **reasons why even voluntary investment in this mine would be a speculative investment for even the most risk tolerant investors.** For

example, consider the following such 10Q admitted reasons for disapproving the EIR and rejecting vested rights:

a. "As of the date of these consolidated financial statements, the Company has not established any proven or probable reserves on its mineral properties and has incurred only acquisition and exploration costs." At p.7
b. "Our business, financial condition, and results of operations may be negatively affected by economic and other consequences from Russia's military action against Ukraine and the sanctions imposed in response to that action." "Risk Factors at p. 21. [Is this a subtle way of warning us that the suspected real party in interest "behind the curtain" successor maybe someone/some entity who presents even greater risks than Rise, such as, for example, someone vulnerable to such Russian sanctions or similar disabilities?]
c. "We will require significant additional capital to fund our business plan." Risk Factors at p. 22-23. Consider the detailed admissions that follow that admission:

> We will be required to expend significant funds to determine whether proven and probable mineral reserves exist at our properties, to continue exploration and, if warranted, to develop our existing properties, and to identify and acquire additional properties to diversify our property portfolio. We anticipate that we will be required to make substantial capital expenditures for the continued exploration and, if warranted, development of our I-M Mine Property. We have spent and will be required to continue to expend significant amounts of capital for drilling, geological, and geochemical analysis, assaying, permitting, and feasibility studies with regard to the results of our exploration at our I-M Mine Property. We may not benefit from some of these investments if we are unable to identify commercially exploitable mineral reserves.
>
> Our ability to obtain necessary funding for these purposes, in turn, depends upon a number of factors, including the status of the national and worldwide economy and the price of metals. Capital markets worldwide were adversely affected by substantial losses by financial institutions, caused by investments in asset-backed securities and remnants from those losses continue to impact the ability for us to raise capital. We may not be successful in obtaining the required financing or, if we can obtain such financing, such financing may not be on terms that are favorable to us.
>
> Our inability to access sufficient capital for our operations could have a material adverse effect on our financial condition, results of operations, or prospects. Sales of substantial amounts of securities may have a highly dilutive effect on our ownership or share structure. Sales of a large number of shares of our common stock in the public markets, or the potential for such sales, could decrease the trading price of those shares and could impair our ability to raise capital through future sales of common stock. We have not yet commenced commercial production at any of our properties and, therefore, have not generated positive

cash flows to date and have no reasonable prospects of doing so unless successful commercial production can be achieved at our I-M Mine Property. We expect to continue to incur negative investing and operating cash flows until such time as we enter into successful commercial production. This will require us to deploy our working capital to fund such negative cash flow and to seek additional sources of financing. There is no assurance that any such financing sources will be available or sufficient to meet our requirements. There is no assurance that we will be able to continue to raise equity capital or to secure additional debt financing, or that we will not continue to incur losses.

d. ***"We have a limited operating history on which to base an evaluation of our business and prospects." Risk Factors at p.23.*** Consider the detailed admissions that follow that admission and which raise the question: why aren't those additional investigations being required and done in advance of the EIR approval, especially since the EIR/DEIR ignores objector demands for a commentary about the adverse consequences us neighbors fear if the EIR miner dewaters and otherwise creates a mess and then (before any of the mitigation or other safety work) abandons the project as infeasible? Such advance work should include what the 10Q plans for later after approval as follows:

Since our inception, we have had no revenue from operations. We have no history of producing products from any of our properties. Our I-M Mine Project is a historic, past-producing mine with apart from the exploration work that we have completed since 2016 has had very little recent exploration work since 1956. We would require further exploration work in order to reach the development stage. Advancing our I-M Mine Property into the development stage will require significant capital and time, and successful commercial production from the I-M Mine Property will be subject to completing feasibility studies, permitting and re-commissioning of the mine, constructing processing plants, and other related works and infrastructure. As a result, we are subject to all of the risks associated with developing and establishing new mining operations and business enterprises including:

- completion of feasibility studies to verify reserves and commercial viability, including the ability to find sufficient ore reserves to support a commercial mining operation;
- the timing and cost, which can be considerable, of further exploration, preparing feasibility studies, permitting and construction of infrastructure, mining and processing facilities;
- the availability and costs of drill equipment, exploration personnel, skilled labor, and mining and processing equipment, if required;
- the availability and cost of appropriate smelting and/or refining arrangements, if required;

- compliance with stringent environmental and other governmental approval and permit requirements;
- the availability of funds to finance exploration, development, and construction activities, as warranted;
- potential opposition from non-governmental organizations, local groups or local inhabitants that may delay or prevent development activities;
- potential increases in exploration, construction, and operating costs due to changes in the cost of fuel, power, materials, and supplies; and
- potential shortages of mineral processing, construction, and other facilities related supplies.

The costs, timing, and complexities of exploration, development, and construction activities may be increased by the location of our properties and demand by other mineral exploration and mining companies. It is common in exploration programs to experience unexpected problems and delays during drill programs and, if commenced, development, construction, and mine start-up. In addition, our management and workforce will need to be expanded, and sufficient support systems for our workforce will have to be established. This could result in delays in the commencement of mineral production and increased costs of production. Accordingly, our activities may not result in profitable mining operations and we may not succeed in establishing mining operations or profitably producing metals at any of our current or future properties, including our I-M Mine Property.

e. ***"We have a history of losses and expect to continue to incur losses in the future" Risk Factors at p.23.*** Consider the detailed admissions that follow that admission and which raise the question, under these many admitted uncertain and high-risk circumstances, why is it not the EIR/DEIR that is "speculative" instead my objections, as the disputed EIR/DEIR continues incorrectly to assert. For example, consider these quoted 10Q admissions (emphasis added):

We have incurred losses since inception, have had negative cash flow from operating activities, and expect to continue to incur losses in the future. **We have incurred the following losses from operations during each of the following periods:**

- **$3,464,127 for the year ended July 31, 2022**
- **$1,603,878 for the year ended July 31, 2021**
- **$5,471,535 for the year ended July 31, 2020**

We expect to continue to incur losses unless and until such time as one of our properties enters into commercial production and generates sufficient revenues to fund continuing operations. We recognize that if we are unable to generate significant revenues from mining operations and/or dispositions of our properties, **we will not be able to earn profits or continue operations.** At this early stage of

> our operation, we also expect to face the risks, uncertainties, expenses, and difficulties frequently encountered by companies at the start-up stage of their business development. **We cannot be sure that we will be successful in addressing these risks and uncertainties and our failure to do so could have a materially adverse effect on our financial condition. (emphasis added)**

What that implies is not just an unhappy fate for investors, but a worse result for us local surface owners above and around the 2585-acre underground mine, a topic which the EIR/DEIR incorrectly refuses to address as too "speculative," although the reverse is more true; i.e., as so admitted, shortly after the Rise investors and creditors lose hope for their gamble, they will cease supporting Rise and it will collapse, leaving a mess for us neighbors and our bigger community that the EIR/DEIR refuses to discuss but which (as a bankruptcy lawyer with vast experience in such situations) Some objectors report having seen such problems too many times and can describe for the bankruptcy or other courts that most likely will resolve the disputes that must follow any EIR or vested rights approval by the County. See the Engel Objections.

Again, these admissions defeat the level of certainty incorrectly implied in the EIR/DEIR to the contrary and wrongly asserted as grounds for ignoring objections as too speculative or unsubstantiated or unexplained, because such admissions confirm the correctness of objections, at least to the extent of requiring a meaningful EIR/DEIR "good faith reasoned analysis" and "common-sense" risk assessment in the DEIR/EIR where none now exists. These problems are even more serious in the vested rights disputes, making the granting of vested rights to evade the permitting process even more dangerous for us objectors and the County. In particular, for example, as described in Engel's DEIR Objection 254 #'s 2, 4, 14, and 15, it is not speculative (as the disputed EIR incorrectly claims) that us objectors living on the surface above and around the 2585-acre underground mine will enforce our defensive rights to protect our homes, environment, and property rights and value, our forests and environment, and our community way of life against this mining menace with not just the usual legal challenges, but also with law reforms and political changes.

D. SEC Filing Admitted "Risks Related to Mining and Exploration."

Consider the detailed 10Q admissions that follow that forgoing admission and which raise the question, under these many admitted uncertain and high-risk circumstances, why is it not the EIR/DEIR that is "speculative" instead my objections, as the disputed EIR/DEIR continues incorrectly to assert. For example, consider these quoted 10Q admissions (with emphasis added):

(i)"The I-M Mine Property is in the exploration stage. There is no assurance that we can establish the existence of any mineral reserve on the I-M Mine Property or any other properties we may acquire in commercially exploitable quantities. Unless and until we do so, we cannot earn any revenues from these properties and if we do not do so we will lose all of

the funds that we expend on exploration. If we do not discover any mineral reserve in a commercially exploitable quantity, the exploration component of our business could fail." 10Q at p. 24:

We have not established that any of our mineral properties contain any mineral reserve according to recognized reserve guidelines, nor can there be any assurance that we will be able to do so.

A mineral reserve is defined in subpart 1300 of Regulation S-K under the Securities Act of 1933, as amended (the "Securities Act") and the Exchange Act ("Subpart 1300") as an estimate of tonnage and grade or quality of "indicated mineral resources" and "measured mineral resources" (as those terms are defined in Subpart 1300) that, in the opinion of a "qualified person" (as defined in Subpart 1300), can be the basis of an economically viable project. In general, **the probability of any individual prospect having a "reserve" that meets the requirements of Subpart 1300 is small, and our mineral properties may not contain any "reserves" and any funds that we spend on exploration could be lost. Even if we do eventually discover a mineral reserve on one or more of our properties, there can be no assurance that they can be developed into producing mines and that we can extract those minerals. Both mineral exploration and development involve a high degree of risk, and few mineral properties that are explored are ultimately developed into producing mines.**

The commercial viability of an established mineral deposit will depend on a number of factors including, by way of example, the size, grade, and other attributes of the mineral deposit, the proximity of the mineral deposit to infrastructure such as processing facilities, roads, rail, power, and a point for shipping, government regulation, and market prices. **Most of these factors will be beyond our control, and any of them could increase costs and make extraction of any identified mineral deposit unprofitable.**

(ii)"The nature of mineral exploration and production activities involves a high degree of risk and the possibility of uninsured losses." 10Q at p. 24:

Exploration for and the production of minerals is highly speculative and involves greater risk than many other businesses. Most exploration programs do not result in mineralization that may be of sufficient quantity or quality to be profitably mined. Our operations are, and any future development or mining operations we may conduct will be, subject to all of the operating hazards and risks normally incidental to exploring for and development of mineral properties, such as, but not limited to:

- economically insufficient mineralized material;
- fluctuation in production costs that make mining uneconomical;
- labor disputes;
- unanticipated variations in grade and other geologic problems;
- **environmental hazards;**

- **water conditions;**
- **difficult surface or underground conditions;**
- **industrial accidents;**
- metallurgic and other processing problems;
- mechanical and equipment performance problems;
- **failure of dams, stockpiles, wastewater transportation systems, or impoundments;**
- **unusual or unexpected rock formations; and**
- **personal injury, fire, flooding, cave-ins and landslides.**

Any of these risks can materially and adversely affect, among other things, the development of properties, production quantities and rates, costs and expenditures, potential revenues, and production dates. If we determine that capitalized costs associated with any of our mineral interests are not likely to be recovered, we would incur a write-down of our investment in these interests. All of these factors may result in losses in relation to amounts spent that are not recoverable, or that result in additional expenses.

(iii). "Commodity price volatility could have dramatic effects on the results of operations and our ability to execute our business plan." 10Q at p. 25:

The price of commodities varies on a daily basis. Our future revenues, if any, will likely be derived from the extraction and sale of base and precious metals. The price of those commodities has fluctuated widely, particularly in recent years, and is affected by numerous factors beyond our control including economic and political trends, expectations of inflation, currency exchange fluctuations, interest rates, global and regional consumptive patterns, speculative activities and increased production due to new extraction developments and improved extraction and production methods. The effect of these factors on the price of base and precious metals, and therefore the economic viability of our business, could negatively affect our ability to secure financing or our results of operations.

(iv). "Estimates of mineralized material and resources are subject to evaluation uncertainties that could result in project failure." 10Q at p. 25:

Our exploration and future mining operations, if any, are and would be faced with risks associated with being able to accurately predict the quantity and quality of mineralized material and resources/reserves within the earth using statistical sampling techniques. Estimates of any mineralized material or resource/reserve on any of our properties would be made using samples obtained from appropriately placed trenches, test pits, underground workings, and intelligently designed drilling. **There is an inherent variability of assays between check and duplicate samples taken adjacent to each other and between sampling points that cannot be reasonably eliminated. Additionally, there also may be unknown geologic details that have not been**

identified or correctly appreciated at the current level of accumulated knowledge about our properties. This could result in uncertainties that cannot be reasonably eliminated from the process of estimating mineralized material and resources/reserves. If these estimates were to prove to be unreliable, we could implement an exploitation plan that may not lead to commercially viable operations in the future.

(v). "Any material changes in mineral resource/reserve estimates and grades of mineralization will affect the economic viability of placing a property into production and a property's return on capital." 10Q at p. 2:

As we have not completed feasibility studies on our I-M Mine Property and have not commenced actual production, we do not have mineralization resources and any estimates may require adjustments or downward revisions. In addition, the grade of ore ultimately mined, if any, may differ from that indicated by future feasibility studies and drill results. Minerals recovered in small scale tests may not be duplicated in large scale tests under on-site conditions or in production scale. (emphasis added)

(vi). "Our exploration activities on our properties may not be commercially successful, which could lead us to abandon our plans to develop our properties and our investments in exploration." 10Q at p. 25:

Our long-term success depends on our ability to identify mineral deposits on our I-M Mine Property and other properties we may acquire, if any, that we can then develop into commercially viable mining operations. Mineral exploration is highly speculative in nature, involves many risks, and is frequently non-productive. These risks include unusual or unexpected geologic formations, and the inability to obtain suitable or adequate machinery, equipment, or labor. The success of commodity exploration is determined in part by the following factors:

- the identification of potential mineralization;
- availability of government-granted exploration permits;
- the quality of our management and our geological and technical expertise; and
- the capital available for exploration and development work.

Substantial expenditures are required to establish proven and probable reserves through drilling and analysis, to develop metallurgical processes to extract metal, and to develop the mining and processing facilities and infrastructure at any site chosen for mining. Whether a mineral deposit will be commercially viable depends on a number of factors that include, without limitation, the particular attributes of the deposit, such as size, grade, and proximity to infrastructure; commodity prices; and government regulations, including, without limitation, regulations relating to prices, taxes, royalties, land tenure, land use, importing and exporting of minerals, and environmental protection. We may invest significant capital and resources in exploration activities and

may abandon such investments if we are unable to identify commercially exploitable mineral reserves. The decision to abandon a project may have an adverse effect on the market value of our securities and the ability to raise future financing.

(vii). "We are subject to significant governmental regulations that affect our operations and costs of conducting our business and may not be able to obtain all required permits and licenses to place our properties into production." 10Q at 26:

Our current and future operations, including exploration and, if warranted, development of the I-M Mine Property, do and will require permits from governmental authorities and will be governed by laws and regulations, including:

- laws and regulations governing mineral concession acquisition, prospecting, development, mining, and production;
- laws and regulations related to exports, taxes, and fees;
- labor standards and regulations related to occupational health and mine safety; and
- environmental standards and regulations related to waste disposal, toxic substances, land use reclamation, and environmental protection.

Companies engaged in exploration activities often experience increased costs and delays in production and other schedules as a result of the need to comply with applicable laws, regulations, and permits. Failure to comply with applicable laws, regulations, and permits may result in enforcement actions, including the forfeiture of mineral claims or other mineral tenures, orders issued by regulatory or judicial authorities requiring operations to cease or be curtailed, and may include corrective measures requiring capital expenditures, installation of additional equipment, or costly remedial actions. **We cannot predict if all permits that we may require for continued exploration, development, or construction of mining facilities and conduct of mining operations will be obtainable on reasonable terms, if at all. Costs related to applying for and obtaining permits and licenses may be prohibitive and could delay our planned exploration and development activities. We may be required to compensate those suffering loss or damage by reason of our mineral exploration or our mining activities, if any, and may have civil or criminal fines or penalties imposed for violations of, or our failure to comply with, such laws, regulations, and permits.**

Existing and possible future laws, regulations, and permits governing operations and activities of exploration companies, or more stringent implementation of such laws, regulations and permits, could have a material adverse impact on our business and cause increases in capital expenditures or require abandonment or delays in exploration. Our I-M Mine Property is located in California, which has numerous clearly defined regulations with respect to permitting mines, which could potentially impact the total time to market for the project.

Subsurface mining is allowed in the Nevada County M1 Zoning District, where the I-M Mine Property is located, with approval of a "Use Permit". Approval of a Use

Permit for mining operations requires a public hearing before the County Planning Commission, whose decision may be appealed to the County Board of Supervisors ("County Board"). **Use Permit approvals include conditions of approval, which are designed to minimize the impact of conditional uses on neighboring properties.**

On November 21, 2019 we submitted an application for a Use Permit to Nevada County (the "County"). On April 28, 2020, with a vote of 5-0, the County Board approved the contract for Raney Planning & Management Inc. to prepare an Environmental Impact Report and conduct contract planning services on behalf of the County for the proposed I-M Mine Project.

The Use Permit application proposes underground mining to recommence at the I-M Mine Property at an average throughput of 1,000 tons per day. The existing Brunswick Shaft, which extends to ~3400 feet depth below surface, would be used as the primary rock conveyance from the I-M Mine Property. A second service shaft would be constructed by raising from underground to provide for the conveyance of personnel, materials, and equipment. Processing would be done by gravity and flotation to produce gravity and flotation gold concentrates.

We propose to produce barren rock from underground tunneling and sand tailings as part of the project which would be used for creation of approximately 58 acres of level and useable industrial zoned land for future economic development in Nevada County. A water treatment plant and pond, using conventional processes, would ensure that groundwater pumped from the mine is treated to regulatory standards before being discharged to the local waterways. There is no assurance our Use Permit application will be accepted as submitted. If substantial revisions are required, our ability to execute our business plan will be further delayed.

In 1975, the California Legislature enacted the Surface Mining and Reclamation Act ("SMARA"), which required that all surface mining operations in California have approved reclamation plans and financial assurances. **SMARA was adopted to ensure that land used for mining operations in California would be reclaimed post-mining to a useable condition. Pursuant to SMARA, we would be required to obtain approval of a Reclamation Plan from and provide financial assurances to the County for any surface component of the underground mining operation before mining operations could commence. Approval of a Reclamation Plan will require a public hearing before the County Planning Commission.**

To approve a Reclamation Plan and Use Permit, the County would need to satisfy the requirements of California Environmental Quality Act ("CEQA"). CEQA requires that public agency decision makers study the environmental impacts of any discretionary action, disclose the impacts to the public, and minimize unavoidable impacts to the extent feasible. CEQA is triggered whenever a California governmental agency is asked to approve a "discretionary project". The approval of a Reclamation Plan is a "discretionary project" under CEQA. Other necessary ancillary permits like

the California Department of Fish and Wildlife ("CDFW") Streambed Alteration Agreement (if applicable) also triggers CEQA compliance.

In this situation, the lead agency for the purposes of CEQA would be the County. Other public agencies in charge of administering specific legislation will also need to approve aspects of the Project, such as the CDFW (the California Endangered Species Act), the Air Pollution Control District (Authority to Construct and Permit to Operate), and the Regional Water Quality Control Board (National Pollutant Discharge Elimination System (authorized to state governments by the US Environmental Protection Agency) and Report of Waste Discharge). However, CEQA's Guidelines provide that if more than one agency must act on a project, the agency that acts first is generally considered the lead agency under CEQA. All other agencies are considered "responsible agencies." Responsible agencies do need to consider the environmental document approved by the lead agency, but they will usually accept the lead agency's document and use it as the basis for issuing their own permits. **There is no assurance that other agencies will not require additional assessments in their decision-making process. If such assessments are required, additional time and costs will delay the execution of, and may even require us to re-evaluate the feasibility of, our business plan. (emphasis added)**

(viii). "Our activities are subject to environmental laws and regulations that may increase our costs of doing business and restrict our operations. 10Q at 27:

All phases of our operations are subject to environmental regulation in the jurisdictions in which we operate. Environmental legislation is evolving in a manner that may require stricter standards and enforcement, increased fines and penalties for non-compliance, more stringent environmental assessments of proposed projects, and a heightened degree of responsibility for companies and their officers, directors, and employees. **These laws address emissions into the air, discharges into water, management of waste, management of hazardous substances, protection of natural resources, antiquities and endangered species, and reclamation of lands disturbed by mining operations. Compliance with environmental laws and regulations, and future changes in these laws and regulations, may require significant capital outlays and may cause material changes or delays in our operations and future activities. It is possible that future changes in these laws or regulations could have a significant adverse impact on our properties**

(ix). "Regulations and pending legislation governing issues involving climate change could result in increased operating costs, which could have a material adverse effect on our business." 10Q at 27:

A number of governments or governmental bodies have introduced or are contemplating legislative and/or regulatory changes in response to concerns about the potential impact of climate change. Legislation and increased regulation regarding climate change could impose significant costs on us, on our future venture partners, if

any, and on our suppliers, including costs related to increased energy requirements, capital equipment, environmental monitoring and reporting, and other costs necessary to comply with such regulations. Any adopted future climate change regulations could also negatively impact our ability to compete with companies situated in areas not subject to such limitations. Given the emotional and political significance and uncertainty surrounding the impact of climate change and how it should be dealt with, we cannot predict how legislation and regulation will ultimately affect our financial condition, operating performance, and ability to compete. Furthermore, even without such regulation, increased awareness and any adverse publicity in the global marketplace about potential impacts on climate change by us or other companies in our industry could harm our reputation. The potential physical impacts of climate change on our operations are highly uncertain, could be particular to the geographic circumstances in areas in which we operate and may include changes in rainfall and storm patterns and intensities, water shortages, changing sea levels, and changing temperatures. These impacts may adversely impact the cost, production, and financial performance of our operations.

(x). "Land reclamation requirements for our properties may be burdensome and expensive." 10Q at 28:

Although variable depending on location and the governing authority, land reclamation requirements are generally imposed on mineral exploration companies (as well as companies with mining operations) in order **to minimize long term effects of land disturbance.**

Reclamation may include requirements to:

- **control dispersion of potentially deleterious effluents;**
- **treat ground and surface water to drinking water standards; and**
- **reasonably re-establish pre-disturbance landforms and vegetation.**

In order to carry out reclamation obligations imposed on us in connection with our potential development activities, we must allocate financial resources that might otherwise be spent on further exploration and development programs. We plan to set up a provision for our reclamation obligations on our properties, as appropriate, but this provision may not be adequate. If we are required to carry out unanticipated reclamation work, our financial position could be adversely affected. (emphasis added)

(xi). "We may be unable to secure surface access or purchase required surface rights." 10Q at 28:

Although we obtain the rights to some or all of the minerals in the ground subject to the mineral tenures that we acquire, or have the right to acquire, in some cases we may not acquire any rights to, or ownership of, the surface to the areas covered by such mineral

tenures. In such cases, applicable mining laws usually provide for rights of access to the surface for the purpose of carrying on mining activities; however, the enforcement of such rights through the courts can be costly and time consuming. It is necessary to negotiate surface access or to purchase the surface rights if long-term access is required. **There can be no guarantee that, despite having the right at law to carry on mining activities, we will be able to negotiate satisfactory agreements with any such existing landowners/occupiers for such access or purchase of such surface rights, and therefore we may be unable to carry out planned mining activities. In addition, in circumstances where such access is denied, or no agreement can be reached, we may need to rely on the assistance of local officials or the courts in such jurisdiction the outcomes of which cannot be predicted with any certainty. Our inability to secure surface access or purchase required surface rights could materially and adversely affect our timing, cost, or overall ability to develop any mineral deposits we may locate. (emphasis added)**

(xii). "Our properties and operations may be subject to litigation or other claims." 10Q at 28:

From time to time our properties or operations may be subject to disputes that may result in litigation or other legal claims. We may be required to take countermeasures or defend against these claims, which will divert resources and management time from operations. The costs of these claims or adverse filings may have a material effect on our business and results of operations.

(xiii). "We do not currently insure against all the risks and hazards of mineral exploration, development, and mining operations." 10Q at 28:

Exploration, development, and mining operations involve various hazards, including environmental hazards, industrial accidents, metallurgical and other processing problems, unusual or unexpected rock formations, structural cave-ins or slides, flooding, fires, and periodic interruptions due to inclement or hazardous weather conditions. These risks could result in damage to or destruction of mineral properties, facilities, or other property, personal injury, environmental damage, delays in operations, increased cost of operations, monetary losses, and possible legal liability. We may not be able to obtain insurance to cover these risks at economically feasible premiums or at all. We may elect not to insure where premium costs are disproportionate to our perception of the relevant risks. The payment of such insurance premiums and of such liabilities would reduce the funds available for exploration and production activities. (emphasis added)

Again, all these Rise admissions defeat the level of certainty incorrectly implied in the EIR/DEIR to the contrary and wrongly asserted as grounds for ignoring objections as too speculative or unsubstantiated or unexplained, because such admissions confirm the correctness of objections, at least to the extent of requiring a meaningful EIR/DEIR good faith reasoned analysis and common-sense risk assessment in the DEIR/EIR where none now

exists. In particular, for example, it is not speculative (as the disputed EIR incorrectly claims) that us objectors living on the surface above and around the 2585-acre underground mine will enforce our defensive rights to protect our homes and property rights and value, our forests and environment, and our community way of life against this mining menace with not just the usual legal challenges, but also with law reforms and political changes.

E. Miscellaneous 10Q Admissions Inconsistent With Or Contrary to the EIR/DEIR.

The DEIR claims that there is no viable alternative to the mining of this property, because industrial uses would be too "intense," a bizarre idea that is contrary to "common sense" (the standard in *Gray v. County of Madera*) and for which the DEIR/EIR offers no "good faith reasoned analysis" (the standard in *Vineyard, Banning, and Costa Mesa)* as demonstrated in Engel Objections and others thereto, noting that nothing is worse or more "intense" than such 24/7/365 mining for 80 years with continuous resistance from the local victims of this mining menace. However, the 10Q states at p. 17: "**The Company would produce barren rock from underground tunneling and sad tailings as part of the project which would be used for creation of approximately 58 acres if local and useable industrial zoned land for future economic development in Nevada County, which is the alternative rejected by the DEIR/EIR as not viable and too "intense." (emphasis added) This intensity works against Rise's vested rights claims, as well as by adding an "expansion" to its business operations not contemplated in the prior mining.**

F. Miscellaneous Other Admitted Data from the 10Q.

As discussed at page 8 of the 10Q, Rise closed its purchase of the "Idaho-Maryland Gold Mine" property on 1/25/2017 for $2,000,000. It then purchased the 82-acre surface rights adjacent thereto for $1,900,000 closing on May 14, 2017. Including those purchase prices and related acquisition expenditures totaling $7,958,346, the Rise cumulative expenditures for this project have been $8,082,335. Thus, Rise's working investment after acquisition has only been modest, such as for that 10Q period $123,989, of which the only CEQA evaluation or risk relevant expenses have been $92,159 for "consulting" $2453 on "engineering," and $1596 for "supplies." No wonder that Rise has so little useful to say about the conditions regarding its mine, both the flooded part (still unevaluated in any sufficient way since 1956) and the new expansion area in the 2585-acre underground mine, because not only has Rise seemed eager to avoid discovering any inconvenient or worse truths or information, but Rise had insufficient working capital to investigate even if it had wished to risk acquiring the information us objectors expect to be true and damning to its goals for EIR/DEIR approval and vested rights claims.

As discussed at 10Q page 10, Rise borrowed $1,000,000 on 9/3/2019 secured by all of its (and its subsidiary's) mine and other assets due in full on 9/3/2023. The 10Q reported current balance is $1,491,308. The substantial warrants and high interest rate on the loan, which confirm the lender's belief in the high-risk nature of that loan against those mining assets (i.e., almost 8 to 1 loan principal to book value of assets plus the stock warrants). Various stock transactions are also described that raised the money already spent.

III. RISE ADMISSIONS IN ITS FORM 10K FOR THE FISCAL YEAR ENDED 7/31/2022 (FILED 10/31/2022) [Again Not Updated Yet By Rise.]

A. Admissions Regarding the Mine Property And Basic Context Data.

` 1. How Rise's 10K (at pp.34-38) Describes the IMM History And How That Compares To Rise's Vested Rights Claims.

Rise's 10K admits (at 34-35) that 1955 was "the final year of production from the mine." Thus, there has been no mining for vested rights acquisition since at least 1955, thus focusing on the comparison of the applicable law at that time to what Rise now proposes for vested rights mining. Compare this to the Nevada County's 1954 ordinance and State laws in 1954 laws versus what was done in that last 1955 year of mining operations, as discussed in *Hansen* in this Petition, including detailed analysis of that often-mischaracterized case by miners more correctly described in Exhibit __hereto. To be clear none of the work done at the mine since it closed and flooded in 1956 qualifies for vested rights, since it was only "exploration" or environmental testing, which even the Rise 10K excludes from mining activities by its admission at pp. 28: "Mineral exploration, however, is distinct from the definitions of 'sub surface mining' and "surface mining'" [making the point that miners in that M1 district zoned land could explore without a permit.] While Rise cites aggregate gold production numbers from 1866-1955 in its Table 3 at pp. 35, what matters for the vested rights dispute is what vested rights uses and intensities existed, for example, when the Nevada County ordinance addressed in Hansen was enacted compared to the nonconforming uses, if any, that occurred in 1955. Clearly, nonuse since 1956 cannot create any additional or enhanced vested rights, even under *Hansen* (much less under many other authorities that objectors cite [and will cite in later briefing] to defeat Rise's vested rights claims). While this is not the time or the place for briefing all objectors facts, evidence, and law for our trial briefs defeating the vested rights, it is instructive to consider this Rise 10K admission at 34, demonstrating that not much happened in 1954-55 of helpful relevance for Rise's vested rights claims, especially considering all the additional laws and regulations occurring after the mine closed and flooded in 1956 and even before since:"[mining was] forced to shut down by the US Government in 1942 (Shore 1943). Due to lack of development, a decline in gold production was experienced and recovery from war-time shutdown never occurred."

While Rise's 10K claims at pp. 34 that: "The I-M Mine Property and its comprehensive collection of original documents was rediscovered in 1990 by Consolidated Del Norte Ventures Inc, the predecessor company of Emgold Mining Corporation, and efforts were made to reopen the historic mine." During the period of what Rise called "Exploration & Mine Development 2003-2004" [skipping over in dead silence the period of nonuse or anything from 1956 to 2003], Rise claims (at pp. 34): "Development work during this period [2003-2004] included completion of a preliminary investigation of the mine records, publishing various technical reports on the I-M Property, leasing or purchasing adjacent properties [none of which would be eligible for vested rights because they were expansion, intensification, and otherwise barred by case law], various permit applications and associated environmental studies, development of a ceramics

technology process, and completion of an exploration program. Emgold was unsuccessful in reopening the historic mine due to inability to raise necessary funding in the midst of unfavorable market conditions." As described in this Petition, objectors dispute any such Emgold documentary evidence as consistent with Rise's description (e.g., that such "rediscovered" in 1990 pre-1956 records that were a 'comprehensive collection"), the law of evidence will exclude those purported records as admissible proof for any vested rights.

As to the relevant "history" summarized by the Rise 10K starting at p. 34, using what are described as "available historic records," which objectors assume means the portion of such historical records which Rise was able to find and chose to hunt down and locate, leaving for later litigation discovery the question of which possibly available records Rise chose not to seek or investigate. [While the 10K admits that "[h]istoric drill logs were not available for review and no historic drill core was preserved from past mining operations…" and objectors wonder what **reliable** evidence, if any, serves as the foundation for Rise's (and the EIR/DEIR's) purported analysis and what deficiencies exist to invalidate or discredit such analysis. Another discovery question is whether and to what extent the prior Emgold owner stopped its reported investigation merely (as Rise claims at 34-35) "due to inability to raise necessary funding in the midst of unfavorable market conditions" or whether they may also have been discouraged by negative information or clues of risks that would have to have been addressed in the EIR (if Rise had chosen to investigate them.) For example, the 10K reports that Rise purchased the "Emgold diamond drill program database" as distinct from all the historical documents of Emgold, as Rise did when it purchased from BET Group. In objectors' experience miners tend to be selective about what they want to know and what they avoid, because they might not want to know inconvenient truths or worse. Incidentally, Rise's efforts to dodge discovery claiming limits to the administrative record may work for CEQA disputes (although objectors do not waive any rights to seek such discovery by exceptions) do not apply to this vested rights dispute involving competing rights and claims between surface owners above and around the 2585-acre underground mine.

None of that Emgold activity could have created or preserved or otherwise supported any Rise vested rights claim. Even if Emgold had some intent to restart the mine, under the circumstances of nonuse, abandonment, etc., that intention could not support vested rights since it was not accompanied by any relevant mining or nonconforming uses, because, among other things, it could not comply with all the applicable laws and regulations taking effect since 1956 during the period of nonuse and abandonment before its 2003 acquisition. Even if somehow Emgold was relevant, Rise admits at pp. 35 that Emgold's intention was not to expand and do intensive mining like in the EIR/DEIR Rise plan, but rather (consistent with Emgold's "exploration drill program") on two different sites "both targeting near surface mineralization around historic workings, whereas Rise's plan was for deeper mining in different places. No one should imagine that anyone in 1956 had any intention to do what Rise proposes to do now, and objectors will dispute any contrary claim by Rise, as well as any claim of Emgold's exploration activities providing any support for Rise's vested rights claim.

Moreover, applying the objective standard for future intent, no one in 1956 when the mine flooded and closed could have had any intent to reopen the mine for what Rise wants to do now. Not only was the mine abandoned, but no effort was made to preserve any restart opportunity at least until that ineffectual Emgold dabbling in 2003. Mining historians can prove

how everything changed radically between 1956 and any relevant modern dates in dispute with Rise, since in 1956 underground mining was largely still reliant on manual labor using hand tools and dynamite for excavation (as distinct from modern machinery), none of the equipment was at all comparable, the times primitive science was all superseded by more modern science in every field, safety regulations and practices and environmental considerations were absurdly lax and, in the absence of meaningful laws and enforcement ancient miner owners did as they wished, which is also reflected in their record keeping where they recorded what they wanted known or imagined, without little regard for realities or comprehensiveness for modern vested rights purposes, ventilation systems, dewatering systems, and communication systems were dangerously primitive, etcetera. Dewatering in the 1950's was especially primitive with manual or the beginning of steam pumps which made the kind of dewatering needed in the IMM and planned by Rise literally imaginable in 1956. (Electric pumps did not begin to appear until well into the 1960's.) Among the factors leading to the 1956 closure was not just declining gold prices, but also depletion over decades of mining of easily accessible and high-grade gold, making mining more expensive and riskier, with many technology limits compared to the challenging conditions as well as the growing environmental concerns.

2. Some General Data Admissions About the IMM to Compare To the Disputed EIR/DEIR and the Vested Rights Claims

As stated in Rise's 10K at pp. 22+ the I-M Mine Project is described as a unified project comprised of "approximately 175 acres … surface land and … 2800 acres … of mineral rights" identified by maps and parcel data without any meaningful surface location data like roads or addresses. According to the 10K at pp. 25, that is comprised of "10 surface parcels" including 55 sub parcels (The "Brunswick" 37-acre site and related 82-acre "Mill" site, and the "mineral rights" area we call the "2585-acre underground mine" that the EIR/DEIR calls its CEQA project, as distinct from what the 10K calls the 56 acre "Idaho land" that the EIR/DEIR separates from that project and calls the "Centennial" dump site and on which no mining is contemplated. However, as explained in the Introduction to this Exhibit and elsewhere in the Petition, all of those parcels are described in Rise's 10K as parts of one unified mining project, thus conflicting with Rise's EIR/DEIR presentation of its alternate history (and trying to escape its SEC filings admissions by trying in the EIR/DEIR and other presentations to assert that the Centennial site is a separate project for CEQA but somehow inconsistently at the same time denying that Centennial work is an expansion or intensity-change for purposes of vested rights to use it as a dump for its new mining operations. Thus, for example, there can be no vested right to dump IMM mine waste on Centennial. Besides physical location and other differences, one of many factors separating the Centennial dump site from the IMM mining is that Centennial gets its NID water from the "Loma Rica System," while Brunswick gets its NID water from the "E. George System" (10K at 28).

In any case, neither Rise's 10K nor the EIR/DEIR nor other related filings reveal when or how Rise's predecessor acquired those 10 parcels (55 sub parcels) or underground mining rights to compare mine "expansions" for vested rights analysis versus the continuously evolving and expanding applicable laws at such times. Instead, Rise just states in the 10K that "original mineral rights" were acquired "at various times" since 1851. The 10K describes the Rise

purchase of everything from BET Group Estate (at pp.29) by quitclaim deed on 1/25/2017 (with the Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) "subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" Note that Rise (at pp. 28) not only separates surface from subsurface mining, but separates "mineral exploration" from both such types of mining, consistent with the M1 district zoning.

The Rise description of its environmental studies (at 10K pp. 31-32) addresses the IMM and Centennial wholly owned land conditions, which is not determinative of the conditions in the different areas of the 2585-acre underground mines. As admitted at page 31 as to "Environmental Liabilities," all "environmental studies were completed prior to Rise purchasing the Idaho land [aka Centennial] and the Brunswick land." That means that Rise cannot vouch for the accuracy, completeness, or sufficiency of the studies or any directions (or lack of correct instructions) given by prior owners. Motions in limine at the start of the court trial will exclude most of Rise's so-called evidence because it is inadmissible on various grounds and other reasons (such as those discussed in the Introduction to this Exhibit) why there can be no substantial evidence for any vested rights as claimed by Rise.

Such issues are important, among other things, because when Rise wants to impress the potential investor readers about the details of the "Geological Setting, Mineralization, And Deposit Types" (SEC 10K at 38+), it describes the variable underground gold related data with some precision. However, when the EIR/DEIR addresses those underground conditions to deal with groundwater and related environmental and other property rights issues, it generalizes and incorrectly assumes a uniformity of those underground conditions that is rebutted by Rise's SEC 10K variations, which in turn, however, also incorrectly extrapolates and generalizes on many such dispute topics from the surface conditions at its small, wholly owned Brunswick site to the underground mining of the 2585-acre sites. Again, what is lacking from Rise is a sufficient baseline either for CEQA or vested rights disputes as to the relevant starting dates for each parcel and at the relevant later dates so as to know how to judge applicable expansions and intensity changes at critical times. (While that variation is relevant for gold opportunities addressed in the 10K that Rise wants to know, the EIR/DEIR does not equally address that variability because its disputed "talking points" (the miner equivalent of politician "spin") sound less problematic for such groundwater and other EIR/DEIR risk disclosure exposures when it assumes uniformity consistent with its apparent desire for what seems to me to be an "alternative reality" Objectors expect yet another alternative reality version for Rise's vested rights claims.

Stated another way, should the Rise vested rights claim or EIR/DEIR be mistakenly approved by the County, the challenge litigation will impeach the EIR/DEIR's and vested rights' descriptions of the underground and other conditions for groundwater and other risk and dispute issues, among other things, based on the contrary or inconsistent variable underground data presented in the SEC 10K. Also, when describing the underground conditions for gold, there are many described exceptions and variations, but the disputed EIR/DEIR's "don't worry about groundwater" theory (which objectors expect incorrectly attempt to evade key precedents that defeat Rise's plans, such as *Gray v. County of Madera*, and to be even further minimized in Rise's vested rights claims to attempt to evade objections like those in this

Petition) falsely assumes or implies uniformity not described in the SEC 10K. For example, in discussing its underground analysis, even Rise's 10K reflects doubts (e.g., at 44): "Although Rise has carefully digitized and checked the locations and values of drill hole results from level plans and other documents, the absence of drill hole related documentation, such as drill logs, drill hole deviation, core recovery and density measurements, assay certificates, and possible channel sample grade biases, could materially impact the accuracy and reliability of the reported results."

Many inconsistencies appear even within the Rise 10K, although not usually as substantial as the differences between the more detailed 10K and the less significant, more general, and less detailed data in the EIR/DEIR. Objectors fear the vested rights claims will be the worst of each alternative reality, such as exaggerating alleged "facts" that would help vested rights theories, while minimizing, ignoring, or incorrectly addressing "facts" that would defeat vested rights. For example, (at 44) the Rise 10K admits that "Rise has conducted mineral processing and metallurgical testing analysis on the recent drill core from the I-M Mine Property for the purposes of environmental study in conjunction with permitting efforts." Since the disputed EIR/DEIR does not sufficiently reveal those results, that will likely be a subject of intense discovery efforts in any subsequent litigation to determine, for example: what was not reported by Rise and why? Even if the answer is that the EIR/DEIR or vested rights claim editor did not trust that data, as the Rise 10K admittedly does not accept/trust the inconvenient historical data that also rebuts the EIR/DEIR and vesting rights as addressed in our objections. For the 10K's such doubts, consider, for example (at 44): "No estimates of mineral resources have been prepared for the I-M Mine Property. We are not treating historical mineral resource estimates as current mineral resource estimates. In addition, there are no mineral reserves estimates for the I-Mine Property." Since the 10K (at 44-45) cites and relies on somewhat different authorities than the EIR/DEIR and (we assume) also than the vested rights claims, the question is why? Considering all of the many Rise and its enablers' credibility issues with the EIR/DEIR, one wonders if Rise is more cautious about the 10K and other SEC filings because of the more serious consequences of misrepresentations than Rise is concerned about the accuracy, compliance, and sufficiency of the EIR/DEIR and (objectors assume) the vested rights claim data.

3. Some Environmental Data.

The Rise 10K contains (see pp. 28-45) many environmental facts that are often inconsistent with, or that fill in factual gaps in, the EIR/DEIR (and, objectors predict, will do so as well for Rise vested rights claim.) What is important for focus is that the history and investigations are either about the much less relevant and important Rise owned Brunswick and Mill site land (compared to the key 2585-acre underground mine, where the mining takes place and the problems begin), and most explorations/investigations are about the search for gold sources, not about a study for safety or environmental threats. Almost as bad, is the telling fact that Rise admits it and its predecessors didn't even do much looking at the dangerous spots, but simply focused on their such wholly owned entry lands and then incorrectly extrapolated from that to wrongly assume those conditions uniformly applied in the 2585-acre underground mine that is the greatest concern. The Rise description of its environmental studies (at 10K pp. 31-32)

addresses the IMM and Centennial wholly owned land conditions, which is not determinative of the conditions in the different areas of the 2585-acre underground mines. As admitted at page 31 as to "Environmental Liabilities," all "environmental studies were completed prior to Rise purchasing the Idaho land [aka Centennial] and the Brunswick land." That means that Rise cannot vouch for the accuracy, completeness, or sufficiency of the studies or any directions (or lack of correct instructions) given by prior owners. Motions in limine at the start of the court trial will exclude most of Rise's so-called evidence because it is inadmissible on various grounds and other reasons (such as those discussed in the Introduction to this Exhibit) why there can be no substantial evidence for any vested rights as claimed by Rise.

For example, as to the "Idaho land" [aka Centennial] and containing arsenic in the mine tailings and waste berms, the NV5 Draft Final Preliminary Endangerment Assessment and follow-up Draft Remedial Action Plan (7/1/2020) is reported still "currently in process" by the Cal EPA. As to the Brunswick & Mill site (at p.31) following a surface Phase 1 assessment by ERRG, "ERRG has recommended further sampling and studies" "to determine if contamination historic mining and mineral processing was present." This is one of several opportunities for investigation that Rise has avoided to evade inconvenient truths and embolden Rise's "alternative reality" presentations. Also, in 2006 a Phase II assessment was reportedly done for the Mill Site by Geomatrix (at 32) which found arsenic in the waste rock and Volatile Organic Compounds (VOC) in the groundwater but they were not concerned with "vapor" and relied on the "deed restriction which restricts the use of groundwater for any domestic purpose and the construction of wells for the purpose of extracting water, unless expressly permitted by the Regional Water Board." The significance of these causes of concern have not been investigated or addressed sufficiently by the DEIR/EIR, although NV5 reportedly prepared a "Phase I/II ESA (June 16, 2020) presenting the results of additional investigations and addressing historical conditions identified in previous reports" (at 32). [Stated another way, the wording of the summary results is cleverly ambiguous although drafted in the passive voice (e.g., "mine waste is believed [by whom? based on what?] to have originated from offsite…") and subjective (e.g., arsenic concentrations …were relatively low except for …) [compared to what standard?]

At p. 32 + the 10K provides a general list of permits that might be required under particular summarized circumstances, but the Rise 10K does not apply that general summary to reveal when such permits will be sought for this project or what of the listed factors are expected to trigger that require such permits. Objectors mention this because when the EIR/DEIR lists permits it also does not describe sufficiently such trigger factors or the circumstances where objectors could apply such SEC 10K data and other law to assure ourselves that the miner was planning to seek all the required permits, as opposed to evading them until the miner was "caught" and then seeking such permits and "forgiveness." The four Engel Objections to the EIR/DEIR demonstrate why objectors perceive the EIR/DEIR to suffer from credibility problems that make such concerns reasonable, and, as noted above in the Introduction, that credibility problem will now be compounded by Rise's alternative reality in the EIR/DEIR conflicting with Rise's alternative reality for its vested rights claims, as so described above regarding the Centennial site.

B. Admissions in Risk Factor Discussion 10K Item 1A at p.6+.

The risk factors admitted in the 10K are the same as those admitted in the more current 10Q that is addressed above. So, objectors will not repeat them here, but we note that the consistency of those admissions increases their importance as admissions in these disputes.

C. Miscellaneous Additional Financial Admissions. (Most data here is passed over in favor of the more current 10Q data stated above).

To place the foregoing Rise 10Q financial data in contest and reveal Rise's chronic incapacity to perform its EIR/DEIR goals and aspirations, even as limited to what it admits to be required (as distinct from what us objectors expect to be ultimately required if the EIR were ever to be approved and for the vested rights claims), objectors note the admission at Rise 10K p. 5: "As at July 31, 2022, we had a cash balance of $471,918, compared to a cash balance of $773,279 as of July 31, 2021." However, the 10K financial data for the prior year (starting at 48+) gives one a sense of scale, such as with respect to the "net loss and comprehensive loss for the year [2022]" of $3,464,127, compared to the operating loss of $3,385,107 (ignoring the large "gain on fair value adjustment on warrant derivatives"). Among the key questions is whether the data developed by Rise for the EIR/DEIR is being fully processed for its CEQA compliance as opposed to simply its gold exploration use. See, e.g., (at 49) where the 10K reports an "Increase in mineral exploration costs to $788.684 (2021- $782,261) related to activities surrounding the Use Permit application."

As admitted (at 49): During the year ended July 31, 2022, the Company received cash from financing activities of $2,392, 998 (2021-$248,198) related to the private placement' that year. But during that year "the Company used $2.694,359 in net cash on operating activities, compared to $2,853, 475 in net cash the prior year…" As to the risk that creates for nonperformance of the EIR/DEIR, please note the following related 10K admission that follows those admissions:

> The Company expects to operate at a loss for at least the next 12 months. It has no agreements for additional financing and cannot provide any assurance that additional funding will be available to finance its operations on acceptable terms in order to enable it to carry out its business plan. There are no assurances that the Company will be able to complete further sales of its common stock or any other form of additional financing. However, the Company has been able to obtain such financings in the past. If the Company is unable to achieve the financing necessary to continue its plan of operations, then it will not be able to carry out any exploration work on the Idaho-Maryland Property or the other properties in which it owns an interest and its business may fail.

The Rise auditors, Davidson & Company, LLP, qualified its financials (starting at 10K p. 53) as follows:

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company incurred a loss of $3,464,127 for the year ended July 31, 2022, and as of that date, had an accumulated deficit of $23,008,604. These events and conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

EXHIBIT B: SOME REASONS WHY *HANSEN BROTHERS ENTERPRISES, INC. V. BOARD OF SUPERVISORS* CANNOT HELP RISE, BUT INSTEAD HELPS IMM OBJECTORS.

To Best Appreciate How Rise Misuses *Hansen* For Rise's Incorrect And Worse Vested Rights Arguments, the County Should Examine *Hansen* In Detail In Order To Expose Rise's Manipulation Techniques, Such As What Some EIR/DEIR Objections Previously Exposed And Disputed as "Bait And Switch" And "Hide The Ball" Tactics In Rise's Petition Claiming Vested Rights. While the Main Briefing To Come Will Comprehensively Rebut the Disputed Rise Petition, Some Examples Merely From the Hansen Debate Will Support the Objectors Petition for Interim Procedural Relief As Illustrated Below:

(1) *Hansen* Is Distinguishable From this IMM Dispute Because Hansen Was Limited To SURFACE Mining Under SMARA, While the IMM Dispute Is About UNDERGROUND Mining Not Subject To SMARA. That Difference Also Raises Many Other Issues That Rise (Again) Incorrectly Ignores, Both In Its Disputed Petition And the Disputed EIR/DEIR, Such As Regarding the Competing Constitutional, Legal, And Property Rights of Objecting Surface Owners Above And Around the 2585-acre Underground Mine At Issue, Especially Regarding Surface Owners' Existing And Future Wells And Groundwater, Particularly Since, For Example, Even *Hansen* (Plus All The Other Applicable Case Authorities) Must Deny Any Vested Rights For Rise's New Dewatering System And Water Treatment Plant Without Which the IMM Cannot Reopen;

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

(3) Rise Cherry-Picks Selected Parts of *Hansen's* Words And Foundational Principles Extracted From Their Actual, Stated Context, While Rise Ignores Entirely Or Evades Or Misconstrues Out of Context What *Hansen* Actually Both Ruled And Refused To Rule (e.g., Whether as Lacking Sufficient Evidence, Such As To Which Parcels Qualify For Vested Rights, Or Premature Such Whether That Mining Would Exceed the New Intensity Threshold) ;

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

(5) Rise Implicitly Limits Disputes By Ignoring, Evading, Or Mischaracterizing *Hansen* Statements As If They Were All That Needed To Be Known Or Decided, When, To the Contrary, They Are Only A Part Of the Comprehensive Disputes. For Example, Rise Argues That Someone Else Has The Burden of Proof, By Citing Only To the Burden On "Abandonment" Disputes, While Ignoring *Hansen*'s And Other Courts' Decisions (e.g., *Calvert* And *Hardesty*) PLACING ON RISE THE BURDENS OF PROOF For Its Claim of Vested Rights And Many Other Essential Issues; and

(6) Rise Ignores Objectors' Own Competing Due Process Rights (e.g., *Calvert* And *Hardesty*) For A Full And Fair Rebuttal of Rise's Errors, Omission, And Other Noncompliance, Especially With The Law of Evidence, Which Mattered Even in Hansen And Other Case. At

Least In the Court Process The Law of Evidence Will Cause Rejection Most the Rise Petition Exhibits And Purported Evidence As Lacking Sufficient Foundation, Credibility, And Admissibility Among Other Evidentiary Objections. See Exhibit D, *Calvert,* and *Hardesty.*

I. Some Introductory Comments And Previews.

Following that quick summary above, this Exhibit presents some introductory comments followed by a systematic and detailed analysis of the Hansen majority option. The intention is to be comprehensive; so that once again the County can see how Rise, as the old song goes, "sees what he wants to see, and disregards the rest." By focusing on what Rise has so disregarded even in its favorite *Hansen* case, the County can see below where Rise knew its "alternative reality" "story" was vulnerable. By contrast, Objectors show all of *Hansen,* revealing both where Rise again, as in its dispute EIR/DEIR and other filings, "hides the ball," and why the parts that Rise likes are distinguishable (some noted in the quick summary above). After that analysis of the *Hansen* majority's position, objectors then present some important analyses of the two dissenting opinions agreeing with all the lower courts and the County, which rejected any vested rights for the miner. Those comments and their cited authorities have had a significant influence on the case law that has evolved since then. Also, because the facts in this IMM dispute are sufficiently different from those in *Hansen*, objectors believe that if that *Hansen* majority had confronted our IMM situation, that majority would have favored the analysis of those original dissenters.

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

Rise's vested rights "alternative reality," principally crafted around its disputed misuse of *Hansen,* is meritless in many ways that are illustrated briefly herein and that will systematically demonstrated in more detail in the coming objection to the Rise Petition. Those rebuttals include not just by what Rise misuses in its disputed overgeneralizations, unproven and unprovable "facts," and other unsubstantiated claims that are not admissible evidence under the law of evidence, and many other disputed Rise contentions. Rise also must fail because of the many things it neither substantiates (i.e., disputed Rise opinions not supported by any cited authority but woven into the fabric of some case discussion), nor even addressed at all, whether by evading the issue (e.g., the "hide the ball tactic"), by some distraction (e.g., the "bait and switch" tactic), or by ignoring the issue or key case (e.g., *Hardesty, Keystone, Varjabedian,* and others often already cited in record EIR/DEIR objections, such as the four Engel Objections that

integrate many others and third party evidence in over 1000 pages incorporated herein). (For example, what happened in Rise Petition to the *Hansen*/SMARA requirement for a "reclamation plan" and "financial assurances" that were supposed to be "the heart" of SMARA? See Exhibit C. Remember please that Hansen limited itself to SMARA without relying on any common law of California?) However, many rebuttals are for that next opposition brief, which will explore not just Rise's errors, omissions, and worse, but also Rise's such objectionable "hide the ball" or "bait and switch" tactics, such as for example, the examination of some subtle manipulation of defined terms with obscure evasions of reality, such as, for example, the Rise Petition's definition (at p.1) of "Vested Mine Property" versus its term "Mine Property" (aka "Mine"). The Rise Petition is fairly detailed about what it claims and wants as relief in its conclusion at 76, i.e., the "Vested Mine Property," but it is vague, evasive, and objectionable about how it defines and misuses the defined term "Mine Property:" i.e., "Before the Vested Mine Property was consolidated into its current configuration in 1941, it existed as multiple mines and operations referred to in this Petition as the "Mine Property" or the "Mine." The objectors' future deconstruction of the alternative reality crafted in the Rise Petition will address how such tactics are misused.

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

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

Before Rise can argue about who has the burden of proof over the abandonment dispute (the only issue it seems actually to address on that topic), Rise must acknowledge that it has the burden of proof on vested rights and many things it prefers to ignore, rather than attempt to debate. Since Rise relies primarily on *Hansen* why did Rise neglect to address this *Hansen* ruling (at 564, emphasis added), **among others, that must be addressed first, before the dispute over abandonment: "The burden of proof is on the party asserting a nonconforming use to establish the lawful and continuing existence of that use at the time of**

the enactment of the ordinance", citing *Melton v. City of San Pablo* (1967), 252 Cal. App.2d 794. Among other *Hansen* stated principles to the applicable facts in the section (at 560-61) named "A. Extent of Bear's Elbow Mine in 1954," the court began with the previously elaborated basic principle (here without the limitations and nuances discussed elsewhere that further doom Rise's claims) that: **"a vested right to continue a nonconforming use extends only to the property on which the use existed at the time zoning regulations changed and the use became a nonconforming use** [10/10/1954 according to the Rise Petition]." (emphasis added) Just as the IMM admits to being an aggregation of different mines acquired at different times from different predecessors (as to which the Rise Petition only offers selected and incomplete data that objectors dispute under the laws of evidence and otherwise), the *Hansen* mine also involved such different adjacent parcels aggregating 60 acres, and the related discussion of each of the four parcels aggregating 60 acres confirms the flaws in Rise Petition's presentation of its disputed "evidence" for its 10 parcels (and 55 sub parcels) objectors will dispute in the main substantive briefing to come. Details matter, as does the sufficiency of evidence since *Hansen's* majority remanded for such deficiencies (as did *Calvert*). **Notice how Hansen requires this vested rights dispute to require proof (i.e., competent evidence) on a parcel-by-parcel (and, in the IMM case, sub-parcel-by-sub-parcel) basis, as *Hansen* demonstrated.** The court stated (at 561-64)(emphasis added):

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

is entitled to a writ of mandate… [therefore referring to a further] determin[ation] by the superior court on remand.

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

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

As illustrated throughout Objectors Petition, including Exhibit D, Rise's proof will also be doomed by its own admissions and inconsistent statement in the Rise Petition compared to the Rise SEC filings (Exhibit A) and the EIR/DEIR and other Rise applications etc. to the County which seek the use permits etc. that Rise now, in a disputed (and impossible to do consistently) switch of positions, claims Rise can evade somehow by such disputed vested rights. Future objector briefs will explain about judicial and similar administrative estoppels and other effects of objectors' impeaching Rise with its own admissions and inconsistencies.

See Exhibit A (SEC admissions inconsistent with, or contrary to both the EIR/DEIR and the Rise Petition) and Exhibit D illustrating such evidence disputes. As the saying goes, Rise can have its disputed and incorrect opinions, but it cannot have its own facts, especially when it is responsible for so many inconsistencies and conflicts between the Rise Petition now versus all those prior SEC filings (Exhibit A), disputed EIR/DEIR, and permit and other applications etc., such as those listed in the County Staff Report.

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

A. Rise incorrectly claims/assumes that *Hansen* (and SMARA on which *Hansen* is solely based), which is limited to "surface mining," somehow also applies to this IMM underground mining when it does not (and does not even claim to do so.) To the contrary:

***Hansen* (and SMARA) are limited to "*surface mining*," and there is no underground mining at issue or even present in *Hansen's* facts (or in SMARA)**. See, e.g., Exhibit C discussing the SMARA limitations that prevent any application of that surface mining law to this IMM underground mining dispute. For example, *Hansen* described various mining operation and business facts and issues in dispute as follows:

1. The IMM Dispute is About Underground Mining-Not Surface Mining.

Hansen begins by **defining "surface mining operations"** in FN 4 quoting Pub. Resources Code #2735, since that *Hansen* decision is limited by the scope of that definition (as demonstrated herein), stating: "[A]ll, or any part of, the process involved in the mining of minerals on mined lands by **removing overburden and mining directly from the mineral deposits open-pit mining of minerals naturally exposed, mining by auger method, dredging and quarrying, or surface work incident to any to an underground mine**…." (emphasis added) Thus, while Hansen and the law (see, e.g., *Calvert and Hardesty* and Exhibit C) **distinguish between underground mining and the "surface work incident to an underground mine," Rise** not only totally ignores that distinction and issue, but (without any purported analysis or authority) **simply, falsely assumes that SMARA vested rights' permission to do such "surface work" for an underground mine is permission to mine as it wishes underground at the IMM, such as described in the disputed EIR/DEIR (e.g., 24/7/365 for 80 years: underground blasting 76 miles of new tunnels into new, unexplored areas of the 2585-acre underground mine, chasing imagined gold veins, if any, wherever they might lead; dewatering with a new system to deplete groundwater and wells owned by objecting surface owners living above and around that underground mine; etc.)** More importantly, that surface mining access to the underground may start at the Brunswick site owned by Rise, but that **underground mining is beneath objecting surface owners with their own competing constitutional, legal, and property rights (down at least 200 feet, plus deeper for water and other rights not included in the mineral rights quitclaim deed quoted in**

Rise's SEC 10K filings quoted in Exhibit A) analyzed in Objectors Petition and cases like *Keystone and Varjabedian.* Stated another way, even if somehow words don't mean what they say anymore for Rise and somehow "surface work incident to any underground mine" were relevant in this dispute (which it is not and wouldn't give Rise in any event permission actually do any underground mining) **the surface above the new underground mining Rise plans to do is owned by objectors and cannot be used for such Rise surface mining work; i.e., how would Rise create access to begin that new underground mining expansion area without doing all the massive, underground work admitted in the EIR/DEIR and SEC filings (Exhibit A)?**

2. *The Facts Of Hansen Did Not Include Any Underground Mining, Just Surface Mining.* *Hansen (at 544-46) describes the applicable "aggregate business in which the materials combined and sold as aggregate are obtained by surface mining and quarrying on part of a 67-acre-plus tract of land comprised of several parcels…" "in a remote, mountainous area…" made up of riverbed, adjacent hillsides, and a flat yard area which is used for processing and storage." "Production of aggregate from sand, gravel, and rock mined and quarries … commenced almost 50 years ago."* Moreover, as the Hansen majority itself defined the scope of the dispute (at 547, emphasis added): **"This action arose out of Hansen Brothers' efforts to comply with the Surface Mining And Reclamation Act of 1975 (#2710 et seq.)(hereinafter SMARA)," and in reliance on #2776 the miners claim vested rights to be excused from the conditional use permit requirement, recognizing that SMARA required its own regulatory compliance, including for a "reclamation plan" and related "financial assurances."**

3. *The Hansen Majority (Unlike the Dissenters And All the Lower Decisionmakers) Found Continuity of That Hansen "Aggregate Business" Sufficient On Facts Very Different From Those Regarding the IMM.* The *Hansen* majority found (at 544-545): "Production of aggregate from sand, gravel, and rock mined and quarries … commenced almost 50 years ago [in 1946].) And, despite conflicting testimony, Hansens testified and claimed that the operations were continuous during that entire period. Evidence of various continuing business activities on site was also produced, although issues about the significance of those activities was at the core of the disputes both between the parties and between the majority and dissenting Justices in *Hansen.* However, as analyzed below in more detail, in this IMM dispute the abandoned/discontinued IMM flooded and closed for such mining operations in 1956, making such continuing work essential to vested rights impossible, especially as to the new, underground expansion area that had never before been accessed or explored much less mined.

4. Even the *Hansen* Majority Concluded (at 543) That: "the record is inadequate to permit us, or the lower courts and administrative bodies, to determine (1) whether the nonconforming uses which Hansen Brothers claims a vested right to continue extends to all of the Nevada County property …over which it claims a vested right to continue operations…" Thus, Rise overstates the result in *Hansen* on that key issue which here relates to objectors' disputes about Rise claiming vested rights to underground mine in that separate, new, unexplored, never mined before part of the 2585-acre underground IMM, EIR/DEIR identified area beneath objecting surface owners living above or around that proposed mining. Stated another way, *Hansen* is not authority supporting Rise's vested rights claim to mine there as it demands, because even in that *Hansen* majority decision, where the facts were more favorable to the miner (in the majority view) than these IMM facts, *Hansen* found the evidence

insufficient for the miner to prevail, as demonstrated above. Here, the IMM evidence against Rise is much stronger and includes not just mining facts, but also objectors' use of Rise admissions and inconsistencies cited in the Objectors Petition and SEC filings (Exhibit A) to defeat Rise's claim. Indeed, as so explained in the Objectors Petition most of Rise's so-called proof cannot satisfy its burden of proof because, besides massive foundational issues (including sources and completeness), credibility, and reliability objections, the law of evidence would bar it on many grounds. Coming in as a speculator to buy the mine in 2017, Rise has no relevant personal knowledge about prior intentions, events, or other facts at issue, and objectors do and will object to most of Rise's allegations, assuming the County process allows it before being ordered to do so in another objector due process ruling as in *Calvert or Hardesty.*

B. Rise Cannot Claim Vested Rights To the New Underground Area Now Targeted For Expansion That Had Not Previously Been Accessed, Explored, Or Mined As Admitted by Rise in Its SEC Filings (Exhibit A) And In the EIR/DEIR Before Rise Switched To Its Inconsistent Vested Rights Theory.

As so noted herein, in the Objectors Petition, and elsewhere, each of the admitted at least 10 IMM parcels (and 55 sub parcels) must be analyzed separately as to its historical ownership, operations, and mining intentions on the 10/10/1954 vesting date**. As *Hansen* stated (at 558):**

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

That *Hansen* ruling should be fatal to the Rise Petition, because the separate underground parcels now to be mined had never been sufficiently accessed, explored, or mined before. There were no tunnels, infrastructure, or mining activities there on or after 10/10/1954. Thus, Rise cannot under its own primary *Hansen* authority claim a vested right to that new mining expansion. Consider how *Hansen* applied that rule to the mining facts in the section (at 565-568) entitled "Separate Use." Unlike Rise's IMM plan to mine such underground areas never previously mined (hence, for instance, the admitted EIR/DEIR description of 76 miles of new tunneling to access that area seeking veins of gold), ***Hansen's* miner had previously mined**

much of the areas where the court granted vested rights, but (and what Rise ignores) even the disputed Hansen majority reserved judgment (at 543, see also 568, emphasis added) as to some of those then unmined areas pending more and better evidence that they were entitled to vested rights; i.e., "Nonetheless, the record is inadequate to permit us, or the lower courts and administrative bodies [which had all rejected the miner's vested rights claims], to determine (1) whether the nonconforming use to which Hansen Brothers claims a vested right to continue extends to all of the Nevada County property it identifies … or (2) the extent of the areas over which an intent to quarry for rock was objectively manifested in 1954."

No one (not even the overly generous *Hansen* majority) should allow Rise any vested rights to mine that new, underground IMM expansion area, because, among many other objections, Rise's so-called evidence is much worse than what even that Hansen majority found too deficient. See Exhibit D discussing and applying evidence standards, which the Rise Petition rarely does, instead simply citing disputed partial records that objectors main briefing will show are neither admissible evidence nor complete, sufficient, or credible. In *Hansen* (at 565-66) the majority agreed with the united dissenters and lower decisionmakers that rock quarrying had been discontinued for periods in excess of 180 days deadline and when operating had been producing smaller quantities of material than the riverbed mining. However, the majority stated those facts were not "dispositive" because the court saw "mining for sand and gravel and quarrying for rock" as "integral parts of that business" on 10/10/1954 that "could [not] be compartmentalized into two mining uses and aggregate production business," because such mining uses … were incidental aspects of the aggregated production business." **Even if somehow Rise could satisfy anyone without the required evidence, Rise still could not pass the test (at 566, emphasis added) for these new and unexplored/unmined "open areas" now proposed for such new, expansion underground mining, because even if all other conditions were satisfied for vested rights, such "open areas" would only be included (even by the *Hansen* majority) when and if: "such open areas were in use or partially used in connection with the uses existing when the regulations were adopted," which was not the case in this part of the IMM.**

Ironically, this is one of the powerful differences for "objective intentions" about the future between all these surface mining cases which Rise cites for its "alternative reality" versus objectors' underground mining reality: the underground portions of the IMM 2585-acres proposed for mining are an "open area" but underground and physically isolated from any such qualifying mining activity, especially in 1954, considering all the technology, financial, and other legal and practical limitations making that unused and inaccessible new, expansion area some future reserve on different parcels (or sub parcels) that cannot ever qualify for vested rights. Remember, the relevant, predecessor miners were still using manual pumps for dewatering in 1954, and these new IMM expansion areas are far deeper than anything in the 1954 existing IMM**.** Even now Rise admits in its EIR/DEIR that this expansion mining would requires a new, high tech, massive dewatering system operating 24/7/365 for 80 years that those predecessors could have never planned to duplicate. **SEE THE *HANSEN* DISCUSSED CASE DENYING SUCH VESTED RIGHTS CLAIM (**AT 566, EMPHASIS ADDED**) THAT THE MAJORITY SAID "ILLUSTRATED" ITS "APPROACH": *PARAMOUNT ROCK CO. V COUNTY OF SAN DIEGO* (1960), 180 CAL.APP.2D 217, 230, WHERE THE READY-MIX CONCRETE BUSINESS ADDED FOR THE FIRST TIME AFTER THE VESTING REZONING DATE A NEW "ROCK CRUSHING PLANT**

ON THE SITE"(REPLACING PRECIOUSLY OFFSITE CRUSHING), REJECTING THE ARGUMENT THAT SUCH A CRUSHER ADDITION WAS "AN INTEGRAL PART OF THE BUSINESS THAT THE [OWNER] PLAINTIFF HAD BEEN OPERATING," SINCE THAT CRUSHER WAS "NOT PART OF THE NONCONFORMING USE TO WHICH THE PROPERTY WAS BEING PUT AT THE TIME THE ZONING ORDINANCE WAS ADOPTED." STATED ANOTHER WAY, HANSEN (AT 566, EMPHASIS ADDED) IN EFFECT STILL REQUIRED THAT SUCH "A COMPONENT OF A BUSINESS" MUST "ITSELF HA[VE] A VESTED RIGHT TO CONTINUE USING THE LAND ON WHICH IT IS LOCATED FOR OPERATION OF THE BUSINESS."

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

C. Rise Incorrectly Claims A Sufficient Objective Intent To Expand The Underground IMM Mining As It Wishes, But Even the *Hansen* Majority Analysis Does Not Support Rise's Conclusions, And Rise Again ignores "Inconvenient Truths."

Hansen Declined To Rule On the Miner's Objective Intent For Lack of Sufficient Evidence, And There Is Far Less Evidence Here About Rise Predecessors' Intentions As To the Expanded Mining Into That Separate, New, Unexplored, Area of the Underground IMM. Hansen stated (at 543, emphasis added): "Nonetheless, **the record is inadequate to permit us,** or the lower courts and administrative bodies, **to determine … (2) the extent of the area over which an intent to quarry for rock was objectively manifested in 1954." In the case here, in the years since the closed, flooded, and (yes) abandoned IMM in 1956, much of our community grew up above and around the IMM underground 2585-acre mine (e.g., thousands of homes, shopping centers and businesses, churches, an airport, a hospital, and much more, all reasonably assuming from the objective manifestations that the IMM was abandoned and would never reopen. If the owners wanted to preserve their vested rights, they needed to do far more than the insufficient and mostly irrelevant things Rise claims its**

predecessors did (but where is admissible evidence to satisfy Rise's burden of proof?) What None of Rise claims was done on the surface of the abandoned mine after 1954 is sufficient to create vested rights for what Rise proposed to do now underground, where it did nothing. As far as our community knew, the flooded IMM was just history. The main briefing to come will detail all those rebuttals of Rise's attempts to link that past to the present plan, but in the interim, please recall how, as discussed above, Hansen insisted on a parcel-by-parcel analysis.

In discussing the "objective intention" disputes addressed throughout this Exhibit and Objectors Petition also recall that *Hansen* stated (at 557, emphasis added) that: **"The right to expand mining or quarrying operations on the property IS LIMITED BY THE EXTENT THAT THE PARTICULAR MATERIAL IS BEING EXCAVATED WHEN THE ZONING LAW BECAME EFFECTIVE." Here even Rise's self-selected and cherry-picked part of the history admitted that gold production was dwindling progressively, and the mining shifted to tungsten instead until even that was abandoned. But Rise is not seeking tungsten in this expanded new IMM mining, a topic ignored in the EIR/DEIR and SEC filings (Exhibit A). The reality of this history is not that these predecessors (and since 2017 Rise) waited from 10/10/1954 until now (or 2017) to launch 69-year suspended plan to mine this unexplored and unproven underground gold mining site. Objectors suspect, however, the hint of an incorrect or worse attempt by Rise to imitate and "backdate" the facts of *Hansen* by trying to connect its gold mining to some newly imagined "aggregate business." However, Rise's attempt now to imagine any historical link for what Rise discussed in the disputed EIR/DEIR about unapproved, and at best unlikely, new business of selling mine waste rebranded as "engineered fill," is irrelevant here, and has no proven counterpart in 1954 or before in practice or fantasy. In any event, as shown herein *Hansen* itself, not to mention other objector precedents, do not allow a vested right claim for an aggregate business to support an expansion for vested underground gold mining in this new expansion area.**

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

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

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

> **When continuance of an existing use is permitted by a zoning ordinance, the continued nonconforming use must be similar to the use existing at the time the zoning ordinance became effective… [citing *"Rehfeld v. City and County of San Francisco* (1933), 218 Cal. 83 …*City of Yuba City v. Chemiavsky* (1931), 117 Cal. App. 568 …"] Intensification of**

> **expansion of the existing nonconforming use, or moving the operation to another location on the property is not permitted. (*County of San Diego v. McClurken*, …37 Cal.2d 683,687-688.** See also 8A *McQuillin* …#25.206 p.114) [I]n determining whether the nonconforming use was the same before and after the passage of a zoning ordinance, each case must stand on its own facts. (*Edmonds v. County of Los Angeles*…40 Cal.2d at 651 …[also *Livingston Rock and Tweed & Gambrell Mill*].

Objectors' follow-up briefing will offer to prove how that quote alone and others in the next subsection defeat Rise's vested rights claims, including by using Rise's own admissions inconsistencies against it, such as from Rise's SEC filings (Exhibit A) and the disputed EIR/DEIR and objector record rebuttals thereto. As the record objections to the EIR/DEIR demonstrate, the new underground mining proposed by Rise is so admitted not to be "**similar"** to the 1956, 1955, or 10/10/1954 versions (e.g., deeper in a new, unexplored, and expanded underground area on separate parcels (or sub parcels) using changes to modern methods, equipment, techniques, systems, and substances (including adding toxic hexavalent chromium made infamous in the *Erin Brockovich* movie that now ghost town still cannot remediate [www.hinkleygroundwater.com], but which Rise wants to use to cement mine waste into shoring pillars to support the underground mine and save the expense of having to export that mine waste. That technique and intense threat were not used in 1954.)

Also, the new mining will be far more **"intense**" by the **unprecedented in 10/10/1954 extreme 24/7/365 for 80 years of dewatering (i.e., depleting surface owner existing and future wells and groundwater for purported "treatment" at a new facility (not used or contemplated in 1954) to flush away downstream in the Wolf Creek), blasting (more powerful), tunneling (another 76 miles into new unexplored areas), mining with that toxic shoring technique to leave the cemented mine waste in support pillars to save export costs), clearing and supposedly selling the mine waste rebranded as "engineered fill"(a new business not done in 1954), and other dissimilar activities.** Other environmental, labor, and other laws and police powers beyond the reach of Rise's disputed vested rights overrides would prevent Rise from going back to the "old ways" in the 1950's even if it could afford to do so. In any case, Rise could not afford to do things less expansively, less intensely, or otherwise more similarly. See, e.g., Rise's SEC filing admissions (Exhibit A), and DEIR at 6-14, where Rise admitted that the whole IMM project is not economically feasible unless Rise can mine as it has proposed 24/7/365 for 80 years, which of course is unimaginable in the face of objectors' votes supporting more protective law reforms and officials who voters will expect to prioritize our common community "good" policies over bad or worse practices to maximize profits for speculator shareholders. See record objections to the disputed EIR/DEIR's claims about Rise's disputed, minor economic benefits or those alleged in the disputed County Economic Report, all of which purported IMM benefits are far less than what record objectors offer to prove would be lost, and just in already occurring lost property values and consequent property tax collections.

Also, contrary to that *Hansen* quoted rule, the new Rise mining is not only admittedly "expanding" (e.g., 76 new miles of new tunneling into a separate and deeper area compared to the existing 72 miles of tunnels), but it is also "moving that operation to another location of the

property," which is especially serious because that impacts more surface owners and their properties (e.g., groundwater and existing and future wells) above that new area, triggering even more direct, conflicting property rights than were at issue before and countering the absurd Rise vested rights claim that somehow Rise can mine wherever and however it wants as long as it enters from the same Brunswick site as before (for which, of course, Rise cites no authority, which is not surprising because Rise's whole theory relies on surface mining, which is fundamentally different than this underground IMM mining.) After 69 years of flooded isolation, Rise's vested rights mining in that separate, unexplored, expanded underground area is not legally possible, as objectors offer to prove further in their main briefing.

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

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

This distinction is critical because Rise's proposed, massive, "enlarged," underground activities 24/7/365 for 80 years is unprecedented in their "intensity" and could not have been imagined by anyone in 1954, much less be proven by admissible evidence of "objective manifestations" from 1954. Moreover, as objectors' follow-up briefing and proof will show, these tests must also include the negative impacts of those mining and related activities on, among others, the surface residents and property (including groundwater and existing and future wells) above and around the 2585-acre underground IMM, the environment, and the community way of life. Also, *Hansen*, following such cited principles it deduced from *Edmonds* and *McClusken,* would correctly judge for example, the massive new dewatering system (and particularly its new "treatment plant") as far beyond any vested rights permission, as agreed above by *Hansen, McClurken*, and *Edmonds.*

However, in that (for many reasons) distinguishable *Hansen* case the issue compressed into the single narrow question of comparative rock volume, and, again, the court did not support Rise's claim as Rise asserts. Again, the court did not resolve the question of whether mining was "enlarged or intensified," although the majority stated (at 574-75) some dicta guidance that is hard to apply here to the very different IMM case. Rise, of course, focuses on the court's featuring of the Kansas court's discussion in *Union Quarries* that a natural growth of the business or an increase in the business done is not an impermissible change in the nonconforming use**. (Note this assumes inapplicable comparisons and ignores the whole *Hansen* and other law prohibitions discussed above forbidding expansion to use another "open property.")** *Hansen* made the inapplicable analogy to allow "a gradual and natural increase in a **lawful** nonconforming use of a property, including quarry property," using the example of a grocery store operated as a **lawfu**l, nonconforming use in an area of increasing population would not be restricted to the same number of patrons or in the volume of goods sold…" (emphasis added, because as the **record objections to the EIR/DEIR already show that proposed IMM use would not be "lawful" in many ways, especially without the permits Rise is refusing to seek in reliance on these disputed and meritless vested rights claims.)**

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

hundreds of record objections to the EIR/DEIR here proving the IMM would be so detrimental to the community, but especially by violations of such surface owners' personal competing constitutional, legal, and property rights. See *Keystone and Varjabedian*.**)**

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

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

What is most important in this discussion is not just that the quantities of IMM mining rock and any mineral recovery will progressively exceed any amount from past years (i.e., pre-1956), but that every proposed aspect of the IMM mining is prohibitively more "intense" as to its many different harms on impacted surface residents above and around this underground IMM, on objectors' groundwater and existing and future wells, on objectors' property rights and values, on objectors' vegetation and forest (and fire threats), on objectors' environment, on our community way of life, and on every other menace proven in record objections to the disputed EIR/DEIR. The issue of intensity is about such harms, not just about how much rock or gold is mined. As *Calvert* and *Hardesty* prove, each objector has his or her own, personal due process and other constitutional, legal, and property rights to prevent this IMM menace

from happening. See *Keystone* and *Varjabedian*. Such objectors are not dependent on the County acting for them as the *Hansen* court so suggested. Worse, waiting to measure output is absurd and legally inappropriate, because the harms that matter most will begin years before production starts, such as when Rise first begins dewatering the mine and depleting surface owners' groundwater and existing and future wells, blatantly using a dewatering system and new "treatment" plant for which there is no possible vested right and flushing away our groundwater down the Wolf Creek.

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

It is indisputable that modern mining techniques, methods, practices, explosives, dewatering systems, equipment, and every other activity planned by Rise at the IMM is more "intense" in every way than the mining in 1954, 1955, or 1956 when the abandoned IMM closed and flooded. Rise contends this kind of intensity must be ignored by Hansen's natural progression of a business, using the inapplicable analogy (at least for underground IMM mining) of an evolving grocery store. Objectors dispute that interpretation to the IMM dispute, and the courts will have to resolve in due course as a question of law which kinds of intensity increases surface objectors must tolerate, if any, and which cannot be protected by Rise vested rights. That is a complex debate for another briefing, except for the fact that underground mining intensity must be judged on its own unique basis, especially considering the competing constitutional, legal, and property rights of objecting surface owners above and around the 2585-acre underground mine. See *Keystone* and *Varjabedian.* For example, the massive 24/7/365 dewatering effort and systems, including the new water treatment plant, have no counterparts in 1954 or 1956 underground mining, and that Rise system is clearly massively more "intense" and "dissimilar" to the dewatering methods. The question is should not be about comparative technology expectations, but rather about the intensity of the harm and impacts they cause not just on the environment, but on the surface owners who must either suffer them or, as here, resist such harms to their health, welfare, property, and rights. That impact is intolerable, for example, as to its intense depletion of our groundwater and existing and future wells, and nowhere does Rise cite authority for its disputed vested rights to take our groundwater, dry up our existing and future wells, as well as our forests and vegetation, flushing the precious water aways down to Wolf Creek for its speculator shareholder profits and no net benefit to objecting owners of that groundwater.

For example, if the shallower, less impactful and intense (i.e., manual pumping and not 24/7/365) dewatering of the IMM before 1956 was tolerable, which we dispute, the far more intense, Rise dewatering system working 24/7/365 for 80 years, even during climate change, chronic droughts must defeat Rise's vested rights. When our wells dry up (and our new wells [that surface owners have a constitutional right to drill] are no longer feasible), when our forest and vegetation begins to die, and when "subsidence" and other groundwater depletion problems emerge, that intensity must defeat any disputed Rise vested rights, and becomes irrefutable evidence of the inverse condemnation, nuisance, and other claims mentioned in Objectors Petition and detailed in objectors' EIR/DEIR objections. Also, if the pick and shovel mining and old-fashioned dynamite blasting of 1954, 1955, or 1956 did not materially impact the surface residents living above or around the underground IMM at that time with noise and

vibration, but the 24/7/365 modern tunneling, blasting with modern explosives, mining, or other activities will have that impact, that must be a forbidden increase of intensity to defeat vested rights, even though such surface owners moved in after 1956. Stated another way, what about competing surface owner vested rights in reverse? We also will have practical evidence of intensity because such impacts will materially depress surface property values by those and other impacts.

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

At the outset *Hansen* proclaims (at 551, emphasis added) the settled law to be: "Adoption of a zoning ordinance which is not arbitrary and does not unduly restrict the use of private property is a permissible exercise of the police power and does not violate the takings clause of the Fifth Amendment …and comparable provisions of the California Constitution, even when the law restricts an existing use of the affected property. [citations omitted for now]." But among the many things Rise ignores in seeking to evade that reality is that *Hansen* was only focused on the competing "**zoning law," as distinguished from many other environmental, health, safety, and other applicable laws protecting those potential victims of the mining, such as the voting surface owners living above and around the 2585-acre underground IMM who have political as well as personal legal remedies and a *Calvert* and *Hardesty* recognized right to due process participation in this vested rights dispute process.** Recall in this muti-party IMM dispute this is not just about how Rise uses the property it owns to harm such surface owners, impacted others, or the general public. More importantly for this IMM dispute, **objecting surface owners above and around the 2858-acre underground mine have their own competing constitutional, legal, and property rights (including as to their groundwater (and existing and future wells) that Rise would "dewater" and flush away down the Wolf Creek. In deciding what is "arbitrary" or "permissible exercise of police power" the court must consider not just the general public, but also those thousands of impacted competitors living on the surface above or around that underground IMM mining. The Objectors Petition briefly explains some of those surface ownership rights both (i) to groundwater and to lateral and subjacent support (such as to avoid "subsidence" that includes depletion of groundwater and existing and future wells) in the US Supreme Court's Keystone decision, as well as (ii) the thousands of impacted neighbors' rights to assert (when ripe) inverse condemnation, nuisance, and other claims (which SMARA denies blocking as explained in Exhibit C) in the California Supreme Court's *Varjabedian* decision, that the County must weigh against a speculating miner's desire for exploitive profits, as explained in objectors record EIR/DEIR objections.**

For example, Hansen added (at 551-52, emphasis added): "**A zoning ordinance or land-use regulation which operates prospectively and denies the owner the opportunity to exploit an interest in the property that the owner believed would be available for future**

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

When Rise talks about potential County "takings" liability, consider what even *Hansen's* summary of the general principle stated of broader relevance in this multi-party dispute: "when the law effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a substantial investment in development costs has been made, the ordinance may be invalid as applied to that property unless compensation is paid." Competing surface owners should have no such less rights in reverse. The growth of our surface community is not unreasonable, oppressive, or unwarranted, especially in our reasonable reliance on the abandonment of the IMM by 1956, and the County cannot be liable for protecting our surface community against the proposed Rise mining menace beneath them. Indeed, since objecting surface owners have many political remedies, as well as our legal remedies in these disputes, objectors urge the County to be careful about being overly tolerant of Rise's bullying, because voters will enact as appropriate more laws to protect such surface owners' and our community's competing groundwater (as well as existing and future wells), property and other rights and values, and our environment from Rise's threatened mining harms. See the Objectors Petition and the massive, incorporated record objections to the dispute EIR/DEIR.

VI. Having Generally Ignored That Basic Legal Foundation Even In *Hansen,* Instead, Rise Incorrectly Focused Only on *Part* of One of *Hansen's* Many sections Entitled: "III.B. Vested rights to mining, quarrying, and other extractive uses—the 'diminishing asset' doctrine;" i.e., Rise Narrows Hansen's Rulings To The Ones That Rise Considers Less Embarrassing To Rise's Disputed Claims.

At the outset note that the Rise Petition incorrectly fills in many gaps in Rise's disputed analysis of the California SURFACE mining law (See Exhibit C) with inapplicable and distinguishable cases from other states and situations, as if they were somehow compatible and consistent with this proposed California UNDERGROUND mining at the IMM (or even consistent with *SURFACE* California mining under SMARA), but Rise cannot use such surface laws to evade permits required for such underground mining, and Rise would fail even under the surface laws themselves. See Exhibit C. That result will be shown with objectors' later briefing on the merits. However, for now it is sufficient to observe that the Rise Petition is so citing to OTHER state cases and laws (besides California) on which neither *Hansen* nor other key, applicable California cases rely for the specific use Rise makes of such inapplicable foreign

citations (or Rise's own unsubstantiated opinions mixed [without warning] into the case law discussions.)

While *Hansen* perceived (at 553, emphasis added) that "the state has the same power to prohibit the extraction or removal of natural products form the land as it does to prohibit other uses," the court recognized an "**exception to the rule banning expansion of a [lawful, as the court later qualified]nonconforming use that is specific to mining [by which the court meant 'surface mining', which was the only kind at issue or otherwise discussed in that case]."** Again, this does not address the IMM **underground** mining, but only relates to **surface** mining under SMARA (which contains both benefits and its own regulatory burdens for the miner, such as enforcement of an approved miner "reclamation plan" with "financial assurances" that Rise could never achieve—See Rise's SEC filing admissions in Exhibit A), and DEIR 6-14. However, for the sake of argument, consider the details of what *Hansen* actually said, which Rise misinterprets in significant parts as shown. *Hansen* explains that under the "diminishing asset" doctrine "progression of the mining or quarrying activity into other areas of the property is not necessarily a prohibited **expansion or change of location** of the nonconforming use." Id. (emphasis added) **(Note that only addresses location change and does not address change in "intensity" as occurs with Rise's new IMM mining.)** Then Hansen continued at 553 (and here focus on our emphasis added to see the conditions Rise cannot satisfy): "When there is **objective evidence** of the **[then] owner's intent to expand** a mining operation, **and that intent existed at the time of the zoning change [here Rise says was 10/19/1954]**, the use may expand into the contemplated area." **That statement assumes, of course, that all the other *Hansen* requirements for vested rights are satisfied, including those stated above regarding the parcel-by-parcel analysis where mining had to be continuing at that time, i.e., the reason *Hansen* had to remand to decide which parcels were entitled to vested rights.**

But Rise cannot satisfy its burden of proof that each of the 10 parcels (and 55 sub parcels) of the IMM in 1954 ("the time of the zoning change") was to mine that new, separate, unexplored part of the 2585-acre underground IMM with "objective evidence." See Exhibit D. Few Rise Petition Exhibits or other things that Rise incorrectly asserts to be competent "evidence" are credible or admissible such objective evidence, which evidentiary issues are shown to affect the results in cases like *Hansen* and *Hardesty*, where insufficient competent evidence defeated vested rights despite what was allowed in the administrative record. **The Rise predecessor owners on 10/10/1954 of each such underground mining area parcel or sub parcel are not available witnesses now, the records are incomplete and unreliable, and there is no required evidentiary "foundation" for any evidence of their respective such intentions that satisfies the applicable law of evidence. See Exhibit D. See also Exhibit A, where Rise admits in SEC filings the problematic nature of the historical records. Even *Hansen* refused to rule on some issues lacking sufficient competent evidence, including as to some location of expanded mining disputes.** Indeed, Rise's own admissions, such as in its SEC 10K filings (Exhibit A), undermine its own claims by confirming some of the objective realities about the deficient, incomplete, unreliable, and otherwise not convincing or sufficient historical records for such Rise's imagined "facts." Also, recall the related admissions about the objective facts (or **"objective manifestations" of intent**) regarding the IMM mine that should counter any such Rise alleged general intentions. Clearly, Rise's predecessors at and after 10/10/1954 (i) did some insufficient or irrelevant activities (but on which parcels? Clearly not the underground ones Rise

now wishes to mine) before they closed and abandoned the underground mine in 1956 to flooding, (ii) sold operating assets, but (iii) also did (and failed to do) other things contrary to an intent now to mine these new, expanded, unexplored underground areas. Indeed, because this new IMM expansion area was not explored and because Rise admitted in its SEC filings (Exhibit A) that there are no proven gold reserves there and that **this new mining is (our words for convenience) a speculative gamble, it is unimaginable that desperate, financially stressed predecessor owners liquidating assets to survive had any objective intent to mine this particular underground expansion area, which is admittedly deeper than the rest of the mine, requires 76 miles of new tunnels just to access any gold veins there, and requires more dewatering and other costs, difficulties, and risks than any existing underground IMM mining in 1954, 1955, or 1956.**

However, notice that the Rise Petition history is totally one-sided, and Rise says far less about the times between 1954 to 1956 in its Petition now than Rise said in its SEC filings and other communications since it bought the IMM in 2017 but before its recent attempt to change legal theories and its "story" to accommodate its vested rights theory. Further briefing will expose all the reasons Rise must fail, both as to the realities on these issues, but also as to the objectors' related objections to Rise's "evidence" and objectors' legal theories about laches, estoppel (including judicial estoppel in the administrative context), waiver, prescriptive easements, and other defenses of competing surface owners. Notice that the vested rights theory against the government, does not empower the miner against the competing constitutional, legal, and property rights objecting surface owners above and around the 2585-acre underground mine, who have reasonably relied and invested in their surface properties (and groundwater wells) since 1956 on the abandonment of that underground mining. Where, for example, does Rise's Petition address the differences between these disputes when they are between Rise versus the County as distinguished from between Rise and those competing surface owners? As the Supreme Court said in *Keystone,* property rights are a **bundle of many strands, and surface owner objectors have a right to dispute against Rise with respect to every single one. *Keystone* quoting** (at 497) *Hodel v. Virginia Surface Mining & Reclamation Ass'n Inc*, 452 U.S, 264 (1981):

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

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

different and adverse impact on the neighborhood" [which adverse impacts hundreds of meritorious record objections to Rise's EIR/DEIR have already proven here].); Stephans & Sones v. Municipality of Anchorage (Alaska 1984), 685 P.2d 98, 101-102 included in that test for vested rights this clarification: "The mere intention or hope on the part of the landowner [miner] to extend the use over the entire tract is insufficient; the intent must be objectively manifested by the present operations" (which was not proven, thus denying vested rights in that gravel pit case, where the mining at the alleged vesting date was at "a relatively small scale at the time… and even four years later extended to only two to five acres" on a 53 acre parcel zoned for 13 acres of mining).

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

As also explained herein, Rise cannot satisfy its burden of proof to have vested rights at all, so we should never reach the abandonment dispute. Nevertheless, the last part of Hansen's vested rights lesson is this: "Nonuse is not a nonconforming use, however, and reuse may be prohibited if a nonconforming use has been voluntarily abandoned. (Hill v. City of Manhattan Beach…6 Cal.3d 279, 286.) We will address abandonment disputes below where Hansen deals with that issue in more detail.

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

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

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

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

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

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

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

Objectors emphasize that court's comment because it demonstrates the point made elsewhere. Conducting such a separate non-mining business on the property (the proposed new "engineered fill" (i.e., mine waste) aggregate business is not going to continue any vested rights, when the mining nonconforming use ceases.

VIII. Because the *Hansen Majority Rulings Are Distinguishable And* Dissents Present Authorities And Arguments That Have Influenced Other More Applicable Cases, We Briefly Address Some Selected Illustrations of Arguments by the *Hansen* Dissenters, Urging Rejection of the Surface Miner's Vested Rights As Was Done By Each of the County, the Trial Court, And the Court of Appeal.

The two powerful dissents influence the dominant judicial thinking objectors on this topic and echoed analyses from the lower decisionmakers that could still apply under different facts than those found by the Hansen majority in that case, such as those in this IMM dispute. Besides objectors sharing some of what the *Hansen dissenters argued, objectors also note more about what the majority* expressly excluded from their ruling for the majority's remand or deferred for further litigation, thereby leaving our path open for other decisions and cases that doom Rise's claims, such as *Calvert* and *Hardesty.*

A. Hansen Was Limited to SURFACE Mining, Distinguishable from the IMM Disputes With Rise As Demonstrated In Objectors Petition.

To what extent, if any, does *Hansen* apply to support any vested rights claim relevant to such ***underground*** mining at issue in this IMM dispute? Objectors Petition demonstrates some of the many reasons why *Hansen* and other ***surface*** mining authorities cannot support Rise's vested rights claims for its **underground** IMM mining, beginning with the fact that the Hansen majority rulings were limited to SMARA law at issue that only apply to surface mining as objectors demonstrate in the Petition. Moreover, the legal issues in that *Hansen majority* surface mining analysis are radically different in many ways from objectors' IMM disputes with Rise's proposed underground mining to which SMARA does not apply. To attempt to fashion some analogous law to extrapolate from such surface mining vested rights to underground vested rights would, in effect, reopen the whole debate between the Hansen majority versus the dissenters (and those below whole the dissenters would have affirmed.) Rise's efforts to impose surface mining rules (under which Rise still could never qualify for vested rights) on IMM underground mining (and objecting surface owners above and around that 2585-acre underground mine) would compel the courts to, in effect, become unauthorized, perpetual

referees and detailed rule makers for 80 years (plus the reclamation aftermaths) of 24/7/365 menaces and consequent disputes with objecting surface owners defending the health and welfare of our families, the values and uses of objectors' groundwater, existing and future wells, properties and environment, and our community way of life. In particular, **surface mining impacts adjacent neighbors by what the miner does on its own property, while this disputed , expanded, underground Rise mining impacts thousands of surface owners living above and around that underground mining with person competing constitutional, legal, and property rights (e.g., rights to "lateral and subjacent support," for example, to prevent "subsidence" [expressly including groundwater depletion] as described by the US Supreme Court in *Keystone*. Rise has admitted in its SEC filings (Exhibit A) that its deed restrictions define our "surface" to extend at least down 200 feet, plus even deeper as to groundwater and other matters besides the relevant mining minerals. [The Objectors Petition also demonstrates that, as *Gray v. County of Madera* already proved, Rise's disputed EIR/DEIR groundwater mitigation plan is insufficient to protect competing existing and future wells of objectors. See also the record objections against the EIR/DEIR, such as those by the CEA, the Rudder Group, the Wells Coalition, the Engel Objections, and others.]**

Until Rise's claims are defeated, such test-case conflicts must be continuous, since the vested rights disputes will not only test such impacts of ***existing*** laws on the actual Rise underground mining and related threats, but also the **new** laws that right-thinking elected officials and citizen initiatives will create during that 80 years (plus reclamation period) to protect resident voters from such Rise mining menaces**. See, e.g., the correct, dissenting opinion in *Hansen,* which correctly observes at Kennard FN 15 at that: "The lead opinion asserts that: 'the SMARA application form is not designed for, and alone is not an adequate basis upon which to decide, the question of impermissible intensification.' … The lead opinion suggests that Nevada County wait until it determines that plaintiff's mining activities have exceeded the scope of its nonconforming use, after which it can seek injunctive relief (Id. at pp. 574-575.) … The lead opinion's suggestion is not a good one, either from the plaintiff's perspective or the county's….Similarly, the county's interests will be better served if it can halt illegal activities on plaintiff's land before those activities have begun." Indeed, whatever the County may do, this is a multi-party dispute with Rise, the County, and objectors, who do not know any impacted surface owners who will suffer waiting at all either to challenge Rise or to delay law reform efforts to mitigate harms better than Rise's disputed mitigation proposals that are not only deficient for impacts Rise recognizes, but Rise offers no mitigations for the many harms Rise incorrectly refuses to recognize or misjudges. And what is the Rise mining plan now and its corresponding reclamation plan now? That is critical, because there is no way Rise has the capacity to provide satisfactory required "financial assurances" for any tolerable reclamation plan, as Rise's SEC filings [Exhibit A] show from its deficient financial resources.)**

B. **Increased Intensity Is Obvious And Diverse Although the *Hansen* Majority Dodged the Issue.**

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

stating: " The plurality opinion leaves open the question of whether intensification of Hansen Brothers' nonconforming us will eventually violate the zoning ordinance. The Superior Court's findings already establish, however, that it will. In any event, the practical problem with the plurality opinion's holding is that, by the time the evidence of intensification becomes apparent and a remedy is sought and obtained, serious damage may well already have been inflicted." (That SMARA "intensity" of Rise's nonconforming use issue that *Hansen* ducked may be itself intensively litigated by objectors (when ripe) whatever the County may do. Recall that, as addressed in the Objectors Petition, not only has the surface land above the 2585-acre underground IMM mine massively developed since the mine closed and flooded in 1956, but the mining techniques, science, environmental and other laws have also radically evolved and changed during that period before 10/10/1954 when Rise starts its vested rights claim. That especially impacts the required **Rise reclamation plan and matching "financial assurances" (unachievable by Rise as proven by its SEC filing admissions in Exhibit A)**, which must match whatever it is that Rise is permitted to do, if anything, at the end of the dispute processes and opposition remedies, as well as all the consequential and incidental impacts on surface owners, neighbors, and the rest of the community here and wherever the mine's toxic hexavalent chromium and other pollution flows down the Wolf Creek, as demonstrated in record EIR/DEIR objections.

At a minimum, prohibited "intensity" must exist (even alone) by Rise planning to double the size of the underground mining, adding a water treatment facility and massive dewatering equipment and improvements for dewatering 24/7/365 for 80 years. That must likewise at least equally intensify the reclamation plan and more than double the required "financial assurances" that are already grossly insufficient (Exhibit A), even without considering all the substantial changes between the applicable dates for comparison and all the financial updates likewise required to address those changes and other matters relevant to assuring completion of the final, required reclamation plan, as discussed in the foregoing Petition. See Exhibit C, addressing reclamation plans and financial assurances under the SMARA model assumed to apply in *Hansen* and other cases cited by the Rise Petition. Note that, **unlike the majority who incorrectly dodged the reclamation issue entirely in *Hansen [see Kennard Dissent FN 9]*, the dissenter correctly demonstrated that THE "PLAINTIFF'S RECLAMATION PLAN REPRESENTED A SUBSTANTIAL INTENSIFICATION OF PLAINTIFF'S MINING OPERATION, AND THUS NECESSITATED A CONDITIONAL USE PERMIT." KENNARD DISSENT FN11. ALSO, WHILE THE EIR/DEIR AND STAFF INCORRECTLY TREAT THE CENTENNIAL DUMP AS A SEPARATE PROJECT FOR CEQA, AS DEMONSTRATED IN EIR/DEIR OBJECTIONS, THOSE CENTENNIAL SITE INTENSITY AND SUBSTANTIAL CHANGE ISSUES WILL HAVE A MASSIVE IMPACT IN DEFEATING RISE'S VESTED RIGHTS CLAIMS, NOT MERELY AS TO THE MASSIVE INCREASES IN THE RECLAMATION PLAN AND FINANCIAL ASSURANCES RISKS, BURDENS, AND COSTS, BUT ALSO BECAUSE OF THAT DUMPING OF TOXIC MINE WASTE THERE FROM THE NEW RISE MINING REQUIRES INTENSE MAINTENANCE FOR LETHAL SAFETY CONCERNS, SUCH AS NEEDING FREQUENT DAILY WATERING TO SUPPRESS THE DEADLY FUGITIVE DUST WITH ASBESTOS AND OTHER HEALTH HAZARDS AT RISK, even during droughts when wasting precious water to suppress that community health hazard for the benefit of the Canadian miner's shareholders' profits is not the best use of local water in such times of scarcity.)**

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

Since Rise cannot mine without an approved reclamation plan that matches whatever it is permitted to do, if anything, and since Rise must have "financial assurances" for any such reclamation plan [that Rise's SEC filings in Exhibit A admit Rise is not capable of providing], especially considering all the relevant issues raised by impacted surface owners, neighbors, and others, how can Rise possibly prevail, even under *Hansen*? While the County can do whatever it decides to do, objectors may insist on litigating fully the reclamation and financial assurances issues that should doom any hope of Rise having any vested rights mining.

D. *Hansen Incorrectly* Dodged the Question of Whether the "Diminishing Asset Doctrine" Applied To Such Mines And Asserted That Not To Be An Issue In *Hansen.*

Is the Kennard dissent in *Hansen* correct that the diminishing asset doctrine (emphasis added): (A) "does not restrict the power of a governmental entity to limit, as was done here, the *intensity* of the operator's mining activities, if not also to expansions of the area to be mined? [yes], and (B) that must be considered as an issue in such cases at least to evaluate whether the "plaintiff's riverbed mine and its quarry may be viewed separately to determine whether plaintiff proposes an intensification of its use of the property? [Yes.] Note here that issue must be addressed for many intensified uses, such as not only doubling the size of the underground mine into new, unexplored, and deeper expanded areas, but also to address the many additional planning and improvement issues raised by Rise in its disputed DEIR/EIR, such as, for example, building a water treatment plant and new dewatering system equipment and improvements to operate 24/7/365 for 80 years plus reclamation thereafter. The merits of that debate about that diminishing asset doctrine are addressed elsewhere in the Petition and in the briefing to follow once we have had time to fully study the new Rise Petition filing.

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

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

What are all the applicable laws that impact Rise's mining operation as each relevant date, not just the inapplicable SMARA? What is the impact of each cessation or change in mining operations by Rise from any period when Rise claims vested rights? See the county ordinances and other laws, such as the impact of Section 29.2B at issue in *Hansen* as to the discontinuation of nonconforming uses for a period of 180 days or more compared to the 69-

year-long gap in the types of mining activity required for vested rights at issue in the IMM case. **Without a permit or statutory immunity, Rise can held accountable for noncompliance with every applicable law that existed before the start of its vested rights. As Justice Mosk explained in his dissent (at 577-81) objectors assert should apply still to IMM underground mining as if it were the *Hansen* decision, that vested rights dispute also depends on and is subject to (at 579) "a condition that the lawful nonconforming use of land existing at time of adoption of the ordinance and not some other and different kind of nonconforming use which the owner of the land might subsequently find to be profitable or advantageous…. County of Orange v. Goldring (1953), 121 Cal.App.2d 442…" Moreover, the use must be continuous: if abandoned, it may not be resumed. …Nonuse is not a nonconforming use…" citing Hill v. City of Manhattan Beach (1971) 6 Cal.3d 279.**

F. *Hansen* Correctly Excludes From Vested Rights the Portions of Property Acquired By the Miner After 10/10/1954, As Discussed Above in This Exhibit And As Even The Majority Acknowledged In Requiring Further Evidence.

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

G. Unlike the Hansen Majority's Controversial Combination of the River Gravel Business With the Rock Quarry Mining Business, There Is No Basis For Considering the Centennial Business As Such An Integrated Part of the Brunswick Mine Operation For Vested Rights Purposes, Because That Test Looks Back In Time, While the CEQA Test Looks Forward.

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

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

What is the correct interpretation standard for when the expanded use of land will no longer be tolerated because it exceeds the applicable limit on such expansions? (As Justice Mosk said in his Dissent correctly citing the applicable CA Supreme Court precedents misapplied or ignored by the majority in their ***SURFACE*** mining ruling:

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

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

The key guidance from the courts generally can be stated plainly as this: nonconforming uses can only be tolerated to the extent necessary to avoid a "taking" contrary to the state or federal constitution. However, since that constitutional dividing line often is less clear, what the courts have done is attempt to provide more readable standards. Objectors phrase the issue this way against Rise because this is a multiparty dispute that involves COMPETING TAKING VERSUS INVERSE CONDEMNATION CLAIMS about Rise's UNDERGROUND MINING versus surface owners'

PROPERTY RIGHTS, VALUES, AND GROUNDWATER under applicable laws. As explained in the Objectors Petition, surface owners above and around the 2585-acre mine have their own competing constitutional, legal, and property rights at stake, especially as to their groundwater and existing and future wells that Rise would deplete by dewatering, purport to treat, and flush away down the Wolf Creek 24/7/365 for 80 years, which indisputably is a more "intensive" misuse without precedent.

Indeed, the only attempted groundwater depletion comparable in modern times involved much less intensity and wrongdoing, which was nevertheless defeated in a decision rejecting Rise's proposed mitigation measures in ***Gray v. County of Madera***, discussed in the Objectors Petition.) Ultimately, the County could be required to choose whether it wishes, as the courts require, either (a) to pay inverse condemnation claims to thousands of its citizen voters for the profit, if any, of shareholders of this (substantively) Canadian mining company (operating strategically as a Nevada corporation), or (b) to deny Rise's claim so the County and objectors can prevail in the court proceedings that will continue until either Rise gives up or our community finally becomes safe from this mining. Again, note that, if the County mistakenly rules for Rise, successor officials and courts may have to confront many successive citizen initiatives and new laws by responsible officials, as these constant disputes could play out over the next 80 years, as locals continue to resist and counter to save their families health and welfare, their groundwater, existing and future wells, and other property uses and values, their environment, and their community way of life.

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

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

do now or in the future, as objectors may press for law reforms and initiatives to protect their families, their groundwater and environment, their property rights and values, and their community way of life, in effect testing the boundaries of what is or is not a “taking” either or both from Rise or from us objecting surface owners with inverse condemnation claims.

EXHIBIT C: SOME ADDITIONAL REASONS WHY SMARA AND SURFACE MINING CASES CANNOT BE USEFUL TO RISE BY ANALOGY OR AS GUIDANCE FOR SOME RISE IMAGINED "COMMON LAW," VESTED RIGHTS THEORIES (IF ANY), Especially As Rise Seeks Benefits Without Burdens.

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

    a. **An Overview of Some Authorities And Reasons Why Rise's Vested Rights Claims For UNDERGROUND Mining Are Doomed At the "Dormant," "Discontinued," And "Abandoned" IMM.**

This Exhibit is intended to explain, consistent with Objectors Petition correctly using surface mining precedents to defeat Rise's vested rights, how SMARA-related data should prevent Rise from misusing such inapplicable surface mining law to advance its disputed vested rights theories for this UNDERGROUND MINING. See Exhibit B, demonstrating how Rise's favorite *Hansen* case actually helps defeat the Rise Petition. The attached Objectors' Petition and other Exhibits thereto are incorporated herein by reference to avoid more complications in this Rise Petition rebuttal presentation. While some overlap is included for clarity, duplication is avoided to the extent possible. The idea of these Exhibits is to add more specific rebuttal details and examples that could have made the Objectors Petition more overwhelming. The hope was that, if the section headings were helpful in their details, readers could find the parts in which they are particularly interested.

There is no path to that illusory Rise goal, whether directly or indirectly or whether as analogies or imagined revisions to invent incorrect "common law" for the UNDERGROUND IMM mining. See Exhibit B, for example, that explains why Rise's favorite *Hansen* case is distinguishable and cannot accomplish any of Rise's disputed goals. Thus, Rise's vested rights claims for the 2585-acre underground IMM must fail as a matter of law, because the Surface Mining And Reclamation Act ("SMARA"), Public Resources Code # 2710 et seq., only applies to "surface mining." For example, by their own terms *Calvert*, *Hansen*, *Hardesty*, and other cases that Rise must confront are contrary to Rise's disputed vested rights claims only apply to "surface mining" under SMARA, including what SMARA #'s 2736 and 2729, respectively, define as **"surface mining operations"** on "**mined lands." For example, what Rise contemplates in its EIR/DEIR and otherwise is UNDERGROUND MINING that cannot possibly qualify (even by miner analogy) as such SMARA or such *Hansen* or other "surface" "mining" for such vesting rights claims. As Rise has admitted in its EIR/DEIR mining plan, in its SEC filings (Exhibit A), and in other County applications, the only gold Rise is attempting to recover is disconnected from Rise's surface property and underground in new, unmined, unexplored, expanded areas. That truth is especially incontestable since objectors and others own the surface parcels above and around that 2585-acre underground mine inaccessible from that surface. Exhibit A SEC 10k**

admits that Rise's 2017 acquisition deed restrictions prohibit even entry on that at least 200 foot deep "surface" without the owners' consent (which Rise does not claim it has.) For example, that SEC 10K describes the Rise purchase of everything from the BET Group Estate (at pp.29) by quitclaim deed on 1/25/2017 (with the "Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) **"subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" Note that Rise (at 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.**

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

> [T]he italicized portion of the statute [#2776] speaks of vested rights to ***surface*** mining, **not *any* mining**. "Surface mining involves stripping off the top of an area to reach the minerals, in contrast to boring down through tunnels or shafts to extract them." ([People v.] *Rinehart*, supra, 1 Cal. 5th [652] at p. 671, fn. 10 …) (emphasis added)
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> To the extent Hardesty contends he has a vested right to surface mine under section 2776, he simply **failed to carry his burden to prove any substantial *surface* mining on the property** had been conducted by that date. As the trial court found, substantial evidence shows that **prior mining had been hydraulic, tunnel, and drift mining, not surface mining,** which began in the 1990's, and **which represented a SUBSTANTIAL CHANGE,** contrary to former section 2778's requirement that no substantial changes may be made in any such operation except" according to SMARA's terms…. (emphasis added)
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> ***
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> … Hardesty failed to prove any mining was occurring on or even reasonably before the date SMARA took effect. **SMARA was designed to allow existing, operating surface mines to continue operating** after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to dormant mines.**
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> ***Hansen*** *Brother Enterprises, Inc. v. Board of Supervisors* (1996), 12 Cal. 4th 533…*(Hansen Brothers*)—**consistent with a long line of zoning cases—holds that A USE MUST BE PRESENT AT THE TIME A NEW LAW TAKES EFFECT, TO BE CONSIDERED A NONCONFORMING USE…**. Communities for a Better Environment … (2010), 48 Cal.4th 310, 323 fn.8 …["the traditional protections for nonconforming uses established *at the time* zoning restrictions become effective"]…; *McCoslin v. City of Monterey Park* (1958), 163 Cal. App.2d 339, 346…["A nonconforming use is **a lawful use existing *on the effective date* of the zoning restriction and continuing since that time** in nonconformance to the ordinance."] … ***NEITHER A DORMANT NOR AN ABANDONED USE IS A NONCONFORMING USE.*** **(*HANSEN BROTHERS,* AT PL 552*…["NONUSE IS NOT A***

> ***NONCONFORMING USE."])*** **As stated by our Supreme Court, "The ultimate purpose of zoning is … to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected." We have recognized that, given this purpose, courts should FOLLOW A STRICT POLICY AGAINST EXPANSION OF THOSE USES…**
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> **That policy necessarily applies to attempts to continue nonconforming uses which have ceased operation.**" *(Hansen Brothers*, at 568 …) (emphasis added)
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> ***
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> Further, **the record shows a proposed significant change in use since pre-1976 [SMARA's effective date] times. THE CONTINUANCE OF A NONCONFORMING USE "IS A CONTINUANCE OF THE SAME USE AND NOT SOME OTHER KIND OF USE." …[citing McClurkin, Edmonds, and Goldring, where, FOR EXAMPLE, EDMONDS V. COUNTY OF LA (1953), 40 CAL. 2D 642 HELD "ENLARGEMENT OF PLAINTIFF'S TRAILER COURT TO ACCOMMODATE 30 MORE TRAILERS IS CLEARLY A DIFFERENT USE."] SURFACE MINING IS A CHANGED USE ON HARDESTY'S PROPERTY, WHEN CONTRASTED WITH THE PRE-SMARA USE [FOR UNDERGROUND ETC. MINING NOTED ABOVE]. Nor can Hardesty persuasively rely on post-1976 unpermitted surface mining –twice halted by the government— to show that surface mining was extant before 1976.** (emphasis added)

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799-812 ("**Hardesty**") (The miner lost at the Board, trial court, and on appeal in its mandamus action claiming SMARA vested rights as to an ancient, "19th century" federal mining patented gold mine that ceased operation during World War II and was "essential dormant" "through the 1970's" with "virtually no evidence that those mining activities 'continued' to exist at the time SMARA was enacted [effective January 1, 1976], apart from "sporadic," "unpermitted surface(open pit) aggregate and gold mining in the 1990's." Nevertheless, the miner claimed "vested rights to mine the property for gold, sand and gravel (as well as diamonds and platinum)" after he bought the property in 2006. The trial and appellate courts rejected that miner's vested rights claim, agreeing with the Board that "any right to mine had been abandoned," as discussed in the evidence analysis sections above and below.) More importantly, ***Hardesty*** **forbids ignoring the kind of change Rise tries to ignore between different types of mining in incorrectly claiming vested rights. As that court stated:**

> **The trial court found that in the 1990's unpermitted surface (open pit) aggregate and gold mining began different in nature from the 'hydraulic, drift, and tunnel' [i.e., underground] mining that historically had been conducted on the land.** The RFD alleged the new proposed open-pit mining was safer and better for the environment. *** As an alternative to the finding of no vested right based on the lack of mining [in the right way and at the required time] … the trial court **found that any right to mine had been abandoned**." (emphasis added)

While that statutory reality should be obvious on its face, what follows below demonstrates some of the many ways in which SMARA cannot even be applicable by analogy by miners but can be used by objectors. Why?

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

SECOND, because miners are not granted any vested rights to mine as they wish by the constitution (i.e., there is no legal basis for Rise claiming (in the Rise Petition at 58) vested rights to operate "without limitation or restriction," but only under specified terms and conditions not to be stopped from certain qualified, "nonconforming uses" only by the application of a specific kind of land use statute that interrupts either (i) certain otherwise LAWFUL kinds of existing mining in which the miner is actively conducting permissible existing operations on a PARCEL (see the discussion of *Hansen* and Exhibit B counters against Rise's claim that work on one parcel creates vested rights on another), or (ii) certain "objectively" intended and permitted future mining expansions ON A PARCEL during such qualifying continuing operations. See the discussion of *Hansen* and Exhibit B counters against Rise's claim that work or intentions on one parcel create vested rights on another. See also Exhibit B. That also means, for example, that Rise's vested rights still must comply with many other laws and regulations not constituting such a land use regulation "taking" to trigger the constitutional prohibition on applying that law to such qualifying operations. In other words, Rise seems to be demanding that objectors be disabled somehow from relying on each and every law Rise later claims to be empowered by its disputed vested rights to ignore or evade, although as quoted in the Rise Petition (at 58) Rise appears to claim the right to ignore all laws and regulations after 10/10/1954 by announcing its vested rights "operations" will be "without limitation or restriction." Fortunately, Rise has the **burden of proof** of that, which necessarily means its Rise, not objectors, who must identify each such law or regulation and how such vested rights apply to each such law and regulation as it existed at the relevant time, as distinguished, for example, by compliance by laws (like CEQA and environmental laws) which objectors future briefing will demonstrate apply independent of any such vested rights. ***Hardesty* ruled at 811 (citing *Hansen* at 12 Cal.4th at 564, and Calvert at 145 Cal. App.4th at 629): "IT WAS HARDESTY'S BURDEN TO PROVE HE WAS CONDUCTING A NONCONFORMING USE AT THE TIME THE LAW CHANGED." IT ADDED THIS CITE FROM MELTON V. CITY OF SAN PABLO (1967), 252 Cal.App.2d 794, 804: "THE BURDEN OF PROOF IS ON THE PARTY ASSERTING A RIGHT TO A NONCONFORMING USE TO ESTABLISH *THE LAWFUL* AND CONTINUING EXISTENCE OF THE USE *AT THE TIME* OF THE ENACTMENT OF ORDINANCE [IT WISHES TO EVADE.]"** (emphasis added) See also the court's discussion at Id. and 812 of *Stokes v. Board of Permit Appeals* (1997), 52 Cal.App.4th 1348, 1351, 1352-53, 1355-56, and *Walnut Properties, Inc. v. City Council* (1980), 100 Cal.App.3d 1018, 1024.

THIRD, such vested rights do not overcome competing property owners' legal, constitutional, and property rights that may interfere with such mining, such as those of us

surface owners above and around the 2585-acre underground IMM, such as to our existing and future wells and groundwater. That competition between underground miners and surface owners is not about vested rights of a miner displacing surface owner rights and protective laws but rather, as between competing surface vs underground owners, as to who has the superior legal right under all the facts and circumstances. However, if *Calvert* or *Hardesty* were somehow a relevant analogy (despite being legally inapplicable surface cases) for any such Rise claims of vested rights, *Calvert* SUPPORTS THE OBJECTORS, AND NOT THE MINER, in any analogous parts, as demonstrated herein**.** See also Exhibit B analyzing ***Hansen***, which also fails to support Rise vested rights for the IMM and even in some cases as to that *Hansen* surface miner. The reverse uses of surface mining cases in favor of objectors, of course, are different, because the competing objectors' oppositions aren't about qualifying like a miner for vested rights, but rather conversely use objectors' own constitutional, legal, and property rights as defenses and to counter any miner claimed vested rights claims however those vested rights claims may be imagined. As addressed at length in record and incorporated Engel Objections and others, for example, there can be no vested rights for Rise to "take" such objecting surface owners' owned well water and other groundwater by Rise's proposed and disputed dewatering system for disputed, purported "treatment," and to flush it away down the Wolf Creek. On the other hand, objecting surface owners have contrary constitutional, legal, and property rights to protect their well and groundwater. E.g., *Keystone and Varjabedian,* as well as *Gray v. County of Madera,* defeating an EIR for surface mining to deplete competing owners' wells and groundwater based on what the court rejected as mitigations similar to those disputed mitigations proposed here by Rise in its disputed EIR/DEIR. Indeed, ***Hardesty* also clarifies key differences between vested rights as a property owner versus a vested right for mining**, stating (at 806-807) (emphasis added) **the need for vested rights claimants to continue to comply with environmental and various other laws:**

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

Apparently, despite such quoted authorities and others in the Objectors Petition, Rise imagines that it can make some incorrect, vested rights argument for **underground** mining either (a) by purported analogy to SMARA **surface** mining, or (b) as if it could create some new common law by such an analogy, but there is no sufficient legal authority for such a Rise claim or any description of how Rise could mine without compliance with applicable laws. Stated another way (emphasis added), **"nonconforming uses" based on vested rights still must be "legal**." Surface mining with vested rights must comply with the regulations in SMARA and many other applicable laws, and **SMARA expressly allows neighboring objectors and governments to sue the miner for nuisances and many other wrongs; i.e., escaping a use permit requirement doesn't free the SMARA miner to do as it wishes, as discussed herein.** E.g., **SMARA #'s 2714 (excluding many things from its scope, including some "operations" planned or reserved by Rise for its proposed and disputed mining), 2715 (disclaiming from any SMARA impact a long list of "limitations" on the powers of local government and people, such as**, for example, "(a) …the police power … to declare, prohibit, and abate nuisances …(b) … to enjoin any pollution or nuisance. (c) On the power of any state agency …[to enforce the laws it administers]. (d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance …or any other private relief. (e) On the power of any lead agency to adopt policies, standards, or regulations … if the requirements do not prevent the person from complying …[with SMARA]. (f) On the power of any city or county to regulate the use of buildings, structures, and land …" See also SMARA #2713, disclaiming any intent "to take private property for public use without payment of just compensation in violation of the California and United States Constitutions," but Rise mistakenly contends that disclaimer is just for the miner, when it is also for the projection of impacted surface owners and others objecting to the Rise Petition, the EIR/DEIR, and Rise's IMM activities. See, e.g., *Keystone* and *Varjabedian*.

Clearly, SMARA # 2736, defining "surface mining operations," ignores underground mining applications, except as a way of including "surface work incident to an underground mine," but here the only possible surface work is on the small parcels wholly owned by Rise, because objectors and others own the entire surface above the relevant 2585-acre underground mine at issue here. On the other hand, while SMARA does not give Rise any rights as to underground mining, SMARA at #2733 defines "reclamation" (and therefore, "financial assurances" in #2736 to "including adverse surface effects incidental to underground mines … [and] The process may extend to affected lands surrounding mined lands…" Such statutes (and other SMARA terms and conditions) are sufficient to create obligations by Rise (and standing and rights for) surface owners above and around the 2585-acre mine as well as impacted others, but nothing in SMARA creates any reciprocal objections by objectors to Rise. See the "State Policy for the Reclamation of Mined Lands," SMARA #'s 2755-2764; "Reclamation Plans And the Conduct of Surface Mining Operations," SMARA #'s 2770-2779, including successor liability in #2779, making all reclamation related plans, reports, and documentation "public records" under #2778.

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

Or Other Rights To The Rise Proposed Underground Mining In the 2585-Acre Underground Mine Beneath Objectors.

Moreover, it should be incontrovertible that Rise could never satisfy the SMARA conditions for a compliant reclamation plan, and Exhibit A SEC admissions prove Rise incapable of any satisfactory "financial assurances." That *Hardesty* precedent also defeats Rise's vested rights claims for many other reasons discussed in various places herein, but (besides that similar "abandonment" reasoning applicable in both that dispute and this one) that Court of Appeal's analysis of SMARA itself is especially lethal to Rise's theories. For example, as *Hardesty* explained (at 801, emphasis added):

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

The disputes over Rise's "reclamation plan" and related "financial assurances" are addressed elsewhere, but any such reclamation plan must relate to the reality of what is to be done in the mine, which means that not only is Rise's filed "Existing Remediation Plan" deficient and inconsistent with what is required regarding the EIR/DEIR plans, but it is even more wrong in every way for what will be required if this dispute descends into such a vested rights "free for all," where no one knows what will happen in the mine and what laws and regulations apply. **No doubt that Rise will attempt to use disputed vested rights claims under #2776 to evade reclamation plans and financial assurances, but the Objectors Petition and many other existing EIR/DEIR and coming objections will defeat such attempted Rise evasions. But again and again and again, that statute clearly is limited (emphasis added) to those who validly have "a vested right to conduct surface mining operations prior to January 1, 1976…" which Rise does not even as to such Rise's surface mining operations, as demonstrated in the Objectors Petition and more objections to come, but nothing in SMARA or any case cited by the Rise Petition provides that any vested right to "surface mining" creates any vested or other right to mine on the disconnected and separate parcels of that new, underground expansion area of the 2585-acre underground mine, especially since that underground IMM is beneath or around surface property owned by objectors and others.**

That is why the clarity sought in the aforementioned "status conference"--"Summary Due Process Proceeding**"** is so important. **First,** SMARA does not apply to create vested rights for such **underground** mining, and whatever Rise ties to do (and almost everything Rise does without a permit) is subject to legal and political challenge and change by objectors and then also to more changes by new laws (whether by political or legal reforms or by votes or initiatives), as each disputed use and issue, and the application of each law or regulation, is resolved in the courts. **Second,** Rise will have to react to such changing legal and political realities in its operations (whether by right-thinking government officials enforcing or enacting laws better to protect objecting surface owners from such mining or by self-defense, resident

initiatives), thereby requiring more constant changes in the reclamation plan and greater financial assurances, as proven below. See what SMARA allows in #'s 2714 and 2715. **Third,** not just such mining legal changes, but every deficient reclamation plan and financial assurances response by Rise is itself subject to challenge and revision. See, e.g., SMARA #'s 2716, allowing objectors to file actions for writs of mandate; 2717, requiring periodic reporting by the miner as to such reclamation plans and financial assurances. Also, each change in any such reclamation plan requires a new financial assurance to match it, and considering Rise's admitted financial condition in its SEC filings (Exhibit A) objectors cannot imagine Rise ever being able to obtain any such required financial assurance, even for its own proposed and deficient reclamation plan.

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

Moreover, no such legal analogy to SMARA (or its cited cases applying SMARA like *Hansen)* is feasible or legally appropriate, among other things, for example, because objecting surface owners above and around the 2585-acre underground mine have competing constitutional, legal, property, and groundwater rights that must defeat any such Rise claim. Whatever Rise's Brunswick site may allow on the surface (which objectors also still dispute) is irrelevant, because this is only about the gold imagined in the 2585-acre underground mine. Apparently, Rise imagines that it can make some vested rights argument for underground mining by inventing common law, such as by analogy to SMARA surface mining, but there is no legal authority for such a claim (see *Hardesty),* and such a vested rights process is not feasible. Consider, for example, what governmental agency would even have any jurisdiction even to deal with whatever Rise wants to file or have approved in such an imagined SMARA regulation equivalent for underground mining (e.g., some SMARA equivalent reclamation plan or financial assurances proposal), or where the agency would find the budget or qualified staff to deal with such new and unauthorized matters, not to mention all the inevitable disputes with objectors, as here. Moreover, no such legal analogy (even rebranded as imagined common law) is appropriate (as shown elsewhere and in *Hardesty*) because objecting surface owners above and around the 2585-acre underground mine own competing constitutional, legal, and property rights (including groundwater and existing and future well rights) that must defeat any such Rise claim; e.g., trying to regulate such underground mining by some SMARA analogy inevitably will clash with such surface owners' competing rights. What government agency will want to wade into such conflicts without any statutory authority and no state or local funding? What court will want to ignore the constitutional separation of powers to try to fill such a regulatory gap and spend the next 80 years refereeing the constant conflicts with surface owners and other objectors over such 24/7/365 IMM mining where the governing law must be crafted by issue-by-issue litigation?

Indeed, as some objectors already demonstrated in objections to the EIR/DEIR, for example, surface owners' groundwater depletion by Rise "dewatering" for underground mining would be a "taking" contrary to the Fifth Amendment to the US Constitution as well as under

the California constitution. See *Keystone* and *Varjabedian* below, as well as *Gray v. County of Madera* rejecting Rise's purported and disputed mitigation solutions for depleting wells by draining the competing property owners' groundwater. See also SMARA #2713 ("It is not the intent of the Legislature by the enactment of this chapter to take private property for public use without payment of just compensation in violation of the California and United States Constitutions." That is what Rise proposes to do by its dewatering "takings" or conversion.) It makes no policy or economic sense for the County to accommodate meritless Rise's vested rights claims for needless fear of Rise liability claims, only to thereby create meritorious objector claims of far greater "taking"/inverse condemnation liability to thousands of the objecting and voting surface owners above and around the 2585 acre underground mine, especially since, as demonstrated in many EIR/DEIR objections cases like *Gray v. County of Madera,* already have rejected the kind of deficient and disputed mitigation measures that Rise has proposed. Moreover, even if somehow referencing SMARA (even by analogy or to craft some common law) helped Rise, any such analogy would have to include all of SMARA, i.e., both the benefits and the burdens; not just the cherry-picked parts Rise seems to like in a doomed attempt to evade permit requirements**. For example, SMARA #'s 2715 and 2716 prevent any such vested rights thereunder from allowing pollution or nuisances (which would clearly exist from such Rise mining without permits)** or from counters by thousands of voting objectors electing "wise policy" officials and causing the passage of wise laws and regulations to prevent such abuses and other wrongs by Rise and to protect surface owners and others from objectionable Rise mining and, especially from depleting surface owner groundwater as proposed in the disputed EIR/DEIR.

More fundamentally, SMARA includes its own interactive regulatory system for such **surface** mining that cannot be misused by Rise, even by such analogies etc., for its **underground** mining. Rise apparently contemplates claiming vested rights under SMARA precedents like *Calvert or Hansen (see Exhibit B)* to proceed without the normally required permits and CEQA compliance for which Rise has already applied and which the Planning Commission has properly recommended that the Board reject. (Rise's disputed letter incorrectly protesting that Planning Commission decision will also be the subject of further counters by objectors as we near the Board consideration of the EIR and to correct that record.) However, an examination of SMARA reveals that its regulatory system still has ample protections for the public against miners, especially as to requirements Rise cannot hope to satisfy by its doomed reclamation plans and related financial assurances, even if somehow it were possible (which it is not) for SMARA to be adapted by the courts by analogy or common law for Rise's underground mining. Consider, for example, how SMARA #2717 ensures compliance with reporting and monitoring, especially of reclamation plans and financial assurances in accordance with detailed policies and requirements for reclamation of mined lands in #'s 2740- 2764, following the statutory mandates for reclamation plans and the conduct of surface mining operations in sections 2770-2779. For instance, SMARA #2773 requires the specific application of each reclamation plan to each "specific piece of property" "based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, etc. (an insufficient list for underground mining) as well as "establishing site-specific criteria for evaluating compliance with the approved reclamation plan …" and adopt[ing] regulations specifying minimum, verifiable statewide reclamation standards…" (again

insufficient to include underground mining and groundwater variables and issues.) Likewise, #2773.1 requires "financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operator's approved reclamation plan…"

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

In no such case is it feasible, constitutional, or appropriate for the courts to try themselves to replace the missing regulators in such functions or for surface mining regulators to expand their jurisdiction to underground mining. To end any argument on that subject note that under #2773.1 (a)(2) "Financial assurances shall remain in effect for the duration of the surface mining operation [here 80 years] and any additional period until reclamation is completed" [here potentially forever, considering the pollution that even Rise admits in the EIR/DEIR requires continuous "treatment" of such groundwater entering the mine, plus, for example, the toxic hexavalent chromium Rise plans to add into the mine to shore up the mine waste into shoring support columns as will be leaching from them into the Wolf Creek when the mine again floods. See the reclamation problems the ghost town of Hinkley, Ca, documented in the *Erin Brockovich* movie and www.hinkleygroundwater.com.] Moreover, in #2773.1(a)(3) financial assurances "shall be reviewed and, if necessary, adjusted once each calendar year, to account for new lands disturbed …, inflation, and reclamation of lands accomplished ….", thus creating an annual battle between Rise and all the objecting neighbors at risk for such 80 plus years. See # 2796.5(e) providing reimbursement rights for government remediation in civil actions when the miner allows or causes pollution or nuisance, but how would that work in this Rise fantasy?

More importantly, since the County staff and EIR/DEIR team incorrectly refused to consider even rebuttal evidence by objectors (some still is in the EIR/DEIR objection record to preserve that issue for litigation when this dispute reaches the courts) of Rise's financial infeasibility admitted in its SEC filings (Exhibit A) and even in DEIR at 6-14 (where Rise admitted that the IMM project is not so feasible, unless Rise can mine as it demands 24/7//365 for 80 years, which objectors expect to become legally impossible.) However, SMARA # 2773.1(b) mandates such a financial feasibility analysis with public hearings and corrective/defensive actions, and objectors can be expected to assure that becomes an issue even now in this vested rights process. See, e.g., SMARA #2772.1.5 including financial tests for financial assurance credibility that Rise cannot possibly satisfy (Exhibit A), such as a "minimum financial net worth of at least thirty-five million dollars ($35,000,000) adjusted annually to reflect changes in the Consumer Price Index…" and other regulatory requirements. And any amendment to any miner reclamation plan (inevitable as objectors prevail in their litigation objections, especially after the annual #2774.1 government inspections) would require under #2772.4 a new "financial assurances cost estimate." Furthermore, SMARA and related laws themselves will change over

time, both by approval of local ordinances (e.g., #2774.3) and public pressure on the Board to carefully police the mine under # 2774.4, especially when the public makes such mining "an area of statewide or regional significance" under # 2775 for such enhanced policing.

3. Rise Also Cannot Require The Court To Invent A Separate, New Vested Rights Legal System For Its Disputed IMM Underground Mining Without Permits And (If Rise Incorrectly Had Its Way) Without CEQA And Other Compliance.

a. Rise Cannot Invent Any Other Means To Misuse Vested Rights Theories To Advance Its IMM Goals, Especially To Claim Benefits Like Those In SMARA Without the Corresponding SMARA Burdens That Rise Could Never Perform.

When objectors block Rise's attempts at some SMARA analogy or common law invention, objectors presumed Rise's "fallback" is an attempt to somehow to persuade the courts to manufacture some supposedly comparable, separate, new vested rights laws for such underground mining to circumvent all inconvenient legal protections for objectors and our community. But see *Hardesty and even SMARA* above still requiring compliance with environmental and other laws, and the final section below which requires compliance with CEQA. Apparently, Rise wants freedom from normal legal requirements on account of fantasy vested rights that would commit our community to massive and continuous litigation (disputed issue by disputed issue) for the courts to reconcile not just (a) Rise's so-called vested rights with every applicable law protecting objectors or their properties (including groundwater), and our environment, but also, for example, (b) the purported constitutional rights of Rise to mine as it wishes (to again quote the Rise Petition at 58: "without limitation or restriction), versus the competing legal, constitutional, property (including groundwater and existing and future well) rights of objectors, including surface owners living about and around the 2585-acre underground mine at issue (i.e., where the gold supposedly resides – not anywhere on the surface or underground at Rise's Brunswick site). Stated another way, whatever Rise attempts to do to invent some unprecedented, vested rights, Rise must run the gauntlet. **First,** Rise has massive liability and legal problems for trying to clean up Centennial, now that Rise has shifted its position to claim Centennial as part of its "Vested Mine Property," which has to be the most "dormant," "discontinued," and "abandoned" mine imaginable and any more Rise admissions of disturbing that toxic mess will not only fail but create more environmental liability claims by governments against Rise. **Second,** Rise attempts to misuse SMARA vested rights to reach the actual underground mining in the 2585-acre underground IMM from the Brunswick surface parcels will be defeated by objections under SMARA and its cases will be defeated on the merits as described in Objectors Petition and more to come. See also Exhibit B using Hansen to defeat such Rise claims. **Third**, even if somehow Rise could overcome all those objections to **surface** operations on Rise's wholly owned property (i.e., Centennial or Brunswick), which should be legally impossible, that cannot possibly create vested rights for anything that has been "dormant," "discontinued," and "abandoned" at the underground IMM parcels since they closed and flooded in 1956.

Indeed, because the SMARA protections often involve public hearings and other potential victim rights, to even pretend to duplicate SMARA (or as common law) would turn our courts into another regulatory agency, not only creating massive due process and other complaints by objectors, but also transgressing the constitutional boundaries for separation of powers between the legislative, executive, and judicial branches of government. While objectors can elect right-thinking officials and cause law reforms and initiatives, no one should want voters trying to do such things with judges if any judges were so rash as to try to act as unelected, de facto executive branch regulators refereeing constant disputes for the benefit of Rise's underground mining.

On the other hand, while it is not legally possible or appropriate for Rise to use the courts to so invent some new, non-statutory, vested rights regime for its underground mining, it is useful for objectors to use SMARA precedents, such as the *Calvert* and *Hardesty to* defeat such Rise claims. Objectors reason that, if Rise must fail under SMARA precedents, such as those discussed herein, then Rise must fail as well under any purportedly comparable vested rights regime it might attempt to invent by judicial process. Also, as illustrated herein, SMARA vested rights precedents and issue checklists are useful guidance for the County in fashioning the requested Summary Due Process Procedure and evidentiary rules for protecting objectors' due process and other rights to defeat such unprecedented Rise claims. Clearly, no court can ever justify providing less protection than SMARA for objectors facing such greater perils from such underground mining than from surface mining, especially objecting surface owners living above or around the 2585-acre underground IMM. Thus, the County should consider, for example, some of the many aforementioned disabilities for Rise attempting to gain SMARA-type vested rights without the SMARA burdens to protect surface owners and the rest of our community.

b. The Clear Legislative Intentions of SMARA Favor Objectors Over Rise, Especially As To Rise's Inability To Satisfy Its Burden of Proof As To the Required Reclamation Plan And Financial Assurances For Accomplishing The Planned Reclamation, Dooming That Vested Rights Model For Rise, Especially On Account of Rise's SEC Filings (Exhibit A) Admitting That Rise Lacks The Financial Resources For Any Required Performance Assurances.

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

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

See also SMARA #2776 and many other precedents demonstrating that vested rights have burdens as well as benefits for the miner. As explained herein, there is not, and cannot be, any satisfactory Rise reclamation plan for any vested rights mining, and, even if there were such a reclamation plan, objectors can prove from Rise's SEC filing admissions (Exhibit A) that Rise lacks any economic and other feasibility or credibility to perform any such assurances, as discussed

above. While the County staff and Rise incorrectly excluded (so far) economic feasibility and other allegedly non-CEQA objections (even by objectors' rebuttals both to incorrect or worse EIR/DEIR claims and to the mistaken acceptance in the County Economic Report and County Staff Report of such EIR/DEIR exclusions of fundamental realities and many consequent EIR/DEIR errors and omissions), all those economic objections/rebuttals, especially using Rise's own admissions (Exhibit A) and inconsistencies, are essential and unavoidable parts of any vested rights' reclamation and financial assurances analysis. See, for example, Engel Objections from a bankruptcy lawyer with a half century of experience disputing failed mines and miners, including his liquidation of the once primary US reclamation bond insurer and never finding any "financial assurances" to have been adequate, a key reason why there are more than 40,000 abandoned or bankrupt California mines on the ERA list. Since those statutorily mandated reclamation and financial assurance issues have not yet been fully presented by Rise or others in the current (and somewhat inconsistent) disputed EIR/DEIR process, due process requires that objectors be entitled to rebut such issues fully on the merits in an evidentiary adjudicatory process satisfying the constitution, as explained in *Calvert. Hardesty,* and *Hansen* and discussed below and in Exhibit B.

Rise also seems likely to attempt to continue to rely for such disputed mining on Rise's disputed, amended reclamation plan on file with the County (the "**Existing Reclamation Plan**"), which (together with any allegedly supporting "**Reclamation Financial Assurances,"** objectors include here in that term "**Reclamation Plan")** will become a critical subject of this vested rights dispute, even though Rise's plan seems to be proceeding incorrectly without a permit or CEQA compliance (or, as some objectors assume, to flip the mine to someone else, perhaps already "behind the curtain," who is better able to afford the massive costs of even the deficient part of what should be required by law by any such miner.) See Exhibit C, as well as SMARA #'s 2733 (broadly defining " reclamation" in ways that, when properly applied, will make the required "financial assurances" defined in # 2736 unaffordable by Rise or its buyer) and # 2716 (allowing any interested persons [i.e., any objector here] to commence legal actions for writs of mandate to enforce counters against the miner, as was done in *Calvert and other cited cases.)*

SMARA #2776(a) conditions any vested rights on the continuance of the required circumstances, including allowing such vested rights opportunities only "so long as no substantial changes are made in the operation except in accordance with this chapter." That *Calvert* court also adopted (at 624) the Attorney General's 1976 opinion on that SMARA statute (59 Ops. Cal. Atty. Gen. 641, 643, 655-56 (1976)) determining that "substantial change[s]" in operations and "substantial liabilities" for work and materials "constitute questions of fact which can only be determined on a case-by-case basis" in a proper vested right proceeding before the lead agency, as to which objectors insist on fully participating as the full parties they will be in the judicial litigation to come—not just concerned citizens limited to 3 minute comments on EIR/DEIR deficiencies. See the other discussions herein (and in Exhibit B) about applications of such "substantial change" and related precedents to the IMM and to objectors' own due process, legal, and property rights. See, e.g., Exhibit B discussing *Hansen Bros. Enterprises, Inc. v. Board of Supervisor***s** (1996), 12 Cal. 4th 533, 540-46, 552-52, 556, 576 ("***Hanse****n*"), as further explained in the even more relevant *Calvert leading case.* Consider the massive number of underground mining, reclamation, and financial assurance changes that would have to be made by Rise compared to any period before the IMM closed and flooded in

1956, when it was last in operation, closed, and abandoned to flooding. Mining techniques, operations, and laws (as well as our community above and around the 2585-acre proposed new underground mining area and every other aspect of the IMM) have changed too much since 1956 (or 1954, where *Hansen* was focused as discussed in Exhibit B.)

While objectors refute Rise's claim to any vested right to avoid such "permit" requirements, objectors describe below how it is legally impossible for Rise to satisfy its burdens of proof or otherwise to prevail, especially with respect to any such disputed Rise reclamation plan and financial assurances. As demonstrated by various objecting residents and groups in the existing DEIR and EIR proceedings and even by Rise's own admissions (see Exhibit A), Rise does not (and could not) satisfy any such required reclamation plan conditions. Even if Rise had such a compliant plan, Rise cannot provide the required financial assurances for any plan that would be sufficient, as demonstrated by Rise's admissions in its own SEC filings (Exhibit A), including Rise financial statements containing its own accountant's "going concern qualifications." In any case, ***Calvert* (at 630) correctly interprets SMARA #2774 as requiring a public hearing (which must be constitutionally and legally sufficient for objectors' due process and statutory rights and remedies) "for the review and approval of reclamation plans and financial assurances, and the issuance of surface mining permits."** (emphasis added) That has not yet happened and cannot be accomplished now either as part of the disputed EIR/DEIR CEQA pending process or otherwise in this vested rights dispute.

Moreover, so far the County staff has incorrectly refused to consider important rebuttal evidence, such objectors' evidence of Rise's admitted economic infeasibility to accomplish anything material Rise or its enablers plan in the disputed EIR/DEIR (Exhibit A) on Rise's erroneous theories (even in rebuttals to Rise's disputed DEIR/EIR alleged "facts" or claims, or even following up on Rise's admissions, such as at DEIR 6-14, where Rise admitted that the entire project was economically infeasible unless Rise could somehow overcome objections to operate as it demanded 24/7/365 for 80 years). For example, Rise enablers asserted incorrectly that the EIR/DEIR process must ignore issues incorrectly categorized as "non-CEQA" disputes (even though Rise itself did so (and even labeled one section as "non-CEQA" comments), such as allegedly about economic feasibility and other relevant issues that objectors wished to raise (and that some, like the Engel Objections, raised anyway to preserve those arguments for any follow-up litigation). But see, e.g., ***Communities for a Better Environment v. City of Richmond (2010), 184 Cal.App.4th 70, 82-90 ("Richmond v Chevron"),*** where such SEC admissions not only were used in CEQA rebuttals but defeated the EIR in that Richmond Chevron refinery project. Obviously, our resident objectors are also entitled to Calvert style due process in rebutting any vested rights plan, especially such disputed Rise reclamation plan and financial assurances, which means any such dispute process must include not only all our objections to the DEIR and EIR (among other things, describing problems creating conditions requiring reclamation), but also much more objector evidence that the County staff so far has refused to consider in the pending EIR/DEIR processes.

That means, for example, that Rise must contend with even more detailed, enhanced, and expanded objections, such as expert evidence offered by the Engel Objections, such as demonstrating why surety bonds (or equivalents) are rarely, if ever, sufficient to cover the actual reclamation costs, resulting in more than 40,000 abandoned California mines on the EPA list, lingering indefinitely for reclamations that seem likely never to come. Incidentally, among the

many questions so far evaded by Rise and its enablers is this: what risks and problems will occur for our community if Rise were allowed by the County to proceed, whether on such disputed vested rights or other EIR/DEIR theories, and then objectors persuade the courts to stop the mining in the next litigation phase of these perpetual disputes? Stated another way, if this financially questionable miner (by its own admission in SEC filings discussed in Exhibit A) miner dewaters the mine and exhausts the funds needed to cover the massive start up expense needed to begin operations even to learn whether there are any commercially viable gold deposits in those new unexplored areas of the underground mine to being to cover those costs, how much worse off will our community be? Will Rise still be treating our groundwater that now again floods the mine and leaches into the new mine waste shoring cemented together with newly added toxic hexavalent chromium publicized in the Erin Brockovich movie about how hexavalent chromium killed Hinkley, CA and many of its residents and where, after all these years of trying, still have not been able to remediate their groundwater as described in www.hinkleygroundwater.com.

The power of such objections is magnified by the fact (e.g., demonstrated in the Engel Objections, among others) that disputes over such reclamation plans and financial assurances must consider the manifest (and to some extent Rise admitted in SEC filings and Exhibit A) unknowns and uncertainties in this disputed EIR/DEIR plan, assuming Rise does not revise that plan to be even more objectionable in disputed reliance on its alleged freedom from use permit and other compliance. Among other things, consider obvious risks in: (i) reopening a massive mine that has been closed and flooded since 1956, without any adequate study of the current actual conditions of the existing mine or the new, expanded area to be mined (as distinct from Rise's disputed consultants "theories," i.e., often seeming to be pro-mining, biased guesses) or the new mining area doubling its size (e.g., 76 versus 72 mines of new versus old tunneling, and now even deeper in the new mining); (ii) proceeding without adequate exploration, investigation, or credible, reliable, or otherwise critical information as to all the risks listed for investors in Rise's SEC filings (Exhibit A), but mostly ignored improperly in Rise's EIR/DEIR, despite being raised by objectors, including in the 1000 pages plus of four Engel Objections (including incorporations); and (iii) satisfying Rise's burden of proof, which under the facts and circumstances will be impossible for Rise to satisfy in any litigation where the rules of evidence apply, since even much of the insufficient, unreliable, inadmissible, and otherwise noncredible proof Rise has offered so far will fail to overcome our evidentiary objections when they are allowed to be applicable, no later than in the judicial process. (While Rise is hoping for legal "findings" by the County that Rise imagines may give it the appearance of some evidentiary support in the next litigation, objectors can defeat Rise on the legal issues [and mixed questions of law and fact] where the courts address such issues de novo, as already previewed to some extent in the Engel Objections and others to the disputed EIR/DEIR. As demonstrated, for example, in such objections and in that above cited *Community for a Better Environment v. City of Richmond* decision defeating the Chevron EIR in Richmond, Rise cannot ever overcome its damning admissions in its SEC filings (Exhibit A) and elsewhere, no matter what the County decides.)

4. While SMARA Is So Limited To "Surface Mining" And Rise Cannot Create Rise's Imagined Vested Rights FOR RISE'S UNDERGROUND Mining, Such SMARA Cases Can STILL BE USEFUL FOR OBJECTORS' DUE PROCESS AND OTHER REBUTTALS, Such As the *Calvert* Court's Multiparty "Adjudicative" Decision Recognizing the Impacted Public's Right For Due Process And Other Challenges To Rise Mining And Theories.

***Calvert* was not focused on the *MINER'S* due process rights, but rather instead on the due process rights of the NEIGHBORING VICTIMS of the mining and the other impacted public who we call "objectors." *Calvert v. County of Yuba* (2006), 146 Cal.App.4th 613 ("Calvert").** In that case, the county incorrectly approved the surface miner's purported, vested rights in an unconstitutional, two-party "ministerial" process without notice to, and due process for, any impacted neighbors or other objectors, because such miner's vested rights evasion under SMARA of the normal permit requirements was not merely a "ministerial decision" or otherwise one for the County alone. As the *Calvert* court held (Id.): **"Is the vested rights determination regarding Western's surface mining operations …subject to procedural due process requirements of reasonable notice and opportunity [for objectors to] be heard? Our answer: Yes." (**emphasis added) Therefore, **Calvert** court rejected the idea that such a vested rights decision is merely "ministerial," instead holding it to be a "adjudicative" (or "quasi-judicial" or "administrative") decision requiring due process for the objecting neighbors and other impacted public. *Calvert* followed the analysis of SMARA #2776 in **"**Ramsey**"** (i.e., *People v. Dept. of Housing-Community Dev.* (1975), 45 Cal.App.3d 185, 193-94, holding that construction of a mobile home park was, at least in sufficient part, a discretionary act subject to CEQA) and cases cited therein. Moreover, as demonstrated below and in *Calvert,* Rise cannot now just "switch positions" in mid-stage of its EIR/DEIR process from Rise's doomed CEQA theories to some disputed, new, vested rights theory, whether under a "diminishing asset doctrine" theory or otherwise, because that is both legally improper procedurally (e.g., estoppel) and (as *Calvert* explains) that would be a denial of objectors' due process rights to a constitutional process in which they are equally able to present all of their counters and competing evidence in a sufficient, adjudicatory process much closer to what will occur in the following court process than the disputed and deficient CEQA process so far.

That *Calvert* court also rejected as without merit many issues raised by that miner that would also defeat Rise's IMM vested rights claims. **For example, the usual claim by miners that the aggrieved public objectors failed to exhaust their administrative remedies was inapplicable in that case because (citing CA Supreme Court authority in *Horn v. County of Ventura*) the court held (at 622): "[o]ne need not exhaust inadequate remedies in order to challenge their sufficiency."** However, in the IMM mine case, we expect the hundreds of EIR/DEIR objectors also to be even more comprehensive in resisting Rise, making such exhaustion of administrative remedies claims by Rise inapplicable, as objectors had prepared to prove if the disputed EIR had been approved. Nevertheless, *Calvert* is instructive for the County as to its need to upgrade its rules and procedures as noted in the aforementioned IMM status conference topics, especially as explained in one of the concluding sections below about preserving objectors rights to prevent Rise's lengthy "last words" at the Board herein from evading the "fact checking" needed to expose Rise incorrect or worse additions to its disputed "alternative reality," especially by rebutting them with Rise's own admissions (see below and

Exhibit D) and inconsistencies between what Rise then claims versus its (or the EIR/DEIR's or enabler statements' based on Rise claims) prior record positions. That later section below suggests how the County can best deal with that in the suggested Summary Due Process Proceeding before the Board hearing.

So, what possible benefit does Rise imagine for its radical, mid-stream switch to these disputed vested rights claims, even from *Hansen* (which hurts more than helps Rise's disputed claims, as demonstrated in Exhibit B) much from other authorities like *Calvert and Hardesty,* where the miners lost badly on many grounds to comparable objectors? Apparently, besides Rise's desperation and habit of gambling on meritless, "long shot" theories, Rise seeks somehow to shout "vested rights" for doing whatever the disputed Rise Petition may want (still a mystery as to critical issues) as if those words (vested rights) were a magic spell that needed nothing more justification or substantiation to evade the contrary applicable law for Rise's purported vested rights than to invoke some disputed, inapplicable, distinguishable, or even contrary citations to Hansen and SMARA. See Exhibit B rebutting Rise's *Hansen* claims even with the court's own words, and Exhibit C rebutting any Rise reliance on SMARA for this underground IMM. Rise cannot claim the benefits of SMARA, even by analogy, without assuming SMARA's burdens, such as an approved reclamation plan and financial assurances that Rise cannot possibly accomplish by its own admissions as to lack of financial capacity in Rise's SEC admissions in Exhibit A.

However, the Rise Petition is doomed on the legal merits and failed burdens of proof with essential, admissible evidence, and such flaws cannot be overcome by Rise claims about misused/rebranded "due process" empowering imagined vested rights to evade permitting and environmental requirements that Rise has earlier explicitly and implicitly already admitted being applicable. See the EIR/DEIR and Rise's other permit and other applications and filings, such as those detailed in the County Staff Report. Once again, as objections to the EIR/DEIR (especially the Engel Objections) have repeatedly argued correctly, Rise continues to ignore the competing due process rights of the objecting neighbors and public (as upheld by *Calvert and Hardesty*), as if somehow Rise could (incorrectly) compress this massive, multi-party dispute into something like a "ministerial" two-party dispute by Rise with the County in which our objections could (incorrectly) be limited and while unlimited time and advantages are disproportionately permitted to Rise and its enablers. At least for this vested rights dispute, due process hearing rebuttal presentations by objectors cannot be limited to three minutes each, especially without some pre-hearing and other accommodations to match each Rise disputed claim and its purported evidence with objector rebuttals, especially from Rise's own admissions and inconsistencies. In any event, Rise's vested rights theories are not just wrong, but also legally impossible against such counters by the competing surface owner-objectors living above and around the 2585-acre underground IMM, whether the County allows them to be timely presented or objectors assert them in offers of proof that the courts must accommodate. When this dispute reaches the courts, objectors' due process will mean full participation on an equal protection and time basis. Why not follow *Calvert, Hardesty, and other authorities to allow that fair and level playing field now*?

5. Even If Rise Had Some Vested Rights, Which Objectors Dispute, That Excuse To Not Have Certain Permits COULD EXIST ONLY "SO LONG AS THE VESTED RIGHT CONTINUES AND SO LONG AS NO SUBSTANTIAL CHANGES ARE MADE IN THE OPERATION…" (SMARA # 2776.) See Exhibits B, C, D, and E. This Illustrates How Objectors Can Use More Detailed Facts And Correct Law, Including Rise Admissions, To Rebut The Rise Petition's "Story."

a. Rise Cannot Prove the SMARA Required Continuance of the "Same Use" With Its Disputed, Historical Fragments Rise Calls "Evidence."

In any litigation where the rules of evidence apply strictly (see some evidentiary discussion herein and in Exhibit D), Rise's disputed vested rights theory of "no substantial changes" must fail, even by Rise's own SEC filings and other admissions (see Exhibits A, B, C, and E). **As *Hardesty* explained at 812: "THE CONTINUANCE OF A NONCONFORMING USE 'IS A CONTINUANCE OF THE SAME USE AND NOT SOME OTHER KIND OF USE'", citing "*County of San Diego v. McClurkin* (1951), 37 Cal.2d 683, 688; *Edmonds v. County of Los Angeles* (1953), 40 Cal.2d 642, 651; and *County of Orange v. Goldring* (1953) 121 Cal.App.2d 442, 446-47."** (emphasis added) As demonstrated in various ways under every possible perspective, Rise cannot satisfy its burdens to prove with legally admissible, competent, and credible evidence even the base vested rights case of the old, pre-10/10/1954 mining to set the standard for comparison or modeling to SMARA or other surface modeling or other precedents. Even based on facts **Rise has admitted in its SEC filings (see Exhibit A), disputed EIR/DEIR and elsewhere,** the surviving alleged IMM relevant records for the parts of the abandoned IMM mine that flooded and closed in 1956 are vulnerable to challenge as incomplete, unreliable, noncredible, and subject to many evidentiary and other disputes by objectors. Even if Rise were somehow able to get away with changing its legal theories in its Rise Petition "restart," Rise cannot escape its prior admissions and inconsistencies, as demonstrated in *City of Richmond* and *Hardesty* and illustrated in Exhibits A, B, D, and E. Moreover, Rise cannot rewrite history with such disputed "evidence" as if its predecessors were somehow "different and better" than the rest of its problematic industry at such times, especially using Rise Petition's Exhibit fragments of what Rise calls history. See *Hardesty and even Hansen*.

For example, when the predecessor owners were admittedly operating in distress on 10/10/1954 and when and after they so abandoned the IMM in 1956, how likely is it that they saved **comprehensive, complete, and accurate records** of everything they did and did not do or intend? Isn't it more likely that typical mine owners of that time, fearful of prosecutions and claims when foreseeable problems arose, would be careful what they exposed to history, preferring not to have surviving records confessing "inconvenient truths" or worse for possible salvage by their adversaries? Considering that Rise often seems to present fragment documents with little or no sufficient foundation that cannot satisfy its burden of proof, why cannot objectors dispute such things in the main counters to come with such historical and problematic "mining industry practices" of such times?" Historical experience can show that abandoning miners are as careful as retreating armies guilty of "problematic conduct" [e.g., even modern examples like Russia retreating in Ukraine] to only leave behind records that do not expose them to wrongdoing claims or worse.) That lack of a complete and accurate records doesn't mean, as Rise seems to contend, that such uncertainty allows Rise to say or do whatever it

wants from some cherry-picked fragment about which the County process does not (yet) allow court-type cross-examination. To the contrary, that lack of a sufficient "base case" of competent, admissible, credible, reliable, and unambiguous evidence means that Rise cannot ever satisfy its burden of proof on the key issues and requirements for the disputed vested rights Rise claims, especially considering that Rise has chosen not to explore or investigate sufficiently the actual conditions in the existing underground mine, much less the unexplored expansion, new, underground mining areas that now are the core focus of these disputes by objecting surface owners above and around them.

The *Hardesty* case quotes herein support objectors' arguments under these circumstances, but we add this supporting quote about such **evidentiary issues**:

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

Hardesty, 11 Cal.App.5th at 801. See Exhibit D. (This followed the court's earlier evidentiary findings [at 799] that, for example: "'There are no records presently available …to show what kind of mining business … the owner from 1921 to 1988 … conducted on the property after the war.' **The trial court found that through the 1970's, the property 'was essentially dormant.'")**

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

Hardesty at 810. Also, even if Rise tries to allege some such resumed mining, Rise would not be able to claim immunity from all the then existing laws which would require substantial mining changes from the time operations ceased in the closed and flooded mine in 1956. As noted above and elsewhere, **that court ruled at 811 (citing Hansen at 12 Cal.4th at 564, and Calvert at 145 Cal.App.4th at 629): "IT WAS HARDESTY'S BURDEN TO PROVE HE WAS CONDUCTING A NONCONFORMING USE AT THE TIME THE LAW CHANGED." IT ADDED THIS CITE FROM MELTON V. CITY OF SAN PABLO (1967), 252 CAL.APP.2D 794, 804: "THE BURDEN OF PROOF IS ON THE PARTY ASSERTING A RIGHT TO A NONCONFORMING USE TO ESTABLISH *THE LAWFUL* AND CONTINUING EXISTENCE OF THE USE *AT THE TIME* OF THE ENACTMENT OF ORDINANCE [IT WISHES TO EVADE.]"** (emphasis added) See also the court's discussion at Id. and 812 of *Stokes v. Board of Permit Appeals* (1997), 52 Cal.App.4th 1348, 1351, 1352-53, 1355-56, and *Walnut Properties, Inc. v. City Council* (1980), 100 Cal.App.3d 1018, 1024.

Rise's 10K admits (at 34-35—See Exhibit A) that 1955 was "the final year of production from the mine." Thus, there has been no mining for vested rights acquisition since at least

that time in 1955 (which because it is currently uncertain, objectors have "rounded up" to 1956, when Rise admitted the IMM closed and flooded), thus focusing on the comparison of the applicable law at that time to what Rise now proposes for vested rights underground mining in that new, expanded area part of the 2585-acre underground mine that objections prove was too often ignored in the disputed EIR/DEIR. Compare this to the Nevada County's 1954 ordinance and other State laws in 1954 laws versus what was done in that last 1955 year of mining operations, as discussed in *Hansen* in this Petition and Exhibit B. (Because *Hansen* is often a mischaracterized case by miners, it is more correctly described in detail in Exhibit B hereto.) To be clear, **none of the work done at the abandoned IMM since it closed and flooded in 1956 qualifies for Rise vested rights, since there has only been "exploration" or environmental testing, which even Rise's SEC 10K excludes from "mining" activities by its admission (Exhibit A) at pp. 28: "MINERAL EXPLORATION, HOWEVER, IS DISTINCT FROM THE DEFINITIONS OF 'SUB SURFACE MINING' AND "SURFACE MINING'" [MAKING THE POINT THAT MINERS IN THAT M1 DISTRICT ZONED LAND COULD EXPLORE WITHOUT A PERMIT.]** (emphasis added) While Rise cites aggregate gold production numbers from 1866-1955 in its 10K Table 3 at pp. 35, what matters for the vested rights dispute is what vested right uses and intensities existed when, for example, the 1954 Nevada County ordinance addressed in *Hansen* became effective compared to the nonconforming IMM uses, if any, that occurred in 1955 or 1956. Clearly, nonuse since at least 1956 cannot create any additional or enhanced vested rights, even under *Hansen (see Exhibit B),* much less under many other authorities that objectors cite [and more they will cite in later briefing] to defeat Rise's vested rights claims. While this is not the time or the place for briefing all objectors' facts, evidence, and law for our trial briefs defeating the vested rights claims, it is instructive for the County to consider this Rise 10K admission at 34 (Exhibit A), demonstrating that not much happened in 1954-55 of helpful relevance for Rise's vested rights claims, especially considering all the additional and upgraded laws and regulations occurring after the mine closed and flooded by 1956 and even before since (Exhibit A**):"[mining was] forced to shut down by the US Government in 1942 (Shore 1943). Due to lack of development, a decline in gold production was experienced and recovery from war-time shutdown never occurred."** (emphasis added)

Rise's SEC 10K claims at pp. 34 (Exhibit A) that: "The I-M Mine Property and its comprehensive collection of original documents was rediscovered in 1990 by Consolidated Del Norte Ventures Inc, the predecessor company of Emgold Mining Corporation, and efforts were made to reopen the historic mine." However, during the period of what Rise there (Exhibit A) called "Exploration & Mine Development 2003-2004" [skipping over in dead silence the period of nonuse or anything from 1956 to 2003], that **Rise 10K also claims (at pp. 34):**

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

unsuccessful in reopening the historic mine due to inability to raise necessary funding in the midst of unfavorable market conditions." (emphasis added)

As described in this Petition and Exhibits D and E, **objectors dispute any such Emgold purchased documentary evidence as consistent with Rise's description (e.g., disputing that such "REDISCOVERED" in 1990 pre-1956 records that were a "COMPREHENSIVE COLLECTION"). Where is Rise's competent proof for such claims, or even the authenticity of such "evidence?"** What is the proof for the "chain of custody" of such so-called evidence? The law of evidence should exclude those purported records (lacking the required foundation and admissibility factors) as admissible proof for any Rise claimed vested rights, since we cannot imagine how Rise will now prove their disputed completeness, validity, and admissibility. As to that relevant "history" summarized by the Rise 10K (Exhibit A) starting at p. 34, using what are described as "**AVAILABLE** historic records" (emphasis added, to emphasize that **"availability" is a function both existence and the degree of diligence as to the search, which Rise has the burden to prove and objectors doubt)**. Objectors assume that **"available" means the portion of such once greater mass of historical records that Rise was willing and able to find.** What did Rise or its predecessors choose to hunt down and locate? What did Rise or its predecessors not seek, because, for example, it was from a source suspected of having possibly negative information? In any case, those matters are part of Rise's burden of proof, for later litigation or discovery about the question of what possibly available records Rise could have chosen to seek or investigate but didn't. [**Note that RISE'S SEC 10K ADMITS (EXHIBIT A), FOR EXAMPLE, THAT "[H]ISTORIC DRILL LOGS WERE NOT AVAILABLE FOR REVIEW AND NO HISTORIC DRILL CORE WAS PRESERVED FROM PAST MINING OPERATIONS…"** (emphasis added). Objectors wonder what competent, admissible, reliable, or even credible evidence, if any, serves as the foundation for Rise's (and the EIR/DEIR's) purported analysis, and what deficiencies exist to invalidate or discredit such analysis? Another discovery question is whether and to what extent the prior Emgold owner stopped its reported investigation merely (as Rise claims at 34-35, see Exhibit A) "due to inability to raise necessary funding in the midst of unfavorable market conditions" or whether they may also have been discouraged by negative information, suspicions, or clues of risks that would have to have been awkward to address in the disputed EIR/DEIR (if Rise had chosen to search for or investigate them.) For example, **the SEC 10K reports (Exhibit A) that Rise purchased the "Emgold diamond drill program database" as distinct from all the historical documents of Emgold, as Rise did when it purchased from BET Group.** (emphasis added) Why not more? In any case, any applicable CEQA limitations on objector counter efforts, evidence, and arguments do not apply the same way, if at all, to such vested rights disputes, especially when these disputes also involve such objectors' competing rights and claims as surface owners above and around the 2585-acre underground IMM.

b. Even If Somehow Rise's UNDERGROUND MINE Were Treated By Analogy Like A "Surface Mine" Subject To SMARA Or Something Rise Incorrectly Calls the Common Law, Rise's Disputed "Diminishing Asset" Doctrine Theory Still Cannot Create Any Vested Right For Rise's (i) Not "Similar" Or "Changed" "Uses" Or "Operations," (ii) Separate Parcels/Different Areas, (iii) More "Intense" Activities And Impacts, (iv) Not "Objectively Intended" "Expansions," Etc.

The *Rise imagined "*precedents" cannot create any vested right for Rise to mine underground based on some analogy to the "diminishing asset doctrine" for surface mines under SMARA or wishful thinking Rise calls the "common law." The many exceptions recognized by Hansen alone (Exhibit B) are sufficient to defeat the Rise Petition, not to mention the other authorities like Hardesty that Rise ignores, plus the full opposition briefing still to come after status conference "clarity" before the Board hearing. Consider the *Calvert* court's comments (at 623) regarding objective manifestations of intent for expansions (as previously stated quoting *Hardesty* and *Hansen/Exhibit B* on a parcel-by-parcel basis):

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

Also, based on facts confirmed by EIR/DEIR and other Rise admissions, the new/never adequately explored, accessed, or accessible for mining parts of the 2585-acre underground mine into which Rise wishes to expand are **not the "same area" under that *Calvert* test**, but rather would double the IMM in size (and with much greater "intensity" and "change") into new and deeper areas with 76 mines of new tunneling, rather than just continuing to working off of the 72 miles of existing, flooded tunnels (probably now in the extremely dangerous and nonfunctional conditions one would expect after being abandoned and flooded since 1956.) Such mining size, use, change, expansion, and intensity differences are even more important with IMM underground mining than with surface mining, for example, because that at least doubles both the impacts on objecting surface owners (with more, new surface owners above and around the new, expanded underground mining) and with more the groundwater and existing and future depletions, while involving new underground conditions that have not yet been properly explored or adequately analyzed. See Rise SEC admissions in Exhibit A. Also, besides other such *Calvert* court's reasoning defeating Rise, which we apply below with even more power and right in this case of more harmful, dangerous, and impactful **underground mining (e.g., such as to "substantial changes" in "operations" and "uses" with much more "intensity" that each must disqualify any such alleged vested rights on a parcel-by-parcel basis), objectors also contend in this IMM case that many relevant laws Rise attempts to evade by purported vested rights are immune for many reasons, such as because they (i) are an exercise of police powers or otherwise not vulnerable to any vested rights claim, (ii) may have existed in some form even before 10/10/1954 (e.g., common law or property rights protections later codified), or (iii) followed after 1954 or after when the "abandoned" IMM mine closed and flooded in 1956 and before anything could "resume" that Rise could call "mining" for this purpose [as distinct from minor "exploration" or testing or other operations Rise incorrectly confuses with mining, none of which is any "mining" use or operation for vested rights. For example, as discussed below and in Exhibits A and B, Rise admissions enable objectors to prove that Rise's (or even predecessor Emgold's) "explorations" are not**

"mining" for vested rights purposes. (Objectors contend such IMM "mining" still has not, and cannot yet, lawfully resume. Thus, even if Rise's incorrect vested rights theory somehow applied [which we dispute], Rise would still also be bound at least by all of such existing laws and objector rights before Rise tries to start mining again in the future, which, considering the pace of existing and future litigation would probably allow ample time for more law reforms by objector initiatives and lawmakers.)

Rise's fantasy theory that somehow it can evade all mining laws before 10/10/1954 will be defeated by abandonment by 1956. See *Calvert and Hardesty. Also, as demonstrated herein and in future briefing, even actual vested rights cannot override most applicable laws or regulations in any event,* since they are limited to certain land use laws and even then may be subject to objecting surface owner defenses (e.g., laches, unclean hands, estoppels, etc.), property rights (e.g., lateral and subjacent support against subsidence, existing and future well and groundwater, prescriptive easements, environmental protections, etc.), and other protections described in hundreds of record EIR/DEIR objections. Furthermore, Rise cannot satisfy its burden of proof that any applicable predecessor IMM miner in that historical chain leading to Rise for each parcel or sub parcel (each predecessor needing to prove its vested rights at the time of sale) had any "clear intent" to mine before each deadline or into the expanded, new, unexplored/not accessed, and deeper areas of the IMM's 2585-acre underground mine, especially with more "intense" mining and impacts planned by Rise that was not imaginable in 1954, 1955, or 1956. Thus, when any such post-1956 laws and regulations took effect as our community grew around the closed, flooded, and abandoned IMM, those laws and regulations should apply regardless of Rise's disputed vested rights claims. That is "objectively manifest" under the *Calvert* test, because not all the predecessors before Rise on each parcel showed any interest in gambling the monumental cost, time, and effort of restarting the disputed IMM mining in hopes of finding gold in future years (especially in such new, never accessed or mined, unexplored areas) as to which Rise's SEC filings (Exhibit A) admit to being sheer speculation (i.e., not only with no proven gold reserves, but also no adequate exploration data from the new mining area.) **To quote that SMARA #2776 statute, there has been no such "good faith" reliance by Rise and its chain of predecessors on each parcel on any "permit or other authorization," no "surface [or other relevant] *mining* operations" have "commenced" (miner "exploration" of other areas besides the new expansion areas [or even parts of that expansion area] for mining does not create such vested rights to mine as Rise claims). Also, no "substantial liabilities for work and materials necessary" have been incurred for that *"commencement" of "mining" "operations"* in each applicable parcel of that underground mine.**

Exhibit D: The Rise Petition Does Not Have The Kind of Admissible And Credible Evidence Needed To Satisfy Rise's Burdens of Proof on Any of the Required Issues In This IMM Underground Mining, Vested Rights Dispute, Especially Against the Objecting Surface Owners Above And Around the 2585-Acre Underground IMM.

1. **Some Evidentiary Considerations Further Doom Rise's Vested Rights Claims, As To Which Rise Has The Burden of Proof And Should Fail On the Inadmissibility of Much Of Rise's Evidence Under the Laws of Evidence. Objectors Are Entitled To "A Level Playing Field." E.g., To The Extent That the County Tolerates So-Called Rise "Evidence" That Is Inadmissible Or Not Competent Or Credible Under the Rules Of Evidence (To Which Objectors Object), The County Must Allow Equivalents From Objectors. In Any Case, the County Must Clarify Such Rules Early, So That Objectors Can Prepare Motions In Limine To Exclude Such Evidence Or (At Least) Objections Both To So Exclude Some Rise Evidence And To Counter With Objector Matches Whatever Is Tolerated From Rise. In Any Case, IMM History Dooms Rise's Ambitions, Which the Courts At Least Will Not Allow Rise To "Rewrite," Especially on the Required Parcel-By-Parcel Basis As Separate Chains of Title Predecessors Merged Over Time Into the IMM.**

    a. How Rise's Burden of Proof Defeats Its Disputed Vested Rights Claims, As Do The Overwhelming Evidentiary Problems Created by Even The Rise Admitted History of IMM, Much Less The Rise Ignored Realities Supporting Many Objections.

Rise bears the burden of proof as to every element of its disputed vested rights claims, even under Rise's own cited ***Hansen*** authority. See Exhibit B and prior discussions, applying the evidentiary principles to relevant facts in these Rise vested rights disputes to illustrate how and why objectors must prevail. As that *Hansen* court stated**: "The burden of proof is on the party asserting a right to a nonconforming use to establish the lawful and continuing existence of the use at the time of the enactment of the ordinance."** (emphasis added) *Hansen Brothers Enterprises Inc v. Board of Supervisors of Nevada County* (1996), 12 Cal. 4th 533, 564. That burden of proof includes proving with sufficient, credible, and admissible evidence (applying the "objective" tests) that applicable Rise predecessors for each mine aggregated into the IMM over the decades were actually engaged in sufficient mining operations at the relevant times that such legal restrictions affecting each such mining parcel/sub parcel went into effect (1954-1956). Thus, objectors can prevail by defeating Rise vested rights claims by defeating them as to any predecessor in the chain of mine titles of any parcel/sub-parcel aggregated into the IMM and its new, expanded mining plan. As admitted in Rise's SEC 10K filing (cited in Exhibit A) at least 10 parcels (55 sub-parcels) exist in that underground IMM that were previously legally separate mines before integration into the IMM for such vested rights analysis, requiring a parcel/sub-parcel by parcel/sub parcel vested rights analysis for each chain of title and operating history from the commencement of mining (often during the gold rush days) to now. However, underground mining has been physically impossible anywhere for this continuously closed and flooded underground IMM abandoned since at least 1956. Also, Centennial could not be mined because of its toxic dangers and regulatory limitations. Likewise, even if Rise could

have tried to make the Brunswick site functional, there would have been no point because there has been no feasible or economical means of using Brunswick to access the disconnected underground mine.

That Rise description of its environmental studies (at SEC 10K filing pp. 31-32—Exhibit A) addresses the IMM and Centennial wholly owned land conditions, which is not determinative of the conditions in the different areas of the 2585-acre underground mines, especially the unexplored expansion area for new underground mining. As Rise admitted at 10K page 31 as to "Environmental Liabilities," all "environmental studies were completed prior to Rise purchasing the Idaho land [aka Centennial] and the Brunswick land," to which we have many evidentiary objections. That also means that Rise personally cannot vouch for the accuracy, completeness, or sufficiency of those studies or any directions (or lack of correct instructions) that may have been given by the many prior owners of the many parts of the aggregated IMM. As proven herein the courts require each predecessor in each chain of title for each parcel or sub-parcel to have vested rights for the next successor to possibly have such vested rights.

Motions in limine before the start of any court trial will exclude most of Rise's so-called "evidence," because it is inadmissible on various grounds and other reasons (such as those discussed in the introduction above and Exhibit A). The County should also find there can be no substantial evidence for any vested rights as claimed by Rise. In any case, neither Rise's SEC 10K (Exhibit A), nor the EIR/DEIR, nor other related filings reveal when or how Rise's predecessor acquired those 10 parcels (55 sub parcels) or underground mining rights to compare each such mine "expansion" for such vested rights analysis versus the continuously evolving and expanding applicable laws and regulations at such times. Instead, while Rises EIR/DEIR data never lays any factual foundation for vested rights, Rise just states in the 10K that "original mineral rights" were acquired "at various times" since 1851. Exhibit A. The 10K describes the Rise purchase of everything from BET Group Estate (at pp.29) by **quitclaim deed on 1/25/2017** (with the "Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) **"subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…"** Note that Rise (at 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.

Thus, for example, if a predecessor miner had ceased (or never started) mining in one such underground parcel and sold that parcel to another Rise predecessor aggregating different separate mines into the IMM, Rise's vested right claim to that parcel can be defeated, because Rise cannot prove that such predecessors started and continued the vested rights qualified work on that parcel/sub parcel before either (1) the law to evaded by Rise vested rights claims took effect (e.g., the 1954 Nevada County mining law at issue in *Hansen*), or (2) the applicable parcel or sub parcel of the IMM ceased to operate, as admitted in the SEC 10K (Exhibit A) in 1955, or (3) the abandoned IMM closed and flooded in 1956. Continuous qualified mining operations and an objective intent by one chain of predecessors for one such parcel or sub parcel does not create any vested rights for Rise in any other chain of miners or parcels. (Sub-parcels count here, since this vested rights test is about mining targets [i.e., gold veins], not Subdivision Map Act compliance.)

While the County may be accustomed to allowing more legally inadmissible so-called "evidence" from project applicants in CEQA administrative disputes than the court would allow under the stricter rules of evidence, this multi-party, "vested rights" dispute should require truth and credibility about admissibility for what is allowed into "evidence" in these disputes. Objectors fear an "alternative reality" constructed from cherry-picked parts of unreliable "records" selected by Rise or any of its many predecessors in interest to support its respective, disputed version of history that are not legally admissible evidence. Consider, for example, the nature of the factual disputes identified above. We propose to counter such disputed Rise "evidence" in several ways (hopefully in the sections 1 described "Summary Due Process Proceeding, but certainly in any judicial process), such as, for example, for objectors: (1) to make motions to exclude Rise's inadmissible or otherwise objectionable "evidence" in accordance with the legal rules of evidence that prevail in court, or, to the extent the County allows such inadmissible evidence, to allow comparable rebuttal and other opposition evidence from objectors, applying the same standard for a "level playing field;" (2) to use Rise's admissions (e.g., SEC filings noted in Exhibit A, and DEIR at 6-14) and inconsistent statements from the EIR/DEIR, permit applications, and other Rise presentations, to impeach, rebut, and discredit Rise "evidence" (whether direct or indirect through EIR/DEIR enablers or staff reports of Rise comments); (3) to impeach and discredit Rise sources as appropriate to discredit their "evidence," such as we would do in a court litigation process, which is important here, not only because of the recent EIR/DEIR frustrations documented in objectors' record objections (and perhaps for some, the apparent history of "alternative reality" evidence scandals [e.g., the Blue Lead Mine vested rights proceeding, and the Canadian environmental case evidentiary issues, such as referenced in the recent *Union* Story dated August 22, 2023]). More important, credibility and reliability are concerns because of both (a) the relevant general history of unreliable mining records, especially from that applicable period of the 1950's (and before) where such unsworn records before modern science and environmental, securities, and other laws imposing accountability took effect and (now long dead) record keepers had incentives to say or hide what they wished without fear of punishment, and (b) because comprehensiveness, context, and consistency are essential for such historical records credibility. That means that when (as here for the IMM) records are not complete and comprehensive, they are suspect and vulnerable, such as, for example, likely cherry-picked documents reflecting avoidance of inconvenient truths, which history shows tend to be discarded, disregarded, or otherwise evaded in the "story telling" by miners (e.g., by rewriting history to suit the miners' goals); (4) to exclude such historical evidence by the many exceptions to the "business records rule," as "hearsay," because there will often here be an insufficient foundation for the validity, authenticity, source, reliability, or credibility of such records, especially since the IMM is admittedly (Exhibit A) such a combination of many mines and properties acquired at different times by and from different owners before Rise's 2017 purchase (e.g., any even incomplete document can be misleading, for example, because it lacks sufficient context and sourcing, and in most cases what objectors expect to confront will be fragments) from often anonymous, supposed record keepers, whose knowledge of what they are purportedly recording cannot be proven to be from their personal knowledge, and may be double or multiple hearsay or worse; and (5) many other reasons that objectors will demonstrate in the dispute briefing after objectors have had a reasonable opportunity fully to evaluate and react to Rise's vested rights

presentations. Furthermore, to further advance that goal of fair and cost-effective dispute procedures, the County should allow at least some of the normal litigation processes, such as objectors being entitled to require Rise to respond to "requests for admissions," so that we can narrow and focus the factual disputes and make Rise pay our costs in proving anything that they incorrectly refuse to admit. (Such requests for admission can expedite and the problem of asking hundreds of questions of most knowledgeable Rise witnesses key questions to win objectors' pretrial motions while the Rise lawyers try with objections to avoid Rise witnesses admitting the usual truths, which are that they have no credible means to prove the relevant history necessary to support their vested rights claims.)

Note that, just as most such historical IMM records "evidence" will be incomplete, unreliable, unsubstantiated, suspect, or worse, we don't even have to blame Rise, since by the time they acquired their insufficient fragments of the suspect mining records in 2017 from all those different aggregated mine parcels and predecessors since the 1800's aggregated (or not) themselves from prior IMM parcel owners. There have been so many different authors and custodians reporting on hearsay from so many unknown or unavailable sources based on inadmissible hearsay that no credible, much less admissible, evidentiary foundation can often exist. See the illustrative applications above of relevant applications of evidence to IMM dispute factual issues. Even based on facts Rise has admitted in its SEC filings and elsewhere (see Exhibit A), that the records for the IMM mine that flooded and closed in 1956 are incomplete and (though Rise doesn't say so but based on the admitted history) must be unreliable, noncredible, and subject to many evidentiary and other disputes by objectors. See the similar *Hardesty case* example discussed above and in Exhibit B. That doesn't mean, as Rise seems to contend, that such uncertainty allows Rise to do whatever it wants. To the contrary, the lack of a sufficient "base case" evidence to measure comparative "change" or "intensity" for vested rights analysis means that Rise cannot ever satisfy its burden of proof, especially considering that Rise has chosen not adequately to investigate or explore the actual conditions either in the existing mine or in the new, underground expansion area, instead preferring what Rise or its enablers have presumably cherry-picked from a disputed and insufficient sampling of the portion of ancient records that so far have been incorrectly tolerated by the EIR/DEIR team and County staff. Hiding from reality will not work for Rise, at least in court.

Objectors can also prove that such IMM existing records are deficient and unreliable for many other reasons, including because the lack of regulatory reporting at that time (and the incentives back then for miner misreporting with little accountability), which would have disabled anyone now to rely on the old operations records, even if they had all the old missing or incomplete records. In other cases the typical process in the old days was that the miners working underground told the record keeper in the surface office what he wanted to hear for his report (which record keeper typically had no "personal knowledge" to avoid hearsay objections, because he never risked going into the mine) Moreover, even if the miners' reporting was accurate as far as they knew, pre-1956 science was not capable of identifying many critical problems that we have all inherited and that miner witnesses could only have discovered in more recent years, so that old records, even if they were complete and accurate for that ancient time, would still not be sufficient for use today. Moreover, since mining science, techniques, and equipment have changed radically from the period before the mine shut down in 1956, it would not even to be desirable (or legally possible) for Rise to revert to those

deficient, unsafe, and noneconomic old mining method, which is all there is since nothing was happening in the abandoned underground mine after 1956. Substantial "change," greater "intensity," and lack of credible and admissible evidence are inevitable and doom any vested rights arguments by Rise.

b. Controlling Public Policy Considerations Also Doom Rise's Meritless Vested Rights Theory, As Demonstrated By Its Own Cited *Calvert* Precedent (And Cases Cited Therein, Like *Ramsey* And *Hansen,* As Well As Others Like *Hardesty* etc.*).*

As *Calvert* explained (at 625):

> **SMARA's policy is to assure that adverse environmental effects are prevented or minimized; that mined lands are reclaimed to a usable condition; that the production and conservation of minerals are encouraged while giving consideration to recreational, ecological, and aesthetic values; and that residual hazards to the public health and safety are eliminated. (# 2712) A public adjudicatory hearing that examines all the evidence regarding a claim of vested rights to surface mine in the diminishing asset context will promote these goals much more than will a mining owner's one-sided presentation that takes place behind an agency's closed doors. (emphasis added)**

Everything the Rise Petition claims is contrary to that SMARA policy, thus denying Rise both any policy basis for its vested rights claims and any support incorrect interpretations. As already demonstrated in the existing CEQA objections, including the four Engel Objections that integrate and incorporate many others and well as EPA, CalEPA, and other third party experts and evidence sources, none of the applicable public policies can be reconciled with any such meritless Rise claims for any such vested rights, and Rise cannot prevail even under its own reportedly cited authorities like *Calvert or Hansen,* much less under the applicable laws and other authorities that will be argued by objectors, if there is ever any opportunity in any proper vested rights proceeding, as would be required by any satisfactory due process proceeding for objections to such Rise vested rights claims even to be considered.

2. There Are Many Other Evidentiary Problems With Rise's Whole Approach to Its Attempts To Bully The County And Ignore And Evade Objectors That Also Doom These Vested Rights Claims, Especially Since Rise Cannot Reconcile Its Self-Defeating Admissions And Inconsistencies, Particularly Now That Rise Is Trying To Switch From Its Disputed EIR/DEIR/Permit "Stories" To Rise's Disputed Vested Rights Stories.

a. *Hardesty* Illustrates How the Courts Will Combat Rise's Attempts To Misuse Or Ignore Evidence To Disregard Such Attempts To Manufacture An Alternative Reality.

As illustrated herein and as will be proven when permitted by evidentiary objections and other counters, Rise's so-called objectionable "evidence" must be disregarded as one means of

defeating Rise's burden of proof. While some such Rise purported "evidence" is inadmissible under the legal **rules of evidence** (e.g., most of Rise's so-called "history" is fragmented, lacks foundation, is hearsay or worse, and fails to prove what Rise claims), Rise's purported evidence is defeated by the many inconsistencies, contradictions, and objectionable rhetorical "tricks" that can often be rebutted by Rise's own admissions. See, e.g., ***Communities for a Better Environment v. City of Richmond*** (2010), 184 Cal. App.4th 70 (called the **"City of Richmond")** (where the court used Chevron admissions in, and inconsistencies from, its SEC filings to defeat its EIR). In this case we have not merely inconsistent statements, but also inconsistent or contradictory Rise claims, themes, and "stories" in which such inconsistent or contradictory statements are embedded. For example, Rise changed its theories, claims, and contentions in its Rise Petition from its prior EIR/DEIR and related petitions and applications (which were themselves, like the Rise Petition now, also inconsistent with, or contrary to, the Rise SEC filing admissions, for example, in Exhibit A), and, by matching such inconsistencies and contradictions at their sources that Rise has not attempted to reconcile, objectors can use Rise's own admissions and inconsistencies to defeat the Rise Petition. That means objectors will not just be knocking out Rise's objectionable statements (often actually just unsubstantiated and incorrect opinions or theories masquerading as alleged "facts"), but objectors also can deconstruct Rise's disputed narratives supporting its incorrect vested rights claims based on such disputed "evidence" and gaping omissions filled in by incorrect Rise assumptions. One classic example of that latter gap is when Rise attempts (with insufficient, outdated [e.g., changing circumstances from being flooded and neglected since 1956 and ignoring evolving science and mining-related and practices or techniques since 1954, 1955, or 1956], and disputed "evidence") to prove the underground conditions of the entire 2585-acre underground mine from Rise's purported sampling on one parcel as an over-generalization to claim identical conditions allegedly exist everywhere in the "Vested Mine Property." Indeed, the addition of Centennial to the "Vested Mine Property" makes any generalization about that Vested Mine Property obviously incorrect, considering the better-studied toxic menaces at Centennial, which Rise cannot possibly cover up by overgeneralizations to Brunswick, for example. As demonstrated in the Objectors Petition and cases like *Hardesty* and *Hansen* (Exhibit B), a parcel-by-parcel analysis is required for vested rights and proof about something on one parcel is not proof of anything as the other parcels.

Because (as objections to the EIR/DEIR expose) Rise has a habit of insisting on what is politely called an "alternative reality" (e.g., what *Hardesty* called a "muddle"), the County should consider how *Hardesty* handled a miner's evidentiary resistance to reality, such as where the court stated:

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

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799 -812. For example, what EIR/DEIR claims may apply for vested rights to one part of the IMM project has never been sufficiently proven by the EIR/DEIR or otherwise by Rise or others with the **required "common sense" (e.g., *Gray*) and "good faith reasoned analysis"** (emphasis added, e.g., *Banning, Vineyard, and Costa Mesa*) to apply similarly to the rest of the project; i.e., such parts like the Brunswick site, the Centennial site, or the specially addressed area around East Bennett Road, are more likely to be different than the 2585-acre underground mine that the EIR/DEIR speculates (and incorrectly assumes) to be the same or uniform. See, e.g.**, *Banning Ranch Conservancy v. City of Newport Beach (*2017), 2 Cal.5th 918, 940-41 ("*Banning*"); *Vineyard Area Citizens For Responsible Growth v. City of Rancho Cordova* (2007), 40 Cal.4th 412, 442 ("*Vineyard*"); *Gray v. County of Madera* (2008), 167 Cal.App.4th 1099 (*"Gray*"); *Concerned Citizens of Costa Mesa, Inc. v. 32d Dist. Ag. Ass'n* (1986), 42 Cal.3d 929 ("*Costa Mesa").***

What else does one do besides to continue so object to such disputed Rise "evidence" and rely on the courts to apply Hardesty and other law to defeat such unprovable vested rights claims? Among other things, objectors also can impeach its use and presentation by Rise by inconsistencies and prior admissions before Rise began this new, vested rights campaign. When, as noted above, the Rise "story" in the SEC filings (Exhibit A) or the EIR/DEIR don't match, then none of such "evidence" offered by Rise can be considered credible and should then be disregarded. See, e.g., ***Communities for a Better Environment v. City of Richmond*** (2010), 184 Cal. App.4th 70 (where the court used Chevron admissions in, and inconsistencies from, its SEC filings to defeat its EIR, providing ample authority for here proving the error of the County staff and other EIR/DEIR enablers in excluding and ignoring objectors' use of Rise's SEC admissions and inconsistencies to rebut both Rise's incorrect EIR/DEIR and its vested rights claims, especially as to the fact that Rise's SEC financial statements (Exhibit A) prove that Rise lacks the financial capacity to do anything material that it has proposed either in the EIR/DEIR or now in Rise's vested rights process, especially since Rise's required "financial assurances" for even its deficient "reclamation plan" appear illusory.) While objectors may search into such historical records, despite such aforementioned problems, one of objectors' proposed status conference questions is whether the County will be evaluating its own historical records of the IMM mine for its own analysis of the IMM vested rights claims, or whether objectors must do that on their own from public records requests, in which latter cases the status conference should include a discussion of how the County can best assist and expedite such (what should be collaborative) efforts by explaining to objectors how best to identify and access relevant historical records by public records requests, or, better yet, as is done in many such major cases like this, the County could create an indexed data room for objectors with all of the potentially relevant records there for objectors to explore.

However, for achieving the essential goals of truth and credibility (as distinguished from another "alternate reality" appearing like in the disputed EIR/DEIR), objectors need both such an equal protection and time for rebuttals and counters, a level playing field for disputes, and a fair opportunity to expose at least adverse admissions and inconsistencies from Rise and its enablers. Objectors also need a County process, like the suggested Summary Due Process Proceeding, that allows for objectors to achieve those goals, or, if the County declines to do so, for objectors to make a sufficient official record of their objections to enable the next, court process objections to cause a remand for a re-do that allows for such fair

Calvert/Hardesty **due process procedure on the second try. In any case, objectors need to know all the County rules and procedures in advance so that we can properly operate within the boundaries (while objecting to them on the record as appropriate for the court processes to follow). This issue is another reason for the requested status conference early in the County's vested rights process.**

Objectors assume (for now) that Rise will attempt to assert that its disputed vested rights claims are somehow consistent with Rise's disputed allegations about relevant facts asserted in the disputed EIR/DEIR (incidentally, both often inconsistent with or contrary to Rise's SEC filings in Exhibit A), since, if not (as is sometimes now the case), objectors will impeach and rebut Rise for attempting to tell a different story to the EIR/DEIR team and County than the Rise Petition now alleges in its vested rights claims (just as Rise has already been impeached/rebutted in record objections, for telling its investors and the SEC different things in its SEC filings [Exhibit A] than in its disputed EIR/DEIR.) See, e.g., ***Communities for a Better Environment v. City of Richmond*** (2010), 184 Cal. App.4th 70, discussed above. The disputed EIR (like the noncompliant DEIR) also misdescribed conditions in the entire IMM Project (including by inconsistent uses and claims about Rise's Centennial dump site operations, as well as overgeneralizing from one parcel to the whole "Vested Mine Property" as if incorrectly assuming without competent proof that everything was the same) as if the project parts were somehow "uniform" when they are not. **Objectors suggest this simple test: Drive 72 miles in the direction of the existing IMM underground tunnels and then 76 miles on the path of the new, expansion tunnels, and then consider how likely it is that those underground mining areas are uniform.) While the disputed EIR incorrectly dismissed all these matters as too "speculative" to merit any response, objectors note that such surface property owners are each competent witnesses to such matters, and their evidence includes the rights to rebut and impeach every false assumption, erroneous speculation, unsubstantiated opinion, and other noncompliance in the EIR/DEIR or now in Rise vested rights claims, especially Rise's DEIR/EIR, SEC filings, and now vested rights case admissions (all likely to be so inconsistent.)** Id. (where the court used Chevron admissions in its SEC filings to defeat its EIR.)

Also note that Rise continues its flawed analytical methodology from its disputed EIR/DEIR claims, the least problematic example of which is attempting to rely on disputed Rise or enabling consultants unsubstantiated opinions as if they were somehow "facts" or were (incorrectly) imagined by Rise to be so self-evident that they did not have to be justified and somehow were beyond objectors' challenges. Now Rise is repeating that disputed tactic in its vested rights claims, such as also noted herein (and in admitted Exhibit A history), such lack of evidentiary and analytical support adds to the many reasons why the IMM cannot qualify for vested rights. For example, what EIR/DEIR claims may apply for vested rights to one part of the IMM project has never been sufficiently proven by the EIR/DEIR or otherwise by Rise or others with the required "common sense" (e.g., *Gray*) and "good faith reasoned analysis" (*Banning, Vineyard, and Costa Mesa*) to apply similarly to the rest of the project; i.e., such parts like the Brunswick site, the Centennial site, or the specially addressed area around East Bennett Road, are more likely to be different than the 2585-acre underground mine that the EIR/DEIR speculates (and incorrectly assumes) to be the same or uniform**.** Some more examples follow using some of the vested rights requirements, such as addressed earlier in this Petition from some of the leading cases like *Calvert and Hardesty.*

b. While Rise May Attempt To Evade the Rules of Evidence On the Disputed Theory That Such Administrative Processes Allow Its Inadmissible Evidence (as the old saying goes) Including By "Throwing Everything At the Wall To See What Sticks," That Is Not Proven Or Supported By Case Law.

The *Hardesty* case quotes herein support objectors' rebuttal arguments under these circumstances, but we add this supporting quote about such **evidentiary issues**:

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

Hardesty, 11 Cal.App.5th at 801. See Exhibit D. (This followed the court's earlier evidentiary findings [at 799] that, for example: "'There are no records presently available …to show what kind of mining business … the owner from 1921 to 1988 … conducted on the property after the war.' **The trial court found that through the 1970's, the property 'was essentially dormant.'")**

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

Hardesty at 810. Also, even if Rise tries to allege some such resumed mining, Rise would not be able to claim immunity from all the then existing laws which would require substantial mining changes from the time operations ceased in the closed and flooded mine in 1956. As noted above and elsewhere, **that court ruled at 811 (citing Hansen at 12 Cal.4th at 564, and Calvert at 145 Cal.App.4th at 629): "IT WAS HARDESTY'S BURDEN TO PROVE HE WAS CONDUCTING A NONCONFORMING USE AT THE TIME THE LAW CHANGED." IT ADDED THIS CITE FROM MELTON V. CITY OF SAN PABLO (1967), 252 CAL.APP.2D 794, 804: "THE BURDEN OF PROOF IS ON THE PARTY ASSERTING A RIGHT TO A NONCONFORMING USE TO ESTABLISH *THE LAWFUL* AND CONTINUING EXISTENCE OF THE USE *AT THE TIME* OF THE ENACTMENT OF ORDINANCE [IT WISHES TO EVADE.]"** (emphasis added) See also the court's discussion at Id. and 812 of *Stokes v. Board of Permit Appeals* (1997), 52 Cal.App.4th 1348, 1351, 1352-53, 1355-56, and *Walnut Properties, Inc. v. City Council* (1980), 100 Cal.App.3d 1018, 1024. Moreover, Rise evidence, even if it were technically admissible, fails to meet the credibility standards in the relevant cases that require at least "common sense" (Gray) and "good faith reasoned analysis" (Banning, Vineyard, etc.) See, e.g.**, *Banning Ranch Conservancy v. City of Newport Beach* (2017), 2 Cal.5th 918, 940-41 ("*Banning*"); *Vineyard Area Citizens For Responsible Growth v. City of Rancho Cordova* (2007), 40 Cal.4th 412, 442 ("*Vineyard*"); *Gray v. County of Madera***

(2008), 167 Cal.App.4th 1099 (*"Gray"*); *Concerned Citizens of Costa Mesa, Inc. v. 32d Dist. Ag. Ass'n* (1986), 42 Cal.3d 929 ("*Costa Mesa")*

c. The Consequences of Rise's Deficient, Disputed, And Worse Evidence Is That Even If The County Accepts It, The Courts Cannot And (As In *Calvert*) Any Toleration of Rise's Case In The County Process Would Require A Remand And Re-Do, Which No One (Except Perhaps Rise) Should Want.

While Rise may attempt to argue against evidentiary requirements, Rise cannot ignore *Calvert,* or even the *Hansen* evidentiary example, where the California Supreme Court majority re-examined, the evidence deemed sufficient for the contrary ruling by the County, the trial court, and the Court of Appeal to reverse them, yet still finding insufficient evidence for various vested rights issues, thereby confirming the importance of the rules of evidence in such cases, stating (at 542):

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

See Exhibit B. While the Hansen court's majority (versus the dissents supporting the County and lower court decisions) could disagree with everyone else about the evidence of whether the "proposal for future rock quarrying would be an impermissible intensification of the nonconforming use of its property" and whether various relevant inactivity was sufficient to determine that the applicable aggregate production business had been "discontinued," that majority thinking in *Hansen* does not apply in this distinguishable IMM case, where such factors cannot be proven by Rise. See Exhibit B. Moreover, **after considering much more evidence than will be available to Rise for the IMM**, the actual conclusion of the majority in *Hansen* (at 543) was: "Nonetheless, as we explain below, **because a court cannot determine on this record that Hansen Brothers is entitled to the [vested rights] relief it seeks, the [miner's] petition for writ of mandate to compel the Board to approve a Surface Mining And Reclamation Act of 1975 (#2710 et seq.) reclamation plan for the Hansen Brothers' property was properly denied by the superior court.** However, Hansen Brothers is entitled … to have its application reconsidered. We shall therefore reverse the judgment of the Court of Appeal … but we shall do so **with directions that … the superior court conduct further hearings." (**emphasis added)

What that means is that evidence and the burden of proof are important matters in these vested rights disputes, especially where the courts must deal with the additional factors from the competition between objecting surface owners above and around the 2585-acre

underground IMM, who have no less constitutional, legal, and property rights at issue. See *Keystone and Varjabdian* above.

d. Among Rules Against Rewriting History, Rise Cannot Prove the SMARA Required Historical Continuance of the "Same Use" "Without Substantial Changes" With Its Disputed, Historical Fragments Rise Calls "Evidence."

(i). The Rise Petition Changes "Uses" By Mixing Up Surface Mining Versus Underground Mining And Many Other Such Changes.

In any litigation where the rules of evidence apply, Rise's disputed vested rights theory of "no substantial changes" must fail, even by Rise's own SEC filings and other admissions (see Exhibits A, B, C, and E). **As *Hardesty* explained at 812: "THE CONTINUANCE OF A NONCONFORMING USE 'IS A CONTINUANCE OF THE SAME USE AND NOT SOME OTHER KIND OF USE'", citing "*County of San Diego v. McClurkin* (1951), 37 Cal.2d 683, 688; *Edmonds v. County of Los Angeles* (1953), 40 Cal.2d 642, 651; and *County of Orange v. Goldring* (1953) 121 Cal.App.2d 442, 446-47."** (emphasis added) As discussed in Exhibits B and C and throughout Objectors Petition, Hardesty and SMARA both confirm that underground mining is not the same use as surface mining. In any case, as demonstrated in a following section, there is no way that any Rise vested rights argument can succeed, considering even the undisputed (or rationally indisputable) facts and admissions, no matter what else Rise attempts to do or say. Among many other reasons, that is because SMARA and vested rights only apply to **surface** mining, not to the **underground** mining relevant here. See Exhibit C. Indeed, even if Rise were to try to limit itself now to (something it attempts incorrectly to characterize as) "surface mining," that would also be the kind of "substantial change" that defeats any vested rights claim under SMARA and other applicable law. (Of course, there is no commercial gold potential here for Rise in any surface mining, and, even if somehow Rise tried to make some bogus, vested rights claim to underground mining by some disputed SMARA analogy attempting to make up Rise's own "common law," that would likewise fail as involving such a "substantial change," more "intensity," etc. See Exhibits A, B, and C.) In any case, the other legal requirements for vested rights do not exist in this case, especially on account of the abandonment, laches, and other arguments discussed herein for the abandoned IMM, closed, and flooded since 1956, while our community grew up above and around the IMM and the applicable laws and regulations protecting objectors evolved on the reasonable (and correct) assumption that the IMM would not ever reopen. *Calvert v County of Yuba* (like Hardesty) still defeats Rise's, disputed, vested rights claims. See also Exhibit B distinguishing *Hansen*, expected to be Rise's favored case, although it also cannot enable Rise's vested rights claim. More importantly, any Rise claim of vested rights that depends on SMARA (or analogies to it to invent some new common law) is limited to **"surface mining,"** including what SMARA #'s 2736 and 2729, respectively, define as **"surface mining operations"** on "**mined lands."** As shown in the next section, it is indisputable (e.g., as admitted in the EIR/DEIR and Rise's SEC filing admissions in Exhibit A, etc.) that the relevant lands to be mined are underground in the 2585-acre mineral rights areas, not on the small surface areas owned by Rise. Rise's SEC filings admit (Exhibit A) that Rise's rights do not exist at least above 200 feet below the surface, and Rise's EIR/DEIR admit Rise does not intend

to mine above 500 feet of the surface. That means that Rise's proposed mining's potential impacts could include harms done (e.g., groundwater depletion, subsidence) not just on the top surface, but also so below the surface, another factor which Rise failed sufficiently to address in the disputed EIR/DEIR or in its vested rights claims.

More generally, as demonstrated in various ways under every possible perspective, Rise cannot satisfy its burdens to prove with legally admissible, competent, and credible evidence even the base vested rights case of the old, pre-10/10/1954 mining to set the standard for comparison or modeling to SMARA or other surface modeling or other precedents. Even based on facts **Rise has admitted in its SEC filings (see Exhibit A), disputed EIR/DEIR and elsewhere,** the surviving alleged IMM relevant records for the parts of the abandoned IMM mine that flooded and closed in 1956 are vulnerable to challenge as incomplete, unreliable, noncredible, and subject to many evidentiary and other disputes by objectors. Even if Rise were somehow able to get away with changing its legal theories in its Rise Petition "restart," Rise cannot escape its prior admissions and inconsistencies, as demonstrated in *City of Richmond* and *Hardesty,* and illustrated in Exhibits A, B, D, and E. Moreover, Rise cannot rewrite history with such disputed "evidence" as if its predecessors were somehow "different and better" than the rest of its problematic industry at such times, especially using Rise Petition's Exhibit fragments of what Rise calls history. See *Hardesty and even Hansen*.

For example, SMARA #2776(a) (as well as laws applicable to this dispute) conditions any vested rights on the continuance of the required circumstances, including **allowing such vested rights opportunities only "so long as no substantial changes are made in the operation except in accordance with this chapter." See Exhibit C. That *Calvert* court also adopted (at 624) the Attorney General's 1976 opinion on that SMARA statute (59 Ops. Cal. Atty. Gen. 641, 643, 655-56 (1976)) determining that "substantial change[s]" in operations and "substantial liabilities" for work and materials "constitute questions of fact which can only be determined on a case-by-case basis" in a proper vested rights proceeding before the lead agency, as to which objectors insist on fully participating as the equal parties they will be in the judicial litigation to come—not just concerned citizens limited to 3 minute comments on EIR/DEIR deficiencies.** See the other discussions herein (and in Exhibit B) about applications of such "substantial change" and related precedents to the IMM and to objectors' own counter due process, legal, and property rights. See, e.g., Exhibit B discussing *Hansen Bros. Enterprises, Inc. v. Board of Supervisor***s** (1996), 12 Cal. 4th 533, 540-46, 552-52, 556, 576 ("***Hansen***"), as further explained in the even more relevant *Calvert and Hardesty leading cases.* Consider the massive number of underground mining, reclamation, and financial assurances changes that would have to be made by Rise now compared to any period before the IMM closed and flooded in 1956, when all active parts of the IMM were last in operation, closed, and abandoned to flooding. Mining techniques, operations, and laws (as well as our growing community above and around the 2585-acre proposed new underground mining area and every other aspect of the IMM) have changed too much since 1956 [or, more precisely, likely sometime in 1955] (or 1954, where *Hansen* was focused on Nevada County's mining law then, as discussed in Exhibit B.)

While objectors refute Rise's claim to any vested right to avoid or reduce such "permit" requirements, objectors describe herein and in briefs to come how it is legally impossible for Rise to satisfy its burdens of proof or otherwise to prevail, especially with respect to any such disputed Rise reclamation plan and financial assurances. As demonstrated by various objecting

residents and groups in the existing DEIR and EIR proceedings and even by Rise's own admissions (see Exhibit A), Rise does not (and could not) satisfy any such required reclamation plan conditions. Also, even if Rise had such a compliant plan, Rise cannot provide the required financial assurances for any plan that would be sufficient, as demonstrated by Rise's admissions in its own SEC filings (Exhibit A), including Rise financial statements containing its own accountant's "going concern qualifications" questioning Rise's capacity to remain a "going concern."

For example, when the predecessor owners were admittedly operating in distress on 10/10/1954 and when and after they so abandoned the IMM in 1956, how likely is it that they saved **comprehensive, complete, and accurate records** of everything they did and did not do or intend? Isn't it more likely that typical mine owners of that time, fearful of prosecutions and claims when foreseeable problems arose, would be careful what they exposed to history, preferring not to have surviving records confessing "inconvenient truths" or worse for possible salvage by their adversaries? Considering that Rise often seems to present fragment documents with little or no sufficient foundation that cannot satisfy its burden of proof, why cannot objectors dispute such things in the main counters to come with such historical and problematic "mining industry practices" of such times?" Historical experience can show that abandoning miners are as careful as retreating armies guilty of "problematic conduct" [e.g., even modern examples like Russia retreating in Ukraine] to only leave behind records that do not expose them to wrongdoing claims or worse.) That lack of a complete and accurate records doesn't mean, as Rise seems to contend, that such uncertainty allows Rise to say or do whatever it wants from some cherry-picked fragment about which the County process does not (yet) allow court-type cross-examination. To the contrary, that lack of a sufficient "base case" of competent, admissible, credible, reliable, and unambiguous evidence means that Rise cannot ever satisfy its burden of proof on the key issues and requirements for the disputed vested rights Rise claims, especially considering that Rise has chosen not to explore or investigate sufficiently the actual conditions in the existing underground mine, much less the unexplored expansion, new, underground mining areas that now are the core focus of these disputes by objecting surface owners above and around them.

In any event, objectors can easily refute any Rise claim that there have been no "substantial changes" between that 10/10/1954 mine and what the disputed EIR/DEIR and related permits and other applications contemplate (or whatever else Rise now plans to attempt under disputed vested rights the Rise Petition at 58 claims "without limitation or restriction"), such as both (i) doubling the size of the underground mine into new, unexplored, and deeper territories (e.g., off another 76 miles of tunnels), and (ii) as to using newer mining materials, equipment, and techniques, many not even subject to Rise's vested rights evolution arguments because they had no historical counterparts (e.g., the new water treatment plant) and all being prohibitively too "intense" or otherwise objectionable for many reasons. For example, the four Engel Objections and others demonstrate that, according to the disputed EIR/DEIR, Rise now plans to save money by leaving much of the mine waste in the new underground mine by cementing it together with toxic hexavalent chromium cement paste into shoring columns exposed to the 24/7/365 dewatering process of 80 years (and worse, thereafter when, lacking any adequate "reclamation plan" and financial assurances," such water is no longer purportedly "treated" in that new Rise system from that again abandoned IMM floods and leaks, thereby

recreating that hexavalent chromium menace risk that notoriously killed the town of Hinkley, CA, and many of its people, as shown in the movie *Erin Brockovich* and as explained in that ghost town's reclamation website (www.hinkleygroundwater.com), reporting that still, after all these years of reclamation efforts, that groundwater is not yet safe. (And yet, Rise still wants to risk flushing (or leaking whenever Rise abandons its system) such potentially polluted water into Wolf Creek, adding more reasons for NID customers downstream to be "skeptical" of such water quality. What is the estimated cost of Rise creating and operating that treatment plant 24/7/365 for 80 years and beyond? What financial assurances for what reclamation plan could Rise ever feasibly imagine providing? How can Rise be trusted to pay for that water treatment, considering its admitted, SEC filing reported, deficient financial condition (Exhibit A) and Rise's likely inability to obtain sufficient "financial assurances?" Any real, due process Calvert/Hardesty trial of these objector disputes must include consideration of what "reclamation" and "financial assurances" would be required, both judging from that Hinkley reclamation struggle and as to more realistic reclamation needs after Rise's mining ceases (and when such water treatment and other safety, mitigations, and protection measures stop).

(ii). Rise Has Not, And Cannot, Prove The Necessary Intentions of Each of Its Predecessors On Each Parcel of Such IMM To Do What Rise Now Contemplates, Much Less To Have Its Own Vested Rights To Pass Forward In The Chain of Title to Rise.

Moreover, **applying the "objective standard" for future intent,** no one in 1956 (when the abandoned mine flooded and closed) could have had any intent to reopen the mine for what Rise wants to do now and where in that new, unexplored area of the 2585-acre underground mine. Not only was the mine abandoned, but no effort was made to preserve any restart opportunity, at least until that ineffectual Emgold dabbling in 2003 (which objectors contend was insufficient for Rise vested rights claims). Mining historians can prove how everything changed radically between the start of 1956 (or the more precise date in 1955) and any relevant modern dates in dispute with Rise, since in 1956 underground mining was largely still reliant on manual labor using hand tools and dynamite for excavation (as distinct from modern machinery and explosives). None of such equipment or explosives were at all comparable in any relevant ways or intensity. The primitive science at that 1956 time was all progressively superseded by more modern science in every field, safety regulations and practices, and 1956 environmental considerations were absurdly lax. In the absence of meaningful laws and enforcement, ancient mine owners in 1956 generally did as they wished, which is also reflected in their generally unreliable record keeping, where they recorded what they wanted known or what they chose to imagine, without little regard for the applicable realities or comprehensiveness for modern vested rights purposes. For example, ventilation systems, dewatering systems, and communication systems were dangerously primitive, etcetera. Dewatering in the 1950's was especially primitive, with manual pumps (or perhaps in some places the beginning of early steam pumps), which made the kind of dewatering needed in the IMM and planned by Rise literally unimaginable in 1956. (Electric pumps did not begin to appear until well into the 1960's.) Among the factors leading to the 1956 closure and abandonment were not just declining gold prices (that rebounded), but also depletion over

decades of mining of easily accessible and high-grade gold at that time, making mining more difficult, expensive, and risky in every way in such unexplored areas that Rise now wished to mine. Comparisons of many 1956 technology and scientific limits, compared to those challenging 1956 conditions, demonstrates why it took until 2017 for even some speculator like Rise to be willing undertake this IMM gamble. However, as mining technology, equipment, explosives, and science progressively advanced since 195**6,** so did applicable laws and competing surface owner rights (e.g., for environmental protections) grow for the benefit of our progressively growing surface community now generally opposing the IMM. Under the circumstances it is far too late for Rise to attempt this disputed vested rights claim, which is presumably why Rise did not attempt it until Rise realized it could not prevail in the EIR and permit disputes from massive objections and (finally) proper decisions by our Planning Commissioners.

e. Rise Also Cannot Be Allowed To Create "Alternate Reality," Such As By Rewriting History, Ignore Inconvenient Truths Or Otherwise "Hiding the Ball," Telling Inconsistent Or Contrary "Stories" In Different Documents Containing Damning Rise Admissions, Etc.

Rise's 10K admits (at 34-35—See Exhibit A) that 1955 was "the final year of production from the mine." Thus, there has been no mining for vested rights acquisition since at least that time in 1955 (which because it is currently uncertain, objectors have "rounded up" to 1956, when Rise admitted the IMM closed and flooded), thus focusing on the comparison of the applicable law at that time to what Rise now proposes for vested rights underground mining in that new, expanded area part of the 2585-acre underground mine that objections prove was too often ignored in the disputed EIR/DEIR. Compare this to the Nevada County's 1954 ordinance and other State laws in 1954 laws versus what was done in that last 1955 year of mining operations, as discussed in *Hansen* in this Petition and Exhibit B. (Because *Hansen* is often a mischaracterized case by miners, it is more correctly described in detail in Exhibit B hereto.) To be clear, **none of the work done at the abandoned IMM since it closed and flooded in 1956 qualifies for Rise vested rights, since there has only been "exploration" or environmental testing, which even Rise's SEC 10K excludes from "mining" activities by its admission (Exhibit A) at pp. 28: "MINERAL EXPLORATION, HOWEVER, IS DISTINCT FROM THE DEFINITIONS OF 'SUB SURFACE MINING' AND "SURFACE MINING'" [MAKING THE POINT THAT MINERS IN THAT M1 DISTRICT ZONED LAND COULD EXPLORE WITHOUT A PERMIT.]** (emphasis added) While Rise cites aggregate gold production numbers from 1866-1955 in its 10K Table 3 at pp. 35, what matters for the vested rights dispute is what vested right uses and intensities existed when, for example, the 1954 Nevada County ordinance addressed in *Hansen* became effective compared to the nonconforming IMM uses, if any, that occurred in 1955 or 1956. Clearly, nonuse since at least 1956 cannot create any additional or enhanced vested rights, even under *Hansen (see Exhibit B),* much less under many other authorities that objectors cite [and more they will cite in later briefing] to defeat Rise's vested rights claims. While this is not the time or the place for briefing all objectors' facts, evidence, and law for our trial briefs defeating the vested rights claims, it is instructive for the County to consider this Rise 10K admission at 34 (Exhibit A), demonstrating that not much happened in 1954-55 of helpful relevance for Rise's

vested rights claims, especially considering all the additional and upgraded laws and regulations occurring after the mine closed and flooded by 1956 and even before since (Exhibit A**):"[mining was] forced to shut down by the US Government in 1942 (Shore 1943). Due to lack of development, a decline in gold production was experienced and recovery from war-time shutdown never occurred."** (emphasis added)

Rise's SEC 10K claims at pp. 34 (Exhibit A) that: "The I-M Mine Property and its comprehensive collection of original documents was rediscovered in 1990 by Consolidated Del Norte Ventures Inc, the predecessor company of Emgold Mining Corporation, and efforts were made to reopen the historic mine." However, during the period of what Rise there (Exhibit A) called "Exploration & Mine Development 2003-2004" [skipping over in dead silence the period of nonuse or anything from 1956 to 2003], that **Rise 10K also claims (at pp. 34):**

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

As described in this Petition and Exhibits D and E, **objectors dispute any such Emgold purchased documentary evidence as consistent with Rise's description (e.g., disputing that such "REDISCOVERED" in 1990 pre-1956 records that were a "COMPREHENSIVE COLLECTION"). Where is Rise's competent proof for such claims, or even the authenticity of such "evidence?"** What is the proof for the "chain of custody" of such so-called evidence? The law of evidence should exclude those purported records (lacking the required foundation and admissibility factors) as admissible proof for any Rise claimed vested rights, since we cannot imagine how Rise will now prove their disputed completeness, validity, and admissibility. As to that relevant "history" summarized by the Rise 10K (Exhibit A) starting at p. 34, using what are described as "**AVAILABLE** historic records" (emphasis added, to emphasize that **"availability" is a function both existence and the degree of diligence as to the search, which Rise has the burden to prove and objectors doubt)**. Objectors assume that **"available" means the portion of such once greater mass of historical records that Rise was willing and able to find.** What did Rise or its predecessors choose to hunt down and locate? What did Rise or its predecessors not seek, because, for example, it was from a source suspected of having possibly negative information? In any case, those matters are part of Rise's burden of proof, for later litigation or discovery about the question of what possibly available records Rise could have chosen to seek or investigate but didn't. [**Note that RISE'S SEC 10K ADMITS (EXHIBIT A), FOR EXAMPLE, THAT "[H]ISTORIC DRILL LOGS WERE NOT AVAILABLE FOR REVIEW AND NO HISTORIC DRILL CORE WAS PRESERVED FROM PAST MINING OPERATIONS…"** (emphasis added). Objectors wonder what competent, admissible, reliable, or even credible evidence, if any, serves as the foundation for Rise's (and the EIR/DEIR's) purported analysis, and what deficiencies exist to

invalidate or discredit such analysis? Another discovery question is whether and to what extent the prior Emgold owner stopped its reported investigation merely (as Rise claims at 34-35, see Exhibit A) "due to inability to raise necessary funding in the midst of unfavorable market conditions" or whether they may also have been discouraged by negative information, suspicions, or clues of risks that would have to have been awkward to address in the disputed EIR/DEIR (if Rise had chosen to search for or investigate them.) For example, **the SEC 10K reports (Exhibit A) that Rise purchased the "Emgold diamond drill program database" as distinct from all the historical documents of Emgold, as Rise did when it purchased from BET Group.** (emphasis added) Why not more? In any case, any applicable CEQA limitations on objector counter efforts, evidence, and arguments do not apply the same way, if at all, to such vested rights disputes, especially when these disputes also involve such objectors' competing rights and claims as surface owners above and around the 2585-acre underground IMM.

None of that admitted Emgold activity could likely have created or preserved or otherwise supported any Rise vested rights claim. Even if Emgold had some intent to restart the mine, under the applicable circumstances of nonuse, abandonment, etc., that intention could not support Rise vested rights, since such conduct or intentions were not accompanied by any relevant mining or nonconforming uses, and because, among other things, such miners could not comply with all the applicable laws and regulations (whether as amendments, upgrades, or new reforms) in effect since 1956 during the period of nonuse and abandonment before Emgold's 2003 acquisition. **Even if somehow Emgold were relevant to these disputes, Rise admits (Exhibit A) at pp. 35 that Emgold's intention was not to expand and do intensive mining like in the EIR/DEIR Rise plan, but rather (consistent with Emgold's admitted "exploration drill program") it only explored on two different sites "both targeting near surface mineralization around historic workings," whereas Rise's current plan is for deeper mining in different places.** (emphasis added) No one should imagine that anyone in 1956 had any intention to do what Rise proposes to do now, and objectors will dispute any contrary claim by Rise, as well as any claim of Emgold's "exploration" activities providing any support for Rise's vested rights claim to mine as and where it now proposes.

3. Testing Some Essential Elements of Vested Rights From Cases Like Calvert And Hardesty Above Against Rise's Disputed Claims.

a. The Rise Petition Contemplates Such Greater "Intensity" of Impactful Changes, Especially on Objecting Surface Owners Above And Around the 2585-Acre Underground Mine That Causes A Difference of Kind of Use.

Stated another way, because the EIR/DEIR "spin" stories (and those in related Rise permit applications) were not crafted for Rise's new, vested rights theory, but rather instead for such approvals, permits, and public relations, those disputed Rise stories and their backup support and purported "evidence" will not fully match Rise's new "spin" stories about its vested rights, thus allowing objectors to rebut and impeach such Rise vested rights claims with Rise's own such EIR/DEIR and other prior admissions and inconsistencies. Thus, the IMM "project" EIR/DEIR (which objectors contend includes Centennial as an "expansion" and further "intensity," each forbidden for such vested rights) suffers many common or similar

errors, omissions, and other noncompliance. Also, there are such admitted "substantial changes," "intensities," and differences both for significant impacts and for essential mitigations for the different parts of the project, as described in detail in record objections to the EIR/DEIR.

For example, Rise's admissions in its SEC filings discussed in Exhibit A confirm some of that lack of mining and objective intent to expand mining, as Rise described the risks of such unknowns about the condition of the new expansion areas to be mined (and deeper) in the 2585-acre underground mine. There is also no sufficient evidence as required by *Hansen* (at 556) and many other precedents, that the predecessor owners or operators of each such separate parcel or sub parcel chain to which Rise eventually succeeded had the required "objective intent" to extend the mining use "to the entire property owned **at such time."** Recall that the primitive, hand labor (pick and shovel with dynamite) mining techniques with manual dewatering pumps likely made the current Rise mining plan unimaginable in 1954, 1955, or 1956, thus defeating any Rise arguments to assume or presume continuous operations and some such future mining intent by the applicable predecessors in interest for all such parcels or sub parcels.

For another example, as explained in Exhibit A and herein, there is no credible proof or admissible and credible evidence that the new, **expanded** mining area and **more "intense"** mining there in the 2585-acre mine either (i) was objectively intended in 1954, 1955, or 1956, or (ii) is comparable either for any relevant purposes to the existing underground mine's relevant, historical operations, or for vested rights or other purposes to the different Brunswick site wholly owned by Rise, which is the only place Rise has dared to attempt even minimal testing or exploration for the disputed claim that somehow that deficient sampling supports its claims.

Also consider this **"intensity" evidentiary issues** from the perspective of the impacted environment and such objecting third parties' surface properties and rights, especially those surface owners above and around the 2585-acre mine and their groundwater, forests, and other vegetation needing water being "intensively" depleted 24/7/365 for 80 years, especially during the climate change promise of chronic droughts (that Rise incorrectly dismissed in its disputed EIR/DEIR as mere "speculation"). Such impacts, especially on objectors' health and welfare, property rights and values, environment, and community way of life from Rise's proposed mining now must be found more "intense" than such impacts on the very different surface community in 1954, 1955, or 1956. Intensity considers the impacts on the number and nature of the affected people and properties, among other things. The then rural area above and around the 2585-acre mine in 1954 or 1956 was easier for accommodation for mining than the thriving suburban community that has grown up there since then, while the abandoned IMM was inactive and a historical relic adjacent to the state park built for the less environmentally dangerous and better maintained Empire Mine, which has also objected to the EIR/DEIR through the State Department of Parks And Recreation on grounds that help counter Rise's vested rights claims. (Besides thousands of impacted residents exercising their rights to build on the surface in reasonable reliance on the IMM never reopening, objectors also note that the surface above or around the 2585-acre underground mine also includes shopping centers, many businesses, a hospital, an airport, and other impacted property improvements.)

Indeed, the time factors in many ways adverse to Rise's disputed vested rights claims, besides the obvious laches, estoppel, and waiver arguments objectors will brief at the appropriate time against Rise's disputed vested rights claims. Thus, it is indisputable that, compared to 1954, 1955. or 1956, Rise's underground mining will be more "intense," especially if incorrectly freed from permit requirements, and the impacts of that mining will be more intense for every competing surface use and our groundwater and environment, even before objectors compare the historical, primitive "pick and shovel" with dynamite style of mining using manual dewatering pumps in 1954, 1955, or 1956 versus modern mining methods, dewatering systems, equipment, and explosives, not to mention EIR water treatment systems, not imaginable at that earlier time.

b. Rise Cannot Ignore the Burdensome SMARA Requirements, Such As Reclamation Plans And Financial Assurances, And Just Claim Disputed Benefits, Especially Underground Which Is A Different Use.

The undersigned objectors presume (for now) that Rise's mining and related plans are the same (or at least sufficiently similar for these purposes) to what Rise has proposed in its pending and disputed DEIR/EIR and in related permits and applications on file with the County (all collectively referred to herein as the "**EIR/DEIR**"). That situation seems likely since Rise presumably wishes to appear at least somewhat consistent with what Rise has been telling its investors in its SEC filings and other disclosures, where there is greater legal accountability for Rise. Rise also seems likely to attempt to continue to rely for such disputed mining on Rise's disputed, amended reclamation plan on file with the County (the "**Existing Reclamation Plan**"), which (together with any allegedly supporting "**Reclamation Financial Assurances,"** objectors include here in that term "**Reclamation Plan"). That** will become a critical subject of this vested rights dispute, even though Rise's plan seems to be proceeding (incorrectly) without a permit or CEQA compliance (or, as some objectors assume, for Rise to "flip" the mine to someone else, perhaps already "behind the curtain," who is better able to afford the massive costs of even the deficient part of what should be required by law from any such miner.) See Exhibit C, as well as SMARA #'s 2733 (broadly defining " reclamation" in ways that, when properly applied, will make the required "financial assurances" defined in # 2736 unaffordable by Rise or its buyer) and # 2716 (allowing any interested persons [i.e., any objector here] to commence legal actions for writs of mandate to enforce counters against the miner, as was done in *Calvert and other cited cases.)*

4. The Clear Legislative Intentions of SMARA Favor Objectors Over Rise Even by Analogy, Especially As To Rise's Inability To Satisfy Its Burden of Proof As To the Required Reclamation Plan And Financial Assurances For Accomplishing The Required Reclamation Plan (Exhibit C), Dooming That Vested Rights Model For Rise, Especially On Account of Rise's SEC Filings (Exhibit A) Admitting That Rise Lacks The Financial Resources For Any Required Performance Assurances.

Rise cannot be allowed to make a partial and noncompliant case by only presenting half the required case and pretending that was all that was required. This is demonstrated in many

ways throughout this Objectors Petition, such as, for example, in Exhibit C, where Rise is shown to be attempting to gain SMARA vested rights benefits without any of the burdens, such as presenting the reclamation plan and financial assurances that the Rise Petition totally ignores. After reminding everyone of Rise's burden of proof, rebuttal to Rise's vested rights claim best begins with the following ruling by *Calvert* (at 617, 624):

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

So, where is Rise's required compliance with any vested rights? See also SMARA #2776 and many other precedents demonstrating that any such vested rights have **burdens as well as benefits** for the miner. As explained herein, there is not, and cannot be, any satisfactory Rise reclamation plan for any such IMM vested rights underground mining, and, even if there were such a reclamation plan, objectors can prove from Rise's SEC filing admissions (Exhibit A) that Rise lacks any economic and other feasibility or credibility to perform any such assurances. The County staff and Rise enablers writing the disputed EIR/DEIR incorrectly have excluded (so far) economic feasibility and other allegedly non-CEQA objections (even by objectors' legally indisputable (in a court of law) rebuttals both (i) to incorrect or worse EIR/DEIR claims, and (ii) to the mistaken acceptance in the County Economic Report and County Staff Report of such EIR/DEIR exclusions of fundamental realities and many consequent EIR/DEIR errors and omissions. However, especially in disputing such vested rights claims, all those economic objections/rebuttals, especially using Rise's own admissions (Exhibit A) and inconsistencies, and they are essential and unavoidable parts of any such vested rights' reclamation and financial assurances analysis. See, for example, Engel Objections from a bankruptcy lawyer with a half century of experience disputing failed mines and miners, including his liquidation of the once, primary, US reclamation bond insurer. In that effort, he never found any "financial assurances" for reclamation to have been adequate, a key reason why there are more than 40,000 abandoned or bankrupt California mines on the ERA list. Since those mandated reclamation and financial assurance issues have not yet been fully or correctly presented by Rise or others in the current (and somewhat inconsistent) disputed EIR/DEIR process, due process requires that objectors be entitled to rebut such issues fully on the merits in a compliant evidentiary-adjudicatory process satisfying the state and federal constitutions, as explained in *Calvert. Hardesty,* and *Hansen,* and discussed further below and in Exhibit B.

In any case, ***Calvert* (at 630) correctly interprets SMARA #2774 as requiring a public hearing (which must be constitutionally and legally sufficient for objectors' due process and statutory rights and remedies) "for the review and approval of reclamation plans and financial assurances, and the issuance of surface mining permits."** (emphasis added) That has not yet happened and cannot be accomplished now either as part of the disputed EIR/DEIR CEQA pending process or otherwise in this vested rights dispute. However, common law vested rights cannot possibly allow less due process and fairness for objectors, especially for underground mining below surface victims' homes and their groundwater depletion and their current and future wells.

Moreover, so far, the County staff has incorrectly refused to consider important rebuttal evidence, such objectors' evidence of Rise's admitted economic infeasibility to accomplish anything material Rise or its enablers plan in the disputed EIR/DEIR (Exhibit A) on Rise's erroneous theories (even in rebuttals to Rise's disputed DEIR/EIR alleged "facts" or claims, or even following up on Rise's admissions, such as at DEIR 6-14, where Rise admitted that the entire project was economically infeasible unless Rise could somehow overcome objections to operate as it demanded 24/7/365 for 80 years). For example, Rise enablers asserted incorrectly that the EIR/DEIR process must ignore issues incorrectly categorized as "non-CEQA" disputes (even though Rise itself ignored its own such alleged boundaries (and the DEIR even labeled one section as "non-CEQA" comments). [Some objectors nevertheless rebutted those disputed CEQA limits, especially about ignoring Rise's economic feasibility and certain other relevant rebuttal issues, such as in the Engel Objections' offers of proof for any follow-up litigation.] But see, e.g., ***Communities for a Better Environment v. City of Richmond (2010), 184 Cal.App.4th 70, 82-90,*** where such SEC admission not only was used in CEQA rebuttals, but they defeated the EIR in that Richmond Chevron refinery project. Obviously, our resident objectors are also entitled to *Calvert* style due process in rebutting any vested rights plan and financial assurances, which means any such dispute process must include not only (i) all our objections to the DEIR and EIR (among other things, describing problems creating conditions requiring reclamation), but also (ii) much more objector evidence that the County staff or EIR/DEIR team so far has refused to consider in the pending EIR/DEIR processes.

That means, for example, that Rise must contend with even more detailed, enhanced, and expanded objections, such as expert evidence offered by the Engel Objections, such as demonstrating why such surety bonds (or equivalents) are rarely, if ever, sufficient to cover the actual reclamation costs, resulting in those more than 40,000 abandoned California mines on the EPA list, lingering indefinitely for reclamations that seem likely never to come. Incidentally, among the many questions so far (incorrectly) evaded by Rise and its enablers (often as "too speculative") is this: what risks and problems will occur for our community if: (a) Rise were allowed by the County to proceed with its desired mining, whether on such disputed vested rights or other EIR/DEIR theories, and then (b) objectors persuaded the courts to stop the mining in the next litigation phase of these perpetual disputes? Stated another way, if this financially questionable miner (by its own admission in SEC filings discussed in Exhibit A) dewaters the mine and exhausts its limited funds needed to cover the massive and prolonged startup expenses needed even to begin operations even to discover whether there are any commercially viable gold deposits in those new, unexplored areas of the underground mine to being to cover those costs and liabilities, how much worse off will our community be then? Also, will Rise still be treating our groundwater that now again floods the mine and leaches into the new mine waste shoring cemented together with Rise's newly added, toxic hexavalent chromium publicized in the *Erin Brockovich* movie about how hexavalent chromium killed Hinkley, CA, and many of its residents, and where, after all these years of trying, those victims still have not been able to remediate their groundwater, as described in www.hinkleygroundwater.com.

The power of such objections is magnified by the fact (e.g., demonstrated in the Engel Objections, among others) that disputes over such reclamation plans and financial assurances must consider the manifest (and to some extent Rise admitted in SEC filings and Exhibit A)

unknowns and uncertainties in this disputed EIR/DEIR plan, assuming Rise does not revise that plan to be even more objectionable in disputed reliance on its alleged vested rights' freedom from use permit and other compliance. Among other things, consider obvious risks in: (i) reopening such a massive mine in unknown (and likely dangerous) condition that has been closed and flooded since 1956, without any adequate study of (a) the current actual conditions of the existing mine or, worse, (b) the new, expanded area to be mined (as distinct from Rise's disputed consultants "theories;" i.e., often seeming to be pro-mining, biased guesses), or (c) the new, mining area doubling its size (e.g., 76 versus 72 mines of new versus old tunneling, and now even deeper in the new mining); (ii) Rise proceeding without adequate exploration, investigation, or credible, reliable, or otherwise critical information, even as to all the admitted risks listed for investors in Rise's SEC filings (Exhibit A), but mostly ignored improperly in Rise's EIR/DEIR, despite being raised by objectors, including in the 1000 pages plus of four Engel Objections (including incorporations); and (iii) satisfying Rise's burden of proof, which under the facts and circumstances will be impossible for Rise to satisfy in any litigation where the rules of evidence apply, since even much of the insufficient, unreliable, inadmissible, and otherwise noncredible proof Rise has offered so far will fail to overcome evidentiary objections when they are allowed to be applicable (e.g., no later than in the judicial process.) While Rise may be hoping for legal "findings" by the County that Rise imagines may give it the appearance of some evidentiary support in the next litigation, objectors can defeat Rise on the legal issues [and mixed questions of law and fact] where the courts address such issues de novo, as already previewed to some extent in the Engel Objections and others to the disputed EIR/DEIR. As demonstrated, for example, in such objections and in *Community for a Better Environment v. City of Richmond* decision defeating the Chevron EIR in Richmond, Rise cannot ever overcome its damning admissions in its SEC filings (Exhibit A) and inconsistencies anywhere, no matter what the County decides.

Also, even if Rise tries to allege some such resumed mining, Rise would not be able to claim immunity from all the then existing laws which would require substantial mining changes from the time operations ceased in the closed and flooded mine in 1956. As noted above and elsewhere, **that court ruled at 811 (citing Hansen at 12 Cal.4th at 564, and Calvert at 145 Cal.App.4th at 629): "IT WAS HARDESTY'S BURDEN TO PROVE HE WAS CONDUCTING A NONCONFORMING USE AT THE TIME THE LAW CHANGED." IT ADDED THIS CITE FROM MELTON V. CITY OF SAN PABLO (1967), 252 CAL.APP.2D 794, 804: "THE BURDEN OF PROOF IS ON THE PARTY ASSERTING A RIGHT TO A NONCONFORMING USE TO ESTABLISH *THE LAWFUL* AND CONTINUING EXISTENCE OF THE USE *AT THE TIME* OF THE ENACTMENT OF ORDINANCE [IT WISHES TO EVADE.]"** (emphasis added) See also the court's discussion at Id. and 812 of *Stokes v. Board of Permit Appeals* (1997), 52 Cal.App.4th 1348, 1351, 1352-53, 1355-56, and *Walnut Properties, Inc. v. City Council* (1980), 100 Cal.App.3d 1018, 1024.

Objectors assume (for now) that Rise will attempt to assert that its disputed vested rights claims are somehow consistent with Rise's disputed allegations about relevant facts asserted in the disputed EIR/DEIR (incidentally, both often inconsistent with or contrary to Rise's SEC filings in Exhibit A), since, if not (as is sometimes now the case), objectors will impeach and rebut Rise for attempting to tell a different story to the EIR/DEIR team and County than the Rise Petition now alleges in its vested rights claims (just as Rise has already been impeached/rebutted in record objections, for telling its investors and the SEC different things in

its SEC filings [Exhibit A] than in its disputed EIR/DEIR.) See, e.g., ***Communities for a Better Environment v. City of Richmond*** (2010), 184 Cal. App.4th 70, discussed above. The disputed EIR (like the noncompliant DEIR) also misdescribed conditions in the entire IMM Project (including by inconsistent uses and claims about Rise's Centennial dump site operations) as if the project parts were somehow "uniform" when they are not. **(Drive 72 miles in the direction of the existing IMM underground tunnels and then 76 miles on the path of the new, expansion tunnels, and then consider how likely it is that those underground mining areas are uniform.) While the disputed EIR incorrectly dismissed all these matters as too "speculative" to merit any response, objectors note that such surface property owners are each competent witnesses to such matters, and their evidence includes the rights to rebut and impeach every false assumption, erroneous speculation, unsubstantiated opinion, and other noncompliance in the EIR/DEIR or now in Rise vested rights claims, especially Rise's DEIR/EIR, SEC filings, and now vested rights case admissions (all likely to be so inconsistent.)** Id. (where the court used Chevron admissions in its SEC filings to defeat its EIR.)

5. After Achieving Sufficient Clarity To Overcome Rise's "Hide the Ball" Tactics Discussed Above, Objectors Propose That Specific Relief And Issues Be Addressed By the County At the Requested Status Conference, Or At Least Made Part of the County's Clarifying Rules And Procedures For This Multi-Party, Vested Rights "Adjudicatory" Dispute Process And Record.

At such a requested County status conference, objectors would explain how the County should proceed to "do this right" with *Calvert/Hardesty* due process, beginning with Rise properly so reveal its contentions, claims, and allegations sufficiently to frame each of the many issues and disputes precisely. The County then could promptly allow objectors to defeat as many as possible of the disputed vested rights claim as a matter of law on the basis of some such pre-trial "Summary Due Process Proceeding." Without delaying the scheduled County hearing to follow shortly thereafter, the County could hear objectors' presentations of their case on video before a designated County official that asks the "hard" questions and presents the kinds of objector cases of law, undisputed or key facts (e.g., EIR/DEIR and other Rise admissions, conflictions, contrary positions, and other inconsistencies), and offers of proof or testimony by qualified experts, so as to match what may be expected from the County and Rise players at the Board hearing. While that may not be full due process, that pre-hearing will at least be a useful preview of what no one can stop from coming from objectors in the judicial process to follow and may enable correct-thinking County players to ask better questions of Rise or its enablers at the Board hearing. At a minimum, whether objectors can prevail by the equivalent of their motions to dismiss or for summary judgment, or even if Rise somehow imagines some disputed, material factual issues that survive such motions, the objecting parties will at least have somewhat clarified and narrowed the issues for the remaining processes. In any event, if Rise must comprehensively plead and prove its vested rights claims in sufficient detail as so required, it should be easier to demonstrate that, as a matter of law and consistent with the rules of evidence that Rise cannot state or prove a legally cognizable cause of action for such vested rights as alleged in the Rise Petition. While objectors would hope to end this Rise Petition threat once and for all, like the result in Rise's favorite *Hansen* case (see Exhibit B), at least many parts

of the Rise Petition claims cannot possibly survive such rigorous objector challenge. For example, it is unimaginable even for cynics to imagine the EPA or CalEPA or any other responsible governmental authority, much less the courts tolerating the Rise Petition claim that an abandoned toxic site like "Centennial" (which Rise cannot possibly prove it can ever afford to remediate—See Exhibit A) can be used free of regulation (what the Rise Petition [at 58] proclaims as "without limitation or restriction") by such a disputed vested rights theory, much less that cleanup (especially here just surface) work on such toxic sites could be considered continuing **"similar"** work for vested rights mining on adjacent parcels, especially those underground like this IMM. See also Exhibits E and D, illustrating some of the many Court and legal authorities expressly defeating Rise's claims with matching quotes that Rise cannot evade.

For sufficient due process for objectors and to avoid or reduce such needless disputes, this Petition/motion urges the County to clarify such applicable procedures and rules in advance, so that objectors can begin preparing for the next judicial phases of the process efficiently with less waste and cost and a full record (as distinct from just massive paper objections and offers of proof.) For example, if objectors' relevant and admissible evidence (see Exhibit D) is again to be incorrectly excluded from consideration (as with respect to economic feasibility and other rebuttal evidence, even based on Rise admissions, in the prior EIR/DEIR process) or limited to whatever each objector can say in three minutes, that is not the kind of due process required for vested rights disputes by the courts (e.g., see *Calvert, Hardesty*, etc. below and even *Hansen* as shown in Exhibit B). That is especially true now that the reclamation plans and financial assurances issues are "at the core" of the Rise Petition vested rights disputes. For example, this time the County can expect either (i) to allow more coherent and complete presentations of comprehensive objections that accommodate some timely substitute court-like rebuttals of Rise errors, omissions, and worse, or (ii), if incorrectly limited again, especially so disproportionately compared to Rise and its enablers, the County must expect not only objections to any such exclusions, but also extensive "offers of proof" for the record to use as evidence in the following court process, where all relevant and admissible evidence will ultimately be heard with equal treatment of objectors compared to Rise. Stated another way, while Rise may incorrectly contend that, like in a disputed EIR/DEIR process where parties are to an extent limited in various ways to the administrative record, that does not exclude evidence that should have been admitted. In any event, this vested rights dispute process is not just for the benefit of Rise, but, as *Calvert* shows, also for the equal benefit of objectors. **For example, the usual claim by miners that the aggrieved public objectors failed to exhaust their administrative remedies was inapplicable in that case because (citing CA Supreme Court authority in *Horn v. County of Ventura*) the court held (at 622): "[o]ne need not exhaust inadequate remedies in order to challenge their sufficiency."**

For example, Rise incorrectly claims a unitary business somehow applies so that any kind of "operation"(defined from an out-of-context *Hansen* quote in Rise Petition Conclusion #2 at 76) done on any of the 10 parcels or 55 sub parcels of its alleged IMM allows all kinds of **"operations" everywhere without legal restrictions**, both on the surface and underground, even in the new, expanded, never explored or accessed for mining underground mining proposed in the disputed EIR/DEIR. To quote that disputed Rise claim (citing *Hansen* at 556, where the actual *Hansen* quote cited there by Rise to support its exaggerated and disputed claim was qualified and limited in *Hansen [emphasis added]* to **"a vested right to quarry or**

excavate [surface mining/not underground mining terms] the entire area OF A PARCEL…" and Rise ignored the more important rulings to follow in the next pages Rise incorrectly ignored, instead incorrectly claiming (at Rise Petition 58, emphasis added): "Therefore, **as a matter of law,** Rise is entitled to engage in mining operations **throughout the whole of the Vested Mine Property pursuant to** the California Supreme Court's holding in **Hansen Brothers**, as mineral rights that have been vested **necessarily encompass, 'without limitation or restriction' the entirety of the Vested Mine Property** due to the nature of mining as an extractive enterprise **under the diminishing asset doctrine." That disputed Rise claim is comprehensively rebutted herein and especially in Exhibit B devoted comprehensively to *Hansen,* which, for example, did NOT so apply vested rights to that exclusively "surface mine" either: (i) to the "ENTIRETY" of that mine AS A MATTER OF LAW (but *Hansen* instead REMANDED, in effect, because of the LACK OF EVIDENCE as to various of the separate parcel as to the application of LEGAL AND FACTUAL ISSUES ignored by Rise), (ii) *Hansen* was based only on SMARA, which EXHIBIT C SHOWS TO CONTAIN MANY REGULATORY "LIMITATIONS OR RESTRICTIONS," ESPECIALLY AS TO THE MINER'S NEED FOR AN APPROVED "RECLAMATION PLAN" AND RELATED "FINANCIAL ASSURANCES" for which Rise could never qualify, as illustrated in Exhibits C and A, and (iii) even more importantly, among many ways Exhibit B hereto demonstrates that the actual *Hansen* decision destroys the Rise Petition claims, consider this *Hansen* quote against Rise's disputed cross-parcel/unitary operations claims (none of which disputed Rise theories apply to UNDERGROUND mining at all, as *Hardesty* demonstrates below and as SMARA itself states in Exhibit C. Instead, *Hansen* stated (at 558, emphasis added):**

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

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

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

Moreover, Rise admits in its EIR/DEIR that this expansion mining would requires a new, high tech, massive dewatering system operating 24/7/365 for 80 years that those 1954 Rise predecessors could have never planned to duplicate. **As Exhibit B demonstrates, THE *HANSEN* DISCUSSED CASE DENYING SUCH VESTED RIGHTS CLAIM (**AT 566, EMPHASIS ADDED**) THAT THE MAJORITY SAID "ILLUSTRATED" ITS "APPROACH": *PARAMOUNT ROCK CO. V COUNTY OF SAN DIEGO* (1960), 180 CAL.APP.2D 217, 230, WHERE THE READY-MIX CONCRETE BUSINESS ADDED FOR THE FIRST TIME AFTER THE VESTING REZONING DATE A NEW "ROCK CRUSHING PLANT ON THE SITE"(REPLACING PRECIOUSLY OFFSITE CRUSHING), REJECTING THE ARGUMENT THAT SUCH A CRUSHER ADDITION WAS "AN INTEGRAL PART OF THE BUSINESS THAT THE [OWNER] PLAINTIFF HAD BEEN OPERATING," SINCE THAT CRUSHER WAS "NOT PART OF THE NONCONFORMING USE TO WHICH THE PROPERTY WAS BEING PUT AT THE TIME THE ZONING ORDINANCE WAS ADOPTED." STATED ANOTHER WAY, *HANSEN* (AT 566, EMPHASIS ADDED) IN EFFECT STILL REQUIRED THAT SUCH "A COMPONENT OF A BUSINESS" MUST "ITSELF HA[VE] A VESTED RIGHT TO CONTINUE USING THE LAND ON WHICH IT IS LOCATED FOR OPERATION OF THE BUSINESS," meaning that Rise cannot now add that water treatment plant that it has already admitted in its disputed EIR/DEIR that it needs for its 24/7/365 dewatering of**

groundwater drained from objecting and competing surface owners and existing and future wells above and around the 2585-acre underground mine.

Also, since Rise relies primarily on *Hansen,* why did Rise neglect to address this *Hansen* ruling (at 564, emphasis added), **among others, that must be addressed first, before our dispute over abandonment: "The burden of proof is on the party asserting a nonconforming use to establish the lawful and continuing existence of that use at the time of the enactment of the ordinance", citing *Melton v. City of San Pablo* (1967), 252 Cal. App.2d 794. Among many incorrect Rise claims about evidence and the burden of proof that further objections will dispute in the coming briefing (see for now Exhibit D), objectors especially dispute Rise's falsely claiming without cited authority and incorrectly (at 1) that "the threshold for proving a vested right exists on the Vested Mine Property is low. It requires only that Rise illustrate that the vested right is more likely than not to exist … meaning that if Rise provided enough evidence to indicate a 50.1% chance that a vested right exists, the County has a legal obligation to confirm that right." Fortunately for justice, Rise cannot achieve even that low standard it sets for itself (even for the inapplicable surface mining), but this illustrates why this Objectors Petition is so necessary to end such meritless Rise threats. Even if Rise were correct about such disputed claims (which it is not), the County cannot BY ITSELF allow any vested rights for Rise mining, for example, such as that new, expanded, never mined or even accessed UNDERGROUND IMM area, because the courts must also address the objections of us surface owners who have our own competing constitutional, legal, and property rights (see the US Supreme Court analysis in *Keystone* discussed below) to block Rise from such IMM mining beneath objectors and depleting our groundwater and existing and future wells. If the County were to take away resisting surface owner' competing rights, then the County would be exposing itself to the kinds of inverse condemnation and other claims the California Supreme Court recognized in its *Varjabedian* decision discussed herein. Recall, for example, objectors EIR/DEIR challenging Rise's proposal to take the first 10% of every existing well and all future wells before even pretending to mitigate with measures already rejected similar to those in *Gray v. County of Madera* **discussed below, with illusory mitigation proposals Rise's SEC filings admit (Exhibit A) it lacks the financial resources to afford.**

For example, the Surface Mining And Reclamation Act, California Pub. Res. Code # 2710 et seq., and related regulations **("SMARA")** and related surface mining court precedents do not apply for a miner to create vested rights for such IMM **underground** mining and cannot be used by Rise, even by analogy to such **surface** mining, as demonstrated below and in even more detail in **Exhibit C. That distinction between surface versus underground mining and the jurisdictional limits of SMARA cannot be rationally contested**, among other things, especially because surface owners above and around have their own competing constitutional, legal, and property rights (see *Keystone* and *Varjabedian).* So, the question then remains: what, if anything, can Rise accomplish by its alleged "common law" vested rights disputed by objectors? Who knows, because the Rise Petition does not attempt to make any such common law case, but instead only cites incorrectly to *Hansen and SMARA* (on which Hansen is solely based), which cites defeat the Rise claims in any event? See Exhibit B and C. Objectors contend the answer is that Rise can achieve nothing, especially from the County who would be worse than foolish to try to give away surface owners' groundwater, wells, and property rights to Rise (see *Keystone* and *Varjabedian*) as a gift to its speculator shareholders, but, even if it could win some

disputed vested rights, Rise's rights vested before 10/10/1954 (e.g., for old fashioned mining and in irrelevant places, which Rise incorrectly claims the right to "modernize" and expand, such as to add the obviously unvested water treatment plant contrary even to *Hansen,* as shown in Exhibit B) would not provide Rise with what practical rights it needs to mine today, especially considering its admitted weak financial condition revealed in Rise's SEC filings (Exhibit A). Rise could never even satisfy SMARA if it were somehow adapted for underground mining, especially as to the required "reclamation plan" and "financial assurances" and especially since Rise's disputed "Vested Mine Property" now includes the Centennial site. See Exhibit C, B, and E. Any common law for such underground mining by Rise would now have to be even more strict on the miner, not less strict, than either SMARA or surface mining cases like *Hansen, Calvert, and Hardesty.* See Exhibits B, C, and E. See also *Keystone* and *Varjabedian* about the disputes between surface owners and underground miners, especially as to surface owner groundwater and both existing **and future** wells Rise threatens (in the disputed EIR/DEIR) to dewater and flush away down the Wolf Creek after purported "treatment" in some new treatment plant for which there can be no vested rights even under *Hansen* (Exhibit B).

Exhibit E: Miscellaneous Examples of Other Authorities And Legal Rights That the Rise Petition Cannot Ignore Or Evade, Which Are Exposed In Context To Counter Rise's "Hide The Ball" Tactics.

Miscellaneous Brief Rebuttal Examples To the Rise Petition And Related Comments.

1. Explaining How This Exhibit Relates To the Rest of the Disputed Rise Petition.

These vested rights disputes are like a dispute over an "apple" that Rise claims to be an "orange," which is a polite way of contrasting reality with Rise's disputed "alternative realities." The Objectors Petition and its other Exhibits are focused on the "apple" reality while using examples by reference to the Rise "orange" to defeat such Rise Petition claims that substantially ignored our "apple" (as the disputed EIR/DEIR likewise did). Stated another way, rather than negate each and every basis for any false claim in the disputed Rise Petition that we are dealing with an "orange," as was largely objectors' approach to disputing the EIR/DEIR, this time objectors begin with more focus on the apple reality. This Exhibit is attached near the end as a preview of coming attractions for a more comprehensive rebuttal of the Rise Petition, hopefully, once objectors have our requested status conference and a better idea of the mysterious theories on Rise's full contentions about in pretending Rise's fruit is an orange, while ignoring our apple reality. This preview just briefly addresses some of the disputed claims in the Rise Petition on their own.

2. The Rise Petition Cherry-Picks Some Disputed Case Law Fragments And Some Disputed And Objectionable "Facts" That Not Only And Proclaims "Indisputable" Victory, While Ignoring Everything That Objectors Petition Demonstrates Must Defeat Them Both On The Actual Law And Facts.

The Rise Petition has crafted its **disputed "alternative reality" by ignoring contrary realities and asserting without merit: (a) [Rise starting at 55] "The facts surrounding the Vested Mine Property are indisputable"; and (b) [summarizing for disputed Rise Petition conclusions beginning at 74-75] "The facts relating to the history and operation of the Vested Mine Property are both extensive and indisputable, and conclusively establish that the Vested Mine Property carries a vested right to mine." The reverse reality presented in Objectors Petition is true, as objectors' "fact-checking" and counter legal briefing and evidence will demonstrate next before the Board hearing, although this Petition (and particularly in its Exhibits) illustrates sufficient objector rebuttals to justify this requested pre-trial relief.** Such subsequent objector filings will expose and rebut that disputed Rise attempt to rewrite applicable IMM "history" and "facts" by the Rise Petition (often by defying and rewriting the law of evidence—See Exhibit D) and applicable law for this **underground** mining (e.g., misapplying and misconstruing **surface** mining laws [SMARA] and precedents relied on by Rise (Exhibits B and C), but easily distinguished and even useful against Rise. While we refute Rise Petition's reliance of its favorite *Hansen* case, we will prove (see Exhibit B) how even *Hansen* defeats the Rise Petition, especially when correctly [i] applied to this IMM **underground** mining, and [ii] analyzed by using all of that *Hansen* court's own words and citations that have been strategically

omitted by Rise or matched with incorrect "facts," and inadmissible so-called "evidence" as demonstrated below and in Exhibit B.)

3. The Rise Petition Misinterprets The Law of Evidence And Rise's Burden of Proof, Especially By Ignoring Important Issues, Contrary Authorities, And .

a. Rise Cannot Prevail Even If It Had Sufficient Admissible And Credible Evidence (Which Rise Lacks), Because It Ignores The Competing Constitutional, Legal, And Property Rights of Objectors, Especially Those Surface Owners Above And Around the 2585-Acre Mine.

Rise also begins (at 1) with a false and disputed claim that it never substantiates or prove somehow overcomes the contrary law cited below, even from the Hansen case on which Rise bases its own Rise Petition:

> The threshold for proving a vested right exists on the Vested Mine Property is low. It requires only that Rise illustrate that the vested right is more likely than not to exist…. meaning that if Rise provides enough evidence to indicate a 50.1% chance that a vested right exists, the County has a legal obligation to confirm that right.

Objectors Petition and Exhibit, B, C, and D thereto dispute that in many ways, none of which the Rise Petition directly disputes or counters with contrary authority. Moreover, contrary to the Objectors Petition, which explains with authorities ignored by Rise (e.g., *Calvert* and *Hardesty*) that this vested rights dispute is not a two-party ministerial type of matter just between the County and Rise, but instead is an adjudicatory dispute in which objectors have equal due process rights. Also, Objectors Petition also proves additional and more powerful competing constitutional, legal, and property rights of the surface owners above and around the 2585-acre underground IMM, illustrating that with the Supreme Court's *Keystone* decision on the competing rights of surface owners versus underground miners and the California Supreme Court's *Varjabedian* decision providing inverse condemnation and other claims to disproportionately impacted homeowners downwind of the new sewer plant. Contrary to Rise's theory, the County cannot give away to Rise property or rights of us surface owners above or around the 2585-acre underground mine, such as our existing and future wells and groundwater or our rights to lateral or subjacent support to prevent subsidence. See excerpts demonstrating objectors' such rebuttals for which Rise has not offered any meaningful counters, although the rest of the Petition contains many additional examples.

b. Calvert And Other Authorities Confirm That Objectors Have Their Own Competing Rights And Claims Independent of the County, All of Which Have Been Improperly Ignored by Rise But Which Still Defeat the Rise Petition.

***Calvert* was not focused on the *MINER'S* due process rights, but rather instead on the due process rights of the NEIGHBORING VICTIMS of the mining and the other impacted public**

who we call "objectors." *Calvert v. County of Yuba* (2006), 146 Cal.App.4th 613 ("Calvert"). In that case, the county incorrectly approved the surface miner's purported, vested rights in an unconstitutional, two-party "ministerial" process without notice to, and due process for, any impacted neighbors or other objectors, because such miner's vested rights evasion under SMARA of the normal permit requirements was not merely a "ministerial decision" or otherwise one for the County alone. As the *Calvert* court held (Id.): **"Is the vested rights determination regarding Western's surface mining operations …subject to procedural due process requirements of reasonable notice and opportunity [for objectors to] be heard? Our answer: Yes." (**emphasis added) Therefore, **Calvert** court rejected the idea that such a vested rights decision is merely "ministerial," instead holding it to be a "adjudicative" (or "quasi-judicial" or "administrative") decision requiring due process for the objecting neighbors and other impacted public. *Calvert* followed the analysis of SMARA #2776 in **"**Ramsey**"** (i.e., *People v. Dept. of Housing-Community Dev.* (1975), 45 Cal.App.3d 185, 193-94, holding that construction of a mobile home park was, at least in sufficient part, a discretionary act subject to CEQA) and cases cited therein. Moreover, as demonstrated below and in *Calvert,* Rise cannot now just "switch positions" in mid-stage of its EIR/DEIR process from Rise's doomed CEQA theories to some disputed, new, vested rights theory, whether under a "diminishing asset doctrine" theory or otherwise, because that is both legally improper procedurally (e.g., estoppel) and (as *Calvert* explains) that would be a denial of objectors' due process rights to a constitutional process in which they are equally able to present all of their counters and competing evidence in a sufficient, adjudicatory process much closer to what will occur in the following court process than the disputed and deficient CEQA process so far.

As also explained in Hardesty, Calvert, and even *Hansen* and in Exhibits C and B, **that *Hardesty* court ruled at 811 (citing Hansen at 12 Cal.4th at 564, and Calvert at 145 Cal.App.4th at 629): "IT WAS HARDESTY'S BURDEN TO PROVE HE WAS CONDUCTING A NONCONFORMING USE AT THE TIME THE LAW CHANGED." IT ADDED THIS CITE FROM MELTON V. CITY OF SAN PABLO (1967), 252 CAL.APP.2D 794, 804: "THE BURDEN OF PROOF IS ON THE PARTY ASSERTING A RIGHT TO A NONCONFORMING USE TO ESTABLISH *THE LAWFUL* AND CONTINUING EXISTENCE OF THE USE *AT THE TIME* OF THE ENACTMENT OF ORDINANCE [IT WISHES TO EVADE.]"** (emphasis added) See also the court's discussion at Id. and 812 of *Stokes v. Board of Permit Appeals* (1997), 52 Cal.App.4th 1348, 1351, 1352-53, 1355-56, and *Walnut Properties, Inc. v. City Council* (1980), 100 Cal.App.3d 1018, 1024. Much of what Rise offers as so-called "evidence" to address that and other burdens of proof is inadmissible, not competent or credible, deficient/insufficient, immaterial or irrelevant, and otherwise objectionable. Such evidence is NOT "indisputable." This Objectors Petition is more than sufficient to defeat the Rise Petition and more objections are coming. Again, none of that evidence deals with the competition and disputes that matter most between Rise and such objectors Rise persists in ignoring, despite the hundreds of meritorious, record objections filed against the EIR/DEIR and the Rise admissions contrary to its claims in its SEC filings in Exhibit A. Moreover, as explained in Exhibit D, by this abrupt Rise change in strategy from its EIR/DEIR and pending permit and other applications see the list in the County Staff Report for the EIR and the EIR/DEIR itself) Rise is creating many more admissions, inconsistencies, and conflicts with the Rise Petition claims with which objectors impeach and rebut the Rise Petition.

c. For Example, Consider This Overview of Hardesty And Other Authorities And Reasons Why Rise's Vested Rights Claims For UNDERGROUND Mining Are Doomed At the "Dormant," "Discontinued," And "Abandoned" IMM, Supplementing the Preceding Discussion.

Rise's vested rights claims for "Vested Mine Property," especially for the 2585-acre underground IMM, must fail as a matter of law, because the Surface Mining And Reclamation Act ("SMARA") only applies to "surface mining." Public Resources Code # 2710 et seq. See Exhibit C. *Calvert*, *Hansen*, and other cases on which Rise incorrectly attempts to rely only apply to "surface mining" under SMARA, including what SMARA #'s 2736 and 2729, respectively, define as **"surface mining operations"** on "**mined lands." See Exhibit C. What Rise contemplates in its EIR/DEIR and otherwise is UNDERGROUND MINING that cannot possibly qualify (even by miner analogy) as such SMARA or such *Hansen* and other "surface mining" cases on which Rise relies for its such disputed vesting rights claims (i.e., the only Rise gold to recover, if any exists, is underground in the new, unmined, expansion area that Rise admits in its SEC filings—Exhibit A—that Rise has not even accessed for meaningful exploration). That underground Rise mining is especially impossible to treat as surface mining because objectors and others own that surface above and around that underground mine and Rise's admitted deed restrictions bar Rise from the "surface" (admittedly defined by Rise 2017 deeds to be at least 200 feet deep) without the surface owners' consent. See, e.g., Exhibit A SEC 10K filing admissions.**

While that statutory reality should be obvious on its face, Exhibit C demonstrates some of the many ways in which SMARA cannot even be applicable by analogy for underground miners, although all mining cases can be used defensively by objectors. Why?

FIRST, because Rise has not even tried to satisfy its burden of proof for such disputed theories, and no "common law" claim by Rise has any such statutory links or and Rise has not only failed to cite any such case authority, but Rise ignored contrary authority in *Hardesty* discussed herein. Indeed, neither Hansen nor any other Rise surface mining cases cite any common laws, even by analogy, for underground mining, but strictly limit themselves to following the SMARA statute.

SECOND, because miners are not granted any vested rights to mine as they wish by the constitution, but only under specified terms and conditions not to be stopped from certain qualified, "nonconforming use" only by application of a specific kind of land use statute that interrupts either (i) certain otherwise LAWFUL kinds of existing mining in which the miner is actively conducting permissible existing operations on a PARCEL (see the above discussion of *Hansen* and Exhibit B counters against Rise's claim that work on one parcel creates vested rights on another), or (ii) certain "objectively" intended and permitted future mining expansions ON A PARCEL during such qualifying continuing operations. See the above discussion of *Hansen* and Exhibit B counters against Rise's claim that work or intentions on one parcel creates vested rights on another. See also Exhibit C. That also means, for example, that Rise's vested rights still must comply with many other laws and regulations not constituting such a land use regulation "taking" to trigger the constitutional prohibition on applying that law to such qualifying operations. In other words, Rise seems to be demanding that objectors be disabled somehow from relying on each and every law Rise later claims to

be empower by its disputed vested rights to ignore or evade, although as quoted above in the Rise Petition (at 58) Rise appears to claim the right to ignore all laws and regulations after 10/10/1954 by announcing its vested rights "operations" will be "without limitation or restriction." Fortunately, Rise has the burden of proof of that, which necessarily means its Rise, not objectors, who must identify each such law or regulation and how such vested rights apply to each such law and regulation as it existed at the relevant time, as distinguished, for example, by compliance by laws (like CEQA and environmental laws) which objectors future briefing will demonstrate apply independent of any such vested rights.

THIRD, such vested rights do not overcome competing property owners' legal, constitutional, and property rights that may interfere with such mining, such as those of us surface owners above and around the 2585-acre underground IMM, such as to our existing and future wells and groundwater. That competition between underground miners and surface owners is not about vested rights of a miner displacing surface owner rights and protective laws but rather, as between competing surface vs underground owners, as to who has the superior legal right under all the facts and circumstances. However, if *Calvert* or *Hardesty* were somehow a relevant analogy (despite being legally inapplicable surface cases) for any such Rise claims of vested rights, *Calvert* SUPPORTS THE OBJECTORS, AND NOT THE MINER, in any analogous parts, as demonstrated herein, . See also Exhibit B analyzing ***Hansen***, which also fails to support Rise vested rights for the IMM and even in some cases as to that *Hansen* surface miner. The reverse uses of surface mining cases in favor of objectors, of course, are different, because the competing objectors' oppositions aren't about qualifying like a miner for vested rights, but rather conversely use objectors' own constitutional, legal, and property rights as defenses and to counter any miner claimed vested rights claims however those vested rights claims may be imagined.

Nowhere in its EIR/DEIR, Rise's SEC filings (Exhibit A), or otherwise does Rise even allege any vested rights under SMARA or other law for **"surface mining,"** including what SMARA #'s 2736 and 2729, respectively, defines as **"surface mining operations"** on "**mined lands."** See Exhibit C. Instead, as admitted in the EIR/DEIR and Rise's SEC filings etc., the relevant lands to be mined by Rise are **underground** in the new, expanded, unexplored 2585-acre mineral rights areas, **not even** on the smaller surface owned by Rise at the Brunswick or Centennial sites. Rise's SEC filings admit that Rise's rights do not exist above 200 feet below the surface, and Rise's EIR/DEIR admits Rise does not intend to mine above 500 feet of the surface. See Exhibit A. Apparently, Rise imagines that it can make some incorrect, vested rights argument for **underground** mining either (a) by purported and incorrect analogy to SMARA **surface** mining (see Exhibit C), or (b) as if Rise somehow could create some new common law by such an analogy, but there is no sufficient legal authority for such a Rise claim or any description of how Rise could mine without compliance with applicable laws, or even provide the SMARA required "reclamation plan" and related financial assurances. Stated another way, "nonconforming uses" based on vested rights still must be "legal." Surface mining with vested rights must comply with the regulatory requirements in SMARA and many other applicable laws, and **SMARA expressly allows neighboring objectors and governments to sue the miner for nuisances and many other wrongs; i.e., escaping a use permit requirement doesn't free the SMARA miner to do as it wishes. See Exhibit C.**

d. Some Examples of Some Other Rise Petition Defeating Factors Further Explained With Others In Exhibit C, Such As Limiting Tolerated Changes, Separating Mining From Explorations And Other Operations For Limiting Vested Rights, Abandonment, And the Need For Reclamation Plans, Financial Assurances, Etc.

Moreover, it should be incontrovertible that Rise could never satisfy the SMARA or analogous conditions for a compliant reclamation plan, and Exhibit A SEC admissions prove Rise incapable of any satisfactory "financial assurances." To the contrary, as the *Hardesty* mining case ruled in defeating such disputed vested rights claims because, among other things, surface and underground mining are different uses:

> [T]he italicized portion of the statute [#2776] speaks of vested rights to ***surface*** mining, **not *any* mining**. "Surface mining involves stripping off the top of an area to reach the minerals, in contrast to boring down through tunnels or shafts to extract them." ([People v.] *Rinehart*, supra, 1 Cal. 5th [652] at p. 671, fn. 10 …) (emphasis added)
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> ***
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> To the extent Hardesty contends he has a vested right to surface mine under section 2776, he simply **failed to carry his burden to prove any substantial *surface* mining on the property** had been conducted by that date. As the trial court found, substantial evidence shows that **prior mining had been hydraulic, tunnel, and drift mining, not surface mining,** which began in the 1990's, and **which represented a SUBSTANTIAL CHANGE,** contrary to former section 2778's requirement that no substantial changes may be made in any such operation except" according to SMARA's terms…. (emphasis added)
>
> ***
>
> … Hardesty failed to prove any mining was occurring on or even reasonably before the date SMARA took effect. **SMARA was designed to allow existing, operating surface mines to continue operating** after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to dormant mines.**
>
> ***Hansen*** *Brother Enterprises, Inc. v. Board of Supervisors* (1996), 12 Cal. 4th 533…*(Hansen Brothers*)—**consistent with a long line of zoning cases—holds that A USE MUST BE PRESENT AT THE TIME A NEW LAW TAKES EFFECT, TO BE CONSIDERED A NONCONFORMING USE…**. Communities for a Better Environment … (2010), 48 Cal.4th 310, 323 fn.8 …["the traditional protections for nonconforming uses established *at the time* zoning restrictions become effective"]…; *McCoslin v. City of Monterey Park* (1958), 163 Cal. App.2d 339, 346…["A nonconforming use is **a lawful use existing *on the effective date* of the zoning restriction and continuing since that time** in nonconformance to the ordinance."] … ***NEITHER A DORMANT NOR AN ABANDONED USE IS A NONCONFORMING USE.* (*HANSEN BROTHERS,* AT PL 552*…["NONUSE IS NOT A NONCONFORMING USE."])* As stated by our Supreme Court, "The ultimate purpose of zoning is … to reduce all nonconforming uses within the zone to**

> **conformity as speedily as is consistent with proper safeguards for the interests of those affected." We have recognized that, given this purpose, courts should FOLLOW A STRICT POLICY AGAINST EXPANSION OF THOSE USES…**
>
> **That policy necessarily applies to attempts to continue nonconforming uses which have ceased operation.**" *(Hansen Brothers*, at 568 …) (emphasis added)
>
> ***
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> Further, **the record shows a proposed significant change in use since pre-1976 [SMARA's effective date] times. THE CONTINUANCE OF A NONCONFORMING USE "IS A CONTINUANCE OF THE SAME USE AND NOT SOME OTHER KIND OF USE." …[citing McClurkin, Edmonds, and Goldring, where, FOR EXAMPLE, EDMONDS V. COUNTY OF LA (1953), 40 CAL. 2D 642 HELD "ENLARGEMENT OF PLAINTIFF'S TRAILER COURT TO ACCOMMODATE 30 MORE TRAILERS IS CLEARLY A DIFFERENT USE."] SURFACE MINING IS A CHANGED USE ON HARDESTY'S PROPERTY, WHEN CONTRASTED WITH THE PRE-SMARA USE [FOR UNDERGROUND ETC. MINING NOTED ABOVE]. Nor can Hardesty persuasively rely on post-1976 unpermitted surface mining –twice halted by the government— to show that surface mining was extant before 1976.** (emphasis added)

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799-812 ("**Hardesty**") (The miner lost at the Board, trial court, and on appeal in its mandamus action claiming SMARA vested rights as to an ancient, "19th century" federal mining patented gold mine that ceased operation during World War II and was "essential dormant" "through the 1970's" with "virtually no evidence that those mining activities 'continued' to exist at the time SMARA was enacted [effective January 1, 1976], apart from "sporadic," "unpermitted surface(open pit) aggregate and gold mining in the 1990's." Nevertheless, the miner claimed "vested rights to mine the property for gold, sand and gravel (as well as diamonds and platinum)" after he bought the property in 2006. The trial and appellate courts rejected that miner's vested rights claim, agreeing with the Board that "any right to mine had been abandoned," as discussed in the evidence analysis sections above and below.) More importantly, ***Hardesty*** **forbids ignoring the kind of change Rise tries to ignore between different types of mining in incorrectly claiming vested rights. As that court stated:**

> **The trial court found that in the 1990's unpermitted surface (open pit) aggregate and gold mining began different in nature from the 'hydraulic, drift, and tunnel' [i.e., underground] mining that historically had been conducted on the land.** The RFD alleged the new proposed open-pit mining was safer and better for the environment. *** As an alternative to the finding of no vested right based on the lack of mining [in the right way and at the required time] … the trial court **found that any right to mine had been abandoned**." (emphasis added)

Here, despite the Rise Petition's disputed claims to the contrary (often apparently based on the false theory that any kind or type of mining useful "operational" activity on any owned parcel somehow allows Rise all desired mining operations on any parcels), the IMM was also "abandoned" by 1956 sufficiently to destroy any future vested rights claim by the *Hardesty* (and even *Hansen*) standards. Rise cannot revive the IMM now, especially by arguing (like the *Hardesty* miner) that Rise's new uses should be allowed because somehow it was somehow "better" than the old one. (That unprecedented argument could not true work against surface owner objectors above or around the IMM). While there was obviously some IMM underground mining before 10/10/1954 at some of the IMM parcels, the point is that Rise is not arguing for vested rights **from underground mining cases and laws (as distinguished from the parts Rise likes of surface mining cases and SMARA**). Why? Perhaps that is because no one could possibly do any underground mining anywhere in the IMM since the mine closed and flooded in 1956, so Rise has to imagine (incorrectly) that some surface or non-mining activity can save it from our obvious abandonment objection. Perhaps that is because Rise must continue to fear confronting us objecting surface owners' competing constitutional, legal, and property rights that Rise keeps ignoring in this Petition as it has in the disputed EIR/DEIR and other Rise applications. Perhaps the County should start asking Rise the hard questions in our ignored EIR/DEIR objections that have not been asked by the County enablers or have not been addressed sufficiently by Rise. Fortunately, *Calvert, Hardesty,* and other cases forbid us objectors to be ignored on these vested rights disputes.

Under such precedents it should be legally impossible for Rise to claim that there has been "no such change," because the EIR/DEIR (and presumably the Rise Petition, although it evades discussion of all such details to avoid comparisons between the 10/10/1954 mining with picks and shovels and manual dewatering systems versus what massive changes are unavoidable features of modern mining and clearly contemplated by Rise, unless it wants to confront more objector exposed inconsistencies to be added to our long lists), such as doubling the size of the existing underground mining area into new, unexplored, and expanded areas as well as mining deeper (e.g., adding 76 miles of tunnels to the existing flooded 72), especially with Rise's disputed new 24/7/365 dewatering system and disputed water treatment plant facilities, plus radically different mining techniques and technologies (not to mention adding toxic hexavalent chromium cement paste for underground mine shoring columns to avoid the cost of removing mine waste, for a replay of the *Erin Brockovich* movie. See www.hinkleygroundwater.com **and Engel Objections). In any case, neither Rise's SEC 10K (Exhibit A), nor the EIR/DEIR, nor other related Rise filings reveal the precise activities and intentions of the miners when Rise's predecessor periodically sold or acquired each of those 10 parcels (55 sub parcels) or any underground mining rights (since Rise has he burden of proof for each predecessor to prove it had at all times vested rights on each parcel to do what Rise proposes now to do).**

In any case, Rise must prove such required data in each case, including the seller's prior objective mining intentions or to compare each such mine parcel or sub parcel unit's "expansion" for such vested rights analysis versus the continuously evolving and expanding applicable laws and regulations at each such relevant times. Instead, while Rise's inconsistent EIR/DEIR data never lays any factual foundation for vested rights (often the opposite), Rise just admits in the SEC 10K that "original mineral rights" were acquired "at various times" since

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

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

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

The *Hardesty* precedent (also citing *Hansen Brothers—see Exhibit B hereto*) not only rejected that similar miner's vested rights claim for those reasons (and others that follow in later discussions), but also "[a]s an alternative basis for decision, the Board and the trial court found any right to mine was abandoned" on such facts. The Court of Appeal agreed: "Here the evidence of abandonment was overwhelming…. Further, **a person's subjective "hope" is not enough to preserve rights; a desire to mine when a land-use law takes effect is "measured by objective manifestations and not by subjective intent." (*Calvert*,** surpra, 145 Cal.App.4th at pl 623…)

At this IMM trial objections there will be overwhelming evidence of "abandonment" defeating Rise vested rights claims. There will also be added **massive evidence of laches and waiver** and more against Rise now trying to assert such a vested rights claim, since this mine sat dormant, closed, and flooded (i.e., abandoned) since 1956, while our community grew up around the abandoned mine in reasonable reliance on the end of that mining (and that potential menace Rise now seeks to force on us.) **Also, as environmental, mining, and other**

applicable laws evolved during and after 1956, such requirements made legal compliance by any miner economically and scientifically infeasible, especially without the kind of "substantial changes" and "intensity" forbidden above for any such vested rights claim. No reasonable person in 1954, 1955, or 1956 could have intended such Rise proposed IMM mining, especially as contemplated in the EIR/DEIR and especially without permits and compliance with current laws (even those in effect in 1976, or, as the Nevada County ordinances at issue in *Hansen,* in 1954). Again, among other things, this is an underground mine (not a surface mine subject to SMARA), and us objecting surface owners above and around the 2585-acre underground IMM mine have competing property and constitutional rights that, despite Rise's efforts to ignore them, the courts must ultimately respect whatever the County decides to do. See *Keystone.*

That *Hardesty* precedent also defeats Rise's vested rights claims for many other reasons discussed in various places herein, but (besides that similar "abandonment" reasoning applicable in both that dispute and this one) that Court of Appeal's analysis of SMARA itself (Exhibit C) is especially lethal to Rise's theories. For example, as *Hardesty* explained (at 801, emphasis added):

> **SMARA requires that all surface mining operations have an approved reclamation plan and approved financial assurances to implement the plan. (#2770, subd. (a)).** … Persons with existing surface mining operations were required to submit a reclamation plan by March 31. 1988. [Id.] **ABSENT AN APPROVED RECLAMATION PLAN AND PROPER FINANCIAL ASSURANCES (WITH EXCEPTIONS NOT APPLICABLE HEREIN) SURFACE MINING IS PROHIBITED. (#2770, SUBD. (D))**.

The disputes over **Rise's "Reclamation Plan"** and related "**financial assurances"** are addressed in Exhibit C and other sections, but any such reclamation plan must relate to the reality of what is to be done in the mine (which is still a mystery, especially under the Rise Petition, but also even under the disputed EIR/DEIR). What, if anything, does Rise propose, since the Rise Petition does not say. That is even more serious because Rise's County filed "Existing Remediation Plan" is already deficient and inconsistent with what is required regarding the EIR/DEIR plans, and it is even more wrong in every way for what will be required if this Rise Petition dispute continues its descent into such vested rights "free for all's," where objectors with Calvert/Hardesty due process rights can only guess about what disputed things will be allowed to happen in and around various parts of the mine and which of Rise's vaguely disputed laws and regulations may still apply. See Exhibits B, C, and D. That is why the **clarity** sought in the aforementioned "Summary Due Process Proceeding**"** is so important. **First,** SMARA does not apply to create vested rights for any such underground mining, and whatever Rise tries to do (and almost everything Rise does without a permit, or, to quote the Rise Petition at 58, "without limitation or restriction") is subject to legal and political challenge and change by objectors and then also to more changes by new reform laws, whether by political or legal reforms or by votes or initiatives), as each disputed use and issue, and the application of each otherwise relevant law or regulation, is resolved in the courts. **Second,** Rise will have to react to enforcement of such changing legal and political realities in its operations (whether by right thinking government

officials enforcing or enacting laws better to protect objecting surface owners from such underground IMM mining or by self-defense, resident initiatives), thereby requiring more constant "changes" in the reclamation plan and greater need for better financial assurances, as proven in Exhibit C and competent evidence/testimony. **Third,** not just such mining legal changes, but every deficient reclamation plan and financial assurances response by Rise may itself be subject to challenge and revision. Also, each change in any such reclamation plan requires a new financial assurance to match it, and, considering Rise's admitted financial condition in its SEC filings (Exhibit A), objectors cannot imagine Rise ever being able to obtain any such required financial assurances, even for its own proposed and deficient reclamation plan, whenever Rise confesses what it is.

On the other hand, while it is not legally possible or appropriate for Rise to use the courts to so invent some new, non-statutory, vested rights regime for its underground mining (probably incorrectly rebranded as the "common law"), **objectors may use SMARA precedents defensively**, such as the *Calvert, Hardesty, and even Hansen (see Exhibit B) to* defeat such Rise claims. See Exhibit C, D, and E. Objectors reason that, if Rise must fail under SMARA precedents, then Rise must fail as well under any purportedly comparable vested rights regime Rise (incorrectly) could possibly attempt to invent by judicial process. Also, correctly interpreted and used SMARA vested rights precedents and issue checklists are helpful guidance for the County in fashioning the requested Summary Due Process Proceeding and evidentiary rules for protecting objectors' due process and other rights to defeat such unprecedented Rise claims. Id. **Clearly, no court can ever justify providing less protection than the SMARA minimum (Exhibit C) for objectors facing such greater perils from such underground mining than from surface mining, especially objecting surface owners living above or around the 2585-acre underground IMM depleting our existing and future wells and groundwater 24/7/365 with no adequate mitigation. See, e.g., Gray v. County of Madera rejecting that mine's EIR and well mitigation proposals similar to those in Rise's disputed EIR/DEIR, leaving objectors to ask, since Rise (incorrectly) claims vested rights to operate without limitation or restriction, what mitigations would be provided, if any, under the disputed Rise Petition? Thus, the County should consider, for example, some of the many aforementioned disabilities for Rise attempting to gain SMARA-type vested rights benefits without SMARA and other legal burdens to protect surface owners and the rest of our community.**

e. **Keystone And Other Authorities Illustrate Various Ways How Competing Constitutional, Legal, And Property Rights of Objecting Surface Owners Above And Around the 2585-acre Underground Mine Can Defeat Rise Vested Rights Threats, Especially By Exposing Rise's Inability To Satisfy Realistic Reclamation Plan And Financial Assurances Requirements.**

As admitted in last Rise's SEC 10K filing (Exhibit A), objecting owners' "surface" property, constitutional, and other legal rights are comprehensive for at least the first 200 feet down, plus forever deeper as to anything not part of "mineral" mining (e.g., such as our surface owner groundwater). Even then, subject to many legal rights of us surface owners, such as for "lateral and subjacent support," including by surface owners' groundwater that must support our surface legal estate. See, e.g., *Keystone Bituminous Coal Ass'n v.*

***DeBenedi*tis,** **480 U.S. 470 (!987) ("Keystone".) That leading Supreme Court decision upheld against a coal miner challenge the Bituminous Subsidence And Land Preservation Act (the "Subsidence Act" as it's called in Pennsylvania and many places where it has been replicated), where mining was limited to prevent "subsidence" ignored by Rise (i.e., the loss of surface lateral and subjacent support and loss of groundwater or depletion of surface water, which are competing legal and property rights our surface residents already have, although Rise may inspire others here to cause even more protective laws (and more potential vested rights claims by Rise for objectors to defeat.) That *Keystone* decision defined (at 474-475) such objectors' "subsidence" concerns (also at issue here for this IMM project), especially because of the massive and objectionable groundwater depletion (24/7/365 for 80 years along and off 76 miles of proposed new tunnels in Rise's new, deeper, and expanded vested rights claims for blasting, tunneling, rock removal, and other mining activities in new, unexplored IMM underground areas, plus the 72 miles of existing tunnels and mined areas where the gold supply was exhausted by the time the IMM was abandoned in 1956. Consider this summary, as applicable to gold mining here as to coal mining there:**

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

While that *Keystone* subsidence law generally required 50% of the coal to remain for support in strategic places, it did many other things to protect the surface and limit the mining, explaining that **the government was entitled to so act "to protect the public interest in health, the environment, and the fiscal integrity of the area," such as by "exercising its police powers to abate activity akin to a public nuisance," although the court made clear that the police power was broader than nuisances. (**at 488**,** emphasis added**)** (The law is the law, whether voters achieve protections from such nuisances and worse by electing responsive officials, by initiatives, or, when ripe, by test case litigation.) Of special note, the Court (at 493-94) explained that this challenge was to the enactment of the law before it was enforced, and that meant 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)

Objecting surface owners have such a "full bundle of property rights" to so defend and enforce by all legally appropriate means, and Rise has a IMM mining plan so vulnerable that Rise admitted (DEIR 6-14) that the whole project would be infeasible unless it could mine as it so wished 24/7/365 for 80 years. What the County must consider as it plans for our futures is that this present dispute about vested rights may not be the end of these battles in which objectors must ultimately prevail to save their health and welfare, their environment, property rights, and values, and their community way of life. Even if somehow Rise were to do the impossible (on the merits) and win mistaken approval in this first vested rights process, new and more protective laws would then be enacted to counter the harmful IMM impacts, with every useful *Keystone* "strand" in objectors' "bundle of property rights." Then Rise would have to bring more vested rights claims that objectors would again dispute and counter and so on until the IMM menaces cease. The reason objectors focus on that future (which the EIR/DEIR refused to address in response to record objections, such as by calling it too speculative) is that vested rights are (at best for Rise) a narrow and deficient legal protection for such mining, especially in such competitions between such surface owners and underground miners below them, as objectors follow up briefing will demonstrate by precedents showing how few vested rights arguments can overcome wisely crafted laws. The present problem for the County is that the physical and environmental harms begin whenever IMM mining and related activities begin (as distinct from now existing harms, such as the mine threats already depressing property values.) While such litigation continues during such impactful Rise actions, it would be hard for the miner to undue later the harms it does before the courts finally stop them.

Therefore, in considering arguments about vested rights, reclamation, and financial assurances, the County should not just assume that those reclamation and financial assurances disputes are only about that distant future 80 years from now. Instead, what happens in the most likely case when the courts stop the disputed mining during its several pre-revenue phase years. For example, if Rise were (incorrectly) to be allowed to begin its mining activities and then the courts stopped them, for instance when Rise drained the flooded mine and began Rise's disputed dewatering processes and other startup work, much Rise harm will have been done by the time Rise is stopped. Yet, Rise will then still have nothing to impress its speculative

investors about the prospects for imagined gold still obscured (at best for Rise) in that unexplored new underground area in which Rise has not even yet begun to mine. That is an insufficiently discussed problem for Rise, because Rise's SEC filings exposed in Exhibit A [that the EIR/DEIR incorrectly has ignored] admit Rise still lacks the financial resources to do much of anything it proposes. Apparently, Rise's speculator investors just dole out money from time to time for what they consider Rise's current project needs. What then happens when Rise has exhausted those insufficient funds, when the courts stop the mining, and when Rise's investors no long like their odds on that Rise gamble? How is Rise going to remediate and reacclimate the messes that Rise has already made when the courts stop it and the speculators cut off funding? Evidence will reveal that to be an old and too often repeated dilemma, and the reason there are more than 40,000 abandoned or bankrupt California mines on the EPA list, like this IMM seems destined to be again. That is also the reason Rise needs a realistic reclamation plan backed by sufficient and credible "financial assurances," not just at the theoretical 80 years end, but also continuously for whenever the courts (as they eventually must) agree with objectors and stop the IMM mining once and for all. Objectors doubt that Rise speculators will ever "go all in" and fund what would be legally required in cash and sufficient "financial assurances" (i.e., surety bonds or letters of credit, for which Rise is insufficiently credit worthy ever to qualify). By analogy, an early demand for such financial assurances and working capital from Rise is like the poker movie scene when the good player (hopefully the County, but, if not, the courts backing the objectors) "calls" and pushes "all in" that player's chips into the bet, and then the villain lacks the chips to match and loses his or her bluff. That is the quick and easy way to end this menace and one reason for this Petition.

Although Rise has the burden of proof, nothing in the disputed EIR/DEIR or Rise Petition sufficiently explains why surface residents above or around the 2585-acre underground mine need not worry about Rise's disputed mining contrary to our legal rights to insist on our "subjacent and lateral support and protection" or from "subsidence" either (a) from defective repair and restoration of the closed and flooded 2585-acre mine that has been abandoned since 1956 and is in at best uncertain condition, or (b) from new and deeper expansion therefrom into unexplored areas that would now be blasted, tunneled, waste cleared (except for new shoring using toxic hexavalent chromium cement paste to create support pillars from mine waste in that place), and otherwise mined 24/7/365 for 80 years. Without permits, credible inspections, and other regulations Rise seeks to evade with its vested rights claims, how can objectors judge such risks, when there are no clear and credible standards and timely and effective monitors to protect surface owners? That is why, even if Rise were able to somehow succeed with its disputed, vested rights claims, the law still allows surface owners many legal self-defense remedies, both legal and political law reforms (e.g., initiatives), which *Keystone* shows can be powerful counters to underground mining.

History shows that most often it requires a crisis, damage event to trigger effective inspections and law reforms, but at that point the damage is done. (Remember the old Broadway musical that they made into a Clint Eastwood movie called "Paint Your Wagon" about Nevada City historic gold mining? It ends with the whole town collapsing into the miners' underground diggings.) Generally, in such cases all that would be left would be for victims to pursue legal remedies (when ripe) against the miner, who typically in mining history is some company with an insufficient financial condition to be financially responsible for the harms it

causes (see Rise SEC filing admissions in Exhibit A) and is often based and managed in a foreign place (e.g., like Rise here from Canada, whose only reported material "asset" is the mine everyone wants to close for such revealed problems.) See, e.g., **DEIR [e.g., admitting at 6-14] the project is economically infeasible unless it can operate 24/7/365 for 80 years in accordance with Rise's disputed EIR proposal).** In this case the County can expect objectors to be proactive, especially because in these vested rights disputes objectors' counterarguments will have more to prove (than County staff or the County Economic Report allowed for consideration in the EIR/DEIR disputes) about the impact of Rise's underground mining on our surface property values, as well as our property rights, including as to groundwater for our existing and future wells. As to why that matters, besides objectors' peace of mind, environment, safety, health, and welfare, consider this question: what is your real estate broker going to tell a buyer about this mess when you try to sell your house above or around the 2585-acre underground mine here? What amount of discount are the mortgage lenders' appraisers going to impose to lower what a buyer can finance? Such inconvenient truths are not hard to see, although Rise and its enablers seem to be unable to disclose them.

f. The Debate Over Who Is "Taking" What From Whom In The Disputes Between Surface Owning Objectors And Underground Miners And Related Issues; Potential Claims (When Ripe) For Inverse Condemnation, Nuisance, Etc., Should Concern The County.

While Rise (like others before it) may attempt to argue that somehow such new regulations and laws reducing IMM potential profits are "eminent domain" "takings" or otherwise barred by its constitutional "vested rights," that meritless theory has long been rejected by courts and governments, both on the legal merits (e.g., such speculative "lost profits" are not recoverable as a legal remedy) and because objecting surface owners also have competing constitutional, legal, and property rights that do merit protection from such underground mining threats. Consider again (in this different context) how the Supreme Court explained in *Keystone* (at 493-94) its caution to any miner challenge to new laws, such as those that would become inevitable if Rise were somehow (mistakenly) allowed to proceed:

> "[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.]

While such "taking" legal issues could (and may) be debated by the adversaries' lawyers here at length, this Petition is not the place yet for that, and, unlike in that Supreme Court case, where surface owner had signed waivers in favor of the underground mining, the reverse is clear here, as demonstrated by the Rise deed limitations and absence of surface waivers, as admitted by

Rise in its SEC Form 10K. Objectors do note, however, that the 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 can and should do by enhanced legislation (or, if need be, by voter initiatives) independent of any CEQA or other screening or permitting as to this IMM threat, to further protect us residents and voters above and around the 2585-acre underground mine. While the IMM could attempt to challenge such new protections for our community, they then (when ripe) could expose themselves to a whole different type of litigation than the usual CEQA fights. See, e.g., Varjabedian. In those kinds of potential disputes, the surface owners have many practical and legal advantages, while the miners are exposed to having to defend what seems to many to be indefensible mining positions under the circumstances and to answer in court all the hard questions evaded by the EIR/DEIR.

Especially considering that this multi-party vested rights dispute (like the EIR/DEIR dispute) is not just over what the Rise does with its own property (Rise owns what it owns), but it is also about how Rise uses that 2585-acree underground mine (with different and unexplored conditions and often uphill of those other Rise owned sites where the only minor/limited exploration and testing was done) and violates the competing constitutional, legal, and property rights of us surface owners and users. (Again, when the DEIR/EIR wrongly plans to lower our surface water table and confiscate the top 10% of our existing well water before Rise even attempts its illusory EIR mitigation measure already rejected as insufficient by the mitigation proposals in ***Gray v. County of Madera***, remember that our "surface" goes down at least 200 feet and further as to groundwater and other rights besides mining minerals, where Rise has no rights, but many duties). In any event, that is one of the many reasons that Rise's disputed vested rights do not exist here, and why CEQA and applicable law require the EIR to be revised and recirculated to distinguish and separately address both (i) when Rise's disputed statements or "evidence" purports to apply only to one part of the Project, such as the new, expanded underground mining area, and (ii) when and how Rise's vested rights "story" or the EIR/DEIR purports to apply to the whole project (and/or Centennial.) Besides *Gray v. County of Madera,* see also, e.g., the Nevada Union story on December 15, 2022, "'Without water, my property is worthless:' Well owners want protection from Rise Gold Grass Valley," reporting on the testimony that there were "over 300 properties with wells within 1000 feet of the mines mineral right area" [i.e., literally including the 2585-acre underground mine's competing surface owners above that mine], as to which the owners have rights to lateral and subjacent support, including to groundwater as demonstrated in the case law cited in Engel Objections and Exhibit A, but as to which the DEIR/EIR fail to comply with CEQA and other applicable law, as the "Wells Coalition," Tony Lauria, and others complained at that session. See the Wells Coalition DEIR objection at Group Letter 27/28 and their follow-up to the EIR. **The relevant comparable is the example discussed in the Union story in 1995 at the North Columbia Diggins on the San Juan Ridge when Siskon Gold operations ruined many wells by breaching a water bearing fault-line.**

Furthermore, as the Union article also stated, over 100 well monitoring sites were required in 1996 by the County conditional use permit "to dewater the mine for exploration," in contrast to the EIR and DEIR ignoring that same or bigger risk, now different and larger because of changes over time and climate change.

While such new local victim legal protections could have significant impacts on any vested rights/EIR mining (even at the overly generous level considered by Grass Valley in its DEIR Agency Letter 8), it is essential to remember that this is more than about how the miner uses the property it owns. This is about us surface owners and users protecting objectors own personal, constitutional, legal, property, and groundwater rights (owned at least down 200 feet above the underground mine that has been closed and flooded since 1956). See Rise's SEC 10K admissions quoted in Exhibit A. Such taking issues clearly arise if Rise were to persuade the courts or County of vested rights to anything that harms competing such surface owners' property rights for the benefit of this disputed mine, such as Rise's disputed EIR/DEIR plan to deplete the top 10% of surface owners well water before the (illusory/not economically feasible) EIR well depletion mitigation replacement kicks in. (if Rise has its way, that unaffordable mitigation probably only would be acknowledged by Rise for the small portion of the total truly existing and future wells so impacted, as recognized by the disputed EIR/DEIR for required mitigation. But see the County General Plan, and *Gray v. County of Madera).* Any such groundwater abuse is also certain to trigger law reforms efforts by victims, as well as claims for Fifth Amendment and California Constitutional taking, inverse condemnation, nuisance, trespass, conversion, and other claims. See, e.g., ***Varjarbedian****,* supra; ***Vaquero Energy, Inc. v. County of Kern*** (2019), 42 Cal. App, 5th 312, allowing surface owner legal protections against underground oil and gas miners.

If the Rise vested rights "story" or noncompliant EIR/DEIR wants to claim that a disputed study or opinion regarding the Brunswick, Centennial, or East Bennett areas regarding some disputed condition should also apply to the separate, expanded, deeper, and generally unexplored new mining area of 2585-acre underground mine, Rise should say so expressly and present the required "common sense," "good faith reasoned analysis" required *Gray, Banning, Vineyard, and Costa Mesa*. If that disputed Rise vested rights "story" or EIR/DEIR want to assume that Rise's disputed claim or rights somehow override objectors' competing surface owners' rights and interests (down at least 200 feet and as to groundwater generally) above and around the 2585-acre underground mine, the EIR/DEIR mine must say so and contest that issue with objectors (not just the County) in a fair, due process proceeding. Likewise, in order to be considered Rise's disputed vested rights claim somehow must prove some right to prevail somehow over objectors' superior competing rights (see *Keystone*), especially since otherwise the County could be liable for a "taking" of our property rights as well as for a forbidden public gift for this Canadian miner and its shareholders' profit. See ***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.) ("***Varjabedian").***

Not just CEQA, but also other applicable laws, apply to the disputes between competing owners of the surface versus underground mines relying on deeper mineral rights, as well as regarding the management of the groundwater in which they share competing legal rights. See *Keystone*. This should be important to the County, because of adverse consequences if it participates in violating such constitutional and property rights of objecting surface owners and

users, such as by enabling Rise to take our groundwater for abusive 24/7/365 dewatering for 80 years, which Rise has no vested right to do. **The County should resist Rise's claims and refrain both from forcing us surface owners to suffer such a dangerous vested rights/EIR/DEIR mining gamble regarding such environmental and other harms, and also from impacting objectors' constitutional, legal, and property rights above and around the 2585-acre underground mine, including as to groundwater and our rights of subjacent and lateral support. E.g., Keystone, Varjabedian, and other cases explaining in some detail with controlling case law the legal perils affecting both the Rise miner and the County for such disputed vested rights/EIR/DEIR expanded and more intense underground mining, including disputes regarding Fifth Amendment takings or inverse condemnation, trespass, conversion of groundwater, violation of lateral or subjacent rights (e.g., to prevent subsidence), and many other property rights related claims. See, e.g., *Varjabedian v Madera* (1977), 20 Cal.3d 285 (relying on the Fifth Amendment holding in *Richards v. Washington Terminal Co*., 233 U.S. 546 (1914), and the even broader California Constitution, to allow nuisance and inverse condemnation claims for victims downwind of the new sewer plant, who suffered a disproportionate, direct, and peculiar burden for that public benefit. [Here the IMM is a private project with no net public benefit mine, as to which profits for Rise's shareholders don't count.]**

Also, there are consequences to imposing (e.g., prioritizing disputed Rise vested rights over objectors' superior constitutional, legal, and property rights) a disproportionate burden on objecting locals for some imagined broader public benefit even to those safely distant from the mining (which net benefit objectors dispute even exists, as in the Engel Objections demonstrates as to the generally disputed County Economic Report and County Staff Report.) Consider, for example, how this concentrated pollution exhausts the margin of error for pollution by more beneficial existing or future land uses locally, as well as the problem Chevron created for the area surrounding their refinery when other refineries crowded into neighboring Benicia and Martinez to exploit that opportunity to "piggyback" on the first refinery.)

Stated another way, the disputed Rise vested rights claims incorrectly assume that Rise will be permitted to do as it wishes once its vested rights are voluntarily or involuntarily accepted by the County, but that ignores objectors' rights that exist and should prevail no matter what the County does, as discussed in various contexts herein. See, e.g., the previous discussions and those in EIR/DEIR objections, especially those exposing both (i) the illusion of Rise incorrectly alleged uniformity of mining and other environmental conditions an, and impacts from, different parts of the IMM "Project," and (ii) fatal Rise inconsistencies between its vested rights claims versus either or both Rise admissions in connection with the EIR/DEIR and Rise's SEC Filings (Exhibit A). (This vested rights dispute also must address the proposed Centennial "dump," which Rise inconsistently claims is somehow both (a) separate from the IMM mining project for CEQA, but somehow also (b) not a new "expansion" for vested rights).

4. Some of The Rise Petition's "Big Finish," Disputed "Key Facts Establish a Vested Right to Mine" (at 74-76) Are Subject To Many Objections And Other Challenges In Objectors Petition And More To Come.

a. Rise Distorts The Applicable Law On Vested Rights In Many Ways Without Even Pretending To Address The Contrary Law And Facts Cited By Objectors.

While the comprehensive rebuttal to the Rise Petition is yet to come following either Rise clarifying its disputed Rise Petition theories (see Exhibit D), objectors offer some brief reactions to Rise's pronouncements, many of which allegations are NOT proven by Rise to the satisfaction of objectors with any sufficient, competent, admissible, credible, and otherwise satisfactory evidence, and many of those evidentiary fragments that may be tolerable do not prove what Rise claims, because there are serious gaps and omissions. For example, consider the Rise problems addressed in the prior section from Rise ignoring the competing constitutional, legal, and property rights of surface owners above and around the 2585-acre underground mine. Even if Rise were to prevail against the County, which objectors contend would be legally impossible, Rise offers no legal arguments or supporting facts that such a result defeats any of objectors' separate arguments and evidence. That cannot be a mistake or ignorance by Rise, since objectors filed in the EIR/DEIR record hundreds of meritorious objections to which there has been no legally or factually correct or sufficient rebuttal or for Rise.

For example, in the Rise Petition's fourth and seventh bullet on page 75 and 76, respectively, Rise incorrectly asserts without satisfying its burden of proof (emphasis added):

> On the date of vesting [10/10/1954], the Mine Property was held under single ownership by the Idaho Maryland Mines Corporation, which at that point was conducting a large-scale, **modern** gold mining operation with active above-and below-ground mining operations. Its surface holdings included **both Centennial Industrial and Brunswick** Industrial Sites.
>
> ***
>
> **In 1980, the County granted a use permit** authorizing the **continuance of mining activities** and **recognizing mining operations as a legal non-conforming use**—specifically rock crushing, operation of a screening plant and on-site sales—**on the Centennial Industrial Site, thereby confirming the Mine's vested right to operate. Because a vested right cannot be confined to just one part of a mine, the entire Vested Mine Property was confirmed as a vested right by the County in 1980.**

See the matching, disputed Rise "Conclusion # 5 is even more incorrect.

b. As Demonstrated In The Following Subsections and Elsewhere In Objectors Petition, Those Rise Claims Are Incorrect And Contrary To Controlling Law, Even Rise's Favorite Hansen Case (see Objectors' Exhibit B).

Those Rise claims are all wrong, although objectors will deal comprehensively with the rebuttal of the County use permit disputed Rise claims in a subsequent objection filing. Just consider the following highlight rebuttals addressed with case law and facts below (unlike the

disputed Rise Petition which cited no such authority for these key points) in the order presented: (

(1) what was "modern" in 1954 was still ancient history with picks and shovels worker and manual dewatering devices, now superseded by science, environmental, safety, and other law reforms and regulations, technology, equipment, and practical improvements, and much more, and those components, especially the Rise contemplated water treatment plant need their own vested rights and cannot have them.

(2) The SEC filing (Exhibit A) and EIR/DEIR admissions concede that toxic, Centennial, potential superfund site has long been (as the applicable laws require) inactive, "dormant," "discontinued," and "abandoned" for underground mining and other uses, and, since Centennial has long had no vested rights for such underground mining and other uses, there can be no vested rights elsewhere that can be based on Centennial. However, in any event, as the Objectors Petition proves (see also below), such vested rights are a use-by-use and parcel-by-parcel limited right that cannot be expanded to different uses or parcels as Rise incorrectly claims. Moreover, in many places in the disputed EIR/DEIR and elsewhere, Rise has previously admitted and claimed that Centennial was not a part of the "project" and (unlike the rest) did not need any EIR/DEIR. Rise will be defeated, among other things, by its own contradictory and inconsistent admissions as to this and many other Rise claims.

(3) As Objectors Petition proves (see also below), what Rise incorrectly calls "mining operations" are not the "use" Rise must have actually to mine, especially underground. Exploration is not mining, as Rise itself has admitted (see below). Again, vested rights are a use-by-use and parcel-by-parcel limited right that cannot be expanded as Rise incorrectly claims. Actual mining (as distinct from the irrelevant activities cited by Rise) on the Centennial parcel has been illegal for many years, so Rise cannot even satisfy the requirement that Rise admits that the use must be "legal."

(4) Objectors cannot imagine how Rise incorrectly so asserts that "vested rights cannot be confined to one part of a mine," since again vested rights are a use-by-use and parcel-by-parcel limited right that cannot be expanded as Rise incorrectly claims.

(5) In any case, as repeatedly proven above and below and in the other parts of the Objectors Petition, no vested rights for any surface mining operations can ever create vested rights for Rise to engage in any underground mining at the IMM. Even if the County use permit accomplished anything close to what Rise incorrectly claims, Rise asserts no facts or law as to how that in any way binds objectors, especially surface owners above or around the 2585-acre underground mine and especially as to their competing constitutional, legal, and property rights that Rise would impact and especially surface owner existing and future wells and groundwater that Rise proposes to dewater, purports to treat in a water treatment plant with no vested rights, and flush away down the Wolf Creek 24/7/365 for 80 years, since DEIR 6-14 admits that anything less than such intense operations

would make the whole project economically unfeasible, especially considering Rise's admitted, weak financial condition (Rise SEC filings in Exhibit A).

c. The Use-By-Use And Parcel-By-Parcel Application of the Vested Rights Rules And Other Rebuttals To the Foregoing Rise Petition Assertions Defeat All Such Rise Petition's Disputed Claims.

Like many other problems for Rise's claims for which Rise seems to lack even some incorrect theory, the Rise Petition just ignores such critical issues as it ignored most of our EIR/DEIR objections. To illustrate, consider how *Hardesty*, one of the most important cases ignored by Rise because it defeats such vested rights claims, dealt with the key issue of Rise surface mining theories versus IMM underground mining realities (although the court in that case supported objectors' position from the reverse perspective of a miner trying to shift to surface mining instead of to underground mining.) *Hardesty* ruled in part (with more to come below):

> [T]he italicized portion of the statute [SMARA #2776] speaks of vested rights to ***surface*** mining, **not *any* mining**. "Surface mining involves stripping off the top of an area to reach the minerals, in contrast to boring down through tunnels or shafts to extract them." ([People v.] *Rinehart*, supra, 1 Cal. 5th [652] at p. 671, fn. 10 …) (emphasis added)
>
> ***
>
> To the extent Hardesty contends he has a vested right to surface mine under section 2776, he simply **failed to carry his burden to prove any substantial *surface* mining on the property** had been conducted by that date. As the trial court found, substantial evidence shows that **prior mining had been hydraulic, tunnel, and drift mining, not surface mining,** which began in the 1990's, and **which represented a SUBSTANTIAL CHANGE,** contrary to former section 2778's requirement that no substantial changes may be made in any such operation except" according to SMARA's terms…. (emphasis added)
>
> ***
>
> … Hardesty failed to prove any mining was occurring on or even reasonably before the date SMARA took effect. **SMARA was designed to allow existing, operating surface mines to continue operating** after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to dormant mines.**
>
> ***Hansen*** *Brother Enterprises, Inc. v. Board of Supervisors* (1996), 12 Cal. 4th 533…*(Hansen Brothers*)—**consistent with a long line of zoning cases—holds that A USE MUST BE PRESENT AT THE TIME A NEW LAW TAKES EFFECT, TO BE CONSIDERED A NONCONFORMING USE…**. Communities for a Better Environment … (2010), 48 Cal.4th 310, 323 fn.8 …["the traditional protections for nonconforming uses established *at the time* zoning restrictions become effective"]…; *McCoslin v. City of Monterey Park* (1958), 163 Cal. App.2d 339, 346…["A nonconforming use is **a lawful use existing *on the effective date* of the**

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

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

***

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

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799-812 ("**Hardesty**") (The miner lost at the Board, trial court, and on appeal in its mandamus action claiming SMARA vested rights as to an ancient, "19th century" federal mining patented gold mine that ceased operation during World War II and was "essential dormant" "through the 1970's" with "virtually no evidence that **those mining activities** (not just the nondeterminative, incidental or different work on the parcel on which Rise and that miner attempted to call "mining") 'continued' to exist at the time SMARA was enacted [effective January 1, 1976], apart from "sporadic," "unpermitted surface(open pit) aggregate and gold mining in the 1990's." Nevertheless, the miner claimed "vested rights to mine the property for gold, sand and gravel (as well as diamonds and platinum)" after he bought the property in 2006. The trial and appellate courts rejected that miner's vested rights claim, agreeing with the Board that "any right to mine had been abandoned," as discussed in the evidence analysis sections herein and in Exhibit D.)

More importantly, in setting up that decision where ***Hardesty*** **forbid the kind of change Rise tries to ignore between such different types of mining in incorrectly claiming vested rights, the Hardesty court stated (Id.):**

> **The trial court found that in the 1990's unpermitted surface (open pit) aggregate and gold mining began different in nature from the 'hydraulic, drift, and tunnel' [i.e., underground] mining that historically had been conducted on the land.** The RFD alleged the new proposed open-pit mining was safer and better for the environment. *** As an alternative to the finding of no vested right based on the lack of mining [in the right way and at the required time] … the trial court **found that any right to mine had been abandoned**." (emphasis added)

Here, despite the Rise Petition's disputed claims to the contrary (often apparently based on the false, *Hardesty* rejected theory that any kind or type of mining useful "operational" activity on any owned parcel somehow allows Rise all desired mining operations on any parcels), the IMM was also "abandoned" by 1956 (which *Hardesty* described as "**dormant")** sufficiently to destroy any future vested rights claim by the *Hardesty* (and even *Hansen*) standards. Rise cannot revive the IMM now, especially by arguing (like the *Hardesty* rejected miner) that Rise's new uses should be allowed because somehow it was somehow "better" than the old one. (That unprecedented argument could not possibly work against surface owner objectors above or around the IMM, because the question would then be "better for whom?" since us surface owners have no less rights than Rise, and objectors argue they have superior relevant rights to Rise's as an underground miner.) While there was obviously some IMM underground mining before 10/10/1954 at some of the IMM parcels, the point is that Rise is not arguing for vested rights **from underground mining cases and laws (as distinguished from the parts Rise likes of surface mining cases and SMARA**). Why? Perhaps that is because no one could possibly do any underground mining anywhere in the IMM, since the "dormant" (i.e., abandoned) mine closed and flooded in 1956, so Rise has to imagine (incorrectly) that some surface or non-mining activity (which would have to be somewhere else than the surface objectors own above or around the 2585-acre underground mine) can save Rise from our obvious abandonment objection. Perhaps that is because Rise continues to fear confronting objecting surface owners' competing constitutional, legal, and property rights that Rise keeps ignoring, as it has in the disputed EIR/DEIR and other Rise applications. Perhaps the County should start asking Rise such hard questions in our ignored EIR/DEIR objections that still have not been asked by the County enablers or have not been addressed sufficiently by Rise. Fortunately, *Calvert, Hardesty,* and other cases forbid us objectors to be ignored on these vested rights disputes. As *Calvert* explained (at 625):

> SMARA's policy is to assure that adverse environmental effects are prevented or minimized; that mined lands are reclaimed to a usable condition; that the production and conservation of minerals are encouraged while giving consideration to recreational, ecological, and aesthetic values; and that residual hazards to the public health and safety are eliminated. (# 2712) **A public adjudicatory hearing that examines all the evidence regarding a claim of vested rights to surface mine in the diminishing asset context will promote these goals much more than will a mining owner's one-sided presentation that takes place behind an agency's closed doors. (emphasis added)**

Consider more of the scores of credibility problems from which the Rise Petition suffers, this example, where Rise incorrectly proclaims with its unsubstantiated conviction (citing Hansen at 556, where the actual *Hansen* quote miscited there by Rise to support its exaggerated and disputed claim was qualified and limited in *Hansen [emphasis added]* to **"a vested right to quarry or excavate [surface mining/not underground mining terms] the entire area OF A PARCEL…**" but Rise ignored the more important rulings to follow in the next pages when Rise incorrectly insisted (at Rise Petition 58, emphasis added): "Therefore, **as a matter of law,** Rise is entitled to engage in mining operations **throughout the whole of the Vested Mine Property pursuant to** the California Supreme Court's holding in **Hansen Brothers**, as mineral rights that have been vested **necessarily encompass, "without limitation or restriction" the entirety of the Vested Mine Property** due to the nature of mining as an extractive enterprise **under the diminishing asset doctrine." That false Rise claim is comprehensively rebutted herein and especially in Exhibit B devoted comprehensively to *Hansen,* which, for example, did NOT so apply vested rights for that exclusively surface mine either (i) to the "ENTIRETY" of that mine "AS A MATTER OF LAW" (but instead REMANDED some such issues, in effect, because of the LACK OF EVIDENCE as to various of the SEPARATE PARCELS as to the application of certain LEGAL AND FACTUAL ISSUES ignored by Rise), (ii) *Hansen* was grounded on SMARA, which EXHIBIT C SHOWS TO BE LIMITED TO SURFACE MINING AND ALSO TO CONTAIN MANY REGULATORY "LIMITATIONS OR RESTRICTIONS," ESPECIALLY AS TO THE NEED FOR AN APPROVED "RECLAMATION PLAN" AND RELATED "FINANCIAL ASSURANCES" for which Rise could never qualify or afford as illustrated in Exhibits C and A, and (iii) even more importantly, among many ways Exhibit B hereto demonstrates that the actual *Hansen* decision destroys the disputed Rise Petition claims citing *Hansen*, consider this *Hansen* quote against such Rise's disputed cross-parcel/unitary operations claims (none of which disputed Rise theories apply to UNDERGROUND mining at all, as *Hardesty* demonstrates below and SMARA itself states in Exhibit C. *Hansen* stated (at 558, emphasis added):**

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

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

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

Moreover, Rise admits in its EIR/DEIR that this expansion mining would requires a new, high tech, massive dewatering system operating 24/7/365 for 80 years that those 1954 Rise predecessors could have never planned to duplicate. **As Exhibit B demonstrates, THE *HANSEN* DISCUSSED CASE DENYING SUCH VESTED RIGHTS CLAIM (**AT 566, EMPHASIS ADDED**) THAT THE MAJORITY SAID "ILLUSTRATED" ITS "APPROACH": *PARAMOUNT ROCK CO. V COUNTY OF SAN DIEGO* (1960), 180 CAL.APP.2D 217, 230, WHERE THE READY-MIX CONCRETE BUSINESS ADDED FOR THE FIRST TIME AFTER THE VESTING REZONING DATE A NEW "ROCK CRUSHING PLANT ON THE SITE"(REPLACING PRECIOUSLY OFFSITE CRUSHING), REJECTING THE ARGUMENT THAT SUCH A CRUSHER ADDITION WAS "AN INTEGRAL PART OF THE BUSINESS THAT THE [OWNER] PLAINTIFF HAD BEEN OPERATING," SINCE THAT CRUSHER WAS "NOT PART OF THE NONCONFORMING USE TO WHICH THE PROPERTY WAS BEING PUT AT THE TIME THE ZONING**

ORDINANCE WAS ADOPTED." STATED ANOTHER WAY, *HANSEN* (AT 566, EMPHASIS ADDED) IN EFFECT STILL REQUIRED THAT SUCH "A COMPONENT OF A BUSINESS" MUST "ITSELF HA[VE] A VESTED RIGHT TO CONTINUE USING THE LAND ON WHICH IT IS LOCATED FOR OPERATION OF THE BUSINESS," meaning that Rise cannot now add that water treatment plant that it has already admitted in its disputed EIR/DEIR that it needs for its 24/7/365 dewatering of groundwater drained from objecting and competing surface owners and existing and future wells above and around the 2585-acre underground mine.

Among other relief requested by objectors in this counter petition, that Rise Petition must be clarified for objectors, both for this dispute process that Rise has triggered and, more importantly, for the expected court proceedings to follow. While objectors do not wish to delay the elimination of the Rise IMM threats, from which objectors are already suffering depressed property values (that will consequently impact County property taxes), at least basic clarity must be achieved before the Board hearing. For example, precisely what **underground** mining and related activities does Rise claim that its disputed vested rights from 10/10/1954 will allow in disregard of otherwise applicable laws and regulations (and in disregard of objectors' competing constitutional, legal and property rights)? That is essential to know now, since **it is legally impossible for some new things (e.g., like Rise's proposed water treatment system) to be considered for vested rights**, even under Rise's favorite *Hansen* **surface** mining case, which objectors' comprehensive analysis in Exhibit B reveals to hurt Rise's disputed theories more than help Rise. Also, to what extent are we disputing the same, disputed Rise mining and related plans (and the same "reclamation plan," still lacking the required "financial assurances" that Rise cannot possibly satisfy) as what is described on the current record in Rise's disputed EIR/DEIR? Does Rise now contemplate doing anything different, since Rise's disputed petition reads like Rise incorrectly imagines it can do whatever it wants, free of otherwise applicable legal limitations, just by chanting "vested rights," like they were some magic spell? Objectors presume Rise must be revising its planned "IMM" vested acts and omissions, because, if objectors only have to dispute Rise's existing (also defective) EIR/DEIR plans, the courts must (and the County should) grant our dismissal motions long before any Rise Petition trial (or adjudicatory hearing).

Those and other confusions from such repeated Rise "hide the ball" tactics (as likewise exposed in record objections to the EIR/DEIR) arise because Rise's apparent (and disputed) goal is to evade/override some (not yet clear which) laws and regulations, and then proceed without obtaining the use permit (and perhaps other normally required permits or approvals) for which Rise previously applied and without the still required CEQA and other legal and regulatory compliance protecting objectors. What Rise contemplated underground mining and related "IMM" activities, infrastructure, and equipment are claimed to be done or used and allowed (or excused) on each parcel (and applicable sub parcel) of such "Vested Mine Property" (or any broader scope" IMM") without the normally required use permit and other compliance with applicable legal requirements? Such required clarity about such disputed excuses for Rise's evasion of IMM legal compliance should begin on an item-by-item basis for each such act, omission, infrastructure, equipment, dangerous material or substance (e.g., blasting explosives and newly added hexavalent chromium mine cement paste for the new techniques for constructing underground shoring pillars from mine waste), and other relevant things that were revealed (or should have been) in the disputed EIR/DEIR or other Rise documentation for

permits or applications or in Rise's SEC filings (Exhibit A). What are each of the laws and regulations and rights of others with which Rise claims to be entitled to disregard by its such disputed "vested rights" "incantation," including as to those listed in the EIR/DEIR related inventory or listed in the **"County Staff Report"** dated on or about April 26, 2023, addressed to the County Planning Commission and reciting some regulatory IMM history and applicable laws and regulations. (For objectors, those are maps to Rise admissions and inconsistencies that contradict the Rise Petition and Rise's disputed vested rights claims.) See also Exhibit A, quoting additional Rise admissions and inconsistencies from Rise's SEC filings, which, despite being incorrectly disregarded by the County staff and EIR/DEIR team, are not just admissible evidence, but in many cases (e.g., the *City of Richmond* case discussed below) are also outcome determinative, even in this context, as *Hardesty* demonstrated in likewise rejecting that miner's similar attempt at imposing its "alternative reality."

Fortunately, applicable law does not require objectors to guess what laws, regulations, permits, and other governmental approvals Rise incorrectly claims no longer apply for Rise's contemplated "IMM" reopening and related activities (and omissions) for its uncertain, but clearly massively expanded, more intense, and comprehensively disputed underground mining and related activities on or from what Rise Petition's calls the "**Vested Mine Property."** Note (surprisingly) that alleged "Vested Mine Property" now purports to include the toxic Centennial site that Rise had previously insisted in the disputed EIR/DEIR was a separate "project," one example of many inconsistencies and contradictory admissions that will defeat the Rise Petition, as Rise struggles radically to so change its legal and factual theories from the basis of Rise's prior records. In any event, **Objectors decline to accept that uncertain Rise project definition for whatever Rise imagines doing (or failing to do) at and around the Idaho-Maryland Mine, all of which objectors will herein collectively call the "IMM," because objectors prefer a fully comprehensive and functional definition.** In other words, and more precisely, the **"IMM**" is whatever Rise at any time claims it may do, or be excused from doing, pursuant to its Rise Petition (as Rise may revise or supplement that petition during the process or hearings, such as Rise has previously attempted to do covertly in the disputed EIR/DEIR process under the guise of Rise "clarifications," many not even "flagged" for the Planning Commissioners). Again, note "IMM" here now includes without limitation everything done at, beneath, around, or from any of such so-called "Vested Rights Property," including the toxic Centennial property that now Rise implicitly admits was (as objectors previously objected for disclosure as distinct from vested rights, which is a different legal issue) part of the EIR/DEIR "project" all along. **Because (as objectors will demonstrate, even by using Rise's favorite *Hansen* case in Exhibit B) vested rights law is a legal parcel-by-legal parcel as and when acquired and used analysis, that vested rights claim for including Centennial is not only incorrect, but (like the new water treatment facility and other new additions after 1954) it dooms the Rise Petition, among other things, because vested rights must include both an approved "reclamation plan" and matching "financial assurances" neither of which is feasible, especially for Rise, whose SEC filing admissions (Exhibit A) expose its inability to afford to accomplish much of anything Rise proposes, much less the many greater requirement Rise does not yet acknowledge.**

The "status conference" requested herein should explore, beginning with the need for more such clarity, what process, rules, and procedures will be constitutionally and legally sufficient for due process objections to the Rise Petition and for the protection of objectors'

competing constitutional, legal, and property rights under the prevailing judicial authorities. For example, ***Calvert* was not only focused on the *MINER'S* due process rights, BUT RATHER INSTEAD PROCLAIMED THE DUE PROCESS RIGHTS OF THE NEIGHBORING VICTIMS of that surface mining and the other impacted public (which types of victims are herein called "objectors," some with special standing as discussed in a following subsection. See *Calvert v. County of Yuba* (2006), 146 Cal.App.4th 613 ("*Calvert*"), analyzed below. OBJECTORS WILL EXPECT NO LESS THAN WHAT *CALVERT* PROVIDED WHEN IT ADDRESSED (AT 622) THIS QUESTION IN THOSE OBJECTORS' FAVOR: "IS THE VESTED RIGHTS DETERMINATION REGARDING WESTERN'S SURFACE MINING OPERATIONS …SUBJECT TO PROCEDURAL DUE PROCESS REQUIREMENTS OF REASONABLE NOTICE AND OPPORTUNITY [FOR OBJECTORS] TO BE HEARD? OUR ANSWER: YES."** In that case, the county incorrectly approved the surface miner's purported, vested rights in an unconstitutional, two-party "ministerial" process without notice to, and adequate due process for, any impacted neighbors or other objectors, because such vested rights evasion of the normal permit requirements is not merely a "ministerial decision" for the County alone. As demonstrated in detail below, *Calvert* rejected as without merit many issues raised by that miner (and by Rise here) that would also defeat Rise's vested rights claims. Indeed, if *Calvert* had confronted an **underground** mine like the IMM, objectors would have been requesting (and we believe would have personal standing for) such clarity, rules, and procedures like those objectors are seeking in this Petition, especially considering the special, competing, constitutional, legal, and property rights of objecting **surface owners** above and around the 2585-acre underground IMM.

Remember its such objectors' owned groundwater and existing and future wells Rise is proposing to "dewater" and flush away down the Wolf Creek. Not only are such objectors' harms (and legal standing) personal, but, for example, even the existing, record objections protest Rise's disputed "mitigation" for such dewatered groundwater flushed down the Wolf Creek (after purported "treatment" by disputed new facilities and systems for which there can be no Rise "vested rights), where Rise EIR mining would wrongfully (i) take the top 10% of surface owner wells without any mitigation replacement, (ii) ignore many existing wells, all future surface wells, and even whole surface areas depleted by Rise's 24/7/365 dewatering impacts for 80 years, and (iii) otherwise violating surface owner rights with deficient mitigation as a matter of law, applying the "well water standard" set by ***Gray v. Madera County*** *(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.) Now that Rise appears to be trying to escape even more applicable laws and regulations with its disputed vested rights excuse, how much more surface owners' groundwater and existing and future wells will Rise now dare to deplete without even it such illusory mitigation? See, e.g., the Engel Objections and others cited therein (e.g., the Wells Coalition, CEA, Rudder Group, and more) in to the EIR/DEIR reserving the rights of such surface owning objectors to compete also in the future for access their own ground water with new wells. See the discussion below of how *Keystone, Varjabedian,* and other property rights authorities cannot be defeated in any Rise process that continues to ignore those such constitutional, legal, and property rights.

d. As Also Demonstrated In the Objectors Petition (And As Again Ignored by Rise From its Own Cited Case—See Objectors' Exhibit B), *Hansen* And *Paramount Rock*

Each Require Separate Vested Rights For Each "Component "Based On The Kind of Permissible "Evidence "Rise Does Not Offer. While Rise May Try To Evade That Rule For Modernizing Upgrades, The Law Is Clear That New Components Like Rise's Water Treatment That Had No Historical Counterpart Cannot Have Vested Rights Even Those Rise Claims To Be Acquired From Other Operations Or Components.

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

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

Moreover, Rise admits in its EIR/DEIR that this expansion mining would requires a new, high tech, massive dewatering system operating 24/7/365 for 80 years that those 1954 Rise predecessors could have never planned to duplicate. **As Exhibit B demonstrates, THE *HANSEN* DISCUSSED CASE DENYING SUCH VESTED RIGHTS CLAIM (**AT 566, EMPHASIS ADDED**) THAT THE MAJORITY SAID "ILLUSTRATED" ITS "APPROACH": *PARAMOUNT ROCK CO. V COUNTY OF SAN***

***DIEGO* (1960), 180 CAL.APP.2D 217, 230, WHERE THE READY-MIX CONCRETE BUSINESS ADDED FOR THE FIRST TIME AFTER THE VESTING REZONING DATE A NEW "ROCK CRUSHING PLANT ON THE SITE"(REPLACING PRECIOUSLY OFFSITE CRUSHING), REJECTING THE ARGUMENT THAT SUCH A CRUSHER ADDITION WAS "AN INTEGRAL PART OF THE BUSINESS THAT THE [OWNER] PLAINTIFF HAD BEEN OPERATING," SINCE THAT CRUSHER WAS "NOT PART OF THE NONCONFORMING USE TO WHICH THE PROPERTY WAS BEING PUT AT THE TIME THE ZONING ORDINANCE WAS ADOPTED." STATED ANOTHER WAY, *HANSEN* (AT 566, EMPHASIS ADDED) IN EFFECT STILL REQUIRED THAT SUCH "A COMPONENT OF A BUSINESS" MUST "ITSELF HA[VE] A VESTED RIGHT TO CONTINUE USING THE LAND ON WHICH IT IS LOCATED FOR OPERATION OF THE BUSINESS," meaning that Rise cannot now add that water treatment plant that it has already admitted in its disputed EIR/DEIR that it needs for its 24/7/365 dewatering of groundwater drained from objecting and competing surface owners and existing and future wells above and around the 2585-acre underground mine.**

While objectors illustrate many such rebuttals throughout this Petition and its Exhibits, this Petition is focused on this question: what is the best way for us objectors now to begin exposing and "deconstructing" that Rise Petition "alternative reality" and using our full and equal due process rights without delaying the hearing? If objectors were in the courts, where this is headed, since objectors have their own rights to be full due process participants there in disputing Rise and any enablers, whatever the County decides (see, e.g., *Calvert* and *Hansen* confirming objectors equal standing in such mining vested rights disputes, which precedents are ignored by Rise, like every other "inconvenient truth" and objectors ourselves), objectors would (and will) promptly begin with *pretrial* motions to dismiss the Rise Petition. However, because objectors do not wish to delay the process for eliminating the Rise Petition and because Rise is **once again** playing "hide the ball" on its mysterious and deficiently substantiated claims for a general mandate and permission to do whatever it wants by chanting "vested rights" as if that were some magic spell (see objectors' record objections to the disputed EIR/DEIR about such tactics), objectors request a status conference at least to compel certain pre-Board-hearing clarifications, among other relief addressed herein.

5. While the Rise Petition Incorrectly Claims the Vested Right to Mine As And Where It Wishes In the IMM So-Called "Vested Mine Property" (at 58) "Without Limitation Or Restriction," That Cannot Include Underground Mining To Which Hansen And SMARA Do Not Apply No Vested Rights Override Most Laws, Just Limited Excuse For Certain Non-conforming Uses That Do Not Comply With the Absence of A Use Permit.

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

> As we will explain, we agree that the [ancient Federal mining] patents conferred on **Hardesty vested rights *as a property owner*, but that is not the same as vested rights *to mine* the property absent compliance with state environmental laws.** The Board and trial court correctly concluded that Hardesty **had to show**

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

Also **SMARA #'s 2715 and 2716 prevent any such vested rights from allowing pollution or nuisances (which would clearly exist from such Rise mining without permits)** or from counters by thousands of voting objectors electing "wise policy" officials and causing the passage of wise laws and regulations to prevent such abuses and other wrongs by Rise and to protect surface owners and others from objectionable Rise mining and, especially from depleting surface owner groundwater as proposed in the disputed EIR/DEIR. For example, **SMARA expressly allows neighboring objectors and governments to sue the miner for nuisances and many other wrongs; i.e., escaping a use permit requirement doesn't free the SMARA miner to do as it wishes, as discussed herein.** E.g., **SMARA #'s 2714 (excluding many things from its scope, including some "operations" planned or reserved by Rise for its proposed and disputed mining), 2715 (disclaiming from any SMARA impact a long list of "limitations" on the powers of local government and people, such as**, for example, "(a) …the police power … to declare, prohibit, and abate nuisances …(b) … to enjoin any pollution or nuisance. (c) On the power of any state agency …[to enforce the laws it administers]. (d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance …or any other private relief. (e) On the power of any lead agency to adopt policies, standards, or regulations … if the requirements do not prevent the person from complying …[with SMARA]. (f) On the power of any city or county to regulate the use of buildings, structures, and land …" See also SMARA #2713, disclaiming any intent "to take private property for public use without payment of just compensation in violation of the California and United States Constitutions," but Rise mistakenly contends that disclaimer is just for the miner, when it is also for the projection of impacted surface owners and others objecting to the Rise Petition, the EIR/DEIR, and Rise's IMM activities. See, e.g., *Keystone* and *Varjabedian*.

Exhibit F: My Objections To the County Economic Report

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December 7, 2022

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805-962-0611
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cc. County of Nevada
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County Planning Department
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Re: Objections To And Questions Regarding "Economic Impact of the Proposed Idaho-Maryland Mine Project" (the "Report") dated 11/15/2022 by Robert D. Niehaus, Inc. ("RDN"); RDN Project #320

Dear Mr. Niehaus:

1. **Introductory Questions.**

Since you have invited questions in advance of the conference regarding your Report, I am presenting you with ten of the more basic questions in the context of my related DEIR objections, so that you can better understand the concerns that inspire such questions. Unless otherwise defined herein, I will use the terms from your Report for ease of comparison. If this Project is ever approved over the hundreds of meritorious written and oral objections presently on record in response to the Draft Environmental Impact Report ("DEIR"), including mine to which I direct your attention, these and many other questions will be at issue on the legal and political disputes by the many area residents who believe the proposed mine activities to be both intolerable and contrary to CEQA and other applicable laws. I believe in preserving what harmony is possible in our community, and that may be improved by narrowing the scope of our differences regarding this mine controversy to the extent feasible. That begins by the

County and its evaluators realistically addressing the real issues of greatest concern to the affected residents (and voters) like me. That requires recognition of the many fatal flaws in the DEIR which the Report chooses to ignore.

Among the greatest objections to the Report is that it incorrectly **assumes**, despite all the evidence and unaddressed concerns to the contrary now in the record, that (1) the DEIR is correct, complete, and compliant with CEQA and other applicable law, and (2) that Rise Grass Valley ("RGV" or, together with its parent company, "Rise") is financially and otherwise capable of performing and intent on accomplishing what it states in the DEIR. By failing to analyze such correctness, completeness, and compliance of the DEIR and the financial feasibility of Rise to complete and operate the Project in compliance with the DEIR and applicable law, your Report may be useless and, worse, support dangerous mining, if your such untested assumption is wrong (as objectors have proven, and will continue to prove, it to be.) Since there is a long history in California of failed mines and miners making unfeasible promises they fail to perform, resulting in more than 49,000 closed or abandoned mines on the EPA clean up list, no mine should be allowed to start (or restart) unless such miner can prove it can accomplish both what it promises to gain approval and what more the applicable laws require. Starting this mining process and then failing to proceed to a satisfactory conclusion as required may create serious economic problems for our community and the whole County. Since the many objections, as well as the Rise SEC financial filings themselves, demonstrate that the Rise effort is highly speculative at best and likely unfeasible, the Report should address the cost to the County of such a failure, rather than simply unwisely assuming success in accordance with the deficient and disputed DEIR.

The evidence and meritorious concerns to the contrary of the DEIR are stated, among other things, in the hundreds of meritorious oral and written objections presented in the record before the County Planning Department, as well as in Rise's own SEC filings (admitting its insufficient financial resources and the speculative nature of the Project and many risks) and DEIR (admitting many vulnerabilities, such as that the Project is economically infeasible unless approved as proposed, including its disputed 24/7/365 operations for 80 years, which disputed timing objectors expect to prevent by legal and political challenges). While there are many record objections to the DEIR and Project that also defeat your Report's "**assumption**" of economic feasibility, I refer you in particular to the two objections that I have filed with the Planning Department on May 30, 2022 (my "**General Objection**") and on April 4, 2022 (my "**Economic Objection**").

My long General Objection explains many deficiencies in the DEIR and many ways in which, if necessary, court and political actions by objectors will impose reforms and additions that would have to occur in order for the Project to be compliant with CEQA and other applicable law and otherwise tolerable to the community of voters that hugely outnumber the theoretical 300 odd workers at the Project (and whatever other support they can muster from distant places in the County that are beyond the adverse effects of this Project.) Those reforms and changes would make the Project even more economically infeasible, even by Rise's own standards.

My Economic Objection contests with cited legal authorities and arguments the incorrect position of the County and Rise (which you and the DEIR seem to follow without independently checking them) that CEQA and other applicable law do not require any showing

of economic feasibility or financial or other credibility. As explained in both my General Objection and Economic Objection (collectively my "**Objections**") incorporated herein (and vice versa), I have substantial and long-term experience as a bankruptcy lawyer with failing mines and mining companies, and I can explain why I believe this Project is at risk of being adding at some future time to the more than 49,000 abandoned or closed or bankrupt mines on the EPA list for cleanup or other remediation. Furthermore, I have extracted from those Objections and placed at the end of this letter various legal and other exposures of the County and Rise that involve costs not addressed in your Report. If this Project is approved and even one of those many stated concerns applies, your Report may be seen as supporting a dangerous illusion or worse. It is not too late to address the true issues and save us all from the miserable mistake approving this Project would be. (I also ask the Planning Department to add this letter to my "Objections" by incorporation by reference (as with other filed objections on the record.)

Question #1: In that context I ask you, what happens if your Report's assumption and reliance about the DEIR and Rise are incorrect? What if the DEIR is incorrect, incomplete, and noncompliant and Rise is financially incapability of performing, as many of us residents contend with evidence in our objections (none of which concerns are rebutted by Rise, nor can they be, since denying the financial and risk admissions information Rise has filed with the SEC would create bigger problems for Rise than its simply inducing you and the County into incorrectly assuming (a) that Rise can accomplish what the disputed DEIR says, despite its own doubts about the risks admitted in its SEC filings, and (b) that what is proposed in the disputed DEIR is correct, complete, compliant, and legally sufficient, when Rise's SEC filings warn of contrary risks?) The harm that is done to our community once the Project has begun may be soon become uncorrectable, even if Rise had the financial resources and willingness to do the necessary corrections (which funding its own SEC filings reveal it lacks and admits it may have risks in accomplishing timely.)

Question # 2: Since Rise admits that it may be financially incapable of accomplishing this Project itself, absent unexpected financing (see my Objections), most of us objectors assume Rise expects to flip this Project after County approval to another miner with more resources. Don't you care about who Rise chooses as the "real," successor miner? Stated another way, if the "flip" buyer from Rise were the kind of miner who would be welcomed by the County, why would it use a financially questionable and controversial applicant like Rise as its "stalking horse?" Therefore, Rise may not be our worst-case adversary in this situation, because the "real," ultimate miner may be even more controversial than Rise. Why is your Report not warning the County against indulging this **financially deficient and controversial Rise miner without testing its performance capabilities** and risking not only nonperformance by Rise but perhaps worse problems from a successor buyer "behind the curtain?" Why expose our community to such risks that your Report does not even attempt to quantify?

2. **The Economic Report Is Premature And Needs To Be Updated After the Disputed DEIR Issues Are Resolved; ie, How can anyone rely on an economic analysis that incorrectly assumes that the disputed DEIR is correct, complete, and compliant, at least without describing the consequences if that assumption is as wrong, as our residents' objections demonstrate?**

There are hundreds of meritorious oral and written objections to the DEIR, including my Objections incorporated herein. The Planning Department must still address those concerns, and, if necessary, the courts, ultimately should agree with most or all those objections. That means this Report will be based on incorrect assumptions, and, therefore, will be incorrect and not just worthless, but counterproductive by supporting illusions. Even if the Planning Department were to decide that all those objections were somehow wrong, objectors can still be expected to use the political and legal processes to protect their rights and property by all appropriate means, certainly resulting in ordinances and new decision-makers' decisions that are contrary to the assumptions in the Report. For example, according to the DEIR's own admissions, all we need to do is create a law prohibiting such operations 24/7/365 and the Project is (by the DEIR's own admission) no longer economically feasible.

Question #3: How will the Report deal with rulings against the DEIR and such other changing circumstances? Will the Report be updated to reflect corrections for the reality that has always existed and exposing the errors of the Report assuming the disputed DEIR was correct, complete, and compliant? Why does the Report not warn the County of the economic consequences if the DEIR is wrong, incomplete, or noncompliant? Don't the Rise risk admissions in its SEC filing demand such warnings and economic risk analysis by you? Why does the Report not deal with the consequences of the impacted residents exercising their legal and political rights in ways that doom the Project, even by the DEIR's own admissions?

3. How Can the Report Justify Reliance on the DEIR, When Objections Raise So Many Basic Credibility Questions, Including NONDISCLOSURE OF THE HEXAVALENT CHROMIUM MENACE?

Besides such reasons to doubt Rise's financial capacity to perform even the DEIR, much less what more the courts and political process will ultimately require if this Project proceeds, there are many other reasons to question the credibility of Rise and its DEIR. I refer you to the record of objections to the County which demonstrates many errors, omission, and worse in the DEIR. I only refer here to one example of many discussed at length in my Objections, which is illustrated by movie "**Erin Brockovich**" and the case study in the real litigation over the death of the town of Hinkley, CA, and its residents from **hexavalent chromium** poisoning of their ground water. As my Objections show, there are thousands of EPA listed studies showing the lethal nature of such hexavalent chromium in ground water, and, yet, the DEIR fails to report their plan to use that toxic substance in its Hazardous Materials discussion. The only reason we even know about that threat is that it is mentioned in passing in the description of the underground mining techniques in another section of the DEIR, which I assume was a mistake by someone who didn't realize they were exposing a problem that Rise chose not to reveal in the place CEQA required for discussions of such hazardous substances.

As noted in my Objections, because there will be constant dewatering of the mine with the exposed water flushed elsewhere else down the Wolf Creek, touted by the DEIR as if somehow that waste and movement of our ground water from the mine's neighbors to other places downstream were somehow a benefit when (1) no one downstream should want to drink or use such toxic water contaminated with hexavalent chromium, which the DEIR does not

promise its cleaner will eliminate (since the DEIR failed even to reveal its existence properly in the deficient hazardous materials analysis), and (2) moving our ground water from the mine neighborhoods to somewhere else is no benefit to us neighbors, an issue as to which there is little and deficient discussion in the DEIR. See the discussion below about depletion of the neighbors' ground water, not only drying up wells but also depriving our surface lands and forests of essential water and creating greater fire hazards. (As explained at the end of this letter, and in my General Objection in more detail, with court precedents prohibiting what the DEIR proposes to do, the surface owners above the 2585-acre underground mining have competing water rights, including as part of their paramount rights to lateral and subjacent support confirmed in Supreme Court precedent I mention later.) Whether or not such DEIR errors, omissions, and noncompliance with CEQA and other applicable law are intentional or merely negligent (which for the present I leave to others, because the adverse consequences to our community are the same in either case), this creates a huge credibility problem for Rise and the DEIR at a minimum that cannot be safely ignored in your Report.

For more details and examples of the DEIR's other "strategic" errors, omissions, and deficiencies, consider what is exposed in my Objections and for which the DEIR has no good excuse, such as the DEIR occasionally mentioning the use of hexavalent chromium in the mine shoring cement paste without any mention of it or its dangers where required in the DEIR's "Hazards And Hazardous Materials" discussion. See CEQA cases like *Banning Ranch Conservancy v. City of Newport Beach* (2017), 2 Cal.5th 918, 940-41 ("**Banning**") and *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007), 40 Cal.4th 412, 442 ("**Vineyards**"), each insisting on "a good faith reasoned analysis," rather than scattered or buried data, and unexplained data in exhibits. Stated another way, why does the Report inappropriately gives the DEIR the benefit of the doubt that CEQA and the courts will not allow? Why should the Report assume that the DEIR is correct, complete, and compliant, especially when Rise admits in its SEC filings risks that it may not be, and when Rise's accountants add a going concern qualification to the financial statements?

Question #4. If the DEIR credibility is destroyed as to this hexavalent chromium issue, why assume that anything else in the DEIR is correct and compliant? Don't such errors, omission, and noncompliance require the County to enforce some burden of proof on Rise and the DEIR? Why give them the benefit of so many doubts, even when Rise admits them in its SEC filings? Why side with these financially questionable outsiders against the impacted residents who will never willingly accept the mine because we have good cause to believe the DEIR is incorrect, incomplete, noncompliant, or worse? The adverse consequences of incorrectly assuming the DEIR is correct and feasible are much worse to the affected community victims than to Rise, who is merely losing the opportunity to profit while disputing indefinitely with its voting neighbors trying to protect their rights and property from this Canadian miner.

Additionally, as demonstrated in the Objections, there are many other DEIR strategic omissions or misleading statements that devastate the credibility of Rise and the DEIR, and cause the DEIR to fail to comply with CEQA and other applicable law. One simple example is the failure to identify adequately the surface boundaries above the 2585 acres underground mine that are owned by residents who are or (when they realize their peril) will be objectors. (The DEIR maps do not show surface streets and other landmarks that enable us to know whether the underground mine is below us as a real estate seller's disclosure or other threat or just near

us as a threat.) The only apparent reason for obscuring such boundary locations is to reduce opposition from surface owners who do not yet realize the extent of their risks. See the discussion below of the effect of the mine on property values, as well as in the legal cases addressed at the end of the letter from my Objections. Such "hide the ball" tactics reflect badly on the DEIR credibility, as the courts have forbidden in cases like *Banning* and *Vineyards* discussed above.

Question #5: How can the Report accurately assess the situation when the thousands who live on the surface above the 2585-acre underground mine do not even yet know their peril? For example, the response of such owners is predictable when they discover what some of us already know; eg, that those surface owner victims will have to tell their buyers or mortgage lenders, for example: "Oh, by the way, there is an old, reopened mine operating 24/7/365 for 80 years underneath this property that is blasting tunnels, digging our ore and rock, draining the local ground water in dewatering ways that imperil your wells, trees, and other rights, as well as shoring up that whole mess beneath us with toxic hexavalent chromium."

Question #6: Why does the Report not address the cost and burdens to the County of all the litigation and extra elections that will result from any such approval of the Project? This is not just about the usual litigation contesting the approval and compliance with CEQA and other applicable law. This is not just about neighbors enforcing their rights to bring appropriate nuisance suits when the risks become manifest and causing new laws and decision-makers to reduce the burdens and risks of the Project on the community. This also includes novel disputes between surface owners and the mine owner (whether Rise or its successor "behind the curtain" to whom it flips the mine, because Rise's SEC filings admit that it may not be able to afford to perform the DEIR and other requirements of applicable law). As described in my Objections, competing surface owners have greater rights that, when enforced, will make the mining economically and otherwise infeasible.

4. Why Does The Report Assume Approval of the Project Is The End, Instead of What Must Instead Become A Perpetual Controversy That Involves Not Only The Courts But The Political Process?

The Report addresses the cost and burdens to the County as if the controversy is over once the Project is approved. However, as discussed in my Objections and at the end of this letter, such a Project is intolerable to those thousands of neighbors adversely affected by the mine. The traditional case studies that your Report should address (and that many expect will be addressed in the litigation that approval would trigger, demonstrating why the three Report case studies are not comparable or useful) are those where the controversies with impacted neighbors endure indefinitely at least until the mine shuts down. See the discussion below of the impact of the Project not only on property values, but on the use and safety of the properties on which thousands of people are living. Few in our community perceive any net value in the mine to us, even if the DEIR's "alternate reality" assumed in your Reort were correct. My Objections describe the controlling legal authorities protecting our community from disproportionate impacts on us for the benefit of people elsewhere in the County who are beyond the local impact zone. For example, the California Supreme Court had upheld nuisance

claims for creating even a beneficial project (ie, a public sewer plant) for the locals disproportionately forced to sacrifice for the good of the broader community (ie, owners downwind of the sewer plant driven from their homes by the stench). Eg, ***Varjabedian v. Madera*** (1977), 20 Cal.3d 285 (discussed below and relying on the Fifth Amendment holding in *Richards v. Washington Terminal Co*. (1914), 233 U.S. 546, and noting that our California Constitution offers us even broader protection than the US Constitution). Unlike such cases of public benefit projects, this DEIR Project does not provide sufficient net benefits to our community in such public benefit ways [by refuting the DEIR, we thereby refute the Report], but instead the mine is for private Canadian profits to be shifted away from our community, likely leaving us with a mess like most mines when they cease to be profitable and then are never properly remediated, as shown on the EPA abandoned mine list.

Question #7: Since the record objections, including my Objections, provide ample grounds for rejecting the Project, why is the County trying so hard to accommodate Rise and create a perpetual controversy in our community at a time when we need to find harmony? Unlike other conflicts that disrupt our community peace, this Project will never have a sufficient constituency of voters (as distinguished, perhaps, from unwise politicians or staffers) to prevail on later votes against mine issues, and that means that perpetual appropriate litigation and exercise of political rights to counter the Project's problems that, if approved, would be an existential menace to our community, especially to those owners above or around the 2585-acreunderground mine.

5. **Why Does The Report Assume That (Illusory) Mitigation Rise Cannot Afford Solves All Problems For the County And Only Consider Underestimated Costs of Certain Police And Other Services?**

My Objections and others demonstrate that there will be massive net costs to the County not addressed in the Report (eg, the cost of road maintenance for abuse 24/7/365 for 80 years from abuse by heavy trucks on those roads that were not designed to accommodate such burdens). The only reason that the Report ignores such massive costs and burdens is that it **assumes incorrectly** that somehow those costs will be 100% mitigated by Rise, ignoring that there is no existing or feasible expected agreement by Rise, but merely the DEIR's vaguely expressed willingness to "negotiate" something, even though its SEC filings shows it lacks the funds to pay those costs, among many other admitted feasibility risks inspiring Rise's accountant to qualify the financials with a going concern qualificaition.

Question #8: Why doesn't the Report identify all the "mitigations" that it assumes will be paid 100% by Rise, so that everyone can properly evaluate both the feasibility of such mitigations and the consequences of those mitigations not being 100% paid by Rise, such as the road maintenance from constant 24/7/365 abuse by its heavy trucks for 80 years? Why doesn't the Report at least quantify what the public must pay if Rise cannot or will not do so? Why does the Report assume that, even if Rise could afford such mitigations, there will be a satisfactory future agreement when there is not any present agreement? More importantly, why doesn't the Report disclose what the cost to the County or public would be in the absence of any mitigation, so that we can judge the risk of insufficient mitigation? Consider, for example, what the direct

and indirect additional cost would be of maintaining those heavy truck access roads abused 24/7/365 for 80 years? If these mitigation issues must become litigated or contested in the political process, you should not be surprised to discover that such net public costs (which the Report assumes away) will far exceed the Report's imagined benefits.

6. **Why Does the Report Shift The Burden of Proving the Harms To Property Values From Rise To The Local Homeowner Victims, And Why Not Ask The Real Experts Who the County Will Face When Any Disputed Approval Is Contested In the Courts And the Political Process?**

The burden of proving no harm from the Project to our property values (which means overcoming many of the objections on record already with the Planning Department) must be on Rise. Yet, by ignoring such record objections and common sense concerns of the thousands of residents living above the 2585-acre underground mine, and by doing an incomplete and flawed investigation to achieve a disputed conclusion that the Report was unable to confirm lost value, the least that the Report could do is consider why us impacted residents dispute the DEIR and, therefore, the Report. The Report addresses (deficiently) some, but not all such reasons why property values will decline because of the Project, noting that many local businesses from who you sought opinions (especially real estate brokers) declined to address the issue with you because of concern about "controversy." However, if you had asked what about what the "controversy" caused them to decline to respond (and they had chosen to answer comprehensively), you would have discovered (and should have reported) that their reason to decline comments is that, by opining on this subject, they would have made their real estate sales jobs harder. Real estate brokers and sellers are legally required to disclose such risks and problems to the buyers, including what is in the record objections.

Therefore, what the brokers and sellers say to you, they then would have to say to every potential buyer or lender. That would make their job much harder, and that is one powerful reason why they don't tell you what they all know to be true: this Project will devastate both the value and the marketability of the impacted homes, especially those thousand living above the 2585-acre underground mine and those others nearby who will suffer from the loss of their groundwater and other mining problems. Even those other homes in the community more distant from the mining will suffer, because of the consequences of declines in the property values of those more directly impacted homes. Ask yourself, who will invest in maintaining or improving any property that is now suffering from such a stigma, especially when they can no longer borrow against the disappearing equity in their impacted homes, assuming they still can get mortgage or home equity loans at all?

That thought highlights the bigger problem with the Report. Most buyer's purchase their houses with mortgage loans. To qualify for such loans, an appraiser must confirm the relevant value for the "loan to value calculations" for compliance with banking regulations. What everyone expects, but the Report totally ignores, is that these impacted properties will not appraise well. Indeed, unlike the real estate brokers (whose self-interest generally favors being optimistic about property values and market opportunities, making their negativity on this mine issue especially powerful), the real estate appraisers will be more "conservative," ie, realistic, in quantifying the harm done to property values by approval of the Project. (Indeed, Federal laws

and regulations arising from excessive valuations in prior real estate bubbles punish appraisers for overvaluations.) When the buyer cannot finance the purchase at the seller's price, either the house doesn't sell (and the owner suffers, without investing more in his or her property, causing more devaluations) or the seller drops the price enough so that the buyer can qualify for loans at the lower appraised value. When one buyer accomplishes that lower price result, that sets the new "comparable" for all other appraisers, and we begin down the "slippery slope" to generally community devaluation. There is ample history of that general decline in such circumstances. Add in the Hinkley, CA, story with the mine's hexavalent chromium and ground water depletion problems, and the expected market value declines can be severe.

Consider what a seller or broker must tell the buyer after the mine approval, and what the bank appraiser must consider in his or her appraisal. "Oh, by the way, there is an old mine that has reopened and is operating 24/7/365 for 80 years underneath [or near] this property. They are blasting tunnels, digging our ore and rock, draining the local ground water in dewatering ways that imperil your wells, trees, and other rights, as well as shoring up that mess with hexavalent chromium." Etcetera. Even parts of the community more distant from the mine will be impacted, if only by the understandable stigma, the reasonable fears, and the other adverse consequences to the whole community of such harms and risks to the mine exposed areas. All such direct and indirect impacts must be disclosed, and disclosure itself assures devaluation and the harms will linger and spread. The decline in property values impacts the economy in many ways not addressed in the Report. Property tax collections will drop with values. Local construction work and related supplier sales will drop because of chilled investments in such threatened properties. Tourism will also be impacted. Sadly, the harder us locals are forced to resist these abuses of our rights, the worse the stigmas will become in the media.

Question #9: "Why isn't the burden of proof on Rise and the DEIR to prove there will be no impact on property values? Why does the Report, in effect, place that burden of proof on the resident victims instead? Why make our community gamble on the Report's foolish reliance on the disputed DEIR, and thereby assume that such obvious problems will not be as bad as every resident who matters knows them to be? Why does the Report, in effect, say that the author's study failed to prove conclusively that values will decline, so go ahead and mine? Why doesn't the Report state the truth, which is that there are many reasons for the mining and related risks, threats, and stigmas to depress property values, and gambling on the DEIR, Rise, and a problem free Project is not something the impacted residents will ever be willing to suffer voluntarily, but instead can be expected to resist with legally appropriate defenses that the Report should consider?

7. Why Has Someone Discouraged Candidates In Elections From Expressing Their Opinions On the Mine By A Serious Misinterpretation of the Applicable Law, And What Approval of the Project Will Mean For Inevitable Future Political Conflicts?

As reported in the *Union* during public forums in the recent elections, someone has convinced candidates and officials that it is somehow legally improper to announce their position on the mine. That claim is both legally incorrect and bad policy. As the controlling court cases I cite below remind us all, it is not only proper and legally permissible, but essential, that

the candidates detail their positions on such important matters, so that voters can make informed decisions on the merit of these critical issues. That is the stated policy reason for the CEQA disclosures. The confusion seems to be that these candidates mistakenly believe they must act like judges (where such limitations apply), rather than candidates (or even elected officials) who can and should freely speak their minds on such matters. Indeed, the purpose of Preliminary Environmental Impact Reports under the California Environmental Quality Act is to provide information needed by voters to express their own views by their votes, as the courts have confirmed. We need more informed voters, not people forced to guess. The most important issue is which candidate has the best policy positions. How can democracy work if our politicians can dodge key issues, so that our votes are uninformed, and we must guess?

If the Project is approved, the result will be extraordinary and protracted political conflict, as well as the usual legal remedies pursued by those of us defending our homes from what harms we know will follow, even though ignored or understated by the disputed DEIR and Report. The next elections will inevitably present candidates who share the views expressed in my Objections and those of thousands of other impacted residents. Those candidates will not be silenced by the incorrect hesitation shown in the last election, but will speak boldly based on the following quotes from one controlling California Supreme Court decision (which cites therein many other concurring decisions, including US Supreme Court precedents): **Fairfield v Superior Court of Solano County** (1975), 14 Cal.3d 768 (rejecting a shopping center developer's attempts to use civil discovery to support an attack on two councilmen who voted against the use permit application and related environmental impact report they had previously criticized, one as a candidate), stating:

> As we shall show … even if … [the developer] could prove that … [the councilmen] had stated their views before the hearing, that fact would not disqualify them from voting on the application. (at 779)
> ***
> A councilman has not only the right but an obligation to discuss issues of vital concern with his constituents and to state his views on matters of public importance. [citing *Todd v. City of Visalia* (1967), 254 Cal.App.2d 679 … (at 780)
>
> … Campaign statements, however, do not disqualify the candidate from voting on matters which come before him after his election. … "[It] would be contrary to the basic principles of a free society to disqualify the candidate from service in the popular assembly those who had made pre-election commitments of policy on issues involved in the performance of their sworn …duties. Such is not the bias or prejudice upon which the law looks askance. The contrary rule of action would frustrate freedom of expression for the enlightenment of the electorate that is the very essence of our democratic society." (at 781)
>
> … We conclude ... The voters …were entitled to discover the views of the candidates for the city council concerning … variances from zoning requirements, and the candidates were entitled to express those views. (at 782)

Question #10: Why does the Report assume that the County costs will be zero after approval of the mine, when it is certain to be challenged in appropriate ways both legally and in the political process, sadly pitting thousands of existing residents against a far lower amount of mine supporters? Putting aside the substantial costs of extra elections and the litigation the County must then expect, why should the County provoke such a massive, protracted controversy by such an ill-advised gamble that will so seriously harm so many of our residents in the most fundamental and unforgivable ways by threatening the value and quiet enjoyment of their property? If your answer is that distant County residents will benefit from the theoretical taxes referenced in the Report, in effect saying that us locals near the mine should suffer disproportionately for benefit of the County as a whole, why does the Report not address the cost to the County and the impact on Rise (and the already infeasible Project) from the predictable remedies of the local victims? See, for example, the legal issues that will impact the County as explained below. Indeed, why not compare fairly and more accurately the harm us locals will suffer to the imagined benefits gained by such others?

Some Supplementary Legal Data Extracted From My Objections That Give Context And Special Force To My Questions.

There can be no net local benefit rationally expected from this mine to Nevada Country, even if the DEIR were correct, complete, and compliant, which it is not. That "no net benefit" analysis is especially true if one focuses on the thousands of us who live on the surface above and around the 2585-acre underground mine, who are generally ignored by the DEIR, in its erroneous pitch to consider this CEQA "project" generally as if it were only the small Brunswick Industrial Site and 30 or so well properties along the East Bennett Road (and, although the DEIR and Report incorrectly describes it as a "separate" CEQA project, the Centennial Industrial Site). This is all one, integrated CEQA Project that cannot be separated with CEQA discussions limited to just one part. As my Objections demonstrate, the greatest consideration and protection must be given to us locals above and around the 2585-acre underground mine, who could suffer many of the greatest negative impacts, none of which are sufficiently addressed in the DEIR or Report. Any DEIR decisionmakers who may like distant mines that are too far away to cause them personal burdens or risks, should especially consider the contrary leading precedent against such uncompensated, disproportionate impacts: ***Varjabedian v. Madera*** (1977), 20 Cal.3d 285 (relying on the Fifth Amendment holding in *Richards v. Washington Terminal Co*. (1914), 233 U.S. 546, and noting that our California Constitution offers us even broader protection than the US Constitution), involving for our discussion purposes both successful nuisance and inverse condemnation claims (among other claims) of local homeowners against the City of Madera's approved sewer treatment plant**. That court upheld the jury's damages award that was not just for the stink nuisance harms suffered by the downwind locals, but also for the loss of real estate value measured** (at 291) by "the difference between the present fair market value of the property as the same would have been without the construction of the sewage treatment plant… and the present fair market value after said plant was constructed and put into operation." The court rejected all the usual defense arguments that a mine owner might be expected to attempt. **As the Court stated (at 298): "If a plaintiff can establish that his**

property has suffered a 'direct and peculiar and substantial burden as a result of the recurring odors produced by a sewage facility -- that he has, as in *Richards,* been singled out to suffer the detrimental environmental effects of the enterprise—then the policy favoring the distribution of the resulting loss of market value is strong … and the likelihood that compensation will impede necessary public construction is slight. … and a burden unfairly and unconstitutionally imposed on the individual landowner." See my Objections for further details.

Some our local harms should also be of broad concern for many other reasons, even to others in the County who may imagine they are too distant to be harmed by this mine. For example, the massive groundwater dumped into the Wolf Creek from the mine's wasteful dewatering goes somewhere else downstream, where those citizens should share our worry about hexavalent chromium and the adequacy and reliability of the mine's cleaning process. While the depletion of our groundwater in ways that add to our mine related miseries may seem local under the disputed DEIR analysis (really just guesses) about our fractured rock aquifer system, the drying out of our surface and its forests by such local groundwater mine depletion and wasteful mine uses (without the illusory "recharge" incorrectly assumed in the DEIR) harms everyone in this "new normal," "zero sum game" of climate change and chronic drought and dryness impacts. Because there is not enough water for everyone in the future, we're all in competition for an insufficient supply, while the mine is continuously flushing our groundwater down the Wolf Creek somewhere else 24/7/365 for 80 years. (Note that the DEIR does not offer any evidence about depletion and other concerns after 2040.) Also, because the consequent fires and smoke and other air quality threats are not locally contained, even those with sufficient water will end up sharing those adverse consequences of this mining. Those and other problems addressed in my Objections and others need to be placed on the negative side of the balance sheet to compare against the minor alleged benefits of the mine that many residents have already disputed in the record.

I cannot imagine us locals (once adequately informed of the realities and the errors, omissions, and deficiencies of the disputed DEIR) tolerating the mine, especially when presently less informed people discover "the hard way" the burdens, risks, and problems which the DEIR was required to disclose and failed to do so satisfactorily. It should be easy for our governments to avoid conflicts with their voting citizens on this mine, because this mine is unlike most other such conflicts in the case law. Often the challenged CEQA projects involved **public improvement** projects needed by the broader community that hurt smaller impacted groups of citizens, like roads, sewer plants, or other public improvements. Here, this private, exploitive mine has no such material net public benefit, contrary to the Report (which assumes away the problems by accepting the disputed DEIR as if it were correct, complete, and compliant, which it is not.) There is little doubt that our real estate values (like local tax revenue and tourism) will suffer in reality, even from the mere stigma of the mine, because, even if we somehow were all wrong about all the mine related problems (which we're not), no one wants to pay these kinds of real estate prices to gamble on suffering such burdens, risks, and harms, especially if they read Rise's SEC filings admitting risks ignored in the DEIR and, therefore, in the Report. See the transcript (when available) of the March 22, 2022, County hearing and those objectors' follow up written comments. Clearly, no government blessing of the DEIR or mine approval (or your Report) will convince anyone at risk in such impact zones above or around the 2585-acre mine (or any buyer

or mortgage lender/appraiser) to accept such risks, especially for no net benefit to their community.

So, sadly, approval of the DEIR and mine would divide our County in one additional way, and I hope that is not our fate. I mention the ***Varjabedian v. Madera*** nuisance claim, not just because such claims (if and when presented) could further affect the economics of the mine and other issues, if and when any victims were to collect nuisance evidence and (under legally appropriate circumstances) to consider the time to be right for accountability. **My primary reason for focusing here on this *Varjabedian* case is the court's discussion of why disproportionate harm suffered by some locals cannot be justified by the benefits to others more distant who can escape that harm**. Those cases (and many others) may create problems for the County in situations like this one, if it were to impose a nuisance (among other things) on such particular victims, **like the *Varjabedian* homeowners downwind from the sewer plant, as a "taking" under the Fifth Amendment and under the California Constitution, potentially creating claims against both the private nuisance maker and the approving governmental authority.** See, eg, *Uniwill v. City of Los Angeles (2004)*, 124 Cal. App. 4th 537 (a private party, here a private utility, and an approving governmental authority can be jointly liable in inverse condemnation for depriving a victim of property rights). As that ***Varjabedian*** Court stated (at 298): "If a plaintiff can establish that his property has suffered a 'direct and peculiar and substantial burden' as a result of the recurring odors produced by a sewage facility -- that he has, as in *Richards,* been singled out to suffer the detrimental environmental effects of the enterprise—then the policy favoring the distribution of the resulting loss of market value is strong … and the likelihood that compensation will impede necessary public construction is slight. … and a burden unfairly and unconstitutionally imposed on the individual landowner." This policy to avoid disproportionate local harms should be especially powerful here, where the mine is not a public improvement for the common good, but rather a private exploitive business of no net benefit to the public.

More importantly, we are not just talking only about intangible issues like smells (although noise, traffic, air quality margins, and other intangibles may also arise in these disputes, especially since this no net benefit mine is to be granted 24/7/365 operating approval that few of our more beneficial local businesses enjoy as far as I know, without any justification in the disputed DEIR for such continuous operation except its arbitrary profit margin desired by Rise and its Canadian owners) or on account of Rise's admittedly weak financial condition discussed in its SEC filings. Here the conflict also includes our groundwater depletion and hexavalent chromium pollution of commonly owned groundwater (and then flushed down the Wolf Creek), as well as potential interference with the legal property rights of surface owners above and around the 2585-acre mine (eg, for subjacent and lateral support discussed below, etc.) With our water table dropping in the climate change future of dryness and drought, the last thing we need is to increase the risk of trees dying and becoming bigger fire hazards because of that 24/7/365 dewatering for 80 plus years and DEIR's admitted 1.4 million gallons a year NID depletion uses at the mine, plus more issues addressed in my Objections and others. Stated another way, all of us locals impacted by the mine are being asked to sacrifice some of our water, health, property rights and value, and other things mentioned and all grossly understated in the DEIR, but for what? So far, the only credible answer seems to be for a speculative and dangerous private project to export profits to private investors across the

Canadian border enjoying their exploitation of us locals, while we suffer those disclosed problems, plus far greater undisclosed burdens, risks, and harms only revealed as cited errors, omissions, and deficiencies in the disputed DEIR. (I discount the Report as unconvincing at best, because it foolishly depends entirely on the DEIR as being correct, complete, and compliant, which my and other objections show it is not, and in any event the Report doesn't even address what risks Rise admits in its SEC filings.)

In considering the scope and nature of any mine approval and its terms and conditions, the government decisionmakers should consider both the nuisance and inverse condemnation court decisions as flip sides of the same coin. (Note: As explained in US Supreme Court cases cited in my Objections and elsewhere, when a government creates or approves a nuisance by a **public** project [like that sewer plant] it is exposing itself to inverse condemnation liability. When a private company does anything that would be such an inverse condemnation if done by a government, then the private company should have equivalent nuisance liability with similar consequences and considerations. That is why I discuss both public and private nuisance and inverse condemnation cases together, for illustration of the common principle they both have that no one can use their property to damage or harm other properties in actionable ways without consequences.)

The damages and "taking" (eg, eminent domain or inverse condemnation) consequences in "taking"/inverse condemnation cases can be similar when a nuisance is imposed on local victims. For example, consider *County of San Diego v. Bressi* (1986), 184 Cal. App.3d 112, where an aviation easement was imposed on homes at the end of a runway with approval authorized for hugely abusive (although unlikely) uses (such as not only jumbo jets, but also "any other contrivance yet to be invented for flight in space.") *See also Coachella Valley Water District v. Western Allied Properties, Inc* (1987), 190 Cal. App. 3d 969 (where the court ordered a retrial where the trial court mistakenly limited the "before condition" valuation damage expert's evidence about the value before impacts of the flood control alternatives if they varied from the government's desired plan, holding the jury was entitled to consider the value of the plaintiff victim's property without being limited to the defendant's idea of solutions or consequences of doing things the defendant's way.) The *Bressi* court rejected the defense that the government should only have to pay for the less burdensome current uses (ie, only small private planes versus jumbo jets and rocket ships in the permits), holding that "just compensation" to the homeowner is measured (like nuisance damages) based on what the owner has lost, rather than by what the taker has gained. And stated (at 123) that: The jury … must "once and for all fix the damages, present and prospective, that will accrue reasonably from the construction of the improvement and in this connection **(the jury) must consider the most injurious use of the property reasonably possible. …In determining the most injurious use of the property reasonably possible, the jury must consider the entire range of uses permitted under the resolution of necessity." (ie, in that case making a small airport into a hub for first jumbo jets and then spaceships.)** (Emphasis added) Thus, if a dangerous or risky mine were allowed such great powers for massive abuse 24/7/365 for 80 years, any liability would be calculated on that worst case basis. That means current nuisances, trespasses, and other torts that have modest current impact can become a huge liability, because that current harm can be multiplied for 80 years' impacts.

Therefore, to the extent that us locals suffer damages, the County is better off with the narrowest approval imaginable, not the worst (or something vague that the DEIR could exploit with loopholes for which there is then maximum possible exposure with the 80-year multiple.) The government authorities should also consider making any approval not include hexavalent chromium, not allowing 24/7/365 operations (eg, versus the normal 12 hours) and for 80 plus years (but at most the limited period for which they have reliable data, which could never exceed 2040 as the outside date for which the disputed DEIR offers even deficient data on limited topics, especially not extending any period allowed based on some assurance of achieving some arbitrary profit margin), and not allowing such unlimited depletion of our groundwater based on a disputed and preposterous recharge fantasy, ignoring climate change dryness and drought, and not allowing other burdens, risks, and harms to us locals and our property rights. That means any disputed approval which is granted (and I urge that none be granted) must be conditioned on such credible protections for the locals from all such burdens, risks, and harms, especially where the disputed DEIR (and, therefore, your Report that depends on the DEIR) lacks reliable data and just assumes the future will be the same as the past. Otherwise, someone may have to pay us local residents not just for current suffering, but also for the risk for future, "worst case" suffering for 24/7/365 for 80-years, as noted above, even if the mine has no funds or ability to operate that long.

Besides such damages for nuisance and other claims, victim locals in such disputes can also entitled to recover (eg, restitution) **costs of mitigating** the victims' damages for any nuisance and inverse condemnation. Eg, *Ahlers v. County of L.A.* (1965), 62 Cal.2d 250 (when road construction caused landslides, the threatened property owners are entitled, among other things, to recover the cost of minimizing their damages in good faith, as by installing 25 shear pin caissons to try and hold back the landslide); *Sheffet v. County of L.A.* (1970), 3 Cal. App.3d 720,741-42 (water diversion damages from subdivision and road entitle victim to mitigate his or her damages in good faith and recover the cost of protecting his or her property). While it is premature to address the mitigation cost recoveries from many defensive strategies local victims could elect to protect their properties from the many burdens, risks, and harms that anyone may suffer from a mine like this, one hypothetical example could be that the locals individually or collectively sink their own competing wells into their owned groundwater beneath their properties above and around the underground mine, hoping to save their surface share) of groundwater otherwise lost by plans to dewater, treat, and flush such groundwater downriver in some disputed but depleting amounts. Nowhere does the DEIR or the Report deal with any such competition with locals for water and other resources to which us locals have at least equal rights. (The conflicts that unfortunately creates with NID is a larger subject for another time, but no one should assume that existing laws and NID won't be changed to better protect us victims in the course of these disputes.)

Other issues may also arise in such nuisance and inverse condemnation etc. cases, some of which are analogous to the risk of "subsidence" from this 2585-acre underground mine for those above and around it entitled to subjacent and lateral support, groundwater, and other rights. E.g., *Smith v. County of L.A.* (1986), 214 Cal. App. 3d 266 (county road repairs created landslide conditions destroying homes triggering nuisance, inverse condemnation, and other claims, including both damages for diminution in the value of real property, but also damages for annoyance, inconvenience, and discomfort, as well as mental distress as a part of the loss of

enjoyment.) See also my Objections, citing the Supreme Court and California cases allowing voters to protect surface owners from underground mining abuses. **For example, consider again the leading such Supreme Court decision of *Keystone Bituminous Coal Ass'n v. DeBenedittis*, 480 U.S. 470 (1987), where the Court upheld against a coal miner challenge the Bituminous Subsidence And Land Preservation Act (the Subsidence Act as it's called in Pennsylvania and many places where it has been replicated), where mining was limited to prevent "subsidence" (the loss of surface lateral and subjacent support and loss of groundwater or depletion of surface water, which are legal rights we surface residents already have here, but it helps to have more laws to detail specific applications and thereby avoiding the need for expensive defense litigation). That Supreme Court decision defined the "subsidence" concerns (also equally at issue for this DEIR project, especially because of the massive and objectionable groundwater depletion and [even what's so far revealed of] the DEIR's new, deeper, and expanded DEIR blasting, tunneling, rock removal, and other mining activities) as follows (at 474-5):**

> 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 subsidence law generally required 50% of the coal to remain for support in strategic places, it did many other things to protect the surface and limit the mining, explaining that the government was entitled to so act "to protect the public interest in health, the environment, and the fiscal integrity of the area," such as by "exercising its police powers to abate activity akin to a public nuisance," although the court made clear that the police power was broader than nuisances. (At 488) Of special note, the Court (at 493-94) noted that this challenge was to the enactment of the law before it was enforced, and that meant that it was premature to complain about how the law might be abused, when 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.]

Please note that there is nothing in the disputed DEIR to explain why we surface residents above or around the mine need not worry about our legal right to mining contrary to our legal rights to "subjacent and lateral support and protection" from "subsidence" from either defective repair of the old 2585-acre mine that has been closed and flooded since 1956 and would now be blasted, tunneled, rock removed, and otherwise mined 24/7/365 for 80 years. How can we judge our risks when there are no clear standards and timely and effective monitors to protect us (or even reliable evidence)? History shows most often it takes a crisis damage event to trigger effective inspections, and at that point the damage is done, and all that would be left would be to pursue legal remedies against the miner, among others, typically with an insufficient financial condition (see my Objections and the Rise SEC filings) based and managed in a foreign place (eg, here Canada) whose only reported real, material asset shown in its SEC filings is the mine everyone wants to close that just revealed such a problem.

Remember the old Broadway musical that they made into a Clint Eastwood/Lee Marvin movie called "Paint Your Wagon" about Nevada City gold mining? It ends with the whole town collapsing into the miners' underground diggings. I hope that is not prophecy, but it illustrates one more topic in the disputed DEIR where there is no reliable or sufficient information. What is the actual condition of the mine that closed and flooded in 1956 and has not been studied since? How can responsible government assume records from those ancient days are now correct, complete, and sufficient as to existing conditions that will be discovered when the mine is drained? As to why that matters, besides our peace of mind and safety, consider question: what is your real estate broker going to tell a buyer about when you try to sell your house above or around the 2585-acre underground mine here? I do not think the answer will be, "don't worry, the DEIR reassures us all."

Thank you for considering my questions.

Sincerely,

G. Larry Engel

EXHIBIT D

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).

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[other participants may join or file joinders]

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
G. Larry Engel
Engel Law, P.C.

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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)
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> 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.**

As of the end of the period covered by this Report, our management carried out an evaluation, with the participation of its Chief Executive Officer and Chief Financial

> Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. **Based on this evaluation, management concluded that our disclosure controls and procedures were not effective as of July 31, 2023 because of a material weakness in internal control over financial reporting that existed as of that date, as more fully described below.**
>
> **Management's Annual Report on Internal Control over Financial Reporting**
>
> Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.
>
> We carried out an evaluation, with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of its internal control over financial reporting as of July 31, 2023. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control-Integrated 2013 Framework. Management **concluded that our company's internal control over financial reporting was not effective as of July 31, 2023 because a material weakness in internal control over financial reporting existed as of that date as a result of a lack of segregation of incompatible duties due to insufficient personnel. A material weakness is a deficiency or a combination of control deficiencies in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.**

Objectors also note Item 10 “Involvement in Certain Legal Proceedings” in the 2023 10K (at 78-79), which describes a long story about environmental wrongs or crimes at the British Columbia (Canada) mine of Banks Island Gold, Ltd. (“Banks”), where Rise stated (at 78) that “Benjamin W. Mossman was a director and officer” before Banks still pending Canadian bankruptcy proceedings. Objectors do not have sufficient knowledge (or interest) to explore the merits of those disputes. What objectors know is that, after discussion of Rise’s perspective on that extensive litigation, the 2023 10K states the following (at 79, emphasis added):

> [In the second trial in 2022] He [Mr. Mossman] was found guilty of 13 environmental violations in relation to certain waste discharges at the Banks mining site, and on September 26, 2023, Mr. Mossman was fined a total of approximately C$30,000 in connection with all of the offenses. Both Mr. Mossman and the Crown has filed appeals from this trial. The Crown has appealed all acquittals. Mr. Mossman has appealed all convictions.

> The hearing of both appeals has been scheduled for the week of January 15, 2024.

Objectors have not evaluated these Canadian disputes and do not address their merits, if any. Objectors cite such Rise quotes only because objectors are informed and believe that Mr. Mossman has had a substantial role in Rise's many filings with the County, as demonstrated in his presentations at the previous County hearings and his public comments on the various IMM disputes, especially those professing his adherence to high standards of environmental compliance. Therefore, as with any such conviction (if only as a legally appropriate challenge to his credibility and the weight of any evidence he has presented (or not presented), objectors reserve the right to ask the County to consider how these convictions (which he disputes and appeals) reflect on Rise and the credibility and weight of such evidence. None of that is not offered here as proof of any wrongs on the merits of this dispute or as proof about his character on the merits. However, that Rise information itself may be (or become) relevant to the credibility of any evidence to the extent provided in Evidence Code #780, 785, and (if and to the extent applicable, 788). See both the Initial Evidentiary Objection and Objectors Petition of Pre-Trial Relief, Etc.

EXHIBIT E

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

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[other participants may join or file joinders]

November 14, 2023

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

Dear Board Members And Advisors:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/s/ Larry Engel

_____

G. Larry Engel
Engel Law, PC.

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

November 14, 2023

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Introductory Comments And Some Evidentiary Context.

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

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

2. Evidence And The Deficient Administrative Process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. A Brief Introduction To Johnson Declaration Disputes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Exhibit 262.

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

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

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

2. Exhibit 262 (continued).

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

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

1. Introduction.

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

2. **Exhibit 289.**

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

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

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

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

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

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

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

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

5. Exhibit 286.

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

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

6. Exhibit 287.

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

7. Exhibit 284.

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

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

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

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

8. **Exhibit 291.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Exhibit 209.

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

2. Exhibit 222.

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

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

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

3. Exhibit 295.

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

4. Exhibits 215 and 249.

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

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

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

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

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

6. Exhibits 233, 234, and 243.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table of Exhibits Referenced In the Rise Petition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Some Introductory Comments And Previews.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

What were the "components" of the mining operation/business at the applicable time in 1954? In *Hansen*, they were found by the Supreme Court majority mining gravel in the riverbed and banks, quarrying rock from the hillside, crushing, combining, and storing the mined materials, and selling or trucking the aggregate from the mine property. In this case, since 10/10/1954 (or whatever the time chosen) for each law at issue for Rise's vested rights claims, Rise is clearly adding unprecedented, new features to its mining operations, such as, for example, (a) constructing a massive dewatering system with a "water treatment plant" to "dewater" groundwater owned by objecting and competing surface owners, purportedly treating that water (ignoring until the courts stop Rise, adding the toxic hexavalent chromium cement paste into the mine for shoring up mine waste in place, a technique not used in 1954), and then flushing that groundwater away down the Wolf Creek, (b) selling "engineered fill" that is really "rebranded" mine waste on some market in which Rise and many of its predecessors did not previously participate (i.e., that was not a continuous use and North Star bought itself outside that chain), (c) dumping toxic mine waste on (what even Rise has consistently claimed, until this new vested rights switch in legal theory 9/1/23, has been) the toxic, **separate Centennial property** already the subject of governmental toxic clean-up orders, requiring frequent daily watering (even during droughts) to prevent (we hope) toxic fugitive dust (e.g., asbestos and now perhaps hexavalent chromium) from harming the neighbors, (d) (presumably) creating massive new remediation and reclamation obligations never before done at the IMM, as well as others now done more intensively, and (e) all the while, without Rise admitting in its SEC filings that it has insufficient financial resources to pay to accomplish anything material that Rise proposes or will be required by law or the courts to do now or in the future, especially as objectors may press for stronger law reforms and initiatives to protect their families, their groundwater, wells, and environment, their property rights and values, and their community

way of life, in effect testing the boundaries of what is or is not a “taking” either or both from Rise or from objecting surface owners with potential inverse condemnation claims.

Attachment B: SOME ADDITIONAL REASONS WHY SMARA AND SURFACE MINING CASES CANNOT BE USEFUL TO RISE BY ANALOGY OR AS GUIDANCE FOR SOME RISE IMAGINED "COMMON LAW," VESTED RIGHTS THEORIES (IF ANY), Especially As the Rise Petition (at 58) Incorrectly Seeks SMARA Benefits Without Its Burdens, Insisting on The Right To Mine Above And Below Ground "Without Limitation Or Restriction."

1. **SMARA Is Limited To "Surface Mining" With Its Required Reclamation Plans And Financial Assurances. Even Purported Rise "Analogies" Or Rebranding As "Common Law" Must Fail, Especially As To Rise's UNDERGROUND IMM, Especially As to Such Disputed "Vested Mines Property" Parcels That Were Closed, Flooded, "Dormant," "Discontinued," And "Abandoned" by 1956, And That Could Not Satisfy The SMARA Conditions For Vested Rights Even If They Were Treated Like "Surface Mines." However, Objectors' Use of Surface Cases For Rebuttals Is Appropriate.**

    a. **An Overview of Some Authorities And Reasons Why Rise's Vested Rights Claims For UNDERGROUND Mining Are Doomed At the "Dormant," "Discontinued," And "Abandoned" IMM. See Also the Companion Table of Cases And Legal Commentary And Attachment A Thereto.**

This exhibit explains, consistent with the more extensive, companion "Objectors Petition For Pre-Trial Relief, Etc." incorporated herein, both (i) how even surface mining precedents defeat Rise Petition's vested rights, and (ii) especially how SMARA's text and related data should prevent Rise from misusing such inapplicable surface mining law to advance its disputed vested rights theories for this UNDERGROUND MINING. See Attachment A, demonstrating how even Rise's favorite *Hansen* case actually helps defeat the Rise Petition's disputed claims (e.g., at 58) that Rise can have benefits of SMARA vested rights without any SMARA burdens, instead allegedly allowing Rise to mine above and below ground anywhere on any "Vested Mine Property" as Rise wishes "without limitation or restriction." (The capitalized terms used herein, or in quotation marks, have the same meaning as defined in the foregoing main objection document and incorporated herein.) **There is no path to that illusory Rise goal, whether directly or indirectly or whether as purported "analogies" or imagined revisions to invent incorrect "common law" for expansion to the UNDERGROUND IMM mining at issue.** See Attachment A, for example, explaining why Rise's favorite *Hansen* case is distinguishable and cannot accomplish any of Rise's disputed goals. **Thus, Rise's vested rights claims for the 2585-acre underground IMM must fail as a matter of law, because the Surface Mining And Reclamation Act ("SMARA"), Public Resources Code # 2710 et seq., only applies to "surface mining." For example, by their own terms *Calvert*, *Hansen*, *Hardesty*, and other cases that Rise must confront are contrary to Rise's disputed vested rights claims and also only apply to "surface mining" under SMARA,** including what SMARA **#'s 2736 and 2729**, respectively, define as **"surface mining operations"** on "**mined lands." See the more detailed discussion of that reality below.**

However, the County should consider (as the courts in the following process will do) both what would be required of Rise if SMARA were directly or indirectly applied to the Rise Petition and how SMARA does not "fit" or "integrate" with underground mining either as Rise

claims or as the statute speaks, especially as to the mining and related operations and components described in the disputed EIR/DEIR and in objectors' record objections thereto that are incorporated herein to avoid repetition. For example, (emphasis added throughout) even **"nonconforming uses" based on vested rights must still be "legal**." Surface mining with vested rights must comply with the text and regulations in and for SMARA and many other applicable laws. Even without addressing the scope of *Calvert* due process rights (see Attachment A and the companion Objectors Petition For Pre-Trial Relief, Etc.), **SMARA expressly also allows neighboring objectors and governments to sue the miner for nuisances and many other wrongs; i.e., escaping a use permit requirement doesn't free the SMARA miner to do as it wishes, especially as the Rise Petition claims are "without limitation or restriction."** E.g., **SMARA #'s 2714 (*excluding* many things from its scope, including some "operations" planned or reserved by Rise for its proposed and disputed mining), 2715 (*disclaiming* from any SMARA impact a long list of "limitations" on mining by the paramount powers of local government and people, such as**, for example, "(a) …the police power … to declare, prohibit, and abate nuisances …(b) … to enjoin any pollution or nuisance. (c) On the power of any state agency …[to enforce the laws it administers]. (d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance …or any other private relief. (e) On the power of any lead agency to adopt policies, standards, or regulations … if the requirements do not prevent the person from complying …[with SMARA]. (f) On the power of any city or county to regulate the use of buildings, structures, and land …" See also SMARA #2713, disclaiming any intent "to take private property for public use without payment of just compensation in violation of the California and United States Constitutions," which statute Rise mistakenly contends is just for the miner, when it is also for the projection of impacted public, especially surface owners above and around the 2585-acre underground mine objecting to the Rise Petition, the EIR/DEIR, and Rise's IMM activities not just as members of the impacted public but as victims with their own competing, constitutional, legal, and property rights, especially as to the groundwater and existing and future well water owned by such surface owners that Rise would dewater and delete 24/7/365 for 80 years. See, e.g., *Keystone* and *Varjabedian*.

Clearly, SMARA # 2736, defining "surface mining operations," generally ignores any references to any **underground** mining applications, uses, operations, and components, except as a way of including "**surface work incident to an underground mine" (**emphasis added). However, here on the so-called "Vested Mine Property" IMM, the only possible "surface work" is on the small parcels wholly owned by Rise (i.e., the Brunswick site and, incredibly, the Centennial site, as an obscure but radical switch from the disputed EIR/DEIR, insisting that Centennial was entirely separate from that IMM "project"). Objectors and others own the entire surface above and around the relevant 2585-acre underground mine at issue here, preventing any access from there and defeating the Rise Petition by the cases discussed throughout this objection, like *Hardesty, Calvert,* and even *Hansen,* that require a parcel-by-parcel, use-by-use, and component-by component limit on any vested rights. **As to the SMARA #2776 statute on which the Rise Petition relies, if one replaces the word "surface" with the word "underground," it become clear that there can be no Rise Petition rights for the 2585-acre underground mine beneath surface owner objectors, whether in the "Flooded Mine" parcels (where there was mining until no later than 1956 when it all flooded), or in the balance of the "Never Mined Parcels." There has been no such #2776 "good faith" reliance by Rise and its**

chain of predecessors on each parcel on any "permit or other authorization," no "surface [now read "underground" or other relevant] *mining* operations" have "commenced" (miner "exploration" of other areas besides the new expansion areas [or even parts of that expansion area] for underground mining, does not create such vested rights to mine as Rise claims). Also, no "substantial liabilities for work and materials necessary" have been incurred for that *"commencement" of any underground "mining" "operations"* IN EACH APPLICABLE PARCEL of that underground mine all beneath or around the surface owned by objectors and others, especially the most inaccessible Never Mined Parcels.

On the other hand, while SMARA does **not** give Rise any rights as to underground mining, SMARA at #2733 defines "reclamation" (and therefore, "financial assurances" in #2736 to "including adverse surface effects incidental to underground mines … [and] The process may extend to affected lands surrounding mined lands…" Such statutes (and other SMARA terms and conditions) are sufficient to create obligations by Rise (and standing and rights for) surface owners above and around the 2585-acre mine as well as impacted others. However, nothing in SMARA creates any reciprocal objections by objectors to Rise. See the "State Policy for the Reclamation of Mined Lands," SMARA #'s 2755-2764; "Reclamation Plans And the Conduct of Surface Mining Operations," SMARA #'s 2770-2779, including successor liability in #2779, making all reclamation related plans, reports, and documentation "public records" under #2778.

For example, what Rise contemplates in its disputed EIR/DEIR and otherwise is UNDERGROUND MINING that cannot possibly qualify (even by miner analogy) as such SMARA or such *Hansen* or other "surface" "mining" for such vesting rights claims. As Rise has admitted in its EIR/DEIR mining plan, in its SEC filings (Exhibit A), and in other County applications, the only gold Rise is attempting to recover is disconnected from Rise's surface property and underground in new, unmined, unexplored, expanded areas. That truth is especially incontestable since objectors and others own the surface parcels above and around that 2585-acre underground mine inaccessible from that surface. Exhibit A SEC 10k admits that Rise's 2017 acquisition deed restrictions prohibit even entry on that at least 200 foot deep "surface" without the owners' consent (which Rise does not claim it has.) For example, that SEC 10K describes the Rise purchase of everything from the BET Group Estate (at p.29) by quitclaim deed on 1/25/2017 (with the "Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) **"subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" Note that Rise (at 10K p. 28) not only separates surface from subsurface mining, but separates "mineral exploration" from both such types of mining, consistent with the M1 district zoning.**

As the *Hardesty* mining case ruled in defeating such disputed vested rights claims:

> [T]he italicized portion of the statute [SMARA #2776] speaks of vested rights to ***surface*** mining, **not *any* mining**. "Surface mining involves stripping off the top of an area to reach the minerals, in contrast to boring down through tunnels or shafts to extract them." ([People v.] *Rinehart*, supra, 1 Cal. 5th [652] at p. 671, fn. 10 …) (emphasis added)
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To the extent Hardesty contends he has a vested right to surface mine under section 2776, he simply **failed to carry his burden to prove any substantial *surface* mining on the property** had been conducted by that date. As the trial court found, substantial evidence shows that **prior mining had been hydraulic, tunnel, and drift mining, not surface mining,** which began in the 1990's, and **which represented a SUBSTANTIAL CHANGE,** contrary to former section 2778's requirement that no substantial changes may be made in any such operation except" according to SMARA's terms…. (emphasis added)

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… Hardesty failed to prove any mining was occurring on or even reasonably before the date SMARA took effect. **SMARA was designed to allow existing, operating surface mines to continue operating** after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to dormant mines.**

Hansen *Brother Enterprises, Inc. v. Board of Supervisors* (1996), 12 Cal. 4th 533…*(Hansen Brothers*)—**consistent with a long line of zoning cases—holds that A USE MUST BE PRESENT AT THE TIME A NEW LAW TAKES EFFECT, TO BE CONSIDERED A NONCONFORMING USE…**. Communities for a Better Environment … (2010), 48 Cal.4th 310, 323 fn.8 …["the traditional protections for nonconforming uses established *at the time* zoning restrictions become effective"]…; *McCoslin v. City of Monterey Park* (1958), 163 Cal. App.2d 339, 346…["A nonconforming use is **a lawful use existing *on the effective date* of the zoning restriction and continuing since that time** in nonconformance to the ordinance."] … ***NEITHER A DORMANT NOR AN ABANDONED USE IS A NONCONFORMING USE.* (*HANSEN BROTHERS,* AT PL 552*…["NONUSE IS NOT A NONCONFORMING USE."])* **As stated by our Supreme Court, "The ultimate purpose of zoning is … to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected." We have recognized that, given this purpose, courts should FOLLOW A STRICT POLICY AGAINST EXPANSION OF THOSE USES…**

That policy necessarily applies to attempts to continue nonconforming uses which have ceased operation." *(Hansen Brothers*, at 568 …) (emphasis added)

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Further, **the record shows a proposed significant change in use since pre-1976 [SMARA's effective date] times. THE CONTINUANCE OF A NONCONFORMING USE "IS A CONTINUANCE OF THE SAME USE AND NOT SOME OTHER KIND OF USE." …[citing McClurkin, Edmonds, and Goldring, where, FOR EXAMPLE, EDMONDS V. COUNTY OF LA (1953), 40 CAL. 2D 642 HELD "ENLARGEMENT OF PLAINTIFF'S TRAILER COURT TO ACCOMMODATE 30 MORE TRAILERS IS CLEARLY A DIFFERENT USE."] SURFACE MINING IS A CHANGED USE ON HARDESTY'S PROPERTY, WHEN CONTRASTED WITH THE PRE-SMARA USE [FOR UNDERGROUND ETC. MINING NOTED ABOVE]. Nor can**

> **Hardesty persuasively rely on post-1976 unpermitted surface mining –twice halted by the government— to show that surface mining was extant before 1976.** (emphasis added)

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799-812 ("**Hardesty**"). In that case ignored by Rise, the miner lost at the Board, trial court, and on appeal in its mandamus action claiming SMARA vested rights as to an ancient, "19th century" federal mining patented gold mine that ceased operation during World War II and was "essential dormant" "through the 1970's" with "virtually no evidence that those mining activities 'continued' to exist at the time SMARA was enacted [effective January 1, 1976], apart from "sporadic," "unpermitted surface (open pit) aggregate and gold mining in the 1990's."

Nevertheless, the miner claimed "vested rights to mine the property for gold, sand and gravel (as well as diamonds and platinum)" after he bought the property in 2006. The trial and appellate courts rejected that miner's vested rights claim, agreeing with the Board that "any right to mine had been abandoned," as discussed in the evidence analysis discussed in the main objection and at the end of Attachment A.) More importantly, ***Hardesty*** **forbids ignoring the kind of change Rise tries to ignore between different types of mining in incorrectly claiming vested rights. As that court stated:**

> **The trial court found that in the 1990's unpermitted surface (open pit) aggregate and gold mining began different in nature from the 'hydraulic, drift, and tunnel' [i.e., underground] mining that historically had been conducted on the land.** The RFD alleged the new proposed open-pit mining was safer and better for the environment. *** As an alternative to the finding of no vested right based on the lack of mining [in the right way and at the required time] … the trial court **found that any right to mine had been abandoned**." (emphasis added)
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> **While that statutory reality should be obvious on its face, what follows below demonstrates some of the many ways in which SMARA cannot even be applicable by analogy by miners, but nevertheless can be used by objectors. Why?**

FIRST, Rise has not even tried to satisfy its burden of proof for such disputed theories or offer more than SMARA and *Hansen* to support its doomed theory. Even if Rise again shifted its theory to invent some unprecedented "common law" claim, there are no such statutory links or such case authority. To the contrary, Rise has ignored contrary authority such as in *Hardesty* discussed in this objection, in the companion Objectors Petition For Pre-Trial Relief, Etc., and in objections to the disputed EIR/DEIR. Indeed, neither *Hansen* nor any other Rise surface mining cases cite any common laws, even by analogy, for such underground mining, but (like Rise) strictly limit themselves to following the SMARA statute**.**

SECOND, because miners are not granted any vested rights to mine as they wish by the constitution (i.e., there is no legal basis for Rise claiming in the Rise Petition at 58 any vested rights to operate "without limitation or restriction"), all Rise could achieve would be a limited

excuse for certain nonconforming (but lawful) uses or components on certain parcels, but even then, only under specified terms and conditions. That vested rights excuse only applies for certain such qualified, "nonconforming uses" on vested parcels as to the application of a specific kind of land use statute (e.g., use permits) that interrupts either (i) certain otherwise LAWFUL kinds of existing types of mining uses in which the miner is actively conducting permissible existing operations on a PARCEL (see the main objection discussion of *Hansen* and Attachment A counters against Rise's incorrect claim that work on one parcel creates vested rights on another), or (ii) certain "objectively" intended and permitted future mining expansions ON AN ELIGIBLE PARCEL during such qualifying continuing operations. Id. That also means, for example, that Rise's vested rights still must comply with many other laws and regulations not constituting such a land use regulation "taking" to trigger the constitutional prohibition on applying that law to such qualifying operations. In other words, the disputed Rise Petaton (at 58) incorrectly demanding the vested right to mine anywhere and any way it wishes "without limitation or restriction" seems to contend that objectors can be disabled somehow from enforcing or relying on each and every law Rise later claims to ignore or evade. Fortunately, Rise has the **burden of proof** of that, which necessarily means that it is Rise, not objectors, who must identify each such law or regulation and how such vested rights apply to each such law and regulation as it existed at the relevant time, as distinguished, for example, by compliance by laws (like CEQA and environmental laws) which objectors future briefing will demonstrate apply independent of any such vested rights. **Stated another way, Rise must be bound by every law and regulation that it does not specifically identify and prove over objections to be applicable. *Hardesty* ruled at 811 (citing *Hansen* at 12 Cal.4th at 564, and Calvert at 145 Cal. App.4th at 629): "IT WAS HARDESTY'S BURDEN TO PROVE HE WAS CONDUCTING A NONCONFORMING USE AT THE TIME THE LAW CHANGED." IT ADDED THIS CITE FROM MELTON V. CITY OF SAN PABLO (1967), 252 Cal.App.2d 794, 804: "THE BURDEN OF PROOF IS ON THE PARTY ASSERTING A RIGHT TO A NONCONFORMING USE TO ESTABLISH *THE LAWFUL* AND CONTINUING EXISTENCE OF THE USE *AT THE TIME* OF THE ENACTMENT OF ORDINANCE [IT WISHES TO EVADE.]"** (emphasis added) See also the court's discussion at Id. and 812 of *Stokes v. Board of Permit Appeals* (1997), 52 Cal.App.4th 1348, 1351, 1352-53, 1355-56, and *Walnut Properties, Inc. v. City Council* (1980), 100 Cal.App.3d 1018, 1024.

THIRD, such vested rights do not overcome, impair, or adversely affect competing property owners' legal, constitutional, and property rights that may interfere with such mining, such as those of us surface owners above and around the 2585-acre underground IMM, such as to our existing and future wells and groundwater. That competition between underground miners and surface owners is not about the vested rights of a miner displacing surface owner rights and protective laws, but rather, as between competing surface vs underground owners, as to who has the superior legal right on each disputed issue under all the facts and circumstances. However, if *Calvert* or *Hardesty* were somehow a relevant analogy for any such Rise claims of vested rights (despite being legally inapplicable surface cases), *Calvert and Hardesty* SUPPORT THE OBJECTORS, AND NOT THE MINER, in any analogous parts. See also Attachment A, analyzing ***Hansen***, which also fails to support Rise vested rights for these IMM disputes and even in some parts rules against that *Hansen* surface miner.

On the other hand, the reverse uses of surface mining cases in favor of objectors, of course, are different, because the competing objectors' oppositions aren't about qualifying like

a miner for vested rights, but rather conversely use objectors' own constitutional, legal, and property rights as defenses and to counter any miner claimed vested rights claims however those vested rights claims may be imagined. As explained in the main objection and in record and incorporated EIR/DEIR objections, for example, there can be no vested rights for Rise to "take" such objecting surface owners' owned well water and other groundwater by Rise's proposed and disputed dewatering system for disputed, purported "treatment," and to flush our water away down the Wolf Creek. On the other hand, objecting surface owners have contrary constitutional, legal, and property rights to protect their existing and future wells and groundwater. E.g., *Keystone and Varjabedian,* as well as *Gray v. County of Madera,* defeating an EIR for surface mining to deplete competing owners' wells and groundwater based on what the court rejected as mitigations similar to those disputed mitigations proposed here by Rise in its disputed EIR/DEIR.

Indeed, ***Hardesty* also clarifies key differences between vested rights as a property owner versus a vested right for mining**, stating (at 806-807) (emphasis added) **the need for vested rights claimants to continue to comply with environmental and various other laws:**

> As we will explain, we agree that the [ancient Federal mining] patents conferred on **Hardesty vested rights *as a property owner*, but that is not the same as vested rights *to mine* the property absent compliance with state environmental laws.** The Board and trial court correctly concluded that Hardesty **had to show active surface mining was occurring on the effective date of SMARA, or the very least show objective evidence that the then owner contemplated resumption of such activities.** Under the facts, viewed in the appropriate light, Hardesty did not carry his burden to show that ***any*** mining was occurring or any intent to mine existed on the relevant date [3/31/1988. **Further, the Board and trial court correctly applied the "nonconforming use" and abandonment doctrines to the facts herein.**
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> **Indeed, in a case involving a different open-pit mine also operated by Hardesty, we rejected his view that a "vested right" to mine under SMARA obviates the need to comply with state environmental laws …[citing to] *Hardesty v. Sacramento Met. Air Quality Management Dist.* (2011), 202 Cal.App.4th 404, 427…**

Such quoted authorities and others in this objection, in the companion Objectors Petition For Pre-Trial Relief, Etc., and record objections to the disputed EIR/DEIR defeat the Rise Petition in many different but cumulative ways.

b. SMARA Requires Reclamation Plans And Financial Assurances That the Rise Petition Ignores And That Rise Could Never Satisfy, And, Even If Rise Had Vested Rights for "Surface Mining" (Which Its Does Not), That Would Not Create Any

Vested Or Other Rights Claimed by Rise, Especially For Its Proposed Underground Mining In the 2585-Acre Underground Mine Beneath Objectors.

Any rebuttal to Rise's vested rights claim begins with the following ruling by *Calvert* (at 617, 624, emphasis added):

> **At the heart of SMARA is the general requirement that every surface mining operation have a permit, a reclamation plan, and financial assurances to implement the planned reclamation. (#2770, sub. (a);** People ex rel Dept of Conservation v. El Dorado County (2005), 36 Cal.4th 971, 984…(*"El Dorado").*

See SMARA #2776 and many other precedents demonstrating that vested rights have burdens as well as benefits for the miner. See also SMARA #'s 2733 (broadly defining " reclamation" in ways that, when properly applied, will make the required "financial assurances" defined in # 2736 unaffordable by Rise or its buyer) and # 2716 (allowing any interested persons [i.e., any objector here] to commence legal actions for writs of mandate to enforce counters against the miner, as was done in *Calvert and other cited cases.)* As explained in this objection and others, there is not, and cannot be, any satisfactory Rise reclamation plan for any vested rights mining, and, even if there were such a reclamation plan, objectors can prove from Rise's SEC filing admissions that Rise lacks any economic and other feasibility or credibility to perform any such assurances. *Hardesty* and other cited authorities also defeat Rise's vested rights claims for many other reasons discussed in various places herein, but (besides that similar "abandonment" reasoning applicable in both that dispute and this one) that Court of Appeal's analysis of SMARA itself is especially lethal to Rise's theories.

For example, as *Hardesty* explained (at 801, emphasis added):

> **SMARA requires that all surface mining operations have an approved reclamation plan and approved financial assurances to implement the plan. (#2770, subd. (a)). … Persons with existing surface mining operations were required to submit reclamation plan by March 31. 1988. [Id.] Absent an approved reclamation plan and proper financial assurances (with exceptions not applicable herein) surface mining is prohibited. (#2770, subd. (d)).**

The detailed disputes over Rise's "reclamation plan" and related "financial assurances" will be further addressed in other objections, especially since the County has (incorrectly) recently bi-furcated the disputes over vested rights from those over the related reclamation plan and financial assurances. However, any such reclamation plan must relate to the reality of what is to be done in the mining and related operations, which means that not only is Rise's outdated "Existing Remediation Plan" earlier on file at the County deficient and inconsistent with what is required, even regarding the disputed EIR/DEIR plans. Rise is even more wrong in every way for what will be required if this dispute descends into such a vested right "free for all," where no objector knows what will happen in the mine and what laws and regulations apply under the

disputed Rise Petition's claim (at 58) that Rise vested rights somehow empower it to do as it wishes "without limitation or restriction," including not even telling us what Rise plans to do so that objectors can insist on both (i) matching reclamation plans and financial assurances and (ii) compliance with all applicable laws and regulations.

Objectors assume that Rise will attempt incorrectly to use such disputed vested rights claims under #2776 to evade reclamation plans and financial assurances, whether directly or indirectly (or both). But again, that statute clearly is limited (emphasis added) to those who validly have "a vested right to conduct surface mining operations prior to January 1, 1976…" which Rise does not, even as to such Rise's surface mining operations, and nothing in SMARA or any case cited by the Rise Petition provides that any claimed vested right to "surface mining" could create any vested or other right to mine on the disconnected and separate parcels of that new, underground expansion area of the 2585-acre underground mine, especially since that underground IMM is beneath or around surface property owned by objectors and others. E.g., Hardesty quoted above. This objection, the companion Objectors Petition For Pre-Trial Relief, record EIR/DEIR objections, and other coming objections will defeat such attempted Rise claims and evasions.

First, SMARA does not apply to create vested rights for such **underground** mining, and whatever Rise ties to do (and almost everything Rise does without a permit) is subject to legal and political challenge and change by objectors and then also to more changes by new laws (whether by officials passing political or legal reforms, or by voters directly, such as with initiatives), as each disputed use and issue, and the application of each law or regulation, is resolved in the courts. **Second,** Rise will have to react to such changing legal and political realities in its operations (whether by right-thinking government officials enforcing or enacting laws better to protect objecting surface owners from such mining or by self-defense, resident initiatives), thereby requiring more constant changes in the reclamation plan and greater financial assurances, as proven below. See what SMARA allows in #'s 2714 and 2715. **Third,** not just such mining legal changes, but every deficient reclamation plan and financial assurances response by Rise is itself subject to challenge and revision. See, e.g., SMARA #'s 2716, allowing objectors to file actions for writs of mandate; 2717, requiring periodic reporting by the miner as to such reclamation plans and financial assurances. Also, each change in any such reclamation plan requires a new financial assurance to match it, and, considering Rise's admitted financial condition in its SEC filings, objectors cannot imagine Rise ever being able to obtain any such required financial assurance, even for its own proposed and deficient reclamation plan.

2. Any Rise Attempt To Invent Vested Rights For Such Underground Mining By Analogy, Imagined Common Law, Or Otherwise, Is Also Doomed, Legally Impossible, And Practically Infeasible, Including Because SMARA Does Not Correspond To the IMM Realities.

Moreover, no such underground mining legal analogy to SMARA (or its cited cases applying SMARA like *Hansen)* is feasible or legally appropriate, among other things, for example, because objecting surface owners above and around the 2585-acre underground mine have competing constitutional, legal, property, and groundwater rights that must defeat any such Rise claim. Whatever Rise's Brunswick site may allow on the surface (which objectors also still

dispute) is irrelevant, because this Rise Petition is mainly about the gold imagined in the Never Mined Parcels of the 2585-acre underground mine. See the EIR/DEIR and objections thereto, as well as Rise's SEC filing admissions. Apparently, Rise imagines that it can make some vested rights argument for underground mining by inventing common law, such as by analogy to SMARA surface mining. However, there is no legal authority for such a claim (see *Hardesty),* and such a vested rights process is not feasible or even yet attempted by Rise. Consider, for example, what governmental agency would even have any jurisdiction even to deal with whatever Rise wants to file or have approved in such an imagined SMARA regulation equivalent for underground mining (e.g., some SMARA equivalent reclamation plan or financial assurances proposal). Where would the agency find the budget or qualified staff to deal with such new and unauthorized underground matters, not to mention all the inevitable disputes with objectors, as here. Moreover, no such legal analogy (even rebranded as imagined common law) is appropriate (as shown elsewhere and in *Hardesty*) because objecting surface owners above and around the 2585-acre underground mine have their own, unique, competing constitutional, legal, and property rights (including as to groundwater and existing and future well rights) that must defeat any such Rise claim; e.g., trying to regulate such underground mining by some SMARA analogy inevitably will clash with such surface owners' competing rights that is never an issue in surface mining. What government agency will want to wade into such conflicts without any statutory authority and no state or local funding? What court will want to ignore the constitutional separation of powers to try to fill such a regulatory gap and spend the next 80 years refereeing the constant conflicts with surface owners and other objectors over such 24/7/365 IMM underground mining where the governing law must be crafted by issue-by-issue test case litigation?

Indeed, as some objectors already demonstrated in objections to the EIR/DEIR, for example, surface owners' groundwater and wells depletion by Rise "dewatering" for underground mining would raise complex "taking" or inverse condemnation and other issues under the Fifth Amendment to the US Constitution as well as under the California constitution. See SMARA #2713, *Keystone*, and *Varjabedian*, as well as *Gray v. County of Madera* rejecting purported and disputed mitigation solutions for depleting wells by draining the competing property owners' groundwater that were even less bad than Rise's disputed and illusory mitigation proposals. It makes no policy or economic sense for the County to accommodate meritless Rise's vested rights claims for needless fear of Rise liability claims, only to thereby provoke thousands of the objecting and voting surface owners above and around the 2585-acre underground mine, especially since, as demonstrated in many EIR/DEIR objections, cases like *Gray v. County of Madera,* already have rejected the kind of deficient and disputed mitigation measures that Rise has proposed. Moreover, even if somehow referencing SMARA helped Rise (even by incorrect analogy or to craft some disputed common law), any such analogy would have to include all of SMARA, i.e., both the benefits and the burdens; not just the cherry-picked parts Rise seems to like in a doomed attempt to evade permit requirements**. For example, SMARA #'s 2715 and 2716 prevent any such vested rights thereunder from allowing pollution or nuisances (which would clearly exist from such Rise mining without permits)** or from counters by thousands of voting objectors electing "wise policy" officials and causing the passage of wise laws and regulations to prevent such abuses and other wrongs by Rise and to

protect surface owners and others from objectionable Rise mining as explained in objections to the disputed EIR/DEIR, especially from depleting surface owner groundwater and wells.

More fundamentally, SMARA includes its own interactive regulatory system for such **surface** mining that cannot be misused by Rise, even by such analogies etc., for its **underground** mining. Rise apparently contemplates claiming vested rights under SMARA to proceed without the normally required permits and CEQA compliance for which Rise has already applied and which the Planning Commission has properly recommended that the Board reject. (Rise's disputed letter incorrectly protesting that Planning Commission decision will also be the subject of further counters by objectors as we near the Board consideration of the Rise Petition or EIR, as applicable, and to correct that record.) However, an examination of SMARA reveals that its regulatory system still has ample protections for the public against miners, especially as to requirements Rise cannot hope to satisfy by its doomed reclamation plans and related financial assurances, even if somehow it were possible (which it is not) for SMARA to be adapted by the courts by analogy or common law for Rise's underground mining. Consider, for example, how SMARA #2717 ensures compliance with reporting and monitoring, especially of reclamation plans and financial assurances in accordance with detailed policies and requirements for reclamation of "mined lands" in #'s 2740-2764, following the statutory mandates for reclamation plans and the conduct of surface mining operations in sections 2770-2779. For instance, SMARA #2773 requires the specific application of each reclamation plan to each "specific piece of property" "based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, etc. (an insufficient list for underground mining) as well as "establishing site-specific criteria for evaluating compliance with the approved reclamation plan …" and adopt[ing] regulations specifying minimum, verifiable statewide reclamation standards…" (again insufficient to include underground mining and groundwater variables and issues.) Likewise, #2773.1 requires "financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operator's approved reclamation plan…" that Rise could never afford according to its own admissions in its SEC filings. Consider even rebuttal evidence by objectors in the EIR/DEIR objection record of Rise's financial infeasibility and even in DEIR at 6-14 (where Rise admitted that the IMM project is not so feasible, unless Rise can mine as it demands 24/7//365 for 80 years, which objectors expect to become legally impossible.)

Note that, while Rise may plan to "flip" this disputed IMM opportunity to another miner with more financial capabilities (e.g., stated by the staff as an incorrect justification for ignoring objectors' evidence and admissions of Rise's financial infeasibility in the EIR/DEIR dispute process), objectors note that such a solvent and successful buyer (as distinct from the usual "shell" subsidiary, like Rise Grass Valley) may be reluctant to inherit the IMM controversies since laws about successor liabilities can be discouraging to companies with any real assets at risk, such as SMARA #2779: "Whenever one operator succeeds to the interest of another in any incomplete surfacing mining operation … the successor shall be bound by the provisions of the approved reclamation plan and provisions of this chapter."

In no such case is it feasible, constitutional, or appropriate for the courts to try themselves to replace the missing regulators in such functions, or for surface mining regulators to expand their jurisdiction to underground mining. To end any argument on that subject note

that under #2773.1 (a)(2) “Financial assurances shall remain in effect for the duration of the surface mining operation [here 80 years] and any additional period until reclamation is completed” [here potentially forever, considering the pollution that even Rise admits in the EIR/DEIR requires continuous “treatment” of such groundwater entering the mine, plus, for example, the toxic hexavalent chromium in cement paste Rise plans to add into the mine to shore up the mine waste into support columns as will be leaching from them into the Wolf Creek when the mine again floods. See the reclamation problems the ghost town of Hinkley, Ca, documented in the *Erin Brockovich* movie and www.hinkleygroundwater.com , where after all these years and ample settlement funds those victims have still not been able to remediate that groundwater.] Moreover, in #2773.1(a)(3) financial assurances “shall be reviewed and, if necessary, adjusted once each calendar year, to account for new lands disturbed …, inflation, and reclamation of lands accomplished ….”, thus creating an annual battle between Rise and all the objecting neighbors at risk for such 80 plus years. See # 2796.5(e) providing reimbursement rights for government remediation in civil actions when the miner allows or causes pollution or nuisance. Also, SMARA # 2773.1(b) mandates such a financial feasibility analysis with public hearings and corrective/defensive actions, and objectors contend that must now also be an issue in this vested rights process. See, e.g., SMARA #2772.1.5 including financial tests for financial assurance credibility that Rise cannot possibly satisfy, such as a “minimum financial net worth of at least thirty-five million dollars ($35,000,000) adjusted annually to reflect changes in the Consumer Price Index…” and other regulatory requirements. And any amendment to any miner reclamation plan (inevitable as objectors prevail in their litigation objections, especially after the annual #2774.1 government inspections) would require under #2772.4 a new “financial assurances cost estimate.” Furthermore, SMARA and related laws themselves will change over time, both by approval of local ordinances (e.g., #2774.3) and public pressure on the applicable government officials to carefully police the mine under # 2774.4, especially when the public makes such mining “an area of statewide or regional significance” under # 2775 for such enhanced policing. How would any of that work in this Rise underground, vested rights fantasy

The power of such objections is magnified by the fact that disputes over such reclamation plans and financial assurances must consider the manifest (and to some extent Rise admitted in SEC filings) unknowns and uncertainties in the disputed EIR/DEIR plan, assuming Rise does not revise that disputed plan to be even more objectionable in disputed reliance on its alleged freedom from use permit and other compliance, claiming (Rise Petition at 58) vested rights permission to operate as it wishes “without limitation or restriction.” Among other things, consider obvious risks in: (i) reopening such a massive underground mine that has been discontinued, dormant, abandoned, closed, and flooded since 1956, without any adequate study of the current actual conditions of the existing mine or the new, expanded area to be mined (as distinct from Rise’s disputed consultants “theories,” i.e., often seeming to be pro-mining, biased guesses) or the new, expansion mining parcels (the “Never Mined Parcels” discussed in this objection) doubling its size (e.g., 76 versus 72 mines of new versus old tunneling, and now even deeper in the new mining); (ii) proceeding with mining without adequate exploration, investigation, or credible, reliable, or otherwise critical information as to all the risks listed for investors in Rise’s SEC filings, but mostly ignored improperly both in the disputed Rise Petition and in Rise’s disputed EIR/DEIR; and (iii) satisfying Rise’s burden of proof,

which, under the facts and circumstances, will be impossible for Rise to satisfy in any litigation where the rules of evidence apply, since even much of the insufficient, unreliable, inadmissible, and otherwise noncredible proof Rise has offered so far will fail to overcome objectors' evidentiary objections when they are allowed to be applicable, no later than in the judicial process

Exhibit A: Selected Admissions From Rise Gold Corp SEC Filings (With Some Related Admissions From the EIR/DEIR), Countering And Rebutting the Rise Vested Rights Petition And Related Rise Claims.

I. Introductory Highlights Illustrating Rise Admissions of Facts That Defeat Vested Rights Claims, Including How Rise Cannot Satisfy Its Burden of Proof Using "Alternative Realities" About Historical And Other Facts.

A. Some Initial Comments On Rise SEC Filings, Particularly Rise's Current SEC Form 10K Dated October 30, 2023, for the fiscal year ending July 31, 2023 (the "2023 10K" and, together with previous 10K filings, collectively called the "10K's"), And Rise's Most Recent Form 10Q Dated June 14, 2023, for April (the "2023 10Q" and, together with the previous 10Q filings, collectively called the "10Q's").

1. Rise Admissions Addressed In Rise SEC Filings Cannot Be Disregarded As Objector Evidence, Both (a) Because They Are Allowed By the Evidence Code As Rebuttals To Counter Specific Contrary And Conflicting Rise Petition Claims, And (b) Because They Counter Any Rise Financial Assurance And Reclamation Plans And Other Requirements Essential To the Existence of Any Vested Rights.

In the past, objectors' rebuttal evidence from Rise admissions in SEC filings and otherwise was incorrectly excluded from the EIR/DEIR disputes, despite objectors' citation of ample authorities and justifications for the admissibility of such Rise admissions. Therefore, objectors begin with this proof supporting objectors' use of such admissions as evidence to defeat this Rise Petition. However, whatever the County may decide about such evidentiary disputes, the courts in the following processes will agree that admission of such rebuttal evidence is mandatory, especially because objectors are directly proving by Rise admissions facts that are directly contrary to, or in conflict with, what vested rights require**.** See objectors' **"Initial Evidentiary Objection"** and the companion **"Objectors Petition For Pre-Trial Relief, Etc."** described below to which this Exhibit is designed to be attached. For example, such rebuttals and refutations in objectors' Initial Evidentiary Objection rebuts each material Rise Petition Exhibit, while also explaining the legal and evidentiary bases for objectors' use of these SEC admissions to refute any possibility of any Rise vested rights. That companion "Objectors Petition For Pre-Trial Relief, Etc." adds more law and evidence in support of such rebuttals through these admissions to justify requested relief and greater clarity before the Board hearing. In other words, objectors are not just refuting Rise's purported "evidence" with its own words but also proving with Rise admissions that such vested rights cannot exist as the courts correctly define such vested rights.

As demonstrated in many court decisions, such as ***Communities for a Better Environment v. City of Richmond*** (2010), 184 Cal. App.4th 70 (where objectors' use of Chevron's inconsistent SEC filing admissions defeated Chevron's EIR) (sometimes called "**Richmond v. Chevron**"), such admissions are indisputably admissible and powerful rebuttal evidence. Moreover, the disputed EIR/DEIR itself (as well as Rise's related project permit and approval

applications, which objectors include here in the collective term **"EIR/DEIR"** for convenience), also add admissions contrary to, or inconsistent with, the Rise Petition seeking vested rights. Those may also be referenced herein, although the disputed "ambiguities," "hide the ball" and "bait and switch" tactics," and other objectionable features of the Rise Petition create uncertainty about what the disputed Rise Petition is actually claiming. Rather than be at risk from such Rise conduct, objectors may assume the "most likely worst case" from Rise to be "safe." Objectors also insist on **Evidence Code ("EC") # 623** and other laws to estop or otherwise prevent Rise from exploiting any such inconsistencies in the Rise Petition. See the many applications of the EC rules in objectors' Initial Evidentiary Objection, such as EC #356 (the right to use the whole "story" to rebut the claimant's cherry-picked parts), 413 (contesting claimant's failure to explain or deny evidence), and 412 (contesting claimant's failure to produce better evidence that it could have presented if it wished to be accurate).

In any event, the Board needs to appreciate how inconsistent and contradictory the Rise Petition "story" is from the "story" Rise has told its investors in Rise's new "2023 10K," even after Rise radically changed its incorrect legal theory to assert instead its disputed vested rights' claims. The new, October 30, 2023, SEC Form 10K (the "**2023 10K**") filed by Rise after its September 1, 2023, (the "**Rise Petition")** should be at least consistent with each other. Instead, this rebuttal proves by Rise admissions that those stories are inconsistent or contradictory in many respects. For example, that 2023 10K admits to at least 25 major "Risk Factors" as warnings to its investors that cannot be reconciled with the Rise Petition or what Rise claims in or about its Exhibits thereto. This objection discusses each such conflict below and explains how such admissions impact the disputed Rise Petition. Objectors also note that these periodic SEC filings make Rise's admissions something of a "moving target." However, because this recent 2023 10K has been filed after the Rise Petition dated September 1, 2023, we focus on that as most impactful on the disputed Rise Petition, with some pre-vested rights claim illustrations to follow in an Attachment for comparison.

Correcting such Rise "errors" (or whatever is the correct characterization) is critical for the "clarity" to which objectors are entitled from the disputed Rise Petition and which the Board (or, if necessary, the court) needs about any such material Rise inconsistencies or worse to reconcile and resolve between (a) the stories Rise is telling the SEC and its investors (with a few additions from Rise admissions in the disputed EIR/DEIR or related Rise filings and presentations), versus (b) the disputed Rise Petition. That is an example of what the **"Objectors Petition for Pre-Trial Relief, Etc."** seeks before the Board hearing or, in any case, in the court proceedings to follow because objectors have made such requests to enhance our record. Because our current objection deadline is at the start of that Board hearing, while Rise continues to have an opportunity again to change and supplement its story during the hearing without objectors having any meaningful rebuttal opportunity (as we previously suffered at the EIR/DEIR hearings), objectors seek to inspire the County to require greater clarity from Rise before the hearing. Everyone should be able to anticipate (as best as we can) what disputed additions Rise may make during the hearing for which a three-minute rebuttal is grossly insufficient. Because many such Rise inconsistencies, contradictions, and worse are already addressed in the objectors' EIR/DEIR record (also including objections to much of the County Economic Report and County Staff Report), objectors again incorporate them into this and each other Rise Petition objection for such rebuttals.

Also, the base objections in the "Initial Evidentiary Objection" (including the incorporated EIR/DEIR objections), including use of Rise admissions against itself, are also incorporated by reference herein to avoid repetition. (However, some may be summarized to support arguments against Rise's vested rights claims.) Those objections include the more than 1000 pages in four "Engel Objections" to the EIR/DEIR and the more than two score of other objectors' filings cross-referenced and incorporated therein. See what the County labeled as DEIR objection Letters Ind. #'s 254 and 255 and related EIR objections dated April 25, 2023, and May 5, 2023, respectively (including each exhibit and incorporation, collectively called the "Engel Objections.") While the disputed EIR/DEIR process so far have incorrectly declined to consider such economic feasibility objections and other rebuttals, in effect obstructing objectors' counters to Rise claims (even though Rise itself violated those incorrect "boundaries"), that CEQA dispute cannot be allowed to interfere in this vested rights process with such evidence from SEC filing admissions on those subjects and others. See, e.g., *Communities for a Better Environment v. City of Richmond* (2010), 184 Cal. App.4th 70, where objectors' use of Chevron SEC filing admissions and inconsistencies defeated Chevron's EIR in correctly demonstrating the law of evidence, as further illustrated in the Initial Evidentiary Objection.

2. Consider, For Example, Rise's Admission (2023 10K at 13-14) That Its Mining Plan Is Conditional On the Results of Its Exploration, Thereby Defeating Its Vested Rights.

Rise admits in various ways in this 10K discussed below that, if Rise's further "exploration" does not produce satisfactory results, Rise will not mine and, even if Rise wished to mine, Rise would not be able to continue any mining plan unless such exploration results convince Rise's money sources to fund further operations. (This was admitted in terms of Rise lacking the capacity to mine (or even unconditionally to commit to mine) unless it was able continuously to find the needed financial and other support from its investors.) For example, Rise states (Id. emphasis added): **"Our long-term success depends on our ability to identify mineral deposits on our I-M Mine Property … that we can then develop into commercially viable mining operations." Furthermore, Rise admits that:**

> **Mineral exploration is highly speculative in nature, involves many risks, and is frequently non-productive. These risks include unusual or unexpected geologic formations and …[listing various risks already admitted by Rise, including the need for "capital available for exploration and development work."]**
>
> **Substantial expenditures are required to establish proven and probable reserves through drilling and analysis to develop …[listing again what is needed for mining and how they determine "whether a mineral deposit will be commercially viable]. WE MAY INVEST SIGNIFICANT CAPITAL AND RESOURCES IN EXPLORATION ACTIVITIES AND FIND IT NECESSARY TO ABANDON SUCH INVESTMENTS IF WE ARE UNABLE TO IDENTIFY**

> **COMMERCIALLY EXPLOITABLE MINERAL RESERVES. THE DECISION TO ABANDON A PROJECT MAY HAVE AN ADVERSE EFFECT ON THE MARKET VALUE OF OUR SECURITIES AND THE ABILITY TO RAISE FUTURE FINANCING. Id. (emphasis added)**

Moreover, Rise admits these losses and problems are expected to continue:

> **THE COMPANY EXPECTS TO OPERATE AT A LOSS FOR AT LEAST THE NEXT 12 MONTHS. IT HAS NO AGREEMENTS FOR ADDITIONAL FINANCING AND CANNOT PROVIDE ANY ASSURANCE THAT ADDITIONAL FUNDING WILL BE AVAILABLE TO FINANCE ITS OPERATIONS ON ACCEPTABLE TERMS IN ORDER TO ENABLE IT TO CARRY OUT ITS BUSINESS PLAN. THERE ARE NO ASSURANCES THAT THE COMPANY WILL BE ABLE TO COMPLETE FURTHER SALES OF ITS COMMON STOCK OR ANY OTHER FORM OF ADDITIONAL FINANCING. HOWEVER, THE COMPANY HAS BEEN ABLE TO OBTAIN SUCH FINANCINGS IN THE PAST. IF THE COMPANY IS UNABLE TO ACHIEVE THE FINANCING NECESSARY TO CONTINUE ITS PLAN OF OPERATION, THEN IT WILL NOT BE ABLE TO CARRY OUT ANY EXPLORATION WORK ON THE I-M MINE PROPERTY OR THE OTHER PROPERTIES IN WHICH IT OWNS AN INTEREST AND ITS BUSINESS MAY FAIL. ID. AT**

But again, nowhere in the disputed EIR/DEIR, Rise Petition, or other Rise filings does Rise ever explain what happens to the mine and our community, especially those of us living on the surface above or around the mine when Rise ceases operations for any reason (including because the investors stop funding the money required continuously for years before Rise admits it could possibly produce any revenue.) Thus, everyone is at continual risk for years before the best case (for Rise) when (and, even Rise admits, if) break-even revenue is achieved. Rise admits it may be unable to perform (or credibly commit to perform) anything material in its disputed plan. At any time, Rise or its money source could decide that the results of such future explorations are unsatisfactory and "abandon the project." Who cleans up the mess Rise leaves behind? That is both why reclamation plans and financial assurances are essential to any vested rights and why it is a legal and policy mistake to separate the adequacy of such reclamation plans and financial assurances from the dispute over the existence of vested rights.

3. **Consider, For Example, Some of the Many Adverse Rise's 2023 10K Admissions About Its "Vested Mine Property" That Rise Calls the "I-M Mine Property" in These SEC Filings And Objectors Call the "IMM" (with special treatment regarding the toxic Centennial site which the Rise Petition has hopelessly confused with irreconcilable contradictions with the EIR/DEIR.)**

As one calculates the disputed reliability of Rise's comments, especially when Rise's plans appear illusory because of chronic, economic infeasibility (plus the substantial uncommitted financing Rise admits below that it continuously needs for years and which seems speculative considering the huge exploration and startup costs before Rise admits anyone can even make an informed guess if and to what extent there is any commercially viable gold there), the Board should focus on the Rise admissions in the 2023 10K (at 11 emphasis added) section about "Risk Related to Mining and Exploration." There Rise stated: "WE HAVE NOT ESTABLISHED THAT ANY OF OUR MINERAL PROPERTIES CONTAIN ANY MINERAL RESERVE ACCORDING TO RECOGNIZED RESERVE GUIDELINES, NOR CAN THERE BE ANY ASSURANCE THAT WE WILL BE ABLE TO DO SO." Also consider (at Id., emphasis added) :

> **The I-M Mine Property is in the exploration stage. There is no assurance that we can establish the existence of any mineral reserve on the I-M Mine Property … in commercially exploitable quantities. Unless and until we do so, we cannot earn any revenues from these properties and if we do not do so we will lose all of the funds that we have expended on exploration, If we do not establish the existence of any mineral reserve in a commercially exploitable quantity, the exploration component of our business could fail.**

As objectors' following analyses of Rise admitted "Risk Factors" demonstrate, among other things and contrary to the disputed Rise Petition, Rise is just speculating and slowly doing minor exploration when money to do so is available. Rise is not planning or acting to mine in a way that creates or preserves any vested right to any mining "uses," especially those in the 2585-acre underground IMM that neither Rise nor any predecessor has even "explored" (apart from trivial, occasional drilling) since that dormant mine closed, discontinued, flooded, and was abandoned by at least 1956. Rise has no current or objective intent or commitment to execute any mining "use" plan on any schedule or to commit to any such startup mining activities beyond the separate exploration" use" (that does not create any vested right for any mining "use"), unless and until Rise believes that it has raised the funds for sufficient further such "exploration" and Rise and its speculator- financiers/investors each find those exploration results to be "successful" in demonstrating WHAT RISE ADMITS DOES NOT NOW EXIST: SUFFICIENT, PROVEN GOLD RESERVES IN CONDITIONS THAT CAN BE MINED PROFITABLY AND SUFFICIENT FINANCING ON ACCEPTABLE TERMS AND CONDITIONS TO CARRY THE MINE OPERATIONS TO POSITIVE CASH FLOW. Under the circumstances that cannot create vested rights for mining any parcel of the 2585-acre underground mine, and particularly the "Never Mined Parcels" that required not only such exploration, but, first, also all the startup work in the Brunswick shaft and the Flooded Mine (e.g., dewatering the flooded mine and reconstructing 72 miles of flooded tunnel and infrastructure) even to be able to reach those Never Mined Parcels to begin any exploration or gold production there. (Remember the surface above the 2585-acre underground mine is owned by objectors and others and not available to Rise for exploration or access, as admitted by Rise in its previous 10K.)

This is not a meritorious vested rights case, but more like this analogy. A Texas holdem poker-playing gambler puts in his ante (buying the IMM cheap) and matches the bets on the

initial round (e.g., the preliminary exploration, initial permitting application work, and then the recent vested rights litigation work) waiting to see the "common cards" dealt out face up on the table one by one to decide whether or not to stay in the game or fold. Rise admits (to its investors and the SEC) throughout this 2023 10K that it may fold. That conditional, wait-and-see approach, especially when Rise is entirely dependent on discretionary funding from money sources who may be more risk adverse, is the opposite of what the Rise Petition claims as a continuous commitment to mine sufficient for preserving vested rights that Rise incorrectly imagines Rise inherited from each previous predecessor. Because there needs to be a continuous, unconditional commitment to mining for vested rights (perhaps under different circumstances allowing short term delays for "market conditions"), such speculators like Rise cannot qualify with such conditional intentions. Such conditional interest in possible mining is not the kind of commitment required by applicable law, because Rise is only "in the game" as long as both Rise and its money source like their odds and as long as their investors keep handing Rise the money to continue their bets.

But, as explained in existing record objections**, once Rise starts any actual work at the IMM (e.g., prolonged dewatering work in particular as an early starter), our community will be much worse off when Rise stops than we are now, one way or another.** Of course, the more Rise does to execute its disputed mining plan will also make our community and, especially objecting local surface owners worse off. Therefore, this objectionable activity cannot ever be allowed to start.

But consider it from this alternative perspective of the impacted local objectors. Rise admits that any intent to actually mine is dependent on many pre-conditions, such as successful future exploration and related fundraising, meaning that Rise does not have the required objective, continuous, and unconditional intent to mine required for vested rights. But suppose (as the law requires and objectors contend) the Rise reclamation plan and financial assurance plans are decided at the same time as the vested rights. In that case, it will become clear that there can be no such vested rights, because no such Rise investors are going to go "all in" by funding at this admittedly early exploration stage the required financial assurances in advance to Rise for the massive reclamation plan that will be required for any such mining. By reference to the gambler analogy above, even if Rise were willing and intending to push all its chips on the table at the start before seeing the next open face cards (e.g., certainly before starting to dewater the IMM and begin depleting groundwater and existing and future well water), it is hard to imagine the investor holding back the chips needed by Rise to commit "to go all in" would prematurely commit to that gamble. That is especially considering all the risks not just admitted by Rise here, but also those demonstrated by record objections to the disputed EIR/DEIR and Rise Petition. Even the more aggressive money players backing such gamblers wait to see all (or at least most all) of the cards face up before they go all in. Stated another way, the objective test of any vested rights intent to mine is proven or disproven by whether or not the miner's money source is willing to go all in now, i.e., at the time the vested rights questions are to be decided. Otherwise, what Rise Petition is incorrectly claiming (without any precedent) is that such miners can have an OPTION TO MINE IF THEY WISH AFTER THEY PROCEED WITH INDEFINITE EXPLORATION ACTIVITIES WHILE TRYING TO RAISE THE REQUIRED FUNDING AND WHILE US SURFACE OWNERS AND OUR COMMUNITY INDEFINITELY SUFFER THE STIGMAS DEPRESSING OUR

PROPERTY VALUES. No applicable law gives such an indefinite option to Rise at objectors' prejudice, as the property values of objecting surface owners above and around the 2585-acre underground IMM remain eroding indefinitely while Rise gambles to our harm.

Consider, for example, how the unprecedented, disputed, and incorrect Rise Petition's "unitary theory of vested rights" is not just inconsistent with EIR/DEIR admissions and with applicable law requiring continuous vested rights for each "use" and "component" on each "parcel" (even in Rise's favorite *Hansen* case). Still, the Rise Petition's failure to so distinguish between "mining" versus "exploration" "uses" and between SURFACE mining "uses" versus UNDERGROUND mining "uses" as required in *Hardesty* is contradicted in Rise's 2023 10K at 29 (and earlier 10K and 10Q filings) as follows:

> **"Mineral exploration, however, is distinct from the definitions of 'subsurface mining' [aka underground mining] and 'surface mining.' Exploration involves the search for economic minerals through the use of geological surveys, geophysical prospecting, bore holes and trial pits, and surface or underground headings, drifts, or tunnels (NCC #L-II 3.22(B)(5)." (emphasis added)**

For another example, consider how Rise is claiming inconsistently that at the same time: (a) the toxic **Centennial** site is (and has been, as admitted, including in the EIR/DEIR contradicting the Rise Petition) physically, legally, and operationally separate in all material respects from the Brunswick IMM project, including the 2585-acre underground mine, so that they are separate projects for CEQA, as explained at length in the disputed EIR/DEIR admissions (a position that Rise incorrectly contends provides it both legal immunity from the environmental liabilities associated with the Centennial pollution and CERCLA etc. clean up, as well as evading adequate CEQA disclosures about Centennial), but also (b) somehow for Rise Petition's vested rights claims, massive and prolonged dumping of Rise mine waste from the new underground mining (and the related repairing of the old "Flooded Mine" for access) in the 2585-acre new Never Mined parcels allegedly are not an "expansion" or a "new operation" or a new "intensity" that would contradict and defeat Rise's vested rights "story." Also, the 2023 10K (and earlier versions) admit that Rise purchased the Centennial site parcels in 2018, separately from Rise's 2017 purchase of the IMM. As stated, Rise cannot have both CEQA exclusion for Centennial and vested rights for including Centennial in the new, separate, underground mining project in the "Vested Mine Property." Among other things, the disputed Rise Petition's "unitary theory of vested rights" is legally incorrect and inapplicable. See the discussion below of Rise's SEC 10K admissions on this topic versus both the disputed EIR/DEIR and many record objections and others thereto. See, e.g., 2023 10K at 32 admitting that the CalEPA has not yet approved (and may never approve) the Final RAP dated 6/12/2020, and the massive record objections to the disputed EIR/DEIR also dispute any such Centennial approvals.

Also consider the Rise admission in the 2023 10K (at 29) that "the planned land use designation for the Brunswick land remains 'M-1' Manufacturing Industrial, while the planned land use designation for the "Idaho land" (Centennial) is 'BP' Business Park (CoGV-CDD, 2009)." How can Rise possibly imagine any "continuous" vested rights for mining "uses" for either (i) the toxic "Centennial" mine that for many years no one could possibly "use" 'legally" for mining (see, e.g., the EIR/DEIR admissions and record objections to the EIR/DEIR) or other

related uses, or (ii) such Idaho land as rezoned "Business Park" (on which no mining has been attempted or contemplated for many years) and as to which every relevant predecessor before Rise believed would have again required rezoning that seems not only legally infeasible, but also economically infeasible, considering even just the environmental compliance and cleanup costs. While under certain circumstances and conditions (not applicable here) vested rights could perhaps evade certain use permit requirements for continuous "legal" uses on a parcel, Rise has not even attempted to overcome its burden of proof for vested rights for any such continuous mining uses when Centennial must first be legally remediated before anyone could even begin to think about mining there. Indeed, the EIR/DEIR did not even contemplate mining on Centennial, perceiving it just as a potential surface dump for mining waste from other parcels, and no such dump uses (or, if remediated, business park uses, could ever create in basis for expanding the long abandoned and legally prohibited mining uses from Centennial to other parcels as contemplated by the disputed Rise Petition. Also, as admitted in the 2023 10K and even in the EIR/DEIR, Centennial is disconnected from the rest of the IMM or Vested Mine Property in what must be a separate parcel, so that under *Hansen, Hardesty,* and other applicable cases nothing on any separate parcel creates any vested rights "uses" for any other such parcel that did not have the same such continuous "uses."

Because of such inconsistencies, contradictions, and all the other lacks of required "good faith" and objectionable conduct described in the hundreds of existing objections and those additional objections to come against Rise's new vested rights claims, Rise has created what the *Hardesty* court called a "muddle." That "muddle" creates massive disabilities for Rise's burden of proof on all of its critical vested rights claims, as well as adding many new defenses for objectors to the vested rights, such as "unclean hands," "bad faith," "estoppels," "waivers," evidentiary bars and exclusions, and many more in particular issues. See objectors' Initial Evidentiary Objection incorporated herein. (For example, under these circumstances and in this kind of administrative process, there cannot now be "substantial evidence" to support either Rise Petition's vested rights claims or Rise's EIR/DEIR claims. Also, in the court process to come objectors will have extra time and opportunity even more fully to contest and rebut Rise so-called evidence, such as by motions in limine to exclude most of Rise's self-contradictory evidence.) Id. Whenever the law of evidence is allowed to apply, Rise cannot prevail, and (while avoiding any delays in rejecting the Rise Petition) the County should insist that Rise provide BEFORE THE HEARING a comprehensive, consistent, sufficiently detailed, admissible, compliant, and evidentiary appropriate presentation of the reality to litigate with objectors in a full, due process proceeding as equal participants. While it may be possible (in different situations no applicable here) to litigate alternative legal theories, Rise cannot expect the County to approve (and objectors to litigate) more than one of such "alternate realities" inconsistently asserted by Rise to suit each of Rise's disputed, alternative legal theories.

Unfortunately, the County has bifurcated the consideration of the existence of Rise Petition's vested rights from the "reclamation plan" and "financial assurances" that should be essential to any vested rights contest. For example, how can there be any vested rights at all, if (as here) Rise is incapable of providing any adequate "financial assurance?" Even worse, any tolerable "reclamation plan" would itself violate the requirements for vested rights to exist; i.e., such reclamation actions themselves must have vested rights, or else implementation of

that reclamation plan needs its own use permit. See, e.g., discussion in the Initial Evidentiary Objection authorities and other objections regarding how the addition of the Rise water treatment plant on the Brunswick site would be a prohibited "expansion," "intensification," and new, unprecedented "component" (see, e.g., *Hansen* citing *Paramount Rock*) that cannot have any vested rights. The same is true about Rise's unprecedented plan to pipe cement paste with toxic hexavalent chromium into the underground mine to create shoring columns of mine waste, exposing locals to the fate of Hinkley, CA, which died with many of its residents from such hexavalent chromium water pollution as shown in the movie *Erin Brockovich*, and which survivors (despite massive funding from the culpable utility) still are unable to remediate such toxic groundwater (e.g., www.hinkleygroundwater.com).

4. **Rise's Vested Rights Cannot Exist Without A Sufficient "Reclamation Plan" With Adequate "Financial Assurances." Still, Rise's SEC Filings All Admit That Rise Lacks The Resources To Provide Any Meaningful Such Financial Assurances, And The Kinds of Reclamation Plans That Would Be Essential Require Their Own Vested Rights, Which Cannot Exist For Them In This Case, Resulting In Rise's Need For Objectionable Use Permits That Should Be Impossible To Obtain.**

Any adequate "reclamation plan" for the many vested rights requirements demonstrated in this Exhibit and many other record objections would also require their own vested rights, especially when assessed (as they must be) on a parcel-by-parcel, use-by-use, and component-by-component basis. Id. That means Rise would need permits that should be impossible to achieve over the massive and meritorious objections that those applications would inspire. Whatever the Rise reclamation requirements will be determined to be in these disputes from objectors, the related mine work and improvements must be considered new, expanded, and more intense "uses" compared to the historical 1954 mine on which Rise purports to base its vested rights claims. This is not just about changes in science, equipment/infrastructure/materials, and modern technology/practices, but also simply both by the massive scale of the "expansion" and "intensity" of the impacts, measured not just by ore, or by waste rock removed from the underground mine, but, more importantly, by the scale and impacts on the local community, especially on those objectors owning the surface above and around the 2585-acre underground mine. Id. As the EIR/DEIR and earlier SEC filings admit (see, e.g., the Attachment to this Exhibit explaining more from previous 10K's than now revealed in the 2023 10K), the mining expansion from 1954 is massive in scope and intensity, increasing far beyond vested rights tolerance standards from (a) the 72 miles of underground tunnels with 150 miles of drifts and crosscuts in the Flooded Mine that existed in October 1954 and discontinued, flooded, and closed by 1956, to (b) after 24/7/365 dewatering and other startup work for more than a year, adding another 76 miles of new tunnel in the Never Mined Parcels beneath and around our objecting surface owners and others, plus whatever drifts, cross-cuts, and other lateral adventures the miner may pursue. This is relevant to disputing vested rights because Rise's new and unprecedented "components" for which no vested rights could exist (e.g., *Hansen* citing *Paramount Rock*) would have to include not only a water treatment plant, but also a new water replacement system (that Rise's SEC filings demonstrate it could not

afford) as the court required under similar circumstances in the controlling case of ***Gray v. County of Madera (2008), 167 Cal.App.4th 1099 ("Gray")*** **(rejecting the miner's mitigation proposals similar to those proposed by Rise's disputed EIR/DEIR for a tiny fraction of the impacted surface owners), applying legal standards that could only be satisfied by an equivalent water delivery system for each impacted local.**

More fundamentally, as demonstrated in such record objections and others to come, Rise's disputed EIR/DEIR are themselves full of errors, omissions, and worse, compounding, and conflicting with those in the Rise Petition, as well as creating more conflicts and contradictions with Rise's SEC filing admissions. This Exhibit reveals how (as in *Richmond v. Chevron)* much other evidence, authorities, and rules, such as EC #'s 623, 413, and 356, apply not just to rebuttals to Rise's disputed CEQA claims, but even more so to these vested rights disputes. That is especially true since those surface owners above and around the 2585-acre underground mine have their own competing constitutional, legal, and property rights at issue, entitling us to even more standing and due process than provided in *Calvert* and *Hardesty*. Besides Rise failing by application of the normal rules of evidence within the correct legal framework explained in the foregoing objection, the Rise Petition also fails the standard of what *Gray v. County of Madera* calls "common sense," and what *Vineyard, Banning, and Costa Mesa* call "good faith reasoned analysis." Thus, any vested rights dispute must allow both rebuttals of what Rise admits and deficiently reveals, plus all the other realities that are exposed regarding the merits of the disputes.

That means the essential comparison for Rise's vested rights claims is not just (i) what Rise choose to reveal about the "Flooded Mine" (the 1954 underground working mine) versus the "Never Mined Parcels" (the new underground expansion mine) and related disputes against alleged "Vested Mine Parcels," but also (ii) what Rise should have revealed in each case that makes the gap between the old and new impossible for Rise to bridge for its disputed, vested rights claims. One example demonstrated in the foregoing objection (and in many EIR/DEIR and other objections) is that the depleting impacts of proposed dewatering of surface owners' groundwater (and existing and future wells) 24/7/365 for 80 years are grossly understated by Rise and far more "expansive" and "intense" than permitted by any applicable authority defining the boundaries of vested rights. Indeed, the 1954 Flooded Mine did not have surface owners above or around it, but because of surface sales by Rise predecessors over time, Rise inherited a massive community above and around that 2585-acre underground mine whose interests can only be protected by many new uses, components, and other things for which there was no 1854 precedent and for which no vested rights are possible now. Note how Rise and its predecessors (e.g., Emgold) proved nothing by the deficient number and locations of test sites and massively undercounted, impacted existing wells. Also, Rise does not consider the rights of us objecting surface owners living above and around the 2585-acre mine to create new, additional, and deeper competing wells to deal with both the climate change impacts Rise incorrectly denies as "speculative," and to mitigate Rise's wrongs in depleting groundwater and existing and future well water owned by surface owners above and around the 2585-acre undergrounds mine. See the Supreme Court ruling in *Keystone Bituminous Coal Assn v. DeBenedittis, 480 U.S 470 (1987)* ***("Keystone"),*** discussed in the foregoing objection and in such EIR/DEIR and other objections; i.e., Rise cites no authority for any vested rights to deplete any water owned by such objecting surface owners. See also *Varjabedian* (where that court

confirmed that those living downwind of a new sewer treatment plant and so disproportionately impacted by such projects have powerful constitutional rights and other claims.)

B. The Disputed Rise Petition (Like the Disputed EIR/DEIR) Primarily Focuses On the Older, Wholly Owned Portion of the "Vested Mine Property" In Objectionable And Deficient Ways That Too Often Ignore The Disputed Issues Regarding the 2585-Acre Underground Mine Contested by Impacted Objectors Owning The Surface Above And Around That Underground Mine, Especially It's Expansion from the 1954 "Flooded Mine" to What Objectors Call the "Never Mined Parcels" That Have Been Dormant, Closed, Discontinued, And Abandoned Since At Least 1956.

As discussed in this and other objections, the Rise Petition asserts what objectors call Rise's unitary theory of vested rights as to the whole of its so-called "Vested Mine Property," failing to make any serious effort to prove vested rights for each "use" and "component" as continuous on each parcel on the required parcel-by-parcel, use-by-use, and component-by-component bases. Instead, Rise asserts its deficient and insufficient "evidence" to attempt to prove its unprecedented unitary theory of vested rights that seems to claim that anything it does anywhere on the "Vested Mine Property" is sufficient for any "use" or "component" anywhere there, even when Rise's cited *Hansen* decision rejects such an idea, as do the other authorities cited in the foregoing and other objections. While subsequent objections on this subject will demonstrate more errors in that Rise claim and will debate the relevant "parcels" in dispute, objectors frame those issues below in terms of Rise's latest (and only such post-Rise Petition) SEC filing. **Rise's recent SEC 10K for the fiscal year ending July 31, 2023 (at 30) again admits** (as did the previous 10K filings) what the Rise Petition and other communications obscured to "hide the ball" to avoid undercutting their incorrect "unitary theory" excuse (emphasis added):

> "Mineral Rights. The I-M Mine Property consists of **mineral rights on 10 parcels, including 55 sub parcels, totaling 2,560 acres … of full or partial interest**, as detailed in Table 2 and displayed in Figure 4. The mineral rights encompass the past producing I-M Mine Property, which includes the Idaho and Brunswick underground gold mines.
> ***
> The Quitclaim Deed [Rise identifies Document # 20170001985 from Idaho Maryland Industries Inc., to William Ghidotti and Marian Ghidotti in County Records vol. 337, pp.175-196 recorded on 6/12/1963] describes the mineral rights as follows:
>
> The I-M mine Property consists of all rights to minerals within, on, and under the land shown upon the **Subdivision Map of BET ACRES No. 85-7,** filed in the Office of the County Records, Nevada County, California, on February 24, 1987, in Book 7 of Subdivisions, at Page 75 et seq. [See **Rise Petition Exhibit 263** dated Feb. 23, 1987]

> The I-M Mine Property consists of all rights to minerals within, on, and under the land located in portions of Sections 23, 24, 25, 26, 35, and 36 in Township 16 North- Range 8 East MDM, Section 19, 29, 30, and 31 in Township 16 North- Range 9 East MDM, and Section 6 in Township 15 North- Range 9 East MDM and all other mineral rights associated with the Idaho-Maryland Mine.
> ***
> Mineral rights pertain to all minerals, gas, oil, and mineral deposits of every kind and nature beneath the surface of all such real property … subject to the express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land… [and] Mineral rights are severed from surface rights at a depth of 200 ft. (61 m) below surface …. (emphasis added)

Notice that Rise admitted that there are at least 10 parcels and (what Rise calls 55 sub parcels), and objectors will address in a later objection how many more parcels actually may exist. See, e.g., the 2023 10K Table 1 (at 27) describing 12 APN legal parcels just on the Rise-owned surface, without considering any underground mine parcels. Moreover, the color-coded, separate units in SEC 2023 10K Figure 4 show more than 90 parcels. Rise must prove continuous vested rights uses and components at least for each such parcel and sub-parcel, and Rise has not even attempted to satisfy its burden of proof by doing so. Moreover, the vested rights rules prohibit expanding or transferring "uses" or "components" from (i) one parcel (or what Rise calls a "sub parcel") with a vested use or component to (ii) another parcel (or what Rise calls a sub parcel) without such a continuous vested use or component. Thus, even if Rise had vested rights to the Flooded Mine parcels (which objectors' dispute) that would not result in any vested rights for any Never Mined Parcel. Also, having so admitted such parcels (and sub-parcels), Rise should be estopped from asserting its disputed and unprecedented unitary theory of vested rights as if the Vested Mine Property were just one big parcel (which objectors dispute.) See objectors' Initial Evidentiary Objection, addressing various Evidence Code requirements for Rise (e.g., EC #623, 413, 356, etc.) and various other rebuttal opportunities for objectors.

C. Some General, Property Description And Related Issues From the SEC 2023 10K Filings Compared To the Rise Petition And Other Rise Filings With the County, And Related Contradictions For Rebuttals And Objections.

"Item 2. Properties" (beginning at p. 21) of the 2023 10K still uses the general term "I-M Mine Property" to describe (i) what objectors call the "IMM" plus the separate "**Centennial"** site, and (ii) what the disputed Rise Petition calls the "Vested Mine Property." (Note that objectors plan a separate objection for the Centennial site and related issues, and that the limited discussion of that topic here does not mean it is not important in objectors' comprehensive objections to the Rise Petition, but rather only that we are just addressing some such issues sequentially.) That "I-M Mine Property" is described by Rise (in that 20233 10K at 24) as "approximately 175 acres …[of] surface land and 2560 acres … of mineral rights," without

any attempt to make any easy comparisons with the EIR/DEIR terms, data, or other contents or to explain inconsistencies, such as, for example, why the EIR/DEIR described **2585-**acres of underground mineral rights but here only **2560**. (Objectors use the larger number for "safety" [i.e., to avoid omitting anything in objections], but, in due course, objectors will address whatever answers we discover for such needless and inconsistent mysteries.) For example, (apart from the 2585-acre underground mining rights) instead of addressing the issues like the EIR/DEIR as to the Brunswick site surface versus the separated Centennial site surface, the 2023 10K identifies in Table 1 (at p. 27) 12 APN legal parcels (contrary to describing 10 in the above subsection quote) called (1) "Idaho land" representing 56 acres …, (2) "Brunswick land" representing 17 acres, and the "Mill Site" property representing 82 acres … as displayed in Figure 3" [a useless map lacking needed landmarks for needed precision.] For convenience (e.g., to avoid confusion in SEC filing quotes herein) this Exhibit generally will use the SEC terms with some additional objector terms for ease of application to our other objection documents. (Why the Rise Petition uses different terms than that 2023 10K in discussing such vested rights issues is another suspicious curiosity.)

Note, however, that the 202310K separately identifies such legal descriptions of Rise's "Surface Rights" as separate from the underground "Mineral Rights." Id. 24-34. Notice how Rise brags (at 32) about how "environmental studies" were "completed on all the surface holdings owned by Rise," ignoring the 2585-acre underground mine where many problems exist as addressed in the record objections to the disputed EIR/DEIR. However, those studies are disputed on many grounds in objections to the EIR/DEIR. The absence of proof of environmental safety in and from the 2585-acre underground mine is a bigger concern not satisfactorily addressed anywhere by Rise, especially as to the addition of admitted use of cement paste with toxic hexavalent chromium pumped down into the underground mine to create shoring columns from mine waste (but obscured without any disclosure, much less reasoned analysis as required in the "Hazards And Hazardous Materials" section of the disputed DEIR or in the obscure and disputed EIR Response 1 to Ind. #254 to that disputed DEIR). See, e.g., the descriptions of hexavalent chromium menaces in the EPA and CalEPA websites and the case study of the hexavalent chromium groundwater pollution in Hinkley, Ca. at www.hinkleygroundwater.com (the story shown in the movie *Erin Brockovich*).

D. Of Course, the Rise SEC Filings Themselves Are Disputed In Many Respects, And Objectors Are Not Accepting Anything In Those Filings As True. Nevertheless, Our Objections Address Them as Admissions That Contradict And Rebut the Rise Petition's Purported Claims. See EC #623.

The Initial Evidence Objection both disputes the Rise Petition and contradicts some of the purported "History" in the 2023 10K and other Rise filings, citing the many ways the laws of evidence defeat Rise claims. See, e.g., *Hardesty* describing how the alternative reality "muddle" of mutually inconsistent and incorrect miner claims cancels all of them out. Objectors will not repeat all those many rebuttals here. However, objectors' rebuttals in that objection also refute the similar Rise Petition claims, for example, alleging evidence that (202310K at 35) Del Norte Ventures, Inc. (Emgold's predecessor) "rediscovered" in 1990" a "comprehensive collection of original documents" for the IMM (presumably pre-1956,

"unauthenticated" documents from before the mine closed and flooded and the miner moved to LA to become an aerospace contractor ending in bankruptcy and a cheap auction sale of the IMM to William Ghidotti.) Part of the more comprehensive problem is that Rise is trying to recreate records from Idaho-Maryland Mines Corporation that closed and abandoned its flooded and dormant mine by 1956, due in large part to the fact that the cost of gold mining increasingly exceeded the indefinite $35 legal cap on gold prices, in effect also abandoning hope of resuming mining unless and until that $35 legal cap was lifted, which did not occur for another decade. That abandonment of the mine and the mining business is proven by Rise Petition's own Exhibit records that prove how that miner liquidated its moveable mining assets and after that1956 abandonment of the dormant and discontinued mine and mining business changed its name and trademark to Idaho Maryland Industries, Inc., moved to LA to become an aerospace contractor, filed Chapter XI under the Bankruptcy Act, and liquidated the mine cheap in an auction sale to William Ghidotti in 1962. Another objection to follow will counter Rise's disputed history in more detail by going beyond the fragmentary and disputed Rise Petition Exhibits that noncontinuous "snapshots" and are by no means adequately "authenticated," admissible evidence, or a "comprehensive collection of original documents" demonstrating vested rights. Many such Rise Petition Exhibits are just "filler," and Rise's failure to produce such alleged records relevant to the vested rights disputes created an inference and presumption that Rise has no such evidence. See the Initial Evidentiary Objection and EC #412, 413, 356, and 403.

Many records referred to in such Rise filings and admissions are production and gold mining process related records that don't prove vested rights and ceased when the dormant and abandoned IMM closed and flooded by 1956. Stated another way, there is no objective intent evidence to prove continuous use (or even continuous intent to resume mining) on a parcel-by-parcel, use-by-use, and component-by-component basis as required by the applicable case law (e.g., *Hardesty, Calvert, Hansen*, etc.). That Initial Evidentiary Objection also exposed errors and omissions in the SEC filings' description (at pp. 35-36) of the Emgold (and predecessor) activities on certain parcels for drilling exploration in 2003-2004 [(not on all parcels and just "exploration" "uses," **not** mining or other relevant mining related "uses"). For example, the 2023 10K admits (at 36): "Exploratory drilling was mainly conducted from tow sites: 1) west of the Eureka shaft, and 2) west of the Idaho shaft, both targeting near surface mineralization around historic working. See Figure 6." That admits no exploration (much less anything relevant to mining "uses" for vested rights) on the critical "Never Mined Parcels" or even most of the "Flooded Mine" parcels in the 2585-acre underground mine where the gold is supposed to be below or near objecting surface owners. The same is true as to what Rise describes (at pp.42-43) as drilling 17 holes in 2019. None of that occasional, noncontinuous activity satisfies any requirement for any vested rights by either Emgold or Rise, even if all their predecessors had vested rights, which none of them did, especially that initial miner-owner in 1954-1962.

Furthermore, contrary to the Rise Petition's confidence about its mining plan and incorrect insistence on its objective intent to reopen the mine and execute its disputed plan, the 2023 10K (like the earlier SEC filings, addressing some in an Attachment) admissions contradict Rise's disputed factual foundation for vested rights. See, e.g., the Initial Evidentiary Objection addresses EC #'s 401-405 (establishing the preliminary facts for admissibility) and 1400-1454

(authenticating evidence). For example, the entire Rise 2023 10K "Risk Factors" discussion below proves that Rise is just a speculator seeking to create a mere, indefinite, and conditional option to mine if the future conditions and explorations are sufficiently attractive both to Rise and to the uncommitted investors from whom Rise continuously needs funds to be able to afford to do much of anything. For example, consider this such admission (at 9) contrary to Rise's claims for continuous activity it incorrectly describes as sufficient for vested rights to mine, which are disproven by objectors from Rise's own exhibit admissions and only involve occasional and limited "drilling explorations" on only a few parcels with no actual "gold mining" uses anywhere in the IMM since at least 1956:

> Our Idaho-Maryland Mine Project is a historic, past-producing mine which, apart from the exploration work that we have completed since 2016, has had very little recent exploration work since 1956. **We would require further exploration work in order to reach the development stage. Advancing our I-M Mine Property into the development stage will require significant capital and time, and successful commercial production from the I-M Mine Property will be subject to completing feasibility studies, permitting and re-commissioning of the mine, constructing processing plants, and other related work and infrastructure. As a result, we are subject to all of the risks associated with developing and establishing new mining operations and business enterprises,** including …[see continued discussion of these issues in the Risk Factor rebuttals below] (emphasis added)

The point here is that vested rights are about continuous prosecution on each parcel of a prior "nonconforming" "use-by-use" and "component-by-component" basis (or enough objective intent to qualify to do so under required facts and circumstances that are not present here), always on a parcel-by-parcel basis. What Rise admits to here is not only contrary to such requirements for vested rights, but such admissions are also contrary to the whole concept of vested rights as based on continuing on a parcel the prior mining activity as a nonconforming use or component. Exploration is the only mining related "use" activity since 1956 that the Rise Petition claims or that is even affordable or physically feasible by Rise. Now, even after the Rise Petition filing, this new, 2023 10K not only admits the reality that during that long period there has been little (and deficient for vested rights purposes) exploration "uses" on the Vested Mine Property, but also that basically Rise is starting a new mine on the ruins of just part of the older "Flooded Mine" with the impermissible goal of expanding that long abandoned and discontinued 1954 use to the Never Mined Parcels. (Note that, in any event, exploration is a different "use" than any underground mining "use" and, therefore, would not create any vested rights for mining in any event.)

II. Some "Risk Factor" And Compliance Admissions by Rise From the 2023 10K, Including Conflicts With the Rise Petition Or Related Rise, Vested Rights Claims.

A. Some Legal Compliance Concerns And Objectors' Requests For The County To Decline To Tolerate Any Rise Petition (Incorrect) Interpretations of What Vested Rights Would Allow Rise To Do (Or Not To Do) As To Any "Use" Or "Component" On Any "Parcel."

As explained in the companion objections referencing this Exhibit, **objectors are confused by the Rise Petition claiming (at 58) that, in effect, Rise can mine and conduct itself generally as it wishes anywhere on the Vested Mine Property "without limitation or restriction."** In contrast with that incorrect and massive overstatement of the disputed effect of Rise vested rights, Rise asserts in the 2023 10K much narrower (though still incorrect) statements of what Rise could accomplish and do, recognizing (e.g., at p.8) "environmental risks" and how (i) Rise "will be subject to extensive federal, state and local laws, regulations, and permits governing protection of the environment," and (ii) "Our plan is to conduct our operations in a way that safeguard public health and the environment." One key issue for the County in reconciling those inconsistent claims is whether (and to what extent) Rise is asserting (a) what it claims the legal right to do in the Rise Petition "without limitation or restriction" versus (b) an aspirational, public relations statement of goals Rise can violate whenever it wishes, or, more likely, "interpret" from the perspective of an aggressive miner so as to make those legal standards of little practical consequence by exaggerated and otherwise incorrect interpretations. Granting the Rise Petition as written is perilous not just for the County but also for objectors, since such an acknowledgment in SEC filings of the need for legal compliance is not a legally enforceable equivalent to the required use permit conditions or a commitment that can be readily enforced by impacted objectors living above and around the 2585-acre underground mine with our own competing, constitutional, legal, and property rights (e.g., it's objectors groundwater and existing and future well water that would be depleted 24/7/365 for 80 years).

Stated another way, objectors take little comfort in such Rise public relations "reassurances" in such SEC filings and other public relations statements, and it is simply too risky to trust Rise (and any successor who may be "hiding behind the curtain", since Rise admits in these 2023 10K financials that Rise lacks the financial resources to accomplish much of anything material that it is asserting it will do.) Indeed, Rise also admits (at 8) that it cannot "predict with any certainty" the "costs associated with implementing and complying with environmental requirements," which Rise acknowledges "could be substantial" and "possible future legislation and regulations" could "cause us to incur additional operating expenses, capital expenditures, and delays." That uncharacteristic realism is appropriate, especially because impacted locals not only have their own legal rights, but also the power to create, directly or indirectly, such protective law reforms to prevent harms to our large community above and around the IMM, such as those predicted in the hundreds of meritorious objections already in the record in opposition to the disputed EIR/DEIR with more to come in opposition to the Rise Petition. However, such aspirational realism in Rise's SEC filings does not seem to be included in the Rise Petition. That means if the County were (incorrectly) to approve any disputed vested rights for any "use" or "component" on any "parcel" of the disputed Vested Mine Property, the County should not accept any of what the Rise Petition claims vested rights mean (e.g., don't gamble on whatever "without limitation or restriction" may mean in the Rise

Petition, but define clearly and correctly what any vested rights would mean.) In particular, the County should follow the guidance of all the many applicable laws and court decisions that the Rise Petition ignores by asserting its incorrect "without limitation or restriction" claim (e.g., instead follow *Hardesty, Calvert, Gray,* and even the whole of *Hansen*, as distinct from merely the fragments Rise that misinterprets.) See the Table of Cases And Comments attached to the Initial Evidentiary Objection and other objections cited legal authorities demonstrating what the applicable law actually is, as distinct from what Rise wishes the law were.

B. Risk Factors Admitted by Rise In Its 2023 10K, But Generally Ignored In the Rise Petition, the EIR/DEIR, And Other Applications And Requests Approval For Benefits From the County. But Also See Those Not Addressed By Rise Anywhere, Such As The Correct, Applicable Law And Facts Supporting The Competing Constitutional, Legal, And Property Rights of Objectors Owing the Surface Above And Around the 2585-Acre Underground Mine.

1. Rise Incorrectly Describes Its Disputed Vested Rights In All of Its Disputed Filings With the SEC Or the County.

As described above and throughout the foregoing and companion objections, as well as in the incorporated record EIR/DEIR and other objections, Rise has incorrectly described (e.g., pp. 4-6) what is required for acquiring and maintaining any vested rights and what the results are of having any vested right for any use or component on any parcel. See, e.g., the Table Of Cases And Commentaries…at the end of the Initial Evidentiary Objection and others. Of relevance here is that the so disputed 2023 10K is not only inconsistent with, or contrary to, the disputed Rise Petition (and the disputed EIR/DEIR) [and vice versa], but also with itself. **For example, the 2023 10K (at 34) states: "Subsurface mining, including ancillary surface uses, would require the following permits and approvals under a Use Permit process [citing many County, State, and Federal approvals, although fewer than in the County Staff Report for the EIR/DEIR]. However, the Rise Petition appears to claim (incorrectly) it can evade many of such requirements. Indeed, that 10K itself is not as clear in other commentaries since it only (at p.6) contemplates a use permit if the Board rejects Rise's vested rights claim.**

In addition, the following Rise admitted "Risk Factors" demonstrate that, among other things and contrary to the disputed Rise Petition, Rise is just engaged in occasional, limited exploration, and speculating; not planning to mine. Rise has no current or objective commitment or committed funding to execute any mining plan at any time or to commit to any other such mining activities, unless and until Rise has raised the funds for sufficient *further* "exploration" and Rise and its speculator- financiers/investors each subjectively finds those exploration results to be "successful" in demonstrating what Rise admits does not now exist: both sufficient, viable, proven or probable gold reserves in conditions that can be mined profitably, plus sufficient financing on acceptable terms and conditions to carry the mine operations to positive cash flow sometime in the distant future. Under the circumstances that intent to speculate and decide what to do in that indefinite future cannot create vested rights for any mining "use" or "component" on any parcel of the 2585-acre underground mine, and, particularly, the "Never Mined Parcels" that require not only such exploration but also all the

startup work in the Brunswick shaft and the Flooded Mine (e.g., dewatering the flooded mine and reconstructing 72 miles of flooded tunnel and infrastructure) even to be able to reach those Never Mined Parcels to begin any exploration or gold mining uses there. (Remember: the surface above the 2585-acre underground mine is owned by objectors and others and is not available to Rise for exploration or access, a Rise "Risk Factor" discussed below.)

This is not a meritorious vested rights case, but rather is more like this analogy: A Texas holdem poker-playing gambler puts in his ante (buying the IMM cheap) and matches the bets on the initial round (limited, preliminary exploration on some parcels), waiting to see the common cards dealt out one-by-one face up on the table to decide each time whether or not to stay in the game or fold. Since there needs to be a continuous commitment to mining uses on each applicable parcel for any vested rights, such speculators like Rise cannot qualify. Such conditional interest in possible mining is not the kind of commitment required by applicable law, because Rise is only "in the game" as long as they like their odds on each "card" and as long as their investors keep doling out the money to continue their bets. But as explained in record objections, once Rise starts any work at the IMM, our community will be much worse off when it stops than we are now, one way or another.

As one calculates the reliability of Rise's economic feasibility and the substantial financing Rise admits below it continuously needs for years before any possible revenue, focus on the Rise admissions in the 2023 10K section about "Risk Related to Mining and Exploration," where Rise stated (at 11, emphasis added): "WE HAVE NOT ESTABLISHED THAT ANY OF OUR MINERAL PROPERTIES CONTAIN ANY MINERAL RESERVE ACCORDING TO RECOGNIZED RESERVE GUIDELINES, NOR CAN THERE BE ANY ASSURANCE THAT WE WILL BE ABLE TO DO SO." Also consider (at Id.) :

> **THE I-M MINE PROPERTY IS IN THE EXPLORATION STAGE. THERE IS NO ASSURANCE THAT WE CAN ESTABLISH THE EXISTENCE OF ANY MINERAL RESERVE ON THE I-M MINE PROPERTY … IN COMMERCIALLY EXPLOITABLE QUANTITIES. UNLESS AND UNTIL WE DO SO, WE CANNOT EARN ANY REVENUES FROM THESE PROPERTIES AND IF WE DO NOT DO SO WE WILL LOSE ALL OF THE FUNDS THAT WE HAVE EXPENDED ON EXPLORATION, IF WE DO NOT ESTABLISH THE EXISTENCE OF ANY MINERAL RESERVE IN A COMMERCIALLY EXPLOITABLE QUANTITY, THE EXPLORATION COMPONENT OF OUR BUSINESS COULD FAIL. (emphasis added)**

[THE FOLLOWING COMMENTS ARE PRESENTED IN ORDER OF THEIR PRESENTATION IN THE 2023 10K "ITEM 1A. RISK FACTORS: RISKS RELATED TO OUR BUSINESS" SECTION (since those risk items are not numbered).]

2. Rise Admits (Its Vulnerability To Increased Levels of "Volatility" or "Rapid Destabilization" That Can Create "Material Adverse Impacts" On Rise.

For reasons Rise admits in its financial statements and comments below, and as confirmed by its own accountants' concerns about Rise as a "going concern" and other risks,

many Rise critics regard Rise's mining plans to be financially infeasible with good cause. While some at the County may have incorrectly regarded such concerns about economic feasibility to have been irrelevant to them in respect of the disputed EIR/DEIR, those concerns must be fully relevant for the "financial assurances" required for any "reclamation plan" required for any vested rights claimed under the Rise Petition. As future objections will explain in more detail, all Rise's proposed safety and protection assurances are meaningless if they are unaffordable by Rise, as seems to be the case based on its own admitted financial condition. Moreover, since reclamation plans themselves may block vested rights by requiring new "uses" and "components" (e.g., not just an unprecedented water treatment plant on the Brunswick site but also a whole water replacement supply system for impacted owners of existing and future depleted wells, as required by ***Gray v. County of Madera***). Those feasibility issues will be much larger than Rise admits, even in the disputed EIR/DEIR. Of course, the obvious risk that has not been addressed by Rise, but which is obvious from reading all the Rise SEC filings since its 2017 IMM acquisitions began, is this: Rise (both the parent and its shell subsidiary) owns limited assets besides the Vested Mine Property, whose disputed value (and which is subject to liens for a large secured loan) crashes when and if its investors cease to continue to dole out the periodic funded needed to continue. Rise will quickly lack working capital for operations, as Rise admits in the following subsection of the 2023 10K and discussed next below. Suppose investors stop funding before any profitable gold is recovered and generating revenue, which the EIR/DEIR admits will first require years of start-up work. In that case, unless there are fully adequate financial assurances for a quality reclamation plan, our community will suffer the fate of many others with the misfortune to endure the more than 40,000 abandoned or bankrupt mines in California on the EPA and CalEPA lists, none of whose financial assurances proved sufficient for adequate reclamation.

3. Rise Admits (at 8-9, emphasis added): "OUR ABILITY TO CONTINUE TO OPERATE AS A GOING CONCERN DEPENDS ON OUR ABILITY TO OBTAIN ADEQUATE FINANCING IN THE FUTURE."

As discussed in the prior paragraphs and demonstrated in Rise's financial statements and comments below, Rise can only continue operating if, as, and when its investors continue to fund those operations in their discretion. Rise has consistently admitted (see discussion below) that there are no "proven [gold] reserves" to value the mine in excess of its secured debt or other, positive, admitted financial data. Thus, Rise is not creditworthy for expecting to attract any asset-based debt financing. (Any credit extensions would be based on warrants or equity kickers, such as being convertible into equity or supported by cheap warrants for stock, thus making another type of equity bet rather than a credit decision based on Rise having any financial resources capable of repaying the debt.) Thus, Rise's hope for attracting funding is fundamentally about the speculator-investors' gamble that Rise can somehow overcome all the current, and foreseeably perpetual: (i) local legal and political opposition to reopening the mine and whatever defensive law reform results locals would cause for protecting their health, welfare, environment, property, and community way of life, if somehow Rise were allowed to start mining; (ii) other risks admitted in the 2023 10K discussed herein; (iii) the business and market risks that could make mining uneconomic or non-viable, even if Rise found

merchantable amounts of gold, such as if the all-in mining costs exceeded their revenue; (iv) the natural physical risks of mining, for which there is long history, such as floods, earthquakes, etc., as well as mining accidents from negligence or get-rich-quick gambles causing cave-ins etc.; (v) the danger of environmental sciences impacting their operations, such as, for example, finding no cost-effective and legal way to dump mine waste [e.g., exposing the disputed theory of Rise selling mine waste as so-called "engineered fill"], or outlawing Rise's planned use of cement paste with toxic hexavalent chromium to shore up mine waste into bracing columns to avoid the cost of removing the waste from the mine; or (vi) many other risks that would concern such a speculator-investor, including the fact that the investor might find more attractive and less risky alternative investments, especially because there could likely be no liquidity from this mine investment (e.g., no one to buy their Rise stock), unless and until somehow in some future year Rise has overcome all the risks and challenges and is finally producing profitable gold revenue from this disputed mine.

While Rise there admits (at 8-9) that there is **"no assurance that the Company will be able to obtain adequate financing in the future or that such financing will be on terms advantageous to the Company," "management believes that the Company can raise sufficient working capital to meet its projected minimum financial obligations for the fiscal year." What about beyond that year? Is our community supposed to endure indefinitely the risk of a failed mine on a year to years basis unless and until in some distant year the Vested Mine Property becomes self-sufficient? What happens if Rise were to get approval to drain the flooded mine, makes other start-up messes, and then discovers that "management" was wrong about costs or other risks or no longer has sufficient working capital? In effect, Rise is demanding (incorrectly, in the name of its disputed version of "vested rights") that not just the County share those speculator risks, but that the County assist Rise in forcing those risks on local objectors, especially those most impacted objectors owning the surface above or around the 2585-acre underground mine who have our own competing constitutional, legal, and property rights independent of the County. Objectors decline to accept any of these admitted risks that should not be ignored by the County and will not be ignored by the courts.**

4. **Rise Admits (at 9) That "We will require significant additional capital to fund our business."**

This is more about the same concerns objectors have noted from the previous Rise admissions above, but Rise adds more confirmation here to what objectors stated as grounds for rejecting Rise Petition or for any other permissions for its mining goals in the EIR/DEIR or otherwise. For example, **Rise admits that: (i) "We will be required to expend significant funds to determine whether proven and probable mineral reserves exist at our properties," i.e., again admitting that no such proof of such gold reserves now exists, thereby confirming that our community, especially those owning the surface above and around the 2585-acre underground mine, will be suffering all the problems identified in hundreds of objections to the EIR/DEIR and more coming to the Rise Petition so that this Rise-speculator can gamble at our expense (without any net benefit or reason to suffer to facilitate such speculation);** (ii) "**We will be required to expend significant funds to… continue exploration and, if warranted, to develop our existing, properties," i.e., confirming that Rise has no sufficient objective intent**

to mine, as required for vested rights, but rather only a conditional and speculative desire to mine if all the conditions are "right" for such speculation, such as, for example, as admitted throughout the 2023 10K that Rise raises sufficient money to conduct sufficient exploration to determine that it is worth beginning to mine, and, if so, that it can raise sufficient money to do so in the context of all the risks that Rise admits to exist, as discussed herein; (iii) "We will be required to expend significant funds to… identify and acquire additional properties to diversify our portfolio," i.e., demonstrating that not only is Rise demanding that the County and its citizens suffer all the problems demonstrated in our many referenced objections as to this local mine, but that **our misery is also to be suffered in order to enable Rise and its investor speculators to double its gambling bet somewhere else, reducing those speculators' risks but increasing our risks (e.g., instead of using money locally as a reserve for all these admitted risks and more, Rise would spend such fund somewhere else of no possible benefit to us suffering locals whose sacrifices enabled the speculators to double their bets;** (iv) "We anticipate that we will be required to make substantial capital expenditures for the continued exploration and, if warranted, development of our I-M Mine Property…[but] We may not benefit from some of these investments if we are unable to identify commercially exploitable reserves" [from "continued exploration and, if warranted, development…"]; i.e., the reality here, and the difficulty for speculators, is that Rise is admitting the risk that, for example, its investors could fund years of legal and political conflicts with local objectors while doing the expensive start-up work (e.g., chronically disputed permitting, dewatering the mine, constructing a water treatment plant and drainage system, repairing the Flooded Mine infrastructure shaft and 72 miles of existing tunnels in order to begin exploring the Never Mined Parcels through 76 miles of new tunnels, only then to learn whether the IMM could become a profitable gold mine or whether it's a total write-off; (v) again, "We may not be successful in obtaining the required financing, or, if we can obtain such financing, such financing may not be on terms favorable to us" for such work, beyond the merits of the mine on account of factors, including the status of the national and worldwide economy [citing the example of the financial crisis 'caused by investments in asset-backed securities] and the price of metal;" (vi) **"Our inability to access sufficient capital for our operations could have a material adverse effect on our financial condition, results of operations, or prospects," i.e., that is the obvious and understated reality, but what matters are the consequences for our community and especially objectors owning the surface above and around the 2585-acre underground mine, because once the disputed mining work starts, we will all be worse off when the mining stops than we already are now,** even if there were adequate reclamation plans with sufficient financial assurances; (vii) **"We have not yet commenced commercial production at any of our properties and, therefore, have not generated positive cash flow to date and have no reasonable prospects of doing so unless successful production can be achieved at our I-M Mine Property," and "expect to continue to incur negative investing and operating cash flows until such time as we enter into successful commercial production," which Rise admits in its disputed EIR/DEIR could take years and likely considering the unknown condition of the closed and flooded 2585-acre underground mine, and all the legal and political opposition to the IMM, could take much longer;** and (viii) again, "There is no assurance that any such financing sources will be available or sufficient to meet our requirements," and "There is no assurance that we will be able to continue to raise equity capital or to secure additional debt financing, or that we will not

continue to incur losses," i.e., **this is an all or nothing bet by the Rise speculators at the unwilling risk and prejudice of our whole community, but especially objectors owning the surface above and around the 2585-acre underground mine.**

5. **Rise Admits (at 9-10) That It Has "a limited operating history on which to base an evaluation of our business and prospect," thus admitting that objectors' impacted community has no less reason to be skeptical about Rise's performance and credibility than the speculating investors Rise is warning to beware in Rise's SEC filings.**

Rise admits that "since our inception" it has had "no revenue from operations" and "no history of producing products from any of our properties." More importantly, consider the following admissions (at 9, emphasis added) **AFTER THE RISE PETITION FILING and contrary to Rise's claims for continuous activity** that Rise incorrectly describes as sufficient for vested rights to mine. (Objectors prove from Rise Petition's own Exhibit admissions the only possibly relevant work at the IMM since 1956 involved occasional and limited "drilling explorations" on only a few parcels with no actual "gold mining" uses anywhere in the IMM since at least 1956.) None of these Rise admissions support vested rights, but, to the contrary, defeat them:

> **Our Idaho-Maryland Mine Project is a historic, past-producing mine which, apart from the exploration work that we have completed since 2016, has had very little recent exploration work since 1956. We would require further exploration work in order to reach the development stage. Advancing our I-M Mine Property into the development stage will require significant capital and time, and successful commercial production from the I-M Mine Property will be subject to completing feasibility studies, permitting and re-commissioning of the mine, constructing processing plants, and other related work and infrastructure. As a result, we are subject to all of the risks associated with developing and establishing new mining operations and business enterprises, including *completion of feasibility studies to verify reserves and commercial viability, including the ability to find sufficient ore reserves to support a commercial mining operation; * …further exploration, preparing feasibility studies, permitting and construction of infrastructure, mining and processing facilities; * the availability and costs of drill equipment, exploration personnel, skilled labor, and mining and processing equipment, if required; * the availability and cost of appropriate smelting and/or refining arrangements, if required; * compliance with stringent environmental and other governmental approval and permit requirements; * the availability of funds to finance exploration, development, and construction activities, as warranted, * potential opposition from non-governmental organizations, local groups, or local inhabitant…* potential increases in …costs [for various reasons]…* potential shortages of …related supplies.**

> ***
> **…Accordingly, our activities may not result in profitable mining operations, and we may not succeed in establishing mining operations or profitably producing metals … including [at] our I-M Mine Property [for those and other stated reasons].**

As explained above, this "starting over" admission that Rise is not just planning to reopen the IMM as a continuation of anything that preexisted. Rise also admits to starting over as if it were "developing and establishing new mining operations and business enterprises." That is the opposite of vested rights and rebuts any claim to the required continuity. Rise is admitting the obvious reality that was clear to all its predecessors: reopening the mine is, in effect, starting over on the ruins of part of the old mine that has been dormant, discontinued, abandoned, closed, and flooded since at least 1956. That is NOT engaging in a continuing, nonconforming use through all those predecessors of Rise, none of whom claimed vested rights, but instead (like Rise itself until 9/1/2023) applied for permits for each such activity as the law required.

6. Rise Admits (at 10) That Its "History of Losses" Is Expected To Continue In the Future.

Among the many reasons why even vested rights work requires both a "reclamation plan" and "financial assurances" is that for each of the more than 40,000 abandoned or bankrupt mines in California on the CalEPA and EPA lists the reclamation plans and financial assurances proved to be insufficient or worse. As future objections and expert evidence will prove before the hearing, the reality confirmed in Rise's SEC filings is that Rise cannot provide any sufficient "financial assurances" for any acceptable "reclamation plan," as is obvious from its financial and other admissions. Consider these admissions (at 10, emphasis added):

> ***We have a history of losses and expect to continue to incur losses in the future.***
>
> We have incurred losses since inception, have had negative cash flow from operating activities, and expect to continue to incur losses in the future. We have incurred the following losses from operations during each of the following periods:
>
> *$3,660,382 for the year ended July 31, 2023
>
> *$3,464,127 for the year ended July 31, 2022
>
> *$1,603,878 for the year ended July 31, 2021
>
> **We expect to continue to incur losses unless and until such time as one of our properties enters into commercial production and generates sufficient revenues to fund continuing operations. We recognize that if we are unable to generate significant revenues from mining operations and/or dispositions of our properties, we will not be able to earn profits or continue operations. At this early stage of our operation, we also**

> **expect to face the risks, uncertainties, expenses, and difficulties frequently encountered by companies at the start-up stage of their business development. We cannot be sure that we will be successful in addressing these risks and uncertainties and our failure to do so could have a materially adverse effect on our financial condition.**

As noted herein, lacking any material assets besides its disputed IMM that is already subject to secured loan liens exceeding (what objectors perceive as) the mine's conventional collateral value (hence the requirements for "equity kicker" stock warrants), these admissions explain why it is infeasible to expect this uncreditworthy (by any conventional standard) Rise to find any adequate such "financial assurances." So, why isn't the Board addressing that reality and the absence of any credible reclamation plan at the hearing? See objectors many arguments on that subject in this Exhibit and other objections, but especially including the fact that any possible reclamation would require uses and components for which no vested rights can be credibly claimed, among other things, because (like the water treatment plant that had no counterpart in 1954, or the water supply system required for the whole impacted local community by Gray v. County of Madera) there can be no vested rights for those unprecedented uses and components, especially on a parcel-by-parcel basis as required even by *Hansen* (citing and discussing *Paramount Rock* for that result).

7. Rise Complains (at 11) About How Public Opposition Allegedly Could Cause Reputational Damage That Could Adversely Affect Rise's Operations And Financial Condition, But Rise Is The Problem—Not the Victim.

Objectors are astonished that this Canadian-based miner would come to our community to attempt to reopen such a massive mine menace underneath and near our homes **and dare "to play the victim**." See the hundreds of meritorious objections to the disputed EIR/DEIR and more to come to the Rise Petition. Among the many reasons that objectors living above and around the 2585-acre underground IMM remind the County of our plight and peril as the real victims in this drama, is that we have our own, competing, constitutional, legal, and property rights at stake. Objectors are not just public-spirited community residents and voters protecting our environment and community way of life by the exercise not just of our First Amendment rights, but also by exercise of our constitutional rights to petition our government for redress of our many grievances. We were here first, before Rise came to town to speculate at our prejudice. We invested in surface homes on surface lands sold by Rise predecessors with protective deed restrictions to protect surface owners from any future miners, and we reasonably assumed that that historical IMM would be no threat because we would be protected by applicable law, environmental regulators, and responsible local governments. Now, when it is disappointed by such a correct and proper Planning Commission decision (Rise's complaint letter will be rebutted in another objection), Rise somehow claims some unprecedented priority over all of us by incorrectly claiming "vested rights." Nonsense. There is no such possible thing as Rise silencing objectors' lawful exercise of competing interests explaining why Rise is wrong because somehow being wrong might harm is reputation, especially since Rise has itself harmed its reputation by its objectionable conduct and threats.

Such objectors are properly protecting our homes, families, and property values and rights from the risks and harms threatened by this mining in legally appropriate ways, as demonstrated by the foregoing objection and by hundreds of other meritorious record objections to the EIR/DEIR with more to come to the Rise Petition. For example, such objectors' groundwater and existing and future well water would be dewatered 24/7/365 for 80 years and flushed away by Rise down the Wolf Creek. Rise came to town to speculate by seeking to reopen a dormant gold mine closed, discontinued, abandoned, and flooded since at least 1956. **That (and more) makes us existing resident surface owners above and around the 2585-acre underground IMM the victims, not Rise.** So far, contrary to many record objections, Rise has entirely ignored or disregarded objectors' issues and concerns as if this were just a dispute about how Rise uses its owned property, as distinguished from how Rise impacts objectors' own properties. Contrary to the disputed Rise Petition, Rise has no vested or other right to mine here. Objectors are not taking anything away from Rise, but, to the contrary, Rise is taking much away from objectors by 24/7/365 operations for 80 years that are utterly incompatible with our preexisting, suburban way of life and our competing property rights and values. And for what? For the profit for this Canadian-based miner and its distant speculating investors. What this Exhibit demonstrates is that Rise not only admits that speculation and the huge risks that such investors are taking. But if the County approves anything for Rise, it would be imposing all those same risks (and additional burdens) on unwilling local objectors with no net benefit, just massive risks, and harms, including the prolonged erosion of our property values as Rise "explores" and indefinitely waits for the data it and its speculator money sources to decide whether or not to proceed with the mining. Under these circumstances, there is no such thing as vested rights for such an indefinite, conditional option to mine.

Consider here in greater detail as the Board reads such Rise risk admissions in this and previous Rise SEC filings that such admissions not only describe the risks for Rise investors and for us impacted local objectors, but also for our whole community. The incompatibility of such mining with our surface community above and around the 2585-acre underground IMM is demonstrated by the negative impact our property values, which also harms the County's property tax revenue (plus declining sales tax revenue from tourists who don't come here for the miseries of a working mine). All of the local service industries also will suffer to the extent they depend, for example, on such surface owners building on their lots and residents repairing or remodeling their homes. Also consider this dilemma: what do objectors tell a prospective buyer or its mortgage lender about the IMM risks? We could hand them the thousands of pages of Rise EIR/DEIR and Rise Petition filings, plus all the meritorious rebuttals and objections, and say: "make your own decision, and buyer beware." That will guarantee the depression in our property values as much as will their brokers warning them of the risks of property value declines regardless of the merits merely because of the stigma: no buyer wants to pay top dollar for the opportunity to live in what has been a wonderful and beautiful place that now is at such risk for such mining underneath them 24-7-365 for 80 years. Even if the buyer or its lender were willing to risk trusting Rise and its enablers and to disregard the hundreds of record objections and the concerns of almost every impacted resident, wouldn't that buyer still follow his or her broker's advice that there are equivalent houses that now have become better investments at a safer distance from the IMM? Indeed, wouldn't even such a Rise trusting buyer (if such an impacted, local person exists) decide in any case that it is "better to be safe than sorry"? Also,

even if the buyer were both trusting and not risk-averse, his or her mortgage lender will only lend 80 or 90% of the appraised value of a house. If the appraised value is less than the asking price or the pre-Rise value, won't the buyer always drop his or her offer to that now lower appraised value? (Most buyers need that financing and are not eager to stretch further for a down payment.) Once one appraiser causes that predictable price drop, that lower sale price becomes the new "comparable" for all the other appraisals to follow, and the market prices begin to spiral down. Almost every broker in town recognizes that property value problem, whether or not they wish to speak candidly on that topic, proving the obvious: Such underground mining is incompatible beneath surface homes in a local community like this. Defending one's home is not about harming Rise's reputation or prejudice about mining or such speculators. Few buyers anywhere ever want to live above a working mine, regardless of the truth or falsity of Rise's public relations and other claims about the quality of its mining.

In any event, independent of the many disputes with, and objections to, Rise Petition, the EIR/DEIR, and other Rise "communications," Rise's own admissions in its SEC filings and elsewhere, such as those addressed in this Exhibit, are not reassuring to surface owners or any potential buyer or lender (or its appraisers.) Also, what does a resident seller say to a buyer who looks at the Rise financial statements and admissions and asks, why should I assume Rise can afford any of the safety and other protections Rise promises to make its mining tolerable and legally compliant? How can Rise acquire sufficient "financial assurances" for an adequate "reclamation plan?" Isn't Rise asking all of us existing and future owners to assume (for no good reason or benefit) the risks against which Rise is warning his speculator-investors? Why should any existing or future resident do that? In any case, before Rise starts accusing its resistors of causing it reputational damages, Rise should consider that it cannot possibly complain about objectors exposing Rise admissions that are contrary to its Rise Petition, EIR/DEIR, and other communications. If Rise has credible answers to our concerns, objectors have not yet seen them, leaving Rise with additional credibility problems of its own making and more reasons why, Rise should look to itself instead of at its critics.

8. Rise Admits (at 11) That "Increasing attention to environmental, social, and governance (ESG) matters may impact our business.

Objectors refer the reader to the previous response to the more specific complaint about Rise's reputation. However, the disputed EIR/DEIR demonstrated that Rise is a climate skeptic/denier, which is a cause for concern about any miner seeking to dewater the mine 24/7/365 for 80 years by draining surface owned groundwater needed not just for lateral and subjacent support to protect such owners from "subsidence," but also to save our surface forests and vegetation from the chronic droughts assured by climate change that is an undeniable part of our actual reality and cannot continue to be disregarded in Rise's "alternate reality" in which climate change issues are "too speculative" to address (e.g., where Rise's disputed EIR/DEIR incorrectly relied on prior decades of average surface rainfall to attempt to justify its 24/7/365 dewatering for 80 years as if there were no climate change/dryness/drought threat issues.) See, e.g., *Keystone, Gray v. County of Madera, and Varjabedian.*

9. Rise Admits (at 11-12) Risks Related to Mining and Exploration.

Rise admitted (Id. emphasis added): "WE HAVE NOT ESTABLISHED THAT ANY OF OUR MINERAL PROPERTIES CONTAIN ANY MINERAL RESERVE ACCORDING TO RECOGNIZED RESERVE GUIDELINES, NOR CAN THERE BE ANY ASSURANCE THAT WE WILL BE ABLE TO DO SO." Rise also admitted (at Id. emphasis added):

> **THE I-M MINE PROPERTY IS IN THE EXPLORATION STAGE. THERE IS NO ASSURANCE THAT WE CAN ESTABLISH THE EXISTENCE OF ANY MINERAL RESERVE ON THE I-M MINE PROPERTY … IN COMMERCIALLY EXPLOITABLE QUANTITIES. UNLESS AND UNTIL WE DO SO, WE CANNOT EARN ANY REVENUES FROM THESE PROPERTIES AND IF WE DO NOT DO SO WE WILL LOSE ALL OF THE FUNDS THAT WE HAVE EXPENDED ON EXPLORATION. IF WE DO NOT ESTABLISH THE EXISTENCE OF ANY MINERAL RESERVE IN A COMMERCIALLY EXPLOITABLE QUANTITY, THE EXPLORATION COMPONENT OF OUR BUSINESS COULD FAIL.**

This is why objectors describe Rise and its investors as speculators. They are making a bet that there is profitable gold that they cannot prove exists there; i.e., they are making a (presumably, perhaps, educated) guess. But this is a "heads they win, tails we lose" coin flip risk from the perspective of local surface owners above and around the 2585-acre underground mine. Suppose Rise cannot find what it seeks before its investors cut off its funding. In that case, our community will suffer the mess (absent sufficient reclamation plan "financial assurances," but still not making locals whole for the lingering losses of depressed property values and depleted groundwater or existing or future well water.) On the other hand, if Rise succeeds in its gamble, us locals suffer all the miseries that accompany living above or around a working gold mine. See, e.g., record objections to the disputed EIR/DEIR and this Rise Petition.

In addition. Rise admitted (at 12): "Even if we do eventually discover a mineral reserve on one or more of our properties, there can be no assurance that they can be developed into producing mines and that we can extract those minerals. Both mineral exploration and development involve a high degree of risk, and few mineral properties that are explored are ultimately developed into producing mines." Rise then explained (at Id.) many reasons why "an established mineral deposit" is either "commercially viable" or not, such as various factors that "could increase costs and make extraction of any identified mineral deposits unprofitable."

10. **Rise Admits (at 12, emphasis added) That "mineral exploration and production activities involve a high degree of risk and the possibility of uninsured losses."**

Rise admits (Id.) that: "EXPLORATION FOR AND THE PRODUCTION OF MINERALS IS HIGHLY SPECULATIVE AND INVOLVES GREATER RISKS THAN MANY OTHER BUSINESSES. Most exploration programs do not result in mineralization that may be of sufficient quantity or quality to be profitably mined." Rise added that: "OUR OPERATIONS ARE …SUBJECT TO ALL OF THE OPERATING HAZARDS AND RISKS NORMALLY INCIDENTAL TO EXPLORING FOR AND

DEVELOPMENT OF MINERAL PROPERTIES, such as, but not limited to: … *environmental hazards; * water conditions; * difficult surface or underground conditions; * industrial accidents; … *failure of dams, stockpiles, wastewater transportation systems, or impoundments; * unusual or unexpected rock formations; and * personal injury, fire, flooding, cave-ins, and landslides." Rise then reports the unhappy consequences of such risks for the speculator-investors, but not on the impacted victims, such as those living on the surface above or around the 2585-acre underground IMM, which is the consequence that should most concern the Board. Again, as described above, any Board support for Rise would make us objecting locals suffer from the same risks about which Rise is warning its investors, as it is required to do by the securities laws. Among the many reasons why objectors owning the surface above and around the 2585-acre underground mine are asserting their own competing constitutional, legal, and property rights is that we prefer not to be vulnerable to anyone imposing those risks on us. Our independent objection rights and standing should enable us to better protect our own interests.

11. Rise Admits (at 13) That It Is Vulnerable To Gold Commodity Prices, Because Such "Commodity price volatility could have dramatic effects on the results of operations and our ability to execute our business plans."

This obvious truth is just one more reason why Rise's admitted financial concerns and other risks (and its consequent insufficient creditworthiness) expose impacted locals to the consequent risks of Rise lacking the funds when needed to pay for the safety, mitigation, and protections it and its enablers incorrectly claim is sufficient. That is another of many risk factors that should disqualify Rise from reopening the IMM, since Rise's capacity to perform such duties may be or become illusory. All these Rise admitted risk factors demonstrate that Rise has little or no margin for surviving any such disappointments or adverse events. Yet, Rise's disputed EIR/DEIR, Rise Petition, and other filings with the County do not address those consequences to our community, especially on impacted locals living above and around the 2585-acre underground IMM, when those risks occur and Rise has exhausted its funding. Also, Rise's disputed intent for vested rights to mine cannot be so conditional and indefinite. Stated another way, neither Rise nor its predecessors can preserve vested rights to mine by an alleged future intent, if and when the conditions and circumstances it requires all exist at such future dates, such as sufficient funding, ideal market conditions, permits and approvals without burdensome conditions, the absence of any such 25 plus admitted or other foreseeable risks occurring, and the absence of all the other factors Rise admits to being possible obstacles to Rise's execution and accomplishment of its mining plans.

12. Rise Admits (at 13, emphasis added) That "evaluation uncertainties …could result in project failure" such as incorrect "[e]stimates of mineralized material and resources."

That is another example of how Rise admissions of risks for investors are likewise admissions of bigger problems for our community, especially on those objectors owning the

surface above and around the 2585-acre underground IMM. For example, Rise so admits that such risks (detailed further below): "could result in uncertainties that cannot be reasonably eliminated from the process of estimating mineralized material and resources/reserves. If these estimates were to prove to be unreliable, we could implement an exploration plan that may not lead to commercially viable operations in the future." Id. emphasis added. The Board should ask the hard, follow-up questions that objectors would ask if allowed, such as what happens then to us locals? Consider what Rise admitted (Id.) about those "risks associated with being able to accurately predict the quantity and quality of mineralized material and resources/reserves" for Rise's "exploration and future mining operations." Rise admits that all these analyses consist of **"using statistical sampling techniques,"** which is necessary because neither Rise nor its relevant predecessors have actually investigated the actual conditions in the dormant, discontinued 2585-acre underground mine that closed and flooded by 1956.

There is no sufficient data provided by Rise in any filing objectors have found that reveal the data needed to evaluate Rise's critical "statistical sampling techniques." However, judging by the disputed and massively incorrect well-testing methodology proposed by Rise in its disputed EIR/DEIR challenged in record objections, objectors have good cause not to accept Rise's such results without thoroughly re-examining its methodology and analyses. For example, Rise cannot satisfy its burden of proof by simply announcing the results from its mystery formulas from "samples obtained from appropriately placed trenches, test pits, underground workings, and intelligently designed drilling." Id. This will be disputed the same way objectors have and will dispute Rise's well sampling but adding that the surface above and around the 2585-acre underground IMM is owned by objectors or others who would not consent to Rise drilling test holes on their properties.

Also note, for example, that Rise's admitted lack of resources prevents it from "doing the job right" in all the correct and necessary places for greater accuracy. By that polling analogy, there will be a vastly higher margin of error for a poll that samples 100 people versus one that samples 10,000 people, and, here, Rise and is predecessors sampled too few locations for tolerable accuracy and for too few purposes relevant to our community's safety and well-being (as distinct from pleasing Rise's investors). See the related Rise admission in the following paragraph. Furthermore, this following Rise disclaimer may be sufficient for its willing speculator-investors, but it is legally deficient for imposing the risks and burdens of this mining on our community, especially those of us owning the surface above and around the 2585-acre underground IMM:

> **THERE IS INHERENT VARIABILITY OF ASSAYS BETWEEN CHECK AND DUPLICATE SAMPLES TAKEN ADJACENT TO EACH OTHER AND BETWEEN SAMPLING POINTS THAT CANNOT BE ELIMINATED. ADDITIONALLY, THERE ALSO MAY BE UNKNOWN GEOLOGIC DETAILS THAT HAVE NOT BEEN IDENTIFIED OR CORRECTLY APPRECIATED AT THE CURRENT LEVEL OF ACCUMULATED KNOWLEDGE ABOUT OUR PROPERTIES THIS COULD RESULT IN UNCERTAINTIES THAT CANNOT BE REASONABLY ELIMINATED FROM THE PROCESS OF ESTIMATING MINERAL MATERIAL AND RESOURCES/RESERVES. IF THESE**

> **ESTIMATES WERE TO PROVE TO BE UNRELIABLE, WE COULD IMPLEMENT AN EXPLORATION PLAN THAT MAY NOT LEAD TO COMMERCIALLY VIABLE OPERATIONS IN THE FUTURE.** Id. (emphasis added)

Again, objectors ask, and the Board should ask, what happens to us then?

13. Rise Also Admits (at 13) Its Lack of Relevant Knowledge, Creating Risks for "material changes in mineral/reserve estimates and grades of mineralization will affect the economic viability of placing a property into production and a property's return on capital."

The comments in the previous paragraph apply equally here. Indeed, in this risk comment, Rise admits to our such concerns by stating (Id. emphasis added**): "MINERALS RECOVERED IN SMALL SCALE TESTS MIGHT NOT BE DUPLICATED IN LARGE SCALE TESTS UNDER ON-SITE CONDITIONS OR IN PRODUCTION SCALE."** Rise further confesses its lack of work to acquire necessary knowledge for it factual conditions, which are not just uninformed opinions:

> As we have not completed feasibility studies on our I-M Mine Property and have not commenced actual production, we do not have mineral resources, and any estimates may require adjustments or downward revisions. In addition, the grade of ore ultimately mined, if any, may differ from that indicated by future feasibility studies and drill results. Id.

Again, the Board should ask Rise the hard questions objectors would ask if we were allowed to do so in this stage of the process, such as: SINCE THE FATE OF US IMPACTED LOCALS OWNING THE SURFACE ABOVE AND AROUND THE 2585-ACRE UNDERGROUND MINE DEPENDS, AMONG MANY OTHER RISKS, ON THE ACCURACY OF SUCH RISE "STATISTICAL SAMPLING TECHNIQUES," WHAT IS THE MARGIN OF ERROR IN ITS PREDICTIONS, AND WHAT ARE THOSE SAMPLING TECHNIQUES, SO THAT WE CAN CHALLENGE THEM? WHO IS "CHECKING RISE'S MATH" AND THE ASSUMED FACTS IN ITS VARIABLES? Consider by analogy the similar statistical sampling techniques used in political polling. There is always an admitted margin of error (and a greater unadmitted margin of error) demonstrated by the bias injected in the formulas by partisan poll takers. (e.g., If the pollster assumes a 63% election turnout for one side and a 51% turnout for the other side, the margin of error in the resulting prediction could be huge, when the reverse proves true by hindsight.) If the Board would not trust a partisan poll that relies on partisan variables and discloses neither its formulas nor its margin of errors, why should the Board or anyone else trust our community and personal fates to Rise's partisan statistics without a thorough study of Rise's math and its chosen assumptions for the key variables? (As to motive for being "realistic" versus "aggressive," note that Rise repeatedly admits that it is continuously dependent on periodic funding from its investors, and negative data could end that funding and the entire project, including the managers' jobs.)

14. Rise Again Admits (at 13-14) That Its Mining Plan Is Conditional On the Results of Its Exploration, Thereby Defeating Its Vested Rights.

Rise admits again that, if its exploration does not produce satisfactory results, Rise will not mine. Id. (This was previously admitted in terms of Rise lacking the capacity to mine (or even unconditionally to commit to mine) unless it is able to continuously find the needed financial and other support needed from its investors.) For example, Rise states (emphasis added): "OUR LONG-TERM SUCCESS DEPENDS ON OUR ABILITY TO IDENTIFY MINERAL DEPOSITS ON OUR I-M MINE PROPERTY … THAT WE CAN THEN DEVELOP INTO COMMERCIALLY VIABLE MINING OPERATIONS." Id. emphasis added. Furthermore, Rise admits that:

> **MINERAL EXPLORATION IS HIGHLY SPECULATIVE IN NATURE, INVOLVES MANY RISKS, AND IS FREQUENTLY NON-PRODUCTIVE. These risks include unusual or unexpected geologic formations and …[listing various risks already admitted by Rise, including the need for "capital available for exploration and development work."]**
>
> **Substantial expenditures are required to establish proven and probable reserves through drilling and analysis to develop …[listing again what is needed for mining and how they determine "whether a mineral deposit will be commercially viable]. WE MAY INVEST SIGNIFICANT CAPITAL AND RESOURCES IN EXPLORATION ACTIVITIES AND FIND IT NECESSARY TO ABANDON SUCH INVESTMENTS IF WE ARE UNABLE TO IDENTIFY COMMERCIALLY EXPLOITABLE MINERAL RESERVES. THE DECISION TO ABANDON A PROJECT MAY HAVE AN ADVERSE EFFECT ON THE MARKET VALUE OF OUR SECURITIES AND THE ABILITY TO RAISE FUTURE FINANCING. Id. (emphasis added.)**

But again, nowhere in the disputed EIR/DEIR, Rise Petition, or other Rise filings does Rise ever explain what happens next to the mine and our community, especially those of us living on the surface above or around the mine, when Rise (or the investors whose money is required for Rise to do anything material) decides the results of exploration are unsatisfactory and "abandons the project." Who cleans up the mess Rise leaves behind? That is why "reclamation plans" and "financial assurances" are essential, and why it is a legal and policy mistake to separate the adequacy of such reclamation plans and financial assurances from the dispute over the existence of vested rights, especially since Rise's reclamation plan will not have vested rights and will need conventional permits.

But consider this from the alternative perspective of the impacted local objectors. Rise admits that any intent to actually mine is dependent on many pre-conditions, such as successful future exploration and related fund raising, meaning that Rise does not presently

have the required objective and unconditional intent to mine that is required for vested rights. But suppose (as the law requires) the reclamation plan and financial assurance plans are decided at the same time as the vested rights. In that case, it will become clear that there can be no such vested rights because no Rise investors will go "all in" at this exploration stage on providing "financial assurances" in advance to Rise for the massive reclamation plan required for any such mining. By reference to the gambler analogy above, even if Rise were willing and intending to push all of its chips onto the table bet at the start before seeing the next open face cards, it is hard to imagine the investor with all the chips needed so to commit "to go all in" would prematurely commit to that gamble, especially considering all the risks not just admitted by Rise in these SEC filings but also those demonstrated by record objections to the disputed EIR/DEIR and Rise Petition. Stated another way, the objective test of any vested rights intent to mine is proven or disproven by whether or not the miner's money source is willing to go "all in" now, i.e., at the time the vested rights questions are to be decided. Otherwise, what Rise Petition is incorrectly claiming without any precedent is that such miners can have an unlimited option to mine if they wish after they proceed with indefinite exploration activities while trying to raise the required funding and while us surface owners and our community continue indefinitely to suffer the stigmas depressing our property values. No applicable law gives such an indefinite option to Rise at such objectors' prejudice.

15. **Rise Admits (at 14-16, emphasis added) That there are "significant governmental regulations" that may prevent Rise from obtaining "all required permits and licenses to place our properties into production."**

THIS ADMISSION (LIKE OTHERS) IS CONTRARY TO RISE PETITION'S DISPUTED CLAIM (AT 58) THAT RISE'S DISPUTED VESTED RIGHTS EMPOWER RISE TO DO WHATEVER IT PLANS "WITHOUT LIMITATION OR RESTRICTION."

Apparently, that Rise Petition reflects Rise's litigation goal (e.g., to see how much it can "get away with" free of regulation or obligation), but to avoid liability to investors Rise does not dare that same outrageous and incorrect claim in the Rise SEC filings. By analogy, this is like some "alternative reality" politician irresponsibly claiming something absurd at a rally, but then admitting the contrary reality when he or she is under oath and subject to consequences for false statements. See the Initial Evidence Objection, including its Table of Cases And Commentaries … as well as other record objections to any such Rise vested rights claims. Notice that, besides incorrectly discussing abandonment (e.g., ignoring the required use-by-use, component-by-component, and parcel-by-parcel analysis, and the requirements of many cases cited by objections that Rise ignores), Rise implicitly asserts its incorrect unitary theory of vested rights as if any "use" or "component" on any "parcel" allows all uses and components on all parcels until abandoned. But, as objectors prove, Rise overstates what vested rights, if any existed anywhere (which objectors dispute), could accomplish for Rise, although the scope of that overstatement is different between the Rise Petition versus this SEC filing and others (as well as the EIR/DEIR and other Rise filings at the County).

Rise also states (at 14, emphasis added) that "THE COMPANY'S OPERATIONS, INCLUDING EXPLORATION AND, IF WARRANTED, DEVELOPMENT OF THE I-M MINE PROPERTY,

REQUIRED PERMITS FROM GOVERNMENTAL AUTHORITIES AND WILL BE GOVERNED BY LAWS AND REGULATIONS, INCLUDING …[a general and insufficient list of applicable laws, none of which apply to the conflicts between the surface owners above and around the 2585-acre underground mine versus Rise that all Rise filings continue to ignore entirely.]

In any case, the 2023 10K is both internally inconsistent and contrary to the Rise Petition. For example, Rise claims (Id. at 14) that its disputed vested rights empower it to avoid a use permit: **"Mining operations on the I-M Mine Property are a vested use, protected under the California and federal Constitutions, and A USE PERMIT IS NOT REQUIRED FOR MINING OPERATIONS TO CONTINUE." HOWEVER, ON THE NEXT PAGE, RISE SEEMS TO ADMIT (AT 15, EMPHASIS ADDED) THAT USE PERMITS ARE STILL REQUIRED AS FOLLOWS:**

> **Subsurface mining is allowed in the County M1 Zoning District, where the I-M Mine Property is located, with approval of a "Use Permit." Approval of a Use Permit for mining operations requires a public hearing before the County Planning Commission, whose decision may be appealed to the Board of Supervisors. Use Permit approvals include conditions of approval, which are designed to minimize the impact of conditional uses of neighboring properties. … [After describing the 11/19/2019 Use Permit application for underground mining and Rise's proposed additions, like the "water treatment plant and pond, Rise said] There is no assurance our Use Permit application will be accepted as submitted. If substantial revisions are required, our ability to execute our business plan will be further delayed.**

Thus, while the Rise Petition describes evading the requirement for a use permit, and this SEC filing discussion begins with a similar disclaimer of the need for such a use permit, this 2023 10K discussion still contemplates a use permit. Moreover, **Rise also admits that: "Existing and possible future laws, regulations, and permits governing the operations and activities of exploration companies or more stringent implementation of such laws, regulations, or permits, could have a material adverse impact on our business and caused increases in capital expenditures or require abandonment or delays in exploration."** What Rise does not do is address the DEIR admission at 6-14 claiming that the whole project is economically infeasible if Rise cannot operate 24/7/365 for 80 years, which extraordinary timing impositions many objectors expect law reforms to prevent by all appropriate legal and political means.

Indeed, AFTER EXPLAINING THE COSTS AND BURDENS OF SUCH LAWS, REGULATIONS, AND PERMITS, RISE WARNS THAT IT "CANNOT PREDICT IF ALL [SUCH] PERMITS… WILL BE OBTAINABLE ON REASONABLE TERMS." RISE THEN ADDS (at 15): "WE MAY BE REQUIRED TO COMPENSATE THOSE SUFFERING LOSS OR DAMAGE BY REASON OF OUR MINERAL EXPLORATION OR OUR MINING ACTIVITIES, IF ANY, AND MAY HAVE CIVIL OR CRIMINAL FINES OR PENALTIES IMPOSED FOR VIOLATIONS OF, OR OUR FAILURE TO COMPLY WITH, SUCH LAWS, REGULATIONS, AND PERMITS." See Rise's financial admissions below demonstrating that Rise both lacks the insurance and the financial resources to pay any material judgment to such victims. (Again, there is no discussion about the consequences of Rise harms to impacted surface residents or their properties above or around the underground IMM.)

This confusion becomes more complicated because Rise now also admits (at 16) what objectors thought Rise denied for its vested rights, that, besides a use permit, Rise also (i) needs to comply with SMARA, (ii) needs to have a reclamation plan and financial assurances as required in SMARA, (iii) and must comply with CEQA, making all our objections to the disputed EIR/DEIR part of this Rise Petition dispute.

16. Rise Admits (at 16) That Its "activities are subject to environmental laws and regulations that may increase our costs of doing business and restrict our operations."

This is another example of the SEC filings conflicting with the Rise Petition (at 58) incorrectly claiming that Rise can operate as it wishes with vested rights "without limitation or restriction." See objectors' prior discussion of such confusion and disputes. This section correctly observes that environmental and related laws and regulations are evolving to being stricter and more burdensome for miners, and thereby "may require significant outlays and may cause material changes or delays in our operations and future activities. It is possible that future changes in these laws or regulations could have a significant adverse impact on our properties or some portion of our business, causing us to re-evaluate those activities at that time." As discussed above, objectors worry that, when Rise finally decides it cannot accomplish its objectionable plans or its investors stop doling out its essential working capital, our community will be much worse off than we already are now if Rise were allowed to start its operations before they stop again. This is a constant theme throughout these SEC filings where Rise warns investors that they may lose their investments when Rise abandons the project for any of these many such risk-related reasons. Such Rise admissions of risks and consequent abandonment should require the Board to be extremely protective of our community, especially those living on the surface above and around the 2585-acre underground IMM, such as by insisting on the strongest possible reclamation plans and financial assurances. The EPA and CalEPA lists include more than 40,000 such abandoned or bankrupt mines, and what they have in common is poor or worse reclamation plans and financial assurances.

17. Rise Contends (at 17) That Its Compliance With Climate Change Laws and Regulations Could Increase Its Costs And "have a material adverse effect on our business."

Suppose the Board compares this Rise commentary with Rise's responses to objections to the DEIR and objectors' rebuttals to the EIR's evasions of those meritorious objections. In that case, the Board will see a shift from comprehensive denial and evasion in the disputed EIR/DEIR to this strange and disputed appeal for sympathy about the costs and burdens Rise fears from climate change that it still regards as "highly uncertain" (and previously disregarded in the EIR/DEIR disputes as "too speculative.") When objectors say "strange," Rise again is protesting that "any adverse publicity in the global marketplace about potential impacts on climate change by us or other companies in our industry could harm our reputation." While the hundreds of objections to the disputed EIR/DEIR addressed climate change in many ways, objectors have

been particularly focused on the EIR/DEIR's incorrect use, for example, of irrelevant historical surface average rainfall data to justify the massive 24/7/365 dewatering for 80 years that would drain groundwater (and existing and future well water) owned by surface owners living above and around the 2585-acre underground IMM, purporting to treat it in the disputed, proposed water treatment plant "component" (for which there can be no vested rights because it has no precedent in 1954) and then flush our water away down the Wolf Creek. Notice in the following quote (at 17) about how Rise now deals with the reality of increasing climate change droughts and chronic dryness by making this about Rise instead of about how Rise makes this problem massively worse for our community in the most objectionable ways:

> Water will be a key resource for our operations and inadequate water management and stewardship could have a material adverse effect on our company and our operations. While certain aspects relating to water management are within our ability to control, extreme weather events, resulting in too much or too little water can negatively impact our water management practices. The effects of climate change may adversely impact the cost, production, and financial performance of our operations.

Again, nowhere does Rise even attempt realistically to address Rise's threat to take objecting surface owners' groundwater or well water, except for a few (e.g., just 30? Mine neighbors along East Bennett Road) compared to the hundreds of existing, impacted well owners plus many more when one considers, as the law requires, the rights of all (thousands) surface owners above and around the 2585-acre underground mine to tap their groundwater in **future wells** (that Rise ignores) to mitigate drought and other climate change dryness. See *Keystone, Gray v. County of Madera, and Varjabedian.*

18. Rise Admits (at 17-18) That "land reclamation requirements for our properties may be burdensome and expensive" even without considering any of the competing, constitutional, legal, and property rights of objecting surface owners above and around the 2585-acre underground mine.

After noting some general reclamation requirements (again ignoring such surface owners' competing, constitutional, legal, and property rights, and thereby underestimating the scope and intensity of its reclamation and other obligations), Rise complains (at 18, emphasis added):

> In order to carry out reclamation obligations imposed on us in connection with our potential development activities, we must allocate financial resources that might otherwise be spent on further exploration and development programs. **We plan to set up a provision for our reclamation obligations on our properties, as appropriate, but this provision may not be adequate. If we are required to carry out reclamation work, our financial position could be adversely affected.**

FIRST, vested rights require not just reclamation obligations but also "financial assurance," which cannot be satisfied by what Rise's 2023 10K calls "setting up a provision" (i.e., setting aside some reserve funds, probably on a legally and economically illusory basis, where such set asides are vulnerable to judgment creditors and to disappointing treatment in any bankruptcy case), as our expert will address when the County or county is willing to hear our objections to Rise's reclamation plans and financial assurances, which should be heard now to defeat Rise's vested rights claims, because such reclamation uses and components on each parcel need their own vested rights and Rise cannot achieve any of them.) See Rise's admitted financial condition below which makes its "set up of provisions" worse than unsatisfactory. SECOND, as Hardesty and other cases demonstrate, this underground mining is a different "use" for vested rights analysis than surface mining "uses." Reclamation of underground mining harms, such as draining our community's groundwater and existing and future well water, is massively more expensive than Rise admits or contemplates, since it ignores those issues entirely. But see *Keystone, Gray v. County of Madera, and Varjabedian.* ***THIRD,*** despite ample warning in meritorious record EIR/DEIR objections explaining the toxic water pollution menace of hexavalent chromium confirmed in the CalEPA and EPA websites' studies and evidence and illustrated by the case study of how such CR6 pollution killed Hinkley, CA and many of its residents as illustrated in the movie, *Erin Brockovich,* Rise has not renounced its objectionable plan to pipe cement paste with hexavalent chromium into the underground IMM to shore up mine waste into columns. If, despite massive funding from the utility's settlement in that historic case, that town still has been unable to remediate its groundwater after all these years. See www.hinkleygroundwater.com. Rise can hardly be expected to do better when it still refuses to confront that obvious risk.

19. Rise Admits (at 18) harms from "intense competition in the mining industry."

This reveals one more of the many ways in which Rise is positioned to fail, since it has no sufficient financial cushion on which to rely when it suffers any of the many risks and problems it admits may be fatal to it. Rise's concluding admission on this topic is also telling for another reason: despite admitting the lack of resources that render Rise unable to afford to accomplish any part of its plans for the I-M Mine Property, Rise wants to "diversify" and start buying more mines; i.e.: "If we are unable to raise sufficient capital our exploration and development programs may be jeopardized or we may not be able to acquire, develop, or operate additional mining projects."

20. **Rise Admits (at 18) that it is vulnerable to any "shortage of equipment and supplies.**

21. Rise Admits (at 18) that "[j]oint ventures and other partnerships, including offtake arrangements, may expose us to risks."

Rise's chronically distressed financial condition is admitted below and in other Rise SEC filings, that demonstrate Rise's lack of the resources or credit to accomplish any of its material objectives or to satisfy any material obligations it contemplates without continuous equity-based funding from its investors. Many objectors have worried about "who may be behind the curtain" and whether they might be an even bigger risk to our community than Rise. In this admission paragraph, Rise states the obvious:

> We may enter into joint ventures, partnership arrangements, or offtake agreements … Any failure of such other companies to meet their obligations to us or to third parties, or any disputes with respect to the parties' respective rights and obligations, could have a material adverse effect on us, the development and production at our properties, including the I-M Mine Property, and on future joint ventures … could have a material adverse effect on our results…

Perhaps more than in most industries, there are some "aggressive in the extreme" players in the mining industry, and many such miners operate through "expendable" shell subsidiaries that they may not hesitate to place into strategic bankruptcies (or foreign insolvency proceedings for which they may seek US Bankruptcy Code Chapter 15 accommodations) that would create problems for everyone. This industry may also suffer its share of "loan to own" hedge funds (or the like), which can create difficulties for everyone else. This is another risk factor against which the County should prepare to protect our community, especially those living above and around the 2585-acre underground mine.

22. Rise Admits (at 18) that it "may experience difficulty attracting and retaining qualified management" and that "could have a material adverse effect on our business and financial condition."

23. Rise Admits (at 18) that currency fluctuations could become a problem.

24. Rise Admit (at 19) that "[t]itle to our properties may be subject to other claims that could affect our property rights and claims."

While it seems likely that major disputes by third parties over title to the IMM would have surfaced by now, the real question is whether, or to what extent, Rise anticipates attempting to solve its problems by asserting disputed claims to expand its alleged rights, titles, and interests. For example, what groundwater rights does Rise claim to empower it to dewater the mine 24/7/365 for 80 years? Also see the Rise's issues herein of concern to owners of surface properties above and around the 2585-acre IMM.

25. Rise Admits (at 19) that it may attempt to "secure surface access" or purchase required surface rights" or take other objectionable actions to acquire surface access (all of which are prohibited in the deeds by

which Rise acquired the IMM, as admitted in the Rise Petition Exhibits and earlier year SEC 10K filings).

If the County wonders why us surface owners living above or around the 2585-acre underground mine have been so defensive and outspoken against the mine, in part, it is from concern (in the case of some objectors born of experience) that Rise may battle for access to the surface to promote its opportunity to plunder the ground below the 200 foot deep surface rights of objecting surface owners, especially as to the groundwater and existing and future well water rights. See Initial Evidence Objections proving by Rise Petition's own exhibits that such Rise assertions in this 2023 10K (compare with the prior 10K's) admits are meritless. Such implied or express Rise warnings including the following (at 19, emphasis added):

> **In such cases [i.e., where Rise does not own the surface above and around its underground mine it decides it wants to use], applicable mining laws usually provide for rights of access for the purpose of carrying on mining activities; however, the enforcement of such rights through the courts can be costly and time consuming. It is necessary to negotiate surface access or to purchase surface rights if long-term access is required. [This is wrong and contrary to Rise's deed restrictions attached as an Exhibit to its Rise Petition.] There can be no guarantee that, despite having the right at law to carry on mining activities, we will be able to negotiate satisfactory agreements with any such existing landowners/occupiers for such access or purchase such surface rights, and therefore we may be unable to carry out planned mining activities. In addition, IN CIRCUMSTANCES WHERE SUCH ACCESS IS DENIED, OR NO AGREEMENT CAN BE REACHED, WE MAY NEED TO RELY ON THE ASSISTANCE OF LOCAL OFFICIALS OR THE COURTS IN SUCH JURISDICTION THE OUTCOMES OF WHICH CANNOT BE PREDICTED WITH ANY CERTAINTY. OUR INABILITY TO SECURE SURFACE ACCESS OR PURCHASE REQUIRED SURFACE RIGHTS COULD MATERIALLY AND ADVERSELY AFFECT OUR TIMING, COST, AND OVERALL ABILITY TO DEVELOP ANY MINERAL DEPOSITS WE MAY LOCATE.**

None of that is correct in respect to the IMM, which is the only mine Rise presently reports owning in these SEC filings or in its financial statements. FIRST, this demonstrates there can be no vested rights for Rise as to the 2585-acre underground mine, since Rise admits it needs surface access for such mining that Rise has not had (and neither did many predecessors in the chain of title.) Rise neither has such access, nor can Rise expect to acquire such access (or the permits Rise would need for that new "use" on a new parcel for which all cases, including Hansen, would forbid vested rights.) See the Table of Cases and Commentaries… at the end of the Initial Evidentiary Objection and other objections in the record, including to the disputed EIR/DEIR. SECOND, even Rise Petition's own Exhibits prohibit Rise from any such access to the surface without the owners' consent, which means that

Rise's express threat to "rely on the assistance of local officials or the courts" is wrongful, meritless, and worse; it sounds like this may be a Rise threat to bully surface owners by asserting such meritless threats based on a deed that Rise must have read since it is a key piece of imagined Rise evidence for its disputed Rise Petition. THIRD, Rise's incorrect and disputed claim that mining law "usually provides for rights of access" for such mining is irresponsible and inapplicable, because what matters at law here is what the controlling deed states, and this deed (and those of various predecessors) clearly denies Rise access to the surface.

26. Rise Admits (at 19) that its "properties and operations may be subject to litigation or other claims" that "may have a material adverse effect on our business and results of operations."

Based on the irresponsible Rise warning in the previous subsection against surface owners living above and around the 2585-acre underground mine to compel access with litigation and official complaints, Rise seems planning to provoke meritless disputes.

27. Rise Admits (at 19) that "[w]e do not currently insure against all the risks and hazards of mineral exploration, development, and mining operations."

Rise admits the obvious, that (at 19):

> Exploration, development, and mining operations involve various hazards, including environmental hazards, industrial accidents, metallurgical and other processing problems, unusual or unexpected rock formations, structural cave-ins or slides, flooding, fires, and periodic interruptions due to inclement or hazardous weather conditions. These risks could result in damage to or destruction of mineral properties, facilities, or other property; personal injury, environmental damage, delays... increased costs…monetary losses, and possible legal liability. We may not be able to obtain insurance to cover these risks at economically feasible premiums or at all. We may elect not to insure…

Since Rise's financial statements prove that Rise cannot to pay any sizable judgment, much less cover significant other losses, this is another reason why Rise may be unable to continue to mine, leaving everyone else with the still unanswered question: What then?

III. Rise's Admitted (at 49-50, emphasis added) Financial Problems In item 7 of the 2023 10K: Management's Discussion And Analysis of Financial Condition And Results of Operations, Including "Liquidity and Capital Resources."

As summarized below in more detail, Rise has reported (at 49) a net loss and comprehensive loss for the fiscal year ending 7/31/2023 of $3,660,382 and for 2022 of $3,464,127. For fiscal 2023 Rise only reported (at 50) "working capital of $474,272" with a deficit loss of $26,668,986, burning "$2,476,478 in net cash used in operating activities (compared to $2,694,359 in the prior fiscal year). Besides its own excuses for distress, Rise also admits (at 50) vulnerability to "[c]ontinued increased levels of volatility or rapid destabilization of global economic conditions" because they "could negatively impact our ability to obtain equity or debt financing or … other suitable arrangements to finance our Idaho-Maryland Mine Project which, in turn, could have a material adverse effect on our operations and financial condition." Id. Moreover, these losses and problems are expected to continue:

> **THE COMPANY EXPECTS TO OPERATE AT A LOSS FOR AT LEAST THE NEXT 12 MONTHS. IT HAS NO AGREEMENTS FOR ADDITIONAL FINANCING AND CANNOT PROVIDE ANY ASSURANCE THAT ADDITIONAL FUNDING WILL BE AVAILABLE TO FINANCE ITS OPERATIONS ON ACCEPTABLE TERMS IN ORDER TO ENABLE IT TO CARRY OUT ITS BUSINESS PLAN. THERE ARE NO ASSURANCES THAT THE COMPANY WILL BE ABLE TO COMPLETE FURTHER SALES OF ITS COMMON STOCK OR ANY OTHER FORM OF ADDITIONAL FINANCING. HOWEVER, THE COMPANY HAS BEEN ABLE TO OBTAIN SUCH FINANCINGS IN THE PAST. IF THE COMPANY IS UNABLE TO ACHIEVE THE FINANCING NECESSARY TO CONTINUE ITS PLAN OF OPERATION, THEN IT WILL NOT BE ABLE TO CARRY OUT ANY EXPLORATION WORK ON THE I-M MINE PROPERTY OR THE OTHER PROPERTIES IN WHICH IT OWNS AN INTEREST AND ITS BUSINESS MAY FAIL. ID. AT 50 (emphasis added).**

The Board must consider this not just as proof of Rise's financial infeasibility that makes all its actual mining plans likewise appear long-term/indefinite, unaffordable, and perhaps illusory, but these facts also defeat any objective intent for mining required for any vested rights to mine. Note that the Rise admissions could at most be alleged by Rise to prove this disputed claim (which is insufficient for vested rights to mine, which mining is a separate "use" from "exploration" under the applicable cases, which insist of testing for vested rights on a continuous, use-by-use, component-by-component, and parcel-by-parcel basis): Rise (like to a lesser extent its Emgold predecessor, but not Emgold's predecessors) from time to time has claimed to have engaged in some occasional drilling exploration on certain parcels and to aspire to further such exploration, if and when it can afford to do so, requiring further discretionary (i.e., noncommitted) funding from investors. Rise admits in these SEC 10K's (and consistently in other filings) massive and chronic financial problems that consistently require "going concern" warnings from Rise and its accountants. Rise also admits that it has no "proven" or "probable" gold reserves and that it remains speculative that there is any commercially viable gold potential. Also, as the disputed EIR/DEIR admits, there are years of massive start-up work required (e.g., dewatering the IMM, repairing and reconstructing infrastructure, the shaft, and the 72 miles of Flooded Mine tunnels, etc.) even to be able to begin exploring the Never Mined Parcels where Rise claims to need 76 more miles of tunnels for further exploration and mining.

While the County (incorrectly) has so far declined to consider SEC filing admissions and Rise's economic circumstances in objectors' rebuttals, the courts will certainly do so, especially as to these vested rights claims, where reclamation plans are essential to vested rights and financial assurances are essential to any tolerable reclamation plan. But beyond that, to preserve vested rights there must be a continuous objective intent to do the nonconforming vested "use," which here is (at most) so far just to explore, not to mine. Rise is following the same pattern as its Emgold predecessor did (also without achieving any vested rights) before Emgold finally abandoned its quest for mining that never proceeded beyond minor and occasional exploration (when its repeatedly extended option finally expired unexercised.) There is no such thing as a miner having a vested right to mine such continuously (since at least 1956) closed, dormant, flooded, and discontinued underground mine parcels under these circumstances, such as because such explorations were so minor, infrequent, misplaced, and noncontinuous, plus such a successor miner's alleged intent to mine cannot be so conditioned on both (i) the availability on terms satisfactory to Rise of sufficient new money from investors who have no funding commitment and making discretionary decisions on their continuous, day-to-day decisions to dole out money only on a short term basis, as they continuously reassess the risks versus benefits of gambling more money, and (ii) Rise itself being satisfied with whatever opportunities Rise continues to perceive from time to time as the exploration and other relevant data cumulates. These SEC 10K admissions are essential evidence for rebutting vested rights, among other Rise claims, because the miner cannot satisfy any vested right to mine under such circumstances, in effect claiming that it intends to mine if and only if all such practical and legal requirements for mining appear to be viable (many of which are admitted and defined as Risk Factors" in this 2023 10K) and appear to exist in the future to the satisfaction of both Rise and its money source.

Consider what these and other Rise admissions and indisputable facts mean for the disputed Rise Petition's vested rights claims. Rise is, in effect, like a gambler in a Texas holdem game who has no chips left to bet except those that are doled out by her/his by the money source looking over her/his shoulder at the cards being dealt face up one by one. The effect of such Rise admissions for this analogy is that Rise admits it must abandon the game whenever the money source has exhausted her/his appetite for such risks. That is not a possible vested right situation for Rise (or its predecessors.) Reading Rise's 2023 10K admissions demonstrates that Rise isn't committed to mining, but just wants an indefinite and perpetual option to explore (when and to the extent that its money sources fund more exploration) with the Rise **option** to mine (or abandon mining) in some future situation when and if the circumstances arise where Rise and its money source both agree that mining could be sufficiently profitable to make it worth that huge cost of that start-up gamble. But this 10K, like the other Rise SEC filings, proves both that (i) Rise is not yet at that point of commitment to mine, and (ii) Rise's money source is not yet willing to fund anything more than such exploration. Objectors ask the Board to consider the same question objectors will ask the courts, as we keep trying to resolve this dispute as quickly as possible: how long must our community, and especially objectors living above and around the 2585-acre mine, suffer in limbo with depressed property values and other stressful uncertainties, while Rise indefinitely "explores its options?"

IV. Rise's Financial Statements, And Its' Accountants' Opinions, (at 52-79) Also Contain More Admissions That Defeat Rise's Vested Rights And Other Claims.

The Rise accountants confirm Rise's admitted, continuing vulnerability and the present financial infeasibility concerns consistently also reported in Rise's previous SEC filings and audited financial statements. As Davidson & Company, LLP explained at the start of its opinion (Rise's 2023 10K at 53, emphasis added):

> ***Going Concern***
>
> The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company incurred a loss of $3,660,382 for the year ended July 31, 2023 and as of that date, had an accumulated deficit of $26,668,986. **These events and conditions raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.**

In that Note 1 Rise admitted to the accountants, which confirmed (at 59, emphasis added) that:

> The Company is in the early stages of exploration and as is common with any exploration company, it raises financing for its acquisition activities. **The accompanying consolidated financial statements have been prepared on the going concern basis, which presumes that the Company will continue operations for the foreseeable future and will be able to realize its assets and discharge its liabilities in the normal course of business. The Company has incurred a loss of $3,660,382 for the year ended July 31, 2023 and has accumulated a deficit of $26,668,986. The ability of the Company to continue as a going concern is dependent on the Company's ability to maintain continued support from its shareholders and creditors and to raise additional capital and implement its business plan. There is no assurance that the Company will be able to obtain adequate financing in the future or that such financing will be on terms advantageous to the Company. These events and conditions cast substantial doubt about the Company's ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.**
>
> At July 31, 2023, the Company had **working capital of $472,272** (2022 - working capital of $636,617).

Those "going concern" issues, as well as the $1,437,914 secured loan secured by the IMM assets (as explained in Note 9 at 67), make it challenging (at best) for Rise to attract either credit or asset-based loans, making Rise dependent upon continuing equity fundraising, which itself becomes progressively more difficult because existing shareholders' stock is diluted by the issuance of additional equity securities, including debt that is equity-based (e.g., debt convertible into equity or arranged with massive stock warrants or other "equity kickers"). That dilution is becoming a problem because, as Rise itself admits in such 2023 10K and prior SEC filings, Rise's continued deficit spending each year without any revenue or addition of any material capital assets does not enhance Rise's creditworthiness, except Rise may argue that: (i) Rise's exploration related work might add some intangible value to offset such increasing equity dilution perhaps from any value to a mining speculator

of some incremental information from that exploration; and (ii) Rise's cost of seeking permits, governmental approvals, or vested rights might add intangible value for a mining speculator to the extent that those efforts ultimately succeed before the project is abandoned by the essential money sources or by Rise (following the pattern set by Emgold, when it abandoned its purchase option).

As described at p. 54 and Note 5 at p. 64, the reported "carrying amount [value] of the Company's mineral property interests" is $4,149,053, reflecting the Rise purchase prices of the IMM and Centennial discussed in Note 5. As explained in the "Significant Accounting Policies" for Mineral property" in Note 3 (at 61, emphasis added):

> **Mineral property**
>
> The costs of acquiring mineral rights are capitalized at the date of acquisition. After acquisition, various factors can affect the recoverability of the capitalized costs. If, after review, management concludes that the carrying amount of a mineral property is impaired, it will be written down to estimated fair value. **Exploration costs incurred on mineral properties are expensed as incurred. Development costs incurred on proven and probable reserves will be capitalized. Upon commencement of production, capitalized costs will be amortized using the unit-of-production method over the estimated life of the ore body based on proven and probable reserves (which exclude non-recoverable reserves and anticipated processing losses).** When the Company receives an option payment related to a property, the proceeds of the payment are applied to reduce the carrying value of the exploration asset.

Unlike the legal rules where Rise has the burden of proof, accountants here rely on management's assessment of the facts requiring write-downs of that IMM asset value below its purchase price for such "impairment," explaining (at 64, emphasis added):

> As of July 31, 2023, based on management's review of the carrying value of mineral rights, management determined **that there is no evidence that the cost of these acquired mineral rights will not be fully recovered and accordingly, the Company determined that no adjustment to the carrying value of mineral rights was required. AS OF THE DATE OF THESE CONSOLIDATED FINANCIAL STATEMENTS, THE COMPANY HAS NOT ESTABLISHED ANY PROVEN OR PROBABLE RESERVES ON ITS MINERAL PROPERTIES AND HAS INCURRED ONLY ACQUISITION AND EXPLORATION COSTS.**

Note, that Rise admits (and the accountants confirm**) (**at 65, emphasis added**) that because there are not "proven or probable [gold] reserves"** all these increasing exploration expenditures have cumulated to $8,730,982. As explained, that requires that such costs must be reported as expenses adding to the perpetual and cumulating Rise losses. Only "[d]evelopment costs incurred on proven and probable [gold] reserves" will be capitalized and then, when and if "production" "commences," amortized using "the unit-of- production method." Id. at 61.

Note 9A (at 74) addressed "Evaluation of Disclosure Controls And Procedures" and then "Managements Annual Report on Internal Control over Financial Reporting." These admissions and opinions reflect not only on the reliability and quality of Rise's financial

reporting, but also on all the other important Rise filings with the County, such as the disputed Rise Petition and the disputed EIR/DEIR. The Board should consider whether this seems to reflect a pattern and practice about which objectors have previously objected in record filings, such as to Rise assertions of alternate reality opinions as if they were facts, and misuse of certain objectionable tactics described as “hide the ball” or “bait and switch.” Consider the following admissions (Id. emphasis added):

> **Evaluation of Disclosure Controls and Procedures**
>
> The United States Securities and Exchange Commission (the "SEC") defines the term "disclosure controls and procedures" to mean controls and other procedures of an issuer that are designed to ensure that information required to be disclosed in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.
>
> As of the end of the period covered by this Report, our management carried out an evaluation, with the participation of its Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. **Based on this evaluation, management concluded that our disclosure controls and procedures were not effective as of July 31, 2023 because of a material weakness in internal control over financial reporting that existed as of that date, as more fully described below.**
>
> **Management's Annual Report on Internal Control over Financial Reporting**
>
> Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.
>
> We carried out an evaluation, with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of its internal control over financial reporting as of July 31, 2023. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission

("COSO") in Internal Control-Integrated 2013 Framework. **Management concluded that our company's internal control over financial reporting was not effective as of July 31, 2023 because a material weakness in internal control over financial reporting existed as of that date as a result of a lack of segregation of incompatible duties due to insufficient personnel. A material weakness is a deficiency or a combination of control deficiencies in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.**

As of the end of the period covered by this Report, our management carried out an evaluation, with the participation of its Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. **Based on this evaluation, management concluded that our disclosure controls and procedures were not effective as of July 31, 2023 because of a material weakness in internal control over financial reporting that existed as of that date, as more fully described below.**

Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

We carried out an evaluation, with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of its internal control over financial reporting as of July 31, 2023. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control-Integrated 2013 Framework. Management **concluded that our company's internal control over financial reporting was not effective as of July 31, 2023 because a material weakness in internal control over financial reporting existed as of that date as a result of a lack of segregation of incompatible duties due to insufficient personnel. A material weakness is a deficiency or a combination of control deficiencies in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.**

Objectors also note Item 10 “Involvement in Certain Legal Proceedings” in the 2023 10K (at 78-79), which describes a long story about environmental wrongs or crimes at the British Columbia (Canada) mine of Banks Island Gold, Ltd. (“Banks”), where Rise stated (at 78) that “Benjamin W. Mossman was a director and officer” before Banks still pending Canadian

bankruptcy proceedings. Objectors do not have sufficient knowledge (or interest) to explore the merits of those disputes. What objectors know is that, after discussion of Rise's perspective on that extensive litigation, the 2023 10K states the following (at 79, emphasis added):

> [In the second trial in 2022] He [Mr. Mossman] was found guilty of 13 environmental violations in relation to certain waste discharges at the Banks mining site, and on September 26, 2023, Mr. Mossman was fined a total of approximately C$30,000 in connection with all of the offenses. Both Mr. Mossman and the Crown has filed appeals from this trial. The Crown has appealed all acquittals. Mr. Mossman has appealed all convictions. The hearing of both appeals has been scheduled for the week of January 15, 2024.

Objectors have not evaluated these Canadian disputes and do not address their merits, if any. Objectors cite such Rise quotes only because objectors are informed and believe that Mr. Mossman has had a substantial role in Rise's many filings with the County, as demonstrated in his presentations at the previous County hearings and his public comments on the various IMM disputes, especially those professing his adherence to high standards of environmental compliance. Therefore, as with any such conviction (if only as a legally appropriate challenge to his credibility and the weight of any evidence he has presented (or not presented), objectors reserve the right to ask the County to consider how these convictions (which he disputes and appeals) reflect on Rise and the credibility and weight of such evidence. None of that is not offered here as proof of any wrongs on the merits of this dispute or as proof about his character on the merits. However, that Rise information itself may be (or become) relevant to the credibility of any evidence to the extent provided in Evidence Code #780, 785, and (if and to the extent applicable, 788). See both the Initial Evidentiary Objection and Objectors Petition of Pre-Trial Relief, Etc.

ATTACHMENT 1: SOME PREVIOUS SEC FILINGS ON WHICH OBJECTORS FOUND USEFUL ADMISSIONS BEFORE RECENTLY HAVING TO UPDATE TO THE 2023 10K, BECAUSE RISE FILED THAT NEW 10K BEFORE OBJECTORS FILED DOCUMENTS ADDRESSING SUCH RISE SEC FILINGS.

I. This Attachment Provides Useful Rebuttal Comparisons Between Rise Claims Before And After Rise's September 1, 2023, Shift In Legal Theories For Its Rise Petition Claiming Vested Rights.

Rise SEC filings have long been a source of useful admissions. The fact that Rise has updated its reports in the 2023 10K does prevent those earlier admissions from being useful rebuttal evidence. Since some of those rebuttals were already prepared when Rise filed its 2023 10K on October 30, 2023, objectors have attached some of them below for helpful comparison. While the selected Rise statements are often similar and sometimes identical, objectors note that the changes in from those prior reports to the new 2023 10K are important rebuttal evidence, since what Rise changed (and failed to change) in its SEC 2023 10K updates after its September 1, 2023, Rise Petition filing to claim vested rights, proves how Rise has and has not changed its "story" before and after that radical change in legal theories from (a) normal permitting to (b) vested rights claims. While objectors have objected on the record to both Rise's pre-Rise Petition filings and the Rise Petition, the rebuttals are often focused on how Rise can be contradictory and inconsistent with itself. Thereby that both (i)

defeats credibility of claims by Rise for or from its Rise Petition, and (ii) creates other rebuttal opportunities for objectors to defeat the Rise Petition. See the Initial Evidence Objection authorities like EC #623. Objectors are more focused on the SEC filings than on Rise's County filings because general experience in other cases demonstrates that the more serious consequences of incorrect, deficient, or worse statements in such SEC filings tend to inspire greater accuracy and reality (although still disputable) than filings like those with the County, where the filing miners may perceive less risk of accountability or adverse consequences. The more contradictions and conflicts exist between Rise's different presentations to different audiences, the less possible it is for Rise to satisfy its burden of proof.

II. General Admissions from Rise's SEC Form 10Q for the Quarter Ending 10/31/2022 (Updating from the Prior 10Q Addressed in my DEIR Objection 254 #2). [Note that the lack of current SEC reporting data is another problem for Rise, for example, creating a basis for objectors to ask if Rise is trying to avoid admitting even worse facts by delaying filings.]

A. General Admissions About the Speculative Nature of Rise As a Hypothetical "Going Concern" from the Footnotes of Its Current Financial Statements Qualified By Its Accountant, Defeating Any Credibility For Reclamation And Demonstrating Why Sufficient Rise Financial Assurances Will Not Be Achievable.

As described in FN1 to the financial statements reporting the massive financial losses and problems described herein, with 10/31/22 working capital of only $66,526: "The ability of the Company to continue as a going concern is dependent on the Company's ability to maintain continued support from its shareholders and creditors and to raise additional capital and implement its business plan. There is no assurance that the Company will be able to obtain adequate financing in the future or that such financing will be on terms advantageous to the Company. These events and conditions cast significant doubt about the Company's ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern." While Rise, the EIR/DEIR team, and County staff (even the County Economic Report team) have tried to evade any consideration of Rise's financial condition, capabilities, or credibility, that is no longer possible because even SMARA recognizes that reclamation is the key to any vested rights, and reclamation cannot be satisfactory without credible and required "financial assurances" that Rise cannot provide, even for the less expensive reclamation plans disputed by objectors as grossly insufficient and non-compliant. Moreover, the County should also be more generally concerned about how it and others harmed by any Rise conduct creating liability can be compensated when Rise shows no ability to satisfy any significant judgment against it. That Rise lack of financial responsibility should be considered for governmental caution not sufficiently shown so far in these Rise processes, in effect not only justifying objectors' concerns about the harms from such Rise mining and related activities, but also who will bear the cost of

remediating and cleaning up any such harms during operations, much less the ultimate reclamation burdens at the end of this ordeal.

B. General Financial Data as of 10/31/2022.

Rise reports little cash ($166,805) [even less than compared to the 7/31/22] for the period, and that cash will not be sufficient to fund any of its EIR/DEIR goals, especially those relating to the "aspirational" safety and mitigation issues of concern to the objectors and likely the lesser priorities for the miner once it has obtained its disputed EIR approval and has then begun its meritless defense to the objectors' legal, political, and law reform resistance to protect objectors' homes, groundwater and other property rights and values, our forests and environment, and our way of life in our community above and around the 2585-acre underground mine. Rise's other current assets are not material, and its noncurrent assets are just the speculative mine and equipment that has little value absent massive additional investment needed even to begin mining (e.g., dewatering and updating to a starting position the mine condition from being closed and flooded since 1956, as to which there are insufficient reliable and useful information, many likely dangerous conditions unaddressed by the disputed DEIR/EIR, and massive admitted risks). That is why the disputed $4,149,053 "book value" of the mine (including Centennial, Brunswick, and the underground mine) and $545,783 equipment are qualified by the Rise accountant as dependent on the disputed assumption that Rise remains a "going concern" which the accountant and Rise itself admit is speculative.

Note that the most current reported information on expenses and losses (for the three months ending 10/31/2022, which is comparable to prior periods shown) declares an operating (expense) loss of $702,522 and a Net Loss for the period of $684,538, which losses will continue (and objectors expect to prove would dramatically increase) until at best the start of profitable mining which will be long delayed and may never occur for many reasons, whether for lack of working capital, lack of sufficient accessible gold, objectors resistance and resulting lack of investment or credit, worse than expected mining conditions, and other factors that Rise and its accountant admit cause this to be a highly speculative enterprise, as demonstrated above and in objections to the EIR/DEIR. For example, the 10Q reports for the most current reported three months of "Cash Flows From Operating Activities (showing a "loss for the period" of $684,538 and "net cash used in operating activities" of $305,113) that will quickly exhaust the current cash on hand long before not only any net cash flow is produced by the mining, but also long before the potential value of the long closed and flooded mine can even be evaluated for its actual, potential value. FN 1 reports working capital on 10/31/22 of only $66,526. But see other data on page 19. Note also from FN 1 that its "accumulated deficit" (loss) is $23,693,142. [However, note that on 10Q at p. 18 in the "Results of Operations" discussion of "expenses" for that period ending 10/3/1/2022 there are different numbers reported that are larger but still comparatively small, i.e., $105,570 for consulting, $123,989 for geological, mineral, and prospect costs, and $154,096 for "professional fees."]

C. Mining And Other Risk Related Admissions by Rise.

For any such EIR/DEIR mining and related activities, legal compliance, vested rights' reclamation, and other operations, Rise needs (and lacks) vastly more financial resources, especially working capital and the credit needed for compliant "financial assurances" for vested rights reclamation. This SEC 10Q filing admits various things that are directly or indirectly contrary to or inconsistent with the EIR/DEIR or which support any or all of the four Engel Objections, as well as those of others, including the admitted reality that Rise lacks the working capital, financial resources, and capacity to perform its material obligations with respect to the mine, especially regarding the CEQA, vested rights duties (e.g., reclamation and related financial assurances), and other safety or mitigation "aspirations" proposed or required by the EIR/DEIR and other Rise presentations. In effect, if the County were to approve the EIR or vested rights it would be imposing massive harms, risks, and problems on us local objectors for no net benefit to us or the community that Rise admits are **reasons why even voluntary investment in this mine would be a speculative investment for even the most risk tolerant investors.** For example, consider the following such 10Q admitted reasons for disapproving the EIR and rejecting vested rights:

a. "As of the date of these consolidated financial statements, the Company has not established any proven or probable reserves on its mineral properties and has incurred only acquisition and exploration costs." At p.7
b. "Our business, financial condition, and results of operations may be negatively affected by economic and other consequences from Russia's military action against Ukraine and the sanctions imposed in response to that action." "Risk Factors at p. 21. [Is this a subtle way of warning us that the suspected real party in interest "behind the curtain" successor maybe someone/some entity who presents even greater risks than Rise, such as, for example, someone vulnerable to such Russian sanctions or similar disabilities?]
c. "We will require significant additional capital to fund our business plan." Risk Factors at p. 22-23. Consider the detailed admissions that follow that admission:

> We will be required to expend significant funds to determine whether proven and probable mineral reserves exist at our properties, to continue exploration and, if warranted, to develop our existing properties, and to identify and acquire additional properties to diversify our property portfolio. We anticipate that we will be required to make substantial capital expenditures for the continued exploration and, if warranted, development of our I-M Mine Property. We have spent and will be required to continue to expend significant amounts of capital for drilling, geological, and geochemical analysis, assaying, permitting, and feasibility studies with regard to the results of our exploration at our I-M Mine Property. We may not benefit from some of these investments if we are unable to identify commercially exploitable mineral reserves.
>
> Our ability to obtain necessary funding for these purposes, in turn, depends upon a number of factors, including the status of the national and worldwide economy and the price of metals. Capital markets worldwide were adversely affected by substantial losses by financial institutions, caused by investments in asset-backed securities and remnants from those losses continue to impact the ability for us to raise capital. We may not be successful in obtaining the required financing or, if we can obtain such financing, such financing may not be on terms that are favorable to us.

> Our inability to access sufficient capital for our operations could have a material adverse effect on our financial condition, results of operations, or prospects. Sales of substantial amounts of securities may have a highly dilutive effect on our ownership or share structure. Sales of a large number of shares of our common stock in the public markets, or the potential for such sales, could decrease the trading price of those shares and could impair our ability to raise capital through future sales of common stock. We have not yet commenced commercial production at any of our properties and, therefore, have not generated positive cash flows to date and have no reasonable prospects of doing so unless successful commercial production can be achieved at our I-M Mine Property. We expect to continue to incur negative investing and operating cash flows until such time as we enter into successful commercial production. This will require us to deploy our working capital to fund such negative cash flow and to seek additional sources of financing. There is no assurance that any such financing sources will be available or sufficient to meet our requirements. There is no assurance that we will be able to continue to raise equity capital or to secure additional debt financing, or that we will not continue to incur losses.

d. ***"We have a limited operating history on which to base an evaluation of our business and prospects." Risk Factors at p.23.*** Consider the detailed admissions that follow that admission and which raise the question: why aren't those additional investigations being required and done in advance of the EIR approval, especially since the EIR/DEIR ignores objector demands for a commentary about the adverse consequences us neighbors fear if the EIR miner dewaters and otherwise creates a mess and then (before any of the mitigation or other safety work) abandons the project as infeasible? Such advance work should include what the 10Q plans for later after approval as follows:

> Since our inception, we have had no revenue from operations. We have no history of producing products from any of our properties. Our I-M Mine Project is a historic, past-producing mine with apart from the exploration work that we have completed since 2016 has had very little recent exploration work since 1956. We would require further exploration work in order to reach the development stage. Advancing our I-M Mine Property into the development stage will require significant capital and time, and successful commercial production from the I-M Mine Property will be subject to completing feasibility studies, permitting and re-commissioning of the mine, constructing processing plants, and other related works and infrastructure. As a result, we are subject to all of the risks associated with developing and establishing new mining operations and business enterprises including:

- completion of feasibility studies to verify reserves and commercial viability, including the ability to find sufficient ore reserves to support a commercial mining operation;
- the timing and cost, which can be considerable, of further exploration, preparing feasibility studies, permitting and construction of infrastructure, mining and processing facilities;
- the availability and costs of drill equipment, exploration personnel, skilled labor, and mining and processing equipment, if required;
- the availability and cost of appropriate smelting and/or refining arrangements, if required;
- compliance with stringent environmental and other governmental approval and permit requirements;
- the availability of funds to finance exploration, development, and construction activities, as warranted;
- potential opposition from non-governmental organizations, local groups or local inhabitants that may delay or prevent development activities;
- potential increases in exploration, construction, and operating costs due to changes in the cost of fuel, power, materials, and supplies; and

- potential shortages of mineral processing, construction, and other facilities related supplies.

The costs, timing, and complexities of exploration, development, and construction activities may be increased by the location of our properties and demand by other mineral exploration and mining companies. It is common in exploration programs to experience unexpected problems and delays during drill programs and, if commenced, development, construction, and mine start-up. In addition, our management and workforce will need to be expanded, and sufficient support systems for our workforce will have to be established. This could result in delays in the commencement of mineral production and increased costs of production. Accordingly, our activities may not result in profitable mining operations and we may not succeed in establishing mining operations or profitably producing metals at any of our current or future properties, including our I-M Mine Property.

e. ***"We have a history of losses and expect to continue to incur losses in the future" Risk Factors at p.23.*** Consider the detailed admissions that follow that admission and which raise the question, under these many admitted uncertain and high-risk circumstances, why is it not the EIR/DEIR that is "speculative" instead my objections, as the disputed EIR/DEIR continues incorrectly to assert. For example, consider these quoted 10Q admissions (emphasis added):

We have incurred losses since inception, have had negative cash flow from operating activities, and expect to continue to incur losses in the future. **We have incurred the following losses from operations during each of the following periods:**

- **$3,464,127 for the year ended July 31, 2022**
- **$1,603,878 for the year ended July 31, 2021**
- **$5,471,535 for the year ended July 31, 2020**

We expect to continue to incur losses unless and until such time as one of our properties enters into commercial production and generates sufficient revenues to fund continuing operations. We recognize that if we are unable to generate significant revenues from mining operations and/or dispositions of our properties, **we will not be able to earn profits or continue operations.** At this early stage of our operation, we also expect to face the risks, uncertainties, expenses, and difficulties frequently encountered by companies at the start-up stage of their business development. **We cannot be sure that we will be successful in addressing these risks and uncertainties and our failure to do so could have a materially adverse effect on our financial condition. (emphasis added)**

What that implies is not just an unhappy fate for investors, but a worse result for us local surface owners above and around the 2585-acre underground mine, a topic which the EIR/DEIR incorrectly refuses to address as too "speculative," although the reverse is more true; i.e., as so admitted, shortly after the Rise investors and creditors lose hope for their gamble, they will cease supporting Rise and it will collapse, leaving a mess for us neighbors and our bigger community that the EIR/DEIR refuses to discuss but which (as a bankruptcy lawyer with vast experience in such situations) Some objectors report having seen such problems too many times and can describe for the bankruptcy or other courts that most likely will resolve the disputes that must follow any EIR or vested rights approval by the County. See the Engel Objections.

Again, these admissions defeat the level of certainty incorrectly implied in the EIR/DEIR to the contrary and wrongly asserted as grounds for ignoring objections as too speculative or unsubstantiated or unexplained, because such admissions confirm the correctness of objections, at least to the extent of requiring a meaningful EIR/DEIR "good faith reasoned analysis" and "common-sense" risk assessment in the DEIR/EIR where none now exists. These problems are even more serious in the vested rights disputes, making the granting of vested rights to evade the permitting process even more dangerous for us objectors and the County. In

particular, for example, as described in Engel's DEIR Objection 254 #'s 2, 4, 14, and 15, it is not speculative (as the disputed EIR incorrectly claims) that us objectors living on the surface above and around the 2585-acre underground mine will enforce our defensive rights to protect our homes, environment, and property rights and value, our forests and environment, and our community way of life against this mining menace with not just the usual legal challenges, but also with law reforms and political changes.

D. SEC Filing Admitted "Risks Related to Mining and Exploration."

Consider the detailed 10Q admissions that follow that forgoing admission and which raise the question, under these many admitted uncertain and high-risk circumstances, why is it not the EIR/DEIR that is "speculative" instead my objections, as the disputed EIR/DEIR continues incorrectly to assert. For example, consider these quoted 10Q admissions (with emphasis added):

(i)"The I-M Mine Property is in the exploration stage. There is no assurance that we can establish the existence of any mineral reserve on the I-M Mine Property or any other properties we may acquire in commercially exploitable quantities. Unless and until we do so, we cannot earn any revenues from these properties and if we do not do so we will lose all of the funds that we expend on exploration. If we do not discover any mineral reserve in a commercially exploitable quantity, the exploration component of our business could fail." 10Q at p. 24:

> **We have not established that any of our mineral properties contain any mineral reserve according to recognized reserve guidelines, nor can there be any assurance that we will be able to do so.**
>
> A mineral reserve is defined in subpart 1300 of Regulation S-K under the Securities Act of 1933, as amended (the "Securities Act") and the Exchange Act ("Subpart 1300") as an estimate of tonnage and grade or quality of "indicated mineral resources" and "measured mineral resources" (as those terms are defined in Subpart 1300) that, in the opinion of a "qualified person" (as defined in Subpart 1300), can be the basis of an economically viable project. In general, **the probability of any individual prospect having a "reserve" that meets the requirements of Subpart 1300 is small, and our mineral properties may not contain any "reserves" and any funds that we spend on exploration could be lost. Even if we do eventually discover a mineral reserve on one or more of our properties, there can be no assurance that they can be developed into producing mines and that we can extract those minerals. Both mineral exploration and development involve a high degree of risk, and few mineral properties that are explored are ultimately developed into producing mines.**
>
> The commercial viability of an established mineral deposit will depend on a number of factors including, by way of example, the size, grade, and other attributes of the mineral deposit, the proximity of the mineral deposit to infrastructure such as processing facilities, roads, rail, power, and a point for shipping, government regulation, and market prices. **Most of these factors will be beyond our control, and any of them could increase costs and make extraction of any identified mineral deposit unprofitable.**

(ii)"The nature of mineral exploration and production activities involves a high degree of risk and the possibility of uninsured losses." 10Q at p. 24:

> **Exploration for and the production of minerals is highly speculative and involves greater risk than many other businesses. Most exploration programs do not result in mineralization that may be of sufficient quantity or quality to be profitably mined. Our operations are, and any future development or mining operations we may conduct will be, subject to all of the operating hazards and risks normally incidental to exploring for and development of mineral properties, such as, but not limited to:**
>
> - economically insufficient mineralized material;
> - fluctuation in production costs that make mining uneconomical;
> - labor disputes;
> - unanticipated variations in grade and other geologic problems;

- **environmental hazards;**
- **water conditions;**
- **difficult surface or underground conditions;**
- **industrial accidents;**
- metallurgic and other processing problems;
- mechanical and equipment performance problems;
- **failure of dams, stockpiles, wastewater transportation systems, or impoundments;**
- **unusual or unexpected rock formations; and**
- **personal injury, fire, flooding, cave-ins and landslides.**

Any of these risks can materially and adversely affect, among other things, the development of properties, production quantities and rates, costs and expenditures, potential revenues, and production dates. If we determine that capitalized costs associated with any of our mineral interests are not likely to be recovered, we would incur a write-down of our investment in these interests. All of these factors may result in losses in relation to amounts spent that are not recoverable, or that result in additional expenses.

(iii). "Commodity price volatility could have dramatic effects on the results of operations and our ability to execute our business plan." 10Q at p. 25:

The price of commodities varies on a daily basis. Our future revenues, if any, will likely be derived from the extraction and sale of base and precious metals. The price of those commodities has fluctuated widely, particularly in recent years, and is affected by numerous factors beyond our control including economic and political trends, expectations of inflation, currency exchange fluctuations, interest rates, global and regional consumptive patterns, speculative activities and increased production due to new extraction developments and improved extraction and production methods. The effect of these factors on the price of base and precious metals, and therefore the economic viability of our business, could negatively affect our ability to secure financing or our results of operations.

(iv). "Estimates of mineralized material and resources are subject to evaluation uncertainties that could result in project failure." 10Q at p. 25:

Our exploration and future mining operations, if any, are and would be faced with risks associated with being able to accurately predict the quantity and quality of mineralized material and resources/reserves within the earth using statistical sampling techniques. Estimates of any mineralized material or resource/reserve on any of our properties would be made using samples obtained from appropriately placed trenches, test pits, underground workings, and intelligently designed drilling. **There is an inherent variability of assays between check and duplicate samples taken adjacent to each other and between sampling points that cannot be reasonably eliminated. Additionally, there also may be unknown geologic details that have not been identified or correctly appreciated at the current level of accumulated knowledge about our properties. This could result in uncertainties that cannot be reasonably eliminated from the process of estimating mineralized material and resources/reserves. If these estimates were to prove to be unreliable, we could implement an exploitation plan that may not lead to commercially viable operations in the future.**

(v). "Any material changes in mineral resource/reserve estimates and grades of mineralization will affect the economic viability of placing a property into production and a property's return on capital." 10Q at p. 2:

As we have not completed feasibility studies on our I-M Mine Property and have not commenced actual production, we do not have mineralization resources and any estimates may require adjustments or downward revisions. In addition, the grade of ore ultimately mined, if any, may differ from that indicated by future feasibility studies and drill results. Minerals recovered in small scale tests may not be duplicated in large scale tests under on-site conditions or in production scale. (emphasis added)

(vi). "Our exploration activities on our properties may not be commercially successful, which could lead us to abandon our plans to develop our properties and our investments in exploration." 10Q at p. 25:

> Our long-term success depends on our ability to identify mineral deposits on our I-M Mine Property and other properties we may acquire, if any, that we can then develop into commercially viable mining operations. Mineral exploration is highly speculative in nature, involves many risks, and is frequently non-productive. These risks include unusual or unexpected geologic formations, and the inability to obtain suitable or adequate machinery, equipment, or labor. The success of commodity exploration is determined in part by the following factors:
>
> - the identification of potential mineralization;
> - availability of government-granted exploration permits;
> - the quality of our management and our geological and technical expertise; and
> - the capital available for exploration and development work.
>
> Substantial expenditures are required to establish proven and probable reserves through drilling and analysis, to develop metallurgical processes to extract metal, and to develop the mining and processing facilities and infrastructure at any site chosen for mining. Whether a mineral deposit will be commercially viable depends on a number of factors that include, without limitation, the particular attributes of the deposit, such as size, grade, and proximity to infrastructure; commodity prices; and government regulations, including, without limitation, regulations relating to prices, taxes, royalties, land tenure, land use, importing and exporting of minerals, and environmental protection. We may invest significant capital and resources in exploration activities and may abandon such investments if we are unable to identify commercially exploitable mineral reserves. The decision to abandon a project may have an adverse effect on the market value of our securities and the ability to raise future financing.

(vii). "We are subject to significant governmental regulations that affect our operations and costs of conducting our business and may not be able to obtain all required permits and licenses to place our properties into production." 10Q at 26:

> Our current and future operations, including exploration and, if warranted, development of the I-M Mine Property, do and will require permits from governmental authorities and will be governed by laws and regulations, including:
>
> - laws and regulations governing mineral concession acquisition, prospecting, development, mining, and production;
> - laws and regulations related to exports, taxes, and fees;
> - labor standards and regulations related to occupational health and mine safety; and
> - environmental standards and regulations related to waste disposal, toxic substances, land use reclamation, and environmental protection.
>
> Companies engaged in exploration activities often experience increased costs and delays in production and other schedules as a result of the need to comply with applicable laws, regulations, and permits. Failure to comply with applicable laws, regulations, and permits may result in enforcement actions, including the forfeiture of mineral claims or other mineral tenures, orders issued by regulatory or judicial authorities requiring operations to cease or be curtailed, and may include corrective measures requiring capital expenditures, installation of additional equipment, or costly remedial actions. **We cannot predict if all permits that we may require for continued exploration, development, or construction of mining facilities and conduct of mining operations will be obtainable on reasonable terms, if at all. Costs related to applying for and obtaining permits and licenses may be prohibitive and could delay our planned exploration and development activities. We may be required to compensate those suffering loss or damage by reason of our mineral exploration or our mining activities, if any, and may have civil**

or criminal fines or penalties imposed for violations of, or our failure to comply with, such laws, regulations, and permits.

Existing and possible future laws, regulations, and permits governing operations and activities of exploration companies, or more stringent implementation of such laws, regulations and permits, could have a material adverse impact on our business and cause increases in capital expenditures or require abandonment or delays in exploration. Our I-M Mine Property is located in California, which has numerous clearly defined regulations with respect to permitting mines, which could potentially impact the total time to market for the project.

Subsurface mining is allowed in the Nevada County M1 Zoning District, where the I-M Mine Property is located, with approval of a "Use Permit". Approval of a Use Permit for mining operations requires a public hearing before the County Planning Commission, whose decision may be appealed to the County Board of Supervisors ("County Board"). **Use Permit approvals include conditions of approval, which are designed to minimize the impact of conditional uses on neighboring properties.**

On November 21, 2019 we submitted an application for a Use Permit to Nevada County (the "County"). On April 28, 2020, with a vote of 5-0, the County Board approved the contract for Raney Planning & Management Inc. to prepare an Environmental Impact Report and conduct contract planning services on behalf of the County for the proposed I-M Mine Project.

The Use Permit application proposes underground mining to recommence at the I-M Mine Property at an average throughput of 1,000 tons per day. The existing Brunswick Shaft, which extends to ~3400 feet depth below surface, would be used as the primary rock conveyance from the I-M Mine Property. A second service shaft would be constructed by raising from underground to provide for the conveyance of personnel, materials, and equipment. Processing would be done by gravity and flotation to produce gravity and flotation gold concentrates.

We propose to produce barren rock from underground tunneling and sand tailings as part of the project which would be used for creation of approximately 58 acres of level and useable industrial zoned land for future economic development in Nevada County. A water treatment plant and pond, using conventional processes, would ensure that groundwater pumped from the mine is treated to regulatory standards before being discharged to the local waterways. There is no assurance our Use Permit application will be accepted as submitted. If substantial revisions are required, our ability to execute our business plan will be further delayed.

In 1975, the California Legislature enacted the Surface Mining and Reclamation Act ("SMARA"), which required that all surface mining operations in California have approved reclamation plans and financial assurances. **SMARA was adopted to ensure that land used for mining operations in California would be reclaimed post-mining to a useable condition. Pursuant to SMARA, we would be required to obtain approval of a Reclamation Plan from and provide financial assurances to the County for any surface component of the underground mining operation before mining operations could commence. Approval of a Reclamation Plan will require a public hearing before the County Planning Commission.**

To approve a Reclamation Plan and Use Permit, the County would need to satisfy the requirements of California Environmental Quality Act ("CEQA"). CEQA requires that public agency decision makers study the environmental impacts of any discretionary action, disclose the impacts to the public, and minimize unavoidable impacts to the extent feasible. CEQA is triggered whenever a California governmental agency is asked to approve a "discretionary project". The approval of a Reclamation Plan is a "discretionary project" under CEQA. Other necessary ancillary permits like the California Department of Fish and Wildlife ("CDFW") Streambed Alteration Agreement (if applicable) also triggers CEQA compliance.

In this situation, the lead agency for the purposes of CEQA would be the County. Other public agencies in charge of administering specific legislation will also need to approve aspects of the Project, such as the CDFW (the California Endangered Species Act), the Air Pollution Control District (Authority to Construct and Permit to Operate), and the Regional Water Quality Control Board (National Pollutant Discharge Elimination System (authorized to state governments by the US Environmental Protection Agency) and Report of Waste Discharge). However, CEQA's Guidelines provide that if more than one agency must act on a project, the agency that acts first is generally considered the lead agency under CEQA. All other agencies are considered "responsible agencies." Responsible agencies do need to consider the environmental document approved by the lead agency, but they will usually accept the lead agency's document and use it as the basis for issuing their own permits. **There is no assurance that other agencies will not require additional assessments in their decision-making process. If such assessments are required, additional time and costs will delay the execution of, and may even require us to re-evaluate the feasibility of, our business plan. (emphasis added)**

(viii). "Our activities are subject to environmental laws and regulations that may increase our costs of doing business and restrict our operations. 10Q at 27:

All phases of our operations are subject to environmental regulation in the jurisdictions in which we operate. Environmental legislation is evolving in a manner that may require stricter standards and enforcement, increased fines and penalties for non-compliance, more stringent environmental assessments of proposed projects, and a heightened degree of responsibility for companies and their officers, directors, and employees. **These laws address emissions into the air, discharges into water, management of waste, management of hazardous substances, protection of natural resources, antiquities and endangered species, and reclamation of lands disturbed by mining operations. Compliance with environmental laws and regulations, and future changes in these laws and regulations, may require significant capital outlays and may cause material changes or delays in our operations and future activities. It is possible that future changes in these laws or regulations could have a significant adverse impact on our properties**

(ix). "Regulations and pending legislation governing issues involving climate change could result in increased operating costs, which could have a material adverse effect on our business." 10Q at 27:

A number of governments or governmental bodies have introduced or are contemplating legislative and/or regulatory changes in response to concerns about the potential impact of climate change. Legislation and increased regulation regarding climate change could impose significant costs on us, on our future venture partners, if any, and on our suppliers, including costs related to increased energy requirements, capital equipment, environmental monitoring and reporting, and other costs necessary to comply with such regulations. Any adopted future climate change regulations could also negatively impact our ability to compete with companies situated in areas not subject to such limitations. Given the emotional and political significance and uncertainty surrounding the impact of climate change and how it should be dealt with, we cannot predict how legislation and regulation will ultimately affect our financial condition, operating performance, and ability to compete. Furthermore, even without such regulation, increased awareness and any adverse publicity in the global marketplace about potential impacts on climate change by us or other companies in our industry could harm our reputation. The potential physical impacts of climate change on our operations are highly uncertain, could be particular to the geographic circumstances in areas in which we operate and may include changes in rainfall and storm patterns and intensities, water shortages, changing sea levels, and changing temperatures. These impacts may adversely impact the cost, production, and financial performance of our operations.

(x). "Land reclamation requirements for our properties may be burdensome and expensive." 10Q at 28:

Although variable depending on location and the governing authority, land reclamation requirements are generally imposed on mineral exploration companies (as well as companies with mining operations) in order **to minimize long term effects of land disturbance.**

Reclamation may include requirements to:

- **control dispersion of potentially deleterious effluents;**
- **treat ground and surface water to drinking water standards; and**
- **reasonably re-establish pre-disturbance landforms and vegetation.**

In order to carry out reclamation obligations imposed on us in connection with our potential development activities, we must allocate financial resources that might otherwise be spent on further exploration and development programs. We plan to set up a provision for our reclamation obligations on our properties, as appropriate, but this provision may not be adequate. If we are required to carry out unanticipated reclamation work, our financial position could be adversely affected. (emphasis added)

(xi). "We may be unable to secure surface access or purchase required surface rights." 10Q at 28:

Although we obtain the rights to some or all of the minerals in the ground subject to the mineral tenures that we acquire, or have the right to acquire, in some cases we may not acquire any rights to, or ownership of, the surface to the areas covered by such mineral tenures. In such cases, applicable mining laws usually provide for rights of access to the surface for the purpose of carrying on mining activities; however, the enforcement of such rights through the courts can be costly and time consuming. It is necessary to negotiate surface access or to purchase the surface rights if long-term access is required. **There can be no guarantee that, despite having the right at law to carry on mining activities, we will be able to negotiate satisfactory agreements with any such existing landowners/occupiers for such access or purchase of such surface rights, and therefore we may be unable to carry out planned mining activities. In addition, in circumstances where such access is denied, or no agreement can be reached, we may need to rely on the assistance of local officials or the courts in such jurisdiction the outcomes of which cannot be predicted with any certainty. Our inability to secure surface access or purchase required surface rights could materially and adversely affect our timing, cost, or overall ability to develop any mineral deposits we may locate. (emphasis added)**

(xii). "Our properties and operations may be subject to litigation or other claims." 10Q at 28:

From time to time our properties or operations may be subject to disputes that may result in litigation or other legal claims. We may be required to take countermeasures or defend against these claims, which will divert resources and management time from operations. The costs of these claims or adverse filings may have a material effect on our business and results of operations.

(xiii). "We do not currently insure against all the risks and hazards of mineral exploration, development, and mining operations." 10Q at 28:

Exploration, development, and mining operations involve various hazards, including environmental hazards, industrial accidents, metallurgical and other processing problems, unusual or unexpected rock formations, structural cave-ins or slides, flooding, fires, and periodic interruptions due to inclement or hazardous weather conditions. These risks could result in damage to or destruction of mineral properties, facilities, or other property, personal injury, environmental damage, delays in operations, increased cost of operations, monetary losses, and possible legal liability. We may not be able to obtain insurance to cover these risks at economically feasible premiums or at all. We may elect not to insure where premium costs are disproportionate to our perception of the relevant risks. The payment of such insurance premiums and of such liabilities would reduce the funds available for exploration and production activities. (emphasis added)

Again, all these Rise admissions defeat the level of certainty incorrectly implied in the EIR/DEIR to the contrary and wrongly asserted as grounds for ignoring objections as too speculative or unsubstantiated or unexplained, because such admissions confirm the correctness of objections, at least to the extent of requiring

a meaningful EIR/DEIR good faith reasoned analysis and common-sense risk assessment in the DEIR/EIR where none now exists. In particular, for example, it is not speculative (as the disputed EIR incorrectly claims) that us objectors living on the surface above and around the 2585-acre underground mine will enforce our defensive rights to protect our homes and property rights and value, our forests and environment, and our community way of life against this mining menace with not just the usual legal challenges, but also with law reforms and political changes.

E. Miscellaneous 10Q Admissions Inconsistent With Or Contrary to the EIR/DEIR.

The DEIR claims that there is no viable alternative to the mining of this property, because industrial uses would be too "intense," a bizarre idea that is contrary to "common sense" (the standard in *Gray v. County of Madera*) and for which the DEIR/EIR offers no "good faith reasoned analysis" (the standard in *Vineyard, Banning, and Costa Mesa)* as demonstrated in Engel Objections and others thereto, noting that nothing is worse or more "intense" than such 24/7/365 mining for 80 years with continuous resistance from the local victims of this mining menace. However, the 10Q states at p. 17: "**The Company would produce barren rock from underground tunneling and sad tailings as part of the project which would be used for creation of approximately 58 acres if local and useable industrial zoned land for future economic development in Nevada County, which is the alternative rejected by the DEIR/EIR as not viable and too "intense." (emphasis added) This intensity works against Rise's vested rights claims, as well as by adding an "expansion" to its business operations not contemplated in the prior mining.**

F. Miscellaneous Other Admitted Data from the 10Q.

As discussed at page 8 of the 10Q, Rise closed its purchase of the "Idaho-Maryland Gold Mine" property on 1/25/2017 for $2,000,000. It then purchased the 82-acre surface rights adjacent thereto for $1,900,000 closing on May 14, 2017. Including those purchase prices and related acquisition expenditures totaling $7,958,346, the Rise cumulative expenditures for this project have been $8,082,335. Thus, Rise's working investment after acquisition has only been modest, such as for that 10Q period $123,989, of which the only CEQA evaluation or risk relevant expenses have been $92,159 for "consulting" $2453 on "engineering," and $1596 for "supplies." No wonder that Rise has so little useful to say about the conditions regarding its mine, both the flooded part (still unevaluated in any sufficient way since 1956) and the new expansion area in the 2585-acre underground mine, because not only has Rise seemed eager to avoid discovering any inconvenient or worse truths or information, but Rise had insufficient working capital to investigate even if it had wished to risk acquiring the information us objectors expect to be true and damning to its goals for EIR/DEIR approval and vested rights claims.

As discussed at 10Q page 10, Rise borrowed $1,000,000 on 9/3/2019 secured by all of its (and its subsidiary's) mine and other assets due in full on 9/3/2023. The 10Q reported current balance is $1,491,308. The substantial warrants and high interest rate on the loan, which confirm the lender's belief in the high-risk nature of that loan against those mining assets (i.e.,

almost 8 to 1 loan principal to book value of assets plus the stock warrants). Various stock transactions are also described that raised the money already spent.

III, RISE ADMISSIONS IN ITS FORM 10K FOR THE FISCAL YEAR ENDED 7/31/2022 (FILED 10/31/2022) [Again Not Updated Yet By Rise.]

A. Admissions Regarding the Mine Property And Basic Context Data.

` **1, How Rise's 10K (at pp.34-38) Describes the IMM History And How That Compares To Rise's Vested Rights Claims.**

Rise's 10K admits (at 34-35) that 1955 was "the final year of production from the mine." Thus, there has been no mining for vested rights acquisition since at least 1955, thus focusing on the comparison of the applicable law at that time to what Rise now proposes for vested rights mining. Compare this to the Nevada County's 1954 ordinance and State laws in 1954 laws versus what was done in that last 1955 year of mining operations, as discussed in *Hansen* in this Petition, including detailed analysis of that often-mischaracterized case by miners more correctly described in Exhibit __hereto. To be clear none of the work done at the mine since it closed and flooded in 1956 qualifies for vested rights, since it was only "exploration" or environmental testing, which even the Rise 10K excludes from mining activities by its admission at pp. 28: "Mineral exploration, however, is distinct from the definitions of 'sub surface mining' and "surface mining'" [making the point that miners in that M1 district zoned land could explore without a permit.] While Rise cites aggregate gold production numbers from 1866-1955 in its Table 3 at pp. 35, what matters for the vested rights dispute is what vested rights uses and intensities existed, for example, when the Nevada County ordinance addressed in Hansen was enacted compared to the nonconforming uses, if any, that occurred in 1955. Clearly, nonuse since 1956 cannot create any additional or enhanced vested rights, even under *Hansen* (much less under many other authorities that objectors cite [and will cite in later briefing] to defeat Rise's vested rights claims). While this is not the time or the place for briefing all objectors facts, evidence, and law for our trial briefs defeating the vested rights, it is instructive to consider this Rise 10K admission at 34, demonstrating that not much happened in 1954-55 of helpful relevance for Rise's vested rights claims, especially considering all the additional laws and regulations occurring after the mine closed and flooded in 1956 and even before since:"[mining was] forced to shut down by the US Government in 1942 (Shore 1943). Due to lack of development, a decline in gold production was experienced and recovery from war-time shutdown never occurred."

While Rise's 10K claims at pp. 34 that: "The I-M Mine Property and its comprehensive collection of original documents was rediscovered in 1990 by Consolidated Del Norte Ventures Inc, the predecessor company of Emgold Mining Corporation, and efforts were made to reopen the historic mine." During the period of what Rise called "Exploration & Mine Development 2003-2004" [skipping over in dead silence the period of nonuse or anything from 1956 to 2003], Rise claims (at pp. 34): "Development work during this period [2003-2004] included completion of a preliminary investigation of the mine records, publishing various technical reports on the I-M Property, leasing or purchasing adjacent properties [none of which would be eligible for

vested rights because they were expansion, intensification, and otherwise barred by case law], various permit applications and associated environmental studies, development of a ceramics technology process, and completion of an exploration program. Emgold was unsuccessful in reopening the historic mine due to inability to raise necessary funding in the midst of unfavorable market conditions." As described in this Petition, objectors dispute any such Emgold documentary evidence as consistent with Rise's description (e.g., that such "rediscovered" in 1990 pre-1956 records that were a 'comprehensive collection"), the law of evidence will exclude those purported records as admissible proof for any vested rights.

As to the relevant "history" summarized by the Rise 10K starting at p. 34, using what are described as "available historic records," which objectors assume means the portion of such historical records which Rise was able to find and chose to hunt down and locate, leaving for later litigation discovery the question of which possibly available records Rise chose not to seek or investigate. [While the 10K admits that "[h]istoric drill logs were not available for review and no historic drill core was preserved from past mining operations…" and objectors wonder what **reliable** evidence, if any, serves as the foundation for Rise's (and the EIR/DEIR's) purported analysis and what deficiencies exist to invalidate or discredit such analysis. Another discovery question is whether and to what extent the prior Emgold owner stopped its reported investigation merely (as Rise claims at 34-35) "due to inability to raise necessary funding in the midst of unfavorable market conditions" or whether they may also have been discouraged by negative information or clues of risks that would have to have been addressed in the EIR (if Rise had chosen to investigate them.) For example, the 10K reports that Rise purchased the "Emgold diamond drill program database" as distinct from all the historical documents of Emgold, as Rise did when it purchased from BET Group. In objectors' experience miners tend to be selective about what they want to know and what they avoid, because they might not want to know inconvenient truths or worse. Incidentally, Rise's efforts to dodge discovery claiming limits to the administrative record may work for CEQA disputes (although objectors do not waive any rights to seek such discovery by exceptions) do not apply to this vested rights dispute involving competing rights and claims between surface owners above and around the 2585-acre underground mine.

None of that Emgold activity could have created or preserved or otherwise supported any Rise vested rights claim. Even if Emgold had some intent to restart the mine, under the circumstances of nonuse, abandonment, etc., that intention could not support vested rights since it was not accompanied by any relevant mining or nonconforming uses, because, among other things, it could not comply with all the applicable laws and regulations taking effect since 1956 during the period of nonuse and abandonment before its 2003 acquisition. Even if somehow Emgold was relevant, Rise admits at pp. 35 that Emgold's intention was not to expand and do intensive mining like in the EIR/DEIR Rise plan, but rather (consistent with Emgold's "exploration drill program") on two different sites "both targeting near surface mineralization around historic workings, whereas Rise's plan was for deeper mining in different places. No one should imagine that anyone in 1956 had any intention to do what Rise proposes to do now, and objectors will dispute any contrary claim by Rise, as well as any claim of Emgold's exploration activities providing any support for Rise's vested rights claim.

Moreover, applying the objective standard for future intent, no one in 1956 when the mine flooded and closed could have had any intent to reopen the mine for what Rise wants to do now. Not only was the mine abandoned, but no effort was made to preserve any restart opportunity at least until that ineffectual Emgold dabbling in 2003. Mining historians can prove how everything changed radically between 1956 and any relevant modern dates in dispute with Rise, since in 1956 underground mining was largely still reliant on manual labor using hand tools and dynamite for excavation (as distinct from modern machinery), none of the equipment was at all comparable, the times primitive science was all superseded by more modern science in every field, safety regulations and practices and environmental considerations were absurdly lax and, in the absence of meaningful laws and enforcement ancient miner owners did as they wished, which is also reflected in their record keeping where they recorded what they wanted known or imagined, without little regard for realities or comprehensiveness for modern vested rights purposes, ventilation systems, dewatering systems, and communication systems were dangerously primitive, etcetera. Dewatering in the 1950's was especially primitive with manual or the beginning of steam pumps which made the kind of dewatering needed in the IMM and planned by Rise literally imaginable in 1956. (Electric pumps did not begin to appear until well into the 1960's.) Among the factors leading to the 1956 closure was not just declining gold prices, but also depletion over decades of mining of easily accessible and high-grade gold, making mining more expensive and riskier, with many technology limits compared to the challenging conditions as well as the growing environmental concerns.

2, Some General Data Admissions About the IMM to Compare To the Disputed EIR/DEIR and the Vested Rights Claims

As stated in Rise's 10K at pp. 22+ the I-M Mine Project is described as a unified project comprised of "approximately 175 acres … surface land and … 2800 acres … of mineral rights" identified by maps and parcel data without any meaningful surface location data like roads or addresses. According to the 10K at pp. 25, that is comprised of "10 surface parcels" including 55 sub parcels (The "Brunswick" 37-acre site and related 82-acre "Mill" site, and the "mineral rights" area we call the "2585-acre underground mine" that the EIR/DEIR calls its CEQA project, as distinct from what the 10K calls the 56 acre "Idaho land" that the EIR/DEIR separates from that project and calls the "Centennial" dump site and on which no mining is contemplated. However, as explained in the Introduction to this Exhibit and elsewhere in the Petition, all of those parcels are described in Rise's 10K as parts of one unified mining project, thus conflicting with Rise's EIR/DEIR presentation of its alternate history (and trying to escape its SEC filings admissions by trying in the EIR/DEIR and other presentations to assert that the Centennial site is a separate project for CEQA but somehow inconsistently at the same time denying that Centennial work is an expansion or intensity-change for purposes of vested rights to use it as a dump for its new mining operations. Thus, for example, there can be no vested right to dump IMM mine waste on Centennial. Besides physical location and other differences, one of many factors separating the Centennial dump site from the IMM mining is that Centennial gets its NID water from the "Loma Rica System," while Brunswick gets its NID water from the "E. George System" (10K at 28).

In any case, neither Rise's 10K nor the EIR/DEIR nor other related filings reveal when or how Rise's predecessor acquired those 10 parcels (55 sub parcels) or underground mining rights to compare mine "expansions" for vested rights analysis versus the continuously evolving and expanding applicable laws at such times. Instead, Rise just states in the 10K that "original mineral rights" were acquired "at various times" since 1851. The 10K describes the Rise purchase of everything from BET Group Estate (at pp.29) by quitclaim deed on 1/25/2017 (with the Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) "subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" Note that Rise (at pp. 28) not only separates surface from subsurface mining, but separates "mineral exploration" from both such types of mining, consistent with the M1 district zoning.

The Rise description of its environmental studies (at 10K pp. 31-32) addresses the IMM and Centennial wholly owned land conditions, which is not determinative of the conditions in the different areas of the 2585-acre underground mines. As admitted at page 31 as to "Environmental Liabilities," all "environmental studies were completed prior to Rise purchasing the Idaho land [aka Centennial] and the Brunswick land." That means that Rise cannot vouch for the accuracy, completeness, or sufficiency of the studies or any directions (or lack of correct instructions) given by prior owners. Motions in limine at the start of the court trial will exclude most of Rise's so-called evidence because it is inadmissible on various grounds and other reasons (such as those discussed in the Introduction to this Exhibit) why there can be no substantial evidence for any vested rights as claimed by Rise.

Such issues are important, among other things, because when Rise wants to impress the potential investor readers about the details of the "Geological Setting, Mineralization, And Deposit Types" (SEC 10K at 38+), it describes the variable underground gold related data with some precision. However, when the EIR/DEIR addresses those underground conditions to deal with groundwater and related environmental and other property rights issues, it generalizes and incorrectly assumes a uniformity of those underground conditions that is rebutted by Rise's SEC 10K variations, which in turn, however, also incorrectly extrapolates and generalizes on many such dispute topics from the surface conditions at its small, wholly owned Brunswick site to the underground mining of the 2585-acre sites. Again, what is lacking from Rise is a sufficient baseline either for CEQA or vested rights disputes as to the relevant starting dates for each parcel and at the relevant later dates so as to know how to judge applicable expansions and intensity changes at critical times. (While that variation is relevant for gold opportunities addressed in the 10K that Rise wants to know, the EIR/DEIR does not equally address that variability because its disputed "talking points" (the miner equivalent of politician "spin") sound less problematic for such groundwater and other EIR/DEIR risk disclosure exposures when it assumes uniformity consistent with its apparent desire for what seems to me to be an "alternative reality" Objectors expect yet another alternative reality version for Rise's vested rights claims.

Stated another way, should the Rise vested rights claim or EIR/DEIR be mistakenly approved by the County, the challenge litigation will impeach the EIR/DEIR's and vested rights' descriptions of the underground and other conditions for groundwater and other risk and dispute issues, among other things, based on the contrary or inconsistent variable underground

data presented in the SEC 10K. Also, when describing the underground conditions for gold, there are many described exceptions and variations, but the disputed EIR/DEIR's "don't worry about groundwater" theory (which objectors expect incorrectly attempt to evade key precedents that defeat Rise's plans, such as *Gray v. County of Madera*, and to be even further minimized in Rise's vested rights claims to attempt to evade objections like those in this Petition) falsely assumes or implies uniformity not described in the SEC 10K. For example, in discussing its underground analysis, even Rise's 10K reflects doubts (e.g., at 44): "Although Rise has carefully digitized and checked the locations and values of drill hole results from level plans and other documents, the absence of drill hole related documentation, such as drill logs, drill hole deviation, core recovery and density measurements, assay certificates, and possible channel sample grade biases, could materially impact the accuracy and reliability of the reported results."

Many inconsistencies appear even within the Rise 10K, although not usually as substantial as the differences between the more detailed 10K and the less significant, more general, and less detailed data in the EIR/DEIR. Objectors fear the vested rights claims will be the worst of each alternative reality, such as exaggerating alleged "facts" that would help vested rights theories, while minimizing, ignoring, or incorrectly addressing "facts" that would defeat vested rights. For example, (at 44) the Rise 10K admits that "Rise has conducted mineral processing and metallurgical testing analysis on the recent drill core from the I-M Mine Property for the purposes of environmental study in conjunction with permitting efforts." Since the disputed EIR/DEIR does not sufficiently reveal those results, that will likely be a subject of intense discovery efforts in any subsequent litigation to determine, for example: what was not reported by Rise and why? Even if the answer is that the EIR/DEIR or vested rights claim editor did not trust that data, as the Rise 10K admittedly does not accept/trust the inconvenient historical data that also rebuts the EIR/DEIR and vesting rights as addressed in our objections. For the 10K's such doubts, consider, for example (at 44): "No estimates of mineral resources have been prepared for the I-M Mine Property. We are not treating historical mineral resource estimates as current mineral resource estimates. In addition, there are no mineral reserves estimates for the I-Mine Property." Since the 10K (at 44-45) cites and relies on somewhat different authorities than the EIR/DEIR and (we assume) also than the vested rights claims, the question is why? Considering all of the many Rise and its enablers' credibility issues with the EIR/DEIR, one wonders if Rise is more cautious about the 10K and other SEC filings because of the more serious consequences of misrepresentations than Rise is concerned about the accuracy, compliance, and sufficiency of the EIR/DEIR and (objectors assume) the vested rights claim data.

3. Some Environmental Data.

The Rise 10K contains (see pp. 28-45) many environmental facts that are often inconsistent with, or that fill in factual gaps in, the EIR/DEIR (and, objectors predict, will do so as well for Rise vested rights claim.) What is important for focus is that the history and investigations are either about the much less relevant and important Rise owned Brunswick and Mill site land (compared to the key 2585-acre underground mine, where the mining takes place and the problems begin), and most explorations/investigations are about the search for gold

sources, not about a study for safety or environmental threats. Almost as bad, is the telling fact that Rise admits it and its predecessors didn't even do much looking at the dangerous spots, but simply focused on their such wholly owned entry lands and then incorrectly extrapolated from that to wrongly assume those conditions uniformly applied in the 2585-acre underground mine that is the greatest concern. The Rise description of its environmental studies (at 10K pp. 31-32) addresses the IMM and Centennial wholly owned land conditions, which is not determinative of the conditions in the different areas of the 2585-acre underground mines. As admitted at page 31 as to "Environmental Liabilities," all "environmental studies were completed prior to Rise purchasing the Idaho land [aka Centennial] and the Brunswick land." That means that Rise cannot vouch for the accuracy, completeness, or sufficiency of the studies or any directions (or lack of correct instructions) given by prior owners. Motions in limine at the start of the court trial will exclude most of Rise's so-called evidence because it is inadmissible on various grounds and other reasons (such as those discussed in the Introduction to this Exhibit) why there can be no substantial evidence for any vested rights as claimed by Rise.

For example, as to the "Idaho land" [aka Centennial] and containing arsenic in the mine tailings and waste berms, the NV5 Draft Final Preliminary Endangerment Assessment and follow-up Draft Remedial Action Plan (7/1/2020) is reported still "currently in process" by the Cal EPA. As to the Brunswick & Mill site (at p.31) following a surface Phase 1 assessment by ERRG, "ERRG has recommended further sampling and studies" "to determine if contamination historic mining and mineral processing was present." This is one of several opportunities for investigation that Rise has avoided to evade inconvenient truths and embolden Rise's "alternative reality" presentations. Also, in 2006 a Phase II assessment was reportedly done for the Mill Site by Geomatrix (at 32) which found arsenic in the waste rock and Volatile Organic Compounds (VOC) in the groundwater but they were not concerned with "vapor" and relied on the "deed restriction which restricts the use of groundwater for any domestic purpose and the construction of wells for the purpose of extracting water, unless expressly permitted by the Regional Water Board." The significance of these causes of concern have not been investigated or addressed sufficiently by the DEIR/EIR, although NV5 reportedly prepared a "Phase I/II ESA (June 16, 2020) presenting the results of additional investigations and addressing historical conditions identified in previous reports" (at 32). [Stated another way, the wording of the summary results is cleverly ambiguous although drafted in the passive voice (e.g., "mine waste is believed [by whom? based on what?] to have originated from offsite…") and subjective (e.g., arsenic concentrations …were relatively low except for …) [compared to what standard?]

At p. 32 + the 10K provides a general list of permits that might be required under particular summarized circumstances, but the Rise 10K does not apply that general summary to reveal when such permits will be sought for this project or what of the listed factors are expected to trigger that require such permits. Objectors mention this because when the EIR/DEIR lists permits it also does not describe sufficiently such trigger factors or the circumstances where objectors could apply such SEC 10K data and other law to assure ourselves that the miner was planning to seek all the required permits, as opposed to evading them until the miner was "caught" and then seeking such permits and "forgiveness." The four Engel Objections to the EIR/DEIR demonstrate why objectors perceive the EIR/DEIR to suffer from credibility problems that make such concerns reasonable, and, as noted above in the Introduction, that credibility problem will now be compounded by Rise's alternative reality in

the EIR/DEIR conflicting with Rise's alternative reality for its vested rights claims, as so described above regarding the Centennial site.

B. Admissions in Risk Factor Discussion 10K Item 1A at p.6+.

The risk factors admitted in the 10K are the same as those admitted in the more current 10Q that is addressed above. So, objectors will not repeat them here, but we note that the consistency of those admissions increases their importance as admissions in these disputes.

C. Miscellaneous Additional Financial Admissions. (Most data here is passed over in favor of the more current 10Q data stated above).

To place the foregoing Rise 10Q financial data in contest and reveal Rise's chronic incapacity to perform its EIR/DEIR goals and aspirations, even as limited to what it admits to be required (as distinct from what us objectors expect to be ultimately required if the EIR were ever to be approved and for the vested rights claims), objectors note the admission at Rise 10K p. 5: "As at July 31, 2022, we had a cash balance of $471,918, compared to a cash balance of $773,279 as of July 31, 2021." However, the 10K financial data for the prior year (starting at 48+) gives one a sense of scale, such as with respect to the "net loss and comprehensive loss for the year [2022]" of $3,464,127, compared to the operating loss of $3,385,107 (ignoring the large "gain on fair value adjustment on warrant derivatives"). Among the key questions is whether the data developed by Rise for the EIR/DEIR is being fully processed for its CEQA compliance as opposed to simply its gold exploration use. See, e.g., (at 49) where the 10K reports an "Increase in mineral exploration costs to $788.684 (2021- $782,261) related to activities surrounding the Use Permit application."

As admitted (at 49): During the year ended July 31, 2022, the Company received cash from financing activities of $2,392, 998 (2021-$248,198) related to the private placement' that year. But during that year "the Company used $2.694,359 in net cash on operating activities, compared to $2,853, 475 in net cash the prior year…" As to the risk that creates for nonperformance of the EIR/DEIR, please note the following related 10K admission that follows those admissions:

> The Company expects to operate at a loss for at least the next 12 months. It has no agreements for additional financing and cannot provide any assurance that additional funding will be available to finance its operations on acceptable terms in order to enable it to carry out its business plan. There are no assurances that the Company will be able to complete further sales of its common stock or any other form of additional financing. However, the Company has been able to obtain such financings in the past. If the Company is unable to achieve the financing necessary to continue its plan of operations, then it will not be able to carry out any exploration work on the Idaho-Maryland Property or the other properties in which it owns an interest and its business may fail.

The Rise auditors, Davidson & Company, LLP, qualified its financials (starting at 10K p. 53) as follows:

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company incurred a loss of $3,464,127 for the year ended July 31, 2022, and as of that date, had an accumulated deficit of $23,008,604. These events and conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

EXHIBIT F

IMM: Rebutting Rise Vested Rights Petition's Historical Exhibits 1-307, And Often Using Many Such Exhibits Both To Counter Rise's Claims And As A Foundation For Selected Objectors' Legal Rebuttals: The Rules of Evidence Mater (At Least In Court) And Doom Rise's Claims.

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[other participants may join or file joinders]

December 5, 2023

Board of Supervisors
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Re: Idaho-Maryland Mine Vested Rights Petition Disputes: Objectors' Rebuttal (Part 2) To The Vested Rights Petition of Rise Grass Valley, Inc. (herein, together, as applicable, with Rise Gold Corp., called "Rise")

Dear Board Members And Advisors:

The objection attached to and incorporated in this letter and all attachments and incorporations by reference (collectively called **"Evidence Objections Part 2" or "this objection")** are the **second** in a series of legal and factual rebuttals to the disputed Rise Petition and its Exhibits, not counting the "Objectors Petition For Pre-Trial Relief, Etc." discussed below. This objection applies the law of evidence to refute each material one of **Rise Petition Exhibits 308-429** and its **Appendices A, B, and C** within the framework of the applicable substantive law as properly interpreted by the whole of the relevant court decisions, many ignored or incorrectly described by Rise. This follows up and incorporates objectors' "IMM: Rebutting Rise Vested Rights Petition's Historical Exhibits 1-307, And Often Using Many such Exhibits Both To counter Rise's Claims And As A Foundation for Selected Objectors' Legal Rebuttals; The Rules of Evidence Matter (At Least In Court) And Doom Rise's Claims" dated November 14, 2023 (herein with its exhibits and incorporations, together with objectors' November 14, 2023, cover letter to

it, collectively called **"Evidence Objections Part 1**"). Such Evidence Objections Parts 1 and 2 together both (i) defeat Rise's incorrect legal theories of vested rights, and (ii) dispute (or reject as irrelevant "filler") all of the Rise Petition Exhibits regarding Rise's alleged **"Vested Mine Property" proving that Rise failed to satisfy its burden of proof for any alleged vested rights.**

Objectors also dispute for many reasons Rise's description of the subject of these disputes as the "Vested Mine Property," instead calling the core surface and underground mine the **"IMM"** plus separately addressing the "Centennial" site. Among other things, that flags the objectors' disputes regarding "Centennial's" inclusion at all by Rise in that Rise Petition vested rights claims, because Rise both earlier fought to exclude Centennial from its EIR/DEIR "project" and failed in the inconsistent Rise Petition even to make a serious attempt to satisfy Rise's burden of proof as to any vested rights for Centennial (e.g., the bulk of such disputed Rise Petition Exhibits focus only on the other IMM parts). The collective Vested Mine Property term is an objectionable tactic to lure readers into assuming this is all one mining "project" when the EIR/DEIR admits that Centennial is separate and different. Objectors have also filed and incorporated a "Petition And Motion To Nevada County For A Status Conference, For Due Process For These And Other Objections, And To Clarify Issues, Rules, And Procedures For This And Other Oppositions To Rise Grass Valley, Inc.'s Vested Rights Petition Dated September 1, 2023, (the "Rise Petition"), Based On These Illustrative, Preliminary Rebuttals" dated November 22, 2023 (herein called "**Objectors Petition For Pre-Trial Relief, Etc**.") That objection is relevant here because it focuses on how the Rise Petition ignores and evades the unique, competing objections of the owners of the surface above and around the 2585-acre underground IMM, who have their own, personal constitutional, legal, and property rights that are immune from any Rise vested rights claims, regardless of what the County may do or not do in response to the Rise Petition. Stated another way, because Rise continues (despite prior objector briefings in EIR/DEIR objections) to so ignore and evade such competing surface owner objections, even if Rise had any vested rights (which objectors dispute is even possible), it would fail to satisfy its burden of proof that such vested rights could legally impact any such competing constitutional, legal, and property rights of objecting surface owners.

Much of that so-called Rise Petition "proof" either is not competent "evidence" at all (e.g., Rise merely offers incorrect opinions, inferences, or worse), or is legally inadmissible or otherwise objectionable, or is incredible (e.g., worse than implausible, such as because of its inconsistency with, or contradictions by, other Rise claims or filings, or otherwise failing the *Gray v. County of Madera* test requiring "common sense" or the tests in *Banner, Vineyards,* et al. requiring "good faith reasoned analysis"). Objectors also use some such Rise Petition Exhibits as Rise admissions supporting objectors' rebuttal counterarguments and rebuttal evidence. E.g., Evidence Code #623, 412, 413, 1220, 1230, 1235, and other demonstrated applications of the law of evidence in Evidence Objections Part 1. The disputed Rise Petition is also a one-sided and incorrect presentation that ignores or misconstrues contrary, applicable laws, court decisions, and inconvenient truths. As a result, as demonstrated below, Rise has chosen to make this an "apples versus oranges" dispute, in which Rise only incorrectly addresses its "alternative reality" "orange" (i.e., Rise's mistaken interpretation of vested rights for surface/SMARA mining), as if objectors' "apple" (i.e., the underground mining reality under correctly applicable law) did not exist.

At the end of this document (and also attached for convenience to that Evidence Objections Part 1 and that "Objectors Petition For Pre-Trial Relief, Etc."), objectors have attached an **"Exhibit A"** that is a commentary on the recent Rise SEC 10K filing dated October 30, 2023 (the "**2023 10K**") and other Rise SEC filings. That self-contained Exhibit A is focused on Rise's admissions in that SEC 2023 10K and other filings that both (i) rebut contrary and conflicting Rise Petition claims, and (ii) support objectors' opposition to the Rise Petition in this and such other objections. As proven already in Evidence Objections Part 1 and demonstrated in applicable court decisions and Evidence Code cites (e.g., #'s 623, 412, and 413, as well as 1220, 1230, and 1235), such contradictory and inconsistent admissions also defeat the Rise Petition. These objections, in significant part, are not just legal rebuttals (e.g., incorporating and attaching the Table of Cases and Commentary from Evidence Objections Part 1 for convenience), but they also present a comprehensive rebuttal of all of Rise's purported material "evidence." As demonstrated in crucial court cases (e.g., *Hardesty,* even *Hansen*, and the *City of Richmond*), Rise's inconsistencies and contradictions must be self-defeating under the rules of evidence and such applicable court decisions.

Likewise, the contradictions and inconsistencies in the Rise Petition are self-defeating compared to the EIR/DEIR. For example, the Rise Petition must prove that somehow Idaho Maryland Mines Corporation (aka later "Idaho Maryland Industries, Inc."), had and maintained vested rights for every relevant "use" and "component" on each "parcel," despite: (i) liquidating all the IMM equipment and infrastructure by 1956, (ii) closing, discontinuing, and abandoning the dormant and flooded IMM by 1956, (iii) moving to Southern California (then aka "LA,"), and (iii) becoming an aerospace contractor before its bankruptcy and liquidation of the IMM cheap at auction. However, in each case, each such predecessor and Rise failed to prove objectively all such legal and factual vested rights requirements to be satisfied on, and continuously after, 10/10/1954 with continuous objective intent by each owner in that chain of title to reopen the "Vested Rights Mine" on that "use-by-use" and "component-by-component" on each parcel. However, as demonstrated in the EIR/DEIR and objections to it (incorporated herein by **Exhibit B** hereto), there is a massive amount of work, time, and cost in reopening that discontinued, closed, dormant, flooded, and abandoned IMM since at least 1956 (arguably earlier), none of which any predecessor or Rise could ever afford, even by their own admissions. Because such Exhibit A SEC filings demonstrate that the economic viability of a reopened IMM is highly speculative, admittedly lacking "proven" or "probable" gold reserves and admitting the need for massive more exploration before any decision would be made to proceed to any actual restart, that reopening would be an enormous gamble of time and money before anyone could make a reasonably informed guess whether there would be profitable gold even to recover that massive startup cost to discover whether that restart gamble was worth it. That is why Emgold-related Rise Petition Exhibits show Emgold eventually abandoned its many-year quest to do even a lesser version of what Rise claims it intends to do now, if and only if (according to the Rise's 2023 10K admissions exposed in Exhibit A) Rise and each of its essential funding investors decide to gamble what funds are required for such a reopening. This risk was also evident even to Idaho Maryland Mines Corporation in 1954, which is why (plus despair over the $35 per ounce gold price legal limit that would make gold mining unprofitable indefinitely until both the law and economic risk conditions changed) that miner allowed the mine to flood, liquidated everything movable and other assets, and moved to a new location and started a non-mining

aerospace business, only to crash into bankruptcy in 1962, and then liquidate the IMM cheap in 1963.

That initial Idaho-Maryland Mines Corporation miner and its successors knew what has always been obvious: the cost, time, and risk required to salvage/reopen this IMM mine would be prohibitive to anyone but the most hyper-aggressive speculators. Even those speculators would not go "all in" on that bet until "all the cards were showing face up on the table," so they could better judge whether to risk several years of (i) massive 24/7/365 dewatering and construction of the EIR/DEIR system for that depletion and disposition of groundwater (and existing and future well water) of objecting surface owners, including an unprecedented water treatment plant that would be essential for any permission to flush such water away down the Wolf Creek, (ii) total reconstruction of the long-neglected and stripped "Flooded Mine" and essential surface related infrastructure, plus (iii) digging/blasting/etc. another 76 miles of new tunnels into the "Never Mined Parcels," only then to begin chasing gold veins in offshoots to start recovering any gold if there were any worthy of that cost and effort. Of course, even that assumes that somehow the miner could finance and accomplish any of that work against the resolute opposition of the great majority of the impacted, local community, especially those thousands of voters owning the surface above and around the 2585-acre underground IMM. (Objectors use the EIR/DEIR's "2585" acreage number as a "plus or minus" defined term to be consistent with earlier EIR/DEIR objections, but whether that, or 2750, or some other acreage number is correct, all objections are intended to be comprehensive as to the whole of what Rise incorrectly calls the "Vested Mine Property.")

Each such surface owner has his or her own, personal constitutional, legal, and property rights, including as owners of the groundwater (and existing and future well water) being dewatered and flushed away down the Wolf Creek, as well as their political rights to cause the enactment of law reforms that the miner may find inconvenient and for which vested rights offer no protection to the miner. See the legal briefing in the attachments rebutting the Rise Petition claim (at 58) to be entitled to mine "without limitation or restriction," and Exhibit A demonstrates Rise's contrary admissions in its 2023 10K SEC filing. One simple example, and also an illustration of an inconsistency and contradiction between the DEIR/EIR, the Rise SEC filings, and the Rise Petition, is this: the DEIR at 6-14 admits that the IMM cannot be economically feasible unless the miner can operate 24/7/365 for 80 years. If the County were to allow that, voters would undoubtedly change that possibility, whether directly or indirectly, with legally appropriate laws of general application limiting all businesses of such disruptive nature to normal business hours and days, since no residential community should have to suffer such "intensity" of 24/7/365 business activity, especially directly beneath or around their homes. Moreover, that also raises the question of whether Rise continues to evade what happens to our local community if the miner starts and stops before it has any positive cash flow from the mining and the speculator/investors decline to fund the massive restart costs, or they bail out. See the Rise 2023 10K and other SEC filing admissions in Exhibit A and the many EIR/DEIR objections for answers that explain why these disputes are so existential for locals, especially those living above and around the 2585-acre underground IMM.

In any case, please read this Evidence Objections Part 2 as a continuation of the incorporated Evidence Objections Part 1, as if the initial objection had addressed all these Rise Petition Exhibits and Appendices in one objection, instead of this split into two parts because of

the magnitude of the “filler” and irrelevant Rise Petition Exhibits to be rebutted. See also the Objectors Petition For Pre-Trial Relief, Etc. Thank you for considering our views.

Sincerely,

/s/ Larry Engel
G. Larry Engel
Engel Law, PC

Table of Contents

IMM: Rebutting Rise Vested Rights Petition's Historical Exhibits 1-307, And Often Using Many Such Exhibits Both To Counter Rise's Claims And As A Foundation For Selected Objectors' Legal Rebuttals: The Rules of Evidence Matter (At Least In Court) And Doom Rise's Claims.

December 5, 2023 **G. Larry Engel**
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I. Introductory Comments On Why the Rise Petition And Its Objectionable Exhibits Fail To Satisfy Rise's Burden of Proof, As Already Partly Demonstrated In "Evidence Objection Part 1," Addressing The Pre-Rise Predecessors' History (generally, those Exhibits 1-307 addressed in Part 1, but also with disaggregated, disputed "evidence" scattered in later Rise Petition Exhibits addressed below in this "Part 2"). The Rebuttals Herein Particularly Dispute Rise Exhibits #'s308-429, Which in Many Cases Are Really Just Meaningless "Filler" And Often Again Relate to Historical Periods Before Rise's Initial 2017 Acquisition (perhaps tactically, because of Rise's lack of vested rights activity and conflicting and contradictory Rise admissions in SEC filings [Exhibit A] and in the EIR/DEIR and other Rise permit or approval applications.)

A. The Relation of This Objection To Other Objections And Documents Referenced Or Incorporated Herein, And Objectors' Special Standing And Rights As Surface Owners Above And Around The 2585-Acre Underground IMM Or Any Rise Alleged "Vested Mine Property."

1. This Is A Continuation (Part 2) of Evidence Objections Part 1 And Part of the Comprehensive Oppositions to Rise Reopening The Disputed Mine Under Any of Rise's Theories Or Claims.

Rise Petition **Exhibits 308-429** and Appendices A, B, and C rebutted herein (**like Exhibits #'s 1—307 already rebutted in incorporated Evidence Objections Part 1**) do not provide any of the required, "substantial evidence" (i.e., competent, admissible, non-objectionable, and even minimally credible evidence) required to prove Rise's disputed vested rights as to each "use," "parcel," or "component" of the "IMM" or "Vested Mine Property." (The above cover letter definitions apply herein.) That Rise failure is apparent as to the parcels in the "2585-acre" (plus or minus, since Rise offers various numbers in different documents) underground mine that has been "dormant," discontinued, "abandoned," closed, and flooded since at least 1956 (or 1955 or 1957, depending on which "story" one chooses). While such rebuttals will be proven further by additional counter-evidence and briefing rebuttals, especially by those of us objectors living above and around the 2585-acre underground mine, many Rise Petition Exhibits themselves contradict or defeat Rise claims, as objectors' commentaries demonstrate below and elsewhere. For example, at the end of this document, objectors have attached **Exhibit A** as a commentary about how the Rise admissions in its recent **"2023 10K"** filing dated October 30, 2023, and other Rise SEC filings rebut the Rise Petition. That self-contained Exhibit A particularly focused on how Rise's admissions in that SEC 10K filing's Risk Factors both (i) rebut contrary and conflicting Rise

claims in the Rise Petition and its Exhibits, and (ii) support objectors' own contrary evidence rebutting the Rise Petition's alleged evidence, as explained in this objection, Evidence Objections Part 1, and others referenced herein. See also Evidence Code #'s 623, 412, and 413, as well as 1220, 1230, and 1235, as to such conflicts.

Rather than repeating all such EIR/DEIR related "evidence" rebutting this disputed Rise Petition (which also adds many new objections and issues), it is reasonable and appropriate to incorporate the EIR/DEIR objections into the Rise Petition record "as is," because they demonstrate evidence not just of this Rise "hide the ball" tactic (which supports rebuttal evidence against the Rise Petition as well), but also because objectors wish to use many such inconsistent, contrarian, and otherwise conflicting Rise admissions (and our counter objections) to dispute Rise Petition's such claim (at 58) that it can somehow mine as it so wishes **"without limitation or restriction."** The courts will impose many such legal "limitations and restrictions." Still, objectors will need to present their EIR/DEIR objections to prove what all those limitations and restrictions must be to avoid Rise's predictable arguments attempting to limit us to the Rise Petition administrative record and other objections best for objectors to overcome now by making the entire EIR/DEIR record at issue in this Rise Petition dispute. Rise cannot possibly object because Rise has required us to rebut such disputed Rise Petition claims (at 58) to be entitled to so mine as Rise wishes "without limitation or restriction." In any case, every new mining technique applied to each "parcel" is a separate "use" with new "components" that have no vested rights on which Rise can rely since there were no historical counterparts and no continuous such "uses" or even intentions for future such "uses."

2. Objectors Have Ample And Also Unique Standing To Oppose The Reopening of the IMM, Centennial, or Any Disputed "Vested Mine Property," Especially As Surface Owners Above Or Around the 2585-acre Underground IMM.

In all such objections, objectors are focused primarily on our unique bases for standing as surface owners above and around the 2585-acre underground mine with our own, competing connotational, legal, and property rights against the Rise Petition. However, objectors believe their standing is also sufficient and assert as impacted locals, as illustrated by *Calvert v. County of Yuba* (2006), 145 Cal. App.4th 613 ("*Calvert*"), assuring due process for the objecting public against vested rights claims by miners like Rise in such administrative processes (and, of course, in the court process to follow). This document will be attached to multiple objections made to the disputed Rise Petition and other Rise claims pending or to come, including the disputed EIR/DEIR, which is incorporated as disputed in these (and other) objections for use in rebuttals. Such EIR/DEIR rebuttals are still relevant in this vested rights dispute for many applications and rebuttals, including by proving many contradictions and inconsistencies of evidence, including Rise admissions in the 2023 10K and other Rise SEC filings and other applications and communications with the Rise Petition.

As *Calvert, Hardesty, Stokes,* and other judicial precedents demonstrate in Objectors Petition For Pre-Trial Relief, Etc. (see also citations herein or at the end of Evidence Objections Part 1), this Rise Petition dispute must be a multi-party, adjudicative proceeding in which objectors have full, competing participant due process rights comprehensively to contest the Rise Petition. That should include impeaching and cross-examining Rise's "witnesses" and

"evidence" for its incorrect and worse claims. Those *Calvert* and even greater objection rights are especially applicable for the unique legal "standing" of those of us surface owners above, and around the 2585-acre underground IMM, each of whom has competing constitutional, legal, and property rights independent and separate from the County and that must prevail without regard to whatever the County may do or suffer, That is particularly true about the groundwater and existing and future well water owned by such surface owners, as demonstrated in court decisions like *Varjabedian* and *Keystone, that* would be depleted by Rise dewatering and flushed away down the Wolf Creek. Such distinctions matter between such surface owners compared to more distant or general objectors, and versus the County, because, even if the County were somehow unable to defeat the Rise Petition, such surface owners still have many additional ways themselves independently to defeat the Rise Petition under applicable law and even, as shown herein, by using Rise's own Exhibits 1-429 and Appendices A, B, and C against that disputed Rise Petition and related Rise claims.

B. The New "County Staff Recommendations" Reach The Right Result. Still, There Are Even More Objections To Be Considered Against the Rise Petition, Especially To Rebut Disputed Rise Responses To the County As Illustrated Further Herein.

Objectors have just had a brief opportunity to scan the (i) Nevada County Board of Supervisors "Board Agenda Memorandum dated November 28, 2023" and attachments, and (ii) County's Responses To Petitioner's Facts And Evidence In the Vested Rights Petition Including County's Exhibits 1001-1027 dated November 28, 2023, (collectively the "**County Staff Recommendations")** in the County's In Re Idaho Maryland Mine Vested Rights Petition dated September 1, 2023, Matter**. There are many ways to defeat the Rise Petition because it contains so many errors, omissions, and worse, including those so addressed by the County Staff. Because this Objection and the others referenced herein had no opportunity to consider those County Staff Recommendations and objectors cannot delay this to reconcile the various objections, nothing herein should be deemed an implied reaction to such County Staff Recommendations. We have taken both similar plus different paths to the same result that Rise has no vested rights, nor did its predecessors nor can its successors as to any "use" or "component" on any "Vested Mine Property." Objectors** reserve the right to incorporate anything in the County Staff Report consistent with or supportive of objectors' objections and not already included.

Objectors also read and dispute various Rise purported responses to the County Staff Recommendations (e.g., the 12/1/23 "sponsored content" on page A10 of the Nevada Union; *Newsfile* 11/29/23) for all the same reasons as the disputed Rise Petition and others. That Rise press release equivalent not only continues to ignore or evade many arguments and issues raised by the County staff, but Rise also continues to ignore many additional objections raised by objectors here and other impacted objectors. See, e.g., Evidence Objections Part 1 (and this Part 2), Objectors Petition For Pre-Trial Relief, Etc., and EIR/DEIR objections incorporated now and hereafter, and the evidence and authorities cited or incorporated therein (all of which are cross-incorporated herein and in each other such objections of the objectors herein, since those are many parts of one massive objection to the Rise Petition and Rise's other applications, filings, and claims relating to any of Rise's so-called Vested Mine

Property or the IMM or Centennial.) See Exhibit B. The forest ground looks different, flying fast over it at 10,000 feet (as Rise continues to do with its erroneous and worse vested rights claims) than driving through that forest slowly on a country road. But what the County Staff Recommendations do in their way, and what objectors so do in those and many other ways, is to focus on the reality of the ground in that forest that cannot be seen from a plane at 10,000 feet (even if the flyer wanted to know the ground reality under the forest canopy). **Details matter,** especially when Rise attempts to imagine a fantasy, alternative reality and talks only about the forest from that obscured viewpoint without ever addressing the specific trees and the ground details of the forest.

Consider just a few examples, because objectors prefer investing time and effort to present reality, rather than exhaust ourselves correcting all Rise's alternative fantasies. For example, Rise continues to ignore objectors' filings (Id.) entirely and, instead, to rely exclusively on SMARA and its misleading fragments of *Hansen* that relied solely on SMARA (contrary to Rise's press release incorrectly claiming that *Hansen* was a constitutional ruling, which is incorrect and worse, since courts must follow the rule that if there is a way to resolve a case without reliance on the Constitution, the courts do so without reaching the Constitutional issues, as *Hansen* did in this case, which deserved to be read in its entirety because the whole *Hansen* decision defeats Rise's vested rights claim, as demonstrated in such objections. Id.) For example, objectors prove this vested rights dispute must be resolved on a "use-by-use" and "component-by-component" basis as to each individual "parcel" (Id., even including the whole of *Hansen,* which declined to approve the miner's claim for vested rights on specific parcels for failure to satisfy its burden of proof as to such individual parcels and follows *Paramount Rock* forbidding vested rights for adding a rock crusher "component" to a parcel that never had one before, just like Rise intends to add a water treatment plant to a parcel that never had one). As Hardesty proves, underground mining is a different "use" than surface mining (and certainly different from anything else done on the surface), which is the only place possible for any activity since many parcels of that 2585-acre underground mine were closed, flooded, dormant, discontinued, and abandoned by early 1956 (what objectors call the "Flooded Mine"). The rest of that underground mine (what objectors call the "Never Mined Parcel") had never been mined and, like the Flooded Mine, lay beneath thousands of "surface" properties (generally down 200 feet) owned by objectors and others not consenting to any underground mining by Rise or its relevant predecessors. See Evidence Objections Part 1, proving the relevant history even from the Rise Exhibit and other admissions.

Here, Rise's disputed new press release, *Union* ad, and Rise Petition argue for Rise's unprecedented, incorrect, and Rise-invented (what objectors call Rise's) "unitary theory of vested rights" that was *not* announced or applied in *Hansen* or any other Rise Petition subset of the larger universe of applicable cases ignored by Rise (e.g., *Hardesty* or *Calvert*). Exhibit A also uses Rise admissions in its 2023 10K and other SEC filings (and some illustrative EIR/DEIR admissions) to rebut the Rise Petition. Moreover, Rise continues to ignore or evade important facts and history, and, worse, Rise again attaches or cites to irrelevant or otherwise objectionable "filler" Exhibits as purported authority for incorrect Rise Petition claims that such "fillers" do not prove. Also, Rise often misuses Exhibits to prove the wrong things in the wrong ways, and Rise misdescribes those effects in the disputed Rise Petition. For example,

Rise has asserted "good old days" objectionable, historical production data instead of proving what mining activities Idaho Maryland Mines Corporation was doing and objectively intending on the alleged vesting date of 10/10/1954 as the "same use" at the same "intensity" on the "same parcel," which underground gold mining at issue the Rise Exhibits admit was severely limited and depressed by many adverse, chronic facts and circumstances impacting (and to shut down by 1956) that miner and the whole industry (not just then but for more than another decade), especially because, as admitted by Rise and proven by objections, the $35 legal cap on gold prices was far below the cost of recovering such underground gold, making gold mining unprofitable. E.g., Evidence Objections Part 1 and this Part 2 and others cited. Objectors could go on, but that illustrates just some of the many reasons proven in objections to defeat Rise's vested rights claims. In case there are more Rise commentaries, especially more when objectors are not able or permitted to rebut them, such as again at the hearing itself, we will focus on correctly presenting the realities and applicable law as the best opposition to what more errors, omissions, alternative realities, and worse that Rise may add. See Objectors Petition For Pre-Trial Relief, Etc.

C. Framing Rise Evidence Objections In the Context of the Applicable Law And Realities Versus The Rise Incorrect "Law" And "Alternative Reality" Claims.

At the end of Evidence Objection Part 1, a section explains some of the bases for evidentiary objections made to the Rise Petition Exhibits and other Rise claims at issue in this dispute. The Table of Exhibits in Part 1 links readers to each referenced Rise Petition Exhibit, which is incorporated and repeated in this Part 2. That ending section of Evidence Objection Part 1 also contains the total case citations to, and explanations of, specific precedents and authorities, especially those mentioned in this document by a defined term, like *Hansen, Calvert, Hardesty, Keystone, and Varjabedian*.) See also in that Evidence Objection Part 1 the **Table of Cases And Commentary on the Applicable Legal Principles Controlling What Evidence Is Relevant For Vested Rights Disputes Under The Correct Cases And Analysis of Authorities And Applicable Law That Frame The Evidence And Related Disputes, followed therein by Attachments # A (a comprehensive discussion of *Hansen*) and # B (an analysis of how SMARA is limited to SURFACE mining, as distinguished from UNDERGROUND mining). That concluding legal analysis section also addresses and incorporates (as objectors do here) a companion counter-petition by objectors discussed and incorporated below called the "OBJECTORS PETITION FOR PRE-TRIAL RELIEF, ETC.", and further briefs various procedural, evidentiary, and legal issues in hopes of improving the due process afforded to objectors.**

Objectors urge readers to read all cited objections and those herein as comprehensive rebuttals to Rise's incorrect and worse legal theories and factual "stories" that objectors comprehensively dispute, such as Rise Petition's "unitary theory of vested rights." See this and its incorporated Evidence Objections Part 1 and its exhibits and attachments and other objections, including Objectors Petition For Pre-Trial Relief, Etc, and objections to the EIR/DEIR (including to much of the County Staff Report and County Economic Report) [collectively referred to as among objectors' "objections"], revealing for example how the Rise Petition is defeated by a reading of the **whole** *Hansen decision*, the primary authority on which the disputed Rise Petition is based, rather than just Rise's selected and misinterpreted fragments, as

demonstrated by the *Hansen* interpretations in later cases ignored by Rise, such as *Hardesty* and *Calvert*. Instead of such misplaced reliance on *Hansen* fragments, the Rise Petition must prove with sufficient admissible, competent, and credible evidence (and cannot do so) each element required for a valid vested rights' claim on the basis of (i) **use-by-use** (e.g., "exploration" uses are not "mining" "uses," and underground mining is not the same "use" as surface mining, etc.), (ii) **parcel-by-parcel (a major legal briefing issue to come later as to details, but as demonstrated by *Hansen* [which allowed some "parcels," but not others, to have vested rights], *Hardesty*, *Calvert,* and other authorities, Rise cannot reasonably dispute these objections requiring that each applicable "parcel" must have its own vested rights for each "use" and "component" thereon)**, and (iii) **component-by-component** (e.g., since a rock crusher is a "component" for vested rights claims under *Hansen* and its cited *Paramount Rock* authority, so is the disputed EIR water treatment plant contemplated by Rise in its EIR/DEIR, without which Rise cannot hope to deplete and dump the groundwater it wants to dewater 24/7/365 for 80 years into the Wolf Creek.) Id. Also, each owner of each parcel must have its own **continuous** vested rights that it acquires from each of its predecessors in order to pass such vested rights along to its successor owner. Id. Some of Rise's Exhibits demonstrate many forbidden gaps even under Rise's disputed, general, "unitary theory of vested rights." Indeed, no **surface** activities by Rise or its predecessors can in any way ever create and maintain/continue for Rise any vested rights for any **underground** mining, as *Hardesty* explained. No underground mining has been possible since at least early 1956 when the dormant and discontinued IMM liquidated all its movable property at or around the mine and closed it, allowing flooding that no one, including Emgold and Rise, has dewatered to permit any underground activity for any vested rights claims to this day. Id. See also Rise admissions in its 2023 10K and other SEC filings and EIR/DEIR that contradict and conflict with the Rise Petition, creating comprehensive evidentiary objections. E.g., Evidence Code # 623 and Id.

Any activity on any one alleged "Vested Mine Property" "parcel" (especially any Centennial parcel) cannot create vested rights for any other parcel, and all objections refute that unprecedented and incorrect "unitary theory of vested rights." Id. It is legally impossible for Rise to satisfy its burden of proving vested rights by such generalizing (as Rise consistently and incorrectly attempts to do) from one "use" or "component" on one "parcel" to the rest of the "Vested Mine Property." For example, consider objectors' analysis herein (and more comprehensively in another objection to come) of Rise's deficient **evidence on and after the October 10, 1954, vesting date** regarding relevant miner conduct on each relevant parcel (or what Rise calls "sub parcels" in some deeds, which are actually "parcels" for this and other vested rights analyses) during the predecessor-miner's severe and progressive downsizing toward the expected discontinuance of all underground gold mining by the closing, dormancy, abandonment, and flooding of the IMM occurring by 1956. Whatever reduced underground gold mining may have happened between that starting date in 1954 and the closure by 1956, in what is herein later called the underground **"Flooded Mine"** parcels (i.e., the parts of the 2585-acre underground IMM [an approximate acreage from the EIR/DEIR, since Rise also asserts lower numbers without explanation in the Rise Petition and elsewhere] that had been mined at that alleged vesting time) cannot create any vested rights even under *Hansen,* for example, in the rest of that underground mine that objectors call the "**Never Mined Parcels.**" Since the Rise Petition has not even tried to demonstrate vested rights for each contemplated "use" or

"component" on each applicable parcel, Rise must fail as a matter of law to satisfy its burden of proof of anything as required continuously for each owner of each parcel and each use and component. See the discussion below of Rise's deficient maps and evidence on that required parcel-by-parcel basis and the Table of Cases And Commentaries at the end of Evidence Objection Part 1.

However, even if somehow Rise were allowed to use its "unitary theory of vested rights," it still must face the uniquely competing constitutional, legal, and property rights of us surface owners above and around the underground mine on scores of legal and factual issues in unique disputes and never addressed at all in the disputed Rise Petition or even in the disputed EIR/DEIR (where objectors also asserted many meritorious objections incorporated herein). For example, Rise and its miner-predecessors have admitted to having no continuous ownership of (or access to) the surface above the 2585-acre underground mine between October 1954 and now. How could Rise (or its predecessors) possibly assert any rights to mine their underground? Such miners have long been prohibited by deed or law to disturb such "surface" uses (200 feet down) with such underground mining uses, including with Rise admitting in its SEC filings that the "surface" extends down at least 200 feet and farther as to things other than minerals to be mined, such as groundwater and existing and future wells. See 2023 10K and other SEC filing admissions, including in Exhibit A. See also *Keystone, Varjabedian, Gray v. Madera County,* and Rise Petition Exhibits rebutted (or used as admissions therein by objectors for other rebuttals) with deeds and other documents describing surface owner rights and various depths of what is defined as the "surface," all of which create a required separation of the top surface parcels from the underground mining beneath or around them.

All that must be considered in addressing each of the Rise Petition Exhibits analyzed herein as a continuation of the analysis begun in Evidence Objection Part 1, because **none of the Rise Petition Exhibits 1-429 (or the Appendices A, B, or C) even pretend to address each individual use, parcel, and component, but instead seem to follow Rise's unprecedented, disputed, and incorrect "unitary theory" of vested rights under which the Rise Petition incorrectly claims (at 58) the right act as it wishes "without limitation or restriction") as to any "use" or "component" wherever it wants on any parcel or part of the "Vested Mine Property**" (i.e., the IMM, but see the **separate Centennial parcel** now included in that disputed Rise Petition claim, despite Rise previously insisting Centennial was separate from the IMM in the EIR/DEIR and elsewhere, as discussed in various objections). Notice that while the Rise Petition creates the impression that the alleged pre-Rise history is presented in its Exhibits 1-307 (which objectors addressed in Evidence Objections Part 1), the reality is that Exhibits 308-429 (and Appendices) also are primarily focused on the period before the Rise 2017 initial IMM acquisition. Whatever tactics Rise was using in such scattering of Exhibits on related subjects in widely different places, with some needed for clarity in early Exhibit numbers being postponed and inserted in obvious, irrelevant "filler" in the later number Exhibits, objectors remind the reader that Rise has the burden of proof and such confusion is self-defeating, especially by application of the laws of evidence, such as for that purpose Evidence Code #'s 623, 412, and 413, as well as 1220, 1230, and 1235.

The disputed Rise Petition also ignores the fundamental realities of Rise incorrectly claiming vested rights for such 2585-acre **underground mining based on surface "uses" and activities, surface mining precedents, and surface mining laws, like SMARA #2776, that do not**

apply to UNDERGROUND mining or to the competing constitutional, legal, and property rights of objecting surface owners above and around the underground mine, as *Hardesty* proves. See also *Calvert* and even *Hansen.* Rise Petition's attempt to apply SMARA and its authorities to such underground mining activity is not only unprecedented, but it is not even legally or practically possible to reconcile SMARA (or its court precedents, like *Hansen, Hardesty,* and *Calvert)* with such underground mining. For example, how can SMARA government regulators apply their surface mining rules to underground mining for which they have no statutory jurisdiction or powers? In any event, accessing for testing on part of that muti-parcel underground mine on one surface parcel does not empower Rise or its predecessors (e.g., Emgold) with any vested rights for Rise's desired mining (especially underground) **as Rise Petition so wishes "without limitation or restriction."** Indeed, because Rise incorrectly refuses to identify its activities on a use-by-use, component-by-component, parcel-by-parcel basis as required, Rise cannot prove (and did not even try to prove) that its (or its predecessors') testing/exploration somehow applied to each relevant underground parcel.

Moreover, that Rise burden of proof will be impossible to satisfy because none of the parcels in the 2585-acre underground mine could have been accessed (or were proven to be accessible) for decades from the surface above or around the IMM (which surface parcels that determine underground parcels are owned mainly by objectors or at least owners who have not consented to assist Rise to harm their community or to provoke their surface neighbors.) See, e.g., Exhibit A at #II.B.25, rebutting Rise's 2023 10K Risk Factor admitting that Rise may battle surface owners to attempt to achieve necessary access to the surface above and around the 2585-acre underground IMM. Since no one could legally or practically use the toxic Centennial mine for anything besides (at most) a dump, the only surface area from which Rise (or its predecessors could prove it operated any such exploration or testing is from the discontinued, closed, abandoned, and dormant Brunswick mine shaft and site owned by Rise that has been flooded and continuously inaccessible since at least 1956.

D. Unlike The County Which Has So Far Accommodated Rise's Tactical Disaggregation of These Many Interrelated IMM Disputes, Objectors Approach These Disputes As Parts Of One Core Dispute To Prevent Rise From Reopening The "Vested Mine Property" Or Any Part of the IMM or Centennial And From Any Related Activities, Whether By Bogus Vested Rights Claims, Disputed Permits, Approvals, Or Any Other Means Imagined By Or For Rise.

While the County may (incorrectly in our view) consider the disputed EIR/DEIR process separate from the Rise Petition dispute process, the objectors contend that all objectors' EIR/DEIR objections are also applicable to the Rise Petition. From the perspective of objectors (and we contend the correct view of applicable law), there is one massive dispute with Rise (and if and to the extent any County or court authority sides with Rise on anything, with them), with many parts because of Rise's disputed "divide and conquer" and magnify-the-burden tactics and the unfortunate County procedural accommodations of Rise. However, especially as to those objectors owning the surface above or around the 2585-acre underground IMM (e.g., those whose groundwater and existing and future well water would be depleted by Rise dewatering 24/7/365 for 80 years), the reopening of the mine is the core dispute (e.g*., Varjabedian and*

Keystone). Anything and everything Rise does to accomplish any part of that disputed quest to reopen the IMM or Centennial is a sub-dispute (see *Calvert* and objectors' due process rights), regardless of how the County may separately choose to address such matters procedurally. Indeed, as Evidence Objection Part 1 demonstrates, CEQA still applies to at least some aspects of what Rise is attempting by its Rise Petition, and, in any event, the EIR/DEIR contains many admissions, inconsistencies, contrary assertions, and other bases for objectors disputing the Rise Petition and, in any event, limiting the effect of any disputed vested rights. Also, many objections to the EIR/DEIR are equally rebuttals (and contrary evidence and authority) to the Rise Petition. It is not necessary or practical for objectors to separate them all, such as, for example, where such EIR/DEIR objections expose admissions by Rise in its SEC filings that contradict (or are inconsistent with or otherwise discredit) not just the EIR/DEIR, but also now the Rise Petition.

While other objector briefs have proven (or will prove) the relevance and applications of such incorporated EIR/DEIR objections, this point about this being one massive dispute about any claim of right under any legal theory or application for permits or approvals to reopen any of the IMM or Centennial (or any "Vested Mine Property") can be illustrated most broadly by the Rise Petition claim (at 58) that Rise has vested rights that allow it to mine as it wishes everywhere in the "Vested Mine Property" "without limitation or restriction." Not only do objectors dispute such Rise claims comprehensively already in those EIR/DEIR objections (with more to come to the Rise Petition and, as applicable, to the rest of the EIR or other governmental application or approval processes), but such objections to the EIR/DEIR etc. prove those Rise errors, as well as the admissions therein, in Rise's 2023 10K and other SEC filings (e.g., Exhibit A), and other cited or incorporated evidence and arguments. All those objections demonstrate why applicable laws and competing surface owners' constitutional, legal, and property rights must impose many "limitations and restrictions" on Rise contrary to the Rise Petition at 58, regardless of the fate of the Rise Petition. See, e.g., Rise's 2023 10K "Risk Factors" that Exhibit A shows admit the applicability of many such "limitation and restrictions" denied by the conflicting Rise Petition. But what those Rise Petition claims (net of such Rise contradictions and conflicts) might remain a legally objectionable mystery. Thus, besides massive numbers of self-defeating Rise admissions creating meritorious objections to all Rise's paths to its goals for reopening the "Vested Mine Property," this problem remains for all the disputing parties, even if there were any possible vested rights "use" or "component" on any "parcel" (which objectors contend cannot exist): Given such inconsistent and contradictory Rise admissions and claims what is the precise terms and conditions (i.e., what Rise Petition at 58 calls "limitations or restrictions") of any such disputed use or component and on which parcels does it apply? Nothing in the Rise Petition provides legally adequate disclosure of, or clarity about, such matters, and, if the Rise Petition were considered a complaint in court, it would be dismissed on pretrial motions for fundamental lack of clarity, among other things. While the County administrative process may be less rigorous, the County cannot lawfully give Rise "the blank check" it seeks in the Rise Petition. Applicable law requires the County to approve only (at most) specific "uses" or "components" on particular "parcels," which is not presently possible based on the vague and overstated Rise Petition. In any event, impacted objectors can themselves require the courts to dismiss the Rise Petition on that basis, among many others, when this dispute enters the court process.

II. One Illustration of Many Asserted Below Of How Even Rise Petition Exhibits And Admissions Can Be Used To Defeat Vested Rights, For Example, By Focusing On the Unique Fact That It Was Not The October 1954 Nevada County Regulatory Law That Stopped The IMM, But Rather The Pre-Existing $35 Per Ounce Federal Gold Price Cap Law That Stopped All Gold Mining By Making It Unprofitable In the Context of Ever Rising Other Prices.

If (as objectors contend and prove), Idaho-Maryland Mines Corporation, the owner of the IMM (or disputed "Vested Mine Property" defined by Rise) on and after the 10/10/1954 "vesting date" alleged in the Rise Petition, did not have any vested rights to pass up the chain of titles to Rise, then Rise cannot have any vested rights. The Rise Petition Exhibits do not prove any such vested rights for Rise, even under Rise's own incorrect history and translation of applicable law. On the contrary, even admissions in Rise's Exhibits prove disqualification from vested rights or at least abandonment (or "dormancy" or "discontinuance" with similar consequences.) See Evidence Objection Part 1. A CONDITIONAL INTENT TO RESUME MINING WHEN THE LAW CHANGES (ESPECIALLY WITHOUT ANY CURRENT REASON TO EXPECT A NEAR-TERM CHANGE IN THE LEGAL OBSTACLES) CANNOT CREATE OR PRESERVE ANY VESTED RIGHTS. SEE EVIDENCE OBJECTION PART 1. THAT IS DIFFERENT THAN A SUFFICIENT INTENT TO RESTART MINING SOON, WHEN CURRENT MARKET CONDITIONS IMPROVE, AS OBJECTIVELY EVIDENCED BY MAINTAINING EVERYTHING NEEDED FOR FUNCTIONALITY (E.G., EQUIPMENT, INFRASTRUCTURE, FINANCING, ETC.) IN OPERATING CONDITION.

HERE THE MINER'S DESPAIR OVER THE PROLONGED $35 LEGAL CAP MAKING GOLD MINING CHRONICALLY UNPROFITABLE CONFIRMED ABANDONMENT BY THE MINER NOT JUST CLOSING THE MINE INDEFINITELY, BUT ALSO LIQUIDATING EQUIPMENT AND INFRASTRUCTURE, DISCONTINUING ALL MINING WORK (AND DISENGAGING FROM ALL MINING-RELATED ACTIVITIES; E.G., OPENING A NEW AEROSPACE BUSINESS IN THE LA AREA), AND ALLOWING THE MINE TO FLOOD AND LIE DORMANT SINCE AT LEAST 1956. THE YEARS AND HUGE COSTS AND WORK INVOLVED IN NOW REOPENING THE MINE ADMITTED IN THE EIR/DEIR PROVES NO MINER PREDECESSOR HAD NO FORESEEABLE EXPECTATION OF REOPENING THE MINE. IDAHO-MARYLAND MINES CORPORATION (AKA IDAHO MARYLAND INDUSTRIES INC) HOLDING ONTO THE THEN LOW-VALUE MINE AT LOW CARRYING COST BETWEEN 1954 AND AT LEAST 1963 WAS JUST, AT MOST, PRESERVING AN OPTION TO FLIP THE MINE TO A MORE AGGRESSIVE SPECULATOR OR PERHAPS TO REOPEN THE MINE AT SOME DISTANT/INDEFINITE FUTURE DATE WHEN THE $35 GOLD PRICE LEGAL CAP WAS ENDED, AND GOLD BECAME SO VALUABLE THAT IT COULD BE ECONOMIC TO RESUME SUCH A MASSIVE AND RISKY INVESTMENT AS RISE NOW IMAGINES MANY DECADES LATER (A OPTION GAMBLE, INCIDENTALLY, ON WHICH THE EMGOLD PREDECESSOR ABANDONED AFTER YEARS OF "EXPLORATION.") This situation is something like, by analogy, someone who has an old car that broke down and is too expensive to fix and worthless to sell, so the owner puts it up on blocks in the corner of his barn thinking that in some future time, it might become a collectors' item for some car restorer. That is not the mindset required for vested rights, especially when one adds to the analogy of new laws preventing the resumed use of the old

car because it could not qualify for licensing for use under intervening laws with which the old car could not feasibly qualify.

The key tactic in the Rise Petition, besides "hide the ball," is "bait and switch." The Rise Petition Exhibits both old, pre-WWII, and more modern Exhibits attempting to rewrite the prior history to focus only on the "good old days" before the $35 legal gold price cap shut down the industry during the continuing post-WWII rise in all other prices. See the LA Times report dated 4/18/1949 on how the IMM lost #144,311 on gold production worth $1,705,311. See also Evidence Objections Part 1, where this $35 legal cap eventually shutting down the whole industry issue is discussed in other historical Rise Petition Exhibits and Rise admissions. For some reason, Rise split off some such Exhibits for the post-Rise (i.e., post-2017) presentations close to the end of their long exhibit list after considerable, meaningless "filler" discussed herein; e.g., many of the Exhibits addressed below (i.e., #'s 308-429 and Appendices) were parts of the predecessor stories primarily presented in Exhibits #'s 1-307 rebutted in Evidence Objections Part 1. In that respect, consider Exhibit 409, the 1949 admissions of the extreme distress of the mine even as early as August 1949, which then things got worse as the losses increased with increasing prices of everything except the $35 capped price of gold. (Objectors wonder how many other such depressing admission documents Rise has not exposed, and what possible net benefit Rise imagined that letter might provide to its doomed vested rights case. We guess that this shows the stubbornness of gold miners in their quest for miracle solutions. However, the actual history exposed by Evidence Objections Part 1 still proves "Vested Mine Property" abandonment/discontinuance/dormancy.) **That 8/15/1949 letter from the Idaho-Maryland Mines Corporation to an IMM creditor about collateral substitution and struggle to dispose of its distressed lumber business states (at 2, emphasis added) in the relevant part a critical miner predisposition that creates a context for denying vested rights on and after the 10/10/1954 alleged vesting date:**

> **The Brunswick will not carry itself largely due to high costs and low grade. There is no large high grade area on which we can depend to carry us over weak times. The small high grade areas are becoming fewer in number and worst of all we are developing no new ones of consequence. Time is running out.**
> ***
> **The property, to get back on its feet, needs a new high grade crebody which we will not find in the Brunswick (judging by all past records nor will we find it in the old workings of the Idaho (judging by information available). It appears that we must strike out toward unexplored areas.**
> ***
> **Perhaps a gold price increase and renewed faith in the possibility of earning profits from gold mines will help us over the hump.**
> ***** [the letter describes a run-it-until-it-breaks situation with "a lot of tired old equipment whose days are numbered" "in such bad condition it must be replaced" "left with no spare" and how the "old Taylor pump on the 1000 and its old pump line are both in bad shape."]**

> **I am going over all he old maps, reports and other information I can find to give us any leads or information that might lead to short range exploration with a hope of finding quick ore. …**

When considering all the historical "filler" that the Rise Petition Exhibits present about the mine's "vast" potential, remember that the key issues are the conditions, facts, and circumstances on 10/10/1954, as well as when Rise predecessors closed, discontinued, and abandoned the flooded and dormant IMM by 1956, when vested rights would have to be initially proven by Rise for that initial miner to be able to pass any such vested rights up the chain to the next successor (and so on with vested rights having to be continuous up the chain of title to Rise.) What Rise has failed to accomplish in its burden of proof (and what objectors have proven to the contrary in this and other objections) is that no Rise predecessor had any vested rights, and, if any vested rights had managed to reach Rise, Rise would not have been able to preserve them.

III. The Overlaps And Interactions Between the Rise Petition Objections And the EIR/DEIR Objections Are Also Illustrated in The Need Even *Hansen* Requires For Vested Rights For "Components," Such As the New And Unprecedented Water Treatment Plant Dewatering System, Which Will Also Be Challenged By The New, Unprecedented, And More "Intense" And Legally Objectionable Underground Mining Technique Using Cement Paste For Shoring Braces That Risks Polluting Water With Toxic Hexavalent Chromium.

Consider this example of such an overlap between such EIR/DEIR objections and the disputed Rise Petition objections, which is explained in more detail as to evidentiary and legal objections at the end of Evidence Objection Part 1. Contrary to the Rise Petition, applicable laws prohibit Rise from using a dangerous, "greater intensity" or higher-risk mining "use" technique (and "component") for which there was no historical precedent on the parcel at issue and, therefore, for which no vested rights exist, but which is described in some detail in the EIR/DEIR. Even *Hansen* itself defeated the Rise Petition when *Hansen* approved the *Paramount Rock* precedent, denying vested rights for a rock crusher "component" added to a parcel that never had one before. Here, the disputed EIR/DEIR described a "water treatment plant" on a Rise-owned surface parcel that is essential to Rise being able to use a new dewatering system at the IMM 24/7/365 for 80 years and (after such purported treatment) to flush away down Wolf Creek the groundwater and well water depleted from the objecting surface owners above and around the 2585-acre underground IMM. That disputed water treatment plant (and the rest of the dewatering system) has no precedent in that parcel, and no such dewatering or treatment has occurred there since at least 1956. That dewatering and treatment process is more objectionable and difficult than even the EIR/DEIR admitted, because Rise also plans to reduce its expenses in removing the mine waste from the mine by piping down cement paste from the surface to cement together mine waste into shoring brace columns creating a risk of perpetual, toxic hexavalent chromium pollution that Rise's already disputed treatment plant may not be able to remediate. See www.hinkleygroundwater.com, explaining how, after all these years and vast settlement

funding for remediation, Hinkley still has not been able to clean the lethal hexavalent chromium from its groundwater.

Moreover, in critical ways, Rise "hides the ball" by incorrectly disregarding specific objections to it in objectionable ways that obscure the massive threat of such objectionable "uses" and "components" as to which the disputed Rise Petition not only fails to address, but **which the Rise Petition (at 58) claims the vested right to do "without limitation or restriction" 24/7/365 for 80 years. Objectors' record objections to the EIR/DEIR reveal how the disputed EIR/DEIR and some objections to it (see, e.g., DEIR objection Ind. 254 and objectors' follow-up EIR objection to the EIR nonresponsive and worse "Responses," particularly Response 1 to DEIR objection Ind. 254) and "Master Responses" are rebutted one-by-one, including by analysis of the admissions by Rise's consultants' pre-DEIR disputed reports added (obscurely to the end of the EIR, as Exhibits Q, R, and S) explained Rise's disputed plans for shoring up the 2585-acre underground mine.** Those objections expose in detail how Rise plans to save money by reducing the need for underground waste rock removal by creating "shoring" columns with such piped-down "cement paste," **including the TOXIC HEXAVALENT CHROMIUM that is best known from the reality-based movie, *Erin Brockovich,* where that toxin leaked from a utility's settling ponds to poison the groundwater and kill the town of Hinkley, CA, and many of its people, a problem that, despite a record settlement by the polluter, what is left of the town still has not been able to remediate after many years of trying. See the EPA and CalEPA website files on the hexavalent chromium menace. See also (a) the DEIR/DEIR's failure to even address this threat as and where required in the disputed DEIR "Hazards And Hazardous Materials" section. Instead, the DEIR just mentioned it in passing in another section discussing such mine shoring techniques, and (b) the disputed EIR's Response #1 to such detailed DEIR objections in Ind. 254 (i) with a disputed, specific EIR dismissal in its obscure Response 1 to that individual objection Ind 254 (that no one probably read), (ii) without any correction or even identification of the threat about the hexavalent chromium menace in the amended EIR discussion of "clarifications" (disputed as actually EIR amendments that should have required the DEIR/DEIR to be better revised and recirculated) of the required "Hazards and Hazardous Materials" discussion, and (iii) the disputed EIR Exhibits Q, R, and S added (obscurely) at the EIR's end without any explicit identification or alert for readers of the hexavalent chromium threat that could not be easily discovered unless one read everything looking for such "hide the ball" issues, and (iv) even then, one would have had to read the detailed documents (lacking any helpful clues in their titles) to find the insufficient and still detailed admissions by consultants on the subject in reports that pre-dated the DEIR and should have been reported clearly therein with what *Gray* required as "common sense" and what *Banner, Vineyard, a*nd other authorities cited by objectors required as "good faith reasoned analysis."** See the Evidence Objections Part 1's Table of Cases and Commentaries.

The interaction of particular focus here is that Rise not only evaded its obligation to comply with CEQA as to these threats by proper disclosure in the EIR/DEIR, but Rise failed to address its own *Hansen* (*Paramount Rock*) case's requirement for attempting to prove vested rights for such new components and uses. Instead, Rise ignores the issue entirely. As a result, objecting surface owners above and around the 2585-acre underground IMM confront and dispute the Rise Petition (at 58), demanding vested rights to do such objectionable new things

"without limitation or restriction" without the Rise Petition ever even identifying these problems to the County**. By the County incorrectly accommodating Rise's separation of this vested rights dispute from the EIR/DEIR dispute, the County has made itself (and all impacted locals) vulnerable to all such problems revealed in the objections to the EIR/DEIR but never acknowledged or confronted in the disputed Rise Petition, even when such issues involve such vested rights disputes over Rise new "uses" or "components" that cannot possibly have any vested rights, such as because they were not each part of any mining on the relevant parcel on or after 10/10/1954. Evidence Objections Part 1.**

IV. A Brief Rebuttal About Rise Petition's Unsubstantiated, Incorrect, And Worse Centennial Claims.

Note that the Rise Petition historical Exhibits (pre-Rise) ignore the many problems with the separate **Centennial** site that Rise's disputed EIR/DEIR admitted and claimed was NOT part of the Rise "project," but instead was entirely separate therefrom, and, therefore, did not need to comply with CEQA as to the EIR/DEIR "project." Suddenly however, the Rise Petition now has radically changed legal theories and incorrectly imagines that the Centennial site (not meaningfully addressed in the Rise Petition Exhibits, which instead focus on the wholly-owned Brunswick related parcels and the 2585-acre [or so] underground IMM) somehow supports Rise's incorrect and unprecedented "unitary vested rights theory," especially since that toxic Centennial dump has long had no possible legal mining "use," especially any underground "use." See cited EIR/DEIR objections to (and Rise SEC filing admissions about) Centennial, which is subject to many separate disputes and history not addressed by the Rise Petition and which should not [and, considering pending and further objections, cannot be] so used in the future, unless and until, if ever, it is fully remediated (a subject never addressed by the Rise Petition.) Rise cites no authority (and could not cite any authority) for the proposition that a miner's such pollution of such a mine allows it (and its successors) to preserve vested rights claims indefinitely if the miner chooses to remediate the property, if that even were economically or practically feasible, which EIR/DEIR objections prove is not the case. In any case, where does the Rise Petition even attempt to satisfy its burden of proof with objective evidence that Rise and all the relevant Rise predecessors continuously intended since 10/10/1954 to remediate Centennial?

Also, Rise's disputed, purported, old IMM or Centennial remediation plans and financial assurances are not only legally non-compliant and insufficient, but they are economically and practically infeasible to the point of being illusory, especially since Rise's financial resources are admitted in the recent 2023 10K and other Rise SEC filings (see Exhibit A) to be insufficient to fund any satisfactory remediation or reclamation (or much of anything else needed to protect the community) from even that Rise menace, much less the remediation plan and financial assurances the County has separated from the rest of the Rise Petition disputes. See the many record objections to the EIR/DEIR and others to follow in this vested rights dispute regarding Centennial and rebutting the Rise Petition's attempt to misuse Centennial to create or maintain alleged vested rights throughout the Vested Mine Property, even though the only lawful activity on Centennial has long been clean-up or dumping and not any actual mining-related "uses,"

especially not any **underground** mining uses, which *Hardesty* held to be legally different "uses" than **surface** mining for vested rights purposes.

V. Some General Objections To (i) The Way the Rise Petition Purports To Rely On Disputed Exhibits Without Explaining What Or How Those Exhibits Are Supposed To Support the Rise Petition, And (ii) Rise Failing To Explain Noncompliance With Timing, Notice, And Other Legal Requirements That Undercut Rise's Vested Rights Claims In Many Ways, Including Even By Creating Counter "Inferences" To Rebut Rise Claims About Objective Intent of Predecessors Rise Must Prove (But Fails To Do So.)

A. Rise Petition Exhibits Often Fail To Prove What Rise Claims They Mean In Such Petition, And, To the Contrary, Often Constitute Rise Admissions That Rebut The Rise Petition Claims.

As to the Rise Petition and its Exhibits themselves, objectors object to the general citation in that Petition to Exhibits without sufficient explanation as to what Rise claims in the Exhibits makes them relevant, admissible, and even probative or credible evidence for some disputed claim in the Rise Petition purporting to rely on them. On the contrary, many such Exhibits do not prove anything alleged in the Rise Petition. In some cases illustrated below, objectors use those Exhibit admissions to rebut such Rise claims. Sometimes, the Rise Petition may simply be purporting to add some context or foundation for the Rise Petition generally. Still, in reality, such Exhibits are just "filler" that proves nothing important. Even when somewhat relevant, such Exhibits are often just a momentary "snapshot event" that does not prove any required continuity. For example, a document by Emgold reporting on a few occasional exploration test holes (often on some unidentified parcel) does not prove any continuous activity required for vested rights to mine.

Such things might be tolerable in some contexts, but not when such background evidence is cited as having proven something specific that is not so proven in the Exhibit. For example, many deeds, chain of title summaries, photos, exploration reports, and similar documents are attached to the Rise Petition as Exhibits. However, objectors object when a particular vested right claim requirement, such as, for example, continuous mining or objective and unconditional intent to mine in the future, is claimed in the Rise Petition as being proven by such deeds or general documents that identify the owner but not such purported continuous conduct of the owner creating or maintaining imagined vested rights. Objectors object to such wishful Rise thinking and mismatches between factual and legal claims in the Rise Petition and the Exhibits incorrectly cited as proof of such claimed rights. Stated another way, attaching a deed as an Exhibit to identify an owner does not enable the Rise Petition to add an unproven allegation about what Rise claims the owner did or intended (or did not do or intend) and then claim that Rise has proven vested rights. The application of that reality for purposes of objections and rebuttals seems to be both to the Rise Petition (as to which there will be more filed objections coming) and to the Exhibits themselves (as, for example, lack of foundation or authentication, inadmissibility, irrelevance, lack of competence, and other evidentiary objections, etc.)

B. The Law of Evidence Is Generally Ignored By the Rise Petition, Causing Many Rise Petition Exhibits To Be Excluded From Proving Anything, As Proven Herein And In Evidence Objection Part 1.

Also, this objection demonstrates how many such Rise Petition Exhibits in some way contradict or discredit Rise Petition claims, especially when the correct legal analysis is applied instead of the incorrect Rise legal theory and when objectors' rebuttals include damning Rise admission evidence. See, e.g., Evidence Code ("EC") #'s 1220 et seq (confessions and admission generally), 1230 (declarations against interest), 623 (estoppel by Rise's own contradictions and inconsistencies), 412 (impeachment by producing weaker evidence and holding back more relevant and important evidence), 413 (Rise's failure to explain or deny evidence), and 1235 (prior inconsistent statements). For example, Rise asserts an incorrect "unitary theory of vested rights" that an owner of a multi-parcel mine somehow can establish vested rights over every parcel of the mine (even those never mined or even accessed like many in the 2585-acre underground IMM) by how the miner conducts its "uses" (or uses "components") on any one parcel. But see even Hansen rejecting that approach, as do many other cases discussed in Evidence Objections Part 1, such as *Calvert* and *Hardesty*. Since the correct legal analysis is parcel-by-parcel and use-by-use (and component-by-component), the Rise Petition does not even attempt to be comprehensive. Id. Relevant Rise Petition Exhibits are limited to less than all of the alleged "Vested Mine Property." There are often evidentiary admissions of material "gaps" confirming that the Rise Petition has failed in its burden of proof as to all the other relevant parcels. **Id. Many Rise admissions in the EIR/DEIR and the 2023 10K and other Rise SEC filings themselves are often in conflict, inconsistent, and contrary to each other, telling more cautious facts to Rise investors and the SEC in Rise's SEC filings than the even more disputed and unrealistic claims in the EIR/DEIR to the County and others). They also often conflict or are inconsistent with, or are contrary to, the Rise Petition, since this abrupt Rise switch in strategy to disputed vested rights on 9/1/2023 seems to have not been fully anticipated by Rise in previously arranging disputed Rise allegations and "stories" to be more consistent. Id.**

Furthermore, Evidence Objections Part 1 summarizes the many evidentiary rules under the general law of evidence, with examples of objections and rebuttals throughout this document. Many Rise Petition Exhibits cannot be admissible or allowed over such objections. If the County does not provide objectors a process for excluding such purported Rise "evidence," then it will be excluded in the court processes. See Objections Petition For Pre-Trial Relief, Etc. That exclusion of such Rise alleged "evidence" will often result from a combination of objections to the disputed Rise Petition text asserting a disputed claim citing an objectionable Exhibit that is either inadmissible or otherwise disputed and which is unclear as to how the Exhibit is imagined to support the Rise Petition. For example, using an Exhibit for one purpose might sometimes be tolerable, but not for others. The Rise Petition is often unclear, such as by making a broad, disputed assertion and then citing an Exhibit that does not seem relevant or useful support for that disputed Rise assertion. However, because Rise has an "aggressive" imagination of what it thinks it is proving in that manner, objectors will assume the worst case and object to all such purported evidence to be "safe" from such Rise misuse or overgeneralization, etc. **For example, consider (as is often attempted by Rise, especially in the**

Lee Johnson Declaration) that the Rise Petition or Exhibits often rely on inadmissible "hearsay," especially "hidden hearsay," such as illustrated when Mr. Johnson declares that he was "aware" or "knows" or "believes" or "understands" something, without any foundation or explanation as to how he acquired such knowledge, awareness, impressions, bases for inferences or beliefs, or understanding. Evidence Objections Part 1. Objectors must object by assuming that it is just Mr. Johnson obscuring that his such foundational, evidentiary basis is NOT "personal knowledge" as alleged, but instead is just inadmissible hearsay, for example, from relying instead on his deceased mother-in-law, that should not be admissible for the truth of the matter he asserts.

C. Consider How Even Rise's Favorite *Hansen* Case Insists on Applying The Rules of Evidence Ignored Or Evaded By the Rise Petition.

RISE ALSO FAILS TO PROVE TIMELY COMPLIANCE by each of its predecessors with applicable laws requiring action or notices, especially as to deadlines, even those at issue in *Hansen, especially regarding the question of a miner's intent to abandon particular mining or plans for expansion of mining.* E.g., *Hansen's* discussion (at 569-571) of the effect of the "discontinuance of a nonconforming use" and its relationship to abandonment and statutory deadlines for resuming actions, such as:

> Although abandonment of a nonconforming use terminates it in all jurisdictions (8A McQuillin …25.191, p.68), ordinances or statutes which provide that discontinuance of a nonconforming use terminates it have not been uniformly construed. Some have been **held to create a presumption of abandonment by nonuse for the statutory period, others considered to be evidence of abandonment**. **In still other jurisdictions the nonconforming use is terminated** when the specified period of nonuse occurs, regardless of the intent of the landowner. (Id. at pp. 68-69) … [T]he parties have not offered any evidence of the legislative understanding or intent underlying the use of the term "discontinued" in Development Code 29.2(B). Id. at 569-570 (emphasis added)
> ***
> Since **we have concluded that the aggregate mining, production, and sales business was the land use for which the Hansen Brothers had a vested right in 1954,** the fact that rock quarrying may have been discontinued for 180 days or more [the deadline under Development Code 29.2(B)] is irrelevant. Hansen Brothers has a vested right to continue all aspects of its aggregate business at the Bear's Elbow Mine [because the *Hansen* majority (e.g., at 574) forbid treating the separate "components" of that integrated business "operated as a single entity since it was established in 1946" because that 180-day limit on discontinuance (at 570) only "applies to the nonconforming use itself, not to the various components of the business."] **This is not to say that future inactivity at the mine may not result in termination of that vested right or that the county might not conclude that the property is no longer being used for aggregate**

> **production and is currently in use only as a yard for storage and sales of stockpiled material**. Id. at 571. (emphasis added)

See Attachment A and in the Table of Cases And Commentary On Applicable Legal Principles… in Evidence Objections Part 1, further discussing these issues. See also Exhibit B hereto for convenience.

None of that *Hansen* ruling helps Rise, among many other reasons discussed herein, because, as demonstrated below with Rise's own Exhibits and Rise Petition and other record admissions and unlike the facts in *Hansen*: (1) there was no "business" in which the initial predecessor was engaged on October 10, 1954, except the winding down of the underground gold mining in the "Flooded Mine" parcels of the 2585-acre underground mine (with nothing happening in the "Never Mined Area," where any "expansion" or "enlargement" was then unimaginable, because: (a) the $35 legal limit on gold prices made gold mining chronically unprofitable, forcing Idaho-Maryland Mine Corporation to "downsize," and (b) the brief shift to government-subsidized "tungsten" mining (which is a different "use" for vested rights than gold mining), ended before the whole IMM closed and flooded at least by 1956; (2) none of the later surface activities of that Corporation's successors at the IMM (all irrelevant, different "uses" anyway) were ever part of that initial predecessor's "business," and underground gold mining was not ever part of anyone's business after the IMM closed, flooded, and discontinued all operations, ending any underground gold mining or other business at the IMM for all those years and leaving the gold mine discontinued, dormant, and abandoned (as it remains today); (3) that initial predecessor sold off the closed mine's equipment and salable fixtures/infrastructure, changed its name and trademark, moved to LA to become an aerospace contractor, filed bankruptcy, and the IMM was liquidated cheap at an auction sale to William Ghidotti in 1963; (4) William Ghidotti did not buy any business at the IMM auction, just abandoned mine real estate and whatever disputed plans Rise may have it could not have been to revive that underground gold mining as a part of any integrated surface business; (5) contrary to Rise's incorrect claims the mine was not closed pending changes in the "market conditions," but changes in the LAW (e.g., the $35 gold price cap effects that endured for another decade) that shut down the entire industry as mining costs kept rising, and Rise cites no cases where hoping for a change in the law (as distinct from changes in the market) can preserve any vested rights. (That is one reason why no specific proposals for reopening the IMM began to emerge until the 1980's from new, emerging speculators); (5) no one would have even planned any such massive investment to reopen that mine until after the $35 legal limit on gold prices ended, and, as the Exhibits below show, interest in such expensive underground gold mining still did not resume for years after the law changed to end the $35 cap until the whole US economy changed its investment model (e.g., using gold as an inflation hedge) raising the price of gold reliably above its mining costs; (6) no "business" has been possible for that included any part of that underground gold mine, whether for Mr. Ghidotti or any other Rise predecessor after him, among other things, because (a) for anyone to restart even the Flooded Mine (as distinguished from even more expensive, entirely new mining operations into the Never Mined Parcels) would have involved massive and expensive efforts (e.g., dewatering for more than a year; repair and reconstruction of all the infrastructure and support facilities; new equipment; legal compliance work still required despite any vested rights, although only Rise has tried to avoid full

compliance with its incorrect vested rights arguments, etc., as admitted in the EIR/DEIR, other governmental applications by Rise or its later predecessors (Emgold), Rise's SEC filings, and other evidence addressed in objections to the EIR/DEIR or to this Rise Petition), (b) no Rise predecessor with gold mining aspirations has ever engaged in any material actions that could qualify as underground mining work (e.g., Emgold's test drilling and permits are not such mining "uses"), and all of them backed off from this imagined gold mining "opportunity" in favor of sales to more aggressive speculators, which brings us to Rise's conduct that will be addressed in a separate objection rebutting the remaining Rise Petition Exhibits after 307 and any other purported "evidence" from or for Rise; and (7) When the BET Group subdivided and sold for residential and non-mining commercial businesses the surface land (down 200 feet) above the 2585-acres of underground mining rights, it ended any possible gold mining related or other vested rights qualified business **on the surface of those parcels** besides that possible future underground mining. As *Hardesty* explained as quoted herein, speculative hopes for some better future opportunity where mining could be practical do not prevent abandonment. As a result, it is legally impossible for Rise to claim that it has any vested right to mine gold in any of the 2585-acre underground mine as a continuous "use" or even as part of any business on those parcels (and, objectors contend, anywhere else).

Besides proving those facts on which objectors rely and the applicable law, such as vested rights requiring continuous qualified "uses" (and location of "components," like the imagined unprecedented Rise water treatment plant that cannot ever have any vested rights) on a "parcel-by-parcel," "use-by-use," and "component-by-component" basis for each predecessor owner, such predecessors' conduct and matters also create **evidentiary "presumptions" (see *Hansen's* quote above) and also at least "reasonable inferences"** as evidence against any Rise vested rights. E.g., *Gerhardt v. Stephens* (1968), 52 Cal.2d 864, 890 (a property owner's conduct can enable the court to reasonably "infer" the intention to abandon); *Pickens v. Johnson* (1951), 107 Cal.App.2d 778, 788 (explaining that intent to abandon can be proven as inferences even from the owner's acts or conduct alone; a feature of the case that Rise overlooks when the Rise Petition (at 54) mischaracterizes that decision as proposing a clear and convincing evidence standard that does not apply to vested rights.) See **Attachment A and Table of Cases And Commentary On Applicable Legal Principles… in Evidence Objections Part 1.** Those **"inferences"** disproving Rise vested rights claims are further demonstrated below, where this objection dissects each relevant Rise Petition Exhibit of any possible material consequence to prove either: (i) how such objectionable Exhibit is not admissible evidence or supportive of Rise's disputed claim for its use, (ii) how Rise's interpretation is incorrect or contrary to or inconsistent with some other purported Rise evidence or claim, or (iii) how such Exhibit actually supports this objection and others in some respect not addressed by Rise. For those purposes, the legal context matters again for what such "evidence" is trying to prove.

This objection demonstrates how Rise too often incorrectly cites objectionable evidence to prove an incorrect legal theory, such as its incorrect and unprecedented "unitary theory of vested rights," where Rise incorrectly claims that any kind of mining-related surface or underground "use" on any parcel somehow creates vested rights for all uses and components of all parcels in the "Vested Mine Property." **However, to the contrary, the Table of Cases And Commentary On Applicable Legal Principles… in that Evidence Objection Part 1 (see also Exhibit B for convenience) proves that for vested rights to exist, Rise must prove several**

elements of proof that Rise ignores (e.g., issues of enlargement, expansion, intensity, continuity, etc.). The analysis must be continuous for each parcel, each use, and each component, since each parcel, use, and component must have its own vested rights. and each predecessor must have continuous vested rights to pass along to its successor. Each different kind of mining is a separate "use" for vested rights, such that, as *Hardesty* proved (in quotes Id.), surface mining and underground mining are different uses. *Hansen* proved (at 557 and by citing *Paramount Rock Co. v . County of San Diego, herein called "Paramount Rock"*) that the scope of vested rights on a parcel is limited to the mining use for "the particular material" targeted, stating: "The right to expand mining or quarrying operations on the property is limited by the extent that the particular material is being excavated when the zoning law became effective." See, e.g., *Calvert v. County of Yuba* (2006), 145 Cal.App.4th 613, 625 ("*Calvert"),* distinguishing aggregate mining from gold mining as separate, so attempting to link them together did not prove the continuous use required for vested rights; *Hardesty v. State Mining And Geology Board* (2017), 11 Cal.App.5th 810, (the court separated surface mining from underground mining as different "uses" for vested rights) ("Hardesty").

D. The Rise Petition Also Evades Timing Issues, Despite No Authority Allowing Vested Rights To Endure All This Time Since 10/10/1954 Without Any Mining Uses Possible In the 2585-Acre Underground IMM, Especially In the "Never Mined Parcels."

Timing is also a factor where action is required and fails to occur, especially by a deadline. While the distinguishable facts of *Hansen* (according to its majority) did not address the impact of discontinuations of particular mining, the Rise Petition does not explain how Rise and its predecessors managed to escape the statutory deadline for discontinuances or nonuse (or abandonment) of each parcel in the so-called "Vested Mine Property" on a parcel-by-parcel, use-by-use, and component-by-component basis. See Evidence Objections Part 1. As demonstrated herein and in other objections, especially applying the required parcel-by-parcel, use-by-use, and component-by-component analysis, Idaho-Maryland Mines Corporation (aka later Idaho-Maryland Industries, Inc.) violated the deadline addressed in *Hansen* (at 569-571, see above quote) as "Development Code section 29.2(B)." Its successors likewise violated the similar evolving deadlines of each applicable version of that continuing law, also conditioning vested rights as to discontinued nonconforming uses. E.g., **Nevada County Land Use And Development Code** (the **"Development Code," "NCLUDC," or "LUDC**," depending on the citer) # L-II 5.19(B)(4) (one year or more "discontinuance" is fatal to vested rights), which even the Rise Petition and its Exhibits admit as demonstrated in this and other objections, and which admitted property conditions likewise show must be the case, such as all the admissions that no one has been able to operate or even access the Flooded Mine or Never Mined Parcels since at least 1956. Accord *Stokes v. Board of Permit Appeals* (1997), 57 Cal. App. 4th 1348, 1354-56 and n. 4 ("**Stokes**"), which distinguished *Hansen* (including as we have done here and in Attachment A to Evidence Objections Part 1) because all relevant uses of that property stopped for many years (here as to the entire underground 2585-acre underground mine, since at least 1956). Because, as **Hansen** ruled, the County lacks the right to waive or consent to violations of its own zoning laws, the County must reject this disputed Rise Petition. See more proof below, even

using Rise's own Exhibits and admissions, which should be read together with Evidence Objections Part 1 as if one consolidated objection.

An even more serious Rise and predecessor governmental disclosure problem also exists because Rise and its predecessors have **not corrected the extended classification by the California Department of Toxic Substances of the "Vested Mine Property" (what is there called the "Idaho Maryland Mine Property") as an "abandoned mine" and Centennial as long dormant.** A future objection and declaration will deal with these issues more comprehensively as part of briefing why Rise's project follows a problematic pattern that has resulted in over 40,000 abandoned mines ending up on the EPA and CalEPA lists, especially as to the chronic failures of miners deficient and worse "reclamation plans" and the almost invariable insufficiency of "financial assurances" to remediate the problems created by miners who too often have "taking the profits and run" or filed bankruptcy [or cross-border insolvency proceedings with US Chapter 15 cases] when the operation is no longer profitable," leaving a mess for the community. See Exhibit A and Evidence Objections Part 1.

***Stokes* also stated that long lapses are evidence of an intent to abandon, and this objection proves that and much more. Even more striking is what would be noncompliance with applicable state and local mine reporting laws by Rise and every predecessor since 1991, who have failed to file annual reports about any part of the IMM as either "active" or "idle" as required both by Pub. Res. Code # 2207(a)(6) and by County Development Code 3.22(M).** The legal inference and presumption from that inaction is that every predecessor failed to file such annual reports because they considered the entire "Vested Mine Property" and IMM to be abandoned, i.e., inactive, dormant, discontinued, or idle. *Stokes* is also notable as more illustration of prior inconsistent or contrary positions defeating later vested rights claims; in that case, previous owners showed an intent to abandon a nonconforming bathhouse use when they filed and applied for the alternate use as a senior center). There is a similar analysis below of how incompatible with the underground mining of the 2585-acre underground mine it was that the BET Group sold the surface above it (generally down 200 feet) for residential and non-mining commercial uses, including by our analyses of, and rebuttals from, the relevant Rise Petition Exhibits (e.g., 261, 263 and others). Evidence Objections Part 1. The same applies to Sierra Pacific Industries' rezoning efforts for non-mining uses (Rise Exhibits 281 and 282.) Id.

In any case, these objections demonstrate how even the Rise Petition appears to admit that Rise and such predecessors failed to conduct themselves as required for any vested rights, and, among other things already argued in this and other objections (e.g., citing changes in the Rise "story" from the EIR/DEIR or other Rise applications or filings inconsistent or contrary to the Rise Petition), that **objectionable conduct enhances the other claims asserted by objectors to counter vested rights, especially by those objectors owning the surface above and around the 2585-acre underground IMM, asserting that Rise is estopped or otherwise prevented by law (e.g., by waiver or laches or unclean hands) from claiming vested rights.** Id.

VI. General Historical Orientation And Realities for the IMM And Some Other Rebuttals Versus What Rise Incorrectly Claims Is the Meaning or Effect of Disputed Rise Petition Exhibits (#'s 308-429 plus Appendices) At Issue Here.

A. The Rise Petition Exhibits Before And During Rise's Ownership Include (And Incorporate) The Same Problems Of Predecessors Exhibits Exposed In Evidence Objections Part 1, Plus More Added By Rise's Own Errors, Omission, And Worse.

1. Rise Petition's Remaining Exhibits 308-429 (And Appendices A, B, and C) Generally Fail To Prove Any Vested Rights During The Recent History Since Rise Made Its Initial Acquisition in 2017. Also, And Inappropriately, Many Such "Out of Order" Historical Exhibits Rebutted Below (i.e., Tactically Disconnected By the Rise Petition From the Related Rise Predecessors' Earlier Disputed "Evidence" Generally Collected And Previously Rebutted in Segments of Exhibits 1-307) Are Either Useless "Filler" Or Even More Contrary To Rise's Disputed Rewriting of Some Each Predecessor's History.

Objectors have rebutted before (and again below) any Rise claim to any vested rights by Idaho-Maryland Mine Corporation on 10/10/1954 or after that, especially on the "Never Mined Parcels" and as to many unprecedented "uses" and "components" contemplated by Rise (particularly as to their expansion to new parcels), such as the water treatment plant and the much more "intense" dewatering system operating 24/7/365 for 80 years in another 76 miles of proposed new tunneling (plus offshoots from that place chasing gold veins). See, e.g., Evidence Objection Part 1 and herein, such as discussing how even *Hansen* approved *Paramount Rock* in denying vested rights for adding a rock crusher to a parcel where none had previously been located. Of course, as also demonstrated in such rebuttals, any (incorrectly determined) vested rights in the IMM would have been abandoned/discontinued by Idaho-Maryland Industries, Inc. at some point during the period when it liquidated everything moveable from the mine, closed, discontinued, and abandoned the then flooded and dormant IMM, changed its name/trademark, moved to the LA area to become an aerospace contractor, went bankrupt and liquidated the IMM cheap at auction. None of those Rise Petition Exhibits prove any vested rights for Rise or any of its predecessors or any "Vested Mine Property," and, as noted above, Rise made no effort to prove any "use" or "component" on any specific parcel as required, apparently gambling everything on fooling the County with its incorrect and unprecedented "unitary theory of vested rights." As a result, no successor owner in the chain of title to any of the so-called "Vested Mine Property," including Rise, could have any vested rights after that. See Evidence Objections Part 1, and Objectors Petition For Pre-Trial Relief, Etc.

Instead, many of those Exhibits contain Rise admissions that contradict, conflict with, or otherwise defeat Rise's vested rights claims, especially in the context of both (i) the prior historic exhibits with similar objectionable issues and admissions, and (ii) Rise's 2023 10k and other SEC admissions exposed in Exhibit A. Accord Id. In addition, objectors ask: why, for example, would the Rise Petition cluster most of the historical Exhibits on a particular topic (e.g., the Emgold or North Star or BET Group predecessor purported evidence) in the earlier Exhibits (#1-307) addressed in Evidence Objections Part 1, but then have the Rise Petition scatter some others on those same topics for those same predecessors in the latter disconnected Exhibits (# 308-429) parts, especially among many useless "filler" Exhibits and other objectionable documents rebutted below? Perhaps there was something in those latter

documents that Rise feared might disrupt or expose its earlier (and incorrect) "storyline," or maybe that was because there was something in the last "storylines" that Rise did not wish to disrupt or expose flaws in the earlier disputed story "evidence." Perhaps both Rise Petition tactics were in play. In any case, the Rise Petition's claims are so unclear about what Rise imagines its cited Exhibits were supposed to prove, and the Rise Petition claims are grossly overstated and generalized) such mismatched confusion is hard for objectors to grasp, which may have been the Rise goal. See the summary at the end of this objection, where this point is addressed more comprehensively, such as with examples like the Rise Petition (at 58) claiming in effect that what little was allegedly done (or intended to be done in some indefinite future) on any part of the disputed "Vested Mine Property" created vested rights for any desired use or component Rise wished on the whole of such "Vested Mine Property" "without limitation or restriction," contrary to Rise's many contrary and conflicting admissions in Rise's 2023 10K and other SEC filings exposed in Exhibit A hereto. In any event, that lack of clarity is objectionable, legally unacceptable, and a reason for disqualifying the inevitable Rise attempts in the future to supplement Rise's tactically deficient record with new evidence at the coming Board hearing or elsewhere. Id. See also *Hardesty*, where such conflicting "alternative reality" "stories" were described too politely as a "muddle," but rejected in favor of reality, and the *City of Richmond,* where the Court rejected Chevron's EIR because it was inconsistent with and contrary to Chevron's SEC filing admissions.

2. Rise's Exhibit 314 Press Release dated 11/14/2019 Announces Its Limited Use Permit Application, Which (Like the Rise Application Itself) Admits Things Inconsistent with, Or Contrary To, the Disputed Rise Petition Belatedly And Incorrectly Claiming Vested Rights on 9/1/2023, Long After Many Contrary And Inconsistent Applications for Permits Or Approvals Often Disregarded Now By the Rise Petition, But Still Useful To Objectors As Rebuttal Admissions, Especially In the Context of Rise Admissions In the 2023 10K Exposed in Exhibit A.

The Use Permit Application on file with the County contains many admissions contrary to, and inconsistent with, the disputed Rise Petition. The same is true of this Rise press release, which admits (at 2, emphasis added):

> **"…[T]he Project is subject to the Nevada County Land Use and Development Code. Subsurface mining and above ground processing is an allowed use subject to County approval of a Use Permit. The Company will also be required to obtain approval of a Reclamation Plan, variance, and rezone from the County for any surface component of the underground mining operation before mining operations can commence.**
>
> **In order to approve the requested entitlements, the County must satisfy the requirements of the California Environmental Quality Act ("CEQA"). CEQA requires that the County study the environmental impacts …**

> **A general outline of milestones in the process to approval of the permit is outlined as follows…**

That quote is consistent even with Rise's 2023 10K and other SEC filings as demonstrated in Exhibit A, but contrary to the disputed and incorrect Rise Petition claims. See Evidence Code #'w 623, 412, and 413, and other rebuttals of the Rise Petition in Evidence Objections Part 1, especially because Rise hides the full reality of the relevant application and related document by providing only Rise's deficient and disputed interpretation of what Rise regarded as important to share and not the more damaging admissions on which objectors would be focused. AGAIN, AS EVIDENCE CODE #412 STATES (EMPHASIS ADDED): "IF WEAKER AND LESS SATISFACTORY EVIDENCE IS OFFERED WHEN IT WAS WITHIN THE POWER OF THE PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE EVIDENCE OFFERED SHOULD BE VIEWED WITH DISTRUST." See Hardesty and the City of Richmond, discussed herein. The Exhibit 314 summary of the Use Permit Application is also consistent with those SEC admissions, but similarly contrary to the Rise Petition, such as the following (summary at 1-2, emphasis added) that add to the reasons why Rise cannot have any vested rights:

> **The Company …cautions investors no current mineral resources or mineral reserves have been defined… The Company cautions investors that no technical report has been filed to support that this rate of production can be achieved. The Company has not completed a feasibility study to establish mineral reserves and therefore has not demonstrated economic viability of the IM Mine. The Company has not made a production decision for the IM Mine.**

Again, the comments above about Exhibit 309 also apply to this Exhibit and the related grounds why such admissions and others, as well as Exhibit A and Evidence Objections Part 1, defeat any vested rights claims and the Rise Petition.

3. **Rise's Exhibit 308 Press Release dated 1/2/2017 Is Inadmissible And Incorrect Opinion Or Worse, As Well As Useless "Filler," Not Any Admissible Or Credible Evidence For Rise's Disputed Vested Rights Claims. However, That Exhibit Does Contain Damning Rise Admissions That Contradict The Rise Petition And Instead Support Objections.**

Exhibit 308 is a mere press release describing Rise's opinions and allegations (as of 1/2/2017) about its initial acquisition of the IMM for $2,000,000 as the "exercise of the Company's option to purchase the I-M Mine [there described (at 1) as "93-acres of surface land and approximately 2750-acres of mineral rights"] first referenced in the Company's news release dated October 6, 2016." **NOTICE THIS DOES NOT INCLUDE THE LATER ACQUIRED CENTENNIAL SITE THAT RISE INCORRECTLY TREATS AS IF IT WERE SOMEHOW ALWAYS A CONTINUOUS PART OF THAT "VESTED MINE PROPERTY," RATHER THAN WHAT RISE PREVIOUSLY INSISTED IN THE EIR/DEIR TO BE SEPARATE AND NOT A PART OF THE RISE "PROBJECT." (Here again, Rise asserts the underground IMM is 2750 acres, without explaining**

why the EIR/DEIR claimed 2585 acres, and, again, in all objections objectors use the EIR/DEIR acreage number to be consistent with earlier objections, but whatever the correct acreage we intend to be comprehensive and not to omit anything that should be included in the IMM or Vested Mine Property for objections to it to be comprehensive.)

Like most of the Rise Petition Exhibits, this is a promotional "puff" piece that provides data about how Rise imagines the rich gold potential of the mine, but none of which does anything to prove any vested rights. (Apparently, the unexpressed and disputed Rise theory is that somehow, such potential gold prospects mean that the predecessor miners must have wanted to reopen the mine. However, that ignores many countervailing considerations exposed in this and other objections. For over a decade after the alleged 10/10 1954 vesting date, the $35 legal gold price cap made all gold mining uneconomic compared to the ever-increasing recovery and operating costs. Also, after that, many (even after the $35 price cap was lifted, e.g., Emgold) ultimately declined the gamble of a huge start-up investment to dewater and reconstruct the IMM to begin the mining that would reveal what viable gold deposits existed, if any. See Exhibit A exposing Rise risk admissions in the 2023 10K and other SEC filings that reveal how speculative this mining is, especially considering the upfront years of high-cost startup work before any gold recovery revenue is even possible, as admitted in the EIR/DEIR. See objections to such EIR/DEIR and Rise admissions as to such massive start-up work that Rise admits would be required even under Rise's deficient mining plans. Indeed, few Rise Petition Exhibits present anything material to prove any Rise ownership period vested rights, probably because (like every other predecessor) Rise did not intend to claim vested rights until after the Planning Commission did the correct thing and rejected Rise's EIR and use permit. Rise then switched its entire legal theory on September 1, 2023. (Remember, the Rise 2023 10K was filed October 30 after the Rise Petition and contains many contradictory admissions as exposed in Exhibit A.)

Moreover, consider how **Rise admits in Exhibit 308 (at 5) to the difference in the looser, Canadian, mining terminology and opinion vs fact standards from the stricter US/SEC Rules in that Exhibit section entitled, "Cautionary Note to U.S. Investors." Canadian mining terms are "defined by NI 43-101," but not under the US-SEC Industry Guide 7, which only permits SEC filings "to disclose only those mineral deposits that a company can economically and legally extract or produce."** (emphasis added) Thus, in this (presumably Canadian) press release Rise attached the following warning (which the County Board must consider as a damning admission of Rise "playing" the County in this, as in so many other ways, by asking the County to accept as true and credible facts what the SEC forbids to be said to investors in Rise's US filings because the SEC knows that such miner "opinions pretending to be facts" (objectors' words) are too unreliable even for the most aggressive US speculators. See all objectors' cited and incorporated objections. **As that Rise Exhibit stated: "US investors are cautioned not to assume that any part or all of the mineral resources in these categories will ever be converted into Mineral Reserves. US investors are urged to consider closely the disclosure in Rise's Form 10-K, which may be obtained from the Company or online at http:llwww.sec.gov/edgar.shtml."** Id. (emphasis added) In this case, for example, Exhibit A to this objection (and others) reports those 2023 10K admissions by Rise that there are no "proven reserves" or "probable reserves." See objectors' Evidence Objection Part 1 (including the same Exhibit A), which contrasts the contradictions and inconsistencies between Rise SEC filings admissions versus the disputed Rise

Petition claims in, for, or about Rise's Exhibits 1-307, now expanded in this Part 2 objection to the rest of those disputed Rise Petition's Exhibits 308-429 (and Appendices) claims and admissions.

Among the relevance of those differences between Rise's Canadian versus US disclosures is that (under the US rules of evidence): (i) Rise is always bound for all US purposes and uses (including in this vested rights dispute at the County) by what Rise has admitted in its US filings, regardless of what else it may claim or allege it intended to the contrary in Canada, where such less strict standard may permit some expression of unsubstantiated, speculative, and otherwise dangerous levels of unreliability, ambiguity, or worse below safer US standards, and (ii) the Rise Petition asserting to the County its disputed "opinions pretending to be facts" (objectors' words) under that less reliable Canadian standard, supports objectors' challenges to Rise's credibility and creates estoppels, including under **Evidence Code ("EC") # 623,** as well as 1220, 1230, 1235, 412, and 413. See, e.g., *Communities for a Better Environment v. City of Richmond* (2010), 184 Cal.App.4th 70 ("***City of Richmond"),*** where such inconsistent and contradictory SEC filing admissions defeated Chevon's EIR; *Hardesty, Hansen, and Calvert* also discussed such evidentiary deficiencies. Stated another way, although Rise keeps objectionably trying to do so, Rise cannot "have it both ways," i.e., Rise cannot claim at the County for US vested rights the disputed level "facts" or "intentions" permitted under weaker Canadian credibility, reliability, and miner "opinion" standards, while also inconsistently admitting in SEC filings more "reality" and something closer to reliable truth (even though still disputed by objectors, such SEC admissions involve less "wishful thinking" from Rise's "alternative reality") under the stricter SEC standards. For example, the disputed Rise Petition Exhibits included those that incorrectly tried to claim vested rights by the Emgold predecessor, which objectors refuted in Evidence Objection Part 1 (e.g., exposing Rise Exhibits admitting that Emgold did no mining "uses," but merely some occasional and nonmaterial "exploratory drilling" "uses" in some but not all relevant parcels, thus creating no vested rights for any "mining uses,,," especially in the 2585-acre underground IMM beneath the surface owned by objectors and others not including Rise or its predecessor). Therefore, Exhibit 308 is inconsistent with the Rise Petition claim to vested rights, such as when consistent with Rise's 2023 10K admissions and Exhibit A's matching objections, such Rise Petition Exhibit states (at 2-3, emphasis added):

> Emgold Mining Corporation held an option on the I-M Property from approximately 1991 to 2013 and completed a mineral resource calculation displayed in Table 1. **The Company believes this historic resource estimate is relevant, but the Company has not verified the mineral resource calculation. A complete analysis of all historic production and sampling data will be required** in order to verify the historic mineral resource.
> ***
> **[In text boxes for emphasis:] Rise Resources Inc has not done sufficient work to classify the historical resources estimated or the Idaho-Maryland Project as a current mineral resource. Rise is not treating these historical estimates as a current estimate or mineral resources.**

> **The Company cautions that mineral resources that are not mineral reserves do not have demonstrated economic viability. Rise Resources Inc has not established mineral reserves supported by a NI 43-101 compliant technical report and feasibility study. The Company cautions readers that production may not be economically feasible.**
>
> **… over the last 70 years the I-M Mine has been frozen in time…**
>
> **… The Company intends to complete a NI 43-101 technical report as soon as possible to analyze and consolidate historical production and exploration work and define priority exploration targets. The Company will also commence preliminary engineering studies to define a strategy towards longer-term permitting and production goals.**

As described in Exhibit A hereto (and to it), analyzing similar admissions in the 2023 10K dated October 30, 2023, and proving little and no continuous progress on such Rise work since the start of its acquisition in 2017, there is no sufficient, **unconditional**, continuous, commitment to mining uses, but only, at most, to some occasional "exploration" **as an admitted precondition to any decision to mine**, not just by Rise, but also by the investors who Rise admitted it needs to be able to afford even to do exploration sufficient to persuade such investors possibly to gamble the cost of years of high cost, pre-startup, and pre-revenue work. Id., Evidence Objection Part 1, and objections to the EIR/DEIR analyzing the Rise work needed to be accomplished before there is any chance of producing any gold revenue. See also Exbibit A.

Recall that, in any event, Rise cannot have any vested rights, because none of Rise's predecessors had continuously acquired/inherited any from any predecessor since 10/10/1954. Id. Even if Rise somehow proved some acquisitions of vested rights for any "uses" or "components" on any "parcels" (which has not occurred), no such predecessor continuously maintained any such vested rights as required to pass them along to Rise or other successors, especially on the parcel-by-parcel, use-by-use, and component-by-component basis that would be required. See Evidence Objection Part 1, objecting, among other things, to Rise Petition Exhibits 1-307 or using their admissions as rebuttal evidence), especially as contrasted with Exhibit A to it (included hereto as well for convenience), exposing Rise's 2023 10K and other SEC filing admissions; Objectors Petition For Pre-Trial Relief, Etc. Among those objections that apply here (all incorporated herein), consider such rebuttals as well to Rise's disputed (and unproven) claim (at p. 2 of this discussed Exhibit 308) that **Rise has "complete historic records of the I-M Mine … [which] comprehensive records include thousands of documents and maps which show mine workings, production data, drill results, assays, and other important information." Since Rise has not produced, authenticated, or proven those alleged "comprehensive records," since Rise's such disputed and unsubstantiated opinion on the subject is NOT evidence of vested rights, and since what such disputed and unsubstantiated Rise Petition Exhibits Rise has presented are nonprobative "filler," objectors apply Evidence Code #'s 412 and 413 and other evidentiary objections (Id.) to defeat them. For example, this is precisely the circumstance for which EC #412 was designed to presume that, if Rise truly had better evidence than the ineffective filler (or Rise's press release summaries of documents instead of the real thing, as shown above) in its exhibits (such as this press release that proves nothing with its disputed opinions pretending to be facts), Rise would have added them as Exhibits;**

i.e., one must assume Rise produced its strongest evidence for vested rights, and, since that evidence is insufficient, contradicted by Rise admissions, and worse, whatever else Rise may have in such "comprehensive records" must be even less probative of vested rights (and more objectionable.) Objectors suspect such disputed evidence is probably even more counterproductive than these Rise Petition records that objectors have so used as rebuttal admissions here and in the Evidence Objection Part 1. EC #412 states again: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust." (emphasis added)

More importantly, **Exhibit 308 (at 2) admits that: "High inflation of costs after World War II, in conjunction with the fixed price of gold at US $35 per oz. resulted in the cessation of gold production at the I-M Mine in 1954." As explained in Evidence Objection Part 1 and Exhibit A, the entire gold mining industry was discontinued, dormant, and stopped, not just by " general market conditions" in Rise cited cases, but by the fact that APPLICABLE LAW kept the price of gold at $35 for decades while the cost of mining kept increasing. No one could afford to mine or even plan or intend to mine for decades until long after that legal gold price cap was terminated. Id. Thus, as so proven by objectors (Id.), the closed, dormant, and flooded IMM was abandoned and discontinued.** However, if there had been any vested rights by that predecessor (which objectors prove there were not at Id.), any plan to mine would have had to be **conditional** on a change in the gold cap law, and Rise has not cited (and cannot cite) any precedent for allowing such a condition on such changes in the law to indefinitely preserve the option to mine in some distant future when the law changed.

4. **Rise's Disputed Presentation of the DEIR/EIR History Is Incorrect Support for the Rise Petition That Objectors Can Use For Admissions To Rebut Rise's Vested Rights Claims.**

    a. **Rise Petition's Exhibit 315 Press Release dated 1/4/2022 Announces the "Favorable Draft Environmental Impact Report For Idaho-Maryland Project," Which Staff Proposal Was Correctly Rejected Later By the Planning Commission (As Hundreds of Meritorious Objections Demonstrate). That Exhibit Also Admits Things Inconsistent with the Disputed Rise Petition Belatedly And Incorrectly Claiming Vested Rights.**

FIRST, note that the County makes a mistake by excluding from this vested rights dispute process the hundreds of relevant and meritorious EIR/DEIR process objections, including even the use of EIR/DEIR admissions that contradict or conflict with the disputed Rise Petition, while allowing this kind of non-evidence, non-factual, and incorrect Exhibit from Rise above an incorrect expression of DEIR opinions. That incorrect denial of objectors' due process right for such objectors' rebuttals (e.g., limiting objectors' scope of rebuttal evidence without comparable limitations on Rise) does not provide a "level playing field." Objectors again assert all our DEIR/EIR objections (both direct and incorporated from others) comprehensively to rebut this Rise DEIR Exhibit and others by Rise relating to the EIR or DEIR. (While Rise also has incorrectly asserted non-meritorious objections to the correct decisions

and conduct of Planning Commissioners and others against the DEIR/DEIR, objectors will rebut those Rise errors in connection with any further disputed EIR hearings.) Stated another way, how is it possible for the County to ignore the repudiated EIR/DEIR objections, disproven by all those objections (often by default in Rise's failure to respond to them, i.e., Rise deploys the "apples versus oranges" tactic, in which Rise incorrectly insists on discussing only inapplicable "oranges" in a debate about fruit that is determined by the correct "apples" answer where Rise pretends "apples" do not exist, such as by Rise basing its entire Rise Petition on fragments of SMARA and SURFACE mining case when the vested rights dispute is primarily about UNDERGROUND mining not ruled by such surface authorities)?

Moreover, the draft EIR/DEIR authors and Rise team have just expressed incorrect, meritless, and otherwise objectionable opinions that were correctly disputed on the merits by objectors and rejected by the Planning Commission, and, yet still, after all that contrary evidence, Rise never confronted those such opposition merits, issues, and facts. Instead, Rise ignored them all, insisting on new, disputed "unitary vested rights theories" in Rise's "alternative reality" that Rise did not even attempt to reconcile with its own admissions in the EIR/DEIR, County, or other governmental permit or approval applications, or Rise's October 30, 2023, 10K and other SEC filings. E.g., Evidence Objection Part 1, including Exhibit A (to it and hereto) and the Engel Objections and others to the EIR/DEIR and the many other objections, EPA, CalEPA, and other websites and evidence sources cited and incorporated therein (and now herein again).

In any event, whatever the Board may do, objectors are confident that the courts will now include such objections (as proper rebuttals) that the County has chosen not to include from the EIR/DEIR dispute record, even though Rise has included disputed fragments, like this incorrect "puff piece" press release. Stated another way, because the County Planning Commission correctly rejected the EIR/DEIR on the merits, this press release was not even competent evidence at all; it just disputed Rise's opinion, and it was even more improper to allow to fill the administrative record with such disputed, non-evidentiary, incorrect, and nonmaterial "opinions masquerading as facts" about a correctly rejected EIR/DEIR. E.g., Evidence Code #413: "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating to it, if such be the case." See also EC #'s 412 and 623 quoted herein, as well as 1220, 1230, and 1235.

SECOND, this is a disputed Rise press release that ignored almost all of the many meritorious objections of hundreds of objectors, many of whom would be qualified experts in their subjects. E.g., Evidence Objection Part 1, including Exhibit A (to it and hereto) and the Engel Objections to the EIR/DEIR and the many other objections, EPA, CalEPA, and other websites and evidence sources cited and incorporated therein. This is not just a matter of reasoned debate because, as demonstrated in various objections, Rise and its enablers failed to satisfy the requirements for "common sense," "good faith reasoned analysis," and response to each objection that was required by CEQA and applicable law, including the controlling cases like *Gray v. Madera County, Banning, Village, Costa Mesa, et al. discussed in those many EIR/DEIR objections at Id. Rise has not even attempted to explain the inconsistencies and contradictions among Rise's own documentation, such as when Exhibit A and the rest of*

***Evidence Objections Part 1 expose Rise SEC and other admissions defeating the Rise Petition. EC #'s 412, 413, and 623,* as well as 1220, 1230, and 1235.**

THIRD, this disputed Rise press release is not competent evidence of anything, as discussed further in the following subsection (b), where Rise continues to assert its disputed press releases as if they somehow were evidence for Rise's position when their only fair use (as with this one) is for rebuttal admissions to defeat the Rise Petition. If the County tolerates such Rise "opinions masquerading as evidence" (objectors' words), then the County must allow all the objectors' contrary such rebuttal evidence since, as the EIR/DEIR incorporated record (e.g., the refiled Engel Objections, incorporating others) demonstrates, our local community of objectors, especially those above and around the 2585-acre underground mine comprehensively dispute Rise's such opinions claiming to be evidence. Since objectors have already comprehensively disputed, countered, and refuted in such EIR/DEIR objections the DEIR referenced and purportedly summarized by Rise in Exhibit 315; objectors will not repeat those objections to the content of this comprehensively disputed Exhibit.

Also, please consider the "Objectors Petition For Pre-Trial Relief, Etc." dated November 22, 2023, which adds additional authorities for objections to the process that incorrectly obstruct the presentation of Rise Petition objections. Since the Planning Commission has correctly rejected the DEIR, such a disputed DEIR itself (much less Rise's even more disputed press release summary) proves nothing for Rise.

b. Rise Petition's Exhibit 316 Press Release dated 12/16/2022 Announces the "Favorable Final Environmental Impact Report For Idaho-Maryland Project," Which Nonbinding Proposal Was Correctly Rejected Later By the Planning Commission (As Hundreds of Meritorious Objections Demonstrate). That Exhibit Also Admits Things Inconsistent with the Disputed Rise Petition Belatedly And Incorrectly Claiming Vested Rights.

Every objection and comment about the disputed DEIR press release (Exhibit 3i5) and related matters in the previous subsection (a) regarding Exhibit 315 applies equally here to the disputed EIR press release and related matters for this Exhibit 316. Again, this consultant report was correctly rejected on the merits by the Planning Commission in response to hundreds of meritorious EIR/DEIR objections incorporated herein. E.g., Evidence Objection Part 1, including Exhibit A (to it and hereto) and the Engel Objections to the EIR/DEIR and the many other objections, EPA, CalEPA, and other websites and evidence sources cited and incorporated therein (and now herein again, since the County has chosen not to include the EIR/DEIR dispute record, even though Rise has included disputed fragments about it, like this incorrect, "puff piece" press release.) Since objectors have already comprehensively disputed, countered, and refuted in such EIR/DEIR objections the EIR referenced and purportedly summarized by Rise in Exhibit 316; objectors will not repeat here those incorporated objections to the content of this comprehensively disputed Exhibit. However, objectors note that, as demonstrated, for example, in objections to the EIR (especially the Engel Objections that rebut each EIR "Response" and "Master Response" to the Engel Objections Ind. 254 and 255 to the DEIR, including both on the merits and as largely nonresponsive, evasive, incorrect, and worse),

the disputed EIR not only repeats all the material DEIR errors, omissions, and worse, but the disputed EIR compounds those problems by adding more errors, omissions, and worse. Id.

c. Rise Continues To Ignore The Evidence, Law, And Reasons for the Correct Planning Commission Decisions Against the Disputed EIR/DEIR In A Proper Process That, Unlike The Noncompliant Approach of Rise And Its Enablers, Correctly Responded To the Hundreds of Meritorious Objections Ignored, Evaded Or Worse By the Disputed EIR/DEIR. Id.

(i). Rise Exhibit 317 Press Release dated May 12, 2023, "Reports Planning Commission Recommendations on Idaho-Maryland Mine Project" Without Any Attempt To Defend the DEIR/EIR Or To Address On the Merits The Basis For That Correct Decision, Such As Its Foundation on Hundreds of Meritorious Objections To Such Disputed EIR/DEIR, Instead Incorrectly And Unfairly Attacking the Planning Commission And Its Process In A Disputed Letter To the Board of Supervisors That Objectors Will Rebut Comprehensively In That Next EIR Hearing At The Board.

This press release merely states: "At the conclusion of the public hearing, the Planning Commission recommended to the Nevada County Board of Supervisors that the FEIR [the staff proposed EIR] not be certified and that the Use Permit be denied." Rise incorrectly continues to act and argue as if somehow everyone should continue to ignore and evade the hundreds of objections to the EIR/DEIR, including by the Planning Commission, which was entitled both on the merits and as a matter of law to deny the massively flawed, incorrect, deficient, and worse EIR/DEIR, including by reliance on those many objections. However, rather than trying to address such disputes on the merits, Rise just attacked the Planning Commission and its process on a meritless or worse basis, as objectors will refute on the merits when the Board considers the EIR.

(ii). Rebuttals To Attacks By Rise In Its Disputed Letter To the County Board of Supervisors Dated June 1, 2023 (the "Rise EIR Letter" or "Rise Letter"), Wrongly Accusing the Planning Commissioners About Their Correct Decisions And Permissible Actions Regarding the Disputed EIR And Related Permit Applications.

The Rise EIR Letter is worse than wrong and inappropriate as a matter of both law and fact. Among other things, Rise somehow claims that the Planning Commission must be wrong and biased against Rise because it (correctly) disregarded the incorrect, deficient, and worse EIR/DEIR, County Staff Report, and County Economic Report. That meritless Rise complaint continues to ignore all the hundreds of meritorious objections by objectors on which the Planning Commission was entitled to rely in comprehensively rebutting such Rise or enabler EIR/DEIR and other filings. As demonstrated in the Objectors Petition for Pre-Trial Relief, Etc. and Evidence Objections Part 1 (both incorporated herein), this is a multi-party dispute in which objectors have no less standing or rights than Rise or its enablers. See Calvert and

Hardesty. Moreover, the job of the Planning Commission is (i) to rule for the truth and reality, which is what they did for good reasons that objectors have presented, and (ii) to reject the incorrect, deficient, and worse "alternative realities" (which Rise County and SEC filings are not even consistent or reconcilable with each other) asserted by Rise and is enablers. Id.

B. Rise's Press Releases Are Disputed, Mere Opinions And Not Competent "Evidence" of Anything, And Referenced, Occasional EXPLORATION Activities Are Not "Uses" Creating Vested Rights For MINING Uses, Which Are Different And, In Any Event, Require MINING "Uses" On Each Relevant "Parcel" Under Conditions And Circumstances Required For Such Vested Rights That Are Not Proven Or Possible By Rise, Among Other Things, Because the IMM Has Been Closed, Dormant, Discontinued, Flooded, And Abandoned Since At Least Early 1956.

1. Rise's Exhibit 309 Press Release dated 10/2/2017 Is Inadmissible And Incorrect Opinion Or Worse As Well As "Filler," Not Any Kind of Competent Evidence For Rise's Vested Rights Claims. However, That Exhibit Does Contain Damning Rise Admissions That Contradict The Rise Petition And Those Support Objections.

Contrary to the previous Exhibit 308 announcing such exploration "as soon as possible," Exhibit 309 reports (at 1) on the "first exploration drill hole." Besides that 10-month delay in that initial exploration, notice that the cited test location is a "target area on the western side of the I-M Deposit below the area where the historic operator ceased operations upon the mine's shut down in 1942 and 1955," citing to a 9/21/2017 press release that the Rise Petition did not offer in evidence. See again Evidence Code #'s 413, 412, and 623. This seems contrary to Rise's EIR/DEIR plan to mine in the parcels described in Evidence Objection Part 1 as the "Never Mined Parcels," since it seems to be in a "Flooded Mine" parcel where the mining ceased in 1955. **As a result, since vested mining is a parcel-by-parcel, use-by-use, and component-by-component issue (I**d.), **this untimely exploration "use" adds nothing to or for Rise's disputed, vested rights claims: first, because such exploration could only affect (at most) the "parcel" on which the drilling occurred, and second, because exploration is a different "use" than mining and cannot create vested rights for any mining anywhere. Id.**

Notice that this Exhibit (like most of the rest to follow) describes Rise at 1) as follows: **"Rise is an exploration-stage mining company." That means Rise does not plan to mine, but rather to explore a mine opportunity for a flip to a "real" mining company. Since mining is a different "use" for vested rights than "exploration" (Id.), Rise does not have the mindset and objective intent required for any vested right to mine, especially in the Never Mined Parcels, where, for example, the EIR/DEIR reported the need to create 76 miles of new tunnels in the Never Mined Parcels in order even to begin serious exploration and mining underground. Id.**

2. Rise Petition's Exhibit 311 Press Release dated 12/13/2018 About More Drilling Exploration Is (In Significant Part) Inadmissible And Disputed Opinion Or Worse, And Not Any Kind of Competent Evidence Required For Rise's Vested Rights Claims. However, That Exhibit Does Expose Objectionable Rise Tactics In That Rise Petition And Those Support Objections.

Again, the comments above about Exhibit 309 also apply to this Exhibit. The Exhibit discussed "52 Vein" and "2 Vein," and also the Zebra Zone and Brunswick Zone Drilling vein targets, and several related drill holes appear to be on such limited parcels. As explained above, however, those exploration "uses" do not create any vested rights on any other parcels either for exploration or mining (e.g., drilling on a parcel of the Flooded Mine does not create any right even to explore on any other parcel, and no exploration "use" creates any vested right for any mining "use.") See incorporated Evidence Objections Part 1, including Exhibit A (copied and attached here), proving that Rise's disputed and unprecedented "unitary theory of vested rights" is a hoax, and exploration "uses" cannot create any vested rights for mining or component "uses," especially on other parcels, such as the Never Mined Parcels.

3. Rise's Exhibit 313 Press Release dated 6/28/2019 About More Drilling Exploration Is (In Significant Part) Inadmissible And Disputed Opinion Or Worse, And Not Any Kind of Evidence For Rise's Vested Rights Claims. However, That Exhibit Does Expose Objectionable Rise Tactics In That Rise Petition, And Those Support Objections.

Again, the comments above about Exhibit 309 also apply to this Exhibit. Rise claims (at 1) that:

> The Company has completed 19 drill holes, totaling 20,584 meters, over the past 20 months in the Company's initial surface exploration drilling program at the Idaho-Maryland Gold Project…. The initial target represents the mineralized material in close proximity to and accessible from the existing mine workings [i.e., what objectors call the "Flooded Mine"] that can be readily drilled from the surface and/or underground to define a mineral resource.
>
> The Initial Exploration Target provides a basis for the engineering required to permit and plan to re-open the Idaho-Maryland Mine. The Company is now focusing its resources on engineering work to advance the project. The Company has temporarily curtailed surface exploration drilling.
>
> The Company has commenced engineering work to support an application for a Use Permit from Nevada County to allow the following activities: 1) Dewatering of the underground mine workings. 2) Underground exploration drilling. 3) **Full commercial mining with onsite mineral processing at the historic throughput of 1000 tons per day.** (emphasis added [because that quote exposes a massive "bait and switch tactic" by Rise])

First, 19 holes somewhere over 20 months (especially with no proof of which parcels were involved, although this still seems close, the holes probably do not involve many, if any, parcels of the 2585-acre underground IMM because the surface above them is owned by objectors and others who have not consented to support any such mine exploration) is not enough to satisfy any burden of proof (or to preserve even vested rights) for continuous exploration or other "uses," much less the separate mining uses Rise imagines. **Second,** this again admits Rise's

longstanding focus on permitting—with no thought of vested rights or the many inconsistencies or contradictions in Rise admissions that defeat vested rights claims, such as those exposed in Exhibit A. **Third, the relevant historic throughput was not ever 1000 tons per day at any relevant time, such as on or after the vesting day of 10/10/1954, because gold mining never recovered from the admitted closing of the mine during WWII and the admitted and indisputable fact after that that the legal $35 cap on gold was chronically less than the cost of recovering that gold.** See, e.g., Evidence Objections Part 1, including Exhibit A (also hereto) exposing Rise admissions in the 2023 10K and other SEC filings. **By comparison, in Exhibit 313 (at 2), Rise admits that it calculated that legally irrelevant "historical" 1000 tons per day by considering the whole production from 1866 to 1955 (which is not the correct calculation or analysis) and: "Over the five years from 1937-1941 before the mine was forced to shut down during WWII, the mine produced an average of 941 per day…" No such production is relevant to the calculation of vested rights on 10/10/1954 (or the zero production since then.) Moreover, while *Hansen* may have used production number for SURFACE mining on the miner's own property to judge "intensity" or other vested rights issues, *Hansen* did not limit the analysis to that production measure (which incidentally was about the amount of marketable minerals recovered, not the amount of rock removed from the ground [which would include waste rock]). In any event, in the context of this IMM dispute about UNDERGROUND mining, intensity, etc., are measured by the impact on the surface owners above and around the underground mine, e.g., those whose owned groundwater and existing and future well water would be depleted 24/7/365 for 80 years.** Also, the production from the Flooded Mine parcels creates no vested rights as to the Never Mined Parcels, in any event.

C. Rise Petition's Exhibits Relating To Its Second Stage Acquisitions in 2018 of the "Mill Site Property" Do Not Prove Any Vested Rights, But Instead Confirm The Gaps In Relevant Activities That Defeat Vested Rights Claims.

1. Rise Petition Exhibit 312 (a 5/23/2018 Press Release) Is Not Competent Evidence Supporting Any Vested Right, But To the Contrary, It Exposes Proof And Activity Gaps.

While this press release announces the purchase of "82 acres of fee simple land (the **"Mill Site Property,"** that does nothing to prove vested rights, but, to the contrary, it proves that there was a long gap between the initial Rise acquisition of adjacent property in early 2017 and this mid-2018 acquisition. The following Rise admissions (Exhibit at 1, emphasis added) defeat any claim to vested rights for Rise mining on this property:

> The Company has purchased the Mill Site Property **to support the exploration and future development** of the Idaho-Maryland Gold Project. The Mill Site Property is located adjacent to the New Brunswick mine shaft. Before **1991, the Mill Site Property hosted a major commercial lumber mill and 55,000 ft. of industrial buildings. All buildings have subsequently been removed.** The Property has a leveled area of

> approximately 40 acres and a large water-recycle pond which was constructed in 1988 [with a "3.7 acre surface," "40-acre-feet" capacity, and clay lining.]

Nothing in this Exhibit supports Rise's vested rights claim. To the contrary, that admitted lumber-industrial "use" is contrary to, and incompatible with, any mining use and breaks any alleged continuous vested rights mining-related "use." Also, Rise's claim to use that pond "component" also lacks any vested rights potential, not only because it admittedly did not exist 10/10/1954, having been "constructed in 1988," but also because that lumber mill/industrial pond "use" is not at all the same as the "mining" "use" Rise intends for that pond. Moreover, there can be no vested rights for the Rise imagined water treatment plant and system "components" on the imagined parcels for which no predecessor had any vested rights for any past precedent. See, e.g., both *Hansen* approving that principle and the *Paramount Rock* precedent that rejected a vested rights for adding a rock crusher to a parcel that never had one before.

D. Rise Petition Exhibits 367, 368, 369, 370, and 371 Are Emgold Mining Corporation 2003 Press Releases Describing Its Exploration Plans That Are Separated From the More Relevant And Comprehensive Exhibits Rebutted Already in Objectors' Evidence Objections Part 1, Incorporated Herein To Demonstrate the Years Of Occasional, Nonmaterial Exploration Work Before Emgold Eventually Abandoned Its Quest And Allowed Its Purchase Option To Expire Unexercised. See Evidence Objections Part 1, presenting the main part of the Emgold "story" from earlier Exhibits that the Rise Petition separated from these Exhibits.

Emgold did not assert, imagine, or have any vested rights, nor did Emgold ever do any mining or anything much beyond distant analysis of some records or information and some occasional exploration drilling on some (not all) parcels. See **Objectors' Evidence Objections Part 1, which rebutted many lower numbered (i.e., 1-307) Rise Petition Exhibits relating to Emgold that are strangely separated from these objectionable Exhibits. That earlier story demonstrates that Emgold talked about doing things it had never done before, eventually abandoning this IMM project and allowing its purchase option to expire. Id. This presentation suggests that Rise wanted to tell one story about its predecessor earlier and then hoped the reader somehow forgot that in a disconnected/nonintegrated later presentation here. See Evidence Code #412-413, objecting to such "hide the ball" tactics repeatedly used by Rise. Note that Rise does not attach the actual studies as proposed evidence. Still, merely the Emgold press releases describing Emgold's fragmented interpretation of such studies, which is not competent evidence but only objectionable opinion that leaves out the many admissions and contrary inconvenient truths in the study that Rise does not wish to expose. Fortunately, the Evidence Code does not allow Rise to get away with such tactics, as explained in Objectors' Evidence Objections Part 1, such as with EC #356 making that whole study available for rebuttal as incorporated herein, to defeat Rise cherry-picking, as well as objections pursuant to EC #'s 412-413, and 623, and also 1220, 1230, and 1235.**

This **EXHIBIT 367** press release dated 2/12/2003 describes (at 1, emphasis added) a Scoping Study "to identify the necessary activities, capital, and operating costs required in order to **return California's second largest underground gold mine to production."** However, Emgold admits (Id.) that that **report "is considered a Preliminary Assessment report because it contains an economic evaluation of inferred resources as defined in NI43-101**. "**The Scoping Study is not intended to be a Pre-feasibility or Feasibility Study."** Id. (emphasis added.) **These studies appear to involve different parcels than those contemplated by Rise in the EIR/DEIR that presumably are what would also be involved under vested rights claims once the Board (or the courts, if necessary) correct Rise's legal mistakes about its false "unitary theory of vested rights" and require what applicable law mandates for use-by-use, component-by-component, and parcel-by-parcel analysis. Stated another way, Rise is improperly vague, defeating its burden of proof as to everything requiring those and other details about where its expansion mining from the existing "Flooded Mine" parcels would be into the "Never Mined Parcels," where the EIR/DEIR contemplated another 76 miles of new tunnels beneath the surface owned by objecting owners and others. See, e.g., Exhibit A hereto, especially #II.B.25, describing Rise's disputed plan to compel surface owner "cooperation" willingly by some settlement or by alleged force of law or government. That accounts for differences in the Emgold versus Rise mining plans, resulting, for example, in Emgold's focus (at 3-4) on a 10-year operation for its Scenario A (or 5-years in its Scenario B) in and around the exiting Flooded Mine versus the vast new mining contemplated by Rise expanding into the Never Mined Parcels with 24/7/365 mining for 80 years in order (as the DEIR admitted at 6-14) for the project to be economically feasible (apparently more like what Emgold imagined in its Scenario C, which it admits that study did not evaluate). All this study does is (at 5) launch "diamond drilling from six surface locations" with further drilling "dependent on the results of this initial phase of drilling." Id.**

Rise Petition EXHIBIT 368, dated April 15, 2003, is a follow-up report reporting on some "measured, indicated, and inferred [gold] resources" from sampling drilling. That is accompanied by Emgold's reaffirmation of its plans to "prepare all necessary documentation for a Use Permit for dewatering the existing Idaho-Maryland Mine workings" and related activities. However, none of this supports any Rise Petition claims for vested rights, but, to the contrary, admits that Emgold intended to pursue the normal use permit process. Vested rights are not determined based on whether or not there is any suspected gold in a mine parcel, but instead on the legal tests in the applicable law that Rise has not satisfied or, in many cases, even attempted to satisfy, relying instead on its incorrect invention of new unitary vested rights legal theories that are defeated by even the relevant SURFACE mining cases (e.g., *Hardesty, Calvert*, and even the whole of *Hansen,* as distinguished from Rise's misinterpreted, chosen fragments), not to mention the fact that this is UNDERGROUND mining for which Rise Petition cites no authority supporting its disputed vested rights claims.

Rise Petition EXHIBIT 369 dated 9/16/2003 is a follow-up report that adds more data from its minor, occasional drilling program, although admitting (at 3) that it is still engaged in "Phase 1" of its surface drill program" and related preparation for seeking permits, etc., as previously mentioned in its press releases. What is interesting is that (unlike Rise, which incorrectly persists in discussing the Vested Mine Property as if it were one unitary, homogeneous parcel instead on many admitted, separate parcels with different conditions

from amalgamations over time of many other mines), Emgold at least notes differences ignored by Rise and differently described by Rise (e.g., Rise asserting complete IMM documentation {versus Emgold admitting deficiencies], which Rise reportedly inherited from Emgold, but did not admit), such as, for example (at 1, emphasis added):

> **Emgold…has extensive geological data on the eastern part of its 2750-acre property. However, minimal data is available on the older western part where the Phase 1 drilling program was completed. [describing "5 drill holes from two sites located on the western portion of the property."]**

Again, none of this supports the Rise Petition's claim of vested rights.

Rise Petition **EXHIBIT 370** is another press release dated 3/31/2004 reporting Phase 2 test drilling on another eight holes. Again, this proves nothing about any vested rights.

Rise Petition **EXHIBIT 371** is another press release dated 3/31/2004 that reports (at 1, emphasis added) on a "**Preliminary Assessment Technical Report"** "identifying requirements for staged development of the Idaho-Maryland and includes estimated capital and operating costs for production of high-quality ceramic building materials using the Ceramex TM technology…. [and] contemplates the completion of a large underground gold exploration program leading to a feasibility study that may define an economic gold resource…" However, the press release cautions that this report "is not equivalent to a preliminary feasibility study or feasibility study … [and] conclusions should be considered speculative at this point in time because: 1) additional resource definition is necessary, 2) technical advancement and scale up of the Ceramext TM technology is required, 3) **permitting is obligatory under the supervision of the regulatory authorities,** and 4) capital will be required in order to prepare a feasibility study and then construct a plant for commercial exploitation of the Ceramext TM technology." Id. A preliminary discounted cash flow (DCF) financial analysis included …forecasts of a before tax Internal Rate of Return (IRR) on the ceramic project of 45.8% with a Net Present Value (NPV) of US $1.1 billion at a 10% discount rate based on an estimated project capital cost of US $361 million." None of that supports any vested rights that Rise could inherit or otherwise claim. Moreover, this new patented Ceramext technology clearly involves a new use or component that could not have any historical precedent or it would not be patentable as the press release claims.

E. Rise Petition Exhibit 372 Is An Excerpt from a 1956 Court of Claims Case Entitled "Findings Relating To Plaintiff Idaho-Maryland Mining Corporation" at pp. 110-115, #'s 91-108 Does Not Prove Any Vested Rights.

The court's findings about the Government order closing gold mines at the start of WWII conclude at #108 (p.115) that: "By reason of the issuance of Order L-208, Idaho-Maryland Mine was deprived of the use and benefit of ownership of is gold mining properties, i.e., the right to obtain gold from the ore bodies on its properties and to sell such gold. No compensation has been paid to Idaho Maryland" by the US. Note that Rise did not produce the whole case or the related evidence, raising objections about what it excluded. Nevertheless, what was submitted

does not prove any vested right. **That Rise fragment only demonstrates that the mine had a successful history, but the Supreme Court ultimately denied the Idaho-Maryland Mines Corporation taking claim in *United States v. Central Eureka Mining Co*., 357 U.S. 155 (1958); for more history, see *Idaho Maryland Mines Corporation v. U.S.*, 104 F. Supp. 576, 122 Ct. Cl. 670. See objectors' Evidence Objections Part 1, as well as what is described herein and the final summary objection to vested rights to come, addressing the logical deduction and inference from all the relevant and competent evidence and rebuttal realities; i.e., Rise would have maximized its "takings" compensation claims by describing the harm as fatal not as mere disruption in the mining business that the miner intended to restart. (Any such miner lawyers would know that such an admitted plan to restart the mine would undermine their whole taking case because, among other things, it would shift the miner's "taking" claim from the easier and maximum claim for the value of the mine to a speculative dispute that such miner lawyers would wish to avoid over lost interim profits and restart value deductions from damage claims. See what can be recovered from the applicable court records and US National Archives.)**

What killed that miner and the entire gold mining industry after that devastating WWII closure, including causing the liquidation of all mining equipment and movable infrastructure and the closing, discontinuance, and abandonment of the dormant and flooded IMM by 1956, was the prolonged legal price cap of $35 per ounce that was chronically exceeded by the higher cost of recovering the gold, thus making gold mining unprofitable for everyone until long after that price cap was finally ended, as even admitted in Rise Petition Exhibits exposed in Evidence Objection Parts 1 and 2. Id.

F. Rise Petition EXHIBIT 417 Admits/Proves A Change In Shut Down Protocol Dooms Vested Rights, And EXHIBITS 416, 419, and 420 Explain/Admit Why The 1954-1955-1956 Miner Mindset Could Not Sustain Any Vested Rights Claim. See also Exhibit 421, Where The Idaho Maryland Mines Corp. Began Its Diversification From Mining And Migration To LA.

Exhibit 417 is a Sacramento Bee story/photo dated 5/4/1943, explaining that the mines are "**being kept dewatered** for the resumption of operations when the WPB order is lifted" [closing gold mines for WWII]. (emphasis added) Note that Rise has admitted in various documents (e.g., including the EIR/DEIR and Rise SEC filings) that the **IMM was closed and flooded by 1956 without any dewatering**. See Evidence Objections Parts 1 and 2, and EIR/DEIR objections. This difference is objective proof of abandonment/discontinuance/dormancy, especially considering the considerable cost, time, and burdens admitted in the EIR/DEIR for dewatering the IMM and preparing everything required to reopen the "Vested Mine Property." See also objectors' objections to the EIR/DEIR explaining how much more would actually be required by the applicable law to reopen the IMM (not to mention Centennial) under the actual requirements of applicable law as opposed to the deficient Rise approach the court will never allow. In 1943, the same miner (Idaho-Maryland Mines Corporation) continued dewatering because that was cheaper than allowing the mine to flood and dewatering later when mining was restarted. But when that miner-predecessor of Rise closed by 1956 the even bigger mine

(i.e., more flood water volume), there was no dewatering, and the miner allowed the whole mine to flood.

Moreover, that mindset so contrary to sustaining any vested rights claim is also confirmed by **Exhibit 416**, **a LA Times article dated 1/5/1957 explained (emphasis added) that the fatal $35 gold price cap prevented gold miners from recovering their much higher costs, quoting Jack Clark, the superintendent of the Idaho Maryland Mine: "We closed down in December 1955 and it will impossible to resume operations under existing economic conditions." That abandonment of future mining plans was also admitted by Exhibit 422, an LA Times ad dated 5/12/1957 for the liquidation of most of the mining equipment from the IMM;** i.e., **"750 ton milling plant mining equipment," "2 Marcy 86 Ball Mills," "Denver 3x8 Rod Mill, Jaw Crushers to 38"," "gyron crushers," "classifiers," "jigs," "flotation cells," "concentrating tables", "filter equip," "vibrating screens," "mag pulleys," "belt conveyors," "elevators," "sand pumps," "tanks," "thickeners," "feeders," "mixers," "cleanup and refinery equip," "250 mine cars," "19 locomotives," "drilling equipment," "9 muckers," "32 tugger & slusher hoists," "double & single drum miner hoists," "mine pumps to 500 HP," "rail," "drill steel," "tanks," "mine supplies," "Motors to 275 HP," "transformers to 500 KVA," "copper cable," "switches & switch gear," "assay & lab," "machine shop," "electrical blacksmith & pipe shops," "20 buildings," "15 trucks,""etc. etc."** (emphasis added) This is not a sale of "surplus" equipment. This is a "strip it down to the walls," sale of everything movable. In other words, this is the liquidation action of someone who never expects to come back, because anyone restarting the mine would be "starting totally from scratch."

But unlike all the other court precedents allowing some suspension of mining under some terms and conditions during normal (short) periods of adverse markets, this problem was not any normal "market conditions" issue. Still, the doom was caused by the **$35 legal cap on gold prices.** As Clark stated (emphasis added): **"We'll have to let the mine flood itself. … You've got to be taking gold out of the ground to afford to keep the pumps going. We're trying to salvage some of the machinery before it's underwater, but sometimes it's cheaper to leave it down there."** See **Exhibit 420** (a 1/10/1949 letter from the IMM executive to Walter Winchell about the $35 cap.) More significantly, **Exhibit 419**, the Auburn Journal article dated 3/21/1957, described what was stated in its title: "Mines Shut Down in Grass Valley." While the IMM was reported closed and allowed to flood, the adjacent Empire Mine "constructed underground concrete dams" to isolate areas from flooding in the hope of someday the price of gold being permitted by law to rise. The IMM's failure to do what Empire did proves that they did not choose to speculate on that future change in the law by saving their mine.

While these and related matters are discussed in earlier Rise Petition Exhibits analyzed in Evidence Objections Part 1, **Exhibit 421** illustrates the miner's plan to move to Southern California (then known generally as" LA," which objectors adopt for convenience) by acquiring an aircraft parts manufacturing company.

G. Rise Petition Exhibit # 405 Is Ancient Highlights Correspondence dated 10/31/1936 That Has Nothing To Do with Vested Rights for Rise.

These Exhibit #405 letters report the mine condition and operating results in 1936 at its peak. However, that 1936-37 history is distracting "filler" and is irrelevant to proving any

vested rights for Rise or its predecessors, even for its initial Idaho-Maryland Mines Corporation predecessor on 10/10/1954. Exhibit #406 is a 9/26/1944 analysis of the feasibility of a magnesium process and whether the company should risk investing in that startup project. The conclusion (at 6, emphasis added) was: "I do not believe that Idaho Maryland should look forward to embarking upon the production of magnesium because the market is too uncertain and probably will remain so for eighteen months or longer." However, he considered it "desirable to complete the experimental work so we can complete the patenting of the process…" etc. Id. That magnesium process would be a different "use" than gold mining for any vested rights analysis. And there is no proof that the company ever did anything to mine for this anyway. As discussed above, the $35 legal price cap on gold also made gold mining uses different from other mining "uses."

Exhibit 407 is a "Geology And Structure of Idaho-Grass Valley Mine" report dated August 1948. On page 1 (emphasis added), the report "assumes familiarity with the main geologic features and with the details of the mines," and therefore, the report focuses "only on those features which are in doubt or controversy." Again, the question is: what does this opinion data (based on old 1948 technology for such investigations) do to create or preserve vested rights? [By the way, while this report's analysis of the faults and geology did not address the groundwater/well water issues, that analysis should contradict the disputed Rise and EIR/DEIR claim that the fractured rock structure does not risk depleting the surface owners' groundwater above and around the 2585-acre underground mine.]

H. Rise Petition Exhibit #366 (Item 43 pp. 459-470) Is The Record of a Distinguishable (Not To Mention Inconclusive) Example Of A Board of Supervisors Meeting May 10, 2005, Attempting Incorrectly To Assert A Disputed Claim For a New Theory And Precedent For Vested Rights In the Context of an Old Use Permit Allowance of a Temporary Surface Use for a Fire Safe Council "Fire Prevention Wood Use Center" On the Site of A Sawmill "Use" That Replaced Earlier (And Legally Different) Gold Mining "Use" Operations.

While there was considerable discussion of issues to no conclusion (the meeting was continued), nothing in this Exhibit sets any precedent helpful to Rise. **Note that this was NOT a vested rights dispute of the kind alleged in the disputed Rise Petition,** where the nonconforming "use" was incorrectly alleged to eliminate the need for a use permit. **Exhibit 366 involved a dispute over whether the use permit already granted for a sawmill allowed for a temporary (1 year) use by the local Fire Safe Council to operate a needed facility on 5 acres 8am to 5 pm Monday through Friday for processing and storing biomass generated by locals in their fire fuel reduction efforts, which would be much less intense (with all other governmental permits required) than the preceding lumber mill operation that replaced earlier surface operations relating to a mine.** Consider the following examples of many that make that Exhibit irrelevant and misleading in its claim to support the Rise Petition's claim to vested rights to mine free of any needed use permit. Consider the following distinctions:

(i) **This is about *SURFACE* USES UNDER A PREVIOUSLY GRANTED USE PERMIT, not for a vested rights claim that no use permit was needed for Rise in 2017 to**

mine in the 2585-acre *UNDERGROUND* IMM that has been flooded, closed, dormant, discontinued, and abandoned since at least early 1956.

(ii) **More importantly, unlike surface neighbors' complaints about the grinding noise in EX. 366, Rise's proposed uses would add to the many comprehensive harms to the local community addressed in hundreds of objections to the EIR/DEIR and more to come against the Rise Petition, because objecting surface owners living above the 2585-acre underground mine have their own direct, constitutional, legal, and property rights at issue, none of which were (or could have been) addressed in the Ex. 366 dispute.**

(iii) **As in this IMM case, the County staff comments are just opinions that have no more legal force or precedential or evidentiary power than objections by objectors, especially as coming from such non-lawyer staffers on complex legal issues where the staff may have (as here) much more exposure to (and influence from) the user-claimant than to the impacted objecting community; i.e., objectors never have received "equal time" with the County staff compared to Rise. What matters in this legal dispute is what the applicable elected official decides, although, even then, the courts can correct any legal and other sufficient errors proven by the objectors. See generally Evidence Objections Parts 1 and 2 and Objectors Petition For Pre-Trial Relief, Etc.**

(iv) **THE HEARING RECORD STAFF COMMENTS STATED, AMONG OTHER THINGS (EMPHASIS ADDED), "A CRITICAL COMPONENT OF RESTARTING A LAPSED USE IS THAT THE RESTARTED USE MUST BE SUBSTANTIALLY SIMILAR TO THE USES PERMITTED BY THE ISSUES AND OUTSTANDING US PERMITS AND NO MORE INTENSE THAN THE APPROVED ONES." While grinding up tree cuttings in 5 surface acres for local fire safety may seem similar to a lumber mill operation, the SURFACE mine support activities are not at all similar uses to the UNDERGROUND mining beneath the homes owned by a sizeable objecting community for which there is no use permit, especially no right to deplete their groundwater and wells 24/7/365 for 80 years. Also, "intensity" is measured by the impact on the objectors, and blasting, tunneling, mining, etc., beneath objecting surface owners' homes and depleting the groundwater and existing and future well water owned by such surface owners above and around the underground mine is much more "intense" than whatever Rise or its predecessors claim they did on the separate SURFACE parcels they own.**

(v) **While the county noted in Ex. 366 that the grinding, etc. equipment was similar to what was used in the sawmill, whatever equipment or components were used in on the SURFACE by Rise or its predecessors would not be similar to what was used in the UNDERGROUND mining beneath the objecting surface owners.**

(vi) **While most agreed that the nonprofit Fire Safe Council was doing a community benefit, few locals impacted by the Rise mining project consider such mining even to be tolerable and never beneficial. As the California Supreme Court explained in *Varjabedian* (where a new sewer plant was considered useful by those living at a safe distance, those suffering downwind of the sewer plant**

had violated Constitutional rights and thus created inverse condemnation, nuisance, and other claims, because such downwind owners could not be compelled to suffer disproportionately), impacted surface objectors above and around the 2585-acre underground mine have extra rights to block the project causing them disproportionate suffering and loss of property values just as the *Varjabedian* court recognized likewise required constitutional protection.

I. Rise's Disputed (Often Unauthenticated And Inadmissible) Historical "Evidence" Does Not Prove Any Objective Intent By Rise Or Its Predecessors To Reopen Any (Much Less All) of the IMM (or Centennial or "Vested Mine Property") That Is Sufficient Proof For Any Vested Rights. Instead (Like Most of the Disputed Rise Press Releases), the Rise Petition Exhibits At Most Seem To Attempt To Prove That There Is Valuable Gold That Could Be Recovered, Although Rise Constantly Admits In Its 2023 10K And Other SEC Filings And Press Releases That There Are No "Proven" Or "Probable" Gold Reserves That Would Prove Economic Feasibility For Mining. See Rise Petition Exhibits 334, 337, 335, 336, and 338.

The Rise Petition ignores Rise's contrary or inconsistent admissions in the 2023 10K and other SEC filings and press releases, as exposed in Exhibit A hereto. Those SEC filings are comparatively more credible (although still disputed) because the applicable US law could hold Rise accountable, if Rise told its investors the kind of errors, omissions, and worse that it stated in the Rise Petition and other filings at the County or elsewhere, especially in Canada, where Rise could perceive less accountability or risk from such disputed communications. See also the discussion above of **Exhibit 308**, explaining the reasons why Rise tells a more cautious story to its US investors than to its Canadian investors and less restrained stories in situations where Rise is less likely to be held accountable for its disputed and worse claims, as, for example, in its County filings. Although Rise generally does not explain how or why it imagines that its Rise Petition Exhibits prove any element required for vested rights, one may deduce or guess about Rise's disputed claims. Here, for example, objectors assume that Rise has focused on its disputed version of such IMM/Centennial history to attempt (incorrectly) to prove that IMM's rich history of gold deposits (in some parcels of the IMM) somehow proves that each of Rise's relevant predecessors would be motivated (and, somehow therefore, were both motivated and continuously and unconditionally intending, to reopen the IMM and mine as Rise wishes each parcel of the so-called "Vested Mine Property." "without limitation or restriction" at Rise Petition 58.) However, the issue is **not only** the presence or viability of a gold mining use on a parcel, which "proven" or "probable" "gold reserves" Rise's SEC filings admit Rise is not yet asserting there (see, e.g., Exhibit A) and as to which Rise has still not satisfied its burden of proof. Instead, what applicable US law requires is for Rise to prove all the elements of vested rights to so mine under the actual facts and circumstances. E.g., Evidence Objections Part 1, Objectors Petition For Pre-Trial Relief, Etc., and this objection.

In effect, Rise incorrectly claims that it (and its predecessors and successors) can have vested rights indefinitely with a perpetual option to reopen the underground 2585-acre mine and do as it wishes "without limitation or restriction" (Rise Petition at 58) if and when it ever decides that the opportunity is ripe for such exploitation after sufficient exploration and after

convincing Rise's investors to fund not just its preliminary exploration related expenses, but also the massive start-up expenses required to dewater and reopen the Vested Mine Property, especially the 2585-acre underground mine. The disputed Rise Petition and Rise claims ignore all the many requirements for vested rights (e.g., continuous, same parcel, use, and component, not more "intense," etc.) even under the fragments of SMARA and Rise's cited Hansen case for surface mining. E.g., Id., proving that Rise fails to prove any vested rights, even those inapplicable standards for what is primarily, in this case, UNDERGROUND mining, especially on the parcel-by-parcel, use-by-use, and component-by-component basis required not only by the controlling cases and law that Rise ignores, but even by the whole of *Hansen* (see Attachment 1 to Evidence Objections Part 1.) For example, there is no such thing in the applicable law, even for **surface** mining, as what Rise imagines as a "unitary theory of vested rights," where, for example, any occasional use or component on a surface anywhere on any parcel of the Vested Mine Property somehow creates and preserves vested rights everywhere for any use or component on any such parcel, even somehow for underground mining in the "Flooded Mine" that was closed, dormant, and abandoned since 1955 or 1956, and even more incorrectly in the "Never Mined Parcels" underground.

There is no such vested right for Rise to have such a perpetual/indefinite option to mine whenever, however, and wherever Rise wishes in the Vested Mine Property "without limitation or restriction" (Rise Petition at 58), especially not under these facts and circumstances. That rise claim is especially not possible when Rise's mining is conditional both (i) on Rise's discretionary satisfaction with the results of its occasional explorations and other risk factors admitted in Rise's 2023 10K and other SEC filings and addressed in Exhibit A hereto, and (ii) on the willingness of Rise's speculator-investors to continue to fund Rise's activities at their discretion. As explained in Exhibit A and Evidence Objections Part 1, for example, vested rights are not for speculators like Rise (or like its Emgold predecessor) who have conducted no mining, but only for existing miners **to continue** "nonconforming uses" (continuously) on actively mined parcels under the required facts and circumstances that do not exist in this case. Id. Rise is incorrectly asserting that somehow it has acquired a perpetual option to convince the County, whether by bogus vested rights claims or disputed applications for permits or approvals, to empower Rise to mine underground on some basis that will be sufficiently attractive either to Rise speculator-investors or to another miner with more financial resources to invest the considerable start-up costs involved in reopening the Flooded Mine and then to dig 76 miles of new tunnels in the Never Mined Parcels in order to find out whether or not the gold mine is viable in additional vein mining offshoots.

In that context, consider Rise Petition Exhibit # **334**: "Geologic Summary of Mine Development During September 1941," and **#337,** "Geologic Summary of Mine Development for November 1941." **This "filler" was before the IMM was shut down for WWII and assumes (incorrectly) that science and mining analyses have not progressed since before WWII so that such ancient technical work is somehow predictive of the condition of the "Vested Mine Property" today.** Another such geology report that suffers from those same flaws was attached to the Rise Petition as Exhibit 413 entitled "Geology And Ore Occurrences of the Idaho Maryland Mine" dated 11/13/1951, which describes only briefly various "important features" for the extremely complex" geology at issue and discussed production between 1926-1951 with estimated, alleged ore reserves categorized as "accessible ore," "inaccessible ore," "low grade

ore," "developed ore," or "probable ore." These disputed Rise claims are outdated, unauthenticated, and irrelevant records long before the 10/10/1954 alleged vesting date before the IMM was discontinued and disassembled as described above (i.e., liquidating whatever could be moved and sold), flooded, dormant, closed, and abandoned by 1956, when that predecessor changed its name (and trademark) to "Idaho-Maryland Industries, Inc.," moved to the LA area to become an aerospace contractor only to file bankruptcy in 1962, and sell the IMM cheap in 1963 to William Ghidotti. Nothing in that Exhibit competently proves anything relevant to vested rights. It is just more "filler." **Exhibit # 335** is a similar letter dated 5/24/1950 that is more "filler" subject to the same criticisms since such Exhibit likewise does nothing to prove any vested rights. **Exhibit #336** is a similar letter dated 8/5/1949 subject to the same disputes and irrelevancies, except at the end of this one (at p.3) **note the following admission about abandonment (emphasis added)**:

> This record points up several things, the considerable work was done on the Eureka, Morehouse, Mobile, and Roannaise properties before **abandonment**. **NONE OF THE MAPS ARE AVAILABLE BUT IT IS APPARENT THAT THESE MEN WERE REAL MINERS AND LOOKED AT EVERYTHING POSSIBLE BEFORE ABANDONMENT.** Thirdly, these notes might well become part of your file for future references.

Because vested rights is a parcel-by-parcel analysis, this admitted "abandonment" means these abandoned/discontinued/dormant parcels cannot ever be subject to vested rights in any parcels of the Vested Mine Property. This letter makes one wonder how many similar abandonment admissions exist in documents Rise has not chosen to share in its "filler" history pile. See Evidence Objections Part 1, including Evidence Code #'s 412, 413, 623.

Exhibit #338 is a more irrelevant "filler" subject to the same objections as the others above, but this is even worse than such others for several reasons that prove what Rise is doing in a non-credible way to support its disputed rewriting of history. FIRST, this letter dated 8/22/1949 is about negotiating the "MacBoyle option agreement" that is neither included nor is its fate alleged. See Id. Thus, this proves nothing except this one executive's proposed edits to some option agreement that may or may not ever have been executed or, if so, ever exercised. Id. SECOND, this may not even relate to any "Vested Mine Property," since it refers to a lake and spring and surface ranch buildings that are not proven by Rise to be part of the property relevant here. Id. Third, how does this document prove anything in support of vested rights on 10/10/1954? Id.

J. More Rise Petition "Filler" Exhibits Not Only Fail To Prove Any Vested Rights To Mine Or For Components Or Other "Uses," But Those Irrelevant Exhibits Also Support Objections.

1. Rise Petition "Filler" Exhibits That Are Irrelevant To Any Vested Rights Claims, Including Exhibits 310 (Rise Name Change), 318-331 and 333, as well as 339-365, and 373-74 (Maps/Photos). See Exhibits #'s 408, 410-412 addressed in the next paragraph.

Evidence Objections Part 1 demonstrates many reasons for disputing such examples of "filler" Exhibits that add nothing relevant or probative for any vested rights argument. However, objectors ignored many more Exhibits because arguing over what Rise seems to consider as "historical background" (which we would have disputed as fragmentary, inadmissible, or otherwise objectionable if it had any possible impact) seemed unnecessary because such "filler" was so obviously irrelevant to the disputes. However, objectors note that Rise's use of such "filler" for the period after Rise began its local activities in 2017 has even less justification as purported historical background and seems even more evident as just "filler." For example, Exhibit 310 in 4/7/2017 as to Rise's name change seems a strange waste of Exhibit space when Rise claims there are so many important mining records and maps (see above where Rise claims "complete" records and thousands of maps, etc.) that Rise has not shared, presumably because such "evidence" is more helpful to objections in rebuttal/impeachment than to Rise's vested rights claims. See, e.g., Evidence Code #412 and other descriptions of the law of evidence in Evidence Objections Part 1.

The same is true for many other Rise Exhibits, such as #'s **318-331** historical maps that do nothing to prove any vested rights. Vested rights require continuity, but most Exhibits are just "snapshots" of a momentary event lacking supporting proof of continuity. Even the somewhat relevant #**333** map is not probative or even useful, because, like all other Rise-exhibited maps, it fails (despite repeated objections demanding surface landmarks that could enable the objectors owning the surface above and around the 2585-acre underground IMM to locate their properties about that underground IMM mining.) Likewise, Exhibit #332 is useless, Idaho Maryland Mines Corporation "Development Report for April 1936," and that pre-WWII data provides no evidence for the situation applicable to alleged vested rights on or after 10/10/1954. Likewise, Rise adds more filler in maps and photos (many redundant and none revealing or useful) in Exhibits #'s **335-365**. Likewise, old maps of surface infrastructure at Exhibits 373 and 374 prove nothing except to support objectors' objective rebuttal proof of miner abandonment; otherwise, it is just more "filler." The same is true of Exhibits #393-403.

2. **The Rise Petition Adds More Objectionable "Filler" Irrelevant to Any Vested Rights Claims For Rise Mining, including More Irrelevant History About Non-Mining Activities Before 10/10/1954 In Rise Petition Exhibits 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386-392, 404, 408, 410-412, and 414-415.**

Exhibits 375 and 376 are 1950 correspondence about rock removal or sale. Exhibits 377 and 378 are correspondence from 1947 and 1949 about buying explosives. Exhibit 379 is 1950 correspondence about timber piles and worn-out "ball mills." Exhibit 382 as a rejection letter dated 5/1/1950, explaining why no gold mines were hiring, which Rise apparently considered conceptually connected to Exhibit 381, a 5/27/1947 letter to the US Treasury protesting how the Treasure "virtually destroyed their one billion, eight-hundred million fund of gold in order to back the International Monetary Fund and the World Bank." Those latter exhibits are more supportive of objection arguments for abandonment.

Exhibits 386-388 are 1947 (and 399 in 1950) correspondence about sawmill and timber issues, with Exhibit 390 as a sawmill map, and with Exhibit 392 as an 11/22/1991 newspaper story reporting that, consistent with the industry trend, this sawmill shut down. Exhibit 391 was a 1951 correspondence about possibly recovering scheelite as a by-product of gold ore. Exhibit 385 was 1950 correspondence about possible tungsten mining. Exhibit 383 was a 1950 correspondence to the government about a patented process for manufacturing magnesium salts from serpentine rock. Exhibit 384 was an 8/9/1950 press release about the results. Exhibit 404 is a 1949 letter about sawmill issues (e.g., cast mill liners). Each is just a "snapshot" of some pre-1954 alleged "vesting date" irrelevancy to the vesting rights issues later on and after 10/10/1954. The only timely Exhibit #380 was a November 1954 "flowsheet of the Brunswick Mine" process that has nothing to do with those legal issues.

Exhibit 408 is an LA Times article dated 4/18/1949 reporting mining results with the lead that the IMM lost $144,311 on gold production worth $1,705,311. This has to do with the post-WWII economics that shut down the whole gold mining industry by 1956 for more than a decade after that, because gold-mining costs continuously exceeded the $35 legal cap on gold prices. This does not prove any vested rights for Rise but, to the contrary, adds rebuttals to vested rights and helps prove abandonment. A CONDITIONAL INTENT TO RESUME MINING WHEN THE LAW CHANGES (ESPECIALLY WITHOUT ANY CURRENT REASON TO EXPECT A NEAR-TERM CHANGE IN THE LAW) CANNOT PRESERVE VESTED RIGHTS. SEE EVIDENCE OBJECTION PART 1. THAT IS DIFFERENT THAN AN INTENT TO RESTART MINING SOON WHEN CURRENT (Temporary) MARKET CONDITIONS IMPROVE, AS EVIDENCED BY MAINTAINING EVERYTHING IN OPERATING CONDITION. BUT HERE, THE MINER'S DESPAIR OVER THE PROLONGED $35 LEGAL CAP MAKING GOLD MINING CHRONICALLY UNPROFITABLE CONFIRMED ABANDONMENT BY THE MINER NOT JUST CLOSING THE MINE INDEFINITELY, BUT ALSO LIQUIDATING EQUIPMENT AND INFRASTRUCTURE AND ALLOWING THE MINE TO FLOOD, AS DESCRIBED ABOVE. Id. THE YEARS AND HUGE COSTS AND WORK INVOLVED IN REOPENING THE MINE ADMITTED IN THE EIR/DEIR PROVES THE MINER HAD NO FORESEEABLE EXPECTATION OF REOPENING THE MINE. HOLDING ONTO THE MINE AT LOW COST WAS JUST, AT MOST, PRESERVING AN OPTION TO REOPEN THE MINE AT SOME DISTANT FUTURE DATE WHEN THE $35 GOLD PRICE CAP WAS ENDED, AND GOLD BECAME SO VALUABLE THAT IT AGAIN BECAME ECONOMIC TO RESUME SUCH A MASSIVE AND RISKY INVESTMENT AS RISE NOW IMAGINES MANY DECADES LATER (A GAMBLE, INCIDENTALLY, WHICH THE EMGOLD PREDECESSOR ABANDONED AFTER YEARS OF EXPLORATION.) Id. This is something, by analogy, like someone who has an old car that broke down and is too expensive to fix and worthless to sell, so the owner puts it up on blocks in the corner of his barn, thinking that in some future time, it might become a collectors' item for some car restorer. See also Exhibit 409, the 1949 admission of the extreme distress of the mine even as early as August 1949; then things got worse as the losses increased with increasing prices of everything except the $35 capped price of gold.

Exhibit 410 is a lengthy "Mill Report for the Month of January 1950," which again does nothing to prove vested rights on 10/10/1954 or continuing after that as the soon dormant after that IMM was disassembled, liquidated, flooded, and abandoned by 1956, as discussed above. **Exhibit 411** is another correspondence dated 5/1/1950, admitting continuing problems with economics and "outworn equipment" needing replacement. **Exhibit 412** is a similar

correspondence dated 6/26/1950 admitting that "our fears relative to the Idaho Hill have been realized."

For some reason, **Exhibit 414** board meeting minutes dated 2/6/1959 are disconnected from related Rise Petition Exhibit documents on this topic discussed in the Evidence Objection Part 1, regarding the $200,000 loan from Mr. Richmond and Oliver Investment Company "secured by a Deed of Trust on Nevada County properties of the Corporation" to be settled by the transfer of transfer of the "surface of the property to a depth of 75 feet" on terms discussed therein. **Exhibit 415** includes more board minutes from 1959 following up on that proposed transaction. None of those documents prove any vested rights, but to the contrary, they confirm financial distress and solutions contrary to vested rights.

K. Rise Petition Appendix A, B, and C Also Fail To Prove Any Vested Rights, But They Can Be Used For Rebuttal If the Reader Looks At The Relevant Parts To Which the Rise Petition Does Not Refer.

The County Staff Recommendations already note some examples of Rise selective references (i.e., cherry-picking). There are more examples that could be used in rebuttal, which objectors reserve the right to do as useful, especially if Rise adds more data from these sources at the hearing and our clarity increases about the details Rise presently obscures about its claims.

L. These Are Some "Out of Place" Exhibits of No Particular Importance, But Noted Here To Be Comprehensive In Exposing Their Failure To Prove Any Vested Rights, As Shown Already In Objectors' Evidence Objections Part 1. E.g., Rise Petition Exhibits 423, 424, and 425-29.

Evidence Objections Part 1 has already analyzed these North Star surface rock crushing aggregate sales, etc. Exhibits, and objectors incorporate them here to avoid needless repetition. Now, Rise attaches **Exhibit 423**, the Notice of Conditional Approval 12/19/1986, at the end of its earlier discussed Exhibits as an amendment, subject to many conditions, to North Star's use permits U79-41 and U85-25 "for excavation of a six acre on-site borrow pit and relocation of the processing plant on the 11.9-acre parcel located on Idaho Maryland Road, Grass Valley." As explained in that earlier objection, this adds nothing to prove any Rise or predecessor vested rights.

Exhibit 424 is a deed dated 4/15/1960 from SumGold Corporation Inc. to the Yuba River Lumber Co. It does not advance any vested right claim of Rise. See Evidence Objection Part 1 addressing the SumGold Exhibits there.

Exhibit 425 is a photo labeled "Site Grading at Brunswick Shaft in 1996. **Exhibit 426** is a photo labeled "Shaft collar inspection and testing at Brunswick shaft in 1997." **Exhibit 427** is another photo labeled "Shaft collar inspection and testing at Brunswick shaft in 1997." Again, such staged photos prove nothing convincing for any vested rights claim.

Exhibit 428 is a letter dated 12/17/1948 to Wells Fargo Bank, attaching data about the Idaho Sawmill. Again, it adds nothing to support any vested rights claim.

Exhibit 429 is a cover memo dated 6/1/1950 attaching a missing agreement (i.e., referencing a document that Rise does not choose to provide) stating (in its entirety): "I am enclosing herewith for your records a copy of the agreement between Idaho Maryland Mines Corporation and Fabrication Service Engineering for the fabrication and erection of a steel headframe and circular steel bin at the Old Brunswick Shaft."See Evidence Code #412 and 413. Again, this proves nothing.

VII. Some Concluding Comments.

When one reads all the Exhibits to the Rise Petition, it becomes clear that Rise not only has failed to prove any vested rights for any "use" or "component" on any parcel in the disputed "Vested Mine Property," but that Rise does not even attempt to address any of the many rebuttals both as to Rise's incorrect claims about what the applicable law requires for vested rights and as to the reality facts and circumstances. See Evidence Objections Part 1 and this Part 2, as well as the Objectors Petition For Pre-Trial Relief, Etc. Moreover, Rise does not even attempt to reconcile the disputed Rise Petition claims (or even Rise's incorrect claims about what its Exhibits demonstrate) with the many contrary or inconsistent admissions by or for Rise either (1) in Rise's 2023 10K filed (after the Rise Petition) and other SEC filings addressed in Exhibit A hereto, or (2) in the EIR/DEIR, especially in the parts on which the Engel Objections and others focused. Stated another way, Rise is telling a different story to its investors in such SEC filings than to the County in the Rise Petition (e.g., compare Exhibit A hereto with the preceding analysis of the Rise Petition and its Exhibits), which is also different from the Rise story in the EIR/DEIR compared to the Rise Petition (e.g., such as to the Centennial parcels, which Rise previously tried to exclude entirely from the EIR/DEIR "project," but which the Rise Petition now tries to include in the "Vested Mine Property" and to use to support Rise's disputed claim for vested in the rest of the IMM.) Such Rise tactics and confusion defeat the Rise Petition. Id. E.g., Evidence Code #623 estopping Rise from such conflicting claims, as well as many applications of #'s 412 and 413, as well as the evidentiary consequences that defeated the miner in *Hardesty* for what the court too politely called a "muddle" (which understates the tactics Rise uses here), and similar SEC filing admission contradictions by Chevron in the *City of Richmond* case defeated Chevon's EIR. In any case, the Rise Petition fails even to state its disputed claim with sufficient clarity to prevail even if there were some merit to some "use" or "component" on some IMM parcel (which objections prove is not the case, even just using Rise's own admissions against it). For example, when the Rise Petition (at 58) claims the right to mine anywhere in the Vested Mine Property any way it wishes "without limitation or restriction," that incomprehensible and comprehensively disputed Rise overstatement is rebutted in Exhibit A hereto by at least 25 "Risk Factors" in Rise's 2023 10K that describe such "limitations" and "restrictions."

In any event, as before in the EIR/DEIR and other County filings, the Rise Petition continues to present an "alternative reality" instead of the key reality facts and circumstances arising from what cannot be denied: this dispute is primarily about UNDERGROUND MINING in the 2585-acre UNDERGROUND IMM, not surface mining subject to SMARA or surface mining cases like *Hansen* (although objections still prevail even if surface mining authorities did apply). Among many other things that defeat the Rise Petition, that means Rise must confront the

competing constitutional, legal, and property rights of the thousands of surface owners above and around that underground IMM, including, for example, because it is such surface owner groundwater (and existing and future well water) that Rise claims the right to deplete and flush away down the Wolf Creek through a dewatering system and water treatment plant operating 24/7/365 for 80 years that had no vested rights precedent on 10/10/1954 (or at any other time.) See *Keystone*, *Gray v. County of Madera*, and other objector-cited authorities. As demonstrated above (and Evidence Objections Part 1) and more specifically in Objectors Petition For Pre-Trial Relief, Etc., this is not a two-party dispute between Rise and the County or even the less complex muti-party dispute required in *Calvert* and *Hardesty* for due process to impacted objectors. Such ignored rights of such surface owners above and around the 2585-acre underground IMM are much more fundamental and powerful, even compared to the similarly impacted homeowners granted constitutional, legal, and property rights protections by the California Supreme Court in Varjabedian (where owners downwind of the new sewer plant were granted inverse condemnation, nuisance, and other claims for their disproportionate impacts, even for a project there with general public benefits [unlike this no-net public benefit private gold mine].) Whatever the other arguments may be, Rise has made no effort to prove (and has cited no authority permitting) any kind of vested rights that apply to or overcome any of the many objections by such surface owners above or around the underground IMM. Stated another way, when the comprehensively disputed Rise Petition (at 58) incorrectly claims the unprecedented vested right to mine beneath such surface owners as Rise wishes "without limitation or restriction," Rise is overlooking all the many personal rights of such surface owners (e.g., ownership of groundwater [and existing and future well water], rights to lateral and subjacent support to prevent subsidence, and much more) that the County does not have any right to concede to Rise, even if the County wished to do so. Thus, even if Rise were somehow (which should be legally impossible) to force the County to accommodate such disputed vested rights by the Rise Petition, that cannot adversely affect such competing constitutional, legal, or property rights of surface owners above or around the 2585-acre underground IMM. See, e.g., *Keystone, Varjabedian, Hardesty, Gray v. County of Madera*, and other authorities cited in objections reference herein versus not just the disputed Rise Petition but also the disputed claims in Rise 2023 10K rebutted further at Exhibit A #II.B.25, where Rise expressly threatens (without any cited authority) to invade those surface properties above or around the Vested Mine Property for the benefit of its disputed vested rights mining.

Surface owner objectors also make a point of such special rights and standing because Rise outrageously "plays the victim" when it is the aggressor and problem. The County and relevant officials are not acting unfairly against Rise as it keeps claiming, such as by claiming some bias against mining. Instead, what we hope and expect the County and relevant officials to do is to protect their voting residents from this Rise mining menace, especially those of us owning the surface above or around the 2585-acre underground IMM (or alleged Vested Mine Property) with competing constitutional, legal, and property rights protected both by applicable laws Rise ignores and by our political rights to cause government to respond to our grievances and, as appropriate, to enact more law reforms to protect our suburban community from such utterly incompatible mining. Government officials doing their duty to us, such surface owners and local residents, is not about harming Rise, but rather about protecting us surface residents from all the mining harms proven in the objections referenced herein. Consider one final

example of such disputes: putting yourself in the objectors' place. What do surface owners, especially those above or around the 2595-acre underground IMM, tell a buyer about this mess and risk when we want to sell our properties? The brokers and (via their appraisers) mortgage lenders perceive significant adverse effects on such surface property values and risks that will ultimately depress property tax recoveries and cause all manner of indirect harms ignored or understated in the County Economic Report (which report was refuted by objectors as explained in the EIR objections incorporated herein). But what does a seller do or say? No buyer or lender will ever get comfortable living above such a working mine, and the more they study the objections and risks, the more they want risk discounts, driving down prices. No one at risk of mining impacts should be imagined to be willing to rely on Rise's disputed claims and public relations fluff. Indeed, what buyers will pay is a function of what mortgage lenders will lend, which, in turn, is limited by a percentage of appraised value that declines with every new negative comparable sale.

Thus, surface owners are in even a worse risk and impact position than the residents downwind of that sewer plant in *Varjabedian,* and by denying the meritless Rise Petition, the County will not only be doing its duty to protect its local residents, but the County will be protecting our community and its own interests. Consider, for example, the contagion risk if the County were to allow this Rise Petition, since many ancient, dormant/discontinued/abandoned mines would find similarly aggressive speculators like Rise hoping to win a legal lottery gamble or to find someone even more aggressive who will be willing to buy that gamble on a "flip." No one in the County will be safe. If one doubts that risk, objectors suggest that doubters study the case of what happened in the surrounding towns of Benicia and Martinez, CA, when Richmond allowed Chevron to build its refinery.

Table of Exhibits

Exhibit A: Selected Admissions From Rise Gold Corp SEC Filings (With Some Related Admissions From the EIR/DEIR), Countering And Rebutting the Rise Vested Rights Petition And Related Rise Claims.

I. Introductory Highlights Illustrating Rise Admissions of Facts That Defeat Vested Rights Claims, Including How Rise Cannot Satisfy Its Burden of Proof Using "Alternative Realities" About Historical And Other Facts.

A. Some Initial Comments On Rise SEC Filings, Particularly Rise's Current SEC Form 10K Dated October 30, 2023, for the fiscal year ending July 31, 2023 (the "2023 10K" and, together with previous 10K filings, collectively called the "10K's"), And Rise's Most Recent Form 10Q Dated June 14, 2023, for April (the "2023 10Q" and, together with the previous 10Q filings, collectively called the "10Q's").

1. Rise Admissions Addressed In Rise SEC Filings Cannot Be Disregarded As Objector Evidence, Both (a) Because They Are Allowed By the Evidence Code As Rebuttals To Counter Specific Contrary And Conflicting Rise Petition Claims, And (b) Because They Counter Any Rise Financial Assurance And Reclamation Plans And Other Requirements Essential To the Existence of Any Vested Rights.

In the past, objectors' rebuttal evidence from Rise admissions in SEC filings and otherwise was incorrectly excluded from the EIR/DEIR disputes, despite objectors' citation of ample authorities and justifications for the admissibility of such Rise admissions. Therefore, objectors begin with this proof supporting objectors' use of such admissions as evidence to defeat this Rise Petition. However, whatever the County may decide about such evidentiary disputes, the courts in the following processes will agree that admission of such rebuttal evidence is mandatory, especially because objectors are directly proving by Rise admissions facts that are directly contrary to, or in conflict with, what vested rights require**.** See objectors' **"Initial Evidentiary Objection"** and the companion **"Objectors Petition For Pre-Trial Relief, Etc."** described below to which this Exhibit is designed to be attached. For example, such rebuttals and refutations in objectors' Initial Evidentiary Objection rebuts each material Rise Petition Exhibit, while also explaining the legal and evidentiary bases for objectors' use of these SEC admissions to refute any possibility of any Rise vested rights. That companion "Objectors Petition For Pre-Trial Relief, Etc." adds more law and evidence in support of such rebuttals through these admissions to justify requested relief and greater clarity before the Board hearing. In other words, objectors are not just refuting Rise's purported "evidence" with its own words but also proving with Rise admissions that such vested rights cannot exist as the courts correctly define such vested rights.

As demonstrated in many court decisions, such as ***Communities for a Better Environment v. City of Richmond*** (2010), 184 Cal. App.4th 70 (where objectors' use of Chevron's inconsistent SEC filing admissions defeated Chevron's EIR) (sometimes called "**Richmond v. Chevron**"), such admissions are indisputably admissible and powerful rebuttal evidence. Moreover, the disputed EIR/DEIR itself (as well as Rise's related project permit and approval

applications, which objectors include here in the collective term **"EIR/DEIR"** for convenience), also add admissions contrary to, or inconsistent with, the Rise Petition seeking vested rights. Those may also be referenced herein, although the disputed "ambiguities," "hide the ball" and "bait and switch" tactics," and other objectionable features of the Rise Petition create uncertainty about what the disputed Rise Petition is actually claiming. Rather than be at risk from such Rise conduct, objectors may assume the "most likely worst case" from Rise to be "safe." Objectors also insist on **Evidence Code ("EC") # 623** and other laws to estop or otherwise prevent Rise from exploiting any such inconsistencies in the Rise Petition. See the many applications of the EC rules in objectors' Initial Evidentiary Objection, such as EC #356 (the right to use the whole "story" to rebut the claimant's cherry-picked parts), 413 (contesting claimant's failure to explain or deny evidence), and 412 (contesting claimant's failure to produce better evidence that it could have presented if it wished to be accurate).

In any event, the Board needs to appreciate how inconsistent and contradictory the Rise Petition "story" is from the "story" Rise has told its investors in Rise's new "2023 10K," even after Rise radically changed its incorrect legal theory to assert instead its disputed vested rights' claims. The new, October 30, 2023, SEC Form 10K (the "**2023 10K**") filed by Rise after its September 1, 2023, (the "**Rise Petition")** should be at least consistent with each other. Instead, this rebuttal proves by Rise admissions that those stories are inconsistent or contradictory in many respects. For example, that 2023 10K admits to at least 25 major "Risk Factors" as warnings to its investors that cannot be reconciled with the Rise Petition or what Rise claims in or about its Exhibits thereto. This objection discusses each such conflict below and explains how such admissions impact the disputed Rise Petition. Objectors also note that these periodic SEC filings make Rise's admissions something of a "moving target." However, because this recent 2023 10K has been filed after the Rise Petition dated September 1, 2023, we focus on that as most impactful on the disputed Rise Petition, with some pre-vested rights claim illustrations to follow in an Attachment for comparison.

Correcting such Rise "errors" (or whatever is the correct characterization) is critical for the "clarity" to which objectors are entitled from the disputed Rise Petition and which the Board (or, if necessary, the court) needs about any such material Rise inconsistencies or worse to reconcile and resolve between (a) the stories Rise is telling the SEC and its investors (with a few additions from Rise admissions in the disputed EIR/DEIR or related Rise filings and presentations), versus (b) the disputed Rise Petition. That is an example of what the **"Objectors Petition for Pre-Trial Relief, Etc."** seeks before the Board hearing or, in any case, in the court proceedings to follow because objectors have made such requests to enhance our record. Because our current objection deadline is at the start of that Board hearing, while Rise continues to have an opportunity again to change and supplement its story during the hearing without objectors having any meaningful rebuttal opportunity (as we previously suffered at the EIR/DEIR hearings), objectors seek to inspire the County to require greater clarity from Rise before the hearing. Everyone should be able to anticipate (as best as we can) what disputed additions Rise may make during the hearing for which a three-minute rebuttal is grossly insufficient. Because many such Rise inconsistencies, contradictions, and worse are already addressed in the objectors' EIR/DEIR record (also including objections to much of the County Economic Report and County Staff Report), objectors again incorporate them into this and each other Rise Petition objection for such rebuttals.

Also, the base objections in the "Initial Evidentiary Objection" (including the incorporated EIR/DEIR objections), including use of Rise admissions against itself, are also incorporated by reference herein to avoid repetition. (However, some may be summarized to support arguments against Rise's vested rights claims.) Those objections include the more than 1000 pages in four "Engel Objections" to the EIR/DEIR and the more than two score of other objectors' filings cross-referenced and incorporated therein. See what the County labeled as DEIR objection Letters Ind. #'s 254 and 255 and related EIR objections dated April 25, 2023, and May 5, 2023, respectively (including each exhibit and incorporation, collectively called the "Engel Objections.") While the disputed EIR/DEIR process so far have incorrectly declined to consider such economic feasibility objections and other rebuttals, in effect obstructing objectors' counters to Rise claims (even though Rise itself violated those incorrect "boundaries"), that CEQA dispute cannot be allowed to interfere in this vested rights process with such evidence from SEC filing admissions on those subjects and others. See, e.g., *Communities for a Better Environment v. City of Richmond* (2010), 184 Cal. App.4th 70, where objectors' use of Chevron SEC filing admissions and inconsistencies defeated Chevron's EIR in correctly demonstrating the law of evidence, as further illustrated in the Initial Evidentiary Objection.

2. Consider, For Example, Rise's Admission (2023 10K at 13-14) That Its Mining Plan Is Conditional On the Results of Its Exploration, Thereby Defeating Its Vested Rights.

Rise admits in various ways in this 10K discussed below that, if Rise's further "exploration" does not produce satisfactory results, Rise will not mine and, even if Rise wished to mine, Rise would not be able to continue any mining plan unless such exploration results convince Rise's money sources to fund further operations. (This was admitted in terms of Rise lacking the capacity to mine (or even unconditionally to commit to mine) unless it was able continuously to find the needed financial and other support from its investors.) For example, Rise states (Id. emphasis added): **"Our long-term success depends on our ability to identify mineral deposits on our I-M Mine Property … that we can then develop into commercially viable mining operations." Furthermore, Rise admits that:**

> **Mineral exploration is highly speculative in nature, involves many risks, and is frequently non-productive. These risks include unusual or unexpected geologic formations and …[listing various risks already admitted by Rise, including the need for "capital available for exploration and development work."]**
>
> **Substantial expenditures are required to establish proven and probable reserves through drilling and analysis to develop …[listing again what is needed for mining and how they determine "whether a mineral deposit will be commercially viable]. WE MAY INVEST SIGNIFICANT CAPITAL AND RESOURCES IN EXPLORATION ACTIVITIES AND FIND IT NECESSARY TO ABANDON SUCH INVESTMENTS IF WE ARE UNABLE TO IDENTIFY**

> **COMMERCIALLY EXPLOITABLE MINERAL RESERVES. THE DECISION TO ABANDON A PROJECT MAY HAVE AN ADVERSE EFFECT ON THE MARKET VALUE OF OUR SECURITIES AND THE ABILITY TO RAISE FUTURE FINANCING. Id. (emphasis added)**

Moreover, Rise admits these losses and problems are expected to continue:

> **THE COMPANY EXPECTS TO OPERATE AT A LOSS FOR AT LEAST THE NEXT 12 MONTHS. IT HAS NO AGREEMENTS FOR ADDITIONAL FINANCING AND CANNOT PROVIDE ANY ASSURANCE THAT ADDITIONAL FUNDING WILL BE AVAILABLE TO FINANCE ITS OPERATIONS ON ACCEPTABLE TERMS IN ORDER TO ENABLE IT TO CARRY OUT ITS BUSINESS PLAN. THERE ARE NO ASSURANCES THAT THE COMPANY WILL BE ABLE TO COMPLETE FURTHER SALES OF ITS COMMON STOCK OR ANY OTHER FORM OF ADDITIONAL FINANCING. HOWEVER, THE COMPANY HAS BEEN ABLE TO OBTAIN SUCH FINANCINGS IN THE PAST. IF THE COMPANY IS UNABLE TO ACHIEVE THE FINANCING NECESSARY TO CONTINUE ITS PLAN OF OPERATION, THEN IT WILL NOT BE ABLE TO CARRY OUT ANY EXPLORATION WORK ON THE I-M MINE PROPERTY OR THE OTHER PROPERTIES IN WHICH IT OWNS AN INTEREST AND ITS BUSINESS MAY FAIL. ID. AT**

But again, nowhere in the disputed EIR/DEIR, Rise Petition, or other Rise filings does Rise ever explain what happens to the mine and our community, especially those of us living on the surface above or around the mine when Rise ceases operations for any reason (including because the investors stop funding the money required continuously for years before Rise admits it could possibly produce any revenue.) Thus, everyone is at continual risk for years before the best case (for Rise) when (and, even Rise admits, if) break-even revenue is achieved. Rise admits it may be unable to perform (or credibly commit to perform) anything material in its disputed plan. At any time, Rise or its money source could decide that the results of such future explorations are unsatisfactory and "abandon the project." Who cleans up the mess Rise leaves behind? That is both why reclamation plans and financial assurances are essential to any vested rights and why it is a legal and policy mistake to separate the adequacy of such reclamation plans and financial assurances from the dispute over the existence of vested rights.

3. **Consider, For Example, Some of the Many Adverse Rise's 2023 10K Admissions About Its "Vested Mine Property" That Rise Calls the "I-M Mine Property" in These SEC Filings And Objectors Call the "IMM" (with special treatment regarding the toxic Centennial site which the Rise Petition has hopelessly confused with irreconcilable contradictions with the EIR/DEIR.)**

As one calculates the disputed reliability of Rise's comments, especially when Rise's plans appear illusory because of chronic, economic infeasibility (plus the substantial uncommitted financing Rise admits below that it continuously needs for years and which seems speculative considering the huge exploration and startup costs before Rise admits anyone can even make an informed guess if and to what extent there is any commercially viable gold there), the Board should focus on the Rise admissions in the 2023 10K (at 11 emphasis added) section about "Risk Related to Mining and Exploration." There Rise stated: "WE HAVE NOT ESTABLISHED THAT ANY OF OUR MINERAL PROPERTIES CONTAIN ANY MINERAL RESERVE ACCORDING TO RECOGNIZED RESERVE GUIDELINES, NOR CAN THERE BE ANY ASSURANCE THAT WE WILL BE ABLE TO DO SO." Also consider (at Id., emphasis added) :

> **The I-M Mine Property is in the exploration stage. There is no assurance that we can establish the existence of any mineral reserve on the I-M Mine Property … in commercially exploitable quantities. Unless and until we do so, we cannot earn any revenues from these properties and if we do not do so we will lose all of the funds that we have expended on exploration, If we do not establish the existence of any mineral reserve in a commercially exploitable quantity, the exploration component of our business could fail.**

As objectors' following analyses of Rise admitted "Risk Factors" demonstrate, among other things and contrary to the disputed Rise Petition, Rise is just speculating and slowly doing minor exploration when money to do so is available. Rise is not planning or acting to mine in a way that creates or preserves any vested right to any mining "uses," especially those in the 2585-acre underground IMM that neither Rise nor any predecessor has even "explored" (apart from trivial, occasional drilling) since that dormant mine closed, discontinued, flooded, and was abandoned by at least 1956. Rise has no current or objective intent or commitment to execute any mining "use" plan on any schedule or to commit to any such startup mining activities beyond the separate exploration" use" (that does not create any vested right for any mining "use"), unless and until Rise believes that it has raised the funds for sufficient further such "exploration" and Rise and its speculator- financiers/investors each find those exploration results to be "successful" in demonstrating WHAT RISE ADMITS DOES NOT NOW EXIST: SUFFICIENT, PROVEN GOLD RESERVES IN CONDITIONS THAT CAN BE MINED PROFITABLY AND SUFFICIENT FINANCING ON ACCEPTABLE TERMS AND CONDITIONS TO CARRY THE MINE OPERATIONS TO POSITIVE CASH FLOW. Under the circumstances that cannot create vested rights for mining any parcel of the 2585-acre underground mine, and particularly the "Never Mined Parcels" that required not only such exploration, but, first, also all the startup work in the Brunswick shaft and the Flooded Mine (e.g., dewatering the flooded mine and reconstructing 72 miles of flooded tunnel and infrastructure) even to be able to reach those Never Mined Parcels to begin any exploration or gold production there. (Remember the surface above the 2585-acre underground mine is owned by objectors and others and not available to Rise for exploration or access, as admitted by Rise in its previous 10K.)

This is not a meritorious vested rights case, but more like this analogy. A Texas holdem poker-playing gambler puts in his ante (buying the IMM cheap) and matches the bets on the

initial round (e.g., the preliminary exploration, initial permitting application work, and then the recent vested rights litigation work) waiting to see the "common cards" dealt out face up on the table one by one to decide whether or not to stay in the game or fold. Rise admits (to its investors and the SEC) throughout this 2023 10K that it may fold. That conditional, wait-and-see approach, especially when Rise is entirely dependent on discretionary funding from money sources who may be more risk adverse, is the opposite of what the Rise Petition claims as a continuous commitment to mine sufficient for preserving vested rights that Rise incorrectly imagines Rise inherited from each previous predecessor. Because there needs to be a continuous, unconditional commitment to mining for vested rights (perhaps under different circumstances allowing short term delays for "market conditions"), such speculators like Rise cannot qualify with such conditional intentions. Such conditional interest in possible mining is not the kind of commitment required by applicable law, because Rise is only "in the game" as long as both Rise and its money source like their odds and as long as their investors keep handing Rise the money to continue their bets.

But, as explained in existing record objections**, once Rise starts any actual work at the IMM (e.g., prolonged dewatering work in particular as an early starter), our community will be much worse off when Rise stops than we are now, one way or another.** Of course, the more Rise does to execute its disputed mining plan will also make our community and, especially objecting local surface owners worse off. Therefore, this objectionable activity cannot ever be allowed to start.

But consider it from this alternative perspective of the impacted local objectors. Rise admits that any intent to actually mine is dependent on many pre-conditions, such as successful future exploration and related fundraising, meaning that Rise does not have the required objective, continuous, and unconditional intent to mine required for vested rights. But suppose (as the law requires and objectors contend) the Rise reclamation plan and financial assurance plans are decided at the same time as the vested rights. In that case, it will become clear that there can be no such vested rights, because no such Rise investors are going to go "all in" by funding at this admittedly early exploration stage the required financial assurances in advance to Rise for the massive reclamation plan that will be required for any such mining. By reference to the gambler analogy above, even if Rise were willing and intending to push all its chips on the table at the start before seeing the next open face cards (e.g., certainly before starting to dewater the IMM and begin depleting groundwater and existing and future well water), it is hard to imagine the investor holding back the chips needed by Rise to commit "to go all in" would prematurely commit to that gamble. That is especially considering all the risks not just admitted by Rise here, but also those demonstrated by record objections to the disputed EIR/DEIR and Rise Petition. Even the more aggressive money players backing such gamblers wait to see all (or at least most all) of the cards face up before they go all in. Stated another way, the objective test of any vested rights intent to mine is proven or disproven by whether or not the miner's money source is willing to go all in now, i.e., at the time the vested rights questions are to be decided. Otherwise, what Rise Petition is incorrectly claiming (without any precedent) is that such miners can have an OPTION TO MINE IF THEY WISH AFTER THEY PROCEED WITH INDEFINITE EXPLORATION ACTIVITIES WHILE TRYING TO RAISE THE REQUIRED FUNDING AND WHILE US SURFACE OWNERS AND OUR COMMUNITY INDEFINITELY SUFFER THE STIGMAS DEPRESSING OUR

PROPERTY VALUES. No applicable law gives such an indefinite option to Rise at objectors' prejudice, as the property values of objecting surface owners above and around the 2585-acre underground IMM remain eroding indefinitely while Rise gambles to our harm.

Consider, for example, how the unprecedented, disputed, and incorrect Rise Petition's "unitary theory of vested rights" is not just inconsistent with EIR/DEIR admissions and with applicable law requiring continuous vested rights for each "use" and "component" on each "parcel" (even in Rise's favorite *Hansen* case). Still, the Rise Petition's failure to so distinguish between "mining" versus "exploration" "uses" and between SURFACE mining "uses" versus UNDERGROUND mining "uses" as required in *Hardesty* is contradicted in Rise's 2023 10K at 29 (and earlier 10K and 10Q filings) as follows:

> **"Mineral exploration, however, is distinct from the definitions of 'subsurface mining' [aka underground mining] and 'surface mining.' Exploration involves the search for economic minerals through the use of geological surveys, geophysical prospecting, bore holes and trial pits, and surface or underground headings, drifts, or tunnels (NCC #L-II 3.22(B)(5)." (emphasis added)**

For another example, consider how Rise is claiming inconsistently that at the same time: (a) the toxic **Centennial** site is (and has been, as admitted, including in the EIR/DEIR contradicting the Rise Petition) physically, legally, and operationally separate in all material respects from the Brunswick IMM project, including the 2585-acre underground mine, so that they are separate projects for CEQA, as explained at length in the disputed EIR/DEIR admissions (a position that Rise incorrectly contends provides it both legal immunity from the environmental liabilities associated with the Centennial pollution and CERCLA etc. clean up, as well as evading adequate CEQA disclosures about Centennial), but also (b) somehow for Rise Petition's vested rights claims, massive and prolonged dumping of Rise mine waste from the new underground mining (and the related repairing of the old "Flooded Mine" for access) in the 2585-acre new Never Mined parcels allegedly are not an "expansion" or a "new operation" or a new "intensity" that would contradict and defeat Rise's vested rights "story." Also, the 2023 10K (and earlier versions) admit that Rise purchased the Centennial site parcels in 2018, separately from Rise's 2017 purchase of the IMM. As stated, Rise cannot have both CEQA exclusion for Centennial and vested rights for including Centennial in the new, separate, underground mining project in the "Vested Mine Property." Among other things, the disputed Rise Petition's "unitary theory of vested rights" is legally incorrect and inapplicable. See the discussion below of Rise's SEC 10K admissions on this topic versus both the disputed EIR/DEIR and many record objections and others thereto. See, e.g., 2023 10K at 32 admitting that the CalEPA has not yet approved (and may never approve) the Final RAP dated 6/12/2020, and the massive record objections to the disputed EIR/DEIR also dispute any such Centennial approvals.

Also consider the Rise admission in the 2023 10K (at 29) that "the planned land use designation for the Brunswick land remains 'M-1' Manufacturing Industrial, while the planned land use designation for the "Idaho land" (Centennial) is 'BP' Business Park (CoGV-CDD, 2009)." How can Rise possibly imagine any "continuous" vested rights for mining "uses" for either (i) the toxic "Centennial" mine that for many years no one could possibly "use" 'legally" for mining (see, e.g., the EIR/DEIR admissions and record objections to the EIR/DEIR) or other

related uses, or (ii) such Idaho land as rezoned "Business Park" (on which no mining has been attempted or contemplated for many years) and as to which every relevant predecessor before Rise believed would have again required rezoning that seems not only legally infeasible, but also economically infeasible, considering even just the environmental compliance and cleanup costs. While under certain circumstances and conditions (not applicable here) vested rights could perhaps evade certain use permit requirements for continuous "legal" uses on a parcel, Rise has not even attempted to overcome its burden of proof for vested rights for any such continuous mining uses when Centennial must first be legally remediated before anyone could even begin to think about mining there. Indeed, the EIR/DEIR did not even contemplate mining on Centennial, perceiving it just as a potential surface dump for mining waste from other parcels, and no such dump uses (or, if remediated, business park uses, could ever create in basis for expanding the long abandoned and legally prohibited mining uses from Centennial to other parcels as contemplated by the disputed Rise Petition. Also, as admitted in the 2023 10K and even in the EIR/DEIR, Centennial is disconnected from the rest of the IMM or Vested Mine Property in what must be a separate parcel, so that under *Hansen, Hardesty,* and other applicable cases nothing on any separate parcel creates any vested rights "uses" for any other such parcel that did not have the same such continuous "uses."

Because of such inconsistencies, contradictions, and all the other lacks of required "good faith" and objectionable conduct described in the hundreds of existing objections and those additional objections to come against Rise's new vested rights claims, Rise has created what the *Hardesty* court called a "muddle." That "muddle" creates massive disabilities for Rise's burden of proof on all of its critical vested rights claims, as well as adding many new defenses for objectors to the vested rights, such as "unclean hands," "bad faith," "estoppels," "waivers," evidentiary bars and exclusions, and many more in particular issues. See objectors' Initial Evidentiary Objection incorporated herein. (For example, under these circumstances and in this kind of administrative process, there cannot now be "substantial evidence" to support either Rise Petition's vested rights claims or Rise's EIR/DEIR claims. Also, in the court process to come objectors will have extra time and opportunity even more fully to contest and rebut Rise so-called evidence, such as by motions in limine to exclude most of Rise's self-contradictory evidence.) Id. Whenever the law of evidence is allowed to apply, Rise cannot prevail, and (while avoiding any delays in rejecting the Rise Petition) the County should insist that Rise provide BEFORE THE HEARING a comprehensive, consistent, sufficiently detailed, admissible, compliant, and evidentiary appropriate presentation of the reality to litigate with objectors in a full, due process proceeding as equal participants. While it may be possible (in different situations no applicable here) to litigate alternative legal theories, Rise cannot expect the County to approve (and objectors to litigate) more than one of such "alternate realities" inconsistently asserted by Rise to suit each of Rise's disputed, alternative legal theories.

Unfortunately, the County has bifurcated the consideration of the existence of Rise Petition's vested rights from the "reclamation plan" and "financial assurances" that should be essential to any vested rights contest. For example, how can there be any vested rights at all, if (as here) Rise is incapable of providing any adequate "financial assurance?" Even worse, any tolerable "reclamation plan" would itself violate the requirements for vested rights to exist; i.e., such reclamation actions themselves must have vested rights, or else implementation of

that reclamation plan needs its own use permit. See, e.g., discussion in the Initial Evidentiary Objection authorities and other objections regarding how the addition of the Rise water treatment plant on the Brunswick site would be a prohibited "expansion," "intensification," and new, unprecedented "component" (see, e.g., *Hansen* citing *Paramount Rock*) that cannot have any vested rights. The same is true about Rise's unprecedented plan to pipe cement paste with toxic hexavalent chromium into the underground mine to create shoring columns of mine waste, exposing locals to the fate of Hinkley, CA, which died with many of its residents from such hexavalent chromium water pollution as shown in the movie *Erin Brockovich*, and which survivors (despite massive funding from the culpable utility) still are unable to remediate such toxic groundwater (e.g., www.hinkleygroundwater.com).

4. **Rise's Vested Rights Cannot Exist Without A Sufficient "Reclamation Plan" With Adequate "Financial Assurances." Still, Rise's SEC Filings All Admit That Rise Lacks The Resources To Provide Any Meaningful Such Financial Assurances, And The Kinds of Reclamation Plans That Would Be Essential Require Their Own Vested Rights, Which Cannot Exist For Them In This Case, Resulting In Rise's Need For Objectionable Use Permits That Should Be Impossible To Obtain.**

Any adequate "reclamation plan" for the many vested rights requirements demonstrated in this Exhibit and many other record objections would also require their own vested rights, especially when assessed (as they must be) on a parcel-by-parcel, use-by-use, and component-by-component basis. Id. That means Rise would need permits that should be impossible to achieve over the massive and meritorious objections that those applications would inspire. Whatever the Rise reclamation requirements will be determined to be in these disputes from objectors, the related mine work and improvements must be considered new, expanded, and more intense "uses" compared to the historical 1954 mine on which Rise purports to base its vested rights claims. This is not just about changes in science, equipment/infrastructure/materials, and modern technology/practices, but also simply both by the massive scale of the "expansion" and "intensity" of the impacts, measured not just by ore, or by waste rock removed from the underground mine, but, more importantly, by the scale and impacts on the local community, especially on those objectors owning the surface above and around the 2585-acre underground mine. Id. As the EIR/DEIR and earlier SEC filings admit (see, e.g., the Attachment to this Exhibit explaining more from previous 10K's than now revealed in the 2023 10K), the mining expansion from 1954 is massive in scope and intensity, increasing far beyond vested rights tolerance standards from (a) the 72 miles of underground tunnels with 150 miles of drifts and crosscuts in the Flooded Mine that existed in October 1954 and discontinued, flooded, and closed by 1956, to (b) after 24/7/365 dewatering and other startup work for more than a year, adding another 76 miles of new tunnel in the Never Mined Parcels beneath and around our objecting surface owners and others, plus whatever drifts, cross-cuts, and other lateral adventures the miner may pursue. This is relevant to disputing vested rights because Rise's new and unprecedented "components" for which no vested rights could exist (e.g., *Hansen* citing *Paramount Rock*) would have to include not only a water treatment plant, but also a new water replacement system (that Rise's SEC filings demonstrate it could not

afford) as the court required under similar circumstances in the controlling case of ***Gray v. County of Madera (2008), 167 Cal.App.4th 1099 ("Gray")*** **(rejecting the miner's mitigation proposals similar to those proposed by Rise's disputed EIR/DEIR for a tiny fraction of the impacted surface owners), applying legal standards that could only be satisfied by an equivalent water delivery system for each impacted local.**

More fundamentally, as demonstrated in such record objections and others to come, Rise's disputed EIR/DEIR are themselves full of errors, omissions, and worse, compounding, and conflicting with those in the Rise Petition, as well as creating more conflicts and contradictions with Rise's SEC filing admissions. This Exhibit reveals how (as in *Richmond v. Chevron)* much other evidence, authorities, and rules, such as EC #'s 623, 413, and 356, apply not just to rebuttals to Rise's disputed CEQA claims, but even more so to these vested rights disputes. That is especially true since those surface owners above and around the 2585-acre underground mine have their own competing constitutional, legal, and property rights at issue, entitling us to even more standing and due process than provided in *Calvert* and *Hardesty*. Besides Rise failing by application of the normal rules of evidence within the correct legal framework explained in the foregoing objection, the Rise Petition also fails the standard of what *Gray v. County of Madera* calls "common sense," and what *Vineyard, Banning, and Costa Mesa* call "good faith reasoned analysis." Thus, any vested rights dispute must allow both rebuttals of what Rise admits and deficiently reveals, plus all the other realities that are exposed regarding the merits of the disputes.

That means the essential comparison for Rise's vested rights claims is not just (i) what Rise choose to reveal about the "Flooded Mine" (the 1954 underground working mine) versus the "Never Mined Parcels" (the new underground expansion mine) and related disputes against alleged "Vested Mine Parcels," but also (ii) what Rise should have revealed in each case that makes the gap between the old and new impossible for Rise to bridge for its disputed, vested rights claims. One example demonstrated in the foregoing objection (and in many EIR/DEIR and other objections) is that the depleting impacts of proposed dewatering of surface owners' groundwater (and existing and future wells) 24/7/365 for 80 years are grossly understated by Rise and far more "expansive" and "intense" than permitted by any applicable authority defining the boundaries of vested rights. Indeed, the 1954 Flooded Mine did not have surface owners above or around it, but because of surface sales by Rise predecessors over time, Rise inherited a massive community above and around that 2585-acre underground mine whose interests can only be protected by many new uses, components, and other things for which there was no 1854 precedent and for which no vested rights are possible now. Note how Rise and its predecessors (e.g., Emgold) proved nothing by the deficient number and locations of test sites and massively undercounted, impacted existing wells. Also, Rise does not consider the rights of us objecting surface owners living above and around the 2585-acre mine to create new, additional, and deeper competing wells to deal with both the climate change impacts Rise incorrectly denies as "speculative," and to mitigate Rise's wrongs in depleting groundwater and existing and future well water owned by surface owners above and around the 2585-acre undergrounds mine. See the Supreme Court ruling in *Keystone Bituminous Coal Assn v. DeBenedittis, 480 U.S 470 (1987)* ***("Keystone"),*** discussed in the foregoing objection and in such EIR/DEIR and other objections; i.e., Rise cites no authority for any vested rights to deplete any water owned by such objecting surface owners. See also *Varjabedian* (where that court

confirmed that those living downwind of a new sewer treatment plant and so disproportionately impacted by such projects have powerful constitutional rights and other claims.)

B. The Disputed Rise Petition (Like the Disputed EIR/DEIR) Primarily Focuses On the Older, Wholly Owned Portion of the "Vested Mine Property" In Objectionable And Deficient Ways That Too Often Ignore The Disputed Issues Regarding the 2585-Acre Underground Mine Contested by Impacted Objectors Owning The Surface Above And Around That Underground Mine, Especially It's Expansion from the 1954 "Flooded Mine" to What Objectors Call the "Never Mined Parcels" That Have Been Dormant, Closed, Discontinued, And Abandoned Since At Least 1956.

As discussed in this and other objections, the Rise Petition asserts what objectors call Rise's unitary theory of vested rights as to the whole of its so-called "Vested Mine Property," failing to make any serious effort to prove vested rights for each "use" and "component" as continuous on each parcel on the required parcel-by-parcel, use-by-use, and component-by-component bases. Instead, Rise asserts its deficient and insufficient "evidence" to attempt to prove its unprecedented unitary theory of vested rights that seems to claim that anything it does anywhere on the "Vested Mine Property" is sufficient for any "use" or "component" anywhere there, even when Rise's cited *Hansen* decision rejects such an idea, as do the other authorities cited in the foregoing and other objections. While subsequent objections on this subject will demonstrate more errors in that Rise claim and will debate the relevant "parcels" in dispute, objectors frame those issues below in terms of Rise's latest (and only such post-Rise Petition) SEC filing. **Rise's recent SEC 10K for the fiscal year ending July 31, 2023 (at 30) again admits** (as did the previous 10K filings) what the Rise Petition and other communications obscured to "hide the ball" to avoid undercutting their incorrect "unitary theory" excuse (emphasis added):

> "Mineral Rights. The I-M Mine Property consists of **mineral rights on 10 parcels, including 55 sub parcels, totaling 2,560 acres … of full or partial interest**, as detailed in Table 2 and displayed in Figure 4. The mineral rights encompass the past producing I-M Mine Property, which includes the Idaho and Brunswick underground gold mines.
> ***
> The Quitclaim Deed [Rise identifies Document # 20170001985 from Idaho Maryland Industries Inc., to William Ghidotti and Marian Ghidotti in County Records vol. 337, pp.175-196 recorded on 6/12/1963] describes the mineral rights as follows:
>
> The I-M mine Property consists of all rights to minerals within, on, and under the land shown upon the **Subdivision Map of BET ACRES No. 85-7,** filed in the Office of the County Records, Nevada County, California, on February 24, 1987, in Book 7 of Subdivisions, at Page 75 et seq. [See **Rise Petition Exhibit 263** dated Feb. 23, 1987]

> The I-M Mine Property consists of all rights to minerals within, on, and under the land located in portions of Sections 23, 24, 25, 26, 35, and 36 in Township 16 North- Range 8 East MDM, Section 19, 29, 30, and 31 in Township 16 North- Range 9 East MDM, and Section 6 in Township 15 North- Range 9 East MDM and all other mineral rights associated with the Idaho-Maryland Mine.
> ***
> Mineral rights pertain to all minerals, gas, oil, and mineral deposits of every kind and nature beneath the surface of all such real property … subject to the express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land… [and] Mineral rights are severed from surface rights at a depth of 200 ft. (61 m) below surface …. (emphasis added)

Notice that Rise admitted that there are at least 10 parcels and (what Rise calls 55 sub parcels), and objectors will address in a later objection how many more parcels actually may exist. See, e.g., the 2023 10K Table 1 (at 27) describing 12 APN legal parcels just on the Rise-owned surface, without considering any underground mine parcels. Moreover, the color-coded, separate units in SEC 2023 10K Figure 4 show more than 90 parcels. Rise must prove continuous vested rights uses and components at least for each such parcel and sub-parcel, and Rise has not even attempted to satisfy its burden of proof by doing so. Moreover, the vested rights rules prohibit expanding or transferring "uses" or "components" from (i) one parcel (or what Rise calls a "sub parcel") with a vested use or component to (ii) another parcel (or what Rise calls a sub parcel) without such a continuous vested use or component. Thus, even if Rise had vested rights to the Flooded Mine parcels (which objectors' dispute) that would not result in any vested rights for any Never Mined Parcel. Also, having so admitted such parcels (and sub-parcels), Rise should be estopped from asserting its disputed and unprecedented unitary theory of vested rights as if the Vested Mine Property were just one big parcel (which objectors dispute.) See objectors' Initial Evidentiary Objection, addressing various Evidence Code requirements for Rise (e.g., EC #623, 413, 356, etc.) and various other rebuttal opportunities for objectors.

C. Some General, Property Description And Related Issues From the SEC 2023 10K Filings Compared To the Rise Petition And Other Rise Filings With the County, And Related Contradictions For Rebuttals And Objections.

"Item 2. Properties" (beginning at p. 21) of the 2023 10K still uses the general term "I-M Mine Property" to describe (i) what objectors call the "IMM" plus the separate "**Centennial"** site, and (ii) what the disputed Rise Petition calls the "Vested Mine Property." (Note that objectors plan a separate objection for the Centennial site and related issues, and that the limited discussion of that topic here does not mean it is not important in objectors' comprehensive objections to the Rise Petition, but rather only that we are just addressing some such issues sequentially.) That "I-M Mine Property" is described by Rise (in that 20233 10K at 24) as "approximately 175 acres …[of] surface land and 2560 acres … of mineral rights," without

any attempt to make any easy comparisons with the EIR/DEIR terms, data, or other contents or to explain inconsistencies, such as, for example, why the EIR/DEIR described **2585-**acres of underground mineral rights but here only **2560**. (Objectors use the larger number for "safety" [i.e., to avoid omitting anything in objections], but, in due course, objectors will address whatever answers we discover for such needless and inconsistent mysteries.) For example, (apart from the 2585-acre underground mining rights) instead of addressing the issues like the EIR/DEIR as to the Brunswick site surface versus the separated Centennial site surface, the 2023 10K identifies in Table 1 (at p. 27) 12 APN legal parcels (contrary to describing 10 in the above subsection quote) called (1) "Idaho land" representing 56 acres …, (2) "Brunswick land" representing 17 acres, and the "Mill Site" property representing 82 acres … as displayed in Figure 3" [a useless map lacking needed landmarks for needed precision.] For convenience (e.g., to avoid confusion in SEC filing quotes herein) this Exhibit generally will use the SEC terms with some additional objector terms for ease of application to our other objection documents. (Why the Rise Petition uses different terms than that 2023 10K in discussing such vested rights issues is another suspicious curiosity.)

Note, however, that the 202310K separately identifies such legal descriptions of Rise's "Surface Rights" as separate from the underground "Mineral Rights." Id. 24-34. Notice how Rise brags (at 32) about how "environmental studies" were "completed on all the surface holdings owned by Rise," ignoring the 2585-acre underground mine where many problems exist as addressed in the record objections to the disputed EIR/DEIR. However, those studies are disputed on many grounds in objections to the EIR/DEIR. The absence of proof of environmental safety in and from the 2585-acre underground mine is a bigger concern not satisfactorily addressed anywhere by Rise, especially as to the addition of admitted use of cement paste with toxic hexavalent chromium pumped down into the underground mine to create shoring columns from mine waste (but obscured without any disclosure, much less reasoned analysis as required in the "Hazards And Hazardous Materials" section of the disputed DEIR or in the obscure and disputed EIR Response 1 to Ind. #254 to that disputed DEIR). See, e.g., the descriptions of hexavalent chromium menaces in the EPA and CalEPA websites and the case study of the hexavalent chromium groundwater pollution in Hinkley, Ca. at www.hinkleygroundwater.com (the story shown in the movie *Erin Brockovich*).

D. Of Course, the Rise SEC Filings Themselves Are Disputed In Many Respects, And Objectors Are Not Accepting Anything In Those Filings As True. Nevertheless, Our Objections Address Them as Admissions That Contradict And Rebut the Rise Petition's Purported Claims. See EC #623.

The Initial Evidence Objection both disputes the Rise Petition and contradicts some of the purported "History" in the 2023 10K and other Rise filings, citing the many ways the laws of evidence defeat Rise claims. See, e.g., *Hardesty* describing how the alternative reality "muddle" of mutually inconsistent and incorrect miner claims cancels all of them out. Objectors will not repeat all those many rebuttals here. However, objectors' rebuttals in that objection also refute the similar Rise Petition claims, for example, alleging evidence that (202310K at 35) Del Norte Ventures, Inc. (Emgold's predecessor) "rediscovered" in 1990" a "comprehensive collection of original documents" for the IMM (presumably pre-1956,

"unauthenticated" documents from before the mine closed and flooded and the miner moved to LA to become an aerospace contractor ending in bankruptcy and a cheap auction sale of the IMM to William Ghidotti.) Part of the more comprehensive problem is that Rise is trying to recreate records from Idaho-Maryland Mines Corporation that closed and abandoned its flooded and dormant mine by 1956, due in large part to the fact that the cost of gold mining increasingly exceeded the indefinite $35 legal cap on gold prices, in effect also abandoning hope of resuming mining unless and until that $35 legal cap was lifted, which did not occur for another decade. That abandonment of the mine and the mining business is proven by Rise Petition's own Exhibit records that prove how that miner liquidated its moveable mining assets and after that1956 abandonment of the dormant and discontinued mine and mining business changed its name and trademark to Idaho Maryland Industries, Inc., moved to LA to become an aerospace contractor, filed Chapter XI under the Bankruptcy Act, and liquidated the mine cheap in an auction sale to William Ghidotti in 1962. Another objection to follow will counter Rise's disputed history in more detail by going beyond the fragmentary and disputed Rise Petition Exhibits that noncontinuous "snapshots" and are by no means adequately "authenticated," admissible evidence, or a "comprehensive collection of original documents" demonstrating vested rights. Many such Rise Petition Exhibits are just "filler," and Rise's failure to produce such alleged records relevant to the vested rights disputes created an inference and presumption that Rise has no such evidence. See the Initial Evidentiary Objection and EC #412, 413, 356, and 403.

Many records referred to in such Rise filings and admissions are production and gold mining process related records that don't prove vested rights and ceased when the dormant and abandoned IMM closed and flooded by 1956. Stated another way, there is no objective intent evidence to prove continuous use (or even continuous intent to resume mining) on a parcel-by-parcel, use-by-use, and component-by-component basis as required by the applicable case law (e.g., *Hardesty, Calvert, Hansen*, etc.). That Initial Evidentiary Objection also exposed errors and omissions in the SEC filings' description (at pp. 35-36) of the Emgold (and predecessor) activities on certain parcels for drilling exploration in 2003-2004 [(not on all parcels and just "exploration" "uses," **not** mining or other relevant mining related "uses"). For example, the 2023 10K admits (at 36): "Exploratory drilling was mainly conducted from tow sites: 1) west of the Eureka shaft, and 2) west of the Idaho shaft, both targeting near surface mineralization around historic working. See Figure 6." That admits no exploration (much less anything relevant to mining "uses" for vested rights) on the critical "Never Mined Parcels" or even most of the "Flooded Mine" parcels in the 2585-acre underground mine where the gold is supposed to be below or near objecting surface owners. The same is true as to what Rise describes (at pp.42-43) as drilling 17 holes in 2019. None of that occasional, noncontinuous activity satisfies any requirement for any vested rights by either Emgold or Rise, even if all their predecessors had vested rights, which none of them did, especially that initial miner-owner in 1954-1962.

Furthermore, contrary to the Rise Petition's confidence about its mining plan and incorrect insistence on its objective intent to reopen the mine and execute its disputed plan, the 2023 10K (like the earlier SEC filings, addressing some in an Attachment) admissions contradict Rise's disputed factual foundation for vested rights. See, e.g., the Initial Evidentiary Objection addresses EC #'s 401-405 (establishing the preliminary facts for admissibility) and 1400-1454

(authenticating evidence). For example, the entire Rise 2023 10K "Risk Factors" discussion below proves that Rise is just a speculator seeking to create a mere, indefinite, and conditional option to mine if the future conditions and explorations are sufficiently attractive both to Rise and to the uncommitted investors from whom Rise continuously needs funds to be able to afford to do much of anything. For example, consider this such admission (at 9) contrary to Rise's claims for continuous activity it incorrectly describes as sufficient for vested rights to mine, which are disproven by objectors from Rise's own exhibit admissions and only involve occasional and limited "drilling explorations" on only a few parcels with no actual "gold mining" uses anywhere in the IMM since at least 1956:

> Our Idaho-Maryland Mine Project is a historic, past-producing mine which, apart from the exploration work that we have completed since 2016, has had very little recent exploration work since 1956. **We would require further exploration work in order to reach the development stage. Advancing our I-M Mine Property into the development stage will require significant capital and time, and successful commercial production from the I-M Mine Property will be subject to completing feasibility studies, permitting and re-commissioning of the mine, constructing processing plants, and other related work and infrastructure. As a result, we are subject to all of the risks associated with developing and establishing new mining operations and business enterprises,** including …[see continued discussion of these issues in the Risk Factor rebuttals below] (emphasis added)

The point here is that vested rights are about continuous prosecution on each parcel of a prior "nonconforming" "use-by-use" and "component-by-component" basis (or enough objective intent to qualify to do so under required facts and circumstances that are not present here), always on a parcel-by-parcel basis. What Rise admits to here is not only contrary to such requirements for vested rights, but such admissions are also contrary to the whole concept of vested rights as based on continuing on a parcel the prior mining activity as a nonconforming use or component. Exploration is the only mining related "use" activity since 1956 that the Rise Petition claims or that is even affordable or physically feasible by Rise. Now, even after the Rise Petition filing, this new, 2023 10K not only admits the reality that during that long period there has been little (and deficient for vested rights purposes) exploration "uses" on the Vested Mine Property, but also that basically Rise is starting a new mine on the ruins of just part of the older "Flooded Mine" with the impermissible goal of expanding that long abandoned and discontinued 1954 use to the Never Mined Parcels. (Note that, in any event, exploration is a different "use" than any underground mining "use" and, therefore, would not create any vested rights for mining in any event.)

II. Some "Risk Factor" And Compliance Admissions by Rise From the 2023 10K, Including Conflicts With the Rise Petition Or Related Rise, Vested Rights Claims.

A. Some Legal Compliance Concerns And Objectors' Requests For The County To Decline To Tolerate Any Rise Petition (Incorrect) Interpretations of What Vested Rights Would Allow Rise To Do (Or Not To Do) As To Any "Use" Or "Component" On Any "Parcel."

As explained in the companion objections referencing this Exhibit, **objectors are confused by the Rise Petition claiming (at 58) that, in effect, Rise can mine and conduct itself generally as it wishes anywhere on the Vested Mine Property "without limitation or restriction."** In contrast with that incorrect and massive overstatement of the disputed effect of Rise vested rights, Rise asserts in the 2023 10K much narrower (though still incorrect) statements of what Rise could accomplish and do, recognizing (e.g., at p.8) "environmental risks" and how (i) Rise "will be subject to extensive federal, state and local laws, regulations, and permits governing protection of the environment," and (ii) "Our plan is to conduct our operations in a way that safeguard public health and the environment." One key issue for the County in reconciling those inconsistent claims is whether (and to what extent) Rise is asserting (a) what it claims the legal right to do in the Rise Petition "without limitation or restriction" versus (b) an aspirational, public relations statement of goals Rise can violate whenever it wishes, or, more likely, "interpret" from the perspective of an aggressive miner so as to make those legal standards of little practical consequence by exaggerated and otherwise incorrect interpretations. Granting the Rise Petition as written is perilous not just for the County but also for objectors, since such an acknowledgment in SEC filings of the need for legal compliance is not a legally enforceable equivalent to the required use permit conditions or a commitment that can be readily enforced by impacted objectors living above and around the 2585-acre underground mine with our own competing, constitutional, legal, and property rights (e.g., it's objectors groundwater and existing and future well water that would be depleted 24/7/365 for 80 years).

Stated another way, objectors take little comfort in such Rise public relations "reassurances" in such SEC filings and other public relations statements, and it is simply too risky to trust Rise (and any successor who may be "hiding behind the curtain", since Rise admits in these 2023 10K financials that Rise lacks the financial resources to accomplish much of anything material that it is asserting it will do.) Indeed, Rise also admits (at 8) that it cannot "predict with any certainty" the "costs associated with implementing and complying with environmental requirements," which Rise acknowledges "could be substantial" and "possible future legislation and regulations" could "cause us to incur additional operating expenses, capital expenditures, and delays." That uncharacteristic realism is appropriate, especially because impacted locals not only have their own legal rights, but also the power to create, directly or indirectly, such protective law reforms to prevent harms to our large community above and around the IMM, such as those predicted in the hundreds of meritorious objections already in the record in opposition to the disputed EIR/DEIR with more to come in opposition to the Rise Petition. However, such aspirational realism in Rise's SEC filings does not seem to be included in the Rise Petition. That means if the County were (incorrectly) to approve any disputed vested rights for any "use" or "component" on any "parcel" of the disputed Vested Mine Property, the County should not accept any of what the Rise Petition claims vested rights mean (e.g., don't gamble on whatever "without limitation or restriction" may mean in the Rise

Petition, but define clearly and correctly what any vested rights would mean.) In particular, the County should follow the guidance of all the many applicable laws and court decisions that the Rise Petition ignores by asserting its incorrect "without limitation or restriction" claim (e.g., instead follow *Hardesty, Calvert, Gray,* and even the whole of *Hansen*, as distinct from merely the fragments Rise that misinterprets.) See the Table of Cases And Comments attached to the Initial Evidentiary Objection and other objections cited legal authorities demonstrating what the applicable law actually is, as distinct from what Rise wishes the law were.

B. Risk Factors Admitted by Rise In Its 2023 10K, But Generally Ignored In the Rise Petition, the EIR/DEIR, And Other Applications And Requests Approval For Benefits From the County. But Also See Those Not Addressed By Rise Anywhere, Such As The Correct, Applicable Law And Facts Supporting The Competing Constitutional, Legal, And Property Rights of Objectors Owing the Surface Above And Around the 2585-Acre Underground Mine.

1. Rise Incorrectly Describes Its Disputed Vested Rights In All of Its Disputed Filings With the SEC Or the County.

As described above and throughout the foregoing and companion objections, as well as in the incorporated record EIR/DEIR and other objections, Rise has incorrectly described (e.g., pp. 4-6) what is required for acquiring and maintaining any vested rights and what the results are of having any vested right for any use or component on any parcel. See, e.g., the Table Of Cases And Commentaries…at the end of the Initial Evidentiary Objection and others. Of relevance here is that the so disputed 2023 10K is not only inconsistent with, or contrary to, the disputed Rise Petition (and the disputed EIR/DEIR) [and vice versa], but also with itself. **For example, the 2023 10K (at 34) states: "Subsurface mining, including ancillary surface uses, would require the following permits and approvals under a Use Permit process [citing many County, State, and Federal approvals, although fewer than in the County Staff Report for the EIR/DEIR]. However, the Rise Petition appears to claim (incorrectly) it can evade many of such requirements. Indeed, that 10K itself is not as clear in other commentaries since it only (at p.6) contemplates a use permit if the Board rejects Rise's vested rights claim.**

In addition, the following Rise admitted "Risk Factors" demonstrate that, among other things and contrary to the disputed Rise Petition, Rise is just engaged in occasional, limited exploration, and speculating; not planning to mine. Rise has no current or objective commitment or committed funding to execute any mining plan at any time or to commit to any other such mining activities, unless and until Rise has raised the funds for sufficient *further* "exploration" and Rise and its speculator- financiers/investors each subjectively finds those exploration results to be "successful" in demonstrating what Rise admits does not now exist: both sufficient, viable, proven or probable gold reserves in conditions that can be mined profitably, plus sufficient financing on acceptable terms and conditions to carry the mine operations to positive cash flow sometime in the distant future. Under the circumstances that intent to speculate and decide what to do in that indefinite future cannot create vested rights for any mining "use" or "component" on any parcel of the 2585-acre underground mine, and, particularly, the "Never Mined Parcels" that require not only such exploration but also all the

startup work in the Brunswick shaft and the Flooded Mine (e.g., dewatering the flooded mine and reconstructing 72 miles of flooded tunnel and infrastructure) even to be able to reach those Never Mined Parcels to begin any exploration or gold mining uses there. (Remember: the surface above the 2585-acre underground mine is owned by objectors and others and is not available to Rise for exploration or access, a Rise "Risk Factor" discussed below.)

This is not a meritorious vested rights case, but rather is more like this analogy: A Texas holdem poker-playing gambler puts in his ante (buying the IMM cheap) and matches the bets on the initial round (limited, preliminary exploration on some parcels), waiting to see the common cards dealt out one-by-one face up on the table to decide each time whether or not to stay in the game or fold. Since there needs to be a continuous commitment to mining uses on each applicable parcel for any vested rights, such speculators like Rise cannot qualify. Such conditional interest in possible mining is not the kind of commitment required by applicable law, because Rise is only "in the game" as long as they like their odds on each "card" and as long as their investors keep doling out the money to continue their bets. But as explained in record objections, once Rise starts any work at the IMM, our community will be much worse off when it stops than we are now, one way or another.

As one calculates the reliability of Rise's economic feasibility and the substantial financing Rise admits below it continuously needs for years before any possible revenue, focus on the Rise admissions in the 2023 10K section about "Risk Related to Mining and Exploration," where Rise stated (at 11, emphasis added): "WE HAVE NOT ESTABLISHED THAT ANY OF OUR MINERAL PROPERTIES CONTAIN ANY MINERAL RESERVE ACCORDING TO RECOGNIZED RESERVE GUIDELINES, NOR CAN THERE BE ANY ASSURANCE THAT WE WILL BE ABLE TO DO SO." Also consider (at Id.) :

> **THE I-M MINE PROPERTY IS IN THE EXPLORATION STAGE. THERE IS NO ASSURANCE THAT WE CAN ESTABLISH THE EXISTENCE OF ANY MINERAL RESERVE ON THE I-M MINE PROPERTY … IN COMMERCIALLY EXPLOITABLE QUANTITIES. UNLESS AND UNTIL WE DO SO, WE CANNOT EARN ANY REVENUES FROM THESE PROPERTIES AND IF WE DO NOT DO SO WE WILL LOSE ALL OF THE FUNDS THAT WE HAVE EXPENDED ON EXPLORATION, IF WE DO NOT ESTABLISH THE EXISTENCE OF ANY MINERAL RESERVE IN A COMMERCIALLY EXPLOITABLE QUANTITY, THE EXPLORATION COMPONENT OF OUR BUSINESS COULD FAIL. (emphasis added)**

[THE FOLLOWING COMMENTS ARE PRESENTED IN ORDER OF THEIR PRESENTATION IN THE 2023 10K "ITEM 1A. RISK FACTORS: RISKS RELATED TO OUR BUSINESS" SECTION (since those risk items are not numbered).]

2. Rise Admits (Its Vulnerability To Increased Levels of "Volatility" or "Rapid Destabilization" That Can Create "Material Adverse Impacts" On Rise.

For reasons Rise admits in its financial statements and comments below, and as confirmed by its own accountants' concerns about Rise as a "going concern" and other risks, many Rise critics regard Rise's mining plans to be financially infeasible with good cause. While

some at the County may have incorrectly regarded such concerns about economic feasibility to have been irrelevant to them in respect of the disputed EIR/DEIR, those concerns must be fully relevant for the "financial assurances" required for any "reclamation plan" required for any vested rights claimed under the Rise Petition. As future objections will explain in more detail, all Rise's proposed safety and protection assurances are meaningless if they are unaffordable by Rise, as seems to be the case based on its own admitted financial condition. Moreover, since reclamation plans themselves may block vested rights by requiring new "uses" and "components" (e.g., not just an unprecedented water treatment plant on the Brunswick site but also a whole water replacement supply system for impacted owners of existing and future depleted wells, as required by ***Gray v. County of Madera***). Those feasibility issues will be much larger than Rise admits, even in the disputed EIR/DEIR. Of course, the obvious risk that has not been addressed by Rise, but which is obvious from reading all the Rise SEC filings since its 2017 IMM acquisitions began, is this: Rise (both the parent and its shell subsidiary) owns limited assets besides the Vested Mine Property, whose disputed value (and which is subject to liens for a large secured loan) crashes when and if its investors cease to continue to dole out the periodic funded needed to continue. Rise will quickly lack working capital for operations, as Rise admits in the following subsection of the 2023 10K and discussed next below. Suppose investors stop funding before any profitable gold is recovered and generating revenue, which the EIR/DEIR admits will first require years of start-up work. In that case, unless there are fully adequate financial assurances for a quality reclamation plan, our community will suffer the fate of many others with the misfortune to endure the more than 40,000 abandoned or bankrupt mines in California on the EPA and CalEPA lists, none of whose financial assurances proved sufficient for adequate reclamation.

3. Rise Admits (at 8-9, emphasis added): "OUR ABILITY TO CONTINUE TO OPERATE AS A GOING CONCERN DEPENDS ON OUR ABILITY TO OBTAIN ADEQUATE FINANCING IN THE FUTURE."

As discussed in the prior paragraphs and demonstrated in Rise's financial statements and comments below, Rise can only continue operating if, as, and when its investors continue to fund those operations in their discretion. Rise has consistently admitted (see discussion below) that there are no "proven [gold] reserves" to value the mine in excess of its secured debt or other, positive, admitted financial data. Thus, Rise is not creditworthy for expecting to attract any asset-based debt financing. (Any credit extensions would be based on warrants or equity kickers, such as being convertible into equity or supported by cheap warrants for stock, thus making another type of equity bet rather than a credit decision based on Rise having any financial resources capable of repaying the debt.) Thus, Rise's hope for attracting funding is fundamentally about the speculator-investors' gamble that Rise can somehow overcome all the current, and foreseeably perpetual: (i) local legal and political opposition to reopening the mine and whatever defensive law reform results locals would cause for protecting their health, welfare, environment, property, and community way of life, if somehow Rise were allowed to start mining; (ii) other risks admitted in the 2023 10K discussed herein; (iii) the business and market risks that could make mining uneconomic or non-viable, even if Rise found merchantable amounts of gold, such as if the all-in mining costs exceeded their revenue; (iv) the

natural physical risks of mining, for which there is long history, such as floods, earthquakes, etc., as well as mining accidents from negligence or get-rich-quick gambles causing cave-ins etc.; (v) the danger of environmental sciences impacting their operations, such as, for example, finding no cost-effective and legal way to dump mine waste [e.g., exposing the disputed theory of Rise selling mine waste as so-called "engineered fill"], or outlawing Rise's planned use of cement paste with toxic hexavalent chromium to shore up mine waste into bracing columns to avoid the cost of removing the waste from the mine; or (vi) many other risks that would concern such a speculator-investor, including the fact that the investor might find more attractive and less risky alternative investments, especially because there could likely be no liquidity from this mine investment (e.g., no one to buy their Rise stock), unless and until somehow in some future year Rise has overcome all the risks and challenges and is finally producing profitable gold revenue from this disputed mine.

While Rise there admits (at 8-9) that there is **"no assurance that the Company will be able to obtain adequate financing in the future or that such financing will be on terms advantageous to the Company," "management believes that the Company can raise sufficient working capital to meet its projected minimum financial obligations for the fiscal year." What about beyond that year? Is our community supposed to endure indefinitely the risk of a failed mine on a year to years basis unless and until in some distant year the Vested Mine Property becomes self-sufficient? What happens if Rise were to get approval to drain the flooded mine, makes other start-up messes, and then discovers that "management" was wrong about costs or other risks or no longer has sufficient working capital? In effect, Rise is demanding (incorrectly, in the name of its disputed version of "vested rights") that not just the County share those speculator risks, but that the County assist Rise in forcing those risks on local objectors, especially those most impacted objectors owning the surface above or around the 2585-acre underground mine who have our own competing constitutional, legal, and property rights independent of the County. Objectors decline to accept any of these admitted risks that should not be ignored by the County and will not be ignored by the courts.**

4. Rise Admits (at 9) That "We will require significant additional capital to fund our business."

This is more about the same concerns objectors have noted from the previous Rise admissions above, but Rise adds more confirmation here to what objectors stated as grounds for rejecting Rise Petition or for any other permissions for its mining goals in the EIR/DEIR or otherwise. For example, **Rise admits that: (i) "We will be required to expend significant funds to determine whether proven and probable mineral reserves exist at our properties," i.e., again admitting that no such proof of such gold reserves now exists, thereby confirming that our community, especially those owning the surface above and around the 2585-acre underground mine, will be suffering all the problems identified in hundreds of objections to the EIR/DEIR and more coming to the Rise Petition so that this Rise-speculator can gamble at our expense (without any net benefit or reason to suffer to facilitate such speculation);** (ii) "**We will be required to expend significant funds to… continue exploration and, if warranted, to develop our existing, properties," i.e., confirming that Rise has no sufficient objective intent to mine, as required for vested rights, but rather only a conditional and speculative desire to**

mine if all the conditions are "right" for such speculation, such as, for example, as admitted throughout the 2023 10K that Rise raises sufficient money to conduct sufficient exploration to determine that it is worth beginning to mine, and, if so, that it can raise sufficient money to do so in the context of all the risks that Rise admits to exist, as discussed herein; (iii) "We will be required to expend significant funds to… identify and acquire additional properties to diversify our portfolio," i.e., demonstrating that not only is Rise demanding that the County and its citizens suffer all the problems demonstrated in our many referenced objections as to this local mine, but that **our misery is also to be suffered in order to enable Rise and its investor speculators to double its gambling bet somewhere else, reducing those speculators' risks but increasing our risks (e.g., instead of using money locally as a reserve for all these admitted risks and more, Rise would spend such fund somewhere else of no possible benefit to us suffering locals whose sacrifices enabled the speculators to double their bets;** (iv) "We anticipate that we will be required to make substantial capital expenditures for the continued exploration and, if warranted, development of our I-M Mine Property…[but] We may not benefit from some of these investments if we are unable to identify commercially exploitable reserves" [from "continued exploration and, if warranted, development…"]; i.e., the reality here, and the difficulty for speculators, is that Rise is admitting the risk that, for example, its investors could fund years of legal and political conflicts with local objectors while doing the expensive start-up work (e.g., chronically disputed permitting, dewatering the mine, constructing a water treatment plant and drainage system, repairing the Flooded Mine infrastructure shaft and 72 miles of existing tunnels in order to begin exploring the Never Mined Parcels through 76 miles of new tunnels, only then to learn whether the IMM could become a profitable gold mine or whether it's a total write-off; (v) again, "We may not be successful in obtaining the required financing, or, if we can obtain such financing, such financing may not be on terms favorable to us" for such work, beyond the merits of the mine on account of factors, including the status of the national and worldwide economy [citing the example of the financial crisis 'caused by investments in asset-backed securities] and the price of metal;" (vi) **"Our inability to access sufficient capital for our operations could have a material adverse effect on our financial condition, results of operations, or prospects," i.e., that is the obvious and understated reality, but what matters are the consequences for our community and especially objectors owning the surface above and around the 2585-acre underground mine, because once the disputed mining work starts, we will all be worse off when the mining stops than we already are now,** even if there were adequate reclamation plans with sufficient financial assurances; (vii) **"We have not yet commenced commercial production at any of our properties and, therefore, have not generated positive cash flow to date and have no reasonable prospects of doing so unless successful production can be achieved at our I-M Mine Property," and "expect to continue to incur negative investing and operating cash flows until such time as we enter into successful commercial production," which Rise admits in its disputed EIR/DEIR could take years and likely considering the unknown condition of the closed and flooded 2585-acre underground mine, and all the legal and political opposition to the IMM, could take much longer;** and (viii) again, "There is no assurance that any such financing sources will be available or sufficient to meet our requirements," and "There is no assurance that we will be able to continue to raise equity capital or to secure additional debt financing, or that we will not continue to incur losses," i.e., **this is an all or nothing bet by the Rise speculators at the**

unwilling risk and prejudice of our whole community, but especially objectors owning the surface above and around the 2585-acre underground mine.

5. **Rise Admits (at 9-10) That It Has "a limited operating history on which to base an evaluation of our business and prospect," thus admitting that objectors' impacted community has no less reason to be skeptical about Rise's performance and credibility than the speculating investors Rise is warning to beware in Rise's SEC filings.**

Rise admits that "since our inception" it has had "no revenue from operations" and "no history of producing products from any of our properties." More importantly, consider the following admissions (at 9, emphasis added) **AFTER THE RISE PETITION FILING and contrary to Rise's claims for continuous activity** that Rise incorrectly describes as sufficient for vested rights to mine. (Objectors prove from Rise Petition's own Exhibit admissions the only possibly relevant work at the IMM since 1956 involved occasional and limited "drilling explorations" on only a few parcels with no actual "gold mining" uses anywhere in the IMM since at least 1956.) None of these Rise admissions support vested rights, but, to the contrary, defeat them:

> **Our Idaho-Maryland Mine Project is a historic, past-producing mine which, apart from the exploration work that we have completed since 2016, has had very little recent exploration work since 1956. We would require further exploration work in order to reach the development stage. Advancing our I-M Mine Property into the development stage will require significant capital and time, and successful commercial production from the I-M Mine Property will be subject to completing feasibility studies, permitting and re-commissioning of the mine, constructing processing plants, and other related work and infrastructure. As a result, we are subject to all of the risks associated with developing and establishing new mining operations and business enterprises, including *completion of feasibility studies to verify reserves and commercial viability, including the ability to find sufficient ore reserves to support a commercial mining operation; * …further exploration, preparing feasibility studies, permitting and construction of infrastructure, mining and processing facilities; * the availability and costs of drill equipment, exploration personnel, skilled labor, and mining and processing equipment, if required; * the availability and cost of appropriate smelting and/or refining arrangements, if required; * compliance with stringent environmental and other governmental approval and permit requirements; * the availability of funds to finance exploration, development, and construction activities, as warranted, * potential opposition from non-governmental organizations, local groups, or local inhabitant…* potential increases in …costs [for various reasons]…* potential shortages of …related supplies.**
> ***

> **…Accordingly, our activities may not result in profitable mining operations, and we may not succeed in establishing mining operations or profitably producing metals … including [at] our I-M Mine Property [for those and other stated reasons].**

As explained above, this "starting over" admission that Rise is not just planning to reopen the IMM as a continuation of anything that preexisted. Rise also admits to starting over as if it were "developing and establishing new mining operations and business enterprises." That is the opposite of vested rights and rebuts any claim to the required continuity. Rise is admitting the obvious reality that was clear to all its predecessors: reopening the mine is, in effect, starting over on the ruins of part of the old mine that has been dormant, discontinued, abandoned, closed, and flooded since at least 1956. That is NOT engaging in a continuing, nonconforming use through all those predecessors of Rise, none of whom claimed vested rights, but instead (like Rise itself until 9/1/2023) applied for permits for each such activity as the law required.

6. Rise Admits (at 10) That Its "History of Losses" Is Expected To Continue In the Future.

Among the many reasons why even vested rights work requires both a "reclamation plan" and "financial assurances" is that for each of the more than 40,000 abandoned or bankrupt mines in California on the CalEPA and EPA lists the reclamation plans and financial assurances proved to be insufficient or worse. As future objections and expert evidence will prove before the hearing, the reality confirmed in Rise's SEC filings is that Rise cannot provide any sufficient "financial assurances" for any acceptable "reclamation plan," as is obvious from its financial and other admissions. Consider these admissions (at 10, emphasis added):

> ***We have a history of losses and expect to continue to incur losses in the future.***
>
> We have incurred losses since inception, have had negative cash flow from operating activities, and expect to continue to incur losses in the future. We have incurred the following losses from operations during each of the following periods:
>
> *$3,660,382 for the year ended July 31, 2023
>
> *$3,464,127 for the year ended July 31, 2022
>
> *$1,603,878 for the year ended July 31, 2021
>
> **We expect to continue to incur losses unless and until such time as one of our properties enters into commercial production and generates sufficient revenues to fund continuing operations. We recognize that if we are unable to generate significant revenues from mining operations and/or dispositions of our properties, we will not be able to earn profits or continue operations. At this early stage of our operation, we also expect to face the risks, uncertainties, expenses, and difficulties frequently encountered**

by companies at the start-up stage of their business development. We cannot be sure that we will be successful in addressing these risks and uncertainties and our failure to do so could have a materially adverse effect on our financial condition.

As noted herein, lacking any material assets besides its disputed IMM that is already subject to secured loan liens exceeding (what objectors perceive as) the mine's conventional collateral value (hence the requirements for "equity kicker" stock warrants), these admissions explain why it is infeasible to expect this uncreditworthy (by any conventional standard) Rise to find any adequate such "financial assurances." So, why isn't the Board addressing that reality and the absence of any credible reclamation plan at the hearing? See objectors many arguments on that subject in this Exhibit and other objections, but especially including the fact that any possible reclamation would require uses and components for which no vested rights can be credibly claimed, among other things, because (like the water treatment plant that had no counterpart in 1954, or the water supply system required for the whole impacted local community by Gray v. County of Madera) there can be no vested rights for those unprecedented uses and components, especially on a parcel-by-parcel basis as required even by *Hansen* (citing and discussing *Paramount Rock* for that result).

7. Rise Complains (at 11) About How Public Opposition Allegedly Could Cause Reputational Damage That Could Adversely Affect Rise's Operations And Financial Condition, But Rise Is The Problem—Not the Victim.

Objectors are astonished that this Canadian-based miner would come to our community to attempt to reopen such a massive mine menace underneath and near our homes **and dare "to play the victim**." See the hundreds of meritorious objections to the disputed EIR/DEIR and more to come to the Rise Petition. Among the many reasons that objectors living above and around the 2585-acre underground IMM remind the County of our plight and peril as the real victims in this drama, is that we have our own, competing, constitutional, legal, and property rights at stake. Objectors are not just public-spirited community residents and voters protecting our environment and community way of life by the exercise not just of our First Amendment rights, but also by exercise of our constitutional rights to petition our government for redress of our many grievances. We were here first, before Rise came to town to speculate at our prejudice. We invested in surface homes on surface lands sold by Rise predecessors with protective deed restrictions to protect surface owners from any future miners, and we reasonably assumed that that historical IMM would be no threat because we would be protected by applicable law, environmental regulators, and responsible local governments. Now, when it is disappointed by such a correct and proper Planning Commission decision (Rise's complaint letter will be rebutted in another objection), Rise somehow claims some unprecedented priority over all of us by incorrectly claiming "vested rights." Nonsense. There is no such possible thing as Rise silencing objectors' lawful exercise of competing interests explaining why Rise is wrong because somehow being wrong might harm is reputation, especially since Rise has itself harmed its reputation by its objectionable conduct and threats.

Such objectors are properly protecting our homes, families, and property values and rights from the risks and harms threatened by this mining in legally appropriate ways, as

demonstrated by the foregoing objection and by hundreds of other meritorious record objections to the EIR/DEIR with more to come to the Rise Petition. For example, such objectors' groundwater and existing and future well water would be dewatered 24/7/365 for 80 years and flushed away by Rise down the Wolf Creek. Rise came to town to speculate by seeking to reopen a dormant gold mine closed, discontinued, abandoned, and flooded since at least 1956. **That (and more) makes us existing resident surface owners above and around the 2585-acre underground IMM the victims, not Rise.** So far, contrary to many record objections, Rise has entirely ignored or disregarded objectors' issues and concerns as if this were just a dispute about how Rise uses its owned property, as distinguished from how Rise impacts objectors' own properties. Contrary to the disputed Rise Petition, Rise has no vested or other right to mine here. Objectors are not taking anything away from Rise, but, to the contrary, Rise is taking much away from objectors by 24/7/365 operations for 80 years that are utterly incompatible with our preexisting, suburban way of life and our competing property rights and values. And for what? For the profit for this Canadian-based miner and its distant speculating investors. What this Exhibit demonstrates is that Rise not only admits that speculation and the huge risks that such investors are taking. But if the County approves anything for Rise, it would be imposing all those same risks (and additional burdens) on unwilling local objectors with no net benefit, just massive risks, and harms, including the prolonged erosion of our property values as Rise "explores" and indefinitely waits for the data it and its speculator money sources to decide whether or not to proceed with the mining. Under these circumstances, there is no such thing as vested rights for such an indefinite, conditional option to mine.

Consider here in greater detail as the Board reads such Rise risk admissions in this and previous Rise SEC filings that such admissions not only describe the risks for Rise investors and for us impacted local objectors, but also for our whole community. The incompatibility of such mining with our surface community above and around the 2585-acre underground IMM is demonstrated by the negative impact our property values, which also harms the County's property tax revenue (plus declining sales tax revenue from tourists who don't come here for the miseries of a working mine). All of the local service industries also will suffer to the extent they depend, for example, on such surface owners building on their lots and residents repairing or remodeling their homes. Also consider this dilemma: what do objectors tell a prospective buyer or its mortgage lender about the IMM risks? We could hand them the thousands of pages of Rise EIR/DEIR and Rise Petition filings, plus all the meritorious rebuttals and objections, and say: "make your own decision, and buyer beware." That will guarantee the depression in our property values as much as will their brokers warning them of the risks of property value declines regardless of the merits merely because of the stigma: no buyer wants to pay top dollar for the opportunity to live in what has been a wonderful and beautiful place that now is at such risk for such mining underneath them 24-7-365 for 80 years. Even if the buyer or its lender were willing to risk trusting Rise and its enablers and to disregard the hundreds of record objections and the concerns of almost every impacted resident, wouldn't that buyer still follow his or her broker's advice that there are equivalent houses that now have become better investments at a safer distance from the IMM? Indeed, wouldn't even such a Rise trusting buyer (if such an impacted, local person exists) decide in any case that it is "better to be safe than sorry"? Also, even if the buyer were both trusting and not risk-averse, his or her mortgage lender will only lend 80 or 90% of the appraised value of a house. If the appraised value is less than the asking

price or the pre-Rise value, won't the buyer always drop his or her offer to that now lower appraised value? (Most buyers need that financing and are not eager to stretch further for a down payment.) Once one appraiser causes that predictable price drop, that lower sale price becomes the new "comparable" for all the other appraisals to follow, and the market prices begin to spiral down. Almost every broker in town recognizes that property value problem, whether or not they wish to speak candidly on that topic, proving the obvious: Such underground mining is incompatible beneath surface homes in a local community like this. Defending one's home is not about harming Rise's reputation or prejudice about mining or such speculators. Few buyers anywhere ever want to live above a working mine, regardless of the truth or falsity of Rise's public relations and other claims about the quality of its mining.

In any event, independent of the many disputes with, and objections to, Rise Petition, the EIR/DEIR, and other Rise "communications," Rise's own admissions in its SEC filings and elsewhere, such as those addressed in this Exhibit, are not reassuring to surface owners or any potential buyer or lender (or its appraisers.) Also, what does a resident seller say to a buyer who looks at the Rise financial statements and admissions and asks, why should I assume Rise can afford any of the safety and other protections Rise promises to make its mining tolerable and legally compliant? How can Rise acquire sufficient "financial assurances" for an adequate "reclamation plan?" Isn't Rise asking all of us existing and future owners to assume (for no good reason or benefit) the risks against which Rise is warning his speculator-investors? Why should any existing or future resident do that? In any case, before Rise starts accusing its resistors of causing it reputational damages, Rise should consider that it cannot possibly complain about objectors exposing Rise admissions that are contrary to its Rise Petition, EIR/DEIR, and other communications. If Rise has credible answers to our concerns, objectors have not yet seen them, leaving Rise with additional credibility problems of its own making and more reasons why, Rise should look to itself instead of at its critics.

8. Rise Admits (at 11) That "Increasing attention to environmental, social, and governance (ESG) matters may impact our business.

Objectors refer the reader to the previous response to the more specific complaint about Rise's reputation. However, the disputed EIR/DEIR demonstrated that Rise is a climate skeptic/denier, which is a cause for concern about any miner seeking to dewater the mine 24/7/365 for 80 years by draining surface owned groundwater needed not just for lateral and subjacent support to protect such owners from "subsidence," but also to save our surface forests and vegetation from the chronic droughts assured by climate change that is an undeniable part of our actual reality and cannot continue to be disregarded in Rise's "alternate reality" in which climate change issues are "too speculative" to address (e.g., where Rise's disputed EIR/DEIR incorrectly relied on prior decades of average surface rainfall to attempt to justify its 24/7/365 dewatering for 80 years as if there were no climate change/dryness/drought threat issues.) See, e.g., *Keystone, Gray v. County of Madera, and Varjabedian.*

9. Rise Admits (at 11-12) Risks Related to Mining and Exploration.

Rise admitted (Id. emphasis added): "WE HAVE NOT ESTABLISHED THAT ANY OF OUR MINERAL PROPERTIES CONTAIN ANY MINERAL RESERVE ACCORDING TO RECOGNIZED RESERVE GUIDELINES, NOR CAN THERE BE ANY ASSURANCE THAT WE WILL BE ABLE TO DO SO." Rise also admitted (at Id. emphasis added):

> **THE I-M MINE PROPERTY IS IN THE EXPLORATION STAGE. THERE IS NO ASSURANCE THAT WE CAN ESTABLISH THE EXISTENCE OF ANY MINERAL RESERVE ON THE I-M MINE PROPERTY … IN COMMERCIALLY EXPLOITABLE QUANTITIES. UNLESS AND UNTIL WE DO SO, WE CANNOT EARN ANY REVENUES FROM THESE PROPERTIES AND IF WE DO NOT DO SO WE WILL LOSE ALL OF THE FUNDS THAT WE HAVE EXPENDED ON EXPLORATION. IF WE DO NOT ESTABLISH THE EXISTENCE OF ANY MINERAL RESERVE IN A COMMERCIALLY EXPLOITABLE QUANTITY, THE EXPLORATION COMPONENT OF OUR BUSINESS COULD FAIL.**

This is why objectors describe Rise and its investors as speculators. They are making a bet that there is profitable gold that they cannot prove exists there; i.e., they are making a (presumably, perhaps, educated) guess. But this is a "heads they win, tails we lose" coin flip risk from the perspective of local surface owners above and around the 2585-acre underground mine. Suppose Rise cannot find what it seeks before its investors cut off its funding. In that case, our community will suffer the mess (absent sufficient reclamation plan "financial assurances," but still not making locals whole for the lingering losses of depressed property values and depleted groundwater or existing or future well water.) On the other hand, if Rise succeeds in its gamble, us locals suffer all the miseries that accompany living above or around a working gold mine. See, e.g., record objections to the disputed EIR/DEIR and this Rise Petition.

In addition. Rise admitted (at 12): "Even if we do eventually discover a mineral reserve on one or more of our properties, there can be no assurance that they can be developed into producing mines and that we can extract those minerals. Both mineral exploration and development involve a high degree of risk, and few mineral properties that are explored are ultimately developed into producing mines." Rise then explained (at Id.) many reasons why "an established mineral deposit" is either "commercially viable" or not, such as various factors that "could increase costs and make extraction of any identified mineral deposits unprofitable."

10. **Rise Admits (at 12, emphasis added) That "mineral exploration and production activities involve a high degree of risk and the possibility of uninsured losses."**

Rise admits (Id.) that: "EXPLORATION FOR AND THE PRODUCTION OF MINERALS IS HIGHLY SPECULATIVE AND INVOLVES GREATER RISKS THAN MANY OTHER BUSINESSES. Most exploration programs do not result in mineralization that may be of sufficient quantity or quality to be profitably mined." Rise added that: "OUR OPERATIONS ARE …SUBJECT TO ALL OF THE OPERATING HAZARDS AND RISKS NORMALLY INCIDENTAL TO EXPLORING FOR AND DEVELOPMENT OF MINERAL PROPERTIES, such as, but not limited to: … *environmental

hazards; * water conditions; * difficult surface or underground conditions; * industrial accidents; … *failure of dams, stockpiles, wastewater transportation systems, or impoundments; * unusual or unexpected rock formations; and * personal injury, fire, flooding, cave-ins, and landslides." Rise then reports the unhappy consequences of such risks for the speculator-investors, but not on the impacted victims, such as those living on the surface above or around the 2585-acre underground IMM, which is the consequence that should most concern the Board. Again, as described above, any Board support for Rise would make us objecting locals suffer from the same risks about which Rise is warning its investors, as it is required to do by the securities laws. Among the many reasons why objectors owning the surface above and around the 2585-acre underground mine are asserting their own competing constitutional, legal, and property rights is that we prefer not to be vulnerable to anyone imposing those risks on us. Our independent objection rights and standing should enable us to better protect our own interests.

11. **Rise Admits (at 13) That It Is Vulnerable To Gold Commodity Prices, Because Such "Commodity price volatility could have dramatic effects on the results of operations and our ability to execute our business plans."**

This obvious truth is just one more reason why Rise's admitted financial concerns and other risks (and its consequent insufficient creditworthiness) expose impacted locals to the consequent risks of Rise lacking the funds when needed to pay for the safety, mitigation, and protections it and its enablers incorrectly claim is sufficient. That is another of many risk factors that should disqualify Rise from reopening the IMM, since Rise's capacity to perform such duties may be or become illusory. All these Rise admitted risk factors demonstrate that Rise has little or no margin for surviving any such disappointments or adverse events. Yet, Rise's disputed EIR/DEIR, Rise Petition, and other filings with the County do not address those consequences to our community, especially on impacted locals living above and around the 2585-acre underground IMM, when those risks occur and Rise has exhausted its funding. Also, Rise's disputed intent for vested rights to mine cannot be so conditional and indefinite. Stated another way, neither Rise nor its predecessors can preserve vested rights to mine by an alleged future intent, if and when the conditions and circumstances it requires all exist at such future dates, such as sufficient funding, ideal market conditions, permits and approvals without burdensome conditions, the absence of any such 25 plus admitted or other foreseeable risks occurring, and the absence of all the other factors Rise admits to being possible obstacles to Rise's execution and accomplishment of its mining plans.

12. **Rise Admits (at 13, emphasis added) That "evaluation uncertainties …could result in project failure" such as incorrect "[e]stimates of mineralized material and resources."**

That is another example of how Rise admissions of risks for investors are likewise admissions of bigger problems for our community, especially on those objectors owning the surface above and around the 2585-acre underground IMM. For example, Rise so admits that such risks (detailed further below): "could result in uncertainties that cannot be reasonably

eliminated from the process of estimating mineralized material and resources/reserves. If these estimates were to prove to be unreliable, we could implement an exploration plan that may not lead to commercially viable operations in the future." Id. emphasis added. The Board should ask the hard, follow-up questions that objectors would ask if allowed, such as what happens then to us locals? Consider what Rise admitted (Id.) about those "risks associated with being able to accurately predict the quantity and quality of mineralized material and resources/reserves" for Rise's "exploration and future mining operations." Rise admits that all these analyses consist of **"using statistical sampling techniques,"** which is necessary because neither Rise nor its relevant predecessors have actually investigated the actual conditions in the dormant, discontinued 2585-acre underground mine that closed and flooded by 1956.

There is no sufficient data provided by Rise in any filing objectors have found that reveal the data needed to evaluate Rise's critical "statistical sampling techniques." However, judging by the disputed and massively incorrect well-testing methodology proposed by Rise in its disputed EIR/DEIR challenged in record objections, objectors have good cause not to accept Rise's such results without thoroughly re-examining its methodology and analyses. For example, Rise cannot satisfy its burden of proof by simply announcing the results from its mystery formulas from "samples obtained from appropriately placed trenches, test pits, underground workings, and intelligently designed drilling." Id. This will be disputed the same way objectors have and will dispute Rise's well sampling but adding that the surface above and around the 2585-acre underground IMM is owned by objectors or others who would not consent to Rise drilling test holes on their properties.

Also note, for example, that Rise's admitted lack of resources prevents it from "doing the job right" in all the correct and necessary places for greater accuracy. By that polling analogy, there will be a vastly higher margin of error for a poll that samples 100 people versus one that samples 10,000 people, and, here, Rise and is predecessors sampled too few locations for tolerable accuracy and for too few purposes relevant to our community's safety and well-being (as distinct from pleasing Rise's investors). See the related Rise admission in the following paragraph. Furthermore, this following Rise disclaimer may be sufficient for its willing speculator-investors, but it is legally deficient for imposing the risks and burdens of this mining on our community, especially those of us owning the surface above and around the 2585-acre underground IMM:

> **THERE IS INHERENT VARIABILITY OF ASSAYS BETWEEN CHECK AND DUPLICATE SAMPLES TAKEN ADJACENT TO EACH OTHER AND BETWEEN SAMPLING POINTS THAT CANNOT BE ELIMINATED. ADDITIONALLY, THERE ALSO MAY BE UNKNOWN GEOLOGIC DETAILS THAT HAVE NOT BEEN IDENTIFIED OR CORRECTLY APPRECIATED AT THE CURRENT LEVEL OF ACCUMULATED KNOWLEDGE ABOUT OUR PROPERTIES THIS COULD RESULT IN UNCERTAINTIES THAT CANNOT BE REASONABLY ELIMINATED FROM THE PROCESS OF ESTIMATING MINERAL MATERIAL AND RESOURCES/RESERVES. IF THESE ESTIMATES WERE TO PROVE TO BE UNRELIABLE, WE COULD IMPLEMENT AN EXPLORATION PLAN THAT MAY NOT LEAD TO**

> **COMMERCIALLY VIABLE OPERATIONS IN THE FUTURE.** Id. (emphasis added)

Again, objectors ask, and the Board should ask, what happens to us then?

13. Rise Also Admits (at 13) Its Lack of Relevant Knowledge, Creating Risks for "material changes in mineral/reserve estimates and grades of mineralization will affect the economic viability of placing a property into production and a property's return on capital."

The comments in the previous paragraph apply equally here. Indeed, in this risk comment, Rise admits to our such concerns by stating (Id. emphasis added**): "MINERALS RECOVERED IN SMALL SCALE TESTS MIGHT NOT BE DUPLICATED IN LARGE SCALE TESTS UNDER ON-SITE CONDITIONS OR IN PRODUCTION SCALE."** Rise further confesses its lack of work to acquire necessary knowledge for it factual conditions, which are not just uninformed opinions:

> As we have not completed feasibility studies on our I-M Mine Property and have not commenced actual production, we do not have mineral resources, and any estimates may require adjustments or downward revisions. In addition, the grade of ore ultimately mined, if any, may differ from that indicated by future feasibility studies and drill results. Id.

Again, the Board should ask Rise the hard questions objectors would ask if we were allowed to do so in this stage of the process, such as: SINCE THE FATE OF US IMPACTED LOCALS OWNING THE SURFACE ABOVE AND AROUND THE 2585-ACRE UNDERGROUND MINE DEPENDS, AMONG MANY OTHER RISKS, ON THE ACCURACY OF SUCH RISE "STATISTICAL SAMPLING TECHNIQUES," WHAT IS THE MARGIN OF ERROR IN ITS PREDICTIONS, AND WHAT ARE THOSE SAMPLING TECHNIQUES, SO THAT WE CAN CHALLENGE THEM? WHO IS "CHECKING RISE'S MATH" AND THE ASSUMED FACTS IN ITS VARIABLES? Consider by analogy the similar statistical sampling techniques used in political polling. There is always an admitted margin of error (and a greater unadmitted margin of error) demonstrated by the bias injected in the formulas by partisan poll takers. (e.g., If the pollster assumes a 63% election turnout for one side and a 51% turnout for the other side, the margin of error in the resulting prediction could be huge, when the reverse proves true by hindsight.) If the Board would not trust a partisan poll that relies on partisan variables and discloses neither its formulas nor its margin of errors, why should the Board or anyone else trust our community and personal fates to Rise's partisan statistics without a thorough study of Rise's math and its chosen assumptions for the key variables? (As to motive for being "realistic" versus "aggressive," note that Rise repeatedly admits that it is continuously dependent on periodic funding from its investors, and negative data could end that funding and the entire project, including the managers' jobs.)

14. Rise Again Admits (at 13-14) That Its Mining Plan Is Conditional On the Results of Its Exploration, Thereby Defeating Its Vested Rights.

Rise admits again that, if its exploration does not produce satisfactory results, Rise will not mine. Id. (This was previously admitted in terms of Rise lacking the capacity to mine (or even unconditionally to commit to mine) unless it is able to continuously find the needed financial and other support needed from its investors.) For example, Rise states (emphasis added): "OUR LONG-TERM SUCCESS DEPENDS ON OUR ABILITY TO IDENTIFY MINERAL DEPOSITS ON OUR I-M MINE PROPERTY … THAT WE CAN THEN DEVELOP INTO COMMERCIALLY VIABLE MINING OPERATIONS." Id. emphasis added. Furthermore, Rise admits that:

> **MINERAL EXPLORATION IS HIGHLY SPECULATIVE IN NATURE, INVOLVES MANY RISKS, AND IS FREQUENTLY NON-PRODUCTIVE. These risks include unusual or unexpected geologic formations and …[listing various risks already admitted by Rise, including the need for "capital available for exploration and development work."]**
>
> **Substantial expenditures are required to establish proven and probable reserves through drilling and analysis to develop …[listing again what is needed for mining and how they determine "whether a mineral deposit will be commercially viable]. WE MAY INVEST SIGNIFICANT CAPITAL AND RESOURCES IN EXPLORATION ACTIVITIES AND FIND IT NECESSARY TO ABANDON SUCH INVESTMENTS IF WE ARE UNABLE TO IDENTIFY COMMERCIALLY EXPLOITABLE MINERAL RESERVES. THE DECISION TO ABANDON A PROJECT MAY HAVE AN ADVERSE EFFECT ON THE MARKET VALUE OF OUR SECURITIES AND THE ABILITY TO RAISE FUTURE FINANCING. Id. (emphasis added.)**

But again, nowhere in the disputed EIR/DEIR, Rise Petition, or other Rise filings does Rise ever explain what happens next to the mine and our community, especially those of us living on the surface above or around the mine, when Rise (or the investors whose money is required for Rise to do anything material) decides the results of exploration are unsatisfactory and "abandons the project." Who cleans up the mess Rise leaves behind? That is why "reclamation plans" and "financial assurances" are essential, and why it is a legal and policy mistake to separate the adequacy of such reclamation plans and financial assurances from the dispute over the existence of vested rights, especially since Rise's reclamation plan will not have vested rights and will need conventional permits.

But consider this from the alternative perspective of the impacted local objectors. Rise admits that any intent to actually mine is dependent on many pre-conditions, such as successful future exploration and related fund raising, meaning that Rise does not presently have the required objective and unconditional intent to mine that is required for vested rights. But suppose (as the law requires) the reclamation plan and financial assurance plans

are decided at the same time as the vested rights. In that case, it will become clear that there can be no such vested rights because no Rise investors will go "all in" at this exploration stage on providing "financial assurances" in advance to Rise for the massive reclamation plan required for any such mining. By reference to the gambler analogy above, even if Rise were willing and intending to push all of its chips onto the table bet at the start before seeing the next open face cards, it is hard to imagine the investor with all the chips needed so to commit "to go all in" would prematurely commit to that gamble, especially considering all the risks not just admitted by Rise in these SEC filings but also those demonstrated by record objections to the disputed EIR/DEIR and Rise Petition. Stated another way, the objective test of any vested rights intent to mine is proven or disproven by whether or not the miner's money source is willing to go "all in" now, i.e., at the time the vested rights questions are to be decided. Otherwise, what Rise Petition is incorrectly claiming without any precedent is that such miners can have an unlimited option to mine if they wish after they proceed with indefinite exploration activities while trying to raise the required funding and while us surface owners and our community continue indefinitely to suffer the stigmas depressing our property values. No applicable law gives such an indefinite option to Rise at such objectors' prejudice.

15. **Rise Admits (at 14-16, emphasis added) That there are "significant governmental regulations" that may prevent Rise from obtaining "all required permits and licenses to place our properties into production."**

THIS ADMISSION (LIKE OTHERS) IS CONTRARY TO RISE PETITION'S DISPUTED CLAIM (AT 58) THAT RISE'S DISPUTED VESTED RIGHTS EMPOWER RISE TO DO WHATEVER IT PLANS "WITHOUT LIMITATION OR RESTRICTION."

Apparently, that Rise Petition reflects Rise's litigation goal (e.g., to see how much it can "get away with" free of regulation or obligation), but to avoid liability to investors Rise does not dare that same outrageous and incorrect claim in the Rise SEC filings. By analogy, this is like some "alternative reality" politician irresponsibly claiming something absurd at a rally, but then admitting the contrary reality when he or she is under oath and subject to consequences for false statements. See the Initial Evidence Objection, including its Table of Cases And Commentaries … as well as other record objections to any such Rise vested rights claims. Notice that, besides incorrectly discussing abandonment (e.g., ignoring the required use-by-use, component-by-component, and parcel-by-parcel analysis, and the requirements of many cases cited by objections that Rise ignores), Rise implicitly asserts its incorrect unitary theory of vested rights as if any "use" or "component" on any "parcel" allows all uses and components on all parcels until abandoned. But, as objectors prove, Rise overstates what vested rights, if any existed anywhere (which objectors dispute), could accomplish for Rise, although the scope of that overstatement is different between the Rise Petition versus this SEC filing and others (as well as the EIR/DEIR and other Rise filings at the County).

Rise also states (at 14, emphasis added) that "THE COMPANY'S OPERATIONS, INCLUDING EXPLORATION AND, IF WARRANTED, DEVELOPMENT OF THE I-M MINE PROPERTY, REQUIRED PERMITS FROM GOVERNMENTAL AUTHORITIES AND WILL BE GOVERNED BY LAWS AND REGULATIONS, INCLUDING …[a general and insufficient list of applicable laws, none of

which apply to the conflicts between the surface owners above and around the 2585-acre underground mine versus Rise that all Rise filings continue to ignore entirely.]

In any case, the 2023 10K is both internally inconsistent and contrary to the Rise Petition. For example, Rise claims (Id. at 14) that its disputed vested rights empower it to avoid a use permit: **"Mining operations on the I-M Mine Property are a vested use, protected under the California and federal Constitutions, and A USE PERMIT IS NOT REQUIRED FOR MINING OPERATIONS TO CONTINUE." HOWEVER, ON THE NEXT PAGE, RISE SEEMS TO ADMIT (AT 15, EMPHASIS ADDED) THAT USE PERMITS ARE STILL REQUIRED AS FOLLOWS:**

> **Subsurface mining is allowed in the County M1 Zoning District, where the I-M Mine Property is located, with approval of a "Use Permit." Approval of a Use Permit for mining operations requires a public hearing before the County Planning Commission, whose decision may be appealed to the Board of Supervisors. Use Permit approvals include conditions of approval, which are designed to minimize the impact of conditional uses of neighboring properties. … [After describing the 11/19/2019 Use Permit application for underground mining and Rise's proposed additions, like the "water treatment plant and pond, Rise said] There is no assurance our Use Permit application will be accepted as submitted. If substantial revisions are required, our ability to execute our business plan will be further delayed.**

Thus, while the Rise Petition describes evading the requirement for a use permit, and this SEC filing discussion begins with a similar disclaimer of the need for such a use permit, this 2023 10K discussion still contemplates a use permit. Moreover, **Rise also admits that: "Existing and possible future laws, regulations, and permits governing the operations and activities of exploration companies or more stringent implementation of such laws, regulations, or permits, could have a material adverse impact on our business and caused increases in capital expenditures or require abandonment or delays in exploration."** What Rise does not do is address the DEIR admission at 6-14 claiming that the whole project is economically infeasible if Rise cannot operate 24/7/365 for 80 years, which extraordinary timing impositions many objectors expect law reforms to prevent by all appropriate legal and political means.

Indeed, AFTER EXPLAINING THE COSTS AND BURDENS OF SUCH LAWS, REGULATIONS, AND PERMITS, RISE WARNS THAT IT "CANNOT PREDICT IF ALL [SUCH] PERMITS… WILL BE OBTAINABLE ON REASONABLE TERMS." RISE THEN ADDS (at 15): "WE MAY BE REQUIRED TO COMPENSATE THOSE SUFFERING LOSS OR DAMAGE BY REASON OF OUR MINERAL EXPLORATION OR OUR MINING ACTIVITIES, IF ANY, AND MAY HAVE CIVIL OR CRIMINAL FINES OR PENALTIES IMPOSED FOR VIOLATIONS OF, OR OUR FAILURE TO COMPLY WITH, SUCH LAWS, REGULATIONS, AND PERMITS." See Rise's financial admissions below demonstrating that Rise both lacks the insurance and the financial resources to pay any material judgment to such victims. (Again, there is no discussion about the consequences of Rise harms to impacted surface residents or their properties above or around the underground IMM.)

This confusion becomes more complicated because Rise now also admits (at 16) what objectors thought Rise denied for its vested rights, that, besides a use permit, Rise also (i) needs to comply with SMARA, (ii) needs to have a reclamation plan and financial assurances

as required in SMARA, (iii) and must comply with CEQA, making all our objections to the disputed EIR/DEIR part of this Rise Petition dispute.

16. Rise Admits (at 16) That Its "activities are subject to environmental laws and regulations that may increase our costs of doing business and restrict our operations."

This is another example of the SEC filings conflicting with the Rise Petition (at 58) incorrectly claiming that Rise can operate as it wishes with vested rights "without limitation or restriction." See objectors' prior discussion of such confusion and disputes. This section correctly observes that environmental and related laws and regulations are evolving to being stricter and more burdensome for miners, and thereby "may require significant outlays and may cause material changes or delays in our operations and future activities. It is possible that future changes in these laws or regulations could have a significant adverse impact on our properties or some portion of our business, causing us to re-evaluate those activities at that time." As discussed above, objectors worry that, when Rise finally decides it cannot accomplish its objectionable plans or its investors stop doling out its essential working capital, our community will be much worse off than we already are now if Rise were allowed to start its operations before they stop again. This is a constant theme throughout these SEC filings where Rise warns investors that they may lose their investments when Rise abandons the project for any of these many such risk-related reasons. Such Rise admissions of risks and consequent abandonment should require the Board to be extremely protective of our community, especially those living on the surface above and around the 2585-acre underground IMM, such as by insisting on the strongest possible reclamation plans and financial assurances. The EPA and CalEPA lists include more than 40,000 such abandoned or bankrupt mines, and what they have in common is poor or worse reclamation plans and financial assurances.

17. Rise Contends (at 17) That Its Compliance With Climate Change Laws and Regulations Could Increase Its Costs And "have a material adverse effect on our business."

Suppose the Board compares this Rise commentary with Rise's responses to objections to the DEIR and objectors' rebuttals to the EIR's evasions of those meritorious objections. In that case, the Board will see a shift from comprehensive denial and evasion in the disputed EIR/DEIR to this strange and disputed appeal for sympathy about the costs and burdens Rise fears from climate change that it still regards as "highly uncertain" (and previously disregarded in the EIR/DEIR disputes as "too speculative.") When objectors say "strange," Rise again is protesting that "any adverse publicity in the global marketplace about potential impacts on climate change by us or other companies in our industry could harm our reputation." While the hundreds of objections to the disputed EIR/DEIR addressed climate change in many ways, objectors have been particularly focused on the EIR/DEIR's incorrect use, for example, of irrelevant historical surface average rainfall data to justify the massive 24/7/365 dewatering for 80 years that would drain groundwater (and existing and future well water) owned by surface owners living above

and around the 2585-acre underground IMM, purporting to treat it in the disputed, proposed water treatment plant "component" (for which there can be no vested rights because it has no precedent in 1954) and then flush our water away down the Wolf Creek. Notice in the following quote (at 17) about how Rise now deals with the reality of increasing climate change droughts and chronic dryness by making this about Rise instead of about how Rise makes this problem massively worse for our community in the most objectionable ways:

> Water will be a key resource for our operations and inadequate water management and stewardship could have a material adverse effect on our company and our operations. While certain aspects relating to water management are within our ability to control, extreme weather events, resulting in too much or too little water can negatively impact our water management practices. The effects of climate change may adversely impact the cost, production, and financial performance of our operations.

Again, nowhere does Rise even attempt realistically to address Rise's threat to take objecting surface owners' groundwater or well water, except for a few (e.g., just 30? Mine neighbors along East Bennett Road) compared to the hundreds of existing, impacted well owners plus many more when one considers, as the law requires, the rights of all (thousands) surface owners above and around the 2585-acre underground mine to tap their groundwater in **future wells** (that Rise ignores) to mitigate drought and other climate change dryness. See *Keystone, Gray v. County of Madera, and Varjabedian.*

18. Rise Admits (at 17-18) That "land reclamation requirements for our properties may be burdensome and expensive" even without considering any of the competing, constitutional, legal, and property rights of objecting surface owners above and around the 2585-acre underground mine.

After noting some general reclamation requirements (again ignoring such surface owners' competing, constitutional, legal, and property rights, and thereby underestimating the scope and intensity of its reclamation and other obligations), Rise complains (at 18, emphasis added):

> In order to carry out reclamation obligations imposed on us in connection with our potential development activities, we must allocate financial resources that might otherwise be spent on further exploration and development programs. **We plan to set up a provision for our reclamation obligations on our properties, as appropriate, but this provision may not be adequate. If we are required to carry out reclamation work, our financial position could be adversely affected.**

FIRST, vested rights require not just reclamation obligations but also "financial assurance," which cannot be satisfied by what Rise's 2023 10K calls "setting up a provision" (i.e., setting aside some reserve funds, probably on a legally and economically illusory basis, where such

set asides are vulnerable to judgment creditors and to disappointing treatment in any bankruptcy case), as our expert will address when the County or county is willing to hear our objections to Rise's reclamation plans and financial assurances, which should be heard now to defeat Rise's vested rights claims, because such reclamation uses and components on each parcel need their own vested rights and Rise cannot achieve any of them.) See Rise's admitted financial condition below which makes its "set up of provisions" worse than unsatisfactory. SECOND, as Hardesty and other cases demonstrate, this underground mining is a different "use" for vested rights analysis than surface mining "uses." Reclamation of underground mining harms, such as draining our community's groundwater and existing and future well water, is massively more expensive than Rise admits or contemplates, since it ignores those issues entirely. But see *Keystone, Gray v. County of Madera, and Varjabedian.* ***THIRD,*** despite ample warning in meritorious record EIR/DEIR objections explaining the toxic water pollution menace of hexavalent chromium confirmed in the CalEPA and EPA websites' studies and evidence and illustrated by the case study of how such CR6 pollution killed Hinkley, CA and many of its residents as illustrated in the movie, *Erin Brockovich,* Rise has not renounced its objectionable plan to pipe cement paste with hexavalent chromium into the underground IMM to shore up mine waste into columns. If, despite massive funding from the utility's settlement in that historic case, that town still has been unable to remediate its groundwater after all these years. See www.hinkleygroundwater.com. Rise can hardly be expected to do better when it still refuses to confront that obvious risk.

19. Rise Admits (at 18) harms from "intense competition in the mining industry."

This reveals one more of the many ways in which Rise is positioned to fail, since it has no sufficient financial cushion on which to rely when it suffers any of the many risks and problems it admits may be fatal to it. Rise's concluding admission on this topic is also telling for another reason: despite admitting the lack of resources that render Rise unable to afford to accomplish any part of its plans for the I-M Mine Property, Rise wants to "diversify" and start buying more mines; i.e.: "If we are unable to raise sufficient capital our exploration and development programs may be jeopardized or we may not be able to acquire, develop, or operate additional mining projects."

20. Rise Admits (at 18) that it is vulnerable to any "shortage of equipment and supplies.

21. Rise Admits (at 18) that "[j]oint ventures and other partnerships, including offtake arrangements, may expose us to risks."

Rise's chronically distressed financial condition is admitted below and in other Rise SEC filings, that demonstrate Rise's lack of the resources or credit to accomplish any of its material objectives or to satisfy any material obligations it contemplates without continuous equity-based funding from its investors. Many objectors have worried about "who may be behind the

curtain" and whether they might be an even bigger risk to our community than Rise. In this admission paragraph, Rise states the obvious:

> We may enter into joint ventures, partnership arrangements, or offtake agreements … Any failure of such other companies to meet their obligations to us or to third parties, or any disputes with respect to the parties' respective rights and obligations, could have a material adverse effect on us, the development and production at our properties, including the I-M Mine Property, and on future joint ventures … could have a material adverse effect on our results…

Perhaps more than in most industries, there are some "aggressive in the extreme" players in the mining industry, and many such miners operate through "expendable" shell subsidiaries that they may not hesitate to place into strategic bankruptcies (or foreign insolvency proceedings for which they may seek US Bankruptcy Code Chapter 15 accommodations) that would create problems for everyone. This industry may also suffer its share of "loan to own" hedge funds (or the like), which can create difficulties for everyone else. This is another risk factor against which the County should prepare to protect our community, especially those living above and around the 2585-acre underground mine.

22. **Rise Admits (at 18) that it "may experience difficulty attracting and retaining qualified management" and that "could have a material adverse effect on our business and financial condition."**

23. **Rise Admits (at 18) that currency fluctuations could become a problem.**

24. **Rise Admit (at 19) that "[t]itle to our properties may be subject to other claims that could affect our property rights and claims."**

While it seems likely that major disputes by third parties over title to the IMM would have surfaced by now, the real question is whether, or to what extent, Rise anticipates attempting to solve its problems by asserting disputed claims to expand its alleged rights, titles, and interests. For example, what groundwater rights does Rise claim to empower it to dewater the mine 24/7/365 for 80 years? Also see the Rise's issues herein of concern to owners of surface properties above and around the 2585-acre IMM.

25. **Rise Admits (at 19) that it may attempt to "secure surface access" or purchase required surface rights" or take other objectionable actions to acquire surface access (all of which are prohibited in the deeds by which Rise acquired the IMM, as admitted in the Rise Petition Exhibits and earlier year SEC 10K filings).**

If the County wonders why us surface owners living above or around the 2585-acre underground mine have been so defensive and outspoken against the mine, in part, it is from

concern (in the case of some objectors born of experience) that Rise may battle for access to the surface to promote its opportunity to plunder the ground below the 200 foot deep surface rights of objecting surface owners, especially as to the groundwater and existing and future well water rights. See Initial Evidence Objections proving by Rise Petition's own exhibits that such Rise assertions in this 2023 10K (compare with the prior 10K's) admits are meritless. Such implied or express Rise warnings including the following (at 19, emphasis added):

> **In such cases [i.e., where Rise does not own the surface above and around its underground mine it decides it wants to use], applicable mining laws usually provide for rights of access for the purpose of carrying on mining activities; however, the enforcement of such rights through the courts can be costly and time consuming. It is necessary to negotiate surface access or to purchase surface rights if long-term access is required. [This is wrong and contrary to Rise's deed restrictions attached as an Exhibit to its Rise Petition.] There can be no guarantee that, despite having the right at law to carry on mining activities, we will be able to negotiate satisfactory agreements with any such existing landowners/occupiers for such access or purchase such surface rights, and therefore we may be unable to carry out planned mining activities. In addition, IN CIRCUMSTANCES WHERE SUCH ACCESS IS DENIED, OR NO AGREEMENT CAN BE REACHED, WE MAY NEED TO RELY ON THE ASSISTANCE OF LOCAL OFFICIALS OR THE COURTS IN SUCH JURISDICTION THE OUTCOMES OF WHICH CANNOT BE PREDICTED WITH ANY CERTAINTY. OUR INABILITY TO SECURE SURFACE ACCESS OR PURCHASE REQUIRED SURFACE RIGHTS COULD MATERIALLY AND ADVERSELY AFFECT OUR TIMING, COST, AND OVERALL ABILITY TO DEVELOP ANY MINERAL DEPOSITS WE MAY LOCATE.**

None of that is correct in respect to the IMM, which is the only mine Rise presently reports owning in these SEC filings or in its financial statements. FIRST, this demonstrates there can be no vested rights for Rise as to the 2585-acre underground mine, since Rise admits it needs surface access for such mining that Rise has not had (and neither did many predecessors in the chain of title.) Rise neither has such access, nor can Rise expect to acquire such access (or the permits Rise would need for that new "use" on a new parcel for which all cases, including Hansen, would forbid vested rights.) See the Table of Cases and Commentaries… at the end of the Initial Evidentiary Objection and other objections in the record, including to the disputed EIR/DEIR. SECOND, even Rise Petition's own Exhibits prohibit Rise from any such access to the surface without the owners' consent, which means that Rise's express threat to "rely on the assistance of local officials or the courts" is wrongful, meritless, and worse; it sounds like this may be a Rise threat to bully surface owners by asserting such meritless threats based on a deed that Rise must have read since it is a key piece of imagined Rise evidence for its disputed Rise Petition. THIRD, Rise's incorrect and disputed claim that mining law "usually provides for rights of access" for such mining is

irresponsible and inapplicable, because what matters at law here is what the controlling deed states, and this deed (and those of various predecessors) clearly denies Rise access to the surface.

26. Rise Admits (at 19) that its "properties and operations may be subject to litigation or other claims" that "may have a material adverse effect on our business and results of operations."

Based on the irresponsible Rise warning in the previous subsection against surface owners living above and around the 2585-acre underground mine to compel access with litigation and official complaints, Rise seems planning to provoke meritless disputes.

27. Rise Admits (at 19) that "[w]e do not currently insure against all the risks and hazards of mineral exploration, development, and mining operations."

Rise admits the obvious, that (at 19):

> Exploration, development, and mining operations involve various hazards, including environmental hazards, industrial accidents, metallurgical and other processing problems, unusual or unexpected rock formations, structural cave-ins or slides, flooding, fires, and periodic interruptions due to inclement or hazardous weather conditions. These risks could result in damage to or destruction of mineral properties, facilities, or other property; personal injury, environmental damage, delays... increased costs…monetary losses, and possible legal liability. We may not be able to obtain insurance to cover these risks at economically feasible premiums or at all. We may elect not to insure…

Since Rise's financial statements prove that Rise cannot to pay any sizable judgment, much less cover significant other losses, this is another reason why Rise may be unable to continue to mine, leaving everyone else with the still unanswered question: What then?

III. Rise's Admitted (at 49-50, emphasis added) Financial Problems In item 7 of the 2023 10K: Management's Discussion And Analysis of Financial Condition And Results of Operations, Including "Liquidity and Capital Resources."

As summarized below in more detail, Rise has reported (at 49) a net loss and comprehensive loss for the fiscal year ending 7/31/2023 of $3,660,382 and for 2022 of $3,464,127. For fiscal 2023 Rise only reported (at 50) "working capital of $474,272" with a deficit loss of $26,668,986, burning "$2,476,478 in net cash used in operating activities (compared to $2,694,359 in the prior fiscal year). Besides its own excuses for distress, Rise also admits (at 50) vulnerability to "[c]ontinued increased levels of volatility or rapid destabilization

of global economic conditions" because they "could negatively impact our ability to obtain equity or debt financing or … other suitable arrangements to finance our Idaho-Maryland Mine Project which, in turn, could have a material adverse effect on our operations and financial condition." Id. Moreover, these losses and problems are expected to continue:

> **THE COMPANY EXPECTS TO OPERATE AT A LOSS FOR AT LEAST THE NEXT 12 MONTHS. IT HAS NO AGREEMENTS FOR ADDITIONAL FINANCING AND CANNOT PROVIDE ANY ASSURANCE THAT ADDITIONAL FUNDING WILL BE AVAILABLE TO FINANCE ITS OPERATIONS ON ACCEPTABLE TERMS IN ORDER TO ENABLE IT TO CARRY OUT ITS BUSINESS PLAN. THERE ARE NO ASSURANCES THAT THE COMPANY WILL BE ABLE TO COMPLETE FURTHER SALES OF ITS COMMON STOCK OR ANY OTHER FORM OF ADDITIONAL FINANCING. HOWEVER, THE COMPANY HAS BEEN ABLE TO OBTAIN SUCH FINANCINGS IN THE PAST. IF THE COMPANY IS UNABLE TO ACHIEVE THE FINANCING NECESSARY TO CONTINUE ITS PLAN OF OPERATION, THEN IT WILL NOT BE ABLE TO CARRY OUT ANY EXPLORATION WORK ON THE I-M MINE PROPERTY OR THE OTHER PROPERTIES IN WHICH IT OWNS AN INTEREST AND ITS BUSINESS MAY FAIL. ID. AT 50 (emphasis added).**

The Board must consider this not just as proof of Rise's financial infeasibility that makes all its actual mining plans likewise appear long-term/indefinite, unaffordable, and perhaps illusory, but these facts also defeat any objective intent for mining required for any vested rights to mine. Note that the Rise admissions could at most be alleged by Rise to prove this disputed claim (which is insufficient for vested rights to mine, which mining is a separate "use" from "exploration" under the applicable cases, which insist of testing for vested rights on a continuous, use-by-use, component-by-component, and parcel-by-parcel basis): Rise (like to a lesser extent its Emgold predecessor, but not Emgold's predecessors) from time to time has claimed to have engaged in some occasional drilling exploration on certain parcels and to aspire to further such exploration, if and when it can afford to do so, requiring further discretionary (i.e., noncommitted) funding from investors. Rise admits in these SEC 10K's (and consistently in other filings) massive and chronic financial problems that consistently require "going concern" warnings from Rise and its accountants. Rise also admits that it has no "proven" or "probable" gold reserves and that it remains speculative that there is any commercially viable gold potential. Also, as the disputed EIR/DEIR admits, there are years of massive start-up work required (e.g., dewatering the IMM, repairing and reconstructing infrastructure, the shaft, and the 72 miles of Flooded Mine tunnels, etc.) even to be able to begin exploring the Never Mined Parcels where Rise claims to need 76 more miles of tunnels for further exploration and mining.

While the County (incorrectly) has so far declined to consider SEC filing admissions and Rise's economic circumstances in objectors' rebuttals, the courts will certainly do so, especially as to these vested rights claims, where reclamation plans are essential to vested rights and financial assurances are essential to any tolerable reclamation plan. But beyond that, to preserve vested rights there must be a continuous objective intent to do the nonconforming vested "use," which here is (at most) so far just to explore, not to mine. Rise is following the

same pattern as its Emgold predecessor did (also without achieving any vested rights) before Emgold finally abandoned its quest for mining that never proceeded beyond minor and occasional exploration (when its repeatedly extended option finally expired unexercised.) There is no such thing as a miner having a vested right to mine such continuously (since at least 1956) closed, dormant, flooded, and discontinued underground mine parcels under these circumstances, such as because such explorations were so minor, infrequent, misplaced, and noncontinuous, plus such a successor miner's alleged intent to mine cannot be so conditioned on both (i) the availability on terms satisfactory to Rise of sufficient new money from investors who have no funding commitment and making discretionary decisions on their continuous, day-to-day decisions to dole out money only on a short term basis, as they continuously reassess the risks versus benefits of gambling more money, and (ii) Rise itself being satisfied with whatever opportunities Rise continues to perceive from time to time as the exploration and other relevant data cumulates. These SEC 10K admissions are essential evidence for rebutting vested rights, among other Rise claims, because the miner cannot satisfy any vested right to mine under such circumstances, in effect claiming that it intends to mine if and only if all such practical and legal requirements for mining appear to be viable (many of which are admitted and defined as Risk Factors" in this 2023 10K) and appear to exist in the future to the satisfaction of both Rise and its money source.

Consider what these and other Rise admissions and indisputable facts mean for the disputed Rise Petition's vested rights claims. Rise is, in effect, like a gambler in a Texas holdem game who has no chips left to bet except those that are doled out by her/his by the money source looking over her/his shoulder at the cards being dealt face up one by one. The effect of such Rise admissions for this analogy is that Rise admits it must abandon the game whenever the money source has exhausted her/his appetite for such risks. That is not a possible vested right situation for Rise (or its predecessors.) Reading Rise's 2023 10K admissions demonstrates that Rise isn't committed to mining, but just wants an indefinite and perpetual option to explore (when and to the extent that its money sources fund more exploration) with the Rise **option** to mine (or abandon mining) in some future situation when and if the circumstances arise where Rise and its money source both agree that mining could be sufficiently profitable to make it worth that huge cost of that start-up gamble. But this 10K, like the other Rise SEC filings, proves both that (i) Rise is not yet at that point of commitment to mine, and (ii) Rise's money source is not yet willing to fund anything more than such exploration. Objectors ask the Board to consider the same question objectors will ask the courts, as we keep trying to resolve this dispute as quickly as possible: how long must our community, and especially objectors living above and around the 2585-acre mine, suffer in limbo with depressed property values and other stressful uncertainties, while Rise indefinitely "explores its options?"

IV. Rise's Financial Statements, And Its' Accountants' Opinions, (at 52-79) Also Contain More Admissions That Defeat Rise's Vested Rights And Other Claims.

The Rise accountants confirm Rise's admitted, continuing vulnerability and the present financial infeasibility concerns consistently also reported in Rise's previous SEC filings and audited financial statements. As Davidson & Company, LLP explained at the start of its opinion (Rise's 2023 10K at 53, emphasis added):

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company incurred a loss of $3,660,382 for the year ended July 31, 2023 and as of that date, had an accumulated deficit of $26,668,986. **These events and conditions raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.**

In that Note 1 Rise admitted to the accountants, which confirmed (at 59, emphasis added) that:

The Company is in the early stages of exploration and as is common with any exploration company, it raises financing for its acquisition activities. **The accompanying consolidated financial statements have been prepared on the going concern basis, which presumes that the Company will continue operations for the foreseeable future and will be able to realize its assets and discharge its liabilities in the normal course of business. The Company has incurred a loss of $3,660,382 for the year ended July 31, 2023 and has accumulated a deficit of $26,668,986. The ability of the Company to continue as a going concern is dependent on the Company's ability to maintain continued support from its shareholders and creditors and to raise additional capital and implement its business plan. There is no assurance that the Company will be able to obtain adequate financing in the future or that such financing will be on terms advantageous to the Company. These events and conditions cast substantial doubt about the Company's ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.**

At July 31, 2023, the Company had **working capital of $472,272** (2022 - working capital of $636,617).

Those "going concern" issues, as well as the $1,437,914 secured loan secured by the IMM assets (as explained in Note 9 at 67), make it challenging (at best) for Rise to attract either credit or asset-based loans, making Rise dependent upon continuing equity fundraising, which itself becomes progressively more difficult because existing shareholders' stock is diluted by the issuance of additional equity securities, including debt that is equity-based (e.g., debt convertible into equity or arranged with massive stock warrants or other "equity kickers"). That dilution is becoming a problem because, as Rise itself admits in such 2023 10K and prior SEC filings, Rise's continued deficit spending each year without any revenue or addition of any material capital assets does not enhance Rise's creditworthiness, except Rise may argue that: (i) Rise's exploration related work might add some intangible value to offset such increasing equity dilution perhaps from any value to a mining speculator of some incremental information from that exploration; and (ii) Rise's cost of seeking permits, governmental approvals, or vested rights might add intangible value for a mining speculator to the extent that those efforts ultimately succeed before the project is abandoned by the essential money sources or by Rise (following the pattern set by Emgold, when it abandoned its purchase option).

As described at p. 54 and Note 5 at p. 64, the reported "carrying amount [value] of the Company's mineral property interests" is $4,149,053, reflecting the Rise purchase prices of

the IMM and Centennial discussed in Note 5. As explained in the "Significant Accounting Policies" for Mineral property" in Note 3 (at 61, emphasis added):

> **Mineral property**
>
> The costs of acquiring mineral rights are capitalized at the date of acquisition. After acquisition, various factors can affect the recoverability of the capitalized costs. If, after review, management concludes that the carrying amount of a mineral property is impaired, it will be written down to estimated fair value. **Exploration costs incurred on mineral properties are expensed as incurred. Development costs incurred on proven and probable reserves will be capitalized. Upon commencement of production, capitalized costs will be amortized using the unit-of-production method over the estimated life of the ore body based on proven and probable reserves (which exclude non-recoverable reserves and anticipated processing losses).** When the Company receives an option payment related to a property, the proceeds of the payment are applied to reduce the carrying value of the exploration asset.

Unlike the legal rules where Rise has the burden of proof, accountants here rely on management's assessment of the facts requiring write-downs of that IMM asset value below its purchase price for such "impairment," explaining (at 64, emphasis added):

> As of July 31, 2023, based on management's review of the carrying value of mineral rights, management determined **that there is no evidence that the cost of these acquired mineral rights will not be fully recovered and accordingly, the Company determined that no adjustment to the carrying value of mineral rights was required. AS OF THE DATE OF THESE CONSOLIDATED FINANCIAL STATEMENTS, THE COMPANY HAS NOT ESTABLISHED ANY PROVEN OR PROBABLE RESERVES ON ITS MINERAL PROPERTIES AND HAS INCURRED ONLY ACQUISITION AND EXPLORATION COSTS.**

Note, that Rise admits (and the accountants confirm) **(**at 65, emphasis added**) that because there are not "proven or probable [gold] reserves"** all these increasing exploration expenditures have cumulated to $8,730,982. As explained, that requires that such costs must be reported as expenses adding to the perpetual and cumulating Rise losses. Only "[d]evelopment costs incurred on proven and probable [gold] reserves" will be capitalized and then, when and if "production" "commences," amortized using "the unit-of- production method." Id. at 61.

Note 9A (at 74) addressed "Evaluation of Disclosure Controls And Procedures" and then "Managements Annual Report on Internal Control over Financial Reporting." These admissions and opinions reflect not only on the reliability and quality of Rise's financial reporting, but also on all the other important Rise filings with the County, such as the disputed Rise Petition and the disputed EIR/DEIR. The Board should consider whether this seems to reflect a pattern and practice about which objectors have previously objected in record filings, such as to Rise assertions of alternate reality opinions as if they were facts, and misuse of certain objectionable tactics described as "hide the ball" or "bait and switch." Consider the following admissions (Id. emphasis added):

> **Evaluation of Disclosure Controls and Procedures**

The United States Securities and Exchange Commission (the "SEC") defines the term "disclosure controls and procedures" to mean controls and other procedures of an issuer that are designed to ensure that information required to be disclosed in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

As of the end of the period covered by this Report, our management carried out an evaluation, with the participation of its Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. **Based on this evaluation, management concluded that our disclosure controls and procedures were not effective as of July 31, 2023 because of a material weakness in internal control over financial reporting that existed as of that date, as more fully described below.**

Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

We carried out an evaluation, with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of its internal control over financial reporting as of July 31, 2023. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control-Integrated 2013 Framework. **Management concluded that our company's internal control over financial reporting was not effective as of July 31, 2023 because a material weakness in internal control over financial reporting existed as of that date as a result of a lack of segregation of incompatible duties due to insufficient personnel. A material weakness is a deficiency or a combination of control deficiencies in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.**

As of the end of the period covered by this Report, our management carried out an evaluation, with the participation of its Chief Executive Officer and Chief Financial

> Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. **Based on this evaluation, management concluded that our disclosure controls and procedures were not effective as of July 31, 2023 because of a material weakness in internal control over financial reporting that existed as of that date, as more fully described below.**
>
> **Management's Annual Report on Internal Control over Financial Reporting**
>
> Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.
>
> We carried out an evaluation, with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of its internal control over financial reporting as of July 31, 2023. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control-Integrated 2013 Framework. Management **concluded that our company's internal control over financial reporting was not effective as of July 31, 2023 because a material weakness in internal control over financial reporting existed as of that date as a result of a lack of segregation of incompatible duties due to insufficient personnel. A material weakness is a deficiency or a combination of control deficiencies in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.**

Objectors also note Item 10 “Involvement in Certain Legal Proceedings” in the 2023 10K (at 78-79), which describes a long story about environmental wrongs or crimes at the British Columbia (Canada) mine of Banks Island Gold, Ltd. (“Banks”), where Rise stated (at 78) that “Benjamin W. Mossman was a director and officer” before Banks still pending Canadian bankruptcy proceedings. Objectors do not have sufficient knowledge (or interest) to explore the merits of those disputes. What objectors know is that, after discussion of Rise’s perspective on that extensive litigation, the 2023 10K states the following (at 79, emphasis added):

> [In the second trial in 2022] He [Mr. Mossman] was found guilty of 13 environmental violations in relation to certain waste discharges at the Banks mining site, and on September 26, 2023, Mr. Mossman was fined a total of approximately C$30,000 in connection with all of the offenses. Both Mr. Mossman and the Crown has filed appeals from this trial. The Crown has appealed all acquittals. Mr. Mossman has appealed all convictions.

> The hearing of both appeals has been scheduled for the week of January 15, 2024.

Objectors have not evaluated these Canadian disputes and do not address their merits, if any. Objectors cite such Rise quotes only because objectors are informed and believe that Mr. Mossman has had a substantial role in Rise's many filings with the County, as demonstrated in his presentations at the previous County hearings and his public comments on the various IMM disputes, especially those professing his adherence to high standards of environmental compliance. Therefore, as with any such conviction (if only as a legally appropriate challenge to his credibility and the weight of any evidence he has presented (or not presented), objectors reserve the right to ask the County to consider how these convictions (which he disputes and appeals) reflect on Rise and the credibility and weight of such evidence. None of that is not offered here as proof of any wrongs on the merits of this dispute or as proof about his character on the merits. However, that Rise information itself may be (or become) relevant to the credibility of any evidence to the extent provided in Evidence Code #780, 785, and (if and to the extent applicable, 788). See both the Initial Evidentiary Objection and Objectors Petition of Pre-Trial Relief, Etc.

ATTACHMENT 1: SOME PREVIOUS SEC FILINGS ON WHICH OBJECTORS FOUND USEFUL ADMISSIONS BEFORE RECENTLY HAVING TO UPDATE TO THE 2023 10K, BECAUSE RISE FILED THAT NEW 10K BEFORE OBJECTORS FILED DOCUMENTS ADDRESSING SUCH RISE SEC FILINGS.

I. This Attachment Provides Useful Rebuttal Comparisons Between Rise Claims Before And After Rise's September 1, 2023, Shift In Legal Theories For Its Rise Petition Claiming Vested Rights.

Rise SEC filings have long been a source of useful admissions. The fact that Rise has updated its reports in the 2023 10K does prevent those earlier admissions from being useful rebuttal evidence. Since some of those rebuttals were already prepared when Rise filed its 2023 10K on October 30, 2023, objectors have attached some of them below for helpful comparison. While the selected Rise statements are often similar and sometimes identical, objectors note that the changes in from those prior reports to the new 2023 10K are important rebuttal evidence, since what Rise changed (and failed to change) in its SEC 2023 10K updates after its September 1, 2023, Rise Petition filing to claim vested rights, proves how Rise has and has not changed its "story" before and after that radical change in legal theories from (a) normal permitting to (b) vested rights claims. While objectors have objected on the record to both Rise's pre-Rise Petition filings and the Rise Petition, the rebuttals are often focused on how Rise can be contradictory and inconsistent with itself. Thereby that both (i) defeats credibility of claims by Rise for or from its Rise Petition, and (ii) creates other rebuttal opportunities for objectors to defeat the Rise Petition. See the Initial Evidence Objection authorities like EC #623. Objectors are more focused on the SEC filings than on Rise's County filings because general experience in other cases demonstrates that the more serious consequences of incorrect, deficient, or worse statements in such SEC filings tend to inspire greater accuracy and reality (although still disputable) than filings like those with the County, where the filing miners may perceive less risk of accountability or adverse consequences. The more contradictions and conflicts exist between Rise's different presentations to different audiences, the less possible it is for Rise to satisfy its burden of proof.

II. General Admissions from Rise's SEC Form 10Q for the Quarter Ending 10/31/2022 (Updating from the Prior 10Q Addressed in my DEIR Objection 254 #2). [Note that the lack of current SEC reporting data is another problem for Rise, for example, creating a basis for objectors to ask if Rise is trying to avoid admitting even worse facts by delaying filings.]

A. General Admissions About the Speculative Nature of Rise As a Hypothetical "Going Concern" from the Footnotes of Its Current Financial Statements Qualified By Its Accountant, Defeating Any Credibility For Reclamation And Demonstrating Why Sufficient Rise Financial Assurances Will Not Be Achievable.

As described in FN1 to the financial statements reporting the massive financial losses and problems described herein, with 10/31/22 working capital of only $66,526: “The ability of the Company to continue as a going concern is dependent on the Company’s ability to maintain continued support from its shareholders and creditors and to raise additional capital and implement its business plan. There is no assurance that the Company will be able to obtain adequate financing in the future or that such financing will be on terms advantageous to the Company. These events and conditions cast significant doubt about the Company’s ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.” While Rise, the EIR/DEIR team, and County staff (even the County Economic Report team) have tried to evade any consideration of Rise’s financial condition, capabilities, or credibility, that is no longer possible because even SMARA recognizes that reclamation is the key to any vested rights, and reclamation cannot be satisfactory without credible and required “financial assurances” that Rise cannot provide, even for the less expensive reclamation plans disputed by objectors as grossly insufficient and non-compliant. Moreover, the County should also be more generally concerned about how it and others harmed by any Rise conduct creating liability can be compensated when Rise shows no ability to satisfy any significant judgment against it. That Rise lack of financial responsibility should be considered for governmental caution not sufficiently shown so far in these Rise processes, in effect not only justifying objectors’ concerns about the harms from such Rise mining and related activities, but also who will bear the cost of remediating and cleaning up any such harms during operations, much less the ultimate reclamation burdens at the end of this ordeal.

B. General Financial Data as of 10/31/2022.

Rise reports little cash ($166,805) [even less than compared to the 7/31/22] for the period, and that cash will not be sufficient to fund any of its EIR/DEIR goals, especially those relating to the “aspirational” safety and mitigation issues of concern to the objectors and likely the lesser priorities for the miner once it has obtained its disputed EIR approval and has then begun its meritless defense to the objectors’ legal, political, and law reform resistance to protect objectors’ homes, groundwater and other property rights and values, our forests and environment, and our way of life in our community above and around the 2585-acre underground mine. Rise’s other current assets are not material, and its noncurrent assets are just the speculative mine and equipment that has little value absent massive additional investment needed even to begin mining (e.g., dewatering and updating to a starting position the mine condition from being closed and flooded since 1956, as to which there are insufficient reliable and useful information, many likely dangerous conditions unaddressed by the disputed DEIR/EIR, and massive admitted risks). That is why the disputed $4,149,053 “book value” of the mine (including Centennial, Brunswick, and the underground mine) and $545,783 equipment are qualified by the Rise accountant as dependent on the disputed assumption that Rise remains a “going concern” which the accountant and Rise itself admit is speculative.

Note that the most current reported information on expenses and losses (for the three months ending 10/31/2022, which is comparable to prior periods shown) declares an operating (expense) loss of $702,522 and a Net Loss for the period of $684,538, which losses will continue

(and objectors expect to prove would dramatically increase) until at best the start of profitable mining which will be long delayed and may never occur for many reasons, whether for lack of working capital, lack of sufficient accessible gold, objectors resistance and resulting lack of investment or credit, worse than expected mining conditions, and other factors that Rise and its accountant admit cause this to be a highly speculative enterprise, as demonstrated above and in objections to the EIR/DEIR. For example, the 10Q reports for the most current reported three months of "Cash Flows From Operating Activities (showing a "loss for the period" of $684,538 and "net cash used in operating activities" of $305,113) that will quickly exhaust the current cash on hand long before not only any net cash flow is produced by the mining, but also long before the potential value of the long closed and flooded mine can even be evaluated for its actual, potential value. FN 1 reports working capital on 10/31/22 of only $66,526. But see other data on page 19. Note also from FN 1 that its "accumulated deficit" (loss) is $23,693,142. [However, note that on 10Q at p. 18 in the "Results of Operations" discussion of "expenses" for that period ending 10/3/1/2022 there are different numbers reported that are larger but still comparatively small, i.e., $105,570 for consulting, $123,989 for geological, mineral, and prospect costs, and $154,096 for "professional fees."]

C. Mining And Other Risk Related Admissions by Rise.

For any such EIR/DEIR mining and related activities, legal compliance, vested rights' reclamation, and other operations, Rise needs (and lacks) vastly more financial resources, especially working capital and the credit needed for compliant "financial assurances" for vested rights reclamation. This SEC 10Q filing admits various things that are directly or indirectly contrary to or inconsistent with the EIR/DEIR or which support any or all of the four Engel Objections, as well as those of others, including the admitted reality that Rise lacks the working capital, financial resources, and capacity to perform its material obligations with respect to the mine, especially regarding the CEQA, vested rights duties (e.g., reclamation and related financial assurances), and other safety or mitigation "aspirations" proposed or required by the EIR/DEIR and other Rise presentations. In effect, if the County were to approve the EIR or vested rights it would be imposing massive harms, risks, and problems on us local objectors for no net benefit to us or the community that Rise admits are **reasons why even voluntary investment in this mine would be a speculative investment for even the most risk tolerant investors.** For example, consider the following such 10Q admitted reasons for disapproving the EIR and rejecting vested rights:

a. "As of the date of these consolidated financial statements, the Company has not established any proven or probable reserves on its mineral properties and has incurred only acquisition and exploration costs." At p.7
b. "Our business, financial condition, and results of operations may be negatively affected by economic and other consequences from Russia's military action against Ukraine and the sanctions imposed in response to that action." "Risk Factors at p. 21. [Is this a subtle way of warning us that the suspected real party in interest "behind the curtain" successor maybe someone/some entity who presents even greater risks than Rise, such as, for example, someone vulnerable to such Russian sanctions or similar disabilities?]

c. "We will require significant additional capital to fund our business plan." Risk Factors at p. 22-23. Consider the detailed admissions that follow that admission:

> We will be required to expend significant funds to determine whether proven and probable mineral reserves exist at our properties, to continue exploration and, if warranted, to develop our existing properties, and to identify and acquire additional properties to diversify our property portfolio. We anticipate that we will be required to make substantial capital expenditures for the continued exploration and, if warranted, development of our I-M Mine Property. We have spent and will be required to continue to expend significant amounts of capital for drilling, geological, and geochemical analysis, assaying, permitting, and feasibility studies with regard to the results of our exploration at our I-M Mine Property. We may not benefit from some of these investments if we are unable to identify commercially exploitable mineral reserves.
>
> Our ability to obtain necessary funding for these purposes, in turn, depends upon a number of factors, including the status of the national and worldwide economy and the price of metals. Capital markets worldwide were adversely affected by substantial losses by financial institutions, caused by investments in asset-backed securities and remnants from those losses continue to impact the ability for us to raise capital. We may not be successful in obtaining the required financing or, if we can obtain such financing, such financing may not be on terms that are favorable to us.
>
> Our inability to access sufficient capital for our operations could have a material adverse effect on our financial condition, results of operations, or prospects. Sales of substantial amounts of securities may have a highly dilutive effect on our ownership or share structure. Sales of a large number of shares of our common stock in the public markets, or the potential for such sales, could decrease the trading price of those shares and could impair our ability to raise capital through future sales of common stock. We have not yet commenced commercial production at any of our properties and, therefore, have not generated positive cash flows to date and have no reasonable prospects of doing so unless successful commercial production can be achieved at our I-M Mine Property. We expect to continue to incur negative investing and operating cash flows until such time as we enter into successful commercial production. This will require us to deploy our working capital to fund such negative cash flow and to seek additional sources of financing. There is no assurance that any such financing sources will be available or sufficient to meet our requirements. There is no assurance that we will be able to continue to raise equity capital or to secure additional debt financing, or that we will not continue to incur losses.

d. ***"We have a limited operating history on which to base an evaluation of our business and prospects." Risk Factors at p.23.*** Consider the detailed admissions that follow that admission and which raise the question: why aren't those additional investigations being required and done in advance of the EIR approval, especially since the EIR/DEIR ignores objector demands for a commentary about the adverse consequences us neighbors fear if the EIR miner dewaters and otherwise creates a mess and then (before any of the mitigation or other safety work) abandons the project as infeasible? Such advance work should include what the 10Q plans for later after approval as follows:

> Since our inception, we have had no revenue from operations. We have no history of producing products from any of our properties. Our I-M Mine Project is a historic, past-producing mine with apart from the exploration work that we have completed since 2016 has had very little recent exploration work since 1956. We would require further exploration work in order to reach the development stage. Advancing our I-M Mine Property into the development stage will require

significant capital and time, and successful commercial production from the I-M Mine Property will be subject to completing feasibility studies, permitting and re-commissioning of the mine, constructing processing plants, and other related works and infrastructure. As a result, we are subject to all of the risks associated with developing and establishing new mining operations and business enterprises including:

- completion of feasibility studies to verify reserves and commercial viability, including the ability to find sufficient ore reserves to support a commercial mining operation;
- the timing and cost, which can be considerable, of further exploration, preparing feasibility studies, permitting and construction of infrastructure, mining and processing facilities;
- the availability and costs of drill equipment, exploration personnel, skilled labor, and mining and processing equipment, if required;
- the availability and cost of appropriate smelting and/or refining arrangements, if required;
- compliance with stringent environmental and other governmental approval and permit requirements;
- the availability of funds to finance exploration, development, and construction activities, as warranted;
- potential opposition from non-governmental organizations, local groups or local inhabitants that may delay or prevent development activities;
- potential increases in exploration, construction, and operating costs due to changes in the cost of fuel, power, materials, and supplies; and
- potential shortages of mineral processing, construction, and other facilities related supplies.

The costs, timing, and complexities of exploration, development, and construction activities may be increased by the location of our properties and demand by other mineral exploration and mining companies. It is common in exploration programs to experience unexpected problems and delays during drill programs and, if commenced, development, construction, and mine start-up. In addition, our management and workforce will need to be expanded, and sufficient support systems for our workforce will have to be established. This could result in delays in the commencement of mineral production and increased costs of production. Accordingly, our activities may not result in profitable mining operations and we may not succeed in establishing mining operations or profitably producing metals at any of our current or future properties, including our I-M Mine Property.

e. ***"We have a history of losses and expect to continue to incur losses in the future" Risk Factors at p.23.*** Consider the detailed admissions that follow that admission and which raise the question, under these many admitted uncertain and high-risk circumstances, why is it not the EIR/DEIR that is "speculative" instead my objections, as the disputed EIR/DEIR continues incorrectly to assert. For example, consider these quoted 10Q admissions (emphasis added):

We have incurred losses since inception, have had negative cash flow from operating activities, and expect to continue to incur losses in the future. **We have incurred the following losses from operations during each of the following periods:**

- **$3,464,127 for the year ended July 31, 2022**
- **$1,603,878 for the year ended July 31, 2021**
- **$5,471,535 for the year ended July 31, 2020**

> We expect to continue to incur losses unless and until such time as one of our properties enters into commercial production and generates sufficient revenues to fund continuing operations. We recognize that if we are unable to generate significant revenues from mining operations and/or dispositions of our properties, **we will not be able to earn profits or continue operations.** At this early stage of our operation, we also expect to face the risks, uncertainties, expenses, and difficulties frequently encountered by companies at the start-up stage of their business development. **We cannot be sure that we will be successful in addressing these risks and uncertainties and our failure to do so could have a materially adverse effect on our financial condition. (emphasis added)**

What that implies is not just an unhappy fate for investors, but a worse result for us local surface owners above and around the 2585-acre underground mine, a topic which the EIR/DEIR incorrectly refuses to address as too "speculative," although the reverse is more true; i.e., as so admitted, shortly after the Rise investors and creditors lose hope for their gamble, they will cease supporting Rise and it will collapse, leaving a mess for us neighbors and our bigger community that the EIR/DEIR refuses to discuss but which (as a bankruptcy lawyer with vast experience in such situations) Some objectors report having seen such problems too many times and can describe for the bankruptcy or other courts that most likely will resolve the disputes that must follow any EIR or vested rights approval by the County. See the Engel Objections.

Again, these admissions defeat the level of certainty incorrectly implied in the EIR/DEIR to the contrary and wrongly asserted as grounds for ignoring objections as too speculative or unsubstantiated or unexplained, because such admissions confirm the correctness of objections, at least to the extent of requiring a meaningful EIR/DEIR "good faith reasoned analysis" and "common-sense" risk assessment in the DEIR/EIR where none now exists. These problems are even more serious in the vested rights disputes, making the granting of vested rights to evade the permitting process even more dangerous for us objectors and the County. In particular, for example, as described in Engel's DEIR Objection 254 #'s 2, 4, 14, and 15, it is not speculative (as the disputed EIR incorrectly claims) that us objectors living on the surface above and around the 2585-acre underground mine will enforce our defensive rights to protect our homes, environment, and property rights and value, our forests and environment, and our community way of life against this mining menace with not just the usual legal challenges, but also with law reforms and political changes.

D. SEC Filing Admitted "Risks Related to Mining and Exploration."

Consider the detailed 10Q admissions that follow that forgoing admission and which raise the question, under these many admitted uncertain and high-risk circumstances, why is it not the EIR/DEIR that is "speculative" instead my objections, as the disputed EIR/DEIR continues incorrectly to assert. For example, consider these quoted 10Q admissions (with emphasis added):

(i)"The I-M Mine Property is in the exploration stage. There is no assurance that we can establish the existence of any mineral reserve on the I-M Mine Property or any other properties we may acquire in commercially exploitable quantities. Unless and until we do so, we cannot earn any revenues from these properties and if we do not do so we will lose all of the funds that we expend on exploration. If we do not discover any mineral reserve in a commercially exploitable quantity, the exploration component of our business could fail." 10Q at p. 24:

> **We have not established that any of our mineral properties contain any mineral reserve according to recognized reserve guidelines, nor can there be any assurance that we will be able to do so.**
>
> A mineral reserve is defined in subpart 1300 of Regulation S-K under the Securities Act of 1933, as amended (the "Securities Act") and the Exchange Act ("Subpart 1300") as an estimate of tonnage and grade or quality of "indicated mineral resources" and "measured mineral resources" (as those terms are defined in Subpart 1300) that, in the opinion of a "qualified person" (as defined in Subpart 1300), can be the basis of an economically viable project. In general, **the probability of any individual prospect having a "reserve" that meets the requirements of Subpart 1300 is small, and our mineral properties may not contain any**

"reserves" and any funds that we spend on exploration could be lost. Even if we do eventually discover a mineral reserve on one or more of our properties, there can be no assurance that they can be developed into producing mines and that we can extract those minerals. Both mineral exploration and development involve a high degree of risk, and few mineral properties that are explored are ultimately developed into producing mines.

The commercial viability of an established mineral deposit will depend on a number of factors including, by way of example, the size, grade, and other attributes of the mineral deposit, the proximity of the mineral deposit to infrastructure such as processing facilities, roads, rail, power, and a point for shipping, government regulation, and market prices. **Most of these factors will be beyond our control, and any of them could increase costs and make extraction of any identified mineral deposit unprofitable.**

(ii)"The nature of mineral exploration and production activities involves a high degree of risk and the possibility of uninsured losses." 10Q at p. 24:

Exploration for and the production of minerals is highly speculative and involves greater risk than many other businesses. Most exploration programs do not result in mineralization that may be of sufficient quantity or quality to be profitably mined. Our operations are, and any future development or mining operations we may conduct will be, subject to all of the operating hazards and risks normally incidental to exploring for and development of mineral properties, such as, but not limited to:

- economically insufficient mineralized material;
- fluctuation in production costs that make mining uneconomical;
- labor disputes;
- unanticipated variations in grade and other geologic problems;
- **environmental hazards;**
- **water conditions;**
- **difficult surface or underground conditions;**
- **industrial accidents;**
- metallurgic and other processing problems;
- mechanical and equipment performance problems;
- **failure of dams, stockpiles, wastewater transportation systems, or impoundments;**
- **unusual or unexpected rock formations; and**
- **personal injury, fire, flooding, cave-ins and landslides.**

Any of these risks can materially and adversely affect, among other things, the development of properties, production quantities and rates, costs and expenditures, potential revenues, and production dates. If we determine that capitalized costs associated with any of our mineral interests are not likely to be recovered, we would incur a write-down of our investment in these interests. All of these factors may result in losses in relation to amounts spent that are not recoverable, or that result in additional expenses.

(iii). "Commodity price volatility could have dramatic effects on the results of operations and our ability to execute our business plan." 10Q at p. 25:

The price of commodities varies on a daily basis. Our future revenues, if any, will likely be derived from the extraction and sale of base and precious metals. The price of those commodities has fluctuated widely, particularly in recent years, and is affected by numerous factors beyond our control including economic and political trends, expectations of inflation, currency exchange fluctuations, interest rates, global and regional consumptive patterns, speculative activities and increased production due to new extraction developments and improved extraction and production methods. The effect of these factors on the price of base and

precious metals, and therefore the economic viability of our business, could negatively affect our ability to secure financing or our results of operations.

(iv). "Estimates of mineralized material and resources are subject to evaluation uncertainties that could result in project failure." 10Q at p. 25:

> Our exploration and future mining operations, if any, are and would be faced with risks associated with being able to accurately predict the quantity and quality of mineralized material and resources/reserves within the earth using statistical sampling techniques. Estimates of any mineralized material or resource/reserve on any of our properties would be made using samples obtained from appropriately placed trenches, test pits, underground workings, and intelligently designed drilling. **There is an inherent variability of assays between check and duplicate samples taken adjacent to each other and between sampling points that cannot be reasonably eliminated. Additionally, there also may be unknown geologic details that have not been identified or correctly appreciated at the current level of accumulated knowledge about our properties. This could result in uncertainties that cannot be reasonably eliminated from the process of estimating mineralized material and resources/reserves. If these estimates were to prove to be unreliable, we could implement an exploitation plan that may not lead to commercially viable operations in the future.**

(v). "Any material changes in mineral resource/reserve estimates and grades of mineralization will affect the economic viability of placing a property into production and a property's return on capital." 10Q at p. 2:

> **As we have not completed feasibility studies on our I-M Mine Property and have not commenced actual production, we do not have mineralization resources and any estimates may require adjustments or downward revisions. In addition, the grade of ore ultimately mined, if any, may differ from that indicated by future feasibility studies and drill results. Minerals recovered in small scale tests may not be duplicated in large scale tests under on-site conditions or in production scale. (emphasis added)**

(vi). "Our exploration activities on our properties may not be commercially successful, which could lead us to abandon our plans to develop our properties and our investments in exploration." 10Q at p. 25:

> Our long-term success depends on our ability to identify mineral deposits on our I-M Mine Property and other properties we may acquire, if any, that we can then develop into commercially viable mining operations. Mineral exploration is highly speculative in nature, involves many risks, and is frequently non-productive. These risks include unusual or unexpected geologic formations, and the inability to obtain suitable or adequate machinery, equipment, or labor. The success of commodity exploration is determined in part by the following factors:
>
> - the identification of potential mineralization;
> - availability of government-granted exploration permits;
> - the quality of our management and our geological and technical expertise; and
> - the capital available for exploration and development work.
>
> Substantial expenditures are required to establish proven and probable reserves through drilling and analysis, to develop metallurgical processes to extract metal, and to develop the mining and processing facilities and infrastructure at any site chosen for mining. Whether a mineral deposit will be commercially viable depends on a number of factors that include, without limitation, the particular attributes of the deposit, such as size, grade, and proximity to infrastructure; commodity prices; and government regulations, including, without limitation, regulations relating to prices, taxes, royalties, land tenure, land use, importing and exporting of minerals, and environmental protection. We may invest significant capital and resources in exploration activities and may abandon such investments if we are unable to identify

commercially exploitable mineral reserves. The decision to abandon a project may have an adverse effect on the market value of our securities and the ability to raise future financing.

(vii). "We are subject to significant governmental regulations that affect our operations and costs of conducting our business and may not be able to obtain all required permits and licenses to place our properties into production." 10Q at 26:

Our current and future operations, including exploration and, if warranted, development of the I-M Mine Property, do and will require permits from governmental authorities and will be governed by laws and regulations, including:

- laws and regulations governing mineral concession acquisition, prospecting, development, mining, and production;
- laws and regulations related to exports, taxes, and fees;
- labor standards and regulations related to occupational health and mine safety; and
- environmental standards and regulations related to waste disposal, toxic substances, land use reclamation, and environmental protection.

Companies engaged in exploration activities often experience increased costs and delays in production and other schedules as a result of the need to comply with applicable laws, regulations, and permits. Failure to comply with applicable laws, regulations, and permits may result in enforcement actions, including the forfeiture of mineral claims or other mineral tenures, orders issued by regulatory or judicial authorities requiring operations to cease or be curtailed, and may include corrective measures requiring capital expenditures, installation of additional equipment, or costly remedial actions. **We cannot predict if all permits that we may require for continued exploration, development, or construction of mining facilities and conduct of mining operations will be obtainable on reasonable terms, if at all. Costs related to applying for and obtaining permits and licenses may be prohibitive and could delay our planned exploration and development activities. We may be required to compensate those suffering loss or damage by reason of our mineral exploration or our mining activities, if any, and may have civil or criminal fines or penalties imposed for violations of, or our failure to comply with, such laws, regulations, and permits.**

Existing and possible future laws, regulations, and permits governing operations and activities of exploration companies, or more stringent implementation of such laws, regulations and permits, could have a material adverse impact on our business and cause increases in capital expenditures or require abandonment or delays in exploration. Our I-M Mine Property is located in California, which has numerous clearly defined regulations with respect to permitting mines, which could potentially impact the total time to market for the project.

Subsurface mining is allowed in the Nevada County M1 Zoning District, where the I-M Mine Property is located, with approval of a "Use Permit". Approval of a Use Permit for mining operations requires a public hearing before the County Planning Commission, whose decision may be appealed to the County Board of Supervisors ("County Board"). **Use Permit approvals include conditions of approval, which are designed to minimize the impact of conditional uses on neighboring properties.**

On November 21, 2019 we submitted an application for a Use Permit to Nevada County (the "County"). On April 28, 2020, with a vote of 5-0, the County Board approved the contract for Raney Planning & Management Inc. to prepare an Environmental Impact Report and conduct contract planning services on behalf of the County for the proposed I-M Mine Project.

The Use Permit application proposes underground mining to recommence at the I-M Mine Property at an average throughput of 1,000 tons per day. The existing Brunswick Shaft, which extends to ~3400 feet depth below surface, would be used as the primary rock conveyance from the I-M Mine Property. A second service shaft would be constructed by raising from underground to provide for the conveyance of personnel, materials, and equipment. Processing would be done by gravity and flotation to produce gravity and flotation gold concentrates.

We propose to produce barren rock from underground tunneling and sand tailings as part of the project which would be used for creation of approximately 58 acres of level and useable industrial zoned land for future economic development in Nevada County. A water treatment plant and pond, using conventional processes, would ensure that groundwater pumped from the mine is treated to regulatory standards before being discharged to the local waterways. There is no assurance our Use Permit application will be accepted as submitted. If substantial revisions are required, our ability to execute our business plan will be further delayed.

In 1975, the California Legislature enacted the Surface Mining and Reclamation Act ("SMARA"), which required that all surface mining operations in California have approved reclamation plans and financial assurances. **SMARA was adopted to ensure that land used for mining operations in California would be reclaimed post-mining to a useable condition. Pursuant to SMARA, we would be required to obtain approval of a Reclamation Plan from and provide financial assurances to the County for any surface component of the underground mining operation before mining operations could commence. Approval of a Reclamation Plan will require a public hearing before the County Planning Commission.**

To approve a Reclamation Plan and Use Permit, the County would need to satisfy the requirements of California Environmental Quality Act ("CEQA"). CEQA requires that public agency decision makers study the environmental impacts of any discretionary action, disclose the impacts to the public, and minimize unavoidable impacts to the extent feasible. CEQA is triggered whenever a California governmental agency is asked to approve a "discretionary project". The approval of a Reclamation Plan is a "discretionary project" under CEQA. Other necessary ancillary permits like the California Department of Fish and Wildlife ("CDFW") Streambed Alteration Agreement (if applicable) also triggers CEQA compliance.

In this situation, the lead agency for the purposes of CEQA would be the County. Other public agencies in charge of administering specific legislation will also need to approve aspects of the Project, such as the CDFW (the California Endangered Species Act), the Air Pollution Control District (Authority to Construct and Permit to Operate), and the Regional Water Quality Control Board (National Pollutant Discharge Elimination System (authorized to state governments by the US Environmental Protection Agency) and Report of Waste Discharge). However, CEQA's Guidelines provide that if more than one agency must act on a project, the agency that acts first is generally considered the lead agency under CEQA. All other agencies are considered "responsible agencies." Responsible agencies do need to consider the environmental document approved by the lead agency, but they will usually accept the lead agency's document and use it as the basis for issuing their own permits. **There is no assurance that other agencies will not require additional assessments in their decision-making process. If such assessments are required, additional time and costs will delay the execution of, and may even require us to re-evaluate the feasibility of, our business plan. (emphasis added)**

(viii). "Our activities are subject to environmental laws and regulations that may increase our costs of doing business and restrict our operations. 10Q at 27:

All phases of our operations are subject to environmental regulation in the jurisdictions in which we operate. Environmental legislation is evolving in a manner that may require stricter standards and

enforcement, increased fines and penalties for non-compliance, more stringent environmental assessments of proposed projects, and a heightened degree of responsibility for companies and their officers, directors, and employees. **These laws address emissions into the air, discharges into water, management of waste, management of hazardous substances, protection of natural resources, antiquities and endangered species, and reclamation of lands disturbed by mining operations. Compliance with environmental laws and regulations, and future changes in these laws and regulations, may require significant capital outlays and may cause material changes or delays in our operations and future activities. It is possible that future changes in these laws or regulations could have a significant adverse impact on our properties**

(ix). "Regulations and pending legislation governing issues involving climate change could result in increased operating costs, which could have a material adverse effect on our business." 10Q at 27:

A number of governments or governmental bodies have introduced or are contemplating legislative and/or regulatory changes in response to concerns about the potential impact of climate change. Legislation and increased regulation regarding climate change could impose significant costs on us, on our future venture partners, if any, and on our suppliers, including costs related to increased energy requirements, capital equipment, environmental monitoring and reporting, and other costs necessary to comply with such regulations. Any adopted future climate change regulations could also negatively impact our ability to compete with companies situated in areas not subject to such limitations. Given the emotional and political significance and uncertainty surrounding the impact of climate change and how it should be dealt with, we cannot predict how legislation and regulation will ultimately affect our financial condition, operating performance, and ability to compete. Furthermore, even without such regulation, increased awareness and any adverse publicity in the global marketplace about potential impacts on climate change by us or other companies in our industry could harm our reputation. The potential physical impacts of climate change on our operations are highly uncertain, could be particular to the geographic circumstances in areas in which we operate and may include changes in rainfall and storm patterns and intensities, water shortages, changing sea levels, and changing temperatures. These impacts may adversely impact the cost, production, and financial performance of our operations.

(x). "Land reclamation requirements for our properties may be burdensome and expensive." 10Q at 28:

Although variable depending on location and the governing authority, land reclamation requirements are generally imposed on mineral exploration companies (as well as companies with mining operations) in order **to minimize long term effects of land disturbance.**

Reclamation may include requirements to:

- **control dispersion of potentially deleterious effluents;**
- **treat ground and surface water to drinking water standards; and**
- **reasonably re-establish pre-disturbance landforms and vegetation.**

In order to carry out reclamation obligations imposed on us in connection with our potential development activities, we must allocate financial resources that might otherwise be spent on further exploration and development programs. We plan to set up a provision for our reclamation obligations on our properties, as appropriate, but this provision may not be adequate. If we are required to carry out unanticipated reclamation work, our financial position could be adversely affected. (emphasis added)

(xi). "We may be unable to secure surface access or purchase required surface rights." 10Q at 28:

> Although we obtain the rights to some or all of the minerals in the ground subject to the mineral tenures that we acquire, or have the right to acquire, in some cases we may not acquire any rights to, or ownership of, the surface to the areas covered by such mineral tenures. In such cases, applicable mining laws usually provide for rights of access to the surface for the purpose of carrying on mining activities; however, the enforcement of such rights through the courts can be costly and time consuming. It is necessary to negotiate surface access or to purchase the surface rights if long-term access is required. **There can be no guarantee that, despite having the right at law to carry on mining activities, we will be able to negotiate satisfactory agreements with any such existing landowners/occupiers for such access or purchase of such surface rights, and therefore we may be unable to carry out planned mining activities. In addition, in circumstances where such access is denied, or no agreement can be reached, we may need to rely on the assistance of local officials or the courts in such jurisdiction the outcomes of which cannot be predicted with any certainty. Our inability to secure surface access or purchase required surface rights could materially and adversely affect our timing, cost, or overall ability to develop any mineral deposits we may locate. (emphasis added)**

(xii). "Our properties and operations may be subject to litigation or other claims." 10Q at 28:

> From time to time our properties or operations may be subject to disputes that may result in litigation or other legal claims. We may be required to take countermeasures or defend against these claims, which will divert resources and management time from operations. The costs of these claims or adverse filings may have a material effect on our business and results of operations.

(xiii). "We do not currently insure against all the risks and hazards of mineral exploration, development, and mining operations." 10Q at 28:

> **Exploration, development, and mining operations involve various hazards, including environmental hazards, industrial accidents, metallurgical and other processing problems, unusual or unexpected rock formations, structural cave-ins or slides, flooding, fires, and periodic interruptions due to inclement or hazardous weather conditions. These risks could result in damage to or destruction of mineral properties, facilities, or other property, personal injury, environmental damage, delays in operations, increased cost of operations, monetary losses, and possible legal liability. We may not be able to obtain insurance to cover these risks at economically feasible premiums or at all. We may elect not to insure where premium costs are disproportionate to our perception of the relevant risks. The payment of such insurance premiums and of such liabilities would reduce the funds available for exploration and production activities. (emphasis added)**

Again, all these Rise admissions defeat the level of certainty incorrectly implied in the EIR/DEIR to the contrary and wrongly asserted as grounds for ignoring objections as too speculative or unsubstantiated or unexplained, because such admissions confirm the correctness of objections, at least to the extent of requiring a meaningful EIR/DEIR good faith reasoned analysis and common-sense risk assessment in the DEIR/EIR where none now exists. In particular, for example, it is not speculative (as the disputed EIR incorrectly claims) that us objectors living on the surface above and around the 2585-acre underground mine will enforce our defensive rights to protect our homes and property rights and value, our forests and environment, and our community way of life against this mining menace with not just the usual legal challenges, but also with law reforms and political changes.

E. Miscellaneous 10Q Admissions Inconsistent With Or Contrary to the EIR/DEIR.

The DEIR claims that there is no viable alternative to the mining of this property, because industrial uses would be too "intense," a bizarre idea that is contrary to "common sense" (the standard in *Gray v. County of Madera*) and for which the DEIR/EIR offers no "good

faith reasoned analysis" (the standard in *Vineyard, Banning, and Costa Mesa)* as demonstrated in Engel Objections and others thereto, noting that nothing is worse or more "intense" than such 24/7/365 mining for 80 years with continuous resistance from the local victims of this mining menace. However, the 10Q states at p. 17: "**The Company would produce barren rock from underground tunneling and sad tailings as part of the project which would be used for creation of approximately 58 acres if local and useable industrial zoned land for future economic development in Nevada County, which is the alternative rejected by the DEIR/EIR as not viable and too "intense." (emphasis added) This intensity works against Rise's vested rights claims, as well as by adding an "expansion" to its business operations not contemplated in the prior mining.**

F. Miscellaneous Other Admitted Data from the 10Q.

As discussed at page 8 of the 10Q, Rise closed its purchase of the "Idaho-Maryland Gold Mine" property on 1/25/2017 for $2,000,000. It then purchased the 82-acre surface rights adjacent thereto for $1,900,000 closing on May 14, 2017. Including those purchase prices and related acquisition expenditures totaling $7,958,346, the Rise cumulative expenditures for this project have been $8,082,335. Thus, Rise's working investment after acquisition has only been modest, such as for that 10Q period $123,989, of which the only CEQA evaluation or risk relevant expenses have been $92,159 for "consulting" $2453 on "engineering," and $1596 for "supplies." No wonder that Rise has so little useful to say about the conditions regarding its mine, both the flooded part (still unevaluated in any sufficient way since 1956) and the new expansion area in the 2585-acre underground mine, because not only has Rise seemed eager to avoid discovering any inconvenient or worse truths or information, but Rise had insufficient working capital to investigate even if it had wished to risk acquiring the information us objectors expect to be true and damning to its goals for EIR/DEIR approval and vested rights claims.

As discussed at 10Q page 10, Rise borrowed $1,000,000 on 9/3/2019 secured by all of its (and its subsidiary's) mine and other assets due in full on 9/3/2023. The 10Q reported current balance is $1,491,308. The substantial warrants and high interest rate on the loan, which confirm the lender's belief in the high-risk nature of that loan against those mining assets (i.e., almost 8 to 1 loan principal to book value of assets plus the stock warrants). Various stock transactions are also described that raised the money already spent.

III. RISE ADMISSIONS IN ITS FORM 10K FOR THE FISCAL YEAR ENDED 7/31/2022 (FILED 10/31/2022) [Again Not Updated Yet By Rise.]

A. Admissions Regarding the Mine Property And Basic Context Data.

1. How Rise's 10K (at pp.34-38) Describes the IMM History And How That Compares To Rise's Vested Rights Claims.

Rise's 10K admits (at 34-35) that 1955 was "the final year of production from the mine." Thus, there has been no mining for vested rights acquisition since at least 1955, thus

focusing on the comparison of the applicable law at that time to what Rise now proposes for vested rights mining. Compare this to the Nevada County's 1954 ordinance and State laws in 1954 laws versus what was done in that last 1955 year of mining operations, as discussed in *Hansen* in this Petition, including detailed analysis of that often-mischaracterized case by miners more correctly described in Exhibit __hereto. To be clear none of the work done at the mine since it closed and flooded in 1956 qualifies for vested rights, since it was only "exploration" or environmental testing, which even the Rise 10K excludes from mining activities by its admission at pp. 28: "Mineral exploration, however, is distinct from the definitions of 'sub surface mining' and "surface mining'" [making the point that miners in that M1 district zoned land could explore without a permit.] While Rise cites aggregate gold production numbers from 1866-1955 in its Table 3 at pp. 35, what matters for the vested rights dispute is what vested rights uses and intensities existed, for example, when the Nevada County ordinance addressed in Hansen was enacted compared to the nonconforming uses, if any, that occurred in 1955. Clearly, nonuse since 1956 cannot create any additional or enhanced vested rights, even under *Hansen* (much less under many other authorities that objectors cite [and will cite in later briefing] to defeat Rise's vested rights claims). While this is not the time or the place for briefing all objectors facts, evidence, and law for our trial briefs defeating the vested rights, it is instructive to consider this Rise 10K admission at 34, demonstrating that not much happened in 1954-55 of helpful relevance for Rise's vested rights claims, especially considering all the additional laws and regulations occurring after the mine closed and flooded in 1956 and even before since:"[mining was] forced to shut down by the US Government in 1942 (Shore 1943). Due to lack of development, a decline in gold production was experienced and recovery from war-time shutdown never occurred."

While Rise's 10K claims at pp. 34 that: "The I-M Mine Property and its comprehensive collection of original documents was rediscovered in 1990 by Consolidated Del Norte Ventures Inc, the predecessor company of Emgold Mining Corporation, and efforts were made to reopen the historic mine." During the period of what Rise called "Exploration & Mine Development 2003-2004" [skipping over in dead silence the period of nonuse or anything from 1956 to 2003], Rise claims (at pp. 34): "Development work during this period [2003-2004] included completion of a preliminary investigation of the mine records, publishing various technical reports on the I-M Property, leasing or purchasing adjacent properties [none of which would be eligible for vested rights because they were expansion, intensification, and otherwise barred by case law], various permit applications and associated environmental studies, development of a ceramics technology process, and completion of an exploration program. Emgold was unsuccessful in reopening the historic mine due to inability to raise necessary funding in the midst of unfavorable market conditions." As described in this Petition, objectors dispute any such Emgold documentary evidence as consistent with Rise's description (e.g., that such "rediscovered" in 1990 pre-1956 records that were a 'comprehensive collection"), the law of evidence will exclude those purported records as admissible proof for any vested rights.

As to the relevant "history" summarized by the Rise 10K starting at p. 34, using what are described as "available historic records," which objectors assume means the portion of such historical records which Rise was able to find and chose to hunt down and locate, leaving for later litigation discovery the question of which possibly available records Rise chose not to seek or investigate. [While the 10K admits that "[h]istoric drill logs were not available for review and

no historic drill core was preserved from past mining operations…" and objectors wonder what **reliable** evidence, if any, serves as the foundation for Rise's (and the EIR/DEIR's) purported analysis and what deficiencies exist to invalidate or discredit such analysis. Another discovery question is whether and to what extent the prior Emgold owner stopped its reported investigation merely (as Rise claims at 34-35) "due to inability to raise necessary funding in the midst of unfavorable market conditions" or whether they may also have been discouraged by negative information or clues of risks that would have to have been addressed in the EIR (if Rise had chosen to investigate them.) For example, the 10K reports that Rise purchased the "Emgold diamond drill program database" as distinct from all the historical documents of Emgold, as Rise did when it purchased from BET Group. In objectors' experience miners tend to be selective about what they want to know and what they avoid, because they might not want to know inconvenient truths or worse. Incidentally, Rise's efforts to dodge discovery claiming limits to the administrative record may work for CEQA disputes (although objectors do not waive any rights to seek such discovery by exceptions) do not apply to this vested rights dispute involving competing rights and claims between surface owners above and around the 2585-acre underground mine.

None of that Emgold activity could have created or preserved or otherwise supported any Rise vested rights claim. Even if Emgold had some intent to restart the mine, under the circumstances of nonuse, abandonment, etc., that intention could not support vested rights since it was not accompanied by any relevant mining or nonconforming uses, because, among other things, it could not comply with all the applicable laws and regulations taking effect since 1956 during the period of nonuse and abandonment before its 2003 acquisition. Even if somehow Emgold was relevant, Rise admits at pp. 35 that Emgold's intention was not to expand and do intensive mining like in the EIR/DEIR Rise plan, but rather (consistent with Emgold's "exploration drill program") on two different sites "both targeting near surface mineralization around historic workings, whereas Rise's plan was for deeper mining in different places. No one should imagine that anyone in 1956 had any intention to do what Rise proposes to do now, and objectors will dispute any contrary claim by Rise, as well as any claim of Emgold's exploration activities providing any support for Rise's vested rights claim.

Moreover, applying the objective standard for future intent, no one in 1956 when the mine flooded and closed could have had any intent to reopen the mine for what Rise wants to do now. Not only was the mine abandoned, but no effort was made to preserve any restart opportunity at least until that ineffectual Emgold dabbling in 2003. Mining historians can prove how everything changed radically between 1956 and any relevant modern dates in dispute with Rise, since in 1956 underground mining was largely still reliant on manual labor using hand tools and dynamite for excavation (as distinct from modern machinery), none of the equipment was at all comparable, the times primitive science was all superseded by more modern science in every field, safety regulations and practices and environmental considerations were absurdly lax and, in the absence of meaningful laws and enforcement ancient miner owners did as they wished, which is also reflected in their record keeping where they recorded what they wanted known or imagined, without little regard for realities or comprehensiveness for modern vested rights purposes, ventilation systems, dewatering systems, and communication systems were dangerously primitive, etcetera. Dewatering in the 1950's was especially primitive with manual

or the beginning of steam pumps which made the kind of dewatering needed in the IMM and planned by Rise literally imaginable in 1956. (Electric pumps did not begin to appear until well into the 1960's.) Among the factors leading to the 1956 closure was not just declining gold prices, but also depletion over decades of mining of easily accessible and high-grade gold, making mining more expensive and riskier, with many technology limits compared to the challenging conditions as well as the growing environmental concerns.

2. Some General Data Admissions About the IMM to Compare To the Disputed EIR/DEIR and the Vested Rights Claims

As stated in Rise's 10K at pp. 22+ the I-M Mine Project is described as a unified project comprised of "approximately 175 acres … surface land and … 2800 acres … of mineral rights" identified by maps and parcel data without any meaningful surface location data like roads or addresses. According to the 10K at pp. 25, that is comprised of "10 surface parcels" including 55 sub parcels (The "Brunswick" 37-acre site and related 82-acre "Mill" site, and the "mineral rights" area we call the "2585-acre underground mine" that the EIR/DEIR calls its CEQA project, as distinct from what the 10K calls the 56 acre "Idaho land" that the EIR/DEIR separates from that project and calls the "Centennial" dump site and on which no mining is contemplated. However, as explained in the Introduction to this Exhibit and elsewhere in the Petition, all of those parcels are described in Rise's 10K as parts of one unified mining project, thus conflicting with Rise's EIR/DEIR presentation of its alternate history (and trying to escape its SEC filings admissions by trying in the EIR/DEIR and other presentations to assert that the Centennial site is a separate project for CEQA but somehow inconsistently at the same time denying that Centennial work is an expansion or intensity-change for purposes of vested rights to use it as a dump for its new mining operations. Thus, for example, there can be no vested right to dump IMM mine waste on Centennial. Besides physical location and other differences, one of many factors separating the Centennial dump site from the IMM mining is that Centennial gets its NID water from the "Loma Rica System," while Brunswick gets its NID water from the "E. George System" (10K at 28).

In any case, neither Rise's 10K nor the EIR/DEIR nor other related filings reveal when or how Rise's predecessor acquired those 10 parcels (55 sub parcels) or underground mining rights to compare mine "expansions" for vested rights analysis versus the continuously evolving and expanding applicable laws at such times. Instead, Rise just states in the 10K that "original mineral rights" were acquired "at various times" since 1851. The 10K describes the Rise purchase of everything from BET Group Estate (at pp.29) by quitclaim deed on 1/25/2017 (with the Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) "subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" Note that Rise (at pp. 28) not only separates surface from subsurface mining, but separates "mineral exploration" from both such types of mining, consistent with the M1 district zoning.

The Rise description of its environmental studies (at 10K pp. 31-32) addresses the IMM and Centennial wholly owned land conditions, which is not determinative of the conditions in

the different areas of the 2585-acre underground mines. As admitted at page 31 as to "Environmental Liabilities," all "environmental studies were completed prior to Rise purchasing the Idaho land [aka Centennial] and the Brunswick land." That means that Rise cannot vouch for the accuracy, completeness, or sufficiency of the studies or any directions (or lack of correct instructions) given by prior owners. Motions in limine at the start of the court trial will exclude most of Rise's so-called evidence because it is inadmissible on various grounds and other reasons (such as those discussed in the Introduction to this Exhibit) why there can be no substantial evidence for any vested rights as claimed by Rise.

Such issues are important, among other things, because when Rise wants to impress the potential investor readers about the details of the "Geological Setting, Mineralization, And Deposit Types" (SEC 10K at 38+), it describes the variable underground gold related data with some precision. However, when the EIR/DEIR addresses those underground conditions to deal with groundwater and related environmental and other property rights issues, it generalizes and incorrectly assumes a uniformity of those underground conditions that is rebutted by Rise's SEC 10K variations, which in turn, however, also incorrectly extrapolates and generalizes on many such dispute topics from the surface conditions at its small, wholly owned Brunswick site to the underground mining of the 2585-acre sites. Again, what is lacking from Rise is a sufficient baseline either for CEQA or vested rights disputes as to the relevant starting dates for each parcel and at the relevant later dates so as to know how to judge applicable expansions and intensity changes at critical times. (While that variation is relevant for gold opportunities addressed in the 10K that Rise wants to know, the EIR/DEIR does not equally address that variability because its disputed "talking points" (the miner equivalent of politician "spin") sound less problematic for such groundwater and other EIR/DEIR risk disclosure exposures when it assumes uniformity consistent with its apparent desire for what seems to me to be an "alternative reality" Objectors expect yet another alternative reality version for Rise's vested rights claims.

Stated another way, should the Rise vested rights claim or EIR/DEIR be mistakenly approved by the County, the challenge litigation will impeach the EIR/DEIR's and vested rights' descriptions of the underground and other conditions for groundwater and other risk and dispute issues, among other things, based on the contrary or inconsistent variable underground data presented in the SEC 10K. Also, when describing the underground conditions for gold, there are many described exceptions and variations, but the disputed EIR/DEIR's "don't worry about groundwater" theory (which objectors expect incorrectly attempt to evade key precedents that defeat Rise's plans, such as *Gray v. County of Madera*, and to be even further minimized in Rise's vested rights claims to attempt to evade objections like those in this Petition) falsely assumes or implies uniformity not described in the SEC 10K. For example, in discussing its underground analysis, even Rise's 10K reflects doubts (e.g., at 44): "Although Rise has carefully digitized and checked the locations and values of drill hole results from level plans and other documents, the absence of drill hole related documentation, such as drill logs, drill hole deviation, core recovery and density measurements, assay certificates, and possible channel sample grade biases, could materially impact the accuracy and reliability of the reported results."

Many inconsistencies appear even within the Rise 10K, although not usually as substantial as the differences between the more detailed 10K and the less significant, more

general, and less detailed data in the EIR/DEIR. Objectors fear the vested rights claims will be the worst of each alternative reality, such as exaggerating alleged "facts" that would help vested rights theories, while minimizing, ignoring, or incorrectly addressing "facts" that would defeat vested rights. For example, (at 44) the Rise 10K admits that "Rise has conducted mineral processing and metallurgical testing analysis on the recent drill core from the I-M Mine Property for the purposes of environmental study in conjunction with permitting efforts." Since the disputed EIR/DEIR does not sufficiently reveal those results, that will likely be a subject of intense discovery efforts in any subsequent litigation to determine, for example: what was not reported by Rise and why? Even if the answer is that the EIR/DEIR or vested rights claim editor did not trust that data, as the Rise 10K admittedly does not accept/trust the inconvenient historical data that also rebuts the EIR/DEIR and vesting rights as addressed in our objections. For the 10K's such doubts, consider, for example (at 44): "No estimates of mineral resources have been prepared for the I-M Mine Property. We are not treating historical mineral resource estimates as current mineral resource estimates. In addition, there are no mineral reserves estimates for the I-Mine Property." Since the 10K (at 44-45) cites and relies on somewhat different authorities than the EIR/DEIR and (we assume) also than the vested rights claims, the question is why? Considering all of the many Rise and its enablers' credibility issues with the EIR/DEIR, one wonders if Rise is more cautious about the 10K and other SEC filings because of the more serious consequences of misrepresentations than Rise is concerned about the accuracy, compliance, and sufficiency of the EIR/DEIR and (objectors assume) the vested rights claim data.

3. Some Environmental Data.

The Rise 10K contains (see pp. 28-45) many environmental facts that are often inconsistent with, or that fill in factual gaps in, the EIR/DEIR (and, objectors predict, will do so as well for Rise vested rights claim.) What is important for focus is that the history and investigations are either about the much less relevant and important Rise owned Brunswick and Mill site land (compared to the key 2585-acre underground mine, where the mining takes place and the problems begin), and most explorations/investigations are about the search for gold sources, not about a study for safety or environmental threats. Almost as bad, is the telling fact that Rise admits it and its predecessors didn't even do much looking at the dangerous spots, but simply focused on their such wholly owned entry lands and then incorrectly extrapolated from that to wrongly assume those conditions uniformly applied in the 2585-acre underground mine that is the greatest concern. The Rise description of its environmental studies (at 10K pp. 31-32) addresses the IMM and Centennial wholly owned land conditions, which is not determinative of the conditions in the different areas of the 2585-acre underground mines. As admitted at page 31 as to "Environmental Liabilities," all "environmental studies were completed prior to Rise purchasing the Idaho land [aka Centennial] and the Brunswick land." That means that Rise cannot vouch for the accuracy, completeness, or sufficiency of the studies or any directions (or lack of correct instructions) given by prior owners. Motions in limine at the start of the court trial will exclude most of Rise's so-called evidence because it is inadmissible on various grounds and other reasons (such as those discussed in the Introduction to this Exhibit) why there can be no substantial evidence for any vested rights as claimed by Rise.

For example, as to the "Idaho land" [aka Centennial] and containing arsenic in the mine tailings and waste berms, the NV5 Draft Final Preliminary Endangerment Assessment and follow-up Draft Remedial Action Plan (7/1/2020) is reported still "currently in process" by the Cal EPA. As to the Brunswick & Mill site (at p.31) following a surface Phase 1 assessment by ERRG, "ERRG has recommended further sampling and studies" "to determine if contamination historic mining and mineral processing was present." This is one of several opportunities for investigation that Rise has avoided to evade inconvenient truths and embolden Rise's "alternative reality" presentations. Also, in 2006 a Phase II assessment was reportedly done for the Mill Site by Geomatrix (at 32) which found arsenic in the waste rock and Volatile Organic Compounds (VOC) in the groundwater but they were not concerned with "vapor" and relied on the "deed restriction which restricts the use of groundwater for any domestic purpose and the construction of wells for the purpose of extracting water, unless expressly permitted by the Regional Water Board." The significance of these causes of concern have not been investigated or addressed sufficiently by the DEIR/EIR, although NV5 reportedly prepared a "Phase I/II ESA (June 16, 2020) presenting the results of additional investigations and addressing historical conditions identified in previous reports" (at 32). [Stated another way, the wording of the summary results is cleverly ambiguous although drafted in the passive voice (e.g., "mine waste is believed [by whom? based on what?] to have originated from offsite…") and subjective (e.g., arsenic concentrations …were relatively low except for …) [compared to what standard?]

At p. 32 + the 10K provides a general list of permits that might be required under particular summarized circumstances, but the Rise 10K does not apply that general summary to reveal when such permits will be sought for this project or what of the listed factors are expected to trigger that require such permits. Objectors mention this because when the EIR/DEIR lists permits it also does not describe sufficiently such trigger factors or the circumstances where objectors could apply such SEC 10K data and other law to assure ourselves that the miner was planning to seek all the required permits, as opposed to evading them until the miner was "caught" and then seeking such permits and "forgiveness." The four Engel Objections to the EIR/DEIR demonstrate why objectors perceive the EIR/DEIR to suffer from credibility problems that make such concerns reasonable, and, as noted above in the Introduction, that credibility problem will now be compounded by Rise's alternative reality in the EIR/DEIR conflicting with Rise's alternative reality for its vested rights claims, as so described above regarding the Centennial site.

B. Admissions in Risk Factor Discussion 10K Item 1A at p.6+.

The risk factors admitted in the 10K are the same as those admitted in the more current 10Q that is addressed above. So, objectors will not repeat them here, but we note that the consistency of those admissions increases their importance as admissions in these disputes.

C. Miscellaneous Additional Financial Admissions. (Most data here is passed over in favor of the more current 10Q data stated above).

To place the foregoing Rise 10Q financial data in contest and reveal Rise's chronic incapacity to perform its EIR/DEIR goals and aspirations, even as limited to what it admits to be required (as distinct from what us objectors expect to be ultimately required if the EIR were ever to be approved and for the vested rights claims), objectors note the admission at Rise 10K p. 5: "As at July 31, 2022, we had a cash balance of $471,918, compared to a cash balance of $773,279 as of July 31, 2021." However, the 10K financial data for the prior year (starting at 48+) gives one a sense of scale, such as with respect to the "net loss and comprehensive loss for the year [2022]" of $3,464,127, compared to the operating loss of $3,385,107 (ignoring the large "gain on fair value adjustment on warrant derivatives"). Among the key questions is whether the data developed by Rise for the EIR/DEIR is being fully processed for its CEQA compliance as opposed to simply its gold exploration use. See, e.g., (at 49) where the 10K reports an "Increase in mineral exploration costs to $788.684 (2021- $782,261) related to activities surrounding the Use Permit application."

As admitted (at 49): During the year ended July 31, 2022, the Company received cash from financing activities of $2,392, 998 (2021-$248,198) related to the private placement' that year. But during that year "the Company used $2.694,359 in net cash on operating activities, compared to $2,853, 475 in net cash the prior year…" As to the risk that creates for nonperformance of the EIR/DEIR, please note the following related 10K admission that follows those admissions:

> The Company expects to operate at a loss for at least the next 12 months. It has no agreements for additional financing and cannot provide any assurance that additional funding will be available to finance its operations on acceptable terms in order to enable it to carry out its business plan. There are no assurances that the Company will be able to complete further sales of its common stock or any other form of additional financing. However, the Company has been able to obtain such financings in the past. If the Company is unable to achieve the financing necessary to continue its plan of operations, then it will not be able to carry out any exploration work on the Idaho-Maryland Property or the other properties in which it owns an interest and its business may fail.

The Rise auditors, Davidson & Company, LLP, qualified its financials (starting at 10K p. 53) as follows:

> ***Going Concern***
>
> The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company incurred a loss of $3,464,127 for the year ended July 31, 2022, and as of that date, had an accumulated deficit of $23,008,604. These events and conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

EXHIBIT B: 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.

The foregoing "Evidence Objections Part 2," like the "Evidence Objections Part 1" and the "Objectors Petition For Pre-Trial Relief, Etc.", each incorporated the EIR/DEIR administrative record for various reasons, including because those objections to the comprehensively disputed "Rise Petition," refute both Rise's legal arguments and purported evidence by citing to various parts of that EIR/DEIR record as supporting evidence and legal authority. (The definitions in "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 Part 1.") For example, the EIR/DEIR 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 A hereto (exposing and applying blatant inconsistencies between Rise's "2023 10K" and other SEC filings, many also addressed and incorporated in that incorporated EIR/DEIR 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 the "Vested Mine Property" is part of one omnibus dispute not just with the generally impacted public (e.g., *Calvert* and *Hardesty*), but also, more fundamentally, with the objecting owners of the surface properties above and around the 2585-acre underground IMM who have their own constitutional, legal, and property rights to defend from such mining beneath and around them (e.g., the owners of the groundwater and existing and future well water to be depleted, dewatered, and flushed away down the Wolf Creek 24/7/365 for 80 years.) See, e.g., *Keystone* 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 surface owners' rights. That dispute between the underground Rise miner and the surface owners above and around the 2585-acre underground IMM cannot be separated as Rise attempts to do with the County's accommodations, because this is a multi-party dispute even more so than the Calvert vested rights dispute.

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 A 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," those SEC filings (even the 2023 10K filing after the Rise Petition filing) admit that Rise still needs the EIR/DEIR and many permits and approvals (as objectors also contend). As a result, the law

of evidence proven in Evidence Objections Parts 1 and 2 confirm that the EIR/DEIR record (including the Rise SEC filings incorporated therein and herein) is also 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 surface owners above and around the 2585-acre underground IMM defending their constitutional, legal, and property rights, including their groundwater and existing and future groundwater. 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 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 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 their rights by accepting any such limitations, and to assure their due process and the correct results in all such separated disputes, objectors insist on consolidating their objections to be comprehensive as to both law and evidence and, for such many objections to be coherent, objectors must incorporate the whole record so that the courts can be clear as to Rise admissions and about what objector are objecting.

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

Table of Cases And Commentary on the Applicable Legal Principles Controlling What Evidence Is Relevant For Vested Rights Disputes Under The Correct Cases And Analysis of Authorities And Applicable Law that Frame The Evidence And Related Disputes, Followed By Attachments # A (a Comprehensive Discussion of *Hansen*) and # B (an Analysis of How SMARA Is Limited To SURFACE Mining, As Distinguished From UNDERGROUND Mining.)

1. **An Introduction To How These Court Cases Support The Foregoing Evidentiary Objections, And How Rise Evidence Fails Because It Is Only Relevant To An Incorrect Or Worse Legal Theory, Such As Rise Falsely Claiming Unitary Vested Rights Everywhere For Any Use When The Applicable Law Requires Proof On A Parcel-By-Parcel, Use-By-Use, And Component-By-Component Basis.**

    a. **A Guide To the Legal Principles That Provide A Framework For Judging Rise's Disputed "Evidence" And Allowing Objectors' Rebuttals, Applying Controlling Court Decisions And Applicable Laws That Were Either Disregarded By Rise Or, Like *Hansen* (see below and in Attachment A), Misconstrued And Ignored In Parts That Were Most Important.**

The foregoing objection asserted Evidence Code and related objections within the context of a vested right that must be framed by applicable law that is contrary to the Rise Petition's disputed and incorrect legal theories, "facts," and "evidence." Subsequent objections will more comprehensively demonstrate such legal and factual realities with rebuttal and other evidence exposing Rise's "alternative reality." Objectors' goal here is simply to illustrate some key legal principles from some key cases to frame some of what is wrong with the Rise Petition's purported "evidence" and claims. Stated another way, the legal disputes between objectors and Rise are irreconcilable and different, like "apples" versus "oranges," each claiming to be the right and only "fruit." Objectors use the brief, case commentary below to expose the errors and worse by Rise in its "tree farming evidence" by demonstrating that it can only apply to oranges (i.e., **surface** mining), instead of the reality of apples being our true issue (i.e., **underground expansion mining into previously unmined parcels**), as well as the other factual differences that relate as evidence to how an apple farmer (i.e., **underground** miner) must operate versus an orange farmer (i.e., **surface** miner), especially in compliance with different laws protecting competing surface owners objecting, for example, about how the farmer intends to take the groundwater owned by such objectors and thereby deplete such objectors existing and future wells. Thus, this vested rights dispute must begin with the fundamental legal distinctions about whether we are debating apples or oranges. Then, within that correct reality of such underground expansion mining, we can more productively discuss the evidentiary disputes. After all, the point of admissible evidence is that it must prove a relevant truth at issue in the dispute, not tell an irrelevant story about some issue in the dispute Rise wishes to have in its "alternative reality." Contrary to the Rise Petition ignores the reality of apples (underground Objectors' case illustrations below, however, prove both (i) that apples and oranges are different and subject to different laws and farming techniques and objections by different types of objectors (e.g**., objecting surface owners above and around the 2585-acre underground mine have more and unique constitutional, legal, and property rights at issue than the general**

objecting public), with "apples" (i.e., such underground expansion mining) being the correct and key issue, and (ii) Rise is wrong even if somehow its imagined "oranges" (i.e.., *surface mining, SMARA, and Hansen*) were somehow relevant.

If the Board is puzzled by Rise's "bait and switch" tactic, the Supervisors should ask the harder questions that objectors are only allowed to ask in these filings too few read, because the County's disputed process does not allow us objecting surface owners such hard questions as we would indisputably be allowed to do in a court process that follows the applicable laws (e.g., *Calvert* and *Hardesty*). The first such questions are these: Why have Rise and (so far) others failed to respond on the merits to any of such basic objections or our case authorities, especially regarding the issues relating to such proposed, underground expansion mining in the 2585-acre mine and the competing rights of us surface owners above and around that UNDERGROUND mine? Why does the Rise Petition not include any authority attempting to rebut the court decisions cited and quoted by objectors below? Why instead does Rise rely (as in the disputed EIR/DEIR) exclusively on SURFACE mining law (SMARA) and (only selected parts of) surface mining cases like *Hansen* (which *Hansen* case, as read in full, actually both contradicts key parts of the Rise Petition and defeats Rise's vested rights claims? See Attachment # A (comprehensively analyzing *Hansen* to prove that point, consistent with subsequent cases like *Hardesty* and *Calvert addressed here)* and B (illustrating why SMARA does not apply to underground mining, and why objectors fear that such surface mining regulators lack the jurisdiction and authority under SMARA to save us from Rise, such as with adequate "reclamation plans" and "financial assurances." While the County has recently announced disputed limitations in its process for this Board hearing that exclude such concerns about reclamation plans and financial assurances, even as what objectors contend to be permissible rebuttal required by due process [see Calvert]. For example, even *Hansen* states that such reclamation plans and financial assurances are the heart of SMARA, which, in turn, is the *sole legal basis of Hansen cited therein, which, in turn, is the primary basis of the Rise Petition* and what Rise incorrectly claims are relevant evidence, which objectors refute.)

Objectors will be filing objections like this that the County may consider in part beyond its disputed limitations on the scope of the hearing issues, like some parts of this objection. Objectors mean no offense, but we must object to be certain to preserve their rights in the court process to come next. Please consider this and other such filings by objectors as offers of proof, consistent with both (a) by due process, *Calvert*, and other authorities, and (b) as objectors' legally permitted rebuttals of the Rise Petition, Rise "evidence," and Rise legal arguments. See the prior discussions of the Evidence Code right of objectors and the application of such evidentiary objections to defeat Rise Petition and Exhibit disputed "evidence."

b. The County Vested Rights Process And Procedure Is Incorrect And Noncompliant With Applicable Law As It Applies To Objectors, Especially As To Objectors Who Own The Surface Above And Around The 2585-Acre Underground Mine And Have Competing Constitutional, Legal, And Property Rights Beyond Those of the General Public (Who Also Have *Calvert* Due Process Rights Not Yet Accommodated By The County.)

All objectors to the Rise Petition have due process rights that are not being accommodated by the County as required by *Calvert* and other authorities addressed in the objectors more or less concurrent, companion counter-petition to the County that is incorporated herein by reference, i.e., **Petition And Motion To Nevada County For A Status Conference And To Clarify Issues, Rules, And Procedures For This And Other Oppositions To Rise Grass Valley, Inc.'s Vested Rights Petition Dated September 1, 2023, (the "Rise Petition"), Based on These Illustrative, Preliminary Rebuttals** (the "**Objectors Petition For Pretrial Relief Etc.")**. *Calvert v. County of Yuba* (2006), 145 Cal. App.4th 613 ***("Calvert")*** (another surface mining vested rights case applying SMARA, stated (at 616, emphasis added, with annotations from objectors):

> **Our principal conclusion is that if an entity claims a vested right pursuant to SMARA to conduct a surface mining operation that is subject to the diminishing asset doctrine [as is the case with the Rise Petition, although Rise also incorrectly seeks broader vested rights for disputed underground mining and, apparently, the depletion of groundwater and existing and future of objecting surface owners above and around the 2585-acre underground mine by 24/7/365 dewatering for at least 80 years], that claim must be determined in a public adjudicatory hearing that meets the procedural due process requirements of reasonable notice and an opportunity to be heard."**

Because that companion "Objectors Petition For Pretrial Relief Etc." more comprehensively briefs these procedural and related legal and evidentiary issues, objectors will limit their briefing here to selected examples to support certain arguments and rebuttals against Rise.

Perhaps, the County should start asking Rise such hard questions in our ignored EIR/DEIR objections that still have not been asked (as far as we can tell) by the County staff or EIR/DEIR enablers and have not been addressed sufficiently anywhere by Rise, especially in the disputed Rise Petition. Fortunately, *Calvert, Hardesty,* and other cases forbid us objectors to be ignored on these vested rights disputes in such an adjudicatory process where we must have equal rights and standing. As *Calvert* explained (at 625):

> SMARA's policy is to assure that adverse environmental effects are prevented or minimized; that mined lands are reclaimed to a usable condition; that the production and conservation of minerals are encouraged while giving consideration to recreational, ecological, and aesthetic values; and that residual hazards to the public health and safety are eliminated. (# 2712) **A PUBLIC ADJUDICATORY HEARING THAT EXAMINES ALL THE EVIDENCE REGARDING A CLAIM OF VESTED RIGHTS TO SURFACE MINE IN THE DIMINISHING ASSET CONTEXT WILL PROMOTE THESE GOALS MUCH MORE THAN WILL A MINING OWNER'S ONE-SIDED PRESENTATION THAT TAKES PLACE BEHIND AN AGENCY'S CLOSED DOORS. (emphasis added)**

There is no way under the currently limited County hearing procedure for objectors to confront Rise as the equal parties we will soon be in the court process to follow, so that we

have sought pre-trial relief of various kinds, such as to allow evidentiary objections like those in this objection to counter Rise's inadmissible, incorrect, and worse evidence. More importantly, due process is also denied objectors since objectors are cut off by the pre-hearing deadline for filing our objections and evidence from confronting and rebutting Rise's new evidence, arguments, and claims at the hearing (an expected repetition of the problems suffered by objectors at the prior Rise hearings at the County). That means Rise not only gets the last word (actually another, uncontested, extensive briefing and evidence presentation opportunity), but Rise also escapes any rebuttals and counter-evidence that objectors must then battle to add in the court process as the objectors in *Calvert.* Three minutes of public comment at the hearing for each such objector is not due process confrontation, especially as to all the new things Rise will add during its lengthy presentation, where Rise again can escape accountability for its disputed arguments and evidence until the court process to come.

For example, ***Calvert* was not only focused on the *MINER'S* due process rights, BUT RATHER INSTEAD PROCLAIMED THE DUE PROCESS RIGHTS OF THE NEIGHBORING VICTIMS of that surface mining and the other impacted public (which types of victims are herein called "objectors," some with special standing for us surface owners above and around the 2585-acre underground mine whose groundwater and existing and future wells would be depleted 24/7/365 for 80 years, among other violations of objectors' competing constitutional, legal, and property rights. OBJECTORS WILL EXPECT NO LESS THAN WHAT *CALVERT* PROVIDED WHEN IT ADDRESSED (AT 622) THIS QUESTION IN THOSE OBJECTORS' FAVOR: "IS THE VESTED RIGHTS DETERMINATION REGARDING WESTERN'S SURFACE MINING OPERATIONS …SUBJECT TO PROCEDURAL DUE PROCESS REQUIREMENTS OF REASONABLE NOTICE AND OPPORTUNITY [FOR OBJECTORS] TO BE HEARD? OUR ANSWER: YES."** In that *Calvert* case, the county incorrectly approved the surface miner's purported, vested rights in an unconstitutional, two-party "ministerial" process without notice to, and adequate due process for, any impacted neighbors or other objectors, because such vested rights evasion of the normal permit requirements is not merely a "ministerial decision" for the County alone. As demonstrated in detail below, *Calvert* rejected as without merit many issues raised by that miner (and by Rise here) that would also defeat Rise's vested rights claims. Indeed, if *Calvert* had confronted an **underground** mine like the IMM instead of that SMARA surface mine, objectors would have been requesting (and we believe would have personal standing for) such clarity, rules, and procedures like those objectors are seeking in the Objectors Petition For Pretrial Relief Etc., especially considering the special, competing, constitutional, legal, and property rights of objecting **surface owners** above and around the 2585-acre underground IMM that are independent of anything the County may decide about this dispute with the Rise Petition.

2. **The Best Place To Begin Is With The Distinctions Between Underground Mining And Surface Mining, As Illustrated By *Hardesty* and *Keystone*. See also Attachment B describing the limitation of SMARA to surface mining.**

    a. **If One Were Only To Read One Court Decision Besides *Hansen*, *Hardesty* Is The One, Because It Proves For Vested Rights Claims, Among Other Things Addressed Below, Both (1) That Underground Mining "Uses" Are Different Than**

Surface Mining "Uses," And (2) the Necessity For Vested Rights of A Use-By-Use And Parcel-By-Parcel Analysis. *Hardesty v. State Mining And Geology Board (2017), 11 Cal. App.5th 790 ("Hardesty")*).

Rise ignores *Hardesty* because that key court decision defeats Rise Petition's vested rights claims, such as by rejecting Rise's disputed "unitary" theory that any kind of "mining operations" anywhere allows all kinds of mining everywhere, somehow allowing SMARA to apply to IMM **underground** mining, even in the never mined (or even accessed), expansion parcels of the 2585-acre underground mine beneath objecting surface owners above and around that mine. See Attachment B (describing how SMARA only regulates surface mining and cannot apply to underground mining). **Although the *Hardesty* court supported objectors' position from the reverse perspective of a miner trying to shift vested rights to surface mining instead of to underground mining, Hardesty confirmed that each type of mining is a different "use," and vested rights for either underground or surface mining cannot create any vested rights for such other type of mining.** *Hardesty* ruled in part (with more to come later):

> [T]he italicized portion of the statute [SMARA #2776] speaks of vested rights to ***surface*** mining, **not *any* mining**. "Surface mining involves stripping off the top of an area to reach the minerals, in contrast to boring down through tunnels or shafts to extract them." ([People v.] *Rinehart*, supra, 1 Cal. 5th [652] at p. 671, fn. 10 …) (emphasis added)
>
> ***
>
> To the extent Hardesty contends he has a vested right to surface mine under section 2776, he simply **failed to carry his burden to prove any substantial *surface* mining on the property** had been conducted by that date. As the trial court found, substantial evidence shows that **prior mining had been hydraulic, tunnel, and drift mining, not surface mining,** which began in the 1990's, and **which represented a SUBSTANTIAL CHANGE,** contrary to former section 2776's requirement that no substantial changes may be made in any such operation except" according to SMARA's terms…. (emphasis added)
>
> ***
>
> … Hardesty failed to prove any mining was occurring on or even reasonably before the date SMARA took effect. **SMARA was designed to allow existing, operating surface mines to continue operating** after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to dormant mines.**
>
> ***Hansen** Brother Enterprises, Inc. v. Board of Supervisors* (1996), 12 Cal. 4th 533…*(Hansen Brothers*)—**consistent with a long line of zoning cases—holds that A USE MUST BE PRESENT AT THE TIME A NEW LAW TAKES EFFECT, TO BE CONSIDERED A NONCONFORMING USE…**. Communities for a Better Environment … (2010), 48 Cal.4th 310, 323 fn.8 …["the traditional protections for nonconforming uses established *at the time* zoning restrictions become effective"]…; *McCoslin v. City of Monterey Park* (1958), 163 Cal. App.2d 339, 346…["A nonconforming use is **a lawful use existing *on the effective date* of the**

zoning restriction and continuing since that time in nonconformance to the ordinance."] … ***NEITHER A DORMANT NOR AN ABANDONED USE IS A NONCONFORMING USE.*** **(*HANSEN BROTHERS,* AT PL 552*…["NONUSE IS NOT A NONCONFORMING USE."])* As stated by our Supreme Court, "The ultimate purpose of zoning is … to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected." We have recognized that, given this purpose, courts should FOLLOW A STRICT POLICY AGAINST EXPANSION OF THOSE USES…**

That policy necessarily applies to attempts to continue nonconforming uses which have ceased operation." *(Hansen Brothers*, at 568 …) (emphasis added)

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Further, **the record shows a proposed significant change in use since pre-1976 [SMARA's effective date] times. THE CONTINUANCE OF A NONCONFORMING USE "IS A CONTINUANCE OF THE SAME USE AND NOT SOME OTHER KIND OF USE." …[citing McClurken, Edmonds, and Goldring, where, FOR EXAMPLE, EDMONDS V. COUNTY OF LA (1953), 40 CAL. 2D 642 HELD "ENLARGEMENT OF PLAINTIFF'S TRAILER COURT TO ACCOMMODATE 30 MORE TRAILERS IS CLEARLY A DIFFERENT USE."] SURFACE MINING IS A CHANGED USE ON HARDESTY'S PROPERTY, WHEN CONTRASTED WITH THE PRE-SMARA USE [FOR UNDERGROUND ETC. MINING NOTED ABOVE]. Nor can Hardesty persuasively rely on post-1976 unpermitted surface mining –twice halted by the government— to show that surface mining was extant before 1976.** (emphasis added)

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799-812 ("**Hardesty**") (The miner lost at the Board, trial court, and on appeal in its mandamus action claiming SMARA vested rights as to an ancient, "19th century" federal mining patented gold mine that ceased operation during World War II and was "essential dormant" "through the 1970's" with "virtually no evidence that **qualifying mining activities** [not just the nondeterminative, incidental or different work on the parcel on which Rise and that miner attempted to call "mining"] 'continued' to exist at the time SMARA was enacted [effective January 1, 1976], apart from "sporadic," "unpermitted surface (open pit) aggregate and gold mining in the 1990's." Nevertheless, the miner claimed "vested rights to mine the property for gold, sand and gravel [as well as diamonds and platinum"] after he bought the property in 2006. The trial and appellate courts rejected that miner's vested rights claim, agreeing with the Board that "any right to mine had been abandoned.") In this situation, the miner seeking vested rights cannot claim as Rise attempts to do any benefit of the doubt, since that zoning policy goal is to eliminate or reduce all nonconforming uses "as speedily as consistent with proper safeguards for the interests of those affected." *Dienelt v. County of Monterey* (1952), 113 Cal. App.2d 128, 131. But those whose "interests are so affected" do not just include the underground miner seeking vested rights, but also objecting surface owners above and around competing against the underground miner, who are harmed by the mining and need those law reform protections.

That is an additional reason why the *County of San Diego v. McClurken* (1951), 37 Cal.2d 683, 687, insists on "a strict policy against their [i.e., nonconforming uses from vested rights] extension or enlargement."

Apart from the Rise Petition Exhibits disputed earlier in this document, Rise's inconsistent EIR/DEIR data never lays any factual foundation for vested rights (often the opposite). Rise just admits in the SEC 10K that "original mineral rights" were acquired "at various times" since 1851. The SEC 10K also describes the Rise purchase of everything from the BET Group Estate (at pp.29) by quitclaim deed on 1/25/2017 (with the "Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) **"subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" NOTE THAT RISE (AT SEC 10K PP. 28) NOT ONLY SEPARATES SURFACE FROM SUBSURFACE MINING, BUT SEPARATES "MINERAL EXPLORATION" FROM BOTH SUCH TYPES OF MINING, CONSISTENT WITH THE M1 DISTRICT ZONING.**

Indeed, ***HARDESTY*** **ALSO CLARIFIES KEY DIFFERENCES BETWEEN VESTED RIGHTS AS A PROPERTY OWNER VERSUS A VESTED RIGHT FOR MINING**, STATING (AT 806-807) (emphasis added):

> As we will explain, we agree that the [ancient Federal mining] patents conferred on **Hardesty vested rights *as a property owner*, but that is not the same as vested rights *to mine* the property absent compliance with state environmental laws.** The Board and trial court correctly concluded that Hardesty **had to show active surface mining was occurring on the effective date of SMARA, or the very least show objective evidence that the then owner contemplated resumption of such activities.** Under the facts, viewed in the appropriate light, Hardesty did not carry his burden to show that ***any*** mining was occurring or any intent to mine existed on the relevant date [3/31/1988. **Further, the Board and trial court correctly applied the "nonconforming use" and abandonment doctrines to the facts herein.**
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> **Indeed, in a case involving a different open-pit mine also operated by Hardesty, we rejected his view that a "vested right" to mine under SMARA obviates the need to comply with state environmental laws …[citing to] *Hardesty v. Sacramento Met. Air Quality Management Dist.* (2011), 202 Cal.App.4th 404, 427…**
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> The *Hardesty* precedent (also citing *Hansen Brothers—see Exhibit B hereto*) not only rejected that similar miner's vested rights claim for those reasons (and others that follow in later discussions), but also "[a]s an alternative basis for decision, the Board and the trial court found any right to mine was abandoned" on such facts. The Court of Appeal agreed: "Here the evidence of abandonment was overwhelming…. Further, **a person's subjective "hope" is not enough to preserve rights; a desire to mine when a land-use law takes effect is "measured**

by objective manifestations and not by subjective intent." (*Calvert*, supra, 145 Cal.App.4th at pl 623…)

In any case, **none of the work done above or around the closed, dormant, and abandoned IMM since it closed and flooded in 1956 qualifies for Rise vested rights, since there has only been "exploration" "uses" or environmental testing uses, which even Rise's SEC 10K admittedly excludes from "mining" activities by its admission (at pp. 28): "MINERAL EXPLORATION, HOWEVER, IS DISTINCT FROM THE DEFINITIONS OF 'SUB SURFACE MINING' AND "SURFACE MINING'" [MAKING THE POINT THAT MINERS IN THAT M1 DISTRICT ZONED LAND COULD EXPLORE WITHOUT A PERMIT.]** (emphasis added) Such admissions evidence that Rise's vested rights claims now seem to be an afterthought following the Planning Commission recommendation against the EIR and use permit, and another series of objections will address the inconsistencies, contradictions, and conflicts between the Rise Petition now and what Rise and its enablers previously admitted in the EIR/DEIR, in permit applications, in SEC filings, and other documents and communications. Rise is not just changing its legal theory "on the fly," but Rise is also changing its disputed "story."

b. Some of the Reasons Why Objecting Surface Owners Above And Around The 2585-Acre Underground Mine Have Extra Constitutional, Legal, And Property Rights Ignored By Rise And By Surface Mining Laws And Cases. See Attachment B (Explaining SMARA Limits To Surface Mining, And NOT Applying To Underground Mining). See, e.g., *Keystone Bituminous Coal Assn v. DeBenedi*tis, 480 U.S. 470 (!987) ("Keystone".)

Objecting owners' "surface" constitutional, legal, and other property rights are comprehensive for at least (generally) the first 200 feet down (according to Rise's current SEC 10K filing, or under some deeds perhaps more or less), plus forever deeper as to anything not part of deeded "mineral" mining rights (e.g., such as our surface owner groundwater and existing and future wells). Even then, subject to many other legal rights of such surface owners, such as for "lateral and subjacent support," including such "support" by surface owners' groundwater that must support our surface legal estate. See, e.g., *Keystone Bituminous Coal Assn v. DeBenedi*tis, 480 U.S. 470 (!987) ("Keystone".) That leading Supreme Court decision upheld against coal miner challenges the Bituminous Subsidence And Land Preservation Act (the "Subsidence Act" as it's called in Pennsylvania and many places where it has been replicated), where mining was limited to prevent "subsidence" ignored by Rise (i.e., the loss of surface lateral and subjacent support and loss of groundwater or depletion of surface water, which are competing legal and property rights objecting surface residents already have here above and around the 2585-acre underground mine, although Rise may inspire locals here to cause even more protective new laws (presumably triggering more, meritless, vested rights claims by Rise for objectors to defeat and creating incentives for test case litigation that prevents such harms not just by Rise, but also by any of its successors,

since the modern speculators' greed for this imagined gold seems endless.) That *Keystone* decision defined (at 474-475) such objectors' "subsidence" concerns (also at issue here for this IMM project), especially because of the massive and objectionable groundwater depletion (24/7/365 for 80 years along and off 76 miles of proposed new tunnels in Rise's new, deeper, and expanded vested rights mining claims for blasting, tunneling, rock removal, and other mining activities in new, unexplored IMM underground parcels, plus the 72 miles of existing tunnels and mined areas where the known gold supply was exhausted by the time the closed, dormant, and flooded IMM was abandoned in 1956. Consider this court summary, as applicable to gold mining here as to coal mining there:

> Coal mine **subsidence** is the lowering of the strata overlying a coal mine, including the land surface, caused by extraction of underground coal. This lowering of the strata can have devastating effects. It often causes substantial damage to foundations, walls, and other structural members, and the integrity of houses and buildings. Subsidence frequently causes sinkholes or troughs in land which make the land difficult or impossible to develop. Its effect on farming has been well documented—many subsided areas cannot be plowed or properly prepared. **Subsidence can also cause the loss of groundwater and surface ponds.** In short, it presents the type of environmental concern that has been the focus of so much federal, state, and local regulation in recent decades. (Emphasis added). [That conclusion about groundwater has a fn. 2, which states:]
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> Fn2. "Whenever [subsidence effects] extend, damage can occur to buildings, roads, pipelines, cables, streams, water impoundments, wells, and aquifers. Buildings can be cracked or titled; roads can be lowered or cracked, **streams, water impoundments, and aquifers can all be drained into the underground excavations**. Oil and gas wells can be severed, causing contents to migrate into underground mines into aquifers, and even into residential basements. Sewage lines, gas lines, and water lines can all be severed, as can telephone and electric cables. … (emphasis added).

While that *Keystone,* subsidence law generally required 50% of the coal to remain for support in strategic places, it did many other things to protect the surface and limit the mining, explaining that **the government was entitled to so act "to protect the public interest in health, the environment, and the fiscal integrity of the area," such as by "exercising its police powers to abate activity akin to a public nuisance," although the court made clear that the police power was broader than nuisances. (**At 488**,** emphasis added**)** See SMARA # 2715 and 2714 discussed in Attachment B, explaining how even valid vested rights to be excused from a use permit do not excuse Rise from other laws, and how the Rise Petition claim (at 58) to entitlement to operate as it wishes "without limitation or restriction" cannot ever survive the challenges it will inspire. The actual laws that Rise ignores (see Id.) will govern as the applicable laws "limiting or restricting" Rise's uses of the IMM, whether voters achieve such protections from such nuisances and worse by electing responsive officials, by initiatives/referendums, or, if necessary (when ripe), by test case litigation.) Of special note, the *Keystone* Court (at 493-94)

explained that this challenge was to the enactment of the law before it was enforced, meaning that it was premature to complain about how the law might be abused, since the facts of that surface and underground mining competition of rights were not yet established; citing its own precedent in *Hodel v. Virginia Surface Mining & Reclamation Ass'n Inc*, 452 U.S, 264 (1981), the Court explained:

> [The] court ignored this Court's oft-repeated admonition that the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary. [citations omitted] Adherence to this rule is particularly important in cases raising allegations of an unconstitutional taking of private property. *** (at 497): **[W]here an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' is not a taking because the aggregate must be viewed in its entirety. [The Court then followed that discussion how valid zoning laws always affect without any "taking" property uses with things like setbacks, lot size vs building size, etc.]** (emphasis added)

While Rise (like others before it) may attempt to argue that somehow such new regulations and laws reducing IMM potential profits are "eminent domain" "takings" or otherwise barred by its constitutional "vested rights," that meritless theory has long been rejected by courts and governments, both on the legal merits (e.g., such speculative "lost profits" are not recoverable as a legal remedy in this state) and **because objecting surface owners also have their own competing constitutional, legal, and property rights that do merit protection from such underground mining threats.** Note, unlike in that Supreme Court case, where some surface owners had signed waivers in favor of the underground mining, the reverse is true here, as demonstrated by the Rise deed limitations and absence of surface waivers, as admitted by Rise in its SEC 10K filing. California Courts have upheld such surface owner protection laws against underground mineral rights or other uses, such as in California Civil Code section 848(a)(2), upholding such surface owner protections challenged by oil and gas miners. *Vaquero Energy, Inc. v, County of Kern* (2019), 42 Cal. App. 5th 312 (including among protections some delegations of power to surface owners, depending on Tiers classified by the extent of current mining domination vs competing uses dominating the area and many other interesting ideas, involving notice requires, 120-day delays of mining, etc.). The point here is that there are many things our local government (and other law reforms discussed above) can and should do by enhanced legislation (or, if need be, by voter initiatives) independent of any CEQA or other screening or permitting as to this IMM threat, to further protect us residents and voters above and around the 2585-acre underground mine. See, e.g., ***Varjabedian v. Madera*** (1977), 20 Cal.3d 285 (allowing nuisance, inverse condemnation, and other claims for homeowners suffering downwind of the new sewer plant project, since those local victims suffered disproportionate harms compared to the general public enjoying the benefits or the sewer plant without its burdens.) ("***Varjabedian").***

Apart from the Rise Petition Exhibits disputed earlier in this document, Rise's inconsistent EIR/DEIR data never lays any factual foundation for vested rights (often the opposite in advocating for a use permit.) Rise just admits in the SEC 10K that "original mineral

rights" were acquired "at various times" since 1851. However, the SEC 10K also describes the Rise purchase of everything from the BET Group Estate (at pp.29) by quitclaim deed on 1/25/2017 (with the "Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) **"subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" NOTE THAT RISE (AT SEC 10K PP. 28) NOT ONLY SEPARATES SURFACE FROM SUBSURFACE MINING, BUT SEPARATES "MINERAL EXPLORATION" FROM BOTH SUCH TYPES OF MINING, CONSISTENT WITH THE M1 DISTRICT ZONING.**

Furthermore, Objecting surface owners especially have important legal rights and remedies to **mitigate** objectors' damages (when ripe), which include, for example, RIGHTS TO IMPROVE EXISTING WELLS AND TO CREATE NEW WELLS, none of which competing activities are evaluated or discussed in the noncompliant EIR/DEIR or are excused by any Rise vested rights claims. E.g., ***Smith v. County of LA*** (1986), 214 Cal. App. 3d 266 (homeowner victims' self-help mitigation was allowed when essential county road repairs created landslide conditions destroying local homes, triggering nuisance, inverse condemnation, and other claims, both for damages for diminution in the value of real property and for annoyance, inconvenience, and discomfort, including mental distress as part of the loss of quiet enjoyment rights as a property owner. Such exercise of surface owners' property rights will further counter Rise's vested rights theory and the battle over groundwater, future and existing wells, and subsidence. Indeed, *Gray v. County of Madera (2008), 167 Cal.App.4th 1099 ("**Gray**")* (rejecting an EIR surface miner's plan for similar, purported groundwater/well mitigation, that was even superior, to Rise's disputed EIR mitigation plan), clearly rejected the kind of mitigation Rise proposed in its EIR/DEIR, and that same reasoning will defeat Rise's vested rights claims for objecting surface owners competing for their owned groundwater with deeper and new wells and watering systems and charging culpable parties for that mitigation cost as and when allowed by many controlling court decisions. E.g., ***Ahlers v. County of LA*** (1965), 62 Cal.2d 250 (road construction caused landslides, entitling the threatened property owners to recover, among other things, the mitigation costs of constructing 25 shear pin caissons to hold back the landslide); ***Shefft v. County of LA*** (1970) 3 Cal. App.3d 720, 741-42 (when water diversion from subdivision and road construction caused damages, the victims were entitled to recover the costs of protecting their property with mitigation infrastructure.) See also ***Uniwill v. City of LA*** (2004), 124 Cal. App. 4th 537 (both the private party and the approving government can be jointly liable in inverse condemnation); ***Varjabedian v. Madera*** (1977), 20 Cal. 3d 285 (explaining inverse condemnation and nuisance rights of homeowners downwind of the new sewer treatment plant).

3. *Hansen* Itself Defeats Rise's Disputed, "Unitary Theory of Vested Rights" By Requiring A Parcel-By-Parcel Analysis For Each "Use" And "Component." See Attachment A for a comprehensive analysis of *Hansen.*

Rise incorrectly claims the *Hansen* unitary business theory somehow, applies so that any kind of "operation"(defined from SMARA in an out-of-context *Hansen* quote in Rise Petition Conclusion #2 at 76) conducted on any of the "parcels" (10 parcels or 55 sub-parcels in its SEC

10K filing or some other number or configuration?) of its alleged "Vested Mine Property" allows all kinds of **"operations" everywhere (claimed at Rise Petition 58) "without limitation or restriction**," both on the surface and in the 2585-acre underground mine, even in the new, expanded, never explored or accessed for mining underground mining proposed in the disputed EIR/DEIR. To quote that disputed Rise claim (citing *Hansen* at 556, but where the **actual** *Hansen* quote insufficiently quoted by Rise to support its exaggerated and disputed claim was qualified and limited in *Hansen [emphasis added]* to apply to: **"a vested right to quarry or excavate [surface mining/not underground mining terms] the entire area OF A PARCEL…**" Rise ignored the more important rulings to follow in the next *Hansen* pages Rise incorrectly ignored, with Rise instead incorrectly claiming (at Rise Petition 58, emphasis added) as follow: "Therefore, **as a matter of law,** Rise is entitled to engage in mining operations **throughout the whole of the Vested Mine Property pursuant to** the California Supreme Court's holding in **Hansen Brothers**, as mineral rights that have been vested **necessarily encompass, 'without limitation or restriction' the entirety of the Vested Mine Property** due to the nature of mining as an extractive enterprise **under the diminishing asset doctrine."**

To be clear (emphasis added), **Rise incorrectly cited *Hansen* as allowing such vested rights "throughout the whole of the Vested Mine Property," but, to the contrary, *Hansen* indisputably limited such vested rights to "the entire area OF A PARCEL" AND ONLY THAT PARCEL; i.e., only allowing vested rights on a parcel-by-parcel basis, as demonstrated by the *Hansen* court's ultimate decision allowing vested rights on some parcels in the miner's property, but not on other parcels there. See Appendix A (a comprehensive discussion of *Hansen* with quotes that defeat Rise's mischaracterizations of that court decision.) THE RISE PETITION DOES NOT PRODUCE ANY EVIDENCE ON A PARCEL-BY-PARCEL BASIS, BUT ONLY OFFERS UNDIFFERENTIATED "EVIDENCE" ABOUT THE GENERAL MASS OF THE MULTI-PARCEL, "VESTED MINE PROPERTY," THUS FAILING RISE'S BURDEN OF PROOF. Moreover, *Hansen* did NOT so apply vested rights as Rise claims or apply vested rights to any underground mining, but only exclusively to the "surface mine" subject to SMARA (which does not apply at all to underground mining, as explained in Attachment B) ON A PARCEL-BY-PARCEL BASIS. Thus, the disputed Rise Petition's incorrect and unprecedented "unitary theory of vested rights" contradicts *Hansen*, for example: (i) by Rise insisting incorrectly that vested rights apply to the "ENTIRETY" of a mine AS A MATTER OF LAW, when, to the contrary, *Hansen* instead REMANDED some parcels for further analysis, in effect, because of the LACK OF EVIDENCE as to the application of LEGAL AND FACTUAL ISSUES (also ignored by Rise) regarding various of the *separate parcels* of that mine. (In other words, Hansen divided the mine by parcels, some of which had vested rights and some failed to prove any vested rights); (ii) *by the* Rise Petition incorrectly claiming (at 58) that Hansen and SMARA allow Rise to mine as it wishes "without limitation or restriction," *when, to the contrary, neither Hansen nor SMARA applies to underground mining and both Hansen* and *SMARA* (see Attachments A and B) demonstrate many legal and regulatory "limitations or restrictions," especially as to the miner's need for an approved "reclamation plan" and related "financial assurances" for which Rise could never qualify, as illustrated in Rise's SEC filings and financial statements with "going concern qualifications;" and (iii) even more importantly, by Rise ignoring this *Hansen* quote defeating Rise's disputed cross-parcel/unitary operations claims (none of which disputed and unprecedented Rise theories apply to UNDERGROUND mining at all, as *Hardesty***

demonstrated above and as SMARA itself states in Attachment B. In an irrefutable rebuttal to such Rise claims, *Hansen* stated (at 558, emphasis added):

> **EVEN WHERE MULTIPLE PARCELS ARE IN THE SAME OWNERSHIP AT THE TIME A ZONING LAW RENDERS MINING USE NONCONFORMING, EXTENSION OF THE USE INTO PARCELS NOT BEING MINED AT THE TIME IS ALLOWED ONLY IF THE PARCELS HAD BEEN PART OF THE MINING OPERATION.** (*Dolomite Products Company v. Kipers* (1965), 23 A.D.2d. 339…affd 19 N.Y.2d 739 [279 N.Y.S.2d 192]…[**OWNER MAY NOT "TACK" A NONCONFORMING USE ON ONE PARCEL USED FOR QUARRYING ONTO OTHERS OWNED AND HELD FOR FUTURE USE WHEN THE ZONING LAW BECAME EFFECTIVE**]; *Smart v. Dane County Bd. Of Adjustments*…501 N.W.2d 782; *Stephan & Sons v. Municipality of Anchorage*…685 P.2D at p.102 fn.6 ["**THE DIMINISHING ASSET DOCTRINE NORMALLY WILL NOT COUNTENANCE THE EXTENSION OF A USE BEYOND THE BOUNDARIES OF THE TRACT ON WHICH THE USE WAS INITIATED WHEN THE APPLICABLE ZONING LAW WENT INTO EFFECT….]** see also *Midland Park Coal & Lumber Co. v. Terhune*, 56 A.2d 717 (N.J. 1948); *Syracuse Aggregate Corp. v. Weiss*, 51 N.Y.2d 278, 434 N.Y.S.2d 150 *…; Davis v. Miller*, 163 Ohio.St. 91, 126 N.E.2d 49 (1955).].) (emphasis added)

Further, to avoid any doubt about that required parcel-by-parcel and use-by-use analysis in *Hansen* and to emphasize the importance of **EVIDENCE** (contrary to Rise's disputed claim that somehow, we must trust its erroneous legal opinion "as a matter of law"), the *Hansen* court also stated (at 561-64, emphasis added):

> Some of those parcels were conveyed to Hansen Brothers after 1954, however. **The record does not confirm that all of the parcels, over which Hansen Brothers claimed vested rights in its SMARA application, were part of the Bear's Elbow Mine in 1946 or 1954. The record is also devoid of evidence that the owners of those parcels themselves held vested mining rights in the transferred property at the time they were deeded to Hansen Brothers.** Examination of the record reveals that [the County's related admissions, including one obvious mistake that it could not correct in time]… encompassed only the parcel that was the original site of the …Mine and one of the three parcels conveyed to Hansen Brothers after 1954.
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> Hansen Brothers does not dispute the absence of evidence in the record that the after-acquired properties were being used for mining purposes in 1954. Instead, it argues that its SMARA reclamation plan …[was sufficient and the County was estopped to object from subsequent use].
>
> ….**The court must make its own decision as to the legal impact of those facts and is not bound by any concessions of law that a party may have made. [citations]… Indeed, the county lacks the power to waive or consent to violations of zoning law. [citations]**
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> [After analysis that is even more powerful here because IMM objectors here make no admissions or concessions of any kind to Rise, the court concluded:] **Hansen Brothers has failed to carry that burden insofar as its SMARA reclamation plan asserted a vested right to quarry a 60 plus acre parcel…The evidence is insufficient to support a finding that Hansen Brothers is entitled to a writ of mandate… [therefore referring to a further] determin[ation] by the superior court on remand.**

Moreover, while parcels so limit vested rights, they are also limited to each specific "use" (as *Hardesty* demonstrates above) and even as *Hansen* demonstrates below by each specific "component." Consider that Rise admits in its EIR/DEIR that this expansion mining into new, underground parcels would requires a new, high-tech, massive dewatering system operating 24/7/365 for 80 years, but those 1954 Rise predecessors could have never planned to duplicate anything like that. Indeed, as described above even in Rise Petition Exhibits, untreated mine water flowed into the Wolf Creek for decades thereafter. More importantly, when the Idaho Maryland Mines Corporation was suffering its financial distress in 1954 and thereafter and cutting back on its gold mining in anticipation of the 1956 closure and flooding of the gold mine (as admitted in Rise Exhibits discussed above), no one could imagine that miner investing in or operating anything that could be considered a precedent for any such Rise water treatment system. Thus, Rise's claim to vested rights must fail for such an EIR/DEIR water treatment system essential for dewatering any "Vested Mine Property" and any such contemplated mining there. **As Attachment A demonstrates, THE *HANSEN* CASE ITSELF IS CONCLUSIVE AUTHORITY FOR DENYING SUCH VESTED RIGHTS CLAIM (**AT 566, EMPHASIS ADDED**) THE COURT "ILLUSTRATED" ITS "APPROACH" BY CITING *PARAMOUNT ROCK CO. V COUNTY OF SAN DIEGO* (1960), 180 CAL.APP.2D 217, 230 ("Paramount Rock"). IN PARAMOUNT ROCK THAT READY-MIX CONCRETE BUSINESS ADDED FOR THE FIRST TIME AFTER THE VESTING REZONING DATE A NEW "ROCK CRUSHING PLANT ON THE SITE" (REPLACING PRECIOUSLY OFFSITE CRUSHING), REJECTING THE ARGUMENT THAT SUCH A CRUSHER ADDITION WAS "AN INTEGRAL PART OF THE BUSINESS THAT THE [OWNER] PLAINTIFF HAD BEEN OPERATING," BECAUSE THAT CRUSHER WAS "NOT PART OF THE NONCONFORMING USE TO WHICH THE PROPERTY WAS BEING PUT AT THE TIME THE ZONING ORDINANCE WAS ADOPTED." STATED ANOTHER WAY, *HANSEN* (at 566, emphasis added) IN EFFECT STILL REQUIRED THAT SUCH "A COMPONENT OF A BUSINESS" MUST "ITSELF HA[VE] A VESTED RIGHT TO CONTINUE USING THE LAND ON WHICH IT IS LOCATED FOR OPERATION OF THE BUSINESS."**

Thus, Rise cannot now add such a new water treatment plant it admits in its disputed EIR/DEIR that Rise needs for its 24/7/365 for 80 years of dewatering of groundwater drained from objecting and competing surface owners and existing and future wells above and around the 2585-acre underground mine because that massive water has nowhere to go except into the Wolf Creek, which applicable law will not allow without such treatment. (Much better water treatment would be required than Rise proposed in the disputed EIR/DEIR, especially when the government finally focuses on the toxic hexavalent chromium menace from the cement paste the EIR/DEIR proposes to pipe into the underground mine to create shoring column braces from mine waste to avoid the expense of removing such waste rock. As explained in various objections, that toxin that killed Hinkley, California, and many of its citizens as publicized in the

movie, *Erin Brockovich,* has still not been remediated despite ample litigation settlement funds, as explained in www.hinkleygroundwater.com. See the EPA and CalEPA websites with massive threat studies on hexavalent chromium.)

4. Objectors' Cited Court Decisions Do Not Merely Announce Such Above Stated Limitations, Bars, And Principles To Defeat Rise's Vested Rights Claims, But Such Cases Also Apply Those Rebuttal Rules To SIMILAR EVIDENCE That Reinforces Our Objections, Even In *Hansen.* (See Attachment A.)

To avoid any doubt about that parcel-by-parcel, use-by-use, and component-by-component analysis required by *Hansen* and to emphasize the importance of **EVIDENCE AND RISE'S BURDEN OF PROOF (contrary to Rise's disputed claim that somehow, we must trust its erroneous legal opinion as a matter of law), the *Hansen* court also stated** (at 561-64, emphasis added):

> Some of those parcels were conveyed to Hansen Brothers after 1954, however. **The record does not confirm that all of the parcels, over which Hansen Brothers claimed vested rights in its SMARA application, were part of the Bear's Elbow Mine in 1946 or 1954. The record is also devoid of evidence that the owners of those parcels themselves held vested mining rights in the transferred property at the time they were deeded to Hansen Brothers.** Examination of the record reveals that [the County's related admissions, including one obvious mistake that it could not correct in time]… encompassed only the parcel that was the original site of the …Mine and one of the three parcels conveyed to Hansen Brothers after 1954.
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> Hansen Brothers does not dispute the absence of evidence in the record that the after-acquired properties were being used for mining purposes in 1954. Instead, it argues that its SMARA reclamation plan …[was sufficient and the County was estopped to object from subsequent use].
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> ….**The court must make its own decision as to the legal impact of those facts and is not bound by any concessions of law that a party may have made. [citations]… Indeed, the county lacks the power to waive or consent to violations of zoning law. [citations]**
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> [After analysis that is even more powerful here because IMM objectors here make no admissions or concessions of any kind to Rise, the court concluded:] **Hansen Brothers has failed to carry that burden insofar as its SMARA reclamation plan asserted a vested right to quarry a 60 plus acre parcel…The evidence is insufficient to support a finding that Hansen Brothers is entitled to a writ of mandate… [therefore referring to a further] determin[ation] by the superior court on remand.**

While this commentary continues below with further discussions of these evidentiary issues, such Hansen rules ignored by the disputed Rise Petition support objectors' many evidentiary objections above. **Nothing asserted by Rise can be resolved in its favor (as Rise incorrectly claims), "as a matter of law," and none of Rise's evidence is admissible or sufficient to prove any vested rights that it claims when such *Hansen, Hardesty, Calvert*, and other court rulings are applied to support the Evidence Code rules explained and applied in the foregoing objection. Indeed, since the Rise Petition is primarily based on Rise's incorrect and selectively deficient reading of *Hansen*, the more complete reading of Hansen as quoted herein and in Attachment A, defeats the Rise Petition by itself.** Rise may attempt to argue against evidentiary requirements, but Rise cannot ignore *Calvert,* or even the *Hansen* evidentiary example, where the California Supreme Court majority re-examined the evidence for the contrary ruling by the County, the trial court, and the Court of Appeal and then reversed those lower decisions. Yet, the Hansen court still ruled the evidence insufficient for various vested rights issues, thereby confirming the importance of the rules of evidence in such cases (refuting Rise's claims to prevail as a matter of law), stating (at 542):

> Nevertheless, **the record is inadequate** to permit us, or the lower courts and administrative bodies, **to determine (1) whether the nonconforming use** which Hansen Brothers claims a vested right to continue **extends to all of the Nevada County property it identifies** [and so owned in 1954], or (2**) the extent of the area over which an intent to quarry for rock was objectively manifested in 1954** [to which such intended area the court stated at page 543 that mining right is "limited."] (emphasis added)

As demonstrated in the above objection, **that evidentiary problem defeating such vested rights exists for Rise's Vested Mine Property parcels as well, since Rise has produced no sufficient, admissible, and credible parcel-by-parcel, use-by-use, and component-by-component such evidence, especially to mine the parcels never before mined, accessed, or even meaningfully explored by drilling where Rise proposes to create 76 miles of new tunnels. While the Hansen court's majority (versus the dissents supporting the County and lower court decisions) could disagree with everyone else about the evidence of whether the "proposal for future rock quarrying would be an impermissible intensification of the nonconforming use of its property" and whether various relevant inactivity was sufficient to determine that the applicable aggregate production business had been "discontinued," that majority thinking in *Hansen* does not apply in this distinguishable IMM case, where Rise cannot prove such factors.** Moreover, **after considering much more evidence than will be available to Rise for the IMM**, **the actual conclusion of the majority in *Hansen* (at 543) was**:

> Nonetheless, as we explain below, **because a court cannot determine on this record that Hansen Brothers is entitled to the [vested rights] relief it seeks, the [miner's] petition for writ of mandate to compel the Board to approve a Surface Mining And Reclamation Act of 1975 (#2710 et seq.) reclamation plan for the Hansen Brothers' property was properly denied by the superior court.** However, Hansen Brothers is entitled … to have its application reconsidered. We shall therefore reverse the

> judgment of the Court of Appeal … but we shall do so **with directions that … the superior court conduct further hearings." (**emphasis added)
>
> What that means is that evidence and the burden of proof are important matters in these vested rights disputes, especially where the courts here must deal with the additional factors from the competition between objecting surface owners above and around the 2585-acre underground IMM, who have no less constitutional, legal, and property rights at issue than Rise or the County. See *Keystone and Varjabdian* above.

Also, consider how Rise neglected to address this *Hansen* ruling (at 564, emphasis added), **among others, that must be addressed first, before our additional dispute over abandonment below: "The BURDEN OF PROOF is on the party asserting a nonconforming use to establish the lawful and continuing existence of that use at the time of the enactment of the ordinance", citing *Melton v. City of San Pablo* (1967), 252 Cal. App.2d 794. Among many incorrect Rise claims about evidence and the burden of proof that further objections will dispute in the coming briefing, objectors especially dispute RISE'S FALSELY CLAIMING WITHOUT CITED AUTHORITY AND INCORRECTLY (AT 1) THAT: "THE THRESHOLD FOR PROVING A VESTED RIGHT EXISTS ON THE VESTED MINE PROPERTY IS LOW. It requires only that Rise illustrate that the vested right is more likely than not to exist … meaning that if Rise provided enough evidence to indicate a 50.1% chance that a vested right exists, the County has a legal obligation to confirm that right." Fortunately for justice, Rise cannot achieve even that low standard it incorrectly sets for itself (even for the inapplicable SURFACE mining and surface mining law on which Rise incorrectly applies to this UNDERGROUND mining), but this illustrates why this Objectors Petition is so necessary to end such meritless Rise threats.**

More importantly, and another reason besides Calvert due process requirements for us objectors why objectors insist on full participation as equal parties in this vested rights dispute, is stated by *Hansen's* above quote in rejecting the miner's argument that the county was not estopped:

> ….**The court must make its own decision as to the legal impact of those facts and is not bound by any concessions of law that a party may have made. [citations]… Indeed, the county lacks the power to waive or consent to violations of zoning law. [citations] (**emphasis added)

As explained above and in other objections, not only are impacted surface residents above and around the underground mine entitled to enforce our constitutional, legal, and property rights independent of the County and regardless of its decision on vested rights, but, by abandoning its quest for a disputed use permit in favor of vested rights, Rise has sacrificed any legal benefits it might otherwise have claimed from any use permit (i.e., seeking to avoid such use permit burdens and conditions on Rise). That means any disputed Rise vested rights cannot impair any such constitutional, legal, or property rights of any such objecting and competing surface owners.

Even if Rise were correct about such disputed claims (which it is not), the County cannot BY ITSELF allow any vested rights for Rise mining, for example, such as in that new,

expanded, never mined or even accessed UNDERGROUND parcels, because the courts must also address the objections of us surface owners who have our own competing constitutional, legal, and property rights (see the US Supreme Court analysis in *Keystone* discussed below) to challenge Rise from such IMM mining beneath objectors and from depleting groundwater and existing and future wells of surface owners above and around the underground mine. If the County were to "take" away resisting surface owner' competing rights, then the County would be exposing itself to the kinds of inverse condemnation and other claims the California Supreme Court recognized in its *Varjabedian* decision discussed herein. Recall, for example, objectors EIR/DEIR challenging Rise's proposal to take the first 10% of every existing well (and 100% of all future wells) before even pretending to mitigate with measures already rejected similar to those in *Gray v. County of Madera,* with illusory mitigation proposals Rise's SEC filings admit it lacks the financial resources to afford.

The *Hardesty and other* case evidentiary quotes we add demonstrate next with greater particularity what evidence is required to satisfy the miner's burden of proof for vested rights:

> Significantly, at the Board hearing, Hardesty's counsel conceded the mine was dormant until at least the late 1980's, although counsel attributed this to market forces [a disputable argument that Rise cannot credibly make here]. Hardesty submitted other evidence, but the Board and trial court could rationally reject it. **There was no hard evidence, such as production records, employment records, equipment records, and so forth, showing any significant mining after World War II.** *(emphasis added)*

Hardesty, 11 Cal.App.5th at 801. (This followed the court's earlier evidentiary findings [at 799] that, for example: "'There are no records presently available …to show what kind of mining business … the owner from 1921 to 1988 … conducted on the property after the war.' **The trial court found that through the 1970's, the property 'was essentially dormant.'") As demonstrated in the main evidentiary objections above, even what Rise alleges to be evidence is not relevant, sufficient, or admissible when (i) it only applies to Rise's disputed and incorrect legal theories (e.g., Rise's unprecedented and incorrect invention of "unitary vested rights" refuted herein), and (ii) Rise fails to address the realities consistent with the correct, applicable law on a parcel-by-parcel, use-by-use, and component-by-component basis.** As noted above and elsewhere, **that court ruled at 811 (citing Hansen at 12 Cal.4th at 564, and Calvert at 145 Cal.App.4th at 629): "IT WAS HARDESTY'S BURDEN TO PROVE HE WAS CONDUCTING A NONCONFORMING USE AT THE TIME THE LAW CHANGED." IT ADDED THIS CITE FROM MELTON V. CITY OF SAN PABLO (1967), 252 CAL.APP.2D 794, 804: "THE BURDEN OF PROOF IS ON THE PARTY ASSERTING A RIGHT TO A NONCONFORMING USE TO ESTABLISH *THE LAWFUL* AND CONTINUING EXISTENCE OF THE USE *AT THE TIME* OF THE ENACTMENT OF ORDINANCE [IT WISHES TO EVADE.]"** (emphasis added) See also the court's discussion at Id. and 812 of *Stokes v. Board of Permit Appeals* (1997), 52 Cal.App.4th 1348, 1351, 1352-53, 1355-56, and *Walnut Properties, Inc. v. City Council* (1980), 100 Cal.App.3d 1018, 1024.

Moreover, Rise evidence, even if it were technically admissible, fails to meet the **credibility standards in the relevant cases that require at least "common sense" (Gray) and "good faith reasoned analysis" (Banning, Vineyard, etc.)** See, e.g., ***Banning Ranch***

Conservancy v. City of Newport Beach (*2017), 2 Cal.5th 918, 940-41 ("*Banning*"); *Vineyard Area Citizens For Responsible Growth v. City of Rancho Cordova* (2007), 40 Cal.4th 412, 442 ("*Vineyard*"); *Gray v. County of Madera* (2008), 167 Cal.App.4th 1099 (*"Gray*"); *Concerned Citizens of Costa Mesa, Inc. v. 32d Dist. Ag. Ass'n* (1986), 42 Cal.3d 929 ("*Costa Mesa"). Because (as objections to the EIR/DEIR expose) Rise has a habit of insisting on what is politely called an "alternative reality" (e.g., what *Hardesty* called a "muddle"), the County should consider how *Hardesty* handled a miner's evidentiary resistance to reality, such as where the court stated:

> Hardesty's **contentions are unnecessarily muddled** by his persistent refusal to acknowledge the *facts [the court's italics]* supporting the Board's and the trial court's conclusions. … **we will not be drawn onto inaccurate factual ground** (Western Aggregates Inc. v. County of Yuba (2002), 101 Cal. App.4th 278, 291…Because Hardesty does not portray the evidence fairly, any intended factual disputes are forfeited. See Foreman & Clark, supra, 3 Cal.3d at p. 881….Western Aggregates….

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799 -812. For example, what EIR/DEIR claims may apply for vested rights to one parcel of the IMM project has never been sufficiently proven could ever be generalized to the other parcels for which Rise offers no such proof by the disputed Rise Petition or Exhibits, the EIR/DEIR or otherwise by Rise or others, especially with the **required "common sense" (e.g., *Gray*) and "good faith reasoned analysis"** (emphasis added, e.g., *Banning, Vineyard, and Costa Mesa*) to apply similarly to the rest of the project; i.e., such parts like the Brunswick site, the Centennial site, or the specially addressed area around East Bennett Road, are more likely to be different than the 2585-acre underground mine that the EIR/DEIR speculates (and incorrectly assumes) to be the same or uniform.

In addition, the Rise Petition and Exhibits have compounded Rise's objectionable evidentiary problems because such disputed, supporting "evidence" is not just supporting incorrect legal arguments but is also inconsistent or contrary to other disputed Rise "evidence" or admissions in its now suspended EIR/DEIR, permit applications, or SEC filings. **When the Rise "story" in its Rise Petition, its SEC filings, its EIR/DEIR or its other documentation or communications don't "match" or "reconcile," then none of such "evidence" offered by Rise can be considered credible and should then be disregarded. See, e.g., Hardesty** discussed above; ***Communities for a Better Environment v. City of Richmond*** (2010), 184 Cal. App.4th 70 (where the court used Chevron admissions in, and inconsistencies from, its SEC filings to defeat its EIR) While objectors may search into such historical records to rebut the disputed Rise fragments (most of which have not been authenticated or proven admissible), objectors urge the County to evaluate its own historical records of the IMM mine for its own evidentiary analysis of the disputed vested rights claims, and then allow objectors must do their public records requests for access to such relevant historical records or, better yet, as is done in many such major cases like this, objectors ask the County to create an indexed data room for objectors with all of the potentially relevant records there for objectors to explore.

Moreover, massive evidentiary objections apply to the way Rise is "hiding the ball" as to its purported evidence in such conflicting ways that the present County proposed process incorrectly does not allow us to reconcile and rebut, and, therefore, which will consume the

early phases of the following court processes in comprehensive challenges to Rise's purported evidence and related disputes. For example, **EC #412 is a common failing of the Rise Petition and both the Johnson Declaration and other Rise Petition Exhibits, which statute states: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust." As already demonstrated above, Rise Petition Exhibits described conceptually many more documents than were produced by Rise as Exhibits, and objectors assume many of those missing documents contained evidence helpful to the objectors and adverse to the Rise Petition. Objectors will be using EC #412 more generally to address such tactics by rebuttal uses of such inconsistent Rise SEC filings, such as:**

Rise's SEC 10K claims at pp. 34 (Exhibit A) that: "The I-M Mine Property and its **comprehensive collection of original documents was rediscovered in 1990** by Consolidated Del Norte Ventures Inc, the predecessor company of Emgold Mining Corporation, and efforts were made to reopen the historic mine." (emphasis added) However, as described below, **Rise admits not acquiring that full collection,** and during the period of what Rise there called "Exploration & Mine Development 2003-2004" [skipping over in dead silence the period of nonuse or anything from 1956 to 2003], that **Rise 10K also claims (at pp. 34):**

> **"Development work during this period [2003-2004] included completion of a preliminary investigation of the mine records, publishing various technical reports on the I-M Property, leasing or purchasing adjacent properties [none of which disputed and unreliable "evidence" would be eligible for vested rights because they were expansion, intensification, and otherwise barred by case law], various permit applications and associated environmental studies, development of a ceramics technology process, and completion of an exploration program. Emgold was unsuccessful in reopening the historic mine due to inability to raise necessary funding in the midst of unfavorable market conditions."** (emphasis added)

Thus, one of two possibilities, or both of them in part, must apply here: either or both: (i) as discussed in the preceding analysis of the disputed Rise Petition Exhibit evidence, there were actually few or no other books, records, and other evidence that were relevant to the vested rights (besides the disputed Rise Petition Exhibits) than were so implied by Rise (e.g., whatever the records were they didn't prove vested rights but addressed irrelevant subjects instead), such as if such "rediscovered" "comprehensive collection" records of just dealt [with irrelevant to vested rights] gold production and location issues); and/or (ii) there were such records of relevant evidence that Rise (and perhaps Emgold and other predecessors) chose to ignore or disregard or otherwise keep out of the evidence pool, knowing that objectors had no discovery opportunities in the County dispute and that Rise could attempt to limit the evidence to what was in the County's administrative record; e.g., among the reasons why the Evidence Code included # 412 and other rules to discourage (or at least not reward) such hide the ball tactics.)

If the County corrects its procedures as objectors have requested to allow direct challenges and rebuttals to Rise's disputed claims and "evidence," and, in any event, in the courts correctly applying the rules of evidence in accordance with the applicable law, Rise confronts massive obstacles in admitting any such evidence. **Not only will there be all the same**

evidentiary objections asserted by objectors above in this objection, but there will be many more because Rise cannot expect to authenticate these historical records that allegedly were somehow "rediscovered" conveniently in 1990. Recall that Idaho Maryland Mine had no reason to preserve those records, as is proven above in this objection by Rise Petition's own Exhibits: (a) to have suffered a long period of financial distress due to the costs of gold mining exceeding the $35 legal cap on gold prices (which would continue indefinitely as everyone expected and progressively worse for more than a decade); (b) to have discontinued mining operations shortly after the October 1954 vesting date (various dates will be addressed in subsequent briefing between 1955 and 1956, but this objection references 1956 for convenience and to be conservative, since the 1956 closure and flooding of the mine made the abandonment clear to everyone but Rise; (c) to have changed its name and trademark to Idaho Maryland Industries, and moved to LA to become an aerospace contractor; and (d) to be then have that initial, alleged vested rights creators' at least dormant mining assets (now claimed by Rise as "Vested Mine Property") liquidated in an LA bankruptcy by a trustee whose auction resulted in the purchase cheap by William Ghidotti, all as described above by reference to Rise's own Exhibits.

Since there was no activity relevant to vested rights at or about the mine before that auction sale to William Ghidotti (or afterward), how likely is it that any of those mining records survived (especially as a "comprehensive collection") all those non-mining events, especially in the long LA bankruptcy case leading to the eventual auction sale to William Ghidotti. (If those LA bankruptcy records were available, which, unfortunately, the LA bankruptcy court reports they no longer exist, objectors believe that they would end Rise's whole vested rights case by themselves, because they would prove that the bankruptcy resulted in the end of any possible vested rights by abandonment before the sale to William Ghidotti. That will be a subject of further filed objections and evidence before the Board hearing. But the logic of the bankruptcy trustee and others is obvious and can be demonstrated as common practice in such mining bankruptcy cases. No bankruptcy estate parties would want any liability exposure for such a dormant mine that still had no possible value to them at the continuing $35 gold price cap, making it a dangerous asset set for a salvage sale with no one having any intention to continue mining. Why? Because there would be no apparent upside, and any such mining intentions would simply increase their liability exposure.)

In this case, considering the lack of admissible, competent, and credible evidence demonstrated by the deficient, inadmissible, objectionable, and otherwise objectionable Rise Petition Exhibits, Rise must be desperate for anything more persuasive than its previously rebutted and incorrect claim to prevail somehow "as a matter of law" without any such evidence. The fact that Rise did not provide more such "comprehensive" records from that alleged "collection," if and to the extent that such records existed, is more suspicious because Rise could have had more records but chose not to acquire them. That is like a buyer of a long-missing famous work of art whose "provenance" (the chain of legitimate owners, as distinct from thieves or forgers) which the buyer declined to acquire, because the buyer wanted the painting without the risk of the potentially ugly truths of its history. For example, the SEC 10K (at 34-35) reports that **Rise purchased the "Emgold diamond drill program database," as distinct from all the historical documents of Emgold, as Rise did when it purchased fragments**

from the BET Group. (emphasis added) Why not more? [Note that Rise's SEC 10K admits for example, that "[h]istoric drill logs were not available for review and no historic drill core was preserved from past mining operations**…"** thus contradicting the claim of a "comprehensive collection." Objectors wonder what competent, admissible, reliable, or even credible evidence, if any, serves as the foundation for Rise's (and the EIR/DEIR's) purported analysis, and what deficiencies exist to invalidate or discredit such analysis? Another discovery question is whether and to what extent the prior Emgold owner stopped its reported investigation merely (as the Rise 10k claims at 34-35) "due to inability to raise necessary funding in the midst of unfavorable market conditions," or whether Emgold may also have been discouraged by negative information, suspicions, or clues of risks that would have to have been awkward to address in the disputed EIR/DEIR (if Rise had chosen to search for or investigate them.) For example, **the SEC 10K reports that Rise purchased the "Emgold diamond drill program database" as distinct from all the historical documents of Emgold, as Rise did when it purchased fragments from the BET Group.** (emphasis added) Why not more?

As described in this and various other objections, alternatively, **objectors dispute any such Emgold purchased documentary evidence that might exist as not being consistent with Rise's description (e.g., disputing that such "REDISCOVERED" in 1990 pre-1956 records that were a "COMPREHENSIVE COLLECTION"). Where is Rise's competent proof for such claims, or even the authenticity of such "evidence?"** What is the proof for the "chain of custody" of such so-called evidence? The law of evidence should exclude those purported records (lacking the required foundation and admissibility factors) as admissible proof for any Rise claimed vested rights, since we cannot imagine how Rise will now prove and authenticate their disputed completeness, validity, and admissibility. As to that relevant "history" summarized by the Rise 10K starting at p. 34, using what are described as "**AVAILABLE** historic records" (emphasis added, to emphasize that **"availability" is a function both existence and the degree of diligence as to the search, which Rise has the burden to prove and which objectors doubt and may suspect Rise of failing to reveal relevant records adverse to Rise's claims)**. Objectors assume that **"available" means the portion of such a once greater mass of historical records that Rise was willing and able to find and consider.** What did Rise or its predecessors choose to hunt down and locate? What did Rise or its predecessors not seek, because, for example, it was from a source suspected of having possibly negative information? In any case, all those matters are part of Rise's burden of proof, for later litigation or discovery about what possibly available records Rise could have chosen to seek or investigate but didn't.)

Rise also violated a similar evidentiary rule as demonstrated in objectors' EIR/DEIR disputes, and now again above in the Rise Petition disputes, by Rise and its enablers so "hiding the ball." EC #413 STATES THAT: "THE TRIER OF FACT MAY CONSIDER, AMONG OTHER THINGS, THE PARTY'S FAILURE TO EXPLAIN OR DENY BY HIS TESTIMONY SUCH EVIDENCE OR FACTS IN THE CASE AGAINST HIM, OR HIS WILLFUL SUPPRESSION OF EVIDENCE RELATING THERETO…" An examination of the EIR (as shown by some point-by-point EIR objections) shows that Rise generally did not respond compliantly or often even at all to DEIR objections it did not dare to address on the merits. This vested rights process will likely be worse, if objectors do not have a full opportunity for the full due process required by *Calver*t for use by us objector parties rebutting whatever else Rise or its enablers add after the Rise Petition objection cut off deadline as full participants with equal rebuttal rights and time to protect

our constitutional, legal, and property rights as surface owners above and around the 2585-acre underground mine (not just public commentators with three minutes to address a limited scope of policy issues).

5. The Disputed And Incorrect Rise Petition Theory of the Case Is That Somehow Rise Acquired Unprecedented, "Unitary" Vested Rights Under Rise's Misreading of Only Parts of *Hansen* Applied Through Disputed Conduct, Gaps, And Intentions in a Chain of Vested Rights Predecessors Since October 1954.

a. Those Incorrect Rise Claims Are Rebutted Comprehensively In ATTACHMENT A, Presenting A Thorough Analysis of *Hansen, Which Supports Objectors And Defeats Rise.*

According to Rise's incorrect claim, the only possible issue is abandonment, which somehow must be incorrectly resolved in favor of rise "as a matter of law," or, in any event, based on the disputed, deficient, and worse rise petition exhibits refuted above. What preceded this next discussion defeated any such vested rights claim to be "continuous," both at the start and by "gaps" along that chain of rise's predecessors before any need even to consider "abandonment," which disputed issue objectors demonstrate that rise also misjudged.

b. Rise Must, But Fails To, Prove Every Element of What Is Required For Each "Use" And "Each Component" On Each "Parcel" Continuously for Rise And Each Rise Predecessor Since October 1954 To Have Any Vested Rights.

Rise Does Not Even Attempt To Prove Such Things In These Rise Petition Exhibits, Which, Among Other Fatal Flaws, Overgeneralize By Asserting Rise's Unprecedented And Incorrect "Unitary Theory" That Is Defeated By Even The Parts of Rise's Favorite *Hansen* Decision That Rise Improperly Disregards, As Demonstrated Both Here And More Comprehensively In Attachment A. These discussions are brief since these issues are comprehensively addressed in Attachment A and will be more fully briefed in other objections to be filed before the Board hearing. See also Objectors' Petition For Pre-Trial Relief, Etc. Consider the *Calvert* court's comments (at 623) regarding "objective manifestations of intent" continuously required for expanding vested rights uses on a parcel with vested rights for the same uses (as previously stated quoting *Hardesty* and *Hansen/Attachment A* on a parcel-by-parcel, use-by-use, and component-by-component basis, i.e., this confirms the ruling and result in Hansen where expansion of vested rights mining was tested parcel-by-parcel, with some allowed and some not):

> Under that [diminishing asset] doctrine, a vested right to **surface mine** into an expanded area requires the mining owner to show (1) part of the **same area** was being **surfaced mined when the land use law became effective,** and (2) the area the **owner desires to surface mine was clearly intended to be mined when the land use law became effective [i.e., in *Calvert* 1/1/1976]**, **as measured by objective manifestations and not by subjective intent. (**emphasis added.)

Even the *Hansen* majority concluded (at 543) that: "the record is inadequate to permit us, or the lower courts and administrative bodies, to determine (1) whether the nonconforming uses which Hansen Brothers claims a vested right to continue extends to all of the Nevada County property …over which it claims a vested right to continue operations…" Also, based on facts confirmed by EIR/DEIR, SEC filings, and other **Rise admissions**, the new/previously never adequately explored, accessed, or accessible **for mining** parcels of the 2585-acre underground mine into which Rise now wishes to expand **for mining** uses are **not the "same area" under that *Calvert* test (also consistent with *Hardesty* and *Hansen*)**. Recall that the entire 2595-acre underground mine has been inoperable, "dormant," flooded, and closed since at least 1956, and it has been (and still is) impossible to engage in any mining operations there, either (i) in the existing Brunswick shaft and 72 miles of existing, flooded tunnels from which pre-1955 or 1956 mining expanded to 150 miles of cross-cuts and drifts (probably now in the extremely dangerous and nonfunctional conditions one would expect after being abandoned and flooded since 1956) (for convenience call these parcels the **"Flooded Mine"),** or (ii) in the mineral rights parcels that have never been accessible (apart from minor and occasional test drilling, such as discussed above), mined, or otherwise explored (for convenience call these the "**Never Mined Parcels.")** Thus, contrary to the vested rights rules objectors have quoted from *Hansen, Calvert,* and *Hardesty* (and that Rise ignores), Rise cannot "expand" vested from those "Flooded Parcels" to mine the "Never Mined Parcels," even if there were somehow still continuous vested rights to mine the "Flooded Parcels," which Rise claim has been defeated by even the Rise Petition's own Exhibits when properly analyzed above. **As *Hansen* stated (at 558):**

Even where multiple parcels are in the same ownership at the time a zoning law renders mining use nonconforming, extension of the use into parcels not being mined at the time is allowed only if the parcels had been part of the mining operation. (*Dolomite Products Company v. Kipers* (1965), 23 A.D.2d. 339…affd 19 N.Y.2d 739 [279 N.Y.S.2d 192]…[**owner may not "tack" a nonconforming use on one parcel used for quarrying onto others owned and held for future use when the zoning law became effective**]; *Smart v. Dane County Bd. Of Adjustments*…501 N.W.2d 782; *Stephan & Sons v. Municipality of Anchorage*…685 P.2D at p.102 fn.6 ["**The diminishing asset doctrine normally will not countenance the extension of a use beyond the boundaries of the tract on which the use was initiated when the applicable zoning law went into effect….]** see also *Midland Park Coal & Lumber Co. v. Terhune*, 56 A.2d 717 (N.J. 1948); *Syracuse Aggregate Corp. v. Weiss*, 51 N.Y.2d 278, 434 N.Y.S.2d 150 *…; Davis v. Miller*, 163 Ohio.St. 91, 126 N.E.2d 49 (1955).].) (emphasis added)
That *Hansen* ruling should be fatal to the Rise Petition, because the separate underground parcels now to be mined had never been sufficiently accessed, explored, or mined before

(Also, whereas *Hansen* involved the court applying vested rights to a **continuous surface mining business** (where the key issue was the **scope of that surface business**), **this IMM underground mining dispute does not involve any underground mining at all after 1955 or 1956 and cannot possibly be called a "business" for application of *Hansen*, but merely an underground property speculation opportunity situation that *Hansen* did not address**.

Thus, for example, the kind of sporadic non-mining activity on the IMM surface is not continuous, and no such activities could have been happening on surface parcels sold by Rise predecessors to residential and non-mining commercial owners above and around the 2585-acre underground mine, whether the Flooded Mine parcels or Never Mined Parcels. See, e.g., the above discussed North Star rock-crushing for aggregate business on the Brunswick site that never excavated any surface, but just salvaged [and later imported] rock waste, tailings, and sand dumped onto the surface from ancient mining). That cannot qualify Rise for vested rights underground mining not only because it's on different parcels, but also because it is a different "use." **Consider not just *Hardesty* (which defeats the Rise Petition itself on such differences in uses between underground and surface mining), but also even the *Hansen* ruling forbids such dissimilar uses.** See *Hansen* (at 551-552, emphasis added) in its section entitled: "Scope of Vested Mining Rights –A. Zoning and related constitutional principles underlying Hansen Brothers vested rights claim":

When continuance of an existing use is permitted by a zoning ordinance, THE CONTINUED NONCONFORMING USE MUST BE SIMILAR TO THE USE EXISTING AT THE TIME THE ZONING ORDINANCE BECAME EFFECTIVE… [citing *"Rehfeld v. City and County of San Francisco* (1933), 218 Cal. 83 …*City of Yuba City v. Chemiavsky* (1931), 117 Cal. App. 568 …"] INTENSIFICATION of expansion of the existing nonconforming use, or moving the operation to another location on the property is not permitted. (*County of San Diego v. McClurken*, …37 Cal.2d 683,687-688. See also 8A *McQuillin* …#25.206 p.114) [I]n determining whether the nonconforming use was the same before and after the passage of a zoning ordinance, each case must stand on its own facts. (*Edmonds v. County of Los Angeles*…40 Cal.2d at 651 …[also *Livingston Rock and Tweed & Gambrell Mill*].

No one (beside Rise and its enablers, who have an excessive imagination) could possibly perceive or imagine any "similar uses" after 1956 to underground gold mining in the Flooded Mine or Never Mined Parcels or even elsewhere in the so-called "Vested Mine Property." Since there had been no possible gold underground mining anywhere in those 2585-acres of Flooded Mine And Never Mined Parcels since at least 1956, the entire Rise Petition claim depends on ignoring the full content of Hansen and all of Calvert, Hardesty, and other authorities cited herein) in favor of Rise's disputed, imagined, and unprecedented "unitary theory of vested rights" (see the above refutation of that Rise Petition fantasy for allowing vested rights for any

kind of mining operation everywhere, as long as there was any kind of mining-related use anywhere).

As *Hardesty* explained at 812: "THE CONTINUANCE OF A NONCONFORMING USE 'is a continuance of the same use and not some other kind of use'", citing "*County of San Diego v. McClurkin* (1951), 37 Cal.2d 683, 688; *Edmonds v. County of Los Angeles* (1953), 40 Cal.2d 642, 651; and *County of Orange v. Goldring* (1953) 121 Cal.App.2d 442, 446-47." (emphasis added) As *Hardesty* quotes demonstrated above, Rise's alleged **surface operations are always different uses from underground mining**, and even *Hansen* acknowledged that **each "component" must have its own vested right**. As the *Hansen* court reminded us (at 571-75 and in the County's Section 29.2(B), emphasis added)**: "No such [nonconforming use shall be enlarged or intensified." The court added: "Our conclusion that Hansen Brothers continues to have a vested right to continue quarrying hard rock for use in making aggregate DOES NOT COMPEL A CONCLUSION THAT THIS RIGHT EXTENDS TO QUARRYING THE AMOUNT OF ROCK PROPOSES IN ITS SMARA PROPOSAL." Citing again McClurken at 37 Cal.2d 663, 687, *Paramount Rock*, and other support, *Hansen*** added: "**Given the objective of zoning to eliminate nonconforming uses, courts throughout the country generally follow a strict policy against their extension or enlargement."**

Thus, *Hansen* (at 572, emphasis added) explained with approval the following **cases denying vested rights for such increased intensity, expansion, or enlargement: (1) *Edmonds v. County of Los Angeles* (1953), 40 Cal.2d 642, which disallowed vested rights to a trailer park when it had only 20 trailer spots on the zoning trigger date for vesting, but it thereafter increased the number of trailers to 48 (which increase also required an unprecedented, increased, and disqualified "utility house" for "sanitary facilities," just as Rise's new mining would require a new 24/7/365 dewatering system with a new water treatment plant for 80 years of increased, disputed depletion of groundwater from competing surface owner's property (and their existing and future wells) above and around the 2585-acre underground mine, adding another 76 miles of new and deeper tunneling for offshoot mining along every gold vein Rise hopes to cross, beyond the existing 72 miles of tunnels in the 1956 abandoned, closed, and flooded mine) ; (2) *County of San Diego v. McClurken* (1951), 37 Cal.2d 683,** where the court denied vested rights to evade a zoning ordinance banning heavy industrial purposes like the owners' storage of movable surface gas tanks by installing four new, permanent gas storage tanks on the property for the new and different use of storage of gas for service stations instead of such previous "industrial use." ***Edmonds* and *Hansen* also explained that defeat for vested rights claims by noting (at 572, emphasis added): "the additional trailers to be placed on the property were equated to additional structures, a type of changed or intensified use which most jurisdictions refuse to permit as part of a nonconforming use." [Like Rise's new water treatment plant, etc.] *McClurken* had the same concerns with both such a prohibited "new use and placing additional structures on the property. *Hansen* did not allow any of those things, because its miner did not have such a "new use," but instead the court focused on the question of "only an increased volume of production by the existing use." Id.**

In any event, the *Hansen* majority began assessing the issue of prohibited "intensification" by comparison of the quarry outputs before versus after, but again the court found the SMARA record for the *Hansen* required reclamation plan was deficient to resolve even that disputed measure. The court stated that the SMARA remediation application did not

need to address that intensity question sufficiently for resolving that issue in *Hansen.* Thus, the *Hansen* court stated (at 575, emphasis added): **"Impermissible intensification of a nonconforming use is more appropriately addressed at such time as increased production actually occurs**" (which objectors read as like the "ripeness" of a claim for threatened inverse condemnation, nuisance, trespass, or conversion discussed in *Varjabedian* and Objectors Petition For Pre-Trial Relief, Etc.) Thus, in deferring that "intensity" issue for a later "reality" test in practice, because that was a just two-party dispute, rather than a multi-party *Calvert* dispute like this one, *Hansen* added:

> **…[T]he County's remedies are the same as would exist independent of the SMARA application [for the compliant reclamation plan and financial assurances Rise has not presented for approval here] were the Hansen Brothers' business to increase. When it appears that a nonconforming use is being expanded, the county may order the operator to restrict the operation to its former level and seek an injunction if the owner does not obey. [citations]**
>
> Therefore, when the area over which Hansen Brothers has vested rights is determined, and if that area is less than 60 acres, a new or amended SMARA reclamation plan will be necessary. Even if the plan is unchanged, however, the intensification of use question must be reconsidered on remand if the county continues to require the determination of that question before approval of a SMARA reclamation plan.
>
> **…[T]he county is not without remedies if mining activity at the Bear's Elbow Mine increases in the future to a level that the county believes is excessive. As with any other nonconforming use, the county may seek an injunction or other penalties authorized by the zoning ordinance, whenever it believes that production at the mine has reached a level that constitutes an impermissible intensification of the nonconforming use for which Hansen Brothers have a vested right. (emphasis added).**

Since *Hansen* allows the County to do that enforcement against the miner in its discretion, the local voters can then assure their self-defense by all such appropriate means with comparable law reforms that be enforced directly by our impacted residents. What is most important in this discussion is not just that the quantities of IMM mining rock and any mineral recovery will progressively exceed any amount from past years (i.e., pre-1956), but that every proposed aspect of the IMM mining is prohibitively more "intense" as to its many different harms on, and threats to, impacted surface residents above and around this 2585-acre underground IMM, on objectors' groundwater and existing and future wells, on objectors' property rights and values, on objectors' vegetation and forest (and fire threats), on objectors' environment, on our community way of life, and on every other menace proven in record objections to the disputed EIR/DEIR.

The issue of "intensity" is about such harms on us local victims, not just about how much rock or gold is mined for the miner's profits. As *Calvert* and *Hardesty* prove, each objector has his or her own, personal due process and other constitutional, legal, and property rights to prevent this IMM menace from happening. See *Keystone* and *Varjabedian*.

Such objectors do not depend on the County acting for them. In any case, waiting to measure output is absurd and legally inappropriate here, because the harms that matter most will begin years before any possible gold production could start, such as when Rise first begins dewatering the mine and depleting surface owners' groundwater and existing and future wells, blatantly using a dewatering system and new "treatment" plant for which there is no possible vested right and flushing away our groundwater down the Wolf Creek. It should be incontrovertible that compared with the admittedly declining and noneconomic gold mining on October 1954, what changes Rise now proposes are many times more "intense," such as doubling the IMM in size (and with much greater "intensity" and "change") into new and deeper Never Mined Parcels with 76 miles of new tunneling (plus offshoots whenever they find something interesting), rather than just continuing to working in other parcels off of the 72 miles of existing, tunnels in the Flooded Mine parcels (probably now in the extremely dangerous and nonfunctional conditions one would expect after being abandoned and flooded since 1956.) See, e.g., *Hansen* examples herein and in Attachment A, providing a more comprehensive analysis with quotations to discourage disregard or denial by Rise.

Such mining size, use, change, expansion, and intensity differences are even more important with IMM **underground** mining than with *Hansen* **surface** mining, for example, because that at least doubles both the impacts on objecting surface owners above and around them (with more, new surface owners and businesses above and around the new, expanded underground mining) and with more the groundwater and existing and future well depletions, while involving new underground conditions that have not yet been properly explored or adequately analyzed. See Rise SEC admissions. Rise's analyses in these disputes all are pitched from the perspective of the miner's rights, but, unlike Rise, the applicable law focuses on the mine's victims, especially for surface owners above and around the 2585-acre underground mine, who have no less than equal competing constitutional, legal, and property rights. Mining and related impacts must be judged from such victims' rights and perspective, not just the miner's, especially such a speculator who appears in 2017 and now demands vested rights to mine as Rise wishes "without limitation or restriction" (Rise Petition at 58), when every single predecessor at that "Vested Mine Property" or IMM applied for use permits for surface work since all underground mining ceased continuously by 1956.

More importantly, consider, for example, the difference between the negative impacts for the Varjabedian constitutional analysis (I) **on the community** from the depletion of our community groundwater by Rise **24/7/365 for 80 years** (per Rise's disputed EIR/DEIR plans), versus (ii) **on an individual objecting homeowner above or around that underground mine whose own personally owned groundwater is being so depleted, as well as his or her existing or future wells (where Rise's proposed and disputed "mitigation" that cannot even satisfy the *Gray* requirements for protecting well owners, much less the constitutional, legal, and property rights of such surface owner when Rise would deplete the first 10% of existing such owner's existing well water, plus 100% of any future wells, without even attempting Rise's deficient and worse mitigation that its SEC filings admit Rise lacks the financial resources to perform.)**

c. There Can Be No Vested Rights, Especially For the Rise Underground 2585-Acre Parcels, Because All Flooded Mine Parcels, And, In Any Event, At Least The

Critical Underground Expansion Parcels For the New Rise Mining Were Either Abandoned Or Left "Dormant" Too Long.

Besides the *Hansen* discussion (at 569-71) of the 180-day limit on the "discontinuance" of the nonconforming uses required in Nevada County Land Use And Development Code section 29.2(B) and objectors briefing to come in subsequent briefing on the identified equitable and property rights of surface owners (e.g., challenges to vested rights bases laches, estoppel, waiver, and various competing property rights), objectors note that even *Hansen* articulated (at 560-71) principles to defeat the Rise Petition on its very different facts. For example, the Hansen **test states a general rule that admits exceptions for different situations,** as we clearly have in this IMM case (at 569, emphasis added):

> [A]bandonment of a nonconforming use **ordinarily depends** on a concurrence of two factors: (1) An **intention to abandon**, and (2) **an overt act, or failure to act,** which carries the **implication that the owner does not claim or retain any interest in the [vested?!] right to the nonconforming use**… Mere cessation of use does not of itself amount to an abandonment **although the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned.**

While further briefing will address the applicable nuances and authorities, consider these issues for purposes of the current analyses of the evidentiary disputes.

First, as to the **"intention to abandon,"** as proven by the evidence objectors cite above from Rise Petition's own Exhibits, Idaho Maryland Mine Corporation was not only in extreme financial distress by the October 10, 1954, vesting date, because of not only market conditions, but also because of the chronic legal problem about which all miners were already suffering and complaining and that would continue for more than a decade: the $35 legal cap on gold made mining unprofitable, because mining costs exceeded that capped revenue. Unlike *Hansen* and other such cases involving only "cessation" during adverse business climates, **this was a legal problem** that (as proven above herein) would persist for a decade before the $35 cap law changed. That meant that there was no miner intention to resume mining until both that $35 cap law changed and the market price of gold increased sufficiently to significantly exceed rising costs. See, e.g., prior analysis of Rise Petition Exhibits: (i) 209 (the Nevada State Journal 7/7/1957 article on the "perhaps permanent" cessation of all gold mining in the Grass Valley area, and, when asked about the future, the story quotes mine officials as being "hopeful but not optimistic," because "They believe a sizable increase in the price of gold is the only answer," which required law changes); (ii) 222 (the 12/19/61 desperation effort by Idaho Maryland Industries, Inc. director H.G. Robinson pitching Congress for an end to the $35 cap and a government bailout to fund unaffordable IMM "development costs"); (iii) 219 (the Sacramento Bee 8/14/1959 article describing that 1100 acres of surface land down 200 feet of "Idaho Maryland Miners Corporation property here [that] has been sold for residential, commercial, industrial, and recreational use" to Sum-Gold Corporation, retaining "mineral rights and 70 acres around three mine shafts," and (iv) 216 and 218 (these miner's Board minutes in 216 explained the background of the sale in Exhibit 219, which repeatedly used the word

"abandonment" [or its variations], such as discussing selling "2500 acres of mineral rights" "not contiguous to the Corporation's other mining properties and not accessible through the main mine shafts" "that had been abandoned by non-payment of taxes.") Also, because every Rise predecessor (and Rise itself initially) ignored any possible vested rights claims in favor of applying for normal land use permits whenever doing anything relevant, that seems to evidence an intent to have abandoned vested rights arguments. Between October 1954 and 9/1/2023 no predecessor claimed any vested rights at the IMM, allowing the increasing surface owners above and around the 2585-acre underground mine to rely on the absence of any vested rights and, therefore, their having the protection of CEQA and other laws protecting them from the threat (to quote the Rise Petition at 58) of mining as Rise wishes "without limitation or restriction."

Second, as future briefings will demonstrate, **the word "abandon"** (which has a broad range of alleged meanings in many different contexts, including as *Hansen* admits: "The term **"discontinued"** in a zoning regulation dealing with a nonconforming use is sometimes deemed to be **synonymous with 'abandoned'."** and as *Hardesty* above describes as **"dormancy" equivalent to "abandonment.")** The case interpretations of the term should be consistent with the public and legal policies announced above to eliminate vested rights exceptions to such zoning and land use laws whenever possible without making the government pay for an unconstitutional "taking." Here, however, the standard for any kind of abandonment is easily met as described below by objective actions and inactions that must be considered as more than temporary "cessations" by each Rise predecessor since 1954. Indeed, *Hansen* majority states (at 569-71): "This court has also equated discontinuance of a nonconforming use with voluntary abandonment (see *Hill v. City of Manhattan Beach*, supra, 6 Cal.3d 279, 286)" although the *Hansen* court states that it has "never expressly held that such terms are synonymous," and the "parties have not offered any evidence of the legislative standard or intent underlying the use of the term 'discontinued' "in Development Code section 29.2 (B)." Because of the extraordinary admission made by the county "conced[ing] that the **aggregate** business has not been discontinued" (and no objectors foresee conceding anything to Rise), and because of the court's controversial decision that "rock quarrying is an integral part of that [aggregate] business," the court decided that such "aggregate business" (so including rock crushing) had not been "discontinued," thereby, according to the Hansen majority, "the fact that rock quarrying may have been discontinued for 180-days or more is irrelevant….[although] [t]his is not to say that future inactivity at the mine may not result in termination of that vested right or that the county might not conclude that the property is no longer being used for aggregate production…[but] only as a yard for storage and sale of stockpiled material." (Thus, the *Hansen* majority explains in fn. 30 that they do not decide what the meaning of "discontinued" would be in other situations. In any case, *Hansen's* majority decision adds no support to Rise for application in our very different legal and factual situation. None of the sporadic (i.e., noncontinuous from 1954), surface activities of Rise's predecessors on the surface parcels owned by Rise's predecessors (e.g., lumber or milling work, rock crushing and aggregate sales by North Star, and others distinguished by objectors above) can be considered any part of a *Hansen* type "unitary business" that included the discontinued, "dormant" and "abandoned" underground gold mining in that IMM closed and flooded by 1956 and that has never been opened or accessible for any kind of mining operation since then. Moreover, and also defeating

the Rise Petition, the surface subdivisions and sales of the surface parcels prevented any such miner business operation on those parcels, resulting in the situation that would have defeated even the miner in *Hansen*, where a parcel had not ever been mined, like the underground Never Mined Parcel at the IMM. Here, we also have not just the long-Flooded Mine on which no underground mining operations could have been possible since at least 1956, but also, no surface mining operations could have been possible since those surface parcels above and around the underground mine were so sold for incompatible and competing residential and non-mining commercial businesses.

Third, as described in the above objection, the "overt acts or failures to act" in this IMM dispute are overwhelming in favor of objectors and against the Rise Petition, beginning with the Idaho-Maryland Mine Corporation, which owned the IMM in October 1954 and long thereafter until after its bankruptcy in LA when the IMM was sold cheap at auction to William Ghidotti, which Idaho Maryland entity: (i) liquidated all its movable/removable mining equipment, components, and infrastructure, stripping the mine of any functionality, (ii) closed the flooding underground mine, so that no mining could possibly occur again in the Flooded Mine physically without all the massive effort and expense in dewatering, repairing and reconstructing everything lost from neglect and other events and conditions since 1956 (see in the disputed EIR/DEIR what even Rise admits would be required to reopen), and that noneconomic expense and effort was a condition precedent to even begin starting any mining operations underground in the Never Mined Parcels, since the surface was unavailable to that miner (and owned by objecting surface owners) and the only possible access was underground through the restored Flooded Mine, (iii) Idaho-Maryland Mine Corporation changing its name (to Idaho Maryland Industries, Inc.) and its trademark to signal its restart by moving to LA to begin a new business as an aerospace contractor, then filing bankruptcy, and then liquidating the remaining IMM cheap at an auction to William Ghidotti, and (iv) many other factors discussed above in rebuttals to the Rise Petition Exhibits (1-307, pre-Rise in 2017). William and each of his successor owners failed to preserve any basis for vested rights, as also demonstrated above in rebuttals to the Rise Petition Exhibits (1-307, pre-Rise in 2017), including their consistent applications for zoning and permit without mention of vested rights excuses, and further subdivision and sale of the surface parcels by the BET Group for more incompatible residential and non-mining surface uses above and around the 2585-acre underground mine, resulting in the current conflicts between Rise and almost every directly impacted surface owner above or around that 2585-acre underground mine which remains in the same (or worse) condition since 1956.

In any litigation where the rules of evidence apply strictly (see evidentiary discussions above), Rise's disputed vested rights theory must fail not only on the foregoing parcel-by-parcel, use-by-use, and component-by-component rules, but also on each of the sub-component factors required for vested rights as discussed herein by even the surface mining authorities requiring (continuously) "similar uses," "same area," "no substantial changes," "no increased intensity," the future, "objective" "mining intentions" of each predecessor in the chains of title to expand for such "similar uses" on each parcel, etcetera. See the companion Objectors Petition For Pre-Trial Relief, Etc. and the incorporated record objections to the disputed EIR/DEIR. **As *Hardesty* explained at 812: "THE CONTINUANCE OF A NONCONFORMING USE 'is a continuance of the same use and not some other kind of use'", citing "*County of San Diego***

***v. McClurkin* (1951), 37 Cal.2d 683, 688; *Edmonds v. County of Los Angeles* (1953), 40 Cal.2d 642, 651; and *County of Orange v. Goldring* (1953) 121 Cal.App.2d 442, 446-47."** (emphasis added) As *Hardesty* quotes demonstrated above, Rise's alleged **surface operations are always different uses from underground mining**, and even *Hansen* (citing *Paramount Rock*) acknowledged that **each "component" must have its own vested right**.

While Rise reported the volume of ore mined and recovered (as distinct from *Hansen's* calculation of rock moved—a key difference from the perspective of the impacts on objectors owning the surface above and around the IMM and the rest of the community), the "intensity" test must be focused on protecting such impacted locals; i.e., the focus is on how much more suffering the rest of us have to endure compared to prior history in 1954, as distinct from how much more gold Rise can recover, if any, a fact not known for years of preliminary work at the Flooded Mine before mining can begin at the inaccessible Never Mined Parcels, while the rest of us objectors suffer the EIR/DEIR described start-up miseries. Rise cannot satisfy its burdens to prove with legally admissible, competent, and credible evidence the basic vested rights case of the old, pre-1956 mining to set the standard for comparison or modeling even to SMARA surface modeling precedents, much less the relevant dispute here over underground mining, especially into the Never Mined Parcels, for which the Rise Petition cites no authority, even to determine what evidence could be relevant to such underground mining or to loss of vested rights by abandonment, dormancy, discontinuance, judicial or other estoppels, and other objections.

Consider the *Hardesty* court's earlier discussed evidentiary findings [at 799] that, for example: "'There are no records presently available …to show what kind of mining business … the owner from 1921 to 1988 … conducted on the property after the war.' **The trial court found that through the 1970's, the property 'was essentially dormant.'"**

> However, Hardesty failed to prove *any* mining was occurring on or even reasonably before the date SMARA took effect [1/1/76]. SMARA was designed to allow existing, operating surface mines to continue operating after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to truly dormant mines.**

Hardesty at 810. Also, even if Rise tries to allege some such resumed mining, Rise would not be able to claim immunity from all the then-existing laws which would require substantial mining changes (all disqualifying vested rights for changed uses or components, increased intensity, or other factors discussed herein) from either the October 1954 vesting date claim or the time operations ceased in the closed and flooded IMM mine by 1956. **Rise's SEC 10K admits (at 34-35) that 1955 was "the final year of production from the mine."**

Thus, there has been no underground mining for vested rights acquisition since at least that time in 1955. (On account of which Rise changing its position for vested rights and creating uncertainty, objectors have "rounded up" the date to 1956, by which time Rise admitted the IMM closed and flooded.) Consider the comparison of the applicable law at that time to what Rise now proposes for vested rights underground mining in that new, expanded area part of the 2585-acre underground mine (i.e., what objectors call the Never Mined Parcels) that record objections prove was too often ignored in the disputed EIR/DEIR. None of

the work done at the abandoned IMM since it closed and flooded in 1956 qualifies for Rise vested rights, since there has only been "exploration" or environmental testing, which even Rise's SEC 10K excludes from "mining" activities by its admission at p. 28: "MINERAL EXPLORATION, HOWEVER, IS DISTINCT FROM THE DEFINITIONS OF 'SUB SURFACE MINING' AND "SURFACE MINING'" [MAKING THE POINT THAT MINERS IN THAT M1 DISTRICT ZONED LAND COULD EXPLORE WITHOUT A PERMIT.] (emphasis added)

6. While the Bifurcated County Vested Rights Process Separates the Question of the Existence of Vested Rights From Questions About the Required Reclamation Plan And Financial Assurances, That Is A Mistake, Since SMARA Does Not Apply To Underground Mining (See above and Attachment B), And Objectors Worry That Rise May Later Claim That Vested Rights "Without Limitation Or Restriction" Mean Without Reclamation Or Financial Assurances; i.e., That Rise Can Incorrectly Claim the Benefit Of Vested Rights Without Such Burdens.

When the Rise Petition (at 58) claims that its disputed vested rights allow it to mine anyway and anywhere it wishes "without limitation or restriction," objectors worry about the ambiguous and dangerous scope of that incorrect claim. For the record in the court process to follow, objectors contend that there are many "limitations and restrictions" on any such alleged vested rights by application of all applicable laws and as well as the constitutional, legal, and property rights of the surface owners above and around the 2585-acre underground mine, which includes the requirements for sufficient reclamation that are financially assured. For example, when Rise pipes that cement paste into the underground mine beneath surface owners and pollute the surface owners' groundwater, that will require remediation that is economically feasible and reliable (i.e., with adequate financial assurances). In any event, to the extent that the County regards SMARA as controlling, objectors remind the County that as *Hardesty* explained (at 801, emphasis added):

> **SMARA requires that all surface mining operations have an approved reclamation plan and approved financial assurances to implement the plan. (#2770, subd. (a)).** … Persons with existing surface mining operations were required to submit a reclamation plan by March 31. 1988. [Id.] **ABSENT AN APPROVED RECLAMATION PLAN AND PROPER FINANCIAL ASSURANCES (WITH EXCEPTIONS NOT APPLICABLE HEREIN) SURFACE MINING IS PROHIBITED. (#2770, SUBD. (D))**.
>
> See also *Hansen* (i) at 547: "' [T]he reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety.' (#2711, subd. (a))" [and later #2772]), and (ii) "…SMARA requires that persons conducting surface mining operations obtain a permit and obtain approval of a reclamation plan from a designated lead agency for areas subjected to post-January 1, 1976, mining (#'s 2770, 2776).

7. A Brief Summary of How Objectors Use That Legal Framework For Both Evidence And Rebuttals To Counter Rise Petition's Exhibits And Other Disputed "Evidence" By Focusing On Prior Conduct of Rise And Its Predecessors.

RISE ALSO FAILS TO PROVE TIMELY COMPLIANCE by each of its predecessors with applicable laws requiring action or notices, especially as to deadlines, even those at issue in *Hansen, especially regarding the question of a miner's intent to abandon certain mining or plans for expansion of mining.* E.g., *Hansen's* discussion (at 569-571) of the effect of the "discontinuance of a nonconforming use" and its relationship to abandonment and statutory deadlines for resuming actions, such as:

> Although abandonment of a nonconforming use terminates it in all jurisdictions (8A McQuillin …25.191, p.68) ordinances or statutes which provide that discontinuance of a nonconforming use terminates it have not been uniformly construed. Some have been **held to create a presumption of abandonment by nonuse for the statutory period, others considered to be evidence of abandonment**. **In still other jurisdictions the nonconforming use is terminated** when the specified period of nonuse occurs, regardless of the intent of the landowner. (Id. at pp. 68-69) … [T]he parties have not offered any evidence of the legislative understanding or intent underlying the use of the term "discontinued" in Development Code 29.2(B). Id. at 569-570 (emphasis added)
> ***
> Since **we have concluded that the aggregate mining, production, and sales business was the land use for which the Hansen Brothers had a vested right in 1954,** the fact that rock quarrying may have been discontinued for 180 days or more [the deadline under Development Code 29.2(B)] is irrelevant. Hansen Brothers has a vested right to continue all aspects of its aggregate business at the Bear's Elbow Mine [because the *Hansen* majority (e.g., at 574) forbid treating the separate "components" of that integrated business "operated as a single entity since it was established in 1946" because that 180-day limit on discontinuance (at 570) only "applies to the nonconforming use itself, not to the various components of the business."] **This is not to say that future inactivity at the mine may not result in termination of that vested right or that the county might not conclude that the property is no longer being used for aggregate production and is currently in use only as a yard for storage and sales of stockpiled material**. Id. at 571. (emphasis added)

See Attachment A and in the Table of Cases And Commentary On Applicable Legal Principles… below, further discussing these issues.

None of that *Hansen* ruling helps Rise, among many other reasons discussed herein, because, as demonstrated below with Rise's own Exhibits and Rise Petition and other record admissions and unlike the facts in *Hansen*: (1) there was no "business" in which the initial predecessor was engaged on October 10, 1954, except the winding down of the underground gold mining in the "Flooded Mine" parcels of the 2585-acre underground mine (with nothing

happening in the "Never Mined Area," where any "expansion" or "enlargement" was then unimaginable, because: (a) the $35 legal limit on gold prices made gold mining chronically unprofitable, forcing Idaho-Maryland Mine Corporation to "downsize," and (b) the brief shift to government-subsidized "tungsten" mining (which is a different "use" for vested rights than gold mining), ended before the whole IMM closed and flooded at least by 1956; (2) none of the later surface activities of that Corporation's successors at the IMM (all irrelevant, different "uses" anyway) were ever part of that initial predecessor's "business," and underground gold mining was not ever part of anyone's business after the IMM closed, flooded, and discontinued all operations, ending any underground gold mining or other business at the IMM for all those years and leaving the gold mine discontinued, dormant, and abandoned (as it remains today); (3) that initial predecessor sold off the closed mine's equipment and salable fixtures/infrastructure, changed its name and trademark, moved to LA to become an aerospace contractor, filed bankruptcy, and the IMM was liquidated cheap at an auction sale to William Ghidotti in 1963; (4) William Ghidotti did not buy any business at the IMM auction, just abandoned mine real estate and whatever disputed plans Rise may have it could not have been to revive that underground gold mining as a part of any integrated surface business; (5) contrary to Rise's incorrect claims the mine was not closed pending changes in the "market conditions," but changes in the LAW (e.g., the $35 gold price cap effects that endured for another decade) that shut down the entire industry as mining costs kept rising, and Rise cites no cases where hoping for a change in the law (as distinct from changes in the market) can preserve any vested rights. (That is one reason why no specific proposals for reopening the IMM began to emerge until the 1980's from new, emerging speculators); (5) no one would have even planned any such massive investment to reopen that mine until after the $35 legal limit on gold prices ended, and, as the Exhibits below show, interest in such expensive underground gold mining still did not resume for years after the law changed to end the $35 cap until the whole US economy changed its investment model (e.g., using gold as an inflation hedge) raising the price of gold reliably above its mining costs; (6) no "business" has been possible for that included any part of that underground gold mine, whether for Mr. Ghidotti or any other Rise predecessor after him, among other things, because (a) for anyone to restart even the Flooded Mine (as distinguished from even more expensive, entirely new mining operations into the Never Mined Parcels) would have involved massive and expensive efforts (e.g., dewatering for more than a year; repair and reconstruction of all the infrastructure and support facilities; new equipment; legal compliance work still required despite any vested rights, although only Rise has tried to avoid full compliance with its incorrect vested rights arguments, etc., as admitted in the EIR/DEIR, other governmental applications by Rise or its later predecessors (Emgold), Rise's SEC filings, and other evidence addressed in objections to the EIR/DEIR or to this Rise Petition), (b) no Rise predecessor with gold mining aspirations has ever engaged in any material actions that could qualify as underground mining work (e.g., Emgold's test drilling and permits are not such mining "uses"), and all of them backed off from this imagined gold mining "opportunity" in favor of sales to more aggressive speculators, which brings us to Rise's conduct that will be addressed in a separate objection rebutting the remaining Rise Petition Exhibits after 307 and any other purported "evidence" from or for Rise; and (7) When the BET Group subdivided and sold for residential and non-mining commercial businesses the surface land (down 200 feet) above the 2585-acres of underground mining rights, it ended any possible gold mining related or other

vested rights qualified business **on the surface of those parcels** besides that possible future underground mining. As *Hardesty* explained as quoted herein, speculative hopes for some better future opportunity where mining could be practical do not prevent abandonment. As a result, it is legally impossible for Rise to claim that it has any vested right to mine gold in any of the 2585-acre underground mine as a continuous "use" or even as part of any business on those parcels (and, objectors contend, anywhere else).

Besides proving those facts below and (below that) the applicable law, such as vested rights requiring continuous qualified "uses" (and location of "components," like the imagined Rise water treatment plant) on a parcel-by-parcel, use-by-use, and component-by-component basis for each predecessor owner, such predecessor conduct and matters also create **evidentiary "presumptions" (see Hansen's quote above) and also at least "reasonable inferences"** as evidence against any Rise vested rights. E.g., *Gerhardt v. Stephens* (1968), 52 Cal.2d 864, 890 (a property owner's conduct can enable the court to reasonably "infer" the intention to abandon); *Pickens v. Johnson* (1951), 107 Cal.App.2d 778, 788 (explaining that intent to abandon can be proven as inferences even from the owner's acts or conduct alone; a feature of the case that Rise overlooks when the Rise Petition (at 54) mischaracterizes that decision as proposing a clear and convincing evidence standard that does not apply to vested rights.) See **Attachment A and in the Table of Cases And Commentary On Applicable Legal Principles… below.** Those **"inferences"** disproving Rise vested rights claims are further demonstrated below where this objection dissects each relevant Rise Petition Exhibit of any possible material consequence to prove either: (i) how such objectionable Exhibit is not admissible evidence or supportive of Rise's disputed claim for its use, (ii) how Rise's interpretation is incorrect or contrary to or inconsistent with some other purported Rise evidence or claim, or (iii) how such Exhibit actually supports this objection in some respect not addressed by Rise. For those purposes, among others, the legal context matter for what such "evidence" is trying to prove, and this objection demonstrates how Rise too often cites evidence to prove an incorrect legal theory, such as its incorrect and unprecedented "unitary theory of vested rights," where Rise incorrectly claims that any kind of mining-related surface or underground "use" on any parcel somehow creates vested rights for all uses and components of all parcels in the "Vested Mine Property." **However, to the contrary, the Table of Cases And Commentary On Applicable Legal Principles… below proves that for vested rights to exist, Rise must prove several elements of proof that Rise ignores (e.g., issues of enlargement, expansion, intensity, continuity, etc.) and the analysis must be continuous for each parcel, each use, and each component, since each parcel and component must have its own vested rights, and each predecessor must have continuous vested rights to pass along to its successor. Also, each different kind of mining is a separate "use" for vested rights, such that as *Hardesty* proved (in quotes herein), surface mining and underground mining are different uses, and *Hansen* proved (at 557 and by citing *Paramount Rock Co. v . County of San Diego*) that the scope of vested rights on a parcel is limited to the mining use for "the particular material" targeted, stating: "The right to expand mining or quarrying operations on the property is limited by the extent that the particular material is being excavated when the zoning law became effective." See, e.g., *Calvert v. County of Yuba* (2006), 145 Cal.App.4th 613, 625, distinguishing aggregate mining versus gold mining as separate, so that attempting to link them together did not prove the continuous use required for vested rights; *Hardesty v.***

***State Mining And Geology Board* (2017), 11 Cal.App.5th 810, (the court separated surface mining from underground mining as different "uses" for vested rights ("Hardesty").**

Timing is also a factor where action is required and fails to occur, especially by a deadline. While the distinguishable facts of *Hansen* (according to its majority) did not address the impact of discontinuations of certain mining, the Rise Petition does not explain how Rise and its predecessors managed to escape the statutory deadline for discontinuances or nonuse (or abandonment) of each parcel in the so-called "Vested Mine Property" on a parcel-by-parcel, use-by-use, and component-by-component basis. Clearly, as demonstrated herein and in other objections, especially applying the required parcel-by-parcel, use-by-use, and component-by-component analysis, Idaho-Maryland Mines Corporation (aka later Idaho-Maryland Industries, Inc.) violated the deadline addressed in *Hansen* (at 569-571, see above quote) as "Development Code section 29.2(B)." Its successors likewise violated the similar evolving deadlines of each applicable version of that continuing law also conditioning vested rights as to discontinued nonconforming uses. E.g., **Nevada County Land Use And Development Code** (the **"Development Code," "NCLUDC," or "LUDC**," depending on the citer) # L-II 5.19(B)(4) (one year or more "discontinuance" is fatal to vested rights), which even the Rise Petition and its Exhibits admit as demonstrated below and which admitted property conditions likewise demonstrate must be the case, such as all the admissions that no one has been able to operate or even access the flooded IMM since at least 1956. Accord *Stokes v. Board of Permit Appeals* (1997), 57 Cal. App. 4th 1348, 1354-56 and n. 4 ("**Stokes**"), which distinguished *Hansen* (including as we have done here and in Attachment A) because all relevant uses of that property stopped for 7 years (here as to the entire underground 2585-acre underground mine, since at least 1956). Because as **Hansen** ruled the County lacks the right to waive or consent to violations of its own zoning laws, the County must reject this disputed Rise Petition. See more proof below, even using Rise's own Exhibits and admissions.

An even more serious Rise and predecessor governmental disclosure problem also exists because Rise and its predecessors have **not corrected the long classification by the California Department of Toxic Substances of the "Vested Mine Property" (what is there called the "Idaho Maryland Mine Property") as an "abandoned mine" and Centennial as long dormant.** A future objection and declaration will deal with these issues more comprehensively, as part of briefing why Rise's project follows a problematic pattern that has resulted in over 40,000 abandoned mines ending up on the EPA and CalEPA lists, especially as to the chronic failures of miners deficient and worse "reclamation plans" and the almost invariable insufficiency of "financial assurances" to remediate the problems created by miners who too often have "taking the profits and run" or filed bankruptcy [or cross-border insolvency proceedings with US Chapter 15 cases] when the operation is no longer profitable," leaving a mess for the community. The pattern commonly (as here) includes a foreign-based mining parent company (often Canadian) using a US subsidiary (often incorporated in Nevada) with no material assets besides the mine and what financial funding is doled out by the parent depending on current needs and progress toward profits. Our community might try to tolerate a discontinued, dormant, and abandoned IMM, relying on the applicable government regulators to deal with the problems associated with such mines. But when a mining speculator announces its plans to open or reopen such a mine and publicly advances toward its disputed goal with media and permit events (or worse, vested rights claims) over the inevitable and resolute opposition of

impacted locals, many problems arise that objectors wish to stop as soon as possible, such as depressed property values, as discussed herein and elsewhere.

Stokes also stated that long lapses are evidence of an intent to abandon, and this objection proves that and much more. Even more striking is what would be noncompliance with applicable state and local mine reporting laws by Rise and every predecessor since 1991, who have **failed to file annual reports about any part of the IMM as either "active" or "idle" as required both by Pub. Res. Code # 2207(a)(6) and by County Development Code 3.22(M).** The legal inference and presumption from that inaction is that every predecessor failed to file such annual reports because they considered the entire "Vested Mine Property" and IMM to be abandoned, i.e., inactive, or idle. *Stokes* is also notable as more illustration of prior inconsistent or contrary positions defeating later vested rights claims, in that case, prior owners showed an intent to abandon a nonconforming bathhouse use when they filed applied for the alternate use as a senior center). There is a similar analysis below of how incompatible with the underground mining of the 2585-acre underground mine it was that the BET Group sold the surface above it (generally down 200 feet) for residential and non-mining commercial uses, including by our analyses of, and rebuttals from, the relevant Rise Petition Exhibits (e.g., 261, 263 and others). The same is true of Sierra Pacific Industries' rezoning efforts for non-mining uses (Rise Exhibits 281 and 282.)

In any case, these objections demonstrate how even the Rise Petition appears to admit that Rise and such predecessors failed to conduct themselves as required, and, among other things already argued in this and other objections (e.g., citing changes in the Rise "story" from the EIR/DEIR or other Rise applications or filings inconsistent or contrary to the Rise Petition), that **objectionable conduct enhances the other claims asserted by objectors to counter vested rights, especially by those objectors owning the surface above and around the 2585-acre underground IMM, asserting that Rise is estopped or otherwise prevented by law (e.g., by waiver or laches or unclean hands) from claiming vested rights.**

Attachment A: SOME REASONS WHY *HANSEN BROTHERS ENTERPRISES, INC. V. BOARD OF SUPERVISORS (1996), 12 Cal.2d 1324 ("HANSEN")* CANNOT HELP RISE, BUT INSTEAD DEFEATS RISE AS OBJECTORS PROVE WITH BETTER EVIDENCE AND CORRECT APPLICATIONS OF LAW.

To Best Appreciate How Rise Misuses PARTS OF *Hansen* For Rise's Incorrect And Worse Vested Rights Arguments, the County Should Examine *Hansen* In Detail In Order To Expose Rise's "Hide the Ball" Techniques, And Consider How What Disputed "Evidence" Rise Offers Misses The Point By Trying To Prove Incorrect And Worse Rise Legal Theories Instead of What Is Required Even By The Complete *Hansen* Decision, As Distinct From the Fragments Incorrectly Asserted As The Primary Support For The Rise Petition. Consider That:

(1) *Hansen* Is Distinguishable From this IMM Dispute Because *Hansen* Was Limited To SURFACE Mining Under SMARA, While the IMM Dispute Is About UNDERGROUND Mining Not Subject To SMARA. See Attachment B. That Difference Also Raises Many Other Legal And Factual Issues That Rise (Again) Incorrectly Ignores Entirely, Both In Its Disputed Rise Petition And the Disputed EIR/DEIR, And, Instead, Rise Assumes Incorrectly (Without Any Discussion) That Rise Can Base Its Disputed Claims And Proof Exclusively On SMARA And Its Surface Mining Cases Like *Hansen*. Even Worse, Rise Refuses Ever To Address Competing Constitutional, Legal, And Property Rights of Objecting Surface Owners Above And Around the 2585-acre Underground Mine At Issue, Especially Regarding Surface Owners' Existing And Future Wells And Groundwater, Particularly Since, For Example, Even *Hansen* (Plus All The Other Applicable Case Authorities) Must Deny Any Vested Rights For Rise's New Dewatering System And Water Treatment Plant Without Which "Components" the IMM Cannot Possibly Reopen;

(2) Rise Ignores Or Evades How The Most Important Parts/Lessons of *Hansen (All Neglected By Rise) Apply To The IMM To* Defeat the Rise Petition And To Reconcile Even *Hansen* With The Other Leading Decisions That Rise Ignores Because Such Cases Also Defeat The Rise Petition (e.g., *Calvert* and *Hardesty*), Such As About Rise's Proposed "Intensification Or Expansion of the Existing Nonconforming Use, Changes In Use, Or Moving the Operation To Another [Unused] Part of the Property [which] Is Not Permitted" (*Hansen* at 552, emphasis added, citing *McClurken at 687-688*);

(3) Rise Cherry-Picks Selected Parts of *Hansen's* Words And Foundational Principles Extracted From Their Actual, More Comprehensive Context, While Rise Ignores Entirely Evades Or Misconstrues Out of Context What *Hansen* Actually Both Ruled And Refused To Rule (e.g., Whether as Lacking Sufficient Evidence, Such As To Which "Parcels" Qualify For Vested Rights While Other Parcels DO NOT, Or Such As Whether That Mining Would Exceed the New "Intensity" Threshold Prohibited In *Hansen*) ;

(4) Rise Asserts Its Own Disputed Theories And Opinions, As If They Were Part of the *Hansen* Rulings, When They Are Just Unsubstantiated Rise Allegations Or Assumptions Mixed In With Rise's Disputed *Hansen Fragment* Arguments;

(5) Rise Implicitly Limits Disputes By Ignoring, Evading, Or Mischaracterizing *Hansen* Statements As If the Rise Fragments Were All That Needed To Be Known Or Decided, When, To the Contrary, The Rise Fragments Are Only A Part Of the

Comprehensive Legal And Factual Disputes. For Example, Rise Argues That Someone Else Has The Burden of Proof, By Citing Only To the Burden On "Abandonment" Disputes While Ignoring *Hansen*'s And Other Courts' Decisions (e.g., *Calvert* And *Hardesty*) PLACING ON RISE THE BURDENS OF PROOF For Its Claim of Vested Rights And Many Other Essential Issues. See the Evidence Code rules that are applied in the main objection text above to rebut the Rise Petition; and

(6) Rise Ignores Objectors' Own Competing Due Process Rights (e.g., *Calvert* And *Hardesty*) For A Full And Fair Rebuttal of Rise's Errors, Omission, And Other Noncompliance, Especially With The Law of Evidence, Which Mattered Even in *Hansen* And Other Cases. At Least In the Court Process The Law of Evidence Will Cause Rejection of Most of the Rise Petition Exhibits And Purported "Evidence" As Lacking Sufficient Foundation, Credibility, And Admissibility Among Other Evidentiary And Legal Objections. Id.

I. Some Introductory Comments And Previews.

Following that quick summary above, this Attachment presents some introductory comments followed by a systematic and detailed analysis of the *Hansen* majority opinion, with significant discussion of the strong *Hansen* dissents. The intention here is to be comprehensive; so that, once again, the County can see how Rise, as the old song goes, "sees what he wants to see, and disregards the rest." By focusing on what Rise has so disregarded even in its favorite *Hansen* case, the County can see below where Rise knew its "alternative reality" "story" was vulnerable. By contrast, objectors present all of *Hansen,* revealing both where Rise again, as in its disputed EIR/DEIR and other filings, "hides the ball," and why the parts that Rise likes are distinguishable (e.g., some examples noted in the quick summary above). **Also, a critical distinction, besides the limitation of *Hansen* to surface mining as contrasted with IMM underground mining, is that Hansen majority addressed those surface mining issues as a continuously operating business that wanted to expand, while the underground IMM mining has been comprehensively dormant, closed, and flooded since at least 1956, and cannot be judged as an operating business since then.**

After that analysis of the *Hansen* majority's position, objectors then present some important analyses of the two dissenting opinions agreeing with all the lower courts and the County, which each rejected any vested rights for the miner. because this IMM dispute includes massive underground mining outside the scope of the *Hansen* surface mining interpretations because SMARA does not apply to underground mining. Those comments and their cited authorities have had a significant influence on the case law that has evolved since then. Also, because the facts and law in this IMM dispute are sufficiently different from those in *Hansen*, both in fundamentals (underground mining here versus surface/SMARA mining in *Hansen*) and in details (see below), objectors believe that, if that *Hansen* majority had confronted our IMM situation, that majority would have favored the analysis of those original *Hansen* dissenters. **In any case, without the County accepting the Rise Petition's misreading of the Hansen fragments, there is no legal foundation cited in the Rise Petition, and Rise must fail its burden of proof, not just on the actual facts but also on the applicable law.**

The comprehensively disputed Rise Petition begins incorrectly (at 55): "The facts surrounding the Vested Mine Property are indisputable." The reverse is true. Rise's "bold" attempt to create an "alternate reality" to support its vested rights claim was similar to the approach of the unsuccessful miner incorrectly asserted in *Hardesty (and harshly rejected therein as a "muddle").* However, there in *Hardesty,* as here, the court had no difficulty in rejecting that miner's vested rights claims, because (like Rise) that miner insisted on attempting to restrict everyone to his "alternative reality" "bubble," where the miner never had to address the real, hard, and contrary issues, facts, or court decisions. The miner simply defined his fantasy "reality" and declared it "good." But, contrary to Rise's disputed claims of infallibility, objectors would now move to dismiss (or at least move for summary judgment) if we were now in court. See illustrations in the companion "Objectors Petition For Pre-Trial Relief, Etc." and as will be demonstrated in more comprehensive objections to follow in objectors' main briefing in due course against the disputed Rise Petition.

Rise's vested rights "alternative reality," principally crafted around its disputed misuse of *Hansen,* is meritless in many ways that are illustrated briefly herein and that will be systematically demonstrated in more detail in the coming objection to the Rise Petition. Those rebuttals include not just by: (i) missing "time gaps" in the critical evidence required to prove continuous vested rights conduct and intentions (e.g., the period discussed in the above objection rebuttals where Idaho Maryland Mines closed its flooded IMM in 1956, moved to LA, where it changed its name, trademark, and business to become an aerospace contractor, and eventually liquidated in bankruptcy (in which there was no Rise proof of that bankruptcy trustee having any intent or plans to reopen the IMM or do anything else to create or preserve any vested rights), and (ii) what Rise misuses in its disputed overgeneralizations, unproven and unprovable "facts," and other unsubstantiated claims that are not admissible evidence under the law of evidence discussed above in the main text of this objection, and many other disputed Rise contentions. The Rise Petition also must fail because of the many things it neither substantiated (e.g., disputed Rise opinions not supported by any cited authority, but incorrectly woven into the fabric of some case discussion), nor even addressed at all. See discussions in this objection about how the Rise Petition evades or disregards many legal and factual issues (e.g., the "hide the ball tactic"), misuses some distractions and "filler" Exhibits rather than producing all the relevant evidence Rise or its predecessors claim to exist (e.g., the "bait and switch" tactic), or ignores the real issues or key cases not just *Hansen* (e.g., *Hardesty, Keystone, Varjabedian,* and others often already cited.) See also the record EIR/DEIR objections, such as the four "Engel Objections" (DEIR objections Ind. 254 and 255 and related EIR objections dated April 25, and May 5, 2023) that integrate many others and third-party evidence in over 1000 pages incorporated both in this objection and in the Objectors Petition For Pre-Trial Relief Etc. (For example, what happened in Rise Petition to the *Hansen*/SMARA requirement for a "reclamation plan" and "financial assurances" that were supposed to be "the heart" of SMARA? See Attachment B. Remember please that *Hansen* limited itself to SMARA without relying on any common law of California, leaving uncertainty as to whether Rise is attempting to claim the benefits of vested rights without their reclamation plan and financial assurances burdens, when the Rise Petition at 58 claims the rights to mine as it wishes "without limitation or restriction.")

However, many rebuttals are for that next opposition brief, which will explore not just Rise's errors, omissions, and worse, but also Rise's such objectionable "hide the ball" or "bait

and switch" tactics, such as for example, the examination of some subtle manipulation of defined terms with obscure evasions of reality, such as, for example, the Rise Petition's definition (at p.1) of "Vested Mine Property" versus its term "Mine Property" (aka "Mine," i.e., the "Vested Mine Property" is vague, evasive, and objectionable about how it defines and misuses the defined term "Mine Property"), adding to the confusion created by confusing Rise maps and disputed and deficient "evidence" that do not allow the parcel-by-parcel, use-by-use, and component-by-component analysis required for any possible vested rights claims. The Rise Petition is fairly detailed about what Rise claims and wants as relief in its conclusion at 76, but it is vague and deficient in its disputed proof required for that parcel-by-parcel and predecessor-by-predecessor analysis; e.g., "Before the Vested Mine Property was consolidated into its current configuration in 1941, it existed as multiple mines and operations referred to in this Petition as the 'Mine Property' or the 'Mine.') The objectors' future deconstruction of the alternative reality crafted in the Rise Petition will address how such tactics are misused and, therefore, as with the miner who played that strategy in *Hardesty,* Rise cannot satisfy its burden of proof.

That coming further briefing of the applicable law and facts will require significant time and effort, because objectors must deconstruct that clever "alternate reality" in the Rise Petition that is disputable in many ways. The point here is merely to illustrate that there is much to dispute about Rise's claims about the meaning and application in this IMM dispute of Rise's favorite *Hansen* case, even before briefing the many *California* cases evaded or ignored by Rise, but that must ultimately determine this dispute. In any case, objectors invest time in this *Hansen* analysis because *Rise's favorite Hansen case hurts Rise's disputed claims more than it helps them.* If the Rise Petition is the best-case Rise can make for its disputed and incorrect claims, that should convince the County that Rise's other cited cases and authorities are (as objectors also contend) even more inapposite or worse. By contrast, the cases explained in this objection should be sufficient to doom Rise's disputed vested rights claims. Stated another way, Rise's plan must fail to somehow use *Hansen* as a "shield" against all the objectors' better and more applicable authorities, like *Calvert* and *Hardesty,* even before objectors reach cases supporting competing constitutional, legal, and property rights of surface owners above and around the 2585-acre underground mine who are entirely ignored by Rise (as they were in the disputed EIR/DEIR), despite objections citing applicable authorities, such as *Keystone* and *Varjabedian.* The defined terms in the main objection text are incorporated herein, including what is referenced or incorporated therein.

II. Rise Fails Its Burden of Proof Both On The Merits And As Lacking Required And Sufficient Admissible Evidence, Even Under *Hansen.*

Before Rise can argue about who has the burden of proof over the abandonment dispute (the only issue Rise seems actually to address on that topic as the basis for its general attempt incorrectly to shift Rise's burden of proof to objectors), Rise must acknowledge that it has the burden of proof on vested rights and many things it prefers to ignore, rather than attempt to debate. See the foregoing main objection text, citing both the Evidence Code and case authority. See Evidence Code #'s 500 et seq. and 600 et seq. applied in the foregoing objection. Since Rise relies primarily on *Hansen,* why did Rise neglect to address this *Hansen*

ruling (at 564, emphasis added), **among others, that must be addressed first, before the dispute over abandonment: "The burden of proof is on the party asserting a nonconforming use to establish the lawful and continuing existence of that use at the time of the enactment of the ordinance", citing *Melton v. City of San Pablo* (1967), 252 Cal. App.2d 794.** Among other *Hansen* stated principles to the applicable facts in the section (at 560-61) named "A. Extent of Bear's Elbow Mine in 1954," the court began with the previously elaborated basic principle (here without the limitations and nuances discussed elsewhere that further doom Rise's claims) that: **"a vested right to continue a nonconforming use extends only to the property on which the use existed at the time zoning regulations changed and the use became a nonconforming use** [here 10/10/1954 according to the Rise Petition]." (emphasis added) Just as Rise admits to the IMM being an aggregation of different mines acquired at different times from different predecessors (as to which the Rise Petition only offers selected and incomplete data that objectors dispute under the laws of evidence and otherwise), the *Hansen* mine also involved such different adjacent parcels aggregating 60 acres. The related *Hansen* discussion of each of the four parcels aggregating 60 acres confirms the flaws in Rise Petition's presentation of its disputed "evidence" for its many parcels. (Is it the 10 parcels [and 55 sub parcels] in the SEC filings, or something else in the other Rise documents?) Objectors will dispute the parcel issues in the main substantive briefing to come, but the Rise Petition disputed above addresses various different parcel arrangements from time to time, including the BET Group subdivisions above and around the 2585-acre underground mine, some of which it sold off to surface owners for further subdivisions over time. Details matter, as does the sufficiency of evidence, especially since *Hansen's* majority remanded for such detailed evidentiary deficiencies (as did *Calvert*). **Notice how *Hansen* requires this vested rights dispute to require proof (i.e., competent, admissible evidence) on a PARCEL-BY-PARCEL (and, in the IMM case, sub-parcel-by-sub-parcel) basis, as** *Hansen* **demonstrated.** The *Hansen* court stated (at 561-64)(emphasis added):

> Some of those parcels were conveyed to Hansen Brothers after 1954, however. **The record does not confirm that all of the parcels, over which Hansen Brothers claimed vested rights in its SMARA application, were part of the Bear's Elbow Mine in 1946 or 1954. The record is also devoid of evidence that the owners of those parcels themselves held vested mining rights in the transferred property at the time they were deeded to Hansen Brothers.** Examination of the record reveals that [the County's related admissions, including one obvious mistake that it could not correct in time]… encompassed only the parcel that was the original site of the …Mine and one of the three parcels conveyed to Hansen Brothers after 1954.
>
> ***
>
> Hansen Brothers does not dispute the absence of evidence in the record that the after-acquired properties were being used for mining purposes in 1954. Instead, it argues that its SMARA reclamation plan …[was sufficient and the County was estopped to object from subsequent use].
>
> ….**The court must make its own decision as to the legal impact of those facts and is not bound by any concessions of law that a party may have made.**

> **[citations]… Indeed, the county lacks the power to waive or consent to violations of zoning law. [citations]**
>
> ***
>
> [After analysis that is even more powerful here because IMM objectors here make no admissions or concessions of any kind to Rise, the court concluded:] **Hansen Brothers has failed to carry that burden insofar as its SMARA reclamation plan asserted a vested right to quarry a 60 plus acre parcel…The evidence is insufficient to support a finding that Hansen Brothers is entitled to a writ of mandate… [therefore referring to a further] determin[ation] by the superior court on remand.**

The lessons of *Hansen* are not what the Rise Petition claims. **See also, e.g., *Calvert, Hardesty,* and cases cited therein.** As further objector briefing will demonstrate, the Rise Petition record and purported "evidence" are even more deficient and disputed than those at issue in *Hansen*. See also the main objection text for more evidentiary disputes and reasons why the Rise Petition must fail. **See, e.g., many disputed Rise Petition Exhibits (besides often being cherry-picked parts out of the missing alleged "collection" context) are inadmissible or otherwise objectionable under the law of evidence, such as often lacking authentication and the required "foundation," reliability, credibility, and other bases required for admissibility. Again, this is not, as proven in Objectors Petition For Pre-Trial Relief, Etc., just a dispute between Rise and the County, with the public as impotent three-minute commentators. This vested rights dispute is a multi-party dispute that must fully include the objecting public, especially those surface owners above and around the 2585-acre underground IMM, who have their own competing due process and other constitutional rights, legal rights, and groundwater/existing and future wells, and other property rights explained in Objectors Petition For Pre-Trial Relief, Etc. (e.g., *Calvert, Hardesty, Keystone,* and *Varjabedian*).**

Also, even if it had some vested rights to any of such Vested Mine Property, that would not empower Rise to trespass, harm, or otherwise adversely affect such impacted objectors or their property (e.g., existing or future wells and groundwater owned by such surface objectors), especially without first proving Rise's right to do so with admissible evidence and heavy burdens of proof in a proper due process proceeding in which objectors can full participate as equal parties in interest. See, e.g., *Calvert*, *Hardesty,* and cases cited therein. The Rise Petition and process fails that requirement even as to Rise's own property, beginning with the necessity of Rise satisfying its burden of proof with competent evidence in such a due process proceeding as to each fact and issue required to establish a vested rights claim. To avoid delay the County should promptly dismiss the Rise Petition. Even then, if Rise somehow were to prevail over the County on such vested rights, Rise still could not prevail over such surface-owning objectors, since, for example, Rise cannot deplete such objectors owned (existing and future) wells and groundwater, which are property rights that cannot be "taken" without violating the objecting owners' own personal constitutional and legal rights. For the County to participate or assist in any such "taking" from objecting surface owners would create much more massive problems for the County than Rise attempts to threaten, as explained both in the Objectors Petition For Pre-Trial Relief, Etc. and more thoroughly in the incorporated EIR/DEIR objection record. See, e.g., *Varjabedian.* The point of that commentary is to remind

the County that these are some of the many fundamental distinctions between claims for SURFACE MINING vested rights under SMARA (to which *Hansen* limited itself) and UNDERGROUND mining (which Rise continues to ignore and evade, despite record EIR/DEIR objections, and which *Hansen* did not address).

As illustrated throughout the foregoing objection, Rise's proof will also be doomed by its own admissions and inconsistent statements in the Rise Petition compared to the Rise SEC filings and the EIR/DEIR and other Rise applications etc. to the County which seek the use permits or other approvals that Rise now, in a disputed (and impossible to do consistently) switch of legal theories for such mining, claims Rise can evade somehow by such disputed vested rights. Future objector briefs will explain about judicial (and similar administrative) and other estoppels, laches, waivers, and other effects of objectors' impeaching Rise with its own admissions and inconsistencies. See Rise SEC admissions inconsistent with, or contrary to both the EIR/DEIR and the Rise Petition). As the saying goes, Rise can have its disputed and incorrect opinions, but it cannot have its own facts or laws, especially when it is responsible for so many inconsistencies and conflicts between the Rise Petition now versus all those prior SEC filings, disputed EIR/DEIR, and permit and other applications, etc., such as those listed in the County Staff Report about the EIR.

III. The Rise Petition's Incorrect Use of *Hansen Fragments* Is Based On Various Unproven And Incorrect Rise Assumptions And Claims That ARE NOT ANYWHERE Even Attempted To Be Proven In *Hansen* Or Other Rise Cites, Especially As To The Differences Between (1) SMARA Surface Mining Laws On Which Rise Incorrectly Relies (See Attachment B) Versus (2) The Actual, IMM Underground Mining At Issue As Admitted in Rise's Conflicting EIR/DEIR and SEC Filings.

A. Rise Incorrectly Claims/Assumes That *Hansen* (And SMARA on Which *Hansen* Was Solely Based), Which Is Limited to "Surface Mining," Somehow Also Applies To This IMM Underground Mining When It Does Not (And the Rise Petition Does Not Even Expressly Claim It To do So Or Even Discuss Underground Mining Authorities.) See Attachment B.

1. Underground Mining And Surface Mining Are Different "Uses" Raisings Different Legal And Factual Issues, Such That Rise Claims To Vested Rights Based on Surface Uses Or Components Cannot Possibly Prove Anything For Any Vested Rights For Underground Mining Uses Or Components.

Hansen's (and SMARA's) express terms limit them to "*surface mining*," and there is no underground mining at issue or even present in *Hansen's* facts (nor in SMARA). See, e.g., Attachment B discussing the SMARA limitations that prevent any application of that surface mining law to this IMM underground mining dispute.*Hansen* begins by **defining "surface mining operations"** in FN 4 quoting SMARA (Pub. Resources Code #2735), since that *Hansen* decision is limited by the scope of that definition, stating: "[A]ll, or any part of, the process involved in the mining of minerals on mined lands by **removing overburden and mining directly from the mineral deposits open-pit mining of minerals naturally exposed, mining by auger method,**

dredging and quarrying, or surface work incident to any to an underground mine…." (emphasis added) Thus, while *Hansen* and the law (see, e.g., *Calvert and Hardesty* and Attachment B) **distinguish between underground mining and the "surface work incident to an underground mine," Rise** not only totally ignores that distinction and issue, but (without any purported analysis or authority) **simply, falsely assumes that SMARA vested rights' permission to do such "surface work" for an underground mine is also permission to mine as it wishes underground at the IMM according to Rise Petition at 58 "without limitation or restriction," such as described in the disputed EIR/DEIR (e.g., 24/7/365 for 80 years: underground blasting 76 miles of new tunnels into new, never mined and unexplored areas of the 2585-acre underground mine, chasing imagined gold veins, if any, wherever they might lead; dewatering with a new underground and surface system, including an unprecedented, water treatment plant, to deplete groundwater and wells owned by objecting surface owners living above and around that underground mine; etc.)** More importantly, that surface mining access to the underground may start at the Brunswick site owned by Rise, but that **underground mining is beneath objecting surface owners with their own competing constitutional, legal, and property rights (down at least 200 feet, plus deeper for water and other rights not included in the mineral rights quitclaim deed quoted in Rise's SEC 10K filings) analyzed in cases like *Keystone and Varjabedian.*** Stated another way, even if somehow words don't mean what they say any more for Rise and if somehow "surface work incident to any underground mine" were relevant in this dispute (which it is not and wouldn't give Rise any permission actually do any underground mining), objectors own the surface above that new underground mining **that has not been used in modern times (and cannot now be used) even for such Rise surface mining work. How would Rise even create access to begin that new underground mining expansion area without doing all the massive, underground work admitted in the EIR/DEIR and SEC filings?**

2. The Facts And Analysis Of Hansen Did Not Include Any Underground Mining, Just Surface Mining.

Hansen (at 544-46) describes the applicable "aggregate business in which the materials combined and sold as aggregate are obtained by surface mining and quarrying on part of a 67-acre-plus tract of land comprised of several parcels…" "in a remote, mountainous area…" made up of riverbed, adjacent hillsides, and a flat yard area which is used for processing and storage." "Production of aggregate from sand, gravel, and rock mined and quarries … commenced almost 50 years ago." Moreover, as the Hansen majority itself defined the scope of the dispute (at 547, emphasis added): **"This action arose out of Hansen Brothers' efforts to comply with the Surface Mining And Reclamation Act of 1975 (#2710 et seq.)(hereinafter 'SMARA'), and in reliance on #2776 the miners claim vested rights to be excused from the conditional use permit requirement, recognizing that SMARA required its own regulatory compliance, including for a "reclamation plan" and related "financial assurances."**

3. The Hansen Majority (Unlike the Dissenters And All the Lower Decisionmakers) Found Continuity of That Hansen "Aggregate Business" Sufficient On Certain Parcels On Facts Very Different From Those Rise Claims Regarding the IMM.

The *Hansen* majority found (at 544-545): "Production of aggregate from sand, gravel, and rock mined and quarries … commenced almost 50 years ago [in 1946].) And, despite conflicting testimony, Hansens testified and claimed that the operations were continuous during that entire period." Evidence of various continuing business activities on site was also produced, although issues about the significance of those activities was at the core of the disputes both between the parties and between the majority and dissenting Justices in *Hansen.* However, as analyzed below in more detail, in this IMM dispute the abandoned/discontinued IMM flooded and closed for such mining operations by 1956, making such continuing work essential to vested rights impossible, especially as to the new, underground expansion area that had never before been accessed or explored much less mined. Yet, Rise's own Exhibits to rebut its vested rights claims, such as among the missing "time gaps" in the critical evidence required to prove **continuous vested rights conduct and intentions, the years discussed in the above objection rebuttals where Idaho Maryland Mines closed its flooded IMM, moved to LA, where it changed its name, trademark, and business to become an aerospace contractor, and eventually liquidated in bankruptcy before the IMM auction purchase cheap by William Ghidotti (during which time there was no Rise proof of that bankruptcy trustee having any intent or plans to reopen the IMM or do anything else to preserve or create any vested rights.)**

4. Even the Hansen Majority Concluded (at 543) That: "the record is inadequate to permit us, or the lower courts and administrative bodies, to determine (1) whether the nonconforming uses which Hansen Brothers claims a vested right to continue extends to all of the Nevada County property …over which it claims a vested right to continue operations…"

Thus, Rise's unprecedented, incorrect, and disputed "unitary theory of vested rights" is defeated by *Hansen*, and Rise overstates the result in *Hansen* on that key issue which here relates to objectors' disputes about Rise claiming vested rights to underground mine in that separate, new expanded, unexplored, never mined before parcels of the 2585-acre underground IMM beneath objecting surface owners living above or around that proposed mining. Stated another way, *Hansen* is not authority supporting Rise's vested rights claim to mine there as it demands, especially as the Rise Petition claims (at 58) "without limitation or restriction," because even in that *Hansen* majority decision, where the facts were more favorable to the miner (in the majority view) than these IMM facts, *Hansen* found the evidence insufficient for the miner to prevail on various parcels at issue in that court's parcel-by-parcel analysis. Here, the IMM evidence against Rise is much stronger and includes mining facts and objectors' use of Rise admissions and inconsistencies cited in the Objectors Petition For Pre-Trial Relief, Etc. and Rise's SEC filings (Exhibit A thereto) to defeat Rise's claim. Indeed, as explained in the foregoing objection, most of Rise's so-called proof cannot satisfy its burden of proof because, besides massive foundational and authentication issues (including unproven custodians for long periods, unidentified sources, and lack of completeness), credibility, and reliability objections, the law of evidence would bar such inadmissible evidence on many grounds. Coming in as a speculator in 2017 to buy the mine that had been closed and flooded since 1956, Rise has no relevant personal knowledge about prior intentions, events, or other

facts at issue, and most of the relevant witnesses are long dead. Objectors do (and will) object to most of Rise's allegations and so-called "evidence," assuming the County process allows it before the courts reject the same in another objector due process ruling as in *Calvert or Hardesty.*

5. **Rise Cannot Claim Vested Rights To the New Underground Expansion Parcels Now Targeted For Mining (Discussed Above As the "Never Mined Parcels") That Had Not Previously Been Accessed, Explored, Or Mined As Admitted by Rise in Its SEC Filings And In the EIR/DEIR Before Rise Switched To Its Inconsistent Vested Rights Theory.**

As so noted herein and elsewhere, each so-called Vested Mine Property parcel must be analyzed separately as to its historical ownership and continuous operations, and mining intentions for each use and component by each Rise predecessor since the 10/10/1954 vesting date**. As *Hansen* stated (at 558):**

> **Even where multiple parcels are in the same ownership at the time a zoning law renders mining use nonconforming, extension of the use into parcels not being mined at the time is allowed only if the parcels had been part of the mining operation.** (*Dolomite Products Company v. Kipers* (1965), 23 A.D.2d. 339…affd 19 N.Y.2d 739 [279 N.Y.S.2d 192]…[**owner may not "tack" a nonconforming use on one parcel used for quarrying onto others owned and held for future use when the zoning law became effective**]; *Smart v. Dane County Bd. Of Adjustments*…501 N.W.2d 782; *Stephan & Sons v. Municipality of Anchorage*…685 P.2D at p.102 fn.6 ["**The diminishing asset doctrine normally will not countenance the extension of a use beyond the boundaries of the tract on which the use was initiated when the applicable zoning law went into effect….]** see also *Midland Park Coal & Lumber Co. v. Terhune*, 56 A.2d 717 (N.J. 1948); *Syracuse Aggregate Corp. v. Weiss*, 51 N.Y.2d 278, 434 N.Y.S.2d 150 *…; Davis v. Miller*, 163 Ohio.St. 91, 126 N.E.2d 49 (1955).].) (emphasis added)

That *Hansen* ruling should be fatal to the Rise Petition, because the separate underground parcels now to be mined had never been sufficiently accessed, explored, or mined before. See Rise admissions to that effect in its EIR/DEIR and SEC filings, as discussed in Objections various objections. There were no tunnels, infrastructure, or mining activities there on or after 10/10/1954, and the EIR/DEIR proposal was to create 76 miles of new tunnels to access those previous unavailable parcels. Thus, Rise cannot under its own primary *Hansen* authority claim a vested right to that new mining expansion.

Consider how *Hansen* applied that rule to the mining facts in the section (at 565-568) entitled "Separate Use." Unlike Rise's IMM plan to mine such underground parcels never previously mined (hence, for instance, the admitted EIR/DEIR description of 76 miles of new tunneling to access that area seeking veins of gold), ***Hansen's* miner had previously mined much of the areas where the court granted vested rights, but (and what Rise ignores) even the disputed (by all lower decisionmakers and the Supreme Court dissenters) *Hansen* majority reserved judgment (at 543, see also 568, emphasis added) as to some of those then unmined**

parcels pending more and better evidence that they were entitled to vested rights; i.e., stating: "Nonetheless, the record is inadequate to permit us, or the lower courts and administrative bodies [which had all rejected the miner's vested rights claims], to determine (1) whether the nonconforming use to which Hansen Brothers claims a vested right to continue extends to all of the Nevada County property it identifies … or (2) the extent of the areas over which an intent to quarry for rock was objectively manifested in 1954."

No one (not even the overly generous *Hansen* majority) should allow Rise any vested rights to mine that new, underground IMM expansion area, because, among many other objections, Rise's so-called evidence is much worse than what even that *Hansen* majority found too deficient. See the above objection main text discussing and applying evidence standards, The Rise Petition rarely even tries to satisfy its burden of proof, instead simply citing disputed partial, objectionable records, without proof of continuous vested rights (e.g., with massive gaps, as shown from the start as to the lack of any proof to support vested rights during Idaho Maryland Industries [formerly Idaho Maryland Mines] bankruptcy trustee's exclusive control for years before the auction sale to William Ghidotti) that objectors main briefing will show are neither admissible evidence nor complete, sufficient, or credible to prove any vested rights.

In *Hansen* (at 565-66) the majority agreed with the united dissenters and lower decision-makers that rock quarrying had been discontinued for periods in excess of 180 days deadline, and when operating had been producing smaller quantities of material than the riverbed mining. However, the majority stated those facts were not "dispositive" because the court saw "mining for sand and gravel and quarrying for rock" as "integral parts of that business" on 10/10/1954 that "could [not] be compartmentalized into two mining uses and aggregate production business," because such mining uses … were incidental aspects of the aggregated production business." **However, as proven above in quotes from Hardesty, it is indisputable that surface mining and underground mining are different "uses" for vested rights. Even if somehow Rise could satisfy anyone without the required evidence, Rise still could not pass the test (at 566, emphasis added) for these new and unexplored/unmined "open area" parcels now proposed for such new, expansion underground mining, because even if all other conditions were satisfied for vested rights, such "open area" parcels would only be included (even by the *Hansen* majority) when and if: "such open areas were in use or partially used in connection with the uses existing when the regulations were adopted," which was not the case in this such admittedly inaccessible part of the underground IMM.**

Ironically, this is one of the powerful differences for "objective intentions" about the future between all these surface mining cases which Rise cites for its "alternative reality" versus objectors' underground mining reality: the underground parcels of the IMM 2585-acres proposed for mining are an "open area," but underground and physically isolated from any such qualifying mining activity, especially in 1954, considering all the technology, financial, and other legal and practical limitations making that unused and inaccessible expansion area some future reserve on different parcels (or sub parcels) that cannot ever qualify for vested rights. Remember, the relevant, predecessor miners were still using manual pumps for dewatering in 1954, and these new IMM expansion areas are deeper than anything in the 1954 existing IMM**.** Even now Rise admits in its EIR/DEIR that this expansion mining would requires a new, high-tech, massive dewatering system operating 24/7/365 for 80 years that those predecessors could have never planned to duplicate. **SEE THE *HANSEN* DISCUSSED CASE**

DENYING SUCH VESTED RIGHTS CLAIM (AT 566, EMPHASIS ADDED**) THAT THE MAJORITY SAID "ILLUSTRATED" ITS "APPROACH": *PARAMOUNT ROCK CO. V COUNTY OF SAN DIEGO* (1960), 180 CAL.APP.2d 217, 230, WHERE THE READY-MIX CONCRETE BUSINESS ADDED FOR THE FIRST TIME AFTER THE VESTING REZONING DATE A NEW "ROCK CRUSHING PLANT ON THE SITE" (REPLACING PRECIOUSLY OFFSITE CRUSHING), REJECTING THE ARGUMENT THAT SUCH A CRUSHER ADDITION WAS "AN INTEGRAL PART OF THE BUSINESS THAT THE [OWNER] PLAINTIFF HAD BEEN OPERATING," SINCE THAT CRUSHER WAS "NOT PART OF THE NONCONFORMING USE TO WHICH THE PROPERTY WAS BEING PUT AT THE TIME THE ZONING ORDINANCE WAS ADOPTED."** STATED ANOTHER WAY, ***HANSEN*** (AT 566, EMPHASIS ADDED) **IN EFFECT STILL REQUIRED THAT SUCH "A COMPONENT OF A BUSINESS" MUST "ITSELF HA[VE] A VESTED RIGHT TO CONTINUE USING THE LAND ON WHICH IT IS LOCATED FOR OPERATION OF THE BUSINESS."**

That objector analysis of *Hansen is* also consistent with what *Hansen* recognized and imposed (at 558-559, emphasis added) as the additional rule against mining extensions onto "property acquired after the zoning change went into effect," among other things to prevent forbidden evasions "by [the miner] acquiring property abutting a tract on which the nonconforming use operated and expanding into the new property, even though the original owners of the newly acquired property had no vested right to such use of the property." (Citing McCaslin) "The use at the time the ordinance was adopted established the non-conforming use which defendant was entitled to continue," but as in *Struyk v. Samuel Braen's Sons* (N.J. Super. 1951), 85 A.2d 281, that quarry operation could not be so extended even when the purchased, adjacent parcel was used for related support by not as a quarry by the seller. That "no expansion across different parcels rule" applies even where Rise's predecessors owned both parcels. NOTE, THAT *HANSEN* AND *PARAMOUNT* THEREBY (*HANSEN* AT 566) NOT ONLY DEFEAT THE VESTED RIGHTS IMM MINING AT ISSUE, BUT ALSO DEFEAT THE ADDITION OF THE NEW IMM WATER "TREATMENT" SYSTEM DESCRIBED IN THE EIR/DEIR THAT IS ESSENTIAL TO DEWATERING THE EXPANDED MINING (AND ACCESS TO IT, SINCE RISE CANNOT USE ANY SURFACE QWNED BY OBJECTORS ABOVE OR AROUND THE 2585-ACRE UNDERGROUND IMM. *Without that new "treatment system" Rise's whole mining plan is futile, which is a good thing for saving the surface owners' groundwater and existing and future wells from the proposed IMM menace by application of objectors' other rights and claims.*

B. The Rise Petition Incorrectly Claims (at 58) A Sufficient "Objective Intent" To Expand The Underground IMM Mining As It Wishes "Without Limitation Or Restriction," But Even the *Hansen* Majority Analysis Does Not Support Rise's Contentions, And Rise Again ignores "Inconvenient Truths" And Controlling Case Law.

***Hansen* declined to rule on the miner's objective intent for lack of sufficient evidence, and there is far less evidence here about rise predecessors' intentions as to the expanded mining into that separate, new, unexplored, area of the underground IMM.** *Hansen* stated (at 543, emphasis added): "Nonetheless, **the record is inadequate to permit us,** or the lower courts and administrative bodies, **to determine … (2) the extent of the area over which an intent to quarry for rock was objectively manifested in 1954." Here, in the years since 1956 at the closed, flooded, and (yes) abandoned IMM, much of our community grew up above and**

around the IMM underground 2585-acre mine (e.g., thousands of homes, shopping centers and businesses, churches, an airport, a hospital, and much more, all reasonably assuming from the objective manifestations that the IMM was abandoned and would never reopen. If the owners wanted to preserve their vested rights, they needed to do far more CONTINUOUSLY than the insufficient and mostly irrelevant things Rise claims its predecessors did (but where is there admissible evidence to satisfy Rise's burden of proof?) None of what Rise claims was done on the surface of the abandoned mine after 1954 (but not on the surface owned by objectors above or around the 2585-acre underground mine, and not underground from the Brunswick site that is flooded) is sufficient to create vested rights for what Rise proposed to do now underground, where no one has done anything that could be considered mining since before 1956. As far as our community knew until Rise showed, the flooded IMM was just history, with predecessors like Emgold giving up their quest. Moreover, until recently our community believed we could defeat on the legal and factual merits the Rise EIR/DEIR, use permits, and other applications for approvals, not expecting that for the first time ever Rise would incorrectly assert such vested rights, especially as the Rise Petition states (at 58) with the right to mine as it wishes "without limitation or restriction." The main briefing to come will detail all those rebuttals of Rise's attempts to link that past to the present plan, but in the interim, please recall how, as discussed above, *Hansen* insisted on a parcel-by-parcel, use-by-use, and component-by-component analysis.

In discussing the "objective intention" disputes addressed throughout this objection and Objectors Petition For Pre-Trial Relief, Etc. also recall that *Hansen* stated (at 557, emphasis added) that: **"The right to expand mining or quarrying operations on the property IS LIMITED BY THE EXTENT THAT THE PARTICULAR MATERIAL IS BEING EXCAVATED WHEN THE ZONING LAW BECAME EFFECTIVE." Here, Rise's self-selected and cherry-picked part of history admitted that gold production was dwindling progressively, and the mining shifted to government-subsidized TUNGSTEN instead, until even that was abandoned by 1955. But Rise is not seeking tungsten in this expanded new IMM mining, a topic ignored in the EIR/DEIR and SEC filings. The reality of this history is not that these Rise predecessors (and since 2017 Rise) waited from 10/10/1954 until now (or 2017) to launch a preposterous, 69-year suspended, but at all times somehow continuous through many predecessors, plan to mine this unexplored and unproven underground expansion gold mining site. If as some objectors may suspect, however, some incorrect or worse attempt by Rise to imitate the facts of *Hansen* by trying to connect its gold mining to some newly imagined "aggregate business," that must fail on both the law and the facts as demonstrated in this objection. However, Rise's attempt now to imagine any historical link for what Rise discussed in the disputed EIR/DEIR about unapproved, and at best unlikely, new business of selling mine waste rebranded as "engineered fill," is irrelevant here, and has no proven counterpart in 1954, 1955, or 1956, or otherwise that can create a vested right to mine gold underground, which is a separate use on separate parcels and which even Hansen's quote above forbids. In any event, neither *Hansen* itself, nor other objector precedents, would allow a vested right claim for an aggregate business to support an expansion for vested underground gold mining in this new expansion area. Future briefing will rebut the even more strange and disputed attempt by the Rise Petition to misuse the toxic Centennial site to manufacture vested rights.**

IV. Most Damning to Rise's Disputed Vested Rights Claim May Be What *Hansen* Addresses As Denying Vested Rights For "D. Expansion or intensification of use."

A. Rise's Vested Rights Claims Violate *Hansen's* Most Basic Rules Denying Vested Rights For "Changes In Nonconforming Uses" From the Initial Vesting Date, Such As (At 552) By "Intensification" or "Expansion" of the Existing Nonconforming Use Or "Moving The Operation To Another Location On the Property."

Rise's vested rights claims are defeated at the start, before reaching the abandonment issues, by more of *Hansen's* own statements (at 551-552, emphasis added) in its section entitled: "Scope of Vested Mining Rights –A. Zoning and related constitutional principles underlying Hansen Brothers vested rights claim":

> **When continuance of an existing use is permitted by a zoning ordinance, the continued nonconforming use must be similar to the use existing at the time the zoning ordinance became effective… [citing *"Rehfeld v. City and County of San Francisco* (1933), 218 Cal. 83 …*City of Yuba City v. Chemiavsky* (1931), 117 Cal. App. 568 …"] Intensification of expansion of the existing nonconforming use, or moving the operation to another location on the property is not permitted. (*County of San Diego v. McClurken*, …37 Cal.2d 683,687-688.** See also 8A *McQuillin* …#25.206 p.114) [I]n determining whether the nonconforming use was the same before and after the passage of a zoning ordinance, each case must stand on its own facts. (*Edmonds v. County of Los Angeles*…40 Cal.2d at 651 …[also *Livingston Rock and Tweed & Gambrell Mill*].

Objectors' follow-up briefing will offer to prove how that quote alone and others in the next subsection defeat Rise's vested rights claims, including by using Rise's own admissions inconsistencies against the Rise Petition, such as from Rise's SEC filings and the disputed EIR/DEIR and objector record rebuttals thereto. As the record objections to the EIR/DEIR demonstrate, the new underground mining proposed by Rise violates each such requirement, because it is so admitted not to be "**similar"** to the 1956, 1955, or 10/10/1954 versions (e.g., deeper in a new, unexplored, and expanded underground area on separate parcels (or sub parcels). Other such prohibited changes include "moving" mining uses to those underground expansion parcels that were never mined or accessed, and proposing to use disqualified changes for modern methods, equipment, techniques, systems (e.g., the water treatment plant and dewatering systems), and substances (including adding toxic hexavalent chromium made infamous in the *Erin Brockovich* movie that now ghost town still cannot remediate even after years of effort using that huge settlement fund [see www.hinkleygroundwater.com], but which Rise wants to use to cement mine waste into shoring pillars to support the underground mine and save the expense of having to export that mine waste. That technique and intense threat were not used in 1954.)

Also, the new mining will be far more **"intense**" by the **unprecedented in 10/10/1954 extreme of now proposed 24/7/365 for 80 years of dewatering (i.e., depleting surface owner existing and future wells and groundwater for purported "treatment" at a new facility (not**

used or contemplated in 1954) to flush away our local groundwater downstream in the Wolf Creek), blasting (more powerful), tunneling (another 76 miles into new unexplored areas), mining with that toxic, hexavalent chromium, shoring technique to leave the cemented mine waste in support pillars to save export costs), clearing and supposedly selling the mine waste rebranded as "engineered fill"(a new business not done there in 1954), and other dissimilar activities.

Other environmental, labor, and other laws and police powers beyond the reach of Rise's disputed vested rights overrides would prevent Rise from returning to the "old ways" in the 1950's, even if it could afford to do so. While the disputed Rise Petition no doubt will argue for the adoption of that inapplicable, grocery store natural evolutions argument (i.e., for accommodating natural business growth or evolution of the technology), nothing in that *Hansen* analogy excuses Rise for vested rights being defeated by changes required by applicable health, safety, environmental, or other "police power" required laws to protect the public above or around the 2585-acre underground mine, especially from the consequences of science revealing that some change is needed to avoid material harms, rather than a safe and tolerable technology to be more efficient at what was done less efficiently in the past. See also the next section explaining the additional limits on vested rights to the extent increasing intensity or expanding or enlarging the nonconforming use in dispute. Rise, of course, focuses on the *Hansen* court's featuring of the Kansas court's discussion in *Union Quarries* that a natural growth of the business or an increase in the business done is not an impermissible change in the nonconforming use**. (Note this assumes inapplicable comparisons and ignores the whole *Hansen* and other law prohibitions discussed above forbidding expansion to use another "open property.")** *Hansen* made the inapplicable analogy to allow "a gradual and natural increase in a **lawful** nonconforming use of a property, including quarry property," using the example of a grocery store operated as a **lawfu**l, nonconforming use in an area of increasing population would not be restricted to the same number of patrons or in the volume of goods sold…" (emphasis added, because as the **record objections to the EIR/DEIR already show that proposed IMM use would not be "lawful" in many ways, especially without the permits Rise is refusing to seek in reliance on these disputed and meritless vested rights claims.)**

In any case, Rise could not afford to do things less expansively, less intensely, or otherwise more similarly. See, e.g., Rise's SEC filing admissions, and DEIR at 6-14, where Rise admitted that the whole IMM project is not economically feasible unless Rise can mine as it has proposed 24/7/365 for 80 years, which of course is unimaginable in the face of objectors' votes supporting greater exercise of permitted police powers for more protective law reforms and officials who voters will expect to prioritize our common community "good," "health," "welfare," "safety," property rights and values, and environmental policies over bad or worse practices to maximize profits for such mining speculator shareholders. See record objections to the disputed EIR/DEIR's claims about Rise's disputed, minor economic benefits or those alleged in the disputed County Economic Report, all of which purported IMM benefits are far less than what record objectors offer to prove would be lost, and is already occurring, as depressed property values and consequent property tax collections.

Also, contrary to that *Hansen* quoted rule, the new Rise mining is not only admittedly "expanding" (e.g., 76 new miles of new tunneling into separate and deeper parcels compared to

the existing 72 miles of tunnels), but it is also "moving that operation to another location of the property," which is especially serious because that impacts more surface owners and their properties above or around those new underground parcels (e.g., groundwater and existing and future wells), triggering even more direct, conflicting constitutional, legal, and property rights than were at issue before and countering the absurd Rise Petition vested rights claim (at 58) that somehow Rise can mine wherever and however it wants "without limitation or restriction" as long as it enters from the same Brunswick site as before (for which, of course, Rise cites no authority, which is not surprising because Rise's whole legal theory relies on SMARA surface mining, which is fundamentally different than this underground IMM mining.) After 69 years of flooded isolation, Rise's vested rights mining in that separate, unexplored, expanded underground area is not legally possible, as objectors offer to prove further in their main briefing.

B. Application of Even the *Hansen* Majority Recognized "Intensity" Rules From *Hansen* and Cases Cited Therein Defeat Rise's IMM Vested Rights Claims.

As the *Hansen* court reminded us (at 571-75 and in the County's Section 29.2(B), emphasis added)**: "No such [nonconforming use shall be enlarged or intensified." The court added: "Our conclusion that Hansen Brothers continues to have a vested right to continue quarrying hard rock for use in making aggregate DOES NOT COMPEL A CONCLUSION THAT THIS RIGHT EXTENDS TO QUARRYING THE AMOUNT OF ROCK PROPOSES IN ITS SMARA PROPOSAL." Citing again McClurken at 37 Cal.2d 663, 687, *Paramount Rock*, and other support, *Hansen*** added: "**Given the objective of zoning to eliminate nonconforming uses, courts throughout the country generally follow a strict policy against their extension or enlargement."** Thus, *Hansen* (at 572, emphasis added) explained with approval the following **cases denying vested rights for such increased intensity, expansion, or enlargement: (1) *Edmonds v. County of Los Angeles* (1953), 40 Cal.2d 642, which disallowed vested rights to a trailer park when it had only 20 trailer spots on the zoning trigger date for vesting, but it thereafter increased the number of trailers to 48 (which increase also required an unprecedented, increased, and disqualified "utility house" for "sanitary facilities," just as Rise's new mining would require a new 24/7/365 dewatering system with a new water treatment plant for 80 years of increased, disputed depletion of groundwater from competing surface owner's property (and their existing and future wells) above and around the 2585-acre underground mine, adding another 76 miles of new and deeper tunneling for offshoot mining along every gold vein Rise hopes to cross, beyond the existing 72 miles of tunnels in the 1956 abandoned, closed, and flooded mine) ; (2) *County of San Diego v. McClurken* (1951), 37 Cal.2d 683,** where the court denied vested rights to evade a zoning ordinance banning heavy industrial purposes like the owners' storage of movable surface gas tanks by installing four new, permanent gas storage tanks on the property for the new and different use of storage of gas for service stations instead of such previous "industrial use." ***Edmonds* and *Hansen* also explained that defeat for vested rights claims by noting (at 572, emphasis added): "the additional trailers to be placed on the property were equated to additional structures, a type of changed or intensified use which most jurisdictions refuse to permit as part of a nonconforming use." [Like Rise's new water treatment plant, etc.] *McClurken* had the same concerns with both**

such a prohibited "new use and placing additional structures on the property. *Hansen* did not allow any of those things, because its miner did not have such a "new use," but instead the court focused on the question of "only an increased volume of production by the existing use." Id.

This distinction is critical because Rise's proposed, massive, "enlarged," underground activities 24/7/365 for 80 years is unprecedented in their "intensity" and could not have been imagined by anyone in 1954, much less be proven by admissible evidence of "objective manifestations" from 1954, especially where that initial Idaho Maryland Mines closed and abandoned that flooded IMM by 1956, in to change its name, trademark, and business, to move to LA to become an aerospace contractor, and then ended up being liquidated by a bankruptcy trustee who neither did, nor intended, anything to create or preserve any vested rights, but arranged the auction sale cheap to William Ghidotti. Moreover, as objectors' follow-up briefing and proof will show, these legal tests must also include the negative impacts of those mining and related activities on, among others, the surface residents and property (including groundwater and existing and future wells) above and around the 2585-acre underground IMM, the environment, and the community way of life. Rise is just wrong to ignore such crucial things and instead insist incorrectly that intensity can only be judged by comparing the amount of gold extracted now versus earlier. Also, *Hansen*, following such cited principles it deduced from *Edmonds* and *McClusken,* would correctly judge for example, the massive new dewatering system (and particularly its new "treatment plant") as far beyond any vested rights permission, as agreed above by *Hansen, McClurken*, and *Edmonds.*

However, in that (for many reasons) distinguishable *Hansen* case dissimilar facts of that case compressed the issue into the single narrow question of comparative rock volume, and, again, the court did not necessarily support Rise's claim as Rise asserts. Again, the court did not resolve that question of whether that mining was "enlarged or intensified," although the majority stated (at 574-75) some dicta guidance that is hard to apply here to this very different IMM case, even if one were to disregard (only for the sake of argument) the differences between surface and underground mining. Rise, of course, stay focused incorrectly on the court's featuring of the Kansas court's discussion in *Union Quarries* that a natural growth of the business or an increase in the business done is not an impermissible change in the nonconforming use**. (Note this assumes inapplicable comparisons and ignores the whole *Hansen* and other law prohibitions discussed above forbidding expansion to use another "open property;" i.e., again the parcel-by-parcel, use-by-use, and component-by-component analysis that Rise incorrectly ignores.)** *Hansen* made the inapplicable analogy to allow "a gradual and natural increase in a **lawful** nonconforming use of a property, including quarry property," using the example of a grocery store operated as a **lawfu**l, nonconforming use in an area of increasing population would not be restricted to the same number of patrons or in the volume of goods sold…" (emphasis added, because as the **record objections to the EIR/DEIR already show that proposed IMM uses would not be "lawful" in many ways, especially without the permits Rise is refusing to seek in reliance on these disputed and meritless vested rights claims. And even if those uses were lawful now, local voters will cause law reforms exercising police powers immune from vested rights to protect our community from such Rise harms.)**

That unhelpful and distinguishable *Hansen* analogy and commentary on which Rise incorrectly relies does not apply to the IMM, but **that shows the problem with the County incorrectly limiting this multi-party disputed into essentially a two-party case, trivializing the objections and rights of us objecting, impacted local neighbors, those surface property owners above and around the 2585-acre underground mine with their own competing constitutional, legal, and property rights, especially as to groundwater and existing and future wells, who are not allowed to participate properly and to inject reality into such limited and distinguishable *Hansen* type situations, as required for objectors' due process by *Calvert* and *Hardesty*.** Notice, however, that one of the cases cited by *Hansen* with approval did address such third-party victim issues, where *Frank Casilio & Sons v. Zoning Hearing Bd*. Etc. (1956), 364 N.E.2d 969, 970 (emphasis added), **correctly added the condition on an "expansion" claim for vested rights that such "right of natural expansion" had to be "reasonable and not detrimental to the welfare of the community," which that miner violated in that case because "an increase from an occasional truckload of sand and gravel leaving the property each day to as many as 30 a day was not reasonable." (Recall Rise's disputed EIR/DEIR plan for the 100 trucks a day 24/7/365 for 80 years at the IMM compared with some much less impactful number in 1954, among many other harms and burdens proven in our record objections. [Note: objectors' offers of proof are proof until they receive their due process opportunity fairly to present their evidence, which is not just another three minutes for public comments to the County officials]** in hundreds of record objections to the EIR/DEIR here proving the IMM would be so detrimental to the community, but especially by violations of such surface owners' personal competing constitutional, legal, and property rights. See *Keystone and Varjabedian*.**)**

In any event, the *Hansen* majority began assessing the issue of prohibited "intensification" by comparison of the quarry outputs before versus after, but again the court found the SMARA record for the *Hansen* required reclamation plan was deficient to resolve even that disputed measure. The court stated that the SMARA remediation application did not need to address that intensity question sufficiently for resolving that issue in *Hansen.* Thus, the *Hansen* court stated (at 575, emphasis added): **"Impermissible intensification of a nonconforming use is more appropriately addressed at such time as increased production actually occurs**" (which objectors read as like the "ripeness" of a claim for threatened inverse condemnation, nuisance, trespass, or conversion discussed in *Varjabedian* and Objectors Petition For Pre-Trial Relief, Etc.) Thus, in deferring that "intensity" issue for a later "reality" test in practice, because that was a just two-party dispute, rather than a multi-party *Calvert* dispute like this one, *Hansen* added:

> **…[T]he County's remedies are the same as would exist independent of the SMARA application [for the compliant reclamation plan and financial assurances Rise has not presented for approval here] were the Hansen Brothers' business to increase. When it appears that a nonconforming use is being expanded, the county may order the operator to restrict the operation to its former level and seek an injunction if the owner does not obey. [citations]** Therefore, when the area over which Hansen Brothers has vested rights is determined, and if that area is less than 60 acres, a new or amended SMARA reclamation plan will be necessary. Even if the plan is unchanged, however, the

> intensification of use question must be reconsidered on remand if the county continues to require the determination of that question before approval of a SMARA reclamation plan.
>
> **…[T]he county is not without remedies if mining activity at the Bear's Elbow Mine increases in the future to a level that the county believes is excessive. As with any other nonconforming use, the county may seek an injunction or other penalties authorized by the zoning ordinance, whenever it believes that production at the mine has reached a level that constitutes an impermissible intensification of the nonconforming use for which Hansen Brothers have a vested right. (emphasis added).**

Since *Hansen* allows the County to do that enforcement against the miner in its discretion, the local voters can then assure their self-defense by all such appropriate means with comparable law reforms that be enforced directly by our impacted residents.

What is most important in this discussion is not just that the quantities of IMM mining rock and any mineral recovery will progressively exceed any amount from past years (i.e., pre-1956), but that every proposed aspect of the IMM mining is prohibitively more "intense" as to its many different harms on, and threats to, impacted surface residents above and around this 2585-acre underground IMM, on objectors' groundwater and existing and future wells, on objectors' property rights and values, on objectors' vegetation and forest (and fire threats), on objectors' environment, on our community way of life, and on every other menace proven in record objections to the disputed EIR/DEIR. The issue of intensity is about such harms on us local victims, not just about how much rock or gold is mined for the miner's profits. As *Calvert* and *Hardesty* prove, each objector has his or her own, personal due process and other constitutional, legal, and property rights to prevent this IMM menace from happening. See *Keystone* and *Varjabedian*. Such objectors do not depend on the County acting for them. In any case, waiting to measure output is absurd and legally inappropriate here, because the harms that matter most will begin years before any possible gold production could start, such as when Rise first begins dewatering the mine and depleting surface owners' groundwater and existing and future wells, blatantly using a dewatering system and new "treatment" plant for which there is no possible vested right and flushing away our groundwater down the Wolf Creek.

C. Briefly Comparing the Intensity of Old Mining Ways Versus New Mining Ways.

It is indisputable that modern mining techniques, methods, practices, explosives, dewatering systems, equipment, and every other activity planned by Rise at the IMM or "Vested Mine Property" is more "intense" in every way than the mining in 1954, 1955, or 1956 when the abandoned IMM closed and flooded. Rise incorrectly contends that this kind of intensity must be ignored by Hansen's natural business progression, using the inapplicable analogy (especially for underground IMM mining) of an evolving grocery store. The courts may have to resolve in due course as a question of law which kinds of intensity increase local surface objectors must tolerate, if any, and which cannot be protected by Rise vested rights. That is a complex debate for another briefing, except that underground mining intensity must be judged on its own unique basis, especially considering the competing constitutional, legal, and property rights of

objecting surface owners above and around the 2585-acre underground mine. See *Keystone* and *Varjabedian.* For example, the massive 24/7/365 dewatering effort and systems and components for 80 years, including the new water treatment plant "component," have no counterparts in 1954 or 1956 underground mining or to grocery store business evolution matters. That Rise system is clearly massively more "intense" and "dissimilar" to the dewatering methods. The question should not be about comparative technology expectations, but rather about the intensity of the harm and impacts they cause not just on the environment, but on the surface owners who must either suffer them or, as here, resist in legally and politically appropriate ways such harms to their health, welfare, property, and rights. That impact is intolerable, for example, as to its intense depletion of our surface owner groundwater and existing and future wells, and nowhere does Rise cite authority for its disputed vested rights to take our surface owner groundwater, dry up our existing and future wells, as well as our forests and vegetation, flushing the precious water needed for climate change chronic droughts away down the Wolf Creek for its speculator shareholder profits and no net benefit to objecting owners of their depleted groundwater and wells.

For example, if the shallower, less impactful, and less intense (i.e., manual pumping untreated into the Wolf Creek and not 24/7/365 for 80 years) dewatering of the IMM before 1956 was tolerable, we dispute it could be allowed today under stricter environmental laws that vested rights claims cannot overcome. Thus, the far more intense, Rise dewatering system and component treatment plant working 24/7/365 for 80 years, even during climate change, chronic droughts must defeat Rise's vested rights. When our wells dry up (and our new wells [that surface owners have a constitutional and legal right to drill, like surface owners everywhere lacking sufficient surface water] are no longer feasible), when our forest and vegetation begin to die, and when "subsidence" and other groundwater depletion problems emerge, that intensity must defeat any disputed Rise vested rights. That becomes irrefutable evidence of the inverse condemnation, nuisance, and other claims mentioned in Objectors Petition For Pre-Trial Relief, Etc. and detailed in objectors' EIR/DEIR objections. See *Keystone* and *Varjabedian*. Also, if the pick and shovel mining and old-fashioned dynamite blasting of 1954, 1955, or 1956 did not materially impact the few, if any, surface residents living above or around the underground IMM at that earlier time with noise and vibration, but the 24/7/365 modern tunneling, blasting with modern explosives, mining, or other activities will have that impact, that must be a forbidden increase of intensity to defeat vested rights, even though such surface owners moved in after 1956 as a result of mine owners (e.g., the BET Group) subdivisions and sales for such residential and non-mining commercial uses, as illustrated by the Rise Petition Exhibits discussed in the main objection text here. Stated another way, what about competing surface owner constitutional and vested rights in reverse? Objectors also will have practical evidence of "intensity" because such Rise impacts will materially depress surface property values by those and other impacts.

V. In Many Ways, Some Addressed Here For Illustration Before Full Briefing Rebuttals And Counters To Come In Due Course, The Rise Petition Summary Is Incorrect, Flawed, And Incomplete Regarding The *Hansen Majority's Section Entitled:* "Zoning and related constitutional principles underlying Hansen Brothers vested rights claim."

At the outset, *Hansen* proclaims (at 551, emphasis added) the settled law to be: "Adoption of a zoning ordinance which is not arbitrary and does not unduly restrict the use of private property is a permissible exercise of the police power and does not violate the takings clause of the Fifth Amendment …and comparable provisions of the California Constitution, even when the law restricts an existing use of the affected property. [citations omitted for now]." That means if SMARA #2776 does not apply to aid Rise's vested rights claim, Rise must rely on whatever undefined constitutional right it may have to argue under that standard against the contrary competing rights of us surface owner objectors, whose interests must be considered and doing so is not "arbitrary" or "unduly restrictive of property uses" under the *Keystone* standards for protecting surface owners from such underground mining menaces. See also *Varjabedian*. In addition, among the many things Rise ignores in seeking to evade that reality is that *Hansen* was only focused on the competing "**zoning law," as distinguished from many other environmental, health, safety, and other applicable laws protecting those potential victims of the mining, such as the voting surface owners living above and around the 2585-acre underground IMM who have political, as well as personal legal remedies, including a *Calvert* and *Hardesty* recognized right to due process participation in this vested rights dispute process.** Recall in this muti-party IMM dispute that this is **not just about how Rise uses its property** to harm such surface owners, impacted others, or the general public.

More importantly for this IMM dispute, **objecting surface owners above and around the 2858-acre underground mine have their own competing constitutional, legal, and property rights (including as to their groundwater and existing and future wells) that Rise would "dewater" and (after purported treatment by the new component plant without any hope of vested rights) would flush away down the Wolf Creek. In deciding what is "arbitrary" or "permissible exercise of police power" the court must consider not just the general public, but also those thousands of impacted competitors living on the surface above or around that 2585-acre underground IMM mining. The Objectors Petition For Pre-Trial Relief, Etc. explains some of those surface ownership rights both (i) to groundwater and to lateral and subjacent support (such as to avoid "subsidence" that includes depletion of groundwater and existing and future wells) in the US Supreme Court's Keystone decision, as well as (ii) the thousands of impacted neighbors' rights to assert (when ripe) inverse condemnation, nuisance, and other claims (which SMARA denies blocking as explained in Attachment B) in the California Supreme Court's *Varjabedian* decision, that the County must weigh against a speculating miner's desire for exploitive profits, as explained in objectors record EIR/DEIR objections.**

For example, Hansen added (at 551-52, emphasis added):

> **A zoning ordinance or land-use regulation which operates prospectively and denies the owner the opportunity to exploit an interest in the property that the owner believed would be available for future development, or diminishes the value of the property, is not invalid and does not bring about a compensable taking unless all beneficial use of the property is denied.** (citations)"

Here Rise's vested rights claims should also be defeated by laches, estoppel, waiver, and many other defenses objectors expect to brief in their main filings to come. What is notable when these disputes reach the courts is that **this is not just a land use dispute between a miner and the County,** but rather, as ***Calvert*** *and* ***Hardesty*** recognized, **this is a multi-party dispute where allowing vested rights to Rise would create counter constitutional, legal, and property rights in favor of those thousands of objectors living above and around the 2585-acre underground mine.** If Rise were right (but it is not), the County would suffer one way or the other, since such surface owners' competing rights should be superior to Rise's within their scope, as illustrated in *Varjabedian.*

When Rise attempts to bully the County and others about potential County "takings" liability, ignoring *Keystone* and *Varjabedian* even though briefed in prior EIR/DEIR objections, consider what even *Hansen's* summary of the general principle stated of broader relevance in this multi-party dispute:

> When the law effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a substantial investment in development costs has been made, the ordinance may be invalid as applied to that property unless compensation is paid.

Competing surface owners should have no such less rights in reverse. The protection of our growing surface community is not unreasonable, oppressive, or unwarranted, especially in our reasonable reliance on the abandonment of the IMM by 1956 (or at least by the Idaho Maryland Industries bankruptcy trustee thereafter before the auction sale to William Ghidotti), and the County cannot be liable for applying valid laws protecting our surface community against the proposed Rise mining menace beneath them. Indeed, since objecting surface owners have many political remedies, as well as our legal remedies in these disputes, objectors urge the County to be careful about being overly tolerant of Rise's bullying, because, one way or another, local voters will cause the enactment (as appropriate) more laws to protect such surface owners' and our community's competing groundwater (as well as existing and future wells), property and other rights and values, and our environment from Rise's threatened mining harms. See the Objectors Petition For Pre-Trial Relief, Etc. and the massive, incorporated record objections to the dispute EIR/DEIR.

VI. Rise Incorrectly Focused Only on *Part* of One of *Hansen's* Many sections Entitled: "III.B. Vested rights to mining, quarrying, and other extractive uses—the 'diminishing asset' doctrine;" i.e., Rise Incorrectly Narrows Hansen's Rulings To The Ones That Rise Perhaps Considers (Incorrectly) To Appear Less Problematic To Rise's Disputed Claims But That Still Fail To Support the Rise Petition.

The Rise Petition incorrectly fills in many gaps in Rise's disputed analysis of the California SURFACE mining law (See Attachment B) with inapplicable and distinguishable cases from other states and situations, as if they were somehow compatible and consistent with this proposed California UNDERGROUND mining at the Vested Mine Property or IMM (or even consistent with *SURFACE* California mining under SMARA). However, Rise cannot use such

SURFACE laws to evade permits required for such underground mining, and Rise would fail even under the surface laws themselves. See Attachment B. That result will be shown further in objectors' later briefing on the merits. However, for now it is sufficient to observe that the Rise Petition is so citing to OTHER state cases and laws (besides California) on which neither *Hansen* nor other key, applicable California cases rely for the specific claims Rise asserts about such inapplicable foreign citations (or Rise's own unsubstantiated opinions mixed [without warning] into such case law discussions.)

While *Hansen* perceived (at 553, emphasis added) that "the state has the same power to prohibit the extraction or removal of natural products from the land as it does to prohibit other uses," the court recognized an "**exception to the rule banning expansion of a [LAWFUL, as the court later qualified] nonconforming use that is specific to mining [by which the court meant 'surface mining', which was the only kind at issue or otherwise discussed in that case]."** Again, this does not address the Vested Mine Property or IMM **underground** mining, but only relates to **surface** mining under **SMARA (which contains both benefits and its own regulatory burdens for the miner, such as enforcement of an approved miner "reclamation plan" with "financial assurances" that Rise could never achieve—See Rise's SEC filing admissions**, and DEIR 6-14.) However, for the sake of argument, consider the details of what *Hansen* actually said, which Rise misinterprets in significant parts as shown. *Hansen* explains that under the "diminishing asset" doctrine "progression of the mining or quarrying activity into other areas of the property is not necessarily a prohibited **expansion or change of location** of the nonconforming use." Id. (emphasis added) **(NOTE THAT ONLY ADDRESSES LOCATION CHANGE BUT DOES NOT ADDRESS CHANGE IN "INTENSITY" OR "USE" OR ADDING "COMPONENTS" AS OCCURS WITH RISE'S NEW IMM MINING.)**

Then Hansen continued at 553 (and here focus on our emphasis added to expose the conditions Rise cannot satisfy): "When there is **objective evidence** of the **[then] owner's intent to expand** a mining operation, **and that intent existed at the time of the zoning change [here Rise says was 10/19/1954]**, the use may expand into the contemplated area." **That statement assumes, of course, that all the other *Hansen* requirements for vested rights are satisfied, including those stated above regarding the parcel-by-parcel, use-by-use, and component-by-component analysis where mining had to be continuing at that time, i.e., the reasons *Hansen* had to remand the to decide which other parcels, if any, were entitled to vested rights. In other words, because both Hansen's reasoning and its ruling were so contrary to the disputed Rise Petition's incorrect "unitary theory of vested rights," the Rise Petition must fail.**

Moreover, like that *Hansen* miner, Rise cannot satisfy its burden of proof with "objective evidence" that each of the "Vested Mine Property Parcels" (whether 10 parcels and 55 sub-parcels or otherwise, as future briefing will address) on 10/10/1954 ("the time of the zoning change") as to mining that new, separate, unexplored part of the 2585-acre underground IMM. As demonstrated above and even objectors' analysis of Rise Petition's own Exhibits (e.g., #'s 223, 224, and 226), vested rights claims failed (if not before, as we argue) certainly when the Idaho Maryland Industries' LA bankruptcy trustee took control (after that miner abandoned mining, changed its name and trademark and moved to LA to become a failing aerospace contractor) and arranged the liquidation auction at which

William Ghidotti purchased the IMM cheap. Few Rise Petition Exhibits or other things that Rise incorrectly asserts to be "evidence" are credible, true, or admissible such objective evidence, which evidentiary issues are shown to affect the results in cases like *Hansen* and *Hardesty*, where insufficient, competent evidence defeated vested rights, despite what was allowed in the administrative record. **The Rise predecessor owner witnesses on 10/10/1954 of each such underground mining area parcel or sub parcel, Idaho Maryland Mines, are not available witnesses now. The unauthenticated records are incomplete, disputed, and unreliable, and there is no required evidentiary "foundation" for any evidence of their respective such intentions that satisfies the applicable law of evidence, as described in the main objections text above. See also where Rise admits in SEC filings the problematic nature of the historical records.**

Even *Hansen* refused to rule on some vested rights issues lacking sufficient competent evidence, including as to some locations of expanded mining disputes. Indeed, Rise's own admissions, such as in its SEC 10K filings, undermine its own claims by confirming some of the objective realities about the deficient, incomplete, unreliable, and otherwise not convincing or sufficient historical records for such Rise's imagined "facts." Also, recall the related admissions about the objective facts (or **"objective manifestations" of intent**) regarding the IMM mine that should counter any such Rise alleged general intentions. Some of Rise's predecessors at and after 10/10/1954 (i) may have some insufficient or irrelevant activities like minor exploration by occasional small numbers of sample drilling that were **not** legally capable of creating vested rights for any mining "uses," especially underground mining uses, since the IMM has been closed, flooded, and inaccessible for mining uses since at least 1956, and the surface became inaccessible after predecessors (e.g., the BET Group) sold off the surface parcels above and around the 2585-acre underground mine so that no exploration was possible from there. On which parcels does Rise make its claims, since even Hansen required parcel-by-parcel, use-by-use, and component-by-component proof that Rise never even attempts? (ii) sold all removable and salvageable tools, equipment, and operating assets, but (iii) also did (and failed to do) other things contrary to any intent now to mine these new, expanded, unexplored underground areas that were never mined. Indeed, because this new IMM expansion area was not explored or mined, and because Rise admitted in its SEC filings that there are no proven gold reserves, making **this new mining (in our words for convenience) a speculators' gamble, it is unimaginable that desperate, financially stressed predecessor owners liquidating assets to survive had any objective intent to mine this particular underground expansion area, which requires massive restart efforts and costs (e.g., draining the flooded old mine, repairing, reconstructing, and building new infrastructure above and below ground and through the 72 miles of tunnels and 150 miles of "cutoffs" and "drifts" from those tunnels), is admittedly deeper and more challenging than the rest of the mine, requires 76 miles of new tunnels just to access and hunt off for any gold veins there, and requires more dewatering and other costs, difficulties, and risks than any existing underground IMM mining in 1954, 1955, or 1956.**

However, notice that the Rise Petition history is totally one-sided from disputed fragments of purported records, as the foregoing objection demonstrates from our rebuttal of Rise Petition Exhibits, such as Rise's lack of proof of continuous required conduct or intentions during the many time gaps (e.g., during the Idaho Maryland

Industries reinvention of itself after closing the flooded IMM in 1956 as an LA aerospace contractor and especially in the years during which its LA bankruptcy trustee was in control). Rise also says far less about the times between 1954 to 1956 in its Petition now than Rise said in its SEC filings and other communications since it bought the IMM in 2017, but before Rise's recent attempt to change legal theories and its "story" to accommodate its disputed, new vested rights theory. Further briefing will expose all the reasons Rise must fail, both as to the realities on these issues, but also as to the objectors' related objections above to Rise's "evidence" and in objections to come about objectors' legal theories about laches, estoppel (including judicial estoppel in the administrative context), waiver, prescriptive easements, and other defenses of competing surface owners. Notice, for example, that the vested rights theory against the government, does not empower the miner against the competing constitutional, legal, and property rights objecting surface owners above and around the 2585-acre underground mine, who have reasonably relied and invested in their surface properties (and groundwater wells) since 1956 on the abandonment of that underground mining. Where, for example, does Rise's Petition address the differences between these disputes when they are between Rise versus the County, as distinguished from between Rise and those competing surface owners?

As the Supreme Court said in *Keystone,* property rights are a **bundle of many strands, and surface owner objectors have a right to dispute against Rise with respect to every single one. As *Keystone said* quoting** (at 497) *Hodel v. Virginia Surface Mining & Reclamation Ass'n Inc*, 452 U.S, 264 (1981):

> **[W]here an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' is not a taking because the aggregate must be viewed in its entirety. (emphasis added) [The Court then followed that discussion how valid zoning laws always affect without any "taking" property uses with things like setbacks, lot size vs building size, etc.]**

For example, even if Rise were to claim vested rights to such underground mining, where is Rise's authority to deplete groundwater and existing and future wells owned by the surface owners above and around that 2585-acre underground IMM? Notice that some of the "diminishing asset" theory cases *Hansen* cited (at 556-57) with approval (although surface mining cases) are helpful for the competing rights of objecting surface owners above the underground IMM, such as *Town of Wolfeboro (Planning Board) v. Smith* (1989), 131 N.H. 449 [556 A.2d 755, 759] (clarifying this requirement for such vested rights: "and third, he [the miner] must prove that the continued operations do not, and/or will not have a substantially different and adverse impact on the neighborhood" [which adverse impacts hundreds of meritorious record objections to Rise's EIR/DEIR have already proven here].)

***Stephans & Sones v. Municipality of Anchorage* (Alaska 1984), 685 P.2d 98, 101-102 included in that test for vested rights this clarification: "The mere intention or hope on the part of the landowner [miner] to extend the use over the entire tract is insufficient; the intent must be objectively manifested by the present operations" (which was not proven, thus denying vested rights in that gravel pit case, where the mining at the alleged vesting date was**

at "a relatively small scale at the time… and even four years later extended to only two to five acres" on a 53-acre parcel zoned for 13 acres of mining).

VII. Rise Misperceives And Misapplies To What *Hansen* Called (at 568-71): "C. Discontinuance of Use" At The IMM After 10/10/1954 And Especially After the IMM Closed And Flooded In 1955 Or 1956 And Ever Since Has Remained "Dormant;" i.e., the IMM Mining *At Issue* Was Abandoned.

Rise also cannot satisfy its burden of proof to have any vested rights at all, so objectors should never have to reach the abandonment dispute. Nevertheless, the last part of *Hansen's* vested rights lesson is this (at Id.):

> Nonuse is not a nonconforming use, however, and reuse may be prohibited if a nonconforming use has been voluntarily abandoned. (Hill v. City of Manhattan Beach…6 Cal.3d 279, 286.)

We will address abandonment disputes below where *Hansen* deals with that issue in more detail. In discussing Nevada County Land Use And Development Code section 29.2(B), eliminating vested rights after 180 days of "discontinuing" nonconforming use, the *Hansen* court recognized that such requirements "further the purpose of zoning laws which seek to eliminate nonconforming uses," in effect the opposite of Rise's pro-mining policy claims. The court stated (at 568-69):

> The ultimate purpose of zoning is …to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected. [citing Dieneff] … We have recognized that, given this purpose, **courts should follow a strict policy against extension or expansion of those [nonconforming] uses.** [citing *McClurken*] …**That policy necessarily applies to attempts to continue nonconforming uses which have ceased operation** … assum[ing] that the county did not intend an arbitrary or irrational application of its provisions. (emphasis added)

First, although *Hansen* did not confront or address in its two-party, miner vs County dispute what multi-party due process is required (e.g., *Calvert* and *Hardesty*) for our thousands of objections from impacted neighbors, especially those living on the surface above or around the 2585-acre underground IMM, **even that *Hansen* majority ruling did require "proper safeguards for the interests of those affected."** (emphasis added) In this IMM case those safeguards are not to protect Rise, but, as *Calvert* and *Hardesty* demonstrate, rather instead to protect all our impacted residents who developed their surface properties above and around the IMM underground mine after it closed, flooded, and, as far as our reasonably reliant and growing community was concerned, abandoned, and "discontinued" the "dormant" IMM. It should not be necessary for all those impacted objectors to testify against the IMM vested rights, but all would contend they reasonably relied not just on (a) the objective signs of IMM abandonment

of such "dormant" mining (the other post-1956 Rise predecessor businesses are irrelevant because they were not vested in 10/10/1954), but also (b) on the growth of the community above and around the IMM with many incompatible and competing uses, such as thousands of homes, many businesses, shopping centers, churches, a regional hospital, a regional airport, and much more. **Second**, **that legal policy against extension or expansion is enhanced by that reasonable reliance of every such surface owner, who, among their own bundles of constitutional, legal, and property rights (e.g., *Keystone* and *Varjabedian*), have (when ripe) their own counterarguments, claims, and defenses against Rise, such as** for laches, estoppel (including, now that Rise has switched its legal theories from permits to vested rights, judicial estoppel and lethal admissions and inconsistencies under the law of evidence by Rise in its different documents), prescriptive easements, unclean hands, and others. **Third,** Hansen said (at 569) that while "mere cessation of use does not of itself amount to abandonment… **the duration of nonuse may be a factor in determining whether the nonconforming use has been abandoned**." (emphasis added) What *Hansen* suggests would be a tolerable cessation was reflected in its citation to *Southern Equipment Co. v. Winstead* (N.C. 1986), 342 S.E.2d 524, where a "concrete mixing facticity" ceased operating for 6 months "during a business slowdown" while "the plant, equipment, and utilities were maintained" and the plant could be reopened "within two hours." Contrast that with Rise's EIR/DEIR admissions about the years of work required just to be able to dewater the existing flooded mine (requiring new systems and a water treatment plant for which there are no vested rights, even under *Hansen*) and determining after 69 years of flooded abandonment what would be required to make even that existing mine repaired, reconstructed, and ready as a portal to begin work on the proposed new 76 miles of tunneling for mining in the expanded underground parcels. Meanwhile, while that IMM sat abandoned as a historical curiosity from 1956, the community above and around the mine grew to include all those many incompatible uses.

When *Hansen* describes "abandonment" (at 569) it qualifies its definition as "ORDINARILY depend[ing] on a concurrence of two factors: (1) An intention to abandon [as quoted above and applied here, by the 10/10/1954 owner of each IMM parcel or sub parcel at issue], and (2) an overt act, or failure to act, which carries the implication the owner does not intend to retain any interest in the right to the nonconforming use…" As to the Nevada County Section 29.2(B) statute's undefined term "discontinued," objectors are not bound by any County's mistaken "concessions" on this topic as applied in that case (which are not the same as the court's own ruling as to legislative intent). In any event, the facts there do not control the ruling here, for many reasons objectors explain. Those such issues are addressed in more detail elsewhere throughout this objection, including above (as to the evidentiary disputes) some of the rules that defeat Rise and some of the key facts, including some drawn even from Rise admissions and inconsistencies in the EIR/DEIR and SEC filings. See also the Objectors Petition For Pre-Trial Relief, Etc., and the four "Engel Objections" report on such flaws in the disputed EIR/DEIR. More law, data, and evidence will follow in the next main briefing. Objectors contend that discontinuation and abandonment occurred no later than 1956 (and certainly no later than during the Idaho Maryland Industries bankruptcy trustee's control before such trustee arranged the auction to sell the IMM to William Ghidotti in 1963). *Hansen* cannot provide Rise with vested rights. Those illustrative circumstances at the IMM (and others to come next in the main briefing) are ample to prove "discontinuance" and "abandonment" sufficient to negate any Rise

vested rights. In any case, "dormancy" of the IMM, especially for the 2585-acre closed and flooded mine by 1956 cannot be serious disputed by Rise and that should be sufficient as explained above in *Hardesty.*

Incidentally, but importantly, the *Hansen* court concluded that abandonment discussion (at 571, emphasis added) by limiting the scope of its own decision:

> **…That is not to say that future inactivity at the mine may not result in termination of that vested right or that the county might not conclude that the property is no longer being used for aggregate production and is currently in use only as a yard for storage and sales of stockpiled material.**

Objectors emphasize that court's comment because it demonstrates the point made elsewhere. Conducting such a separate non-mining business on the property (the proposed new "engineered fill" [i.e., mine waste] aggregate business) is not going to continue any vested rights, when the mining, nonconforming use ceases; i.e., what *Hardesty* calls "dormancy." Among the *Hardesty* court's earlier evidentiary findings [at 799] was that, for example: "'There are no records presently available …to show what kind of mining business … the owner from 1921 to 1988 … conducted on the property after the war.' **The trial court found that through the 1970's, the property 'was essentially dormant.'"** However, *Hardesty* failed to prove *any* mining was occurring on or even reasonably before the date SMARA took effect [1/1/76]. SMARA was designed to allow existing, operating surface mines to continue operating after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to truly dormant mines.** *Hardesty* at 810.

VIII. Because the *Hansen Majority Rulings Are Distinguishable From Our IMM Dispute And Because Hansen* Dissents Present Authorities And Arguments That Have Influenced Other Cases More Applicable to This One, We Address Some Selected Illustrations of Arguments by the *Hansen* Dissenters, Urging Rejection of the Surface Miner's Vested Rights (As Such Miner Claims Were Rejected By Each of the County, the Trial Court, And the Court of Appeal.)

The two, powerful *Hansen* dissents have influenced the judicial thinking favoring objectors on this topic in situations more similar to the IMM and have echoed helpful analyses from the lower decision-makers that could still apply under such different facts and legal contexts than those found by the *Hansen* majority in that case. Besides objectors sharing some of what the *Hansen dissenters argued, objectors also note more about what such dissents reveal about what the majority* excluded from their ruling either for the majority's remand or deferred for further litigation, thereby leaving objections' paths open for other decisions and cases that doom Rise's claims, such as *Calvert* and *Hardesty.*

A. Hansen Was Limited to SURFACE Mining, Distinguishable from the IMM Underground Mining Disputes With Rise.

To what extent, if any, does *Hansen* apply to support any vested rights claim relevant to such ***underground*** mining at issue in this IMM dispute? The main objection above and Objectors Petition For Pre-Trial Relief, Etc. each demonstrate some of the many reasons why *Hansen* and other ***surface*** mining authorities cannot support Rise Petition's vested rights claims for its **underground "**Vested Mine Property" or IMM mining, beginning with the fact that the *Hansen* majority rulings were limited to SMARA law (e.g., #2776 as a statutory interpretation, rather than constitutional issue). Moreover, the legal and factual issues in that *Hansen majority,* **surface** mining analysis are radically different in many ways from objectors' IMM disputes with Rise's proposed **underground** mining to which SMARA does not apply. See Attachment B. However, Rise does not even attempt to fashion some analogous constitutional law to extrapolate from such surface mining vested rights statutes to underground vested rights, and, because the Rise Petition stands on SMARA and its surface mining cases, Rise cannot even begin to satisfy its burden of proof. Also, that reopens the whole debate between the *Hansen* majority versus the dissenters in this new context (and those decisions against vested rights in the lower courts that the dissenters would have affirmed), in effect empowering those dissents (and lower court decisions) for this different underground context as to which the Hansen majority's analysis has limited application. Rise's efforts to impose surface mining rules (under which Rise still could never qualify for vested rights) on IMM underground mining (and against objecting surface owners above and around that 2585-acre underground mine) would compel the courts to, in effect, become unauthorized, perpetual referees and detailed rule makers for 80 years (plus any reclamation plan and financial assurances aftermaths) of 24/7/365 menaces and consequent disputes. In our separation of powers system of justice, unlike our legislature, our courts are not supposed to make such new laws, and there is no basis to empower Rise underground mining against objecting surface owners defending with their own, competing constitutional, legal, property, and political rights the health and welfare of our families, the values and uses of objectors' groundwater, existing and future wells, properties and environment, and our community way of life. All the courts can do is decide whether Rise can somehow prove some kind of more constitutional, legal, and property right that is more compelling on each disputed issue and law than the competing, contrary constitutional, legal, and property rights of us surface owners above and around the 2585-acre underground mine to resist any of Rise's threatened operations or uses that would adversely impact them or their property. Such competition would also extend to the rest of the impacted community and to the County and other applicable governments and regulators.

In particular, **surface mining impacts adjacent neighbors by what the miner does on its own property, while this disputed, expanded, underground Rise mining would impact *directly on the objectors' own property* above and around that underground mining with personal competing constitutional, legal, and property rights (e.g., rights to "lateral and subjacent support," for example, to prevent "subsidence" [expressly including groundwater and well depletion] as described by the US Supreme Court in *Keystone*. See *Varjabedian*. Rise has admitted in its SEC filings that its deed restrictions (some illustrated in the Rise Petition Exhibits addressed above) define our "surface" to extend down generally at least 200 feet, plus even deeper as to groundwater and other matters besides the relevant mining minerals. [The above main objection, and in greater detail in Objectors Petition For Pre-Trial Relief, Etc., also demonstrate that, as *Gray v. County of Madera* already proved, Rise's disputed EIR/DEIR**

groundwater mitigation plan is insufficient to protect competing existing and future wells of objectors. See also the record objections against the EIR/DEIR, such as those by the CEA, the Rudder Group, the Wells Coalition, the Engel Objections, and others.]

Until Rise's claims are defeated, such test-case conflicts must be continuous, since the vested rights disputes will test not only such impacts of ***existing*** laws on the actual Rise underground mining and related threats, but also effects of the **new** laws that right-thinking elected officials and citizen initiatives will create during that 80 years (plus any reclamation or financial assurances period) to protect resident local voters from such Rise mining menaces**. See, e.g., the correct (at least for this distinguished situation), dissenting opinion in *Hansen,* which correctly observes at Kennard FN 15 that:**

> **The lead opinion asserts that: 'the SMARA application form is not designed for, and alone is not an adequate basis upon which to decide, the question of impermissible intensification.' … The lead opinion suggests that Nevada County wait until it determines that plaintiff's mining activities have exceeded the scope of its nonconforming use, after which it can seek injunctive relief (Id. at pp. 574-575.) … The lead opinion's suggestion is not a good one, either from the plaintiff's perspective or the county's….Similarly, the county's interests will be better served if it can halt illegal activities on plaintiff's land before those activities have begun. (emphasis added)**

Indeed, whatever the County may do, this must be a due process for objectors', multi-party, *Calvert* dispute involving Rise, the County, and objectors as equal parties. Objectors do not know any impacted surface owners who will suffer waiting at all either to challenge Rise or to delay law reform efforts to mitigate harms better than Rise's disputed mitigation proposals that are not only deficient for impacts Rise recognizes, but also for those Rise offers no mitigations for the many harms Rise incorrectly refuses to recognize or misjudges, as demonstrated in the record objections to the EIR/DEIR and other objections to come. Also, it is unclear what Rise's vested rights mining plans and corresponding reclamation plans are now since the disputed Rise Petition incorrectly claims (at 58) that it can mine (and apparently deplete our surface-owned groundwater and wells) as it wishes "without limitation or restriction." That is critical because there is no way Rise has the resources or economic capacity to provide satisfactory required "financial assurances" for any tolerable reclamation plan, as Rise's SEC filings show from its deficient financial resources.)

B. Increased "Intensity" That Defeats Vested Rights Is Obvious And Disputed Here Although the *Hansen* Majority Dodged the Issue.

To what extent has the proposed mining proposed by Rise "intensified" in disqualifying ways since the IMM was last actively mined before it was closed and flooded? **See Kennard Dissent FN 2 correctly stating:**

> **The plurality opinion leaves open the question of whether intensification of Hansen Brothers' nonconforming use will eventually violate the zoning ordinance. The Superior Court's findings already establish, however, that it will. In any event, the practical problem with the plurality opinion's holding is that, by the time the evidence of intensification becomes apparent and a remedy is sought and obtained, serious damage may well already have been inflicted."**

That SMARA "intensity" of Rise's nonconforming use issue that *Hansen* ducked may be itself intensively litigated by objectors (when ripe) whatever the County may do, especially since it is objecting surface owner property rights, including groundwater and existing and future well water, that Rise would be depleting. Recall that, as addressed in the main objection above, the Objectors Petition For Pre-Trial Relief, Etc., and the record objections to the EIR/DEIR, not only has the surface land residential and non-mining commercial uses above the 2585-acre underground IMM mine massively developed since the mine closed and flooded in 1956, but the mining techniques, science, environmental and other laws have also radically evolved and changed during that period before 10/10/1954 when Rise starts its vested rights claim. That especially impacts the required **Rise reclamation plan and matching "financial assurances" (unachievable by Rise as proven by its SEC filing admissions)**, which must match whatever it is that Rise is permitted to do, if anything, at the end of every dispute process and application of opposition remedies. The obvious reality is that such Rise mining is fundamentally incompatible with our community's residential surface way of life and objectors' constitutional, legal, and property rights.

At a minimum, prohibited "intensity" of such expanded underground mining must exist (even alone) by Rise planning to double the size of that underground mining (e.g., adding 76 miles of new tunnels to the existing 72 miles of flooded tunnels), adding a water treatment facility and massive dewatering equipment and improvements for dewatering 24/7/365 for 80 years, and much more. That must likewise at least equally "intensify" the corresponding reclamation plan and more than double the required "financial assurances" that are already grossly insufficient (and illusory according to the Rise SEC filings), even without considering all the substantial changes between the applicable dates for comparison and all the financial updates likewise required to address those changes and other matters relevant to assuring completion of the final, required reclamation plan. See Attachment B, addressing reclamation plans and financial assurances under the SMARA model assumed to apply in *Hansen* and other cases cited by the Rise Petition.

Note that, **unlike the majority who incorrectly dodged the reclamation issue entirely in *Hansen [see Kennard Dissent FN 9]*, the dissenter correctly demonstrated that THE "PLAINTIFF'S RECLAMATION PLAN REPRESENTED A SUBSTANTIAL INTENSIFICATION OF PLAINTIFF'S MINING OPERATION, AND THUS NECESSITATED A CONDITIONAL USE PERMIT." KENNARD DISSENT FN11. ALSO, WHILE THE EIR/DEIR AND STAFF INCORRECTLY TREAT THE CENTENNIAL DUMP AS A SEPARATE PROJECT FOR CEQA, AS DEMONSTRATED IN EIR/DEIR OBJECTIONS, NOW THE RISE PETITON CLAIMS (WITHOUT ANY SUFFICIENT PROOF) THAT CENTENNIAL IS AN IMPORTANT PART OF RISE'S WHOLE, DISPUTED, VESTED RIGHTS THEORY. THOSE CENTENNIAL SITE "INTENSITY" AND "SUBSTANTIAL CHANGE" ISSUES WILL HAVE A**

MASSIVE IMPACT IN DEFEATING RISE'S VESTED RIGHTS CLAIMS TO THAT PART OF (AND ALL OF) THE MASSIVE INCREASES IN THE RECLAMATION PLAN AND FINANCIAL ASSURANCES RISKS, BURDENS, COSTS, AND IMPACTS. ALSO, THAT DUMPING OF TOXIC MINE WASTE THERE FROM THE NEW RISE MINING WOULD REQUIRE INTENSE MAINTENANCE FOR LETHAL SAFETY CONCERNS, SUCH AS NEEDING FREQUENT DAILY WATERING TO SUPPRESS THE DEADLY FUGITIVE DUST WITH ASBESTOS AND OTHER HEALTH HAZARDS AT RISK, even during droughts when wasting precious water to suppress that community health hazard for the benefit of the Canadian miner's shareholders' gambles for profits is not the best use of local water in such times of scarcity. See record objections to the disputed EIR/DEIR.

C. *Hansen* Incorrectly Dodged the Reclamation Plan And Financial Assurances Issues, That Must Defeat Rise in This IMM Dispute.

Since Rise cannot mine without an approved reclamation plan that matches whatever it is permitted to do, if anything, and since Rise must have "financial assurances" for any such reclamation plan [that Rise's SEC filings admit Rise is not capable of providing], especially considering all the relevant issues raised by impacted surface owners, neighbors, and others, how can Rise possibly prevail, even under *Hansen*? While the County can do whatever it decides to do, objectors may insist on litigating fully the reclamation and financial assurances issues that should doom any hope of Rise having any vested rights mining, unless Rise attempts another switch in legal theories and Rise Petition's claim use vested rights to mine as it wishes "without limitation or restriction" means without any reclamation plan or financial assurances at all; i.e., if Rise attempts to claim that those SMARA requirements do not apply to vested rights for underground mining (as to which the Mining Board has no regulatory jurisdiction). However, when Rise tries to claim the benefits of such vested rights without the burden, that is just another reason to deny Rise any vested rights in the first place.

D. *Hansen Incorrectly* Dodged Some "Diminishing Asset Doctrine" Issues Applied To Such Mines And Asserted That Not To Be An Issue In *Hansen.*

Is the Kennard dissent in *Hansen* correct that the diminishing asset doctrine (emphasis added):

> **(A) does not restrict the power of a governmental entity to limit, as was done here, the *intensity* of the operator's mining activities, if not also to expansions of the area to be mined? [yes], and (B) that must be considered as an issue in such cases at least to evaluate whether the plaintiff's riverbed mine and its quarry may be viewed separately to determine whether plaintiff proposes an intensification of its use of the property? [Yes.]**

Note here that issue must be addressed for many "intensified" uses, such as not only doubling the size of the underground mine into new, unexplored, and deeper expanded parcels that have never been mined, but also to address the many additional planning and improvement issues raised by Rise in its disputed DEIR/EIR, such as, for example, building an unprecedented water

treatment plant and new dewatering system equipment and improvements to operate 24/7/365 for 80 years plus reclamation thereafter. The merits of that debate about that diminishing asset doctrine are addressed elsewhere in the Petition and in the briefing to follow once we have had time to fully study the new Rise Petition filing. But again, Rise never cites any controlling authority for how the diminishing asset doctrine for s**urface** mining could be applied to this **underground** mining.

Also, as clarified in Justice Werdegar's concurrence in *Hansen,* the case was remanded in part to resolve uncertainties in the record about past rock quarry mining in the hills, at least some of which would not qualify for vested rights under that diminishing asset doctrine if there was no objectively proven continuous intent to mine in some of that hill area at the time of the new law became effective.

E. *Hansen*'s Analysis of the Nature of Cessations in Mining Operations Must Be Analyzed Relevant Date-By-Date, Parcel-By-Parcel, And Predecessor-By-Predecessor (As Even *Hansen* Did), Not Just As to Applying SMARA There And Underground Mining Here, But Also As To the Impact of All Applicable Laws From Time To Time That Objectors May Seek To Enforce, Whether Or Not the County Elects To Do So.

What are all the applicable laws that impact Rise's mining operation as each relevant date, not just the inapplicable SMARA? What is the impact of each cessation or change in mining operations by Rise from any period when Rise claims vested rights? See the county ordinances and other laws, such as the impact of Section 29.2B at issue in *Hansen* as to the discontinuation of nonconforming uses for a period of 180 days or more compared to the 69-year-long gap in the types of mining activity required for vested rights at issue in the IMM case. **Without a permit or statutory immunity, Rise can held accountable for noncompliance with every applicable law that existed before the start of its vested rights, which will be a bigger deal that Rise seems to imagine, because, even if Rise somehow established some vested right to evade some particular law, the scientific facts may have changed since 1954 to make some pre-10/10/1954 law applicable because of changes in scientific knowledge. For example, if someone evaded an old building code by claiming vested rights at a time before the law established the danger of toxins like asbestos etc., such vested rights would not allow use of such toxins now (to quote Rise Petition at 58 again) "without limitation or restriction." No one ever has a vested right to use what law and science decide is too dangerous to use, such as the hexavalent chromium Rise plans to pipe into the underground mine as cement paste to make shoring columns out of mine waste. See record EIR/DEIR objections, such as the Engel Objections on that issue. As Justice Mosk explained in his dissent (at 577-81) objectors assert should still apply to IMM underground mining as if it were the *Hansen* decision, that vested rights dispute also depends on. and is subject to, (at 579) "a condition that the lawful nonconforming use of land existing at time of adoption of the ordinance and not some other and different kind of nonconforming use which the owner of the land might subsequently find to be profitable or advantageous…. *County of Orange v. Goldring* (1953), 121 Cal.App.2d 442…" Moreover, the use must be continuous: if abandoned, it may not be resumed. …Nonuse is not a nonconforming use…" citing *Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279.**

F. *Hansen* Correctly Excludes From Vested Rights the Portions of Property Acquired By the Miner After 10/10/1954, As Even The Majority Acknowledged In Requiring Further Evidence For Some Parcels, Thereby Confirming the Necessity of a Parcel-by-Parcel Analysis.

Kennard Dissent FN 2 stated: "Without a conditional use permit plaintiff may mine these portions of the property only if they were being mined in 1954, when the county prohibited mining." See Hansen at 560-564 (emphasis added.) For comparison, Rise must disclose the timing of every acquisition of each parcel at issue, not just including those at the Brunswick and Centennial sites, but also those in the 2585-acre underground mine.

G. Unlike the Hansen Majority's Controversial Combination of the River Gravel Business With the Rock Quarry Mining Business, There Is No Basis For Considering the Centennial Business (Although That Long Closed Potential Super-Fund Toxic Site Cannot Be Considered A Relevant "Business") As Such An Integrated Part of the Brunswick Mine Operation For Vested Rights Purposes, Because That Test Looks Back In Time, While the CEQA Test Looks Forward.

How, if at all, does Centennial play into the disputed Rise Petition's vested rights claim for Brunswick site/2585-acre underground mining, both as to Rise's need to prove the same location, no changes, and no more intensity? See the prior discussions. **Also, unlike that controversy, where the two Hansen businesses were part of a unitary operation, Rise cannot prove that unitary operation for the Centennial mining operation (and in the EIR/DEIR Rise claimed the opposite, insisting that Centennial was entirely separate), and Rise should not dare to do so for the additional pollution and toxic remediation/clean-up liabilities that association with Centennial would impose on Rise and even on the Brunswick operation, if deemed unitary. As a result, the Centennial activities contemplated by Rise are not protected by any vested rights claim by Rise as to or for the Brunswick operation, resulting in permitting and other requirements for the contemplated mine waste dumping. Without the ability to dump new mine waste on Centennial, Rise has expanded and intensified mining operations by its dumping of such toxic waste on the Brunswick site, which (as objections to the EIR/DEIR proved), will be much greater than Rise admits because its fantasy plan to sell that notorious mine waste to the market as "rebranded" "engineered fill" is doomed from the start.)**

H. Unlike the Hansen Majority's Controversial Interpretation of SMARA and Nevada County "Section 29.2" Mining Ordinance For SURFACE Mining, Courts Could Still Follow The Hansen Dissents In Such Interpretations For UNDERGROUND Mining, Although Objectors Will Prevail Under Any Possible Interpretation Or Even Surface Mining Rules.

What is the correct interpretation standard for vested rights when the "expanded use" of land will no longer be tolerated because it exceeds the applicable limit on such expansions? (As Justice Mosk said in his Dissent correctly citing the applicable CA Supreme Court precedents

misapplied or ignored by the majority in their ***SURFACE*** mining ruling (and unresolved as to this underground mining):

> Because a nonconforming use "endangers the benefits to be derived from a comprehensive zoning plan" (City of Los Angeles v. Gage (1954), 127 Cal.App.2d 442 …), the law aims to eventually eliminate it (City of Los Angeles v. Wolf (1971), 6 Cal.3d 326 …). However, **to avoid constitutional problems an existing nonconforming use will be tolerated as long as it does not expand to a significant extent.** (Edmonds v. County of Los Angeles (1953), 40 Cal.2d 642 …; Sabek, Inc. v. County of Sonoma (1987), 190 Cal.App.3d 163, 166-167 …). **"The underlying spirit of a comprehensive zoning plan necessarily implies the restriction, rather than the extension, of a nonconforming use of land, and therefore … a condition that the lawful nonconforming use of land existing at the time of the adoption of the ordinance may continue must be held to contemplate only a continuation of substantially the same use which existed at the time of the adoption of the ordinance and not some other and different kind of nonconforming use which the owner of the land might subsequently find to be profitable or advantageous …"** (County of Orange v. Goldring (1953), 121 Cal. App.2d 442…). **Moreover, the use must be continuous: if abandoned, it may not be resumed." "A nonconforming use is a lawful use existing on the effective date of the zoning restriction and continuing since that time in nonconformance to the ordinance."… [citation] Nonuse is not a nonconforming use.** This rule is consistent with the further rule that reuse may be prohibited when a nonconforming use is voluntarily abandoned. (Hill v. city of Manhattan Beach (1971), 6 Cal.3d 270, 285-286… (emphasis added)

Subsequent cases have followed that reasoning, which the majority here did not overrule or dispute, but rather just misapplied by ignoring key evidence against the miner and failing to defer sufficiently to every lower decisionmaker as that surface mining.

The key guidance from the courts generally can be stated plainly as this: nonconforming uses can only be tolerated to the extent necessary to avoid a "taking" contrary to the state or federal constitution. However, since that constitutional dividing line is often less clear, what the courts have done is attempt to provide more readable standards, but only for surface mining where they could apply SMARA. Objectors phrase the issue this way against Rise because this is a multiparty dispute that involves COMPETING TAKING VERSUS INVERSE CONDEMNATION CLAIMS about Rise's UNDERGROUND MINING versus surface owners' PROPERTY RIGHTS, VALUES, AND GROUNDWATER/WELL WATER under applicable laws. As explained in the Objectors Petition, surface owners above and around the 2585-acre mine have their own competing constitutional, legal, and property rights at stake, especially as to their groundwater and existing and future wells that Rise would deplete by dewatering, purport to sanitize in an unprecedented water treatment plant with no vested rights, and then flush away down the

Wolf Creek 24/7/365 for 80 years, which indisputably is a more "intensive" misuse without precedent.

Indeed, the only attempted groundwater depletion standard comparable in modern times involved much less intensity and wrongdoing, which was nevertheless defeated in a decision rejecting proposed mitigation measures in ***Gray v. County of Madera*** (comparable but superior to Rise's EIR/DEIR plan that has been rebutted in record objections thereto and in the Objectors Petition For Pre-Trial Relief, Etc.) Ultimately, the County could be required to choose whether it wishes, as the courts require, either (a) to pay inverse condemnation claims to thousands of its citizen voters for the profit, if any, of speculator shareholders of this (substantively) Canadian mining company (operating strategically as a Nevada corporation from a Canadian base), or (b) to deny Rise's claim, so the County and objectors can prevail in the court proceedings that will continue until either Rise gives up or the courts finally end this menace to our community.

I. *Hansen* Is Also Distinguishable From This Rise Case Because Rise's Expansion Into Unmined Parcels Includes New And Material "aspects of the operation that were [NOT] integral parts of the business at that time [when the applicable ordinance was enacted]."

What were the "components" of the mining operation/business at the applicable time in 1954? In *Hansen*, they were found by the Supreme Court majority mining gravel in the riverbed and banks, quarrying rock from the hillside, crushing, combining, and storing the mined materials, and selling or trucking the aggregate from the mine property. In this case, since 10/10/1954 (or whatever the time chosen) for each law at issue for Rise's vested rights claims, Rise is clearly adding unprecedented, new features to its mining operations, such as, for example, (a) constructing a massive dewatering system with a "water treatment plant" to "dewater" groundwater owned by objecting and competing surface owners, purportedly treating that water (ignoring until the courts stop Rise, adding the toxic hexavalent chromium cement paste into the mine for shoring up mine waste in place, a technique not used in 1954), and then flushing that groundwater away down the Wolf Creek, (b) selling "engineered fill" that is really "rebranded" mine waste on some market in which Rise and many of its predecessors did not previously participate (i.e., that was not a continuous use and North Star bought itself outside that chain), (c) dumping toxic mine waste on (what even Rise has consistently claimed, until this new vested rights switch in legal theory 9/1/23, has been) the toxic, **separate Centennial property** already the subject of governmental toxic clean-up orders, requiring frequent daily watering (even during droughts) to prevent (we hope) toxic fugitive dust (e.g., asbestos and now perhaps hexavalent chromium) from harming the neighbors, (d) (presumably) creating massive new remediation and reclamation obligations never before done at the IMM, as well as others now done more intensively, and (e) all the while, without Rise admitting in its SEC filings that it has insufficient financial resources to pay to accomplish anything material that Rise proposes or will be required by law or the courts to do now or in the future, especially as objectors may press for stronger law reforms and initiatives to protect their families, their groundwater, wells, and environment, their property rights and values, and their community

way of life, in effect testing the boundaries of what is or is not a “taking” either or both from Rise or from objecting surface owners with potential inverse condemnation claims.

Attachment B: SOME ADDITIONAL REASONS WHY SMARA AND SURFACE MINING CASES CANNOT BE USEFUL TO RISE BY ANALOGY OR AS GUIDANCE FOR SOME RISE IMAGINED "COMMON LAW," VESTED RIGHTS THEORIES (IF ANY), Especially As the Rise Petition (at 58) Incorrectly Seeks SMARA Benefits Without Its Burdens, Insisting on The Right To Mine Above And Below Ground "Without Limitation Or Restriction."

1. **SMARA Is Limited To "Surface Mining" With Its Required Reclamation Plans And Financial Assurances. Even Purported Rise "Analogies" Or Rebranding As "Common Law" Must Fail, Especially As To Rise's UNDERGROUND IMM, Especially As to Such Disputed "Vested Mines Property" Parcels That Were Closed, Flooded, "Dormant," "Discontinued," And "Abandoned" by 1956, And That Could Not Satisfy The SMARA Conditions For Vested Rights Even If They Were Treated Like "Surface Mines." However, Objectors' Use of Surface Cases For Rebuttals Is Appropriate.**

    a. **An Overview of Some Authorities And Reasons Why Rise's Vested Rights Claims For UNDERGROUND Mining Are Doomed At the "Dormant," "Discontinued," And "Abandoned" IMM. See Also the Companion Table of Cases And Legal Commentary And Attachment A Thereto.**

This exhibit explains, consistent with the more extensive, companion "Objectors Petition For Pre-Trial Relief, Etc." incorporated herein, both (i) how even surface mining precedents defeat Rise Petition's vested rights, and (ii) especially how SMARA's text and related data should prevent Rise from misusing such inapplicable surface mining law to advance its disputed vested rights theories for this UNDERGROUND MINING. See Attachment A, demonstrating how even Rise's favorite *Hansen* case actually helps defeat the Rise Petition's disputed claims (e.g., at 58) that Rise can have benefits of SMARA vested rights without any SMARA burdens, instead allegedly allowing Rise to mine above and below ground anywhere on any "Vested Mine Property" as Rise wishes "without limitation or restriction." (The capitalized terms used herein, or in quotation marks, have the same meaning as defined in the foregoing main objection document and incorporated herein.) **There is no path to that illusory Rise goal, whether directly or indirectly or whether as purported "analogies" or imagined revisions to invent incorrect "common law" for expansion to the UNDERGROUND IMM mining at issue.** See Attachment A, for example, explaining why Rise's favorite *Hansen* case is distinguishable and cannot accomplish any of Rise's disputed goals. **Thus, Rise's vested rights claims for the 2585-acre underground IMM must fail as a matter of law, because the Surface Mining And Reclamation Act ("SMARA"), Public Resources Code # 2710 et seq., only applies to "surface mining." For example, by their own terms *Calvert*, *Hansen*, *Hardesty*, and other cases that Rise must confront are contrary to Rise's disputed vested rights claims and also only apply to "surface mining" under SMARA,** including what SMARA **#'s 2736 and 2729**, respectively, define as **"surface mining operations"** on "**mined lands." See the more detailed discussion of that reality below.**

However, the County should consider (as the courts in the following process will do) both what would be required of Rise if SMARA were directly or indirectly applied to the Rise Petition and how SMARA does not "fit" or "integrate" with underground mining either as Rise

claims or as the statute speaks, especially as to the mining and related operations and components described in the disputed EIR/DEIR and in objectors' record objections thereto that are incorporated herein to avoid repetition. For example, (emphasis added throughout) even **"nonconforming uses" based on vested rights must still be "legal**." Surface mining with vested rights must comply with the text and regulations in and for SMARA and many other applicable laws. Even without addressing the scope of *Calvert* due process rights (see Attachment A and the companion Objectors Petition For Pre-Trial Relief, Etc.), **SMARA expressly also allows neighboring objectors and governments to sue the miner for nuisances and many other wrongs; i.e., escaping a use permit requirement doesn't free the SMARA miner to do as it wishes, especially as the Rise Petition claims are "without limitation or restriction."** E.g., **SMARA #'s 2714 (*excluding* many things from its scope, including some "operations" planned or reserved by Rise for its proposed and disputed mining), 2715 (*disclaiming* from any SMARA impact a long list of "limitations" on mining by the paramount powers of local government and people, such as**, for example, "(a) …the police power … to declare, prohibit, and abate nuisances …(b) … to enjoin any pollution or nuisance. (c) On the power of any state agency …[to enforce the laws it administers]. (d) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance …or any other private relief. (e) On the power of any lead agency to adopt policies, standards, or regulations … if the requirements do not prevent the person from complying …[with SMARA]. (f) On the power of any city or county to regulate the use of buildings, structures, and land …" See also SMARA #2713, disclaiming any intent "to take private property for public use without payment of just compensation in violation of the California and United States Constitutions," which statute Rise mistakenly contends is just for the miner, when it is also for the projection of impacted public, especially surface owners above and around the 2585-acre underground mine objecting to the Rise Petition, the EIR/DEIR, and Rise's IMM activities not just as members of the impacted public but as victims with their own competing, constitutional, legal, and property rights, especially as to the groundwater and existing and future well water owned by such surface owners that Rise would dewater and delete 24/7/365 for 80 years. See, e.g., *Keystone* and *Varjabedian*.

Clearly, SMARA # 2736, defining "surface mining operations," generally ignores any references to any **underground** mining applications, uses, operations, and components, except as a way of including "**surface work incident to an underground mine" (**emphasis added). However, here on the so-called "Vested Mine Property" IMM, the only possible "surface work" is on the small parcels wholly owned by Rise (i.e., the Brunswick site and, incredibly, the Centennial site, as an obscure but radical switch from the disputed EIR/DEIR, insisting that Centennial was entirely separate from that IMM "project"). Objectors and others own the entire surface above and around the relevant 2585-acre underground mine at issue here, preventing any access from there and defeating the Rise Petition by the cases discussed throughout this objection, like *Hardesty, Calvert,* and even *Hansen,* that require a parcel-by-parcel, use-by-use, and component-by component limit on any vested rights. **As to the SMARA #2776 statute on which the Rise Petition relies, if one replaces the word "surface" with the word "underground," it become clear that there can be no Rise Petition rights for the 2585-acre underground mine beneath surface owner objectors, whether in the "Flooded Mine" parcels (where there was mining until no later than 1956 when it all flooded), or in the balance of the "Never Mined Parcels." There has been no such #2776 "good faith" reliance by Rise and its**

chain of predecessors on each parcel on any "permit or other authorization," no "surface [now read "underground" or other relevant] *mining* operations" have "commenced" (miner "exploration" of other areas besides the new expansion areas [or even parts of that expansion area] for underground mining, does not create such vested rights to mine as Rise claims). Also, no "substantial liabilities for work and materials necessary" have been incurred for that *"commencement" of any underground "mining" "operations"* IN EACH APPLICABLE PARCEL of that underground mine all beneath or around the surface owned by objectors and others, especially the most inaccessible Never Mined Parcels.

On the other hand, while SMARA does **not** give Rise any rights as to underground mining, SMARA at #2733 defines "reclamation" (and therefore, "financial assurances" in #2736 to "including adverse surface effects incidental to underground mines … [and] The process may extend to affected lands surrounding mined lands…" Such statutes (and other SMARA terms and conditions) are sufficient to create obligations by Rise (and standing and rights for) surface owners above and around the 2585-acre mine as well as impacted others. However, nothing in SMARA creates any reciprocal objections by objectors to Rise. See the "State Policy for the Reclamation of Mined Lands," SMARA #'s 2755-2764; "Reclamation Plans And the Conduct of Surface Mining Operations," SMARA #'s 2770-2779, including successor liability in #2779, making all reclamation related plans, reports, and documentation "public records" under #2778.

For example, what Rise contemplates in its disputed EIR/DEIR and otherwise is UNDERGROUND MINING that cannot possibly qualify (even by miner analogy) as such SMARA or such *Hansen* or other "surface" "mining" for such vesting rights claims. As Rise has admitted in its EIR/DEIR mining plan, in its SEC filings (Exhibit A), and in other County applications, the only gold Rise is attempting to recover is disconnected from Rise's surface property and underground in new, unmined, unexplored, expanded areas. That truth is especially incontestable since objectors and others own the surface parcels above and around that 2585-acre underground mine inaccessible from that surface. Exhibit A SEC 10k admits that Rise's 2017 acquisition deed restrictions prohibit even entry on that at least 200 foot deep "surface" without the owners' consent (which Rise does not claim it has.) For example, that SEC 10K describes the Rise purchase of everything from the BET Group Estate (at p.29) by quitclaim deed on 1/25/2017 (with the "Mill Site" acquisition in 2018) granting the right to mine for various "minerals" ***"beneath the surface of all such real property"*** (emphasis added) **"subject to express limitation that the foregoing exception and reservation shall not include any right of entry upon the surface of said land without the consent of the owner of such surface of said land…" Note that Rise (at 10K p. 28) not only separates surface from subsurface mining, but separates "mineral exploration" from both such types of mining, consistent with the M1 district zoning.**

As the *Hardesty* mining case ruled in defeating such disputed vested rights claims:

> [T]he italicized portion of the statute [SMARA #2776] speaks of vested rights to ***surface*** mining, **not *any* mining**. "Surface mining involves stripping off the top of an area to reach the minerals, in contrast to boring down through tunnels or shafts to extract them." ([People v.] *Rinehart*, supra, 1 Cal. 5th [652] at p. 671, fn. 10 …) (emphasis added)
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To the extent Hardesty contends he has a vested right to surface mine under section 2776, he simply **failed to carry his burden to prove any substantial *surface* mining on the property** had been conducted by that date. As the trial court found, substantial evidence shows that **prior mining had been hydraulic, tunnel, and drift mining, not surface mining,** which began in the 1990's, and **which represented a SUBSTANTIAL CHANGE,** contrary to former section 2778's requirement that no substantial changes may be made in any such operation except" according to SMARA's terms…. (emphasis added)

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… Hardesty failed to prove any mining was occurring on or even reasonably before the date SMARA took effect. **SMARA was designed to allow existing, operating surface mines to continue operating** after its effective date without the need to obtain local permits. **SMARA's grandfather provision does not extend to dormant mines.**

Hansen *Brother Enterprises, Inc. v. Board of Supervisors* (1996), 12 Cal. 4th 533…*(Hansen Brothers*)—**consistent with a long line of zoning cases—holds that A USE MUST BE PRESENT AT THE TIME A NEW LAW TAKES EFFECT, TO BE CONSIDERED A NONCONFORMING USE…**. Communities for a Better Environment … (2010), 48 Cal.4th 310, 323 fn.8 …["the traditional protections for nonconforming uses established *at the time* zoning restrictions become effective"]…; *McCoslin v. City of Monterey Park* (1958), 163 Cal. App.2d 339, 346…["A nonconforming use is **a lawful use existing *on the effective date* of the zoning restriction and continuing since that time** in nonconformance to the ordinance."] … ***NEITHER A DORMANT NOR AN ABANDONED USE IS A NONCONFORMING USE.* (*HANSEN BROTHERS,* AT PL 552*…["NONUSE IS NOT A NONCONFORMING USE."])* **As stated by our Supreme Court, "The ultimate purpose of zoning is … to reduce all nonconforming uses within the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected." We have recognized that, given this purpose, courts should FOLLOW A STRICT POLICY AGAINST EXPANSION OF THOSE USES…**

That policy necessarily applies to attempts to continue nonconforming uses which have ceased operation." *(Hansen Brothers*, at 568 …) (emphasis added)

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Further, **the record shows a proposed significant change in use since pre-1976 [SMARA's effective date] times. THE CONTINUANCE OF A NONCONFORMING USE "IS A CONTINUANCE OF THE SAME USE AND NOT SOME OTHER KIND OF USE." …[citing McClurkin, Edmonds, and Goldring, where, FOR EXAMPLE, EDMONDS V. COUNTY OF LA (1953), 40 CAL. 2D 642 HELD "ENLARGEMENT OF PLAINTIFF'S TRAILER COURT TO ACCOMMODATE 30 MORE TRAILERS IS CLEARLY A DIFFERENT USE."] SURFACE MINING IS A CHANGED USE ON HARDESTY'S PROPERTY, WHEN CONTRASTED WITH THE PRE-SMARA USE [FOR UNDERGROUND ETC. MINING NOTED ABOVE]. Nor can**

> **Hardesty persuasively rely on post-1976 unpermitted surface mining –twice halted by the government— to show that surface mining was extant before 1976.** (emphasis added)

Hardesty v. State Mining And Geology Bd. (2017), 11 Cal. App.5th 790, 799-812 ("**Hardesty**"). In that case ignored by Rise, the miner lost at the Board, trial court, and on appeal in its mandamus action claiming SMARA vested rights as to an ancient, "19th century" federal mining patented gold mine that ceased operation during World War II and was "essential dormant" "through the 1970's" with "virtually no evidence that those mining activities 'continued' to exist at the time SMARA was enacted [effective January 1, 1976], apart from "sporadic," "unpermitted surface (open pit) aggregate and gold mining in the 1990's."

Nevertheless, the miner claimed "vested rights to mine the property for gold, sand and gravel (as well as diamonds and platinum)" after he bought the property in 2006. The trial and appellate courts rejected that miner's vested rights claim, agreeing with the Board that "any right to mine had been abandoned," as discussed in the evidence analysis discussed in the main objection and at the end of Attachment A.) More importantly, ***Hardesty*** **forbids ignoring the kind of change Rise tries to ignore between different types of mining in incorrectly claiming vested rights. As that court stated:**

> **The trial court found that in the 1990's unpermitted surface (open pit) aggregate and gold mining began different in nature from the 'hydraulic, drift, and tunnel' [i.e., underground] mining that historically had been conducted on the land.** The RFD alleged the new proposed open-pit mining was safer and better for the environment. *** As an alternative to the finding of no vested right based on the lack of mining [in the right way and at the required time] … the trial court **found that any right to mine had been abandoned**." (emphasis added)
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> **While that statutory reality should be obvious on its face, what follows below demonstrates some of the many ways in which SMARA cannot even be applicable by analogy by miners, but nevertheless can be used by objectors. Why?**

FIRST, Rise has not even tried to satisfy its burden of proof for such disputed theories or offer more than SMARA and *Hansen* to support its doomed theory. Even if Rise again shifted its theory to invent some unprecedented "common law" claim, there are no such statutory links or such case authority. To the contrary, Rise has ignored contrary authority such as in *Hardesty* discussed in this objection, in the companion Objectors Petition For Pre-Trial Relief, Etc., and in objections to the disputed EIR/DEIR. Indeed, neither *Hansen* nor any other Rise surface mining cases cite any common laws, even by analogy, for such underground mining, but (like Rise) strictly limit themselves to following the SMARA statute**.**

SECOND, because miners are not granted any vested rights to mine as they wish by the constitution (i.e., there is no legal basis for Rise claiming in the Rise Petition at 58 any vested rights to operate "without limitation or restriction"), all Rise could achieve would be a limited

excuse for certain nonconforming (but lawful) uses or components on certain parcels, but even then, only under specified terms and conditions. That vested rights excuse only applies for certain such qualified, "nonconforming uses" on vested parcels as to the application of a specific kind of land use statute (e.g., use permits) that interrupts either (i) certain otherwise LAWFUL kinds of existing types of mining uses in which the miner is actively conducting permissible existing operations on a PARCEL (see the main objection discussion of *Hansen* and Attachment A counters against Rise's incorrect claim that work on one parcel creates vested rights on another), or (ii) certain "objectively" intended and permitted future mining expansions ON AN ELIGIBLE PARCEL during such qualifying continuing operations. Id. That also means, for example, that Rise's vested rights still must comply with many other laws and regulations not constituting such a land use regulation "taking" to trigger the constitutional prohibition on applying that law to such qualifying operations. In other words, the disputed Rise Petaton (at 58) incorrectly demanding the vested right to mine anywhere and any way it wishes "without limitation or restriction" seems to contend that objectors can be disabled somehow from enforcing or relying on each and every law Rise later claims to ignore or evade. Fortunately, Rise has the **burden of proof** of that, which necessarily means that it is Rise, not objectors, who must identify each such law or regulation and how such vested rights apply to each such law and regulation as it existed at the relevant time, as distinguished, for example, by compliance by laws (like CEQA and environmental laws) which objectors future briefing will demonstrate apply independent of any such vested rights. **Stated another way, Rise must be bound by every law and regulation that it does not specifically identify and prove over objections to be applicable. *Hardesty* ruled at 811 (citing *Hansen* at 12 Cal.4th at 564, and Calvert at 145 Cal. App.4th at 629): "IT WAS HARDESTY'S BURDEN TO PROVE HE WAS CONDUCTING A NONCONFORMING USE AT THE TIME THE LAW CHANGED." IT ADDED THIS CITE FROM MELTON V. CITY OF SAN PABLO (1967), 252 Cal.App.2d 794, 804: "THE BURDEN OF PROOF IS ON THE PARTY ASSERTING A RIGHT TO A NONCONFORMING USE TO ESTABLISH *THE LAWFUL* AND CONTINUING EXISTENCE OF THE USE *AT THE TIME* OF THE ENACTMENT OF ORDINANCE [IT WISHES TO EVADE.]"** (emphasis added) See also the court's discussion at Id. and 812 of *Stokes v. Board of Permit Appeals* (1997), 52 Cal.App.4th 1348, 1351, 1352-53, 1355-56, and *Walnut Properties, Inc. v. City Council* (1980), 100 Cal.App.3d 1018, 1024.

THIRD, such vested rights do not overcome, impair, or adversely affect competing property owners' legal, constitutional, and property rights that may interfere with such mining, such as those of us surface owners above and around the 2585-acre underground IMM, such as to our existing and future wells and groundwater. That competition between underground miners and surface owners is not about the vested rights of a miner displacing surface owner rights and protective laws, but rather, as between competing surface vs underground owners, as to who has the superior legal right on each disputed issue under all the facts and circumstances. However, if *Calvert* or *Hardesty* were somehow a relevant analogy for any such Rise claims of vested rights (despite being legally inapplicable surface cases), *Calvert and Hardesty* SUPPORT THE OBJECTORS, AND NOT THE MINER, in any analogous parts. See also Attachment A, analyzing ***Hansen***, which also fails to support Rise vested rights for these IMM disputes and even in some parts rules against that *Hansen* surface miner.

On the other hand, the reverse uses of surface mining cases in favor of objectors, of course, are different, because the competing objectors' oppositions aren't about qualifying like

a miner for vested rights, but rather conversely use objectors' own constitutional, legal, and property rights as defenses and to counter any miner claimed vested rights claims however those vested rights claims may be imagined. As explained in the main objection and in record and incorporated EIR/DEIR objections, for example, there can be no vested rights for Rise to "take" such objecting surface owners' owned well water and other groundwater by Rise's proposed and disputed dewatering system for disputed, purported "treatment," and to flush our water away down the Wolf Creek. On the other hand, objecting surface owners have contrary constitutional, legal, and property rights to protect their existing and future wells and groundwater. E.g., *Keystone and Varjabedian,* as well as *Gray v. County of Madera,* defeating an EIR for surface mining to deplete competing owners' wells and groundwater based on what the court rejected as mitigations similar to those disputed mitigations proposed here by Rise in its disputed EIR/DEIR.

Indeed, ***Hardesty* also clarifies key differences between vested rights as a property owner versus a vested right for mining**, stating (at 806-807) (emphasis added) **the need for vested rights claimants to continue to comply with environmental and various other laws:**

> As we will explain, we agree that the [ancient Federal mining] patents conferred on **Hardesty vested rights *as a property owner*, but that is not the same as vested rights *to mine* the property absent compliance with state environmental laws.** The Board and trial court correctly concluded that Hardesty **had to show active surface mining was occurring on the effective date of SMARA, or the very least show objective evidence that the then owner contemplated resumption of such activities.** Under the facts, viewed in the appropriate light, Hardesty did not carry his burden to show that ***any*** mining was occurring or any intent to mine existed on the relevant date [3/31/1988. **Further, the Board and trial court correctly applied the "nonconforming use" and abandonment doctrines to the facts herein.**
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> **Indeed, in a case involving a different open-pit mine also operated by Hardesty, we rejected his view that a "vested right" to mine under SMARA obviates the need to comply with state environmental laws …[citing to] *Hardesty v. Sacramento Met. Air Quality Management Dist.* (2011), 202 Cal.App.4th 404, 427…**

Such quoted authorities and others in this objection, in the companion Objectors Petition For Pre-Trial Relief, Etc., and record objections to the disputed EIR/DEIR defeat the Rise Petition in many different but cumulative ways.

b. SMARA Requires Reclamation Plans And Financial Assurances That the Rise Petition Ignores And That Rise Could Never Satisfy, And, Even If Rise Had Vested Rights for "Surface Mining" (Which Its Does Not), That Would Not Create Any

Vested Or Other Rights Claimed by Rise, Especially For Its Proposed Underground Mining In the 2585-Acre Underground Mine Beneath Objectors.

Any rebuttal to Rise's vested rights claim begins with the following ruling by *Calvert* (at 617, 624, emphasis added):

> **At the heart of SMARA is the general requirement that every surface mining operation have a permit, a reclamation plan, and financial assurances to implement the planned reclamation. (#2770, sub. (a);** People ex rel Dept of Conservation v. El Dorado County (2005), 36 Cal.4th 971, 984…(*"El Dorado").*

See SMARA #2776 and many other precedents demonstrating that vested rights have burdens as well as benefits for the miner. See also SMARA #'s 2733 (broadly defining " reclamation" in ways that, when properly applied, will make the required "financial assurances" defined in # 2736 unaffordable by Rise or its buyer) and # 2716 (allowing any interested persons [i.e., any objector here] to commence legal actions for writs of mandate to enforce counters against the miner, as was done in *Calvert and other cited cases.)* As explained in this objection and others, there is not, and cannot be, any satisfactory Rise reclamation plan for any vested rights mining, and, even if there were such a reclamation plan, objectors can prove from Rise's SEC filing admissions that Rise lacks any economic and other feasibility or credibility to perform any such assurances. *Hardesty* and other cited authorities also defeat Rise's vested rights claims for many other reasons discussed in various places herein, but (besides that similar "abandonment" reasoning applicable in both that dispute and this one) that Court of Appeal's analysis of SMARA itself is especially lethal to Rise's theories.

For example, as *Hardesty* explained (at 801, emphasis added):

> **SMARA requires that all surface mining operations have an approved reclamation plan and approved financial assurances to implement the plan. (#2770, subd. (a)). … Persons with existing surface mining operations were required to submit reclamation plan by March 31. 1988. [Id.] Absent an approved reclamation plan and proper financial assurances (with exceptions not applicable herein) surface mining is prohibited. (#2770, subd. (d)).**

The detailed disputes over Rise's "reclamation plan" and related "financial assurances" will be further addressed in other objections, especially since the County has (incorrectly) recently bi-furcated the disputes over vested rights from those over the related reclamation plan and financial assurances. However, any such reclamation plan must relate to the reality of what is to be done in the mining and related operations, which means that not only is Rise's outdated "Existing Remediation Plan" earlier on file at the County deficient and inconsistent with what is required, even regarding the disputed EIR/DEIR plans. Rise is even more wrong in every way for what will be required if this dispute descends into such a vested right "free for all," where no objector knows what will happen in the mine and what laws and regulations apply under the

disputed Rise Petition's claim (at 58) that Rise vested rights somehow empower it to do as it wishes "without limitation or restriction," including not even telling us what Rise plans to do so that objectors can insist on both (i) matching reclamation plans and financial assurances and (ii) compliance with all applicable laws and regulations.

Objectors assume that Rise will attempt incorrectly to use such disputed vested rights claims under #2776 to evade reclamation plans and financial assurances, whether directly or indirectly (or both). But again, that statute clearly is limited (emphasis added) to those who validly have "a vested right to conduct surface mining operations prior to January 1, 1976…" which Rise does not, even as to such Rise's surface mining operations, and nothing in SMARA or any case cited by the Rise Petition provides that any claimed vested right to "surface mining" could create any vested or other right to mine on the disconnected and separate parcels of that new, underground expansion area of the 2585-acre underground mine, especially since that underground IMM is beneath or around surface property owned by objectors and others. E.g., Hardesty quoted above. This objection, the companion Objectors Petition For Pre-Trial Relief, record EIR/DEIR objections, and other coming objections will defeat such attempted Rise claims and evasions.

First, SMARA does not apply to create vested rights for such **underground** mining, and whatever Rise ties to do (and almost everything Rise does without a permit) is subject to legal and political challenge and change by objectors and then also to more changes by new laws (whether by officials passing political or legal reforms, or by voters directly, such as with initiatives), as each disputed use and issue, and the application of each law or regulation, is resolved in the courts. **Second,** Rise will have to react to such changing legal and political realities in its operations (whether by right-thinking government officials enforcing or enacting laws better to protect objecting surface owners from such mining or by self-defense, resident initiatives), thereby requiring more constant changes in the reclamation plan and greater financial assurances, as proven below. See what SMARA allows in #'s 2714 and 2715. **Third,** not just such mining legal changes, but every deficient reclamation plan and financial assurances response by Rise is itself subject to challenge and revision. See, e.g., SMARA #'s 2716, allowing objectors to file actions for writs of mandate; 2717, requiring periodic reporting by the miner as to such reclamation plans and financial assurances. Also, each change in any such reclamation plan requires a new financial assurance to match it, and, considering Rise's admitted financial condition in its SEC filings, objectors cannot imagine Rise ever being able to obtain any such required financial assurance, even for its own proposed and deficient reclamation plan.

2. Any Rise Attempt To Invent Vested Rights For Such Underground Mining By Analogy, Imagined Common Law, Or Otherwise, Is Also Doomed, Legally Impossible, And Practically Infeasible, Including Because SMARA Does Not Correspond To the IMM Realities.

Moreover, no such underground mining legal analogy to SMARA (or its cited cases applying SMARA like *Hansen)* is feasible or legally appropriate, among other things, for example, because objecting surface owners above and around the 2585-acre underground mine have competing constitutional, legal, property, and groundwater rights that must defeat any such Rise claim. Whatever Rise's Brunswick site may allow on the surface (which objectors also still

dispute) is irrelevant, because this Rise Petition is mainly about the gold imagined in the Never Mined Parcels of the 2585-acre underground mine. See the EIR/DEIR and objections thereto, as well as Rise's SEC filing admissions. Apparently, Rise imagines that it can make some vested rights argument for underground mining by inventing common law, such as by analogy to SMARA surface mining. However, there is no legal authority for such a claim (see *Hardesty),* and such a vested rights process is not feasible or even yet attempted by Rise. Consider, for example, what governmental agency would even have any jurisdiction even to deal with whatever Rise wants to file or have approved in such an imagined SMARA regulation equivalent for underground mining (e.g., some SMARA equivalent reclamation plan or financial assurances proposal). Where would the agency find the budget or qualified staff to deal with such new and unauthorized underground matters, not to mention all the inevitable disputes with objectors, as here. Moreover, no such legal analogy (even rebranded as imagined common law) is appropriate (as shown elsewhere and in *Hardesty*) because objecting surface owners above and around the 2585-acre underground mine have their own, unique, competing constitutional, legal, and property rights (including as to groundwater and existing and future well rights) that must defeat any such Rise claim; e.g., trying to regulate such underground mining by some SMARA analogy inevitably will clash with such surface owners' competing rights that is never an issue in surface mining. What government agency will want to wade into such conflicts without any statutory authority and no state or local funding? What court will want to ignore the constitutional separation of powers to try to fill such a regulatory gap and spend the next 80 years refereeing the constant conflicts with surface owners and other objectors over such 24/7/365 IMM underground mining where the governing law must be crafted by issue-by-issue test case litigation?

Indeed, as some objectors already demonstrated in objections to the EIR/DEIR, for example, surface owners' groundwater and wells depletion by Rise "dewatering" for underground mining would raise complex "taking" or inverse condemnation and other issues under the Fifth Amendment to the US Constitution as well as under the California constitution. See SMARA #2713, *Keystone*, and *Varjabedian*, as well as *Gray v. County of Madera* rejecting purported and disputed mitigation solutions for depleting wells by draining the competing property owners' groundwater that were even less bad than Rise's disputed and illusory mitigation proposals. It makes no policy or economic sense for the County to accommodate meritless Rise's vested rights claims for needless fear of Rise liability claims, only to thereby provoke thousands of the objecting and voting surface owners above and around the 2585-acre underground mine, especially since, as demonstrated in many EIR/DEIR objections, cases like *Gray v. County of Madera,* already have rejected the kind of deficient and disputed mitigation measures that Rise has proposed. Moreover, even if somehow referencing SMARA helped Rise (even by incorrect analogy or to craft some disputed common law), any such analogy would have to include all of SMARA, i.e., both the benefits and the burdens; not just the cherry-picked parts Rise seems to like in a doomed attempt to evade permit requirements**. For example, SMARA #'s 2715 and 2716 prevent any such vested rights thereunder from allowing pollution or nuisances (which would clearly exist from such Rise mining without permits)** or from counters by thousands of voting objectors electing "wise policy" officials and causing the passage of wise laws and regulations to prevent such abuses and other wrongs by Rise and to

protect surface owners and others from objectionable Rise mining as explained in objections to the disputed EIR/DEIR, especially from depleting surface owner groundwater and wells.

More fundamentally, SMARA includes its own interactive regulatory system for such **surface** mining that cannot be misused by Rise, even by such analogies etc., for its **underground** mining. Rise apparently contemplates claiming vested rights under SMARA to proceed without the normally required permits and CEQA compliance for which Rise has already applied and which the Planning Commission has properly recommended that the Board reject. (Rise's disputed letter incorrectly protesting that Planning Commission decision will also be the subject of further counters by objectors as we near the Board consideration of the Rise Petition or EIR, as applicable, and to correct that record.) However, an examination of SMARA reveals that its regulatory system still has ample protections for the public against miners, especially as to requirements Rise cannot hope to satisfy by its doomed reclamation plans and related financial assurances, even if somehow it were possible (which it is not) for SMARA to be adapted by the courts by analogy or common law for Rise's underground mining. Consider, for example, how SMARA #2717 ensures compliance with reporting and monitoring, especially of reclamation plans and financial assurances in accordance with detailed policies and requirements for reclamation of "mined lands" in #'s 2740-2764, following the statutory mandates for reclamation plans and the conduct of surface mining operations in sections 2770-2779. For instance, SMARA #2773 requires the specific application of each reclamation plan to each "specific piece of property" "based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, etc. (an insufficient list for underground mining) as well as "establishing site-specific criteria for evaluating compliance with the approved reclamation plan …" and adopt[ing] regulations specifying minimum, verifiable statewide reclamation standards…" (again insufficient to include underground mining and groundwater variables and issues.) Likewise, #2773.1 requires "financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operator's approved reclamation plan…" that Rise could never afford according to its own admissions in its SEC filings. Consider even rebuttal evidence by objectors in the EIR/DEIR objection record of Rise's financial infeasibility and even in DEIR at 6-14 (where Rise admitted that the IMM project is not so feasible, unless Rise can mine as it demands 24/7//365 for 80 years, which objectors expect to become legally impossible.)

Note that, while Rise may plan to "flip" this disputed IMM opportunity to another miner with more financial capabilities (e.g., stated by the staff as an incorrect justification for ignoring objectors' evidence and admissions of Rise's financial infeasibility in the EIR/DEIR dispute process), objectors note that such a solvent and successful buyer (as distinct from the usual "shell" subsidiary, like Rise Grass Valley) may be reluctant to inherit the IMM controversies since laws about successor liabilities can be discouraging to companies with any real assets at risk, such as SMARA #2779: "Whenever one operator succeeds to the interest of another in any incomplete surfacing mining operation … the successor shall be bound by the provisions of the approved reclamation plan and provisions of this chapter."

In no such case is it feasible, constitutional, or appropriate for the courts to try themselves to replace the missing regulators in such functions, or for surface mining regulators to expand their jurisdiction to underground mining. To end any argument on that subject note

that under #2773.1 (a)(2) “Financial assurances shall remain in effect for the duration of the surface mining operation [here 80 years] and any additional period until reclamation is completed” [here potentially forever, considering the pollution that even Rise admits in the EIR/DEIR requires continuous “treatment” of such groundwater entering the mine, plus, for example, the toxic hexavalent chromium in cement paste Rise plans to add into the mine to shore up the mine waste into support columns as will be leaching from them into the Wolf Creek when the mine again floods. See the reclamation problems the ghost town of Hinkley, Ca, documented in the *Erin Brockovich* movie and www.hinkleygroundwater.com , where after all these years and ample settlement funds those victims have still not been able to remediate that groundwater.] Moreover, in #2773.1(a)(3) financial assurances “shall be reviewed and, if necessary, adjusted once each calendar year, to account for new lands disturbed …, inflation, and reclamation of lands accomplished ….”, thus creating an annual battle between Rise and all the objecting neighbors at risk for such 80 plus years. See # 2796.5(e) providing reimbursement rights for government remediation in civil actions when the miner allows or causes pollution or nuisance. Also, SMARA # 2773.1(b) mandates such a financial feasibility analysis with public hearings and corrective/defensive actions, and objectors contend that must now also be an issue in this vested rights process. See, e.g., SMARA #2772.1.5 including financial tests for financial assurance credibility that Rise cannot possibly satisfy, such as a “minimum financial net worth of at least thirty-five million dollars ($35,000,000) adjusted annually to reflect changes in the Consumer Price Index…” and other regulatory requirements. And any amendment to any miner reclamation plan (inevitable as objectors prevail in their litigation objections, especially after the annual #2774.1 government inspections) would require under #2772.4 a new “financial assurances cost estimate.” Furthermore, SMARA and related laws themselves will change over time, both by approval of local ordinances (e.g., #2774.3) and public pressure on the applicable government officials to carefully police the mine under # 2774.4, especially when the public makes such mining “an area of statewide or regional significance” under # 2775 for such enhanced policing. How would any of that work in this Rise underground, vested rights fantasy

The power of such objections is magnified by the fact that disputes over such reclamation plans and financial assurances must consider the manifest (and to some extent Rise admitted in SEC filings) unknowns and uncertainties in the disputed EIR/DEIR plan, assuming Rise does not revise that disputed plan to be even more objectionable in disputed reliance on its alleged freedom from use permit and other compliance, claiming (Rise Petition at 58) vested rights permission to operate as it wishes “without limitation or restriction.” Among other things, consider obvious risks in: (i) reopening such a massive underground mine that has been discontinued, dormant, abandoned, closed, and flooded since 1956, without any adequate study of the current actual conditions of the existing mine or the new, expanded area to be mined (as distinct from Rise’s disputed consultants “theories,” i.e., often seeming to be pro-mining, biased guesses) or the new, expansion mining parcels (the “Never Mined Parcels” discussed in this objection) doubling its size (e.g., 76 versus 72 mines of new versus old tunneling, and now even deeper in the new mining); (ii) proceeding with mining without adequate exploration, investigation, or credible, reliable, or otherwise critical information as to all the risks listed for investors in Rise’s SEC filings, but mostly ignored improperly both in the disputed Rise Petition and in Rise’s disputed EIR/DEIR; and (iii) satisfying Rise’s burden of proof,

which, under the facts and circumstances, will be impossible for Rise to satisfy in any litigation where the rules of evidence apply, since even much of the insufficient, unreliable, inadmissible, and otherwise noncredible proof Rise has offered so far will fail to overcome objectors' evidentiary objections when they are allowed to be applicable, no later than in the judicial process.

EXHIBIT G

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.

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February 9, 2024

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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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.

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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.