Nicole U. Rinke
Western Mining Action Project
505 S. Arlington Ave., Suite 110
Reno, Nevada 89509
(775) 337-2977

Attorney for Appellant

BEOFRE THE STATE OF NEVADA ENVIRONMENTAL COMMISSION

In Re: Appeal of Water Pollution Control Permit **NV0022269, Big Springs Mine**	**APPELLANT GREAT BASIN MINE WATCH'S OPPOSITION TO INTERVENOR ANGLOGOLD'S MOTION TO RESET HEARING**

Great Basin Mine Watch (GBMW), by and through its undersigned attorney, hereby files this opposition to Intervenor AngloGold Ashanti (Nevada) Corporation (AngloGold)'s motion to reset the hearing date in the above entitled matter. The State Environmental Commission (SEC) is authorized to reset the hearing only upon a showing of good cause. NAC 445B.894(1). Here, as will be explained below, AngloGold has not shown good cause to support its motion to reset the hearing date such that its motion should be denied.

1. According to Nevada law, the SEC must hold an appeal hearing "within 20 days after receipt of the notice of appeal." NRS 445A.610(1).[1] GBMW filed its Notice of Appeal of the Nevada Division of Environmental Protection (NDEP)'s renewal of Water Pollution Control Permit NV0022269 on August 5, 2005. AngloGold now alleges that GBMW requested that the SEC schedule the appeal hearing beyond the twenty day period. That is a blatant mischaracterization of the facts.

In its Notice of Appeal, pursuant to the SEC's rules of practice, GBMW requested that the SEC order pre-hearing briefs. NAC 445B.8925; See Letter from Nicole Rinke to John Walker (Aug. 5, 2005). GBMW did not, however, request that the hearing be scheduled beyond the twenty-day statutory period. See Letter from Nicole Rinke to John Walker (Aug. 5, 2005). To the contrary, recognizing the practical difficulty of full-party briefing within the short twenty-day period, GBMW agreed to waive the twenty day requirement pursuant to an agreed upon briefing and hearing schedule that provided for a December, 2005 appeal hearing. In working out the briefing schedule with NDEP and the SEC's Executive Secretary, GBMW's attorney made it clear that GBMW was concerned about excessively delaying the hearing beyond the agreed upon schedule because, while pending, the appeal would not stay the challenged permit. GBMW's agreement to waive the twenty-day requirement was expressly and entirely based on the condition that the briefing and hearing schedule would be strictly adhered to by the Commission and NDEP.[2]

[1] AngloGold erroneously and misleadingly implies that the time period is set by regulation, not statute. See AnlgoGold's motion, at 1 ¶ 1 (citing to NAC 445B.891(1)).

[2] Notably, AngloGold's attorney was not involved in the conversations surrounding the briefing schedule because, prior to that time, AngloGold had not been granted intervention. C.f. Order Granting Petition to Intervene (Aug. 31, 2005); Order Granting Petition to file Briefs (Aug 31, 2005).

2. On, October 4, 2005, NDEP's Attorney sent a letter to all parties requesting that the December hearing dates be rescheduled due to a conflict with another hearing. See Letter from Bill Frey to John Walker (Oct. 4, 2005). AngloGold now alleges that GBMW did not object to the SEC's resetting of the hearing date based on Mr. Frey's conflict and suggests that this should somehow bar GBMW from objecting to AngloGold's current request to further delay the hearing. As an initial matter, the hearing was not, as AnlgoGold suggests, rescheduled due only to the scheduling conflict of NDEP's attorney. To the contrary, the SEC made it clear that the hearing was rescheduled because, "[t]he original date established for the Big Springs Mine Appeal (i.e., December 8 & 9, 2005) is no longer workable for both the Attorney General' s Office and the State Environment Commission's (SEC) appeal panel." See Letter from John Walker to all parties (Oct. 17, 2005) (emphasis added). Because the hearing date was a conflict for the SEC and because the SEC indicated that the hearing would be rescheduled for January or February, a delay GBMW did not view as unreasonable, GBMW did not oppose the delay. GBMW did, however, at that time, express concern to Mr. Frey and Mr. Walker regarding any further delays in the hearing schedule. Second, and more importantly, GBMW's choice to not oppose the previous rescheduling of this matter in no way precludes it from opposing further delays. At this point, AngloGold's motion, if granted, would result in the SEC holding the requested hearing, at best, within 243 days of its receipt of GBMW's notice of appeal - a delay of more than 12 times the required statutory period of twenty days. GBMW solidly opposes this such an extensive delay.

3. AngloGold asserts that it and its counsel have a conflict with the scheduled hearing dates for February 8 and 9, 2006 because a federal trial it is involved with has recently been scheduled to commence on February 13, 2006. As an initial matter, the federal trial AngoGold points to

does not actually conflict with the appeal hearing scheduled in the instant matter. Second, AngloGold is an intervening party. An interested party is allowed to intervene before the SEC only if "it does not unreasonably broaden the issues or prejudice any party to the proceeding." NAC 445B.8915(3). GBMW's appeal challenges a water pollution control permit issued by NDEP for the Big Springs Mine. The Big Springs Mine, under the challenged permit, is polluting the North Fork of the Humboldt River and it tributaries. While the appeal is pending, the permit remains in effect and the pollution continues. As such, if AngloGold's motion is granted, GBMW will be prejudiced by AngloGold's involvement in this case. Finally, the individuals AngloGold argues will have conflicts because of their involvement with the other federal trial do not appear to in fact have credible conflicts.

a. AngloGold argues that Scott Lewis will be a key witness in both cases. Scott Lewis is the environmental manager for AngloGold's U.S. operations; whereas John Gorman is in charge of the Nevada Operations and the individual who has, thus far, been involved with the instant appeal and the challenged permitting of the Big Springs Mine. See e.g., Letter from John Walker to John Gorman (Aug 9, 2005) (notifying AngloGold of the appeal); Letter from John Gorman to Kurt Kolbe (April 29, 2005) (addressing GBMW's comments on the now challenged permit); Letter from John Gorman to Kurt Kolbe (March 19, 2004) (submitting the 2003 summary for the Big Springs Mine). In addition, GBMW's appeal challenges NDEP's oversight of the mine, not AngloGold's management of the mine. As a result, Scott Lewis would not appear to be a key witness for the instant appeal hearing.

b. AngloGold also argues that its attorney, Mr. Gene Riordan, is the lead attorney of record in both the instant appeal and the federal case. Although Mr. Riordan may be on record as an attorney for the federal court case, there are several attorneys involved in the case and Mr.

Riordan is not the "lead" attorney for the upcoming trial. See Final Pre-Trial Order (attached in part) (signed in the first instance by Robert Troyer).[3] In fact, in addition, Mr. Riordan is not the lead attorney in the instant appeal. Mr. Riordan is, at best, out-of-state counsel who is representing AngloGold in conjunction with two other attorneys – Mr. Peter O'Connor, AngloGold's general counsel and Mr. Butler, AngloGold's local counsel.

Supreme Court Rule (SCR) 42 sets forth certain requirements and procedures for out-of-state attorneys who wish to practice in Nevada. Among other things, SCR 42 requires that an out-of-state attorney file an application and fee with the State Bar of Nevada and receive State Bar approval prior to moving to associate in a state or administrative action. SCR 42 also requires that the motion to associate, with all papers, be served upon all parties. To date, Ms. Rinke has not received any of the required papers as set-forth in SCR 42. SCR 42, applies to all administrative proceedings within the state unless the agency provides otherwise. SCR 42(1)(2). The SEC's rules do not provide separate procedures for associating out of state counsel, NAC 445B.875 et seq., such that SCR 42 applies to the instant hearing. Because Mr. Riordan has not yet complied with the requirements to associate as out-of-state counsel as provided for by SCR 42 he is not, at this point, the official counsel of record for the appeal.

In addition, the rules of the Supreme Court of Nevada plainly require that "[t]he Nevada attorney of record shall be responsible for and actively participate in the representation of a client in any proceeding that is subject to this rule." SCR 42(14)(a) (emphasis added).[4] There is no reason AngloGold's local counsel, Jim Butler, should not be able to handle the instant matter. Mr. Butler has been practicing for nearly twenty years in the area of environmental and natural

[3] Mr. Riordan was acting as lead attorney in the preliminary matters. However, Mr. Troyer is now serving as lead attorney for the upcoming trial.

[4] As explained, SCR 42 applies to appeals before the SEC.

resource law. See Parsons, Behle and Latimer, Biographies, http://www.parsonsbehlelaw.com/biographies.asp?ID=23 (viewed Dec. 2, 2005) (attached). He is a shareholder in the firm of Parsons, Behle and Latimer, which employs over 100 attorneys and boasts "one of the largest environmental, energy and natural resources practices in the western United States." See Parson, Behle & Latimer, Practice Areas, http://www.parsonsbehlelaw.com/firm.asp (viewed Dec. 2, 2005) (attached). Mr. Butler's areas of practice include, environmental appeals and litigation, environmental permitting and compliance, natural resources appeal and litigation, mining, and project permitting. See Parsons, Behle and Latimer, Biographies, http://www.parsonsbehlelaw.com/biographies.asp?ID=23 (viewed Dec. 2, 2005) (attached). Mr. Butler would appear to be entirely capable of handling the instant appeal.

The fact that AngloGold's out-of-state counsel, Mr. Riordan, must participate in another hearing in a separate unrelated matter the week after the scheduled hearing, therefore, hardly constitutes a conflict. Notably, the Western Mining Action Project, with which Ms. Rinke, GBMW's attorney in this matter, is associated, is representing plaintiffs in the very same federal case AngloGold claims is a conflict.

c. AngloGold also argues that Mr. Peter O'Connor has a conflict because as general counsel for AngloGold he oversees both cases. However, as with regards to Mr. Riordan, when there are several attorneys involved, no one attorney must play a lead role. In the instant matter, Mr. O'Connor has not even been signing AngloGold's filings as one of the attorneys of record for AngloGold. See AngloGold's Motion at 3 (listing Jim Butler and Gene Riordan as the attorneys for AngloGold). The fact that intervenor AngloGold, and thus, Mr. O'Connor, is involved in multiple, unrelated cases cannot and should not serve to delay the instant matter.

AngloGold alleges that preparation for the federal case will take several weeks, such that it cannot prepare for both the instant hearing and the federal trial. However, AngloGold was well aware of the hearing scheduled in this matter before the trial was scheduled in the federal case. C.f. Letter from John Walker to all Parties (Nov 4, 2005)(scheduling final appeal hearing date); AngloGold's Motion, at 1 ¶ 3 (indicating that the federal matter was scheduled on November 15, 2005). Because the instant appeal was scheduled prior to the federal matter, this appeal should take priority setting over the federal matter and if AngloGold has a conflict, it is the federal trial, not the instant matter that should be delayed.

4. The hearing in the instant matter was originally scheduled for December 8 and 9, 2005. See Order Granting Petition to File Briefs (Aug. 31, 2005). As discussed above, the hearing was rescheduled on November 4, 2005, for February 8 and 9, 2006, because of conflict for NDEP's attorney Bill Frey and conflicts for the SEC panel that was to hear the appeal. See Letter from John Walker to all Parties (Nov 4, 2005)(scheduling final appeal hearing date). AngloGold now argues that Bill Frey again has a conflict with the February hearing date because he has a trial set to begin on February 6, 2006. Notably, the trial that allegedly creates a conflict for NDEP is the very same trial that prompted NDEP to request the previous change in the hearing date. This perpetual cycle of rescheduling the hearing in the instant matter cannot continue. Again, Mr. Frey was aware of the hearing in the instant matter when the "conflicting" trial date was allegedly set. See Letter from John Walker to all Parties (Nov 4, 2005)(scheduling final appeal hearing date); AngloGold's Motion, at 1 ¶ 4 (indicating that the other trial was scheduled on November 9, 2005). It is not appropriate for Mr. Frey or Mr. Riordan to repeatedly allow other matters to take precedence over this one. The hearing date in the current matter has been set and reset once already. The statutory time period for holding the appeal has already been far

surpassed and any additional delays are without statutory support and strongly opposed by GBMW.

5. GBMW is adamantly opposed to any further delay in the instant hearing. As explained, the statutory time period for holding the appeal has already been far exceeded by more than twelve times. Although GBMW agreed to an extended hearing schedule in order to accommodate briefing, it has consistently indicated the importance of the SEC holding a timely hearing in this matter.

6. AngloGold argues, without any support whatsoever, that GBMW is not prejudiced by its request to reset the hearing date in this matter. AngloGold argues that because the challenged permit remains in effect while GBMW's appeal is pending, and GBMW's appeal seeks to "set aside the WPCP" the status quo is "actually more protective of the environment than the relief requested by GBMW." See AngloGold's Motion at 3 ¶ 6. AngloGold's characterization of the instant appeal grossly mischaracterizes the harm suffered and the relief sought by GBMW in this appeal. Contrary to AngloGold's argument, GBMW's appeal requests far more relief than merely setting aside the challenged permit. In fact, GBMW's appeal requests that:

"the SEC should Order NDEP to:

(1) issue a discharge permit for the mine's three groups of sources: the RDA's, the two pit lakes, and the groundwater diversion;
(2) regulate the discharge as required by federal and state law, including but not limited to, establishing effluent limitations for the discharges in accordance with established water quality standards;
(3) prior to issuing the required discharge permit, establish TMDLs for the impaired receiving waters within a specified reasonable timeframe;
(4) restrict the discharges into the NFHR so that the discharges are not harming, harassing, or otherwise taking Lahontan Cutthroat Trout in violation of the ESA;
(5) regulate the discharge from the pits into groundwater so that the discharge is not degrading groundwater;
(6) regulate the discharge from the groundwater diversion wells so that the discharge is not degrading the shallow groundwater in the Sammy Creek Drainage;
(7) prohibit any discharges until and unless all of the above requirements are met."

See GBMW's Memorandum in Support of Appeal, at 37. As long as the instant appeal is pending, the challenged water pollution control permit remains in effect, as is, and the harm is ongoing. AngloGold's assertion that GBMW is not prejudiced by further delay in the appeal hearing is, therefore, entirely without merit.

For the foregoing reasons, GBMW respectfully requests that the SEC deny AngloGold's motion to reset the hearing and hold the hearing, as previously scheduled, on February 9 and 10, 2006.

Respectfully submitted this ____ day of December, 2005,

_____

Nicole U. Rinke
Nevada Bar No. 7884
Western Mining Action Project
505 S. Arlington Ave., Suite 110
Reno, Nevada 89509
(Phone) 775.337.2977
(Fax) 775.337.2980

Attorney for Appellant GBMW

CERTIFICATE OF SERVICE

I, Nicole Rinke, hereby certify that I served the foregoing **Appellant Great Basin Mine Watch's Opposition to Intervenor AngloGold's Motion to Reset Hearing** upon the following individuals via USPS, this _____ day of December, 2005:

Dave Gaskin
Bureau of Mining Regulation and Reclamation
Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701-5249

Bill Frey
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701-4717

Eugene J. Riordan
Vranesh and Raisch, LLP
1720 14th Street, Suite 200
PO Box 871
Boulder, CO 80306-0871

Jim Butler
Parsons, Behle and Latimer
One East Liberty Street, 6th Floor
Reno, NV 89504

Peter O'Connor
General Counsel
AngloGold Ashanti (Nevada) Corp.
7400 E. Orchard Road, Suite 350
Greenwood Village, CO 80111

_____
Nicole U. Rinke