

ATTACHMENT # 4

**COURT PLEADINGS IN SUPERIOR COURT
(Pertinent pages RE: mining)**

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20
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22 COUNTY OF SAN DIEGO

23 NATIONAL PARKS AND
24 CONSERVATION ASSOCIATION;
EAGLE MOUNTAIN LANDFILL
25 OPPOSITION COALITION; CITY OF
COACHELLA; STEVE W. CLUTE, an
26 individual; DANIEL S. ROMAN, an
individual; RICHARD M. MARSH, an
27 individual,

28 Petitioners and Plaintiffs,

Case No. 662907

MEMORANDUM OF POINTS AND
AUTHORITIES OF RESPONDENTS AND
REAL PARTIES IN INTEREST IN
OPPOSITION TO PETITIONERS'
OBJECTIONS TO A FINDING OF
COMPLIANCE WITH RETURN TO WRIT

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1 is obligated under the *existing* mine reclamation plan to undertake active reclamation. (POB at p. 3, ln.
2 13-14.) To begin with, this argument is not related even tangentially to the BLM land exchange.
3 Moreover, even if there were some connection, Petitioners are simply wrong on the facts. The current
4 reclamation plan, which was prepared in response to the Surface Mining and Reclamation Act (SMARA)
5 and approved by the County, provides for the former pit areas and the tailings piles to naturally weather.
6 (1A:00043, 00046; 6:07956-07958; 7:08125-126.) Therefore, the Project, which would ultimately fill
7 and revegetate the East Pit areas, would indeed constitute an environmental benefit.

8 C. **There is No Reasonable Likelihood of a Reverter to the U.S. Government.**

9 Another argument with no visible relation to the BLM land exchange is Petitioners' claim
10 that the EIR improperly failed to consider, for purposes of the analysis of the "no project" alternative, the
11 "environmental benefit" associated with the reversion to the U.S. Government of the Townsite and
12 railroad right-of-way lands. (POB at p. 4, ln. 3-24.) Here, Petitioners ignore a simple fact: BLM has
13 determined that the Townsite and railroad right-of-way reverter has not been triggered, and will not be
14 triggered if the Project does not proceed. (1A:00111-117; 2A:03067-070; 2D:03526-529; 2B:03256-
15 258.) Therefore, the effect of a reverter need not be analyzed.

16 D. **Renewed Mining Is Not "Reasonably Foreseeable."**

17 Petitioners again stray far from the BLM land exchange issue when they contend that
18 resumed mining is a reasonably foreseeable aspect of the Project that was not analyzed in the EIR. (POB
19 at p. 4, ln. 27 to p. 5, ln. 19.) This fiction is spun largely around the claim that Kaiser "repeatedly
20 expressed interest" in renewed mining during the EIR process. However, none of the record citations to
21 which Petitioners refer -- even as they are characterized by Petitioners -- even come close to evidencing
22 an "interest" in renewed mining.¹² Therefore, this argument should be summarily dismissed by the Court.

23 V. **THE EIR FULLY ANALYZED ALL POTENTIAL IMPACTS TO JOSHUA TREE**
24 **NATIONAL PARK**

25 The new EIR analyzed all of the potential physical impacts on the Park, and particularly those
26 associated with noise, windblown debris, dust, visual contrast and nighttime lighting, concluding that
27

28 ¹² To the contrary, a Kaiser representative testified during the public hearing process that the
previous mining activity had been halted because it was uneconomical. (41:06700.)