

EXHIBIT E

HOT SULPHUR SPRINGS STATE OF COLORADO

CLIMAX MOLYBDENUM CO.,
Petitioner,

v.

HOT SULPHUR SPRINGS-PARSHALL
FIRE PROTECTION DISTRICT,
District.

DISTRICT’S FINDINGS OF FACT AND CONCLUSIONS

INTRODUCTION

The hearing on the Petition of Climax Molybdenum Company, a subsidiary of the Freeport-McMoRan Company (“Climax” or the “Mill”), for exclusion from the Hot Sulphur Springs – Parshall Fire Protection District (the “District”) took place on November 1, 2019, before the Board of Directors of the District¹. Climax was represented by Chris Murray and Julian Ellis of Brownstein, Hyatt, Farber Schreck. The District was represented by Andy Nathan of the firm of Nathan Dumm & Mayer P.C. and David Greher of the firm of Collins Cockrel & Cole, P.C. William Hayashi of the firm of Williamson & Hayashi acted as the hearing legal advisor to the Board.

The determination of whether Climax should be excluded from the District is governed by a specific set of statutory factors under Section 32-1-501(3), C.R.S. The Findings of Fact below identify relevant factual findings regarding each statutory factor. Because the factors are in some cases similar, the facts regarding one factor may also be related to one or more other

¹ Sitting for the Board were Rob Firth, George Davis and Marco De Andrea. Brad White, a witness in this proceeding, recused himself. Director Aaron Bellefueille was absent.

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factors. Ignoring the duplication involved, for ease of reference, they are articulated below under each factor cited to the relevant witness testimony and exhibits. Nonetheless, any finding articulated on any factor may be utilized if it is relevant to a factor, even if not specifically listed under that factor.

The exhibits offered by each party to the hearing were stipulated for admission. Each party reserved the right to question the relevance of specific exhibit but all exhibits are included in the record.

Three witnesses testified at the hearing. They were as follows:

Tara Hosick is the Manager for Strategic Community Development for Climax. Her job duties are to manage Climax's engagement in the community, social responsibility, investment into sustainability into the communities close to Climax's operations and generally getting to know the community and partnering with the community.

Ben Goertz is the Health and Safety Supervisor at the Mill.

Brad White is currently the Chairman of the Board of the District but recused himself from making any decision at this hearing because he was acting as a witness. Mr. White was formerly the Chief of the District from 2009 until 2015, having been with the District since 2002. He is currently the Fire Chief at a neighboring Fire District, the Grand Fire Protection District. Mr. White has had a full course of basic firefighter training. He is a State Certified Fire Proctor. In the National Wildfire System, he is a Certified Strike Team leader and what is called an ICT or Incident Commander Type 3 Trainee with National System. He is co-Chair of the volunteer subsection for volunteer chiefs of the Colorado State Fire Chiefs and has for the last two years chaired the Wildland section for that organization.

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Each witness was sworn prior to testimony. The testimony at the hearing was transcribed by a certified court reporter. That transcript makes up a part of the record of the hearing. References below to page numbers refer to the pages of that transcript.

FINDINGS OF FACT

The following findings of fact are made under Section 32-1-501(3), C.R.S.:

(a)(I) The best interest of property to be excluded;

The testimony of Tara Hosick:

- 36 “Safety is the most important thing we do . . .”. “That’s our number one concern.” “So we wouldn’t take the risk of putting one employee in any type of danger. And also we need to protect our facility because that facility is what keeps employed those 150 plus Grand County folks.”
- 62 If there were a fire that the District and its mutual aid partners needed to handle and Climax was invoiced, the cost could be in the millions of dollars.
- 75 Exhibit W Page 11 of 73 states that many stakeholders share Climax’s view that Freeport-McMoRan should serve a social purpose and bring positive contributions to society for the long term.

The testimony of Benjamin Goertz:

- 100 Climax does not require MERT (Mill Emergency Response Team) members to have state or federal certifications. All certifications are done in-house.
- 101 Climax relies on external fire prevention inspections.
- 131 No current MERT members have EMT certification.
- 131-132 MERT has no certified first responders.
- 134 The District provides training to its firefighters who have gone on MERT. The District provides certifications to its firefighters who go on MERT. Climax does not reimburse the District for either.
- 127 Climax has no mutual aid agreements on any other agreements with any firefighting entity.

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- 130-131 He doesn't know what a disastrous fire at the Mill could cost but acknowledges it could cost millions.

(Per Exhibit 6, the current actual value of improvements at the mill has been valued by the County Assessor as \$76,815,160.)

- 137 He doesn't believe the District has no value to Climax. The District's ability to respond in an emergency at the Mill when Climax needs it is a benefit to Climax. The District has agreements for mutual aid that the District can put on a major fire by requesting that mutual aid.
- 139 The District firefighters are authorized by law to do inspections, issue citations and that sort of thing. If Climax needed help, Climax could call the District and the District would respond.
- 141-142 If a house in the vicinity of the Mill catches fire, the Mill doesn't put it out. That's not within Climax's responsibility. Climax could be liable if it messed up and it doesn't have governmental immunity like the District.
- 143 Climax (MERT) doesn't have the equipment to extract people in auto accidents i.e., Jaws of Life. It would need to call in someone.
- 143-144 Members (employees) of Climax travel to the Mill on mountain roads, in adverse weather conditions. According to Freeport-McMoRan, the safety of its employees is its most important corporate value. In an automobile accident the District has in the past, and is expected in the future, to provide assistance to Climax's employees (i.e., the most important thing to Freeport-McMoRan).
- 147 Although Mr. Goertz was the head of safety, he was unable to identify any wildland fire training conducted by the MERT.

The testimony of Brad White:

- 159 If the Mill is excluded, the loss of tax revenue would drastically impair the capital project outlined in the 2015 inclusion. This capital improvement project has included a new station in Parshall, a fire truck in Parshall, a new fire truck in Hot Sulphur Springs and updating the equipment. It also included water supplies in various places. The District has handled a number of these projects but the rest would probably cease for lack of funds. If the Mill is excluded, it would adversely impact the District's funds available for training and capital replacement.
- 163 The Mill has previously experienced the need for services from the District. He can personally recall being at the Mill when Climax had a boiler issue late at night. He has been at the Mill when Climax had a natural gas line blow near the settling ponds. He has been to the Mill when there was a lightning strike across from the settling ponds that

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the District handled for Climax. The District gets called occasionally for what are called smoke reports – which although not a fire, requires the District to expend resources.

- 163-164 Climax, as part of the District, would be eligible for services from the District if Climax requested them.
- 164 Another advantage to being in the District concerns insurance ratings. The District has an ISO-4 rating which is better than 2/3 of the rural areas nationally. This strong rating typically makes a difference for business owners.
- 164-165 He recalls several automobile accidents over the years to which the District has responded. Some of them had involved Climax employees.
- 168 The District has used some of the money received in taxes from Climax to increase water storage. Last year it completed a project in Copper Creek for 30,000 gallons of water which meets not just the Chief's suppression needs but also the ISO requirements for fire flow. The District is planning two additional sites in the next few years.
- 169 One of the two new water storage sites is in Aspen Canyon, which is near the Mill. The water storage will be of benefit to fire suppression at and near the Mill. Climax has a lot of land that is not near Climax's structures and not near a water supply.
- 169 Even fires adjacent to Climax can adversely impact its operations. The Sugar Loaf fire in June 2018 fire affected the Climax mine (which is connected by conveyor belt to the Mill) because the mine had to be closed due to poor air quality at the mine intakes and Climax had to stop operations. The District supplied assistance to suppress the Sugar Loaf fire.

(a)(II) The best interest of the special district from which the exclusion is proposed;

The testimony of Tara Hosick:

- 22 Climax claims the Mill doesn't need District services. Also Climax claims that when Climax does need District service, it pays for it.
- 56 Climax values what firefighters do. It sees what's happening around the country. This is important work. "We couldn't do without it."
- 72 Exhibit E is a document prepared by Freeport-McMoRan entitled "Economic Impact in Colorado".
- 72-73 The purpose of Exhibit E is to enlighten Colorado residents as to the beneficial impacts of the Mill. According to Freeport-McMoRan, every tax dollar it spends in Colorado generates at least twice as much indirect revenue within the State.

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- 75 Exhibit W, Page 11 of 73 states that many stakeholders share the company's view that Freeport-McMoRan should serve a social purpose and bring positive contributions to society for the long term.

The testimony of Benjamin Goertz:

- 139 The District firefighters are authorized by law to do inspections, issue citations and that sort of thing. If Climax needed help, it could call the District and Climax assumes the District would respond.

The testimony of Brad White:

- 159 The District used tax money to obtain a type 3 engine which is a hybrid structure wildland engine. The District put in a water supply at Copper Creek last year.
- 161 Why can't everyone opt out? Because that's not how taxes work. Fire departments provide critical services and have to be ready and available when needed (i.e., in advance).
- 168 The District has used some of the money received in taxes from Climax to increase water storage for fire suppression. Last year, it completed a project in Copper Creek for 30,000 gallons of water which meets not just the Chief's identified suppression needs but also the ISO requirements for fire flow. The District is planning two additional sites in the next few years. One of those sites is near the Mill.
- 173 The inclusion election was a matter of general public concern in the District.
- 177 It takes more time coming out of Grand Fire or Kremmling Fire (the two adjacent fire districts) to get to the Mill than it does for the District.
- 178 The Mill has applied for at least two grants (when Mr. White was Chief) and potentially another two grants (when Mr. Baumgarten was Chief) from Climax. They were not approved.
- 178-179 Pay as you go, suggested by Climax, has been tried on the East Coast. This is not a model the District's Board would favor. No one else gets to do it. Most of the District's expenses are part of a large investment in having the *capability* to provide service; the actual cost of *performing* the service on a given call is much less. Pay as you go will not sustain a fire department.
- 183 The District was counting on money from taxes generated by the Mill if the inclusion was successful to do projects sooner rather than later.
- 185 Prior to Climax being in the District it struggled as it has always struggled.

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- 186 No doubt the District would exist but it would look different.
- 190 The Board decided to include the Mill and he thinks it was the right thing and the fair thing. The Mill is a repeat client. It is not unfair for a corporation to pay its fair share.

(a)(III) The best interest of the county or counties in which the special district is located;

The testimony of Tara Hosick:

- 56 Climax values what firefighters do. It sees what's happening around the country. This is important work. "We couldn't do without it."
- 72 Exhibit E is entitled "Economic Impact in Colorado".
- 72-73 The purpose of Exhibit E is to enlighten residents of Colorado on the beneficial impacts of Freeport-McMoRan's community involvement. According to Freeport-McMoRan, every tax dollar it pays generates at least twice as much indirect revenue in Colorado.
- 75 Exhibit W, page 11 of 73 states that many stakeholders share the company's view that Freeport-McMoRan should serve a social purpose and bring positive contributions to society for the long term.

The testimony of Benjamin Goertz:

- 131 No current MERT members have EMT certification.
- 131-132 MERT has no certified first responders.
- 139 The District firefighters are authorized by law to do inspections, issue citations and that sort of thing. If Climax needed help, it could call the District and Climax assumes the District would respond.
- 143-145 Members (employees) of Climax travel to the Mill on mountain roads, in adverse weather conditions. According to Freeport-McMoRan, the safety of its employees is its most important corporate value. In an automobile accident the District has in the past, and is expected in the future, to provide assistance to Climax's employees (i.e., the most important thing to Freeport-McMoRan).
- 147 He can't identify any wildland fire training for MERT.

The testimony of Brad White:

- 159 If the Mill is excluded, the loss of tax revenue would drastically impair the capital project outlined in the 2015 inclusion. This capital improvement project has included a

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new station in Parshall, a fire truck in Parshall, a new fire truck in Hot Sulphur Springs and updating the equipment. It also included water supplies in various places. The District has handled a number of these projects but the rest would probably cease for lack of funds. If the Mill is excluded, it would adversely impact the District's funds available for training and capital replacement.

- 165 He recalls several automobile accidents over the years to which the District has responded to. Some of them had involved Climax employees.
- 167 Exhibit D is the Grand County Community Wildfire Protection Plan. It shows the importance of fire districts. The County has a vested interest in making sure that people are included in fire districts because the County becomes responsible for wildland fire response that is not in a fire district. Another goal in Exhibit D is the creation of additional water storage.
- 168 The District has used some of the money received in taxes from Climax to increase water storage. Last year it completed a project in Copper Creek for 30,000 gallons of water which meets not just the Chief's suppression needs but also the ISO requirements for fire flow. The District is looking at two additional sites in the next few years.

(b) The relative cost and benefit to the property to be excluded from the provision of the special district's services;

The testimony of Tara Hosick:

- 30 Climax can't get rid of MERT. There is too much risk. Climax is regulated by Federal Agency Mine Safety Health Administration.
- 36 "Safety is the most important thing we do . . .". "That's our number one concern." "So we wouldn't take the risk of putting one employee in any type of danger. And also we need to protect our facility because that facility is what keeps employed those 150 plus Grand County folks."
- 37 Climax carefully considered the Special Districts that it is in.
- 66 In the event of an auto accident where the victim is trapped, Climax would have to call the District or dispatch. In the event there is a fire on the Mill property and it spreads to the contiguous forest, Climax would call dispatch in Summit or Grand County.
- 70 When Grand County dispatch is called for a fire, Climax would expect that Grand County Fire would show up or the District.
- 71 There is no such thing as Grand County Fire. The County doesn't have a fire department.

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- 76-77 Freeport-McMoRan has invested 2 billion dollars in social projects and programs since 2007. \$600,000 in taxes is a small percentage of that.
- 77-78 The Safety of Climax's work force is its highest priority. Safety is important on and off premises.
- 78-79 According to Exhibit W, page 42 of 73, over the three years that Climax has paid taxes to the District it has also paid its four top executives over \$100,000,000.
- 80 Climax pays taxes to a Library District. Climax has not opted out of the Library District. A Library District does not provide more important services than a Fire District. Climax does not know if the Library District provides any direct services to Climax but if there was a fire, Climax would not call the Library District.

The testimony of Benjamin Goertz:

- 134 The District provides benefits for the MERT team.
- 135-136 He doesn't know what a disastrous fire at the Mill could cost. It could cost millions of dollars. (Per Exhibit 6, the current actual value of improvements at the mill has been valued by the County Assessor as \$76,815,160.)
- 137 Climax doesn't believe the District has no value to Climax. The ability of the District to respond in an emergency when Climax needs it. The District has the mutual aid that the District can put on a major fire by requesting that mutual aid.
- 138 The District provides services to its residents. Climax hasn't requested any services from the District, but Climax could do so.
- 139 District firefighters are authorized by law to do inspections, issues citations and that sort of thing. If the Mill needed help, it could call the District and expects the District would respond.
- 140 If Climax calls Grand County, the responder will be the District. He can't explain why calling Summit County would help since the Mill is not in Summit County.
- 143 Climax doesn't have the equipment to extract people in auto accidents i.e., Jaws of Life. It would have to call in someone.
- 143-144 Members (employees) of Climax travel to the Mill on mountain roads, in adverse weather conditions. According to Freeport-McMoRan, the safety of its employees is its most important corporate value. In an automobile accident the District has in the past, and is expected in the future, to provide assistance to Climax's employees (i.e., the most important thing to Freeport-McMoRan).

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- 145-146 Climax has no way to receive communications from Grand County dispatch to theoretically respond to an emergency offsite of the Mill.
- 147 He can't identify any wildland fire training for MERT.

The testimony of Brad White:

- 158 Tax revenue is going down because of lower production and because of Climax's ability to convince the County to switch from a five year to a three-year average of Mill production.
- 164 Another advantage to being in the District concerns insurance ratings. The District has an ISO-4 rating which is better than 2/3 of the rural areas nationally. This strong rating typically makes a difference for business owners.
- 169 One of the two new water storage sites is in Aspen Canyon, which is near the Mill. The water storage will be of benefit to fire suppression at and near the Mill. Climax has a lot of land that is not near Climax's structures and not near a water supply.
- 169 Even fires adjacent to Climax can adversely impact its operations. The Sugar Loaf fire in June 2018 fire affected the Climax mine (which is connected by conveyor belt to the Mill) because the mine had to be closed due to poor air quality at the mine intakes and Climax had to stop operations. The District supplied assistance to suppress the Sugar Loaf fire.
- 170 The District's efforts benefitted Climax. If the fire had gone differently than it did, the District had committed considerable resources to protect covered structures, ranches and the Climax property.
- 176 The Parshall station is between 15 and 20 minutes from the Mill depending on weather. When he was Chief, it took 4 or 5 minutes to get volunteers down to the station. He believes the District can get hands-on any fire in the Mill in 20 minutes.

(c) The ability of the special district to provide economical and sufficient service to both the property to be excluded and all of the properties within the special district's boundaries;

The testimony of Tara Hosick:

- 65 She is aware that the District is authorized by law to do fire inspections.
- 59 She is not aware of code services from the District.
- 66 The District provides assistance for auto accidents that MERT does not have the equipment to provide.

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- 66-67 She can't explain what Climax would do without the District if a fire expanded off the Mill site.
- 67-68 She can't answer what protection residents of the District would have if the Mill is excluded and a fire occurs on the premises and spreads to adjacent structures or to the forest.
- 67 The whole County is a forest.

The testimony of Benjamin Goertz:

- 134-135 The District provides benefits for the MERT team for which Climax does not reimburse.
- 141-142 There are houses in the vicinity of the Mill. Climax would not provide fire services to them.
- 142-143 Residents of the District can benefit in their insurance rates based upon the District's existence and its training and equipment.
- 148 Exhibit 9 shows the Mill's fire truck. It does not have off road capability or wildland fire apparatus. It does not have capability to go over land and carry water and personnel.

The testimony of Brad White:

- 156-157 For any major forest fire or fire of any type, the District has substantial resources through its mutual aid agreements.
- 158 The tax revenues that the Mill pays the District have been going down because Climax petitioned the County for a three-year average of production (as opposed to a five-year average) which has reduced its assessed valuation and therefore its taxes.
- 159 Using tax revenue the District put into service a new Type 6 wildland engine replacing a smaller pickup type unit.
- 164 The District has the second lowest mill levy among fire districts in the County.
- 163 The Mill has previously experienced the need for services from the District. He can personally recall being at the Mill when Climax had a boiler issue late at night. He has been at the Mill when Climax had a natural gas line blow near the settling ponds. He has been to the Mill when there was a lightning strike across from the settling ponds that the District handled for Climax. The District gets called occasionally for what are called smoke reports – which although not a fire, requires the District to expend resources.

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- 165 The board could receive a fee but does not. The Fire Chief receives a small stipend - \$600 to \$700 a month.
- 166 There is also a volunteer pension. The District works hard to keep down its administrative expenses.
- 176 The Parshall station is between 15 and 20 minutes from the Mill depending on weather. When he was Chief, it took 4 or 5 minutes to get volunteers down to the station. He believes the District could get hands-on any fire in the Mill in 20 minutes.

(d) Whether the special district is able to provide services at a reasonable cost compared with the cost that would be imposed by other entities in the surrounding area to provide similar services in the surrounding area or by the fire protection district or county fire improvement district that has agreed to include the property to be excluded from the special district;

The testimony of Tara Hosick:

- 58 She signed Exhibit A (the Petition for Exclusion) under oath. As to number 10 on page 2 (indicating that alternative fire service would be available to the Mill from “another special district”), she can’t identify anything other than the overall County fire (which doesn’t exist).
- 58-59 Exhibit A concedes at paragraph 10 that the District is able to provide services at a reasonable cost. Ms. Hosick states that there are other special districts in the area which can provide similar services at a reasonable cost but Climax has no evidence to support that. The entity Ms. Hosick mentioned, the overall County fire (does not exist), nor was she aware of its mill levy. Climax does not know of any other local fire district which has a lower mill levy. Climax has no plans, contrary to the petition, to get alternative service from another fire district.

The testimony of Benjamin Goertz:

- 105 The Mill hasn’t used any of the other services from the District like education, inspection services, fire services, etc. (but acknowledges these services are available to it).
- 112 The MERT fire truck has a 1,000-gallon capacity. It has “Type A firefighting capabilities”.
- 127 Climax has no agreement with any other firefighting entities for mutual aid. If there were a major fire, Climax would want the benefit of the District’s mutual aid agreements. If the District calls an adjacent fire district and they have a mutual aid agreement, the other district is coming. If Climax calls one of these districts and because Climax does not have a mutual aid agreement, these other districts may or may not come.

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- 128 Climax has never provided mutual aid.
- 128 He doesn't know what a disastrous fire at the Mill could cost. It could cost millions. (Per Exhibit 6, the current actual value of improvements at the mill has been valued by the County Assessor as \$76,815,160.)
- 131 No MERT members have EMT certification.
- 131 MERT has no certified first responders.
- 134 If a house in the vicinity of the Mill catches fire, the Mill doesn't put it out.
- 151-12 When Climax asks first responders to come from fire districts (including the District) to which Climax pays no taxes, Climax is relying upon the generosity and the human nature of the first responders to come and help Climax out.

The testimony of Brad White:

- 176 Parshall station is between 15 and 20 minutes from Mill depending on weather. When he was Chief, it took 4 or 5 minutes to get volunteers down to the station. He believes the District could get hands-on any fire in the Mill in 20 minutes.

(e) The effect of denying the petition on employment and other economic conditions in the special district and surrounding area;

The testimony of Tara Hosick:

- 53 Climax's own Petition for Exclusion (Exhibit A) states that either granting or denying the petition will have no economic impact on the region, the District, the surrounding area or the state as a whole. However, as noted above, the District spends taxes on projects that could have a positive impact on the region.

(f) The economic impact on the region and on the special district, surrounding area, and state as a whole if the petition is denied or the resolution is finally adopted;

The testimony of Tara Hosick:

- 53 Climax's own Petition for Exclusion (Exhibit A) states that either granting or denying the petition will have no economic impact on the region, the District, the surrounding area or the state as a whole. However, as noted above, the District spends taxes on projects that could have a positive impact on the region.
- 53-54 If Climax is excluded, the District would have to double taxes on its remaining taxpayers if it wanted to keep the same service.

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The testimony of Brad White:

- 161 Raising the mill levy would require a successful vote at a TABOR election.

(g) Whether an economically feasible alternative service may be available; and

The testimony of Tara Hosick:

- 53 She signed Exhibit A (the Petition for Exclusion) under oath. As to number 10 on page 2 (indicating that alternative fire service would be available to the Mill from “another special district”), she can’t identify anything other than the overall County fire (which doesn’t exist).

(h) The additional cost to be levied on other property within the special district if the exclusion is granted.

The testimony of Brad White:

- 160 If mill is providing 50% of tax revenues, tax levy rate would have to be doubled if the Mill is excluded from the District. If it was 40%, mill levy would have to be raised by a corresponding amount.²
- 161 The Mill levy is currently 7.753.
- 161-162 The Gallagher Amendment has had a significant impact on revenue. As a result of the Gallagher Amendment, the District’s tax revenues in 2018 decreased despite a generally improving economy. The effect of Gallagher will be amplified if the Mill were excluded from the District. Exhibits R and S describes the issue with Gallagher and the problems it creates.

CONCLUSIONS OF THE BOARD

Based on the record provided from the hearing and admitted exhibits, the Board of Directors of the District have reached the conclusions stated below. These conclusions address each of the statutory factors to be analyzed under Section 32-1-501(3), C.R.S., in determining whether to grant or deny the exclusion of Climax’s property from the District.

² In a scenario in which the Mill represents 40% of the tax base, the increase on remaining taxpayers would have to be a levy rate increase of 66.67% to offset the lost taxes.

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As a preliminary matter, the Board finds that Climax’s witnesses consistently lacked credibility, as they both offered internally contradictory testimony. A sample of the contradictory positions espoused by Climax include:

- “we just don’t need the service...and if we had need of them we paid for that service” (i.e., Climax has needed and used the service, but wants to pay for it after the fact) (P 22)
- Stating that Climax values what firefighters do, but wanting to freeload on the service, equipment and training paid for by others.³
- Stating that safety is a top priority and that Climax values what the District does, but does not want to pay taxes for the District (again because it does not “need” the services) but yet Climax pays the Library District’s taxes without objection.
- Filing a Petition for Exclusion under oath indicating that another special district would provide service to the Mill and then testifying that no other special district has in fact been asked to provide such service. (P 51)
- Stating that Climax does not need to be in the District because it has the MERT, which is supposedly sufficient, but then indicating that its safety protocols require calling Grand County Dispatch for emergencies at the Mill which “exceed the capabilities of our MERT team”⁴. (P 22)

³ Mr. Ellis questioning Mr. Goertz:

“Q. I have a few followup [sic]. Has the mill ever had an emergency either before inclusion in 2016 or after inclusion in which you called an outside service provider, they answered and said we are not coming?

A. We have not had that occur.” P. 151, ll. 16-21.

Mr. Nathan questioning Mr. Goertz:

“Q. When you get first responders to come from entities that you are not paying tax to you are relying on their generosity and their human nature to come and help you out, right?

A. Yes.” P. 150, l. 22 – p. 151, l. 1.

⁴ Mr. Goertz: “As records showed earlier, we have our Summit dispatch and our Grand County dispatch through and all our expectations if we were to exceed the capabilities of our MERT team.” p. 108, ll. 9-12.

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- Indicating that the MERT is sufficient and self-contained and adequately trained, but then stating that external fire prevention inspections are needed, external assistance is regularly requested for emergency assistance, the MERT team members are exclusively certified in-house by Climax and MERT has no certified first responders.
- Indicating that Climax could in theory provide service to adjacent properties, but never has in the past.
- Testifying that the Mill has frequently called Grand County Dispatch for emergencies but does not know who Grand County dispatches to respond to the call, but also acknowledging that the District is the closest fire district and has answered many calls in the past.
- Indicating that the cost of the District's taxes is "another drop in the bucket" (p. 12) and acknowledging that Climax didn't even notice it had paid taxes to the District until three years after inclusion (p. 50) but that Climax needs to exclude from the District because the taxes adversely impact the Mill's profitability.
- Indicating that it is willing to help the District and the community with grants, but providing no evidence that any such grants have ever been awarded.

"If the MERT team assessed it [an emergency] was beyond their capabilities, yes, they would call out to either Summit or Grand County where available." P. 109, ll. 16-18.

"Again, any team that is responding needs to understand their limits. So depending on the size of the event they will of course reach out if they believe it's beyond their capabilities." P. 123, ll. 11-14.

See also, pp. 124-125.

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- Indicating that the District would be better off without the inclusion of Climax because the taxes are too high and would make the District too dependent upon Climax as a taxpayer.⁵
- Emphasizing the District’s ability to apply to Climax for grants to help the District serve the community, when all witnesses were in agreement that Climax has never granted the District such an award. (The witnesses disagreed about the number of applications the District had made.)
- Asserting that “it is in the best interests of this district to exclude Climax on a going forward basis so as to foreclose Climax from seeking a looking backward resolution and a claim of refund for taxes being paid” without explaining why the refund would be a *necessary* component of any future claim if exclusion is not granted by the Board and without providing any *assurance* that such relief would not be sought. In fact, Climax’s witness stated: “we could *potentially* let the district keep the taxes that have been paid if we are removed going forward” p. 30, ll. 6-8 (emphasis added).
- Providing promotional materials about its value as a community partner, and a payer of its fair share of taxes within Colorado, and the fact that such taxes have a double benefit to the local economies – while at the same time objecting to paying the District’s tax levy which is the second lowest among Grand County fire districts and saying that if excluded, Climax would rely on the “generosity” and

⁵ Tara Hosick: “In thinking of long term sustainability we teach all of our non-profits, all of our entities, all of our service providers to make sure you have diverse revenue sources so that as you go forward you really are sustainable and not depending on one entity. Because when we are not operating we are not paying taxes period. So that's in and of itself not a very sustainable model going forward.” P. 54, ll. 14-20.

Tara Hosick: “Well, I would say a fire department is a positive contribution but the way we engage is really more of a collaboration and a dialogue, rather than a mandate or a tax.”

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basic human decency of the regional fire districts (including the District) to respond to incidents at a property which is not paying taxes like everyone else in the vicinity.

(a)(I) The Best Interest of the Property be Excluded

Although Climax would frame this issue as a purely economic issue, the Board has decided that this factor also includes a considerable and important health, safety, and welfare component.

To begin first with the economics involved in this factor, Climax is a part of Freeport-McMoRan, a multi-billion dollar company. Evidence shows that the taxes to be paid by Climax in the future are diminishing based in significant part on Climax's success in having the County change the methodology used to determine the Mill's assessed valuation. Future taxes on the Mill payable to the District appear to be headed towards approximately \$100,000 per year. This amount is essentially a rounding error for Climax. Its lack of significance is illustrated by Climax's failure to even notice much higher taxes assessed on it due to its inclusion in the District until after several years of making annual payments on the higher tax assessments.

In exchange for these taxes, Climax admits that it currently receives significant services and benefits from the District (and could receive other benefits upon request). While Climax appears to believe that it should not be required to pay any taxes for these services, it is clear that the services represent a substantial value to Climax. These services include the cost of training and certification of MERT members by the District without compensation from Climax.

Climax is required to maintain the MERT to maintain its Mill operations under applicable federal laws; while the MERT provides services that other taxpayers do not have, that is simply because the Mill's operations create risks that other taxpayers do not create. The MERT is not a

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substitute for a fire district. As both of Climax's witnesses admitted, Climax has requested assistance from the District in the past and Climax expects to ask for assistance from the District "if needed" in the future. Services that could be provided include education, inspection and the issuance of citations for dangerous conditions of surrounding property. They include better fire insurance ratings which accrue to the benefit of property owners throughout the District, which logically includes Climax. And perhaps most importantly, they include the substantial resources the District and its mutual aid partners could devote to avoiding or minimizing a disaster that the Mill is ill equipped to handle.

Climax's proposal that it pay separately if and when it needs services is unworkable as described by Brad White and is not the way government and taxes work. For the District to be able to respond effectively to emergencies, including those that may occur at the Mill, it must collect taxes in advance to pay for equipment and training. A "pay as you go" model, as proposed by Climax, would render the District ineffective as a first responder service. That this model is proposed by the largest taxpayer in the community, and what appears to be the primary repeat user of the District's services, would moreover be patently unfair to the other District taxpayers.

Moreover, in the event of a major problem such as a fire that would require not only District services but mutual aid that the District can provide from other fire districts, such services could potentially result in the districts imposing charges on Climax totaling millions of dollars. This potential exposure could dwarf any taxes paid.

However, besides the economics of the matter, which nonetheless indicate that economically it is in the best interest of the property not to be excluded, there is a safety and community service component. Freeport-McMoRan, Climax's parent company, asserts in its

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official literature that the safety of its employees is its highest priority. Yet, the Mill's employees have to travel through the District to get to the Mill. Climax is ill prepared to assist in automobile accidents which can and do occur on mountain roads in difficult weather conditions. It is not Climax that responds to those accidents nor does its MERT have the equipment necessary to do things such as extricating vehicle occupants. This is a District responsibility. Even Climax's witnesses recognized that the District's services improve the safety of Climax's employees.

Additionally, Freeport-McMoRan, per Exhibit W, professes a commitment to community interests, a concept with which Climax agrees. Yet Climax's MERT is not prepared and apparently not available to provide services in the event that fires at the Mill spread to adjacent properties or in the event that fires on adjacent properties spread to the Mill.

Moreover, Freeport-McMoRan is a company with revenues of several billion dollars. Over the three years that Climax has paid taxes to the District, Freeport-McMoRan has paid its top four executives over \$100 million dollars. Freeport-McMoRan further boasted that it has invested \$2 billion in social programs and projects over the last 12 years. The amount of taxes paid by Climax to the District by comparison was described by Climax's own counsel as "another drop in the bucket". Even were Climax not to receive the numerous benefits it already receives and the assurances of aid in the event of a catastrophe, Climax's inclusion in the District provides, as noted above, a myriad of benefits.

It is also clear that the District has better and more useful equipment, as well as better trained personnel to handle a wider variety of incidents than the MERT.⁶ The District has the

⁶ Mr. Nathan questioning Mr. Goertz:

"Q. All right. Now is it your contention that the fire district has absolutely no value to Climax?

A. I think any response capability that is in the area is a benefit.

Q. Well, you have the ability of this fire district to respond in an emergency where you need it, correct?

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ability to handle off-site adjacent fires without the risk of liability because of its governmental immunity, a risk that Climax would have and apparently is not willing to undertake. As noted in the findings, the District provides not only service and protection to Climax, but to the community to which Climax professes a commitment.

Further, the testimony established that the Sugar Loaf fire – which was on property adjacent to Climax’s property – forced Climax to shut its mine operations down because the fire impaired air quality at the mine intakes, which imposed costs on Climax. And as Climax’s employee noted, the “entire county is a forest”⁷ meaning that the Mill is inherently at risk from fires that start offsite but which may threaten operations and structures onsite.

The Board finds that this factor favors denial of the petition.

(a)(II) The Best Interest of the Special District from which the Exclusion is Proposed

From a financial standpoint, the loss of tax revenue from Climax would drastically curtail the District’s ability to fund equipment and training that enable the District’s firefighters to protect the community – and to be safe themselves. The District provided evidence that it makes positive use of this tax money. The District has been able to perform capital improvements on its equipment and structures. The District has used some of the money received in taxes from Climax to increase water storage. The increase in water storage meets not just the suppression

A. Correct.

Q. You have the mutual aid that this district can put on a major fire by requesting that mutual aid which is required to be given?

A. Okay.

Q. All right. Those are values to the mine or the mill, correct?

A. If it is exceeding our capabilities, yes.” P. 137, ll. 6-20.

⁷ Mr. Nathan questioning Ms. Hosick:

“Q. Okay. There are houses next to the mill, correct?”

A. I wouldn't say next to but out in the valley.

Q. Near enough to be affected by a forest fire?

A. By a forest fire but the entire county is a forest.

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needs identified by the Chief, but also ISO requirements of fire flow. The District is considering additional capital projects which it could not do without tax revenue from the Mill.

Prior to Climax being included in the District, the District struggled for some time. Even if the District existed after the exclusion of Climax, it would look dramatically different. The District operates on an exceedingly lean budget, using the largest portions of its tax revenues for equipment and training, which directly translate into increasing safety for the District's personnel and constituents.

The pay as you go system suggested by Climax has been tried in other locales. This is not a model which would work in our community. A functioning fire district requires large advance investments to provide training and equipment needed to respond to fires and other emergencies. These advance investments are essential to ensure that the firefighters are able to provide first responder services that increases the public health, safety and welfare while at the same time minimizing the risk the health, safety and welfare to the first responders themselves. "Pay as you go" would leave the District unable to maintain the current level of equipment and training thereby decreasing the safety of District personnel and District constituents. Further, allowing the District's largest taxpayer and largest repeat user of services to benefit from "pay as you go" could reasonably encourage other taxpayers to request exclusion⁸ on the basis that the little guy should not be paying taxes to support Freeport-McMoRan's bottom line by a rounding amount.

In addition to providing any number of beneficial services to the community (including to Climax upon request), the District performs an important fail safe for Climax in the event of a drastic fire as has been seen not only in Colorado but across various areas of the country. The

⁸ Tara Hosick "I think the typical homeowner would say I don't know [sic] need them until I need them..." p. 28, l. 25 – p. 29, l. 2.

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District's mutual aid agreements increase protection of all taxpayers, because they multiply the number of aid providers in case of a disaster. The District's ability to enter these mutual aid agreements relies in part on the District's ability to provide mutual aid to other adjacent districts, which ability would be hampered by the exclusion of Climax and corresponding loss of tax revenue.

Climax asserts that it values what firefighters do. It recognizes the disasters that are occurring around the country from uncontrolled fires. To quote Climax: "I thank you guys for the work you do. It's important work. We couldn't do without it." Yet Climax proposes to do exactly that. The District's revenues are already being significantly reduced by the effect of the Gallagher amendment. The evidence is clear that the exclusion of Climax would exacerbate the effect of Gallagher on the District's revenues.

Climax asserts that it is in the best interest of the District to grant the exclusion because Climax will sue for improper inclusion and a refund of taxes paid if Climax is not granted exclusion now. As stated above, Climax offers no concrete assurance that such demand for a refund will not be made even if the pending exclusion is granted. The District believes it has good defenses to such a lawsuit. Further, Section 32-1-501(3), C.R.S., provides an exclusive list of the factors the Board may consider in granting or denying an exclusion petition, and the facts surrounding a property's inclusion are not one of those factors. Finally, a governmental entity that makes decisions by bowing to the pressure of threats of litigation will be operationally paralyzed because the courts are open to anyone who wants to file a lawsuit.

This factor favors denial of the petition.

(a)(III) The Best Interest of the County or Counties in which the Special District is located.

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Climax repeatedly acknowledged the value of fire fighters. The County has articulated a vested interest in trying to make sure that properties are included within fire districts to increase public safety and because wildland fire occurring outside fire districts are the County's responsibility.

Exhibit D is a clear indication of the County's policy and position on exclusion from the District without including into another district. The recommendations to attempt to eliminate the threat of wildland fires include promoting and encouraging the development of localized fire districts. It further includes increase areas for water storage, a project that the District is undertaking.

Although Climax claims that its MERT can handle many of the incidents that the District would handle, it is clear that it cannot do so and has in fact not handled them all by itself. It is further clear that the District is far better equipped to prevent a disastrous fire from spreading, destroying structures and forest land, than is MERT. Unlike the District, Climax has no mutual aid agreements.⁹ Climax's theory that it could obtain mutual aid based on the generosity and humanity of adjacent fire departments is speculative and unproven.

Climax's first witness stated that the entire County is a forest. Its second witness admitted that Climax did not have the wildland fire capabilities of the District or adjacent fire districts. The District's witness testified that the Mill was a repeat user of the District's services. There is a very real possibility that a fire could start at the Mill, exceed the capacity of the MERT and become an uncontrollable fire that threatens the County as a whole. The more robust the District's services, the more that risk is reduced and the more assistance the District can provide to adjacent districts under its mutual aid agreements. Exclusion of the Mill, however, would

⁹ Not only does Climax not have mutual aid agreements, it has never provided mutual aid and in fact has no method of communication for Grand County dispatch to call Climax to request the Mill's assistance.

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undermine the District's capabilities, thus increasing the risks to the health, safety and welfare of the County.

Moreover, why should other fire districts provide fire services to Climax, or any services to Climax, when Climax has opted out of its own District to avoid taxes. To the extent that Climax has offered to pay fire districts in the event that it needs them, Climax faces two problems. First, without sufficient ongoing revenue, the District may not be able to provide the response that something the size of the Mill may need. Second, Climax admits that the bill for such services could be in the millions of dollars. This would set up a future timely and costly legal battle if the District were to try to recoup ten, twenty, fifty or even more times the amount of tax revenue that Climax now pays for reimbursement for a single event.

This factor favors denial of the petition.

(b) The Relative Cost and Benefit to the Property be Excluded from the Provision of the Special District's Services.

This factor overlaps with factor (a)(I). Nonetheless, it is clear that Climax values other governmental services for which it pays taxes. Climax's witnesses acknowledged that the District's services are at least as valuable as the services of the Library District for which Climax is paying taxes *without protest* even though it cannot identify any benefit Climax receives from the Library District. In the event of a catastrophic fire or other emergency event, the Library District could not provide assistance to Climax or its employees.

Moreover, Climax admits it pays taxes to other districts in Grand County and elsewhere in Colorado. A fire district is at least as compelling and important as these other districts.

As previously noted, the cost and benefits to the property help protect the safety of what Climax purports to be its top priority: the safety of its employees. The District further provides

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positive contributions to society for the long term that Freeport-McMoRan indicates is part of its credo and that of its stakeholders. Climax acknowledged that a disastrous fire at the Mill could cost millions of dollars. Pursuant to Exhibit 6, the current actual value of improvements at the Mill (as determined by the County Assessor) is over \$76 million. A loss of 10% of the value of those improvements from a disaster, which would not include a loss of income which would be substantial, would be, at a \$100,000 per year, the same as 76 years of taxes Climax pays the District (or to put it another way, the expected annual tax bill approximately equals 0.13% of the County Assessor's valuation of the Mill's improvements). Even an offsite fire – which Climax and its MERT would not handle - could shut down Climax's operations, impacting the profitability of its operations as demonstrated by the Sugar Loaf fire in 2018.

Even Climax admits that the District makes a positive contribution to the community and to Climax. The cost in taxes to Climax is not significant compared to the billions of dollars made by Freeport-McMoRan. Nor is it significant given the compensation of Freeport's top executives or the two billion dollars in aid Freeport has supplied to local communities where it does business. Nor is it significant compared to the potential cost of lost productivity from an incident that might not even be on the Mill's property. Nor is it significant when compared to the cost of the Mill's \$79 million actual valuation. Nor is it significant when considering that the District, as the closest first responder to the Mill, may be the difference between life and death for Mill employees injured at the Mill or while traveling through the District to their work.

This factor favors denial of the petition.

(c) The ability of the special district to provide economical and sufficient service to both the property to be excluded and all the properties within the special district's boundaries.

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The District runs a very lean budget. The Board of Directors by law could receive compensation for meeting attendance, but does not. The Fire Chief and the two commanders receive small stipends. The District volunteers receive a pension. The District works very hard to keep its administrative services costs at a minimum.

The District can provide adequate service to the community. Brad White testified as to the excellent ISO rating in the District, and has indicated that he believes that the District can get hands on any fire in or near the Mill in approximately 20 minutes. There is no other District which can provide faster service. The District's Mutual Aid Agreements provide additional service in the event of a larger incident. The District has provided services whenever requested by or helpful to the Mill.

MERT is not a sufficient alternative to the District. It lacks the qualifications, training and equipment that the District has. MERT does not provide services to surrounding areas. MERT has no Mutual Aid Agreements and if excluded and the Mill requests assistance from first responders from the District and other entities, the Mill would be relying upon the generosity and humanity of the District and those other entities to assist. It is only natural for those entities to question the need for their assistance if the Mill has opted out of the District to the detriment of the entire community.

This factor favors denial of the petition.

(d) Whether the Special District supplied services at a reasonable cost compared with the cost that would be imposed by other entities in the surrounding area to provide similar services in the surrounding area or by the fire protection district or county fire improvement district that has agreed to include the property to be excluded from the special district.

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The conclusions here largely mirror the conclusions in the previous factor. Exhibit A, the Exclusion Petition, asserts that there are other fire protection districts that would be willing to assume the District's role. At the hearing the witness who signed the Petition admitted that assertion to be incorrect. The testimony at the hearing was that Climax could not identify any other independent provider of services other than the District. Climax's witnesses' initial identification of the overall "County Fire" was later admitted to be referring to an entity which does not exist. For the reasons heretofore stated, MERT is not a sufficient or viable alternative. For reasons other than whether Climax is in the District or not, it must maintain MERT but MERT cannot provide similar or equivocal services to the District.

To the extent that Climax were to actually have requested inclusion into another fire district, Brad White testified that the District's total mill levy is the second lowest among the five fire districts in Grand County. As demonstrated by Exhibit T, the District's mill levy of 7.753 mills is lower than both of the next two closest fire districts (after the District) in the County (Kremmling Fire Protection District at 9.543 mills and Grand Fire Protection District No. 1 at 8.927 mills). There is no County fire improvement district. Further, Climax is seeking exclusion from the District without having applied for inclusion into any other fire district.

The Board thus finds that the District's mill levy represents a reasonable cost compared with the cost that would be imposed by other entities in the surrounding area to provide similar services in the surrounding area and further finds that there is no other fire protection district or county fire improvement district that has agreed to include the Mill.

This factor favors denial of the petition.

(e) The effect of denying the Petition on Employment and Other Economic Conditions in the special district area and surrounding area.

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In Paragraph 11 of the Exclusion Petition, the Board notes that Climax asserted in writing, under oath, that there would be no such effect.¹⁰ In contrast, the tax money generated by the Mill is being used by the District in ways that improve economic conditions in the District's area. Brad White testified about the superior insurance rating which the District has obtained with its current level of service. Other positive impacts are created by the capital projects the District has done and plans to do which would favorably impact economic conditions.

Further, Climax's witnesses admitted that the District's services (including through its mutual aid agreements) helps protect the Mill – which employs 150 people in the County – from a fire.¹¹

Finally, the Board takes note that Freeport-McMoRan itself asserts (in Exhibit E, as supported by Climax's Manager of Community Relations) that for every \$1 spent by Climax, the State economy receives the benefit of \$2. It stands to reason that the majority of the taxes Climax pays the District generate a multiplier effect in the local and regional economy, as that is where the District spends most of its money (for example, for capital improvement projects). Freeport-McMoRan cannot have it both ways: if it wants to create publications that assert that for every \$1 it pays in taxes benefits the State economy by \$2, its affiliate Climax cannot assert that granting of the requested Exclusion Petition would have no economic impact whatsoever.¹² The Board expressly finds, based on Climax's own publications and reasoning, that granting the exclusion of the Mill (and the corresponding reduction of approximately \$173,618.49 of District tax revenue, per Climax's Exhibit 1, using 2019 values) would have a negative impact to the

¹⁰ "Neither granting nor denying the Petition will have any effect on employment and other conditions in the District and the surrounding area."

¹¹ Ms. Hosick: "we need to protect our facility because that facility is what keeps employed those 150 plus Grand County folks." P. 36, ll. 18-20.

¹² See the contradictory assertions of Climax, above.

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State economy of approximately \$346 thousand, which would primarily be felt in the District and the surrounding area.

This factor favors denial of the petition.

(f) The economic impact on the region and on the special district if the petition is denied.

The factors discussed above are also relevant to the findings here and that discussion is incorporated into this finding by reference. Without limiting the foregoing, those findings include:

- That the denial of exclusion would have no adverse impact. Finding (e).
- That granting of exclusion would have an adverse impact of twice the amount of taxes saved by Climax. Finding (e).
- That the granting of exclusion would dramatically impair the District's ability to provide services, thus creating greater risks to the community. Finding (b).

This factor favors denial of the petition.

(g) Whether an economically feasible alternative service may be available.

Although Climax affirmed under oath in Paragraph 10 of its Petition for Exclusion (Exhibit A) that "other special districts in the area...can provide similar service at a reasonable cost", Climax acknowledged at the hearing that it is not seeking alternative service from another district but, rather, asserts that its MERT is the economically feasible alternative service. However, the MERT does not have the training or equipment which the District can provide to the Mill and its employees, the MERT has not provided services outside of the Mill's boundaries (and would be constrained from doing so by concerns of incurring liability), the MERT is not prepared to deal with potential disasters without the assistance of the District and its Mutual Aid

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partners and the MERT is not sufficient for all incidents at the Mill, which has safety protocols that include calling Grand County Dispatch which in turn calls the District.

As noted above, paying individually for District services *after an incident* is not a viable alternative to Climax paying taxes *on an ongoing basis* that allow the District to provide the capital improvements, trained personnel and equipment that must be available for the District to have the *capabilities to respond to the incident* in the first place. Moreover, the cost to Climax in the event of the disaster that MERT is unable to contain would be tens or even hundreds of times the cost of taxes that Climax will pay.

This factor favors denial of the petition.

(h) The additional cost to be levied on other property within the special district if the exclusion is granted.

The additional cost to other properties in the District in the event Climax is excluded would be substantial. To provide the same level of services, taxes would have to increase an equivalent amount to the loss of Climax taxes, perhaps doubling.¹³ The increase in taxes would be compounded by the effect of the Gallagher Amendment.

This factor favors denial of the petition.

Decision of the Board

In brief summary, Climax has presented a Petition for Exclusion which is primarily based on three premises: (1) it should not have been included into the District in the first place, (2) exclusion is appropriate because Climax can protect its own property with the MERT and (3) Climax will sue the District for tax refunds if it is not allowed to exclude. Taking these in turn,

¹³ This assumes that the District is able to convince voters to increase their taxes at a TABOR election, which is itself a costly exercise with an unknown result. The Board believes that it would be difficult to convince the remaining taxpayers to double their own taxes precisely because the region's largest taxpayer has been relieved of the old, lower District tax levy. The Board is concerned that a likely result of granting exclusion of the Mill would be to encourage other taxpayers to petition for exclusion as well.

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first, the Board finds that the facts surrounding Climax's inclusion into the District are not within the scope of factors the Board is allowed to consider under Section 32-1-501(3), C.R.S. Second, Climax provided no credible evidence that the MERT is an adequate substitute for fire protection services through the District. Climax offered, at best, scant evidence about the amount, nature and quality of training it provides the MERT. Climax certifies the MERT personnel in house; they do not receive training from any state or federal agency; and Climax outsources inspection services to a contractor. Climax offered no information regarding training manuals, criteria, certifications, outside contractors' evaluations, etc. In contrast, Climax admitted that it regularly relies on outside agencies, including the District, as a matter of course to deal with situations that are too large or are outside of the scope of the MERT's capability and that, as to auto accidents in the District on the way to the Mill, Climax relies on the District. Third, again, the threat of litigation for tax refunds is not properly within the Special District Act criteria. Even if Climax had a strong argument, the Board does not want to reward Climax's threats as a matter of principle. The Board further believes that Climax does not have a strong argument on this issue. Ultimately, the Board is unpersuaded by all of these arguments.

The Board expressly finds that every statutory factor weighs against granting exclusion and thus finds that exclusion is inappropriate and Climax's petition is denied.