COLORADO DIVISION OF RECLAMATION, MINING AND SAFETY
MINERALS PROGRAM INSPECTION REPORT
PHONE: (303) 866-3567

The Division of Reclamation, Mining and Safety has conducted an inspection of the mining operation noted below. This report documents observations concerning compliance with the terms of the permit and applicable rules and regulations of the Mined Land Reclamation Board.

MINE NAME: Pickenpaugh Gravel Pit	**MINE/PROSPECTING ID#:** M-1978-078	**MINERAL:** Sand and gravel	**COUNTY:** Lincoln
INSPECTION TYPE: Preoperation Inspection	**INSPECTOR(S):** Amy Eschberger	**INSP. DATE:** October 2, 2014	**INSP. TIME:** 10:00
OPERATOR: Lincoln County	**OPERATOR REPRESENTATIVE:** John DeWitt and Monty Mattson	**TYPE OF OPERATION:** 110c - Construction Limited Impact	

REASON FOR INSPECTION: Preoperation Inspection	**BOND CALCULATION TYPE:** None	**BOND AMOUNT:** $0.00
DATE OF COMPLAINT: NA	**POST INSP. CONTACTS:** None	**JOINT INSP. AGENCY:** None
WEATHER: Clear	**INSPECTOR'S SIGNATURE:** Amy Eschberger	**SIGNATURE DATE:** October 7, 2014

GENERAL INSPECTION TOPICS

This list identifies the environmental and permit parameters inspected and gives a categorical evaluation of each. No problems or possible violations were noted during the inspection. The mine operation was found to be in full compliance with Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials and/or for Hard Rock, Metal and Designated Mining Operations. Any person engaged in any mining operation shall notify the office of any failure or imminent failure, as soon as reasonably practicable after such person has knowledge of such condition or of any impoundment, embankment, or slope that poses a reasonable potential for danger to any persons or property or to the environment; or any environmental protection facility designed to contain or control chemicals or waste which are acid or toxic-forming, as identified in the permit.

(AR) RECORDS---------- Y	**(FN) FINANCIAL WARRANTY-------- NA**	**(RD) ROADS---------- Y**
(HB) HYDROLOGIC BALANCE---------- Y	**(BG) BACKFILL & GRADING---------- Y**	**(EX) EXPLOSIVES--------- NA**
(PW) PROCESSING WASTE/TAILING---- Y	**(SF) PROCESSING FACILITIES------- NA**	**(TS) TOPSOIL---------- Y**
(MP) GENL MINE PLAN COMPLIANCE- Y	**(FW) FISH & WILDLIFE---------- N**	**(RV) REVEGETATION---- Y**
(SM) SIGNS AND MARKERS---------- Y	**(SP) STORM WATER MGT PLAN---- Y**	**(SB) COMPLETE INSP---- Y**
(ES) OVERBURDEN/DEV. WASTE--------- Y	**(SC) EROSION/SEDIMENTATION--- Y**	**(RS) RECL PLAN/COMP-- Y**
(AT) ACID OR TOXIC MATERIALS------- NA	**(OD) OFF-SITE DAMAGE---------- Y**	**(ST) STIPULATIONS------- NA**

Y = Inspected and found in compliance / N = Not inspected / NA = Not applicable to this operation / PB = Problem cited / PV = Possible violation cited

OBSERVATIONS

This was a pre-operation inspection of the Pickenpaugh Pit (Permit No. M-1978-078) conducted by Amy Eschberger of the Division of Reclamation, Mining, and Safety (Division) in response to a Conversion Application for a 112c Reclamation Permit (CN-01) that was submitted on August 11, 2014. John DeWitt and Monty Mattson represented the Operator, Lincoln County for the inspection. The site is located approximately 13 miles east of Rush, Colorado in Lincoln County, on land owned by Charles Brewer. The site is accessed via a gated entrance off of Co Rd 94. The site is approached approximately 0.65 mile down Co Rd 11.6. This is an intermittent operation, as of the Technical Revision (TR-04) approved on April 5, 2013. The post-mining land use is rangeland.

This is a 110c operation permitted for 8.6 acres to mine sand and gravel for road maintenance. Currently, only 6.11 acres have been disturbed, including a pit (Photo 1), a small product stockpile (Photo 2), a topsoil stockpile (Photo 3), and two haul roads. The conversion to a 112c permit will expand the permit area westward by 6.4 acres, giving a new permit area of 15 acres. Mining is to commence in a northwestern fashion, at depths of approximately 7-18 feet. No processing of mined material will occur on site. As only 3-4 inches of topsoil is present on site, additional topsoil may be imported for reclamation to achieve a minimum replacement depth of 6 inches. All overburden and topsoil stockpiles will be stabilized with vegetative cover.

At the time of inspection, it was clear, sunny, and cool, and the ground was dry. No mining activities were taking place during the inspection, and no equipment was present on site. A permit sign was posted at the gated entrance off of Co Rd 94 (Photo 4). An appropriate public notice sign was also posted at the entrance (Photo 5). Both the current permit boundary and the proposed 15-acre permit boundary were delineated with metal posts (Photos 6 and 7). Currently, all mined slope gradients are 3H:1V or flatter, and the stockpiles appear to be stable. The large gravel stockpile that was shown to be located on the pit floor in previously submitted maps has been removed from the site. Vegetation throughout the site consists of native grasses, a mixture of annual and perennial forbs, and some shrubs. A small grove of cottonwood trees is present in the southeastern portion of the site that was disturbed in early stages of the operation (Photo 8). No problems were observed with the growth of noxious weeds in the permit area.

Several small, low-lying berms were recently constructed upslope to help prevent stormwater runoff from entering the mining area and to help prevent erosion (Photo 9). Drainage from the affected area flows mainly northeastward toward an ephemeral creek (Photo 10). Small berms were constructed in the primary drainage path located northeast of the mining area (Photo 11) to help prevent stormwater runoff which enters the pit from discharging into the creek. According to Annual Reports submitted, these berms were constructed in May 2010. During the inspection, Mr. Mattson indicated the berms were recently repaired, with riprap added to the gully to help control headward erosion into the pit. In the conversion application, the Operator commits to continuing to monitor and maintain the berms as necessary. The Operator maintains a current Stormwater Discharge Permit for this site. The Water Management Plan for this site was modified in a Technical Revision (TR-01) approved on April 27, 2010.

An elongated topsoil stockpile approximately 300 feet long is present along the western edge of the current mining area (see Photo 3). During the inspection, Mr. Mattson indicated this topsoil stockpile will need to be relocated within the permit area so that mining can proceed westward. Rule 3.1.9(3) requires topsoil stockpiles to be stored in places and configurations to minimize erosion and located in areas where disturbance by ongoing mining operations will be minimized. The Division recommends the topsoil be stored on the perimeter of the mining area to help minimize disturbance, and that it be rehandled as little as possible until it is used for reclamation.

The conversion application stated that no permanent man-made structures are present within 200 feet of the proposed permit area. No existing structures were identified during the inspection.

The Division will approve the conversion application for this site. Enclosed with this report are comments the Division received in response to this application.

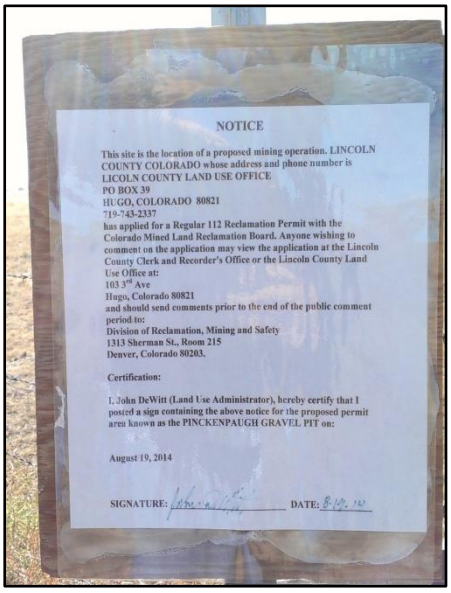
PHOTOGRAPHS

Photo 1. View looking southwest into pit located on western portion of current permit area.

Photo 2. View looking south from haul road, showing small material stockpile present in southeastern portion of permit area.

Photo 3. View looking north from haul road, showing topsoil stockpile stabilized with vegetative cover (indicated) located on western edge of current permit area.

Photo 4. View of permit sign posted at entrance to site off of Co Rd 94.



NOTICE

This site is the location of a proposed mining operation. LINCOLN COUNTY COLORADO whose address and phone number is
LICOLN COUNTY LAND USE OFFICE
PO BOX 39
HUGO, COLORADO 80821
719-743-2337
has applied for a Regular 112 Reclamation Permit with the Colorado Mined Land Reclamation Board. Anyone wishing to comment on the application may view the application at the Lincoln County Clerk and Recorder's Office or the Lincoln County Land Use Office at:
103 3rd Ave
Hugo, Colorado 80821
and should send comments prior to the end of the public comment period to:
Division of Reclamation, Mining and Safety
1313 Sherman St., Room 215
Denver, Colorado 80203.

Certification:

I, John DeWitt (Land Use Administrator), hereby certify that I posted a sign containing the above notice for the proposed permit area known as the PINCKENPAUGH GRAVEL PIT on:

August 19, 2014

SIGNATURE: _____ DATE: 8.19.14

Photo 5. View of public notice sign posted at entrance to site.

Photo 6. View looking southeast, showing metal post marking northwestern corner of current permit boundary.

Photo 7. View looking northeast, showing metal post (indicated) marking southwestern corner of proposed permit boundary.

Photo 8. View looking south from northern permit boundary, showing small grove of cottonwood trees present in early-mined southeastern portion of site.

Photo 9. View looking northeast from southern permit boundary, showing small, low-lying berms constructed along haul road.

Photo 10. View looking northeast, showing primary drainage path from current mining area.

Photo 11. View looking southeast, showing small berms constructed at head of gully that drains northeast toward an ephemeral creek.

Inspection Contact Address

John DeWitt
Lincoln County
P.O. Box 39
Hugo, CO 80821

Enclosure(s): Comments from State Historic Preservation Officer, received on 08/25/2014
Comments from Colorado Parks and Wildlife, received on 09/10/2014
Comments from Division of Water Resources, received on 09/22/2014
Comments from Department of the Army, received on 09/23/2014

CC: Tom Kaldenbach, DRMS

CN01

HISTORY Colorado

August 22, 2014

Amy Eschberger
Environmental Protection Specialist
Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203

Re: Notice of 110(c) to 112(c) Construction Materials Reclamation Permit Conversion Application Consideration Lincoln County, Pickenpaugh Gravel Pit Permit No. M-1978-078 (SHPO Project #66464)

Dear Ms. Eschberger:

Thank you for your correspondence dated August 19, 2014 (received by our office on August 21, 2014) regarding the subject project.

A search of the Colorado Cultural Resource Inventory database indicated that no cultural resource inventories have taken place in the vicinity of the proposed project area and no historic properties have been recorded within the subject property. However, our files contain incomplete information for this area, as most of Colorado has not been inventoried for cultural resources. As a result, there is the possibility that as yet unidentified cultural resources exist within the proposed project area.

Should human remains be discovered during the proposed project activities, the requirements under State law C.R.S. 24-80 (part 13) apply and must be followed.

Thank you for the opportunity to comment. If we may be of further assistance, please contact Todd McMahon, Staff Archaeologist at (303) 866-4607/todd.mcmahon@state.co.us or Dan Corson, Intergovernmental Services Director at (303) 866-2673/ dan.corson@state.co.us.

Sincerely,

Edward C. Nichols
State Historic Preservation Officer
ECN/TCM

COLORADO
Parks and Wildlife
Department of Natural Resources

Southeast Region
4255 Sinton Road
Colorado Springs, CO 80907
P 719.227.5200 | F 719.227.5223

September 4, 2014

Division of Reclamation, Mining and Safety
Department of Natural Resources
Ms Amy Eschberger
1313 Sherman Street, Room 215
Denver, CO 80203

RE: Pickenpaugh Gravel Pit, Permit M-1978-078

Dear Ms Eschberger:

The Colorado Parks and Wildlife is in receipt of the above referenced permit application and is familiar with the site. Based both on the location and type of action being proposed the Division believes impacts to the wildlife resource to be negligible. We appreciate being given the opportunity to comment. Please feel free to contact Warren Cummings at 719.775.2025 or warren.cummings@state.co.us should you have any questions or require additional information.

Sincerely,

Frank McGee
Area Wildlife Manager

Cc: SE Region Files
Area 14 Files
W. Cummings, DWM

DEPARTMENT OF NATURAL RESOURCES

CN01

DIVISION OF WATER RESOURCES

John W. Hickenlooper
Governor

Mike King
Executive Director

Dick Wolfe, P.E.
Director/State Engineer

Response to Reclamation Permit Conversion Application Consideration

DATE: September 19, 2014

TO: Amy Eschberger, Environmental Protection Specialist

CC: Division 2 Office; District 17 Water Commissioner

FROM: Caleb Foy, E.I.T. CRF

RE: Pickenpaugh Gravel Pit, File No. M-1978-078
Operator: Lincoln County
Contact: John Dewitt, (719) 743-2337
Sec. 14, Twp. 14S, Rng. 58W, 6th P.M., Lincoln County

CONDITIONS FOR APPROVAL

☒ The proposed operation does not anticipate exposing groundwater. Therefore, exposure of ground water must not occur during or after mining operations. If stormwater is contained on-site, it must infiltrate into the ground or be released to the natural stream system within 72 hours, or all work must cease until a substitute water supply plan, or augmentation plan approved by water court, is obtained. Reclamation plans must ensure water will not be retained onsite for more than 72 hours unless an augmentation plan approved by water court is obtained.

COMMENTS: According to the application, water will not be used in conjunction with the mining operation.

DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
200 SOUTH SANTA FE AVENUE, SUITE 301
PUEBLO, COLORADO 81003-4270

REPLY TO
ATTENTION OF

September 19, 2014

Regulatory Division

SUBJECT: No Permit Required – Action No. SPA-2014-00413-SCO, Pickenpaugh Gravel Pit (M-1978-078), Lincoln County, Colorado

Ms. Amy Eschberger
State of Colorado Division of Reclamation, Mining and Safety
Department of Natural Resources
1313 Sherman St., Room 215
Denver, CO 80203

Dear Ms. Eschberger:

I am writing this letter in response to your request for a determination of Department of the Army permit requirements for the proposed Pickenpaugh Gravel Pit Project, located at approximately latitude 38.83001, longitude -103.85281, in Lincoln County, Colorado. The applicant plans to expand the existing gravel pit to include an additional 6.4 acres on the Northwest border. We have assigned Action No. SPA-2014-00413-SCO to this project. Please reference this number in all future correspondence concerning the project.

Based on the information provided, we have determined that a Department of the Army permit is not required since the project would not result in the discharge of dredged/fill material into waters of the United States. However, it is incumbent upon the applicant to remain informed of any changes in the Corps Regulatory Program regulations and policy as they relate to this project. If plans change such that waters of the U.S. could be impacted by the proposed project, the applicant should contact our office for a reevaluation of permit requirements.

This decision is based on an approved jurisdictional determination (JD) (attached) that there are no waters of the United States on the project site. The basis for this JD is that the project site contains entirely uplands. A copy of this JD is also available at http://www.spa.usace.army.mil/reg/JD. This approved JD is valid for five years unless new information warrants revision of the determination before the expiration date.

The applicant may accept or appeal this approved JD or provide new information in accordance with the attached Notification of Administration Appeal Options and Process and Request for Appeal (NAAOP-RFA). If the applicant elects to appeal this approved JD, they must complete Section II of the form and return it to the Army Engineer Division, South Pacific, CESPD-PDS-O, Attn: Tom Cavanaugh, Administrative Appeal Review Officer, 1455 Market Street, Room 1760, San Francisco, CA 94103-1399 within 60 days of the date of this notice. Failure to notify the Corps within 60 days of the date of this notice means that the applicant accepts the approved JD in its entirety and waives all rights to appeal the approved JD.

If you have any questions concerning our regulatory program, please contact me at 719-543-8102 or by e-mail at Christopher.M.Grosso@usace.army.mil. At your convenience, please complete a Customer Service Survey on-line available at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

Sincerely,

Christopher Grosso
Regulatory Project Manager

Enclosure(s)

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 18, 2014

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Albuquerque District, Pickenpaugh Gravel Pit, Lincoln County, Colorado, SPA-2014-00413-SCO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: **Colorado** County/parish/borough: **Lincoln** City:
Center coordinates of site (lat/long in degree decimal format): Lat. **38.83001°**, Long. **-103.85281°**
Universal Transverse Mercator: **13 599575.89 4298537.98**
Name of nearest waterbody: **Horse Creek**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Arkansas River**
Name of watershed or Hydrologic Unit Code (HUC): **Horse. Colorado., 11020008**
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form:

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: **September 18, 2014**
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are no** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: linear feet, wide, and/or acres.
      Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Pick List**
      Elevation of established OHWM (if known):

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain:

SECTION III: CWA ANALYSIS

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW:

   Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) General Area Conditions:
   Watershed size: **Pick List**
   Drainage area: **Pick List**
   Average annual rainfall: inches
   Average annual snowfall: inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☐ Tributary flows through **Pick List** tributaries before entering TNW.

   Project waters are **Pick List** river miles from TNW.
   Project waters are **Pick List** river miles from RPW.
   Project waters are **Pick List** aerial (straight) miles from TNW.
   Project waters are **Pick List** aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain:

   Identify flow route to TNW[5]:
   Tributary stream order, if known:

   (b) General Tributary Characteristics (check all that apply):

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain:
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List.**

Primary tributary substrate composition (check all that apply):
☐ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime:
Other information on duration and volume:

Surface flow is: **Pick List**. Characteristics:

Subsurface flow: **Pick List**. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):
☐ clear, natural line impressed on the bank ☐ the presence of litter and debris
☐ changes in the character of soil ☐ destruction of terrestrial vegetation
☐ shelving ☐ the presence of wrack line
☐ vegetation matted down, bent, or absent ☐ sediment sorting
☐ leaf litter disturbed or washed away ☐ scour
☐ sediment deposition ☐ multiple observed or predicted flow events
☐ water staining ☐ abrupt change in plant community
☐ other (list):
☐ Discontinuous OHWM.[7] Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☐ High Tide Line indicated by: ☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects ☐ survey to available datum;
☐ fine shell or debris deposits (foreshore) ☐ physical markings;
☐ physical markings/characteristics ☐ vegetation lines/changes in vegetation types.
☐ tidal gauges
☐ other (list):

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain:
Identify specific pollutants, if known:

(iv) Biological Characteristics. Channel supports (check all that apply):
☐ Riparian corridor. Characteristics (type, average width):
☐ Wetland fringe. Characteristics:
☐ Habitat for:
☐ Federally Listed species. Explain findings:

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

☐ Fish/spawn areas. Explain findings:
☐ Other environmentally-sensitive species. Explain findings:
☐ Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
Wetland size: acres
Wetland type. Explain:
Wetland quality. Explain:
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain:

Surface flow is: **Pick List**
Characteristics:

Subsurface flow: **Pick List**. Explain findings:
☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:
☐ Directly abutting
☐ Not directly abutting
☐ Discrete wetland hydrologic connection. Explain:
☐ Ecological connection. Explain:
☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List**.
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian buffer. Characteristics (type, average width):
☐ Vegetation type/percent cover. Explain:
☐ Habitat for:
☐ Federally Listed species. Explain findings:
☐ Fish/spawn areas. Explain findings:
☐ Other environmentally-sensitive species. Explain findings:
☐ Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**
Approximately acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet, wide, Or acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet wide.
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters:

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☐ Tributary waters: linear feet, wide.
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters:

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

[8]See Footnote # 3.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands. have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.**[9]
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain:
☐ Other factors. Explain:

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet, wide.
☐ Other non-wetland waters: acres.
Identify type(s) of waters:
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
☐ Other: (explain, if not covered above):

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[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet, wide.
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource:
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

☐ Non-wetland waters (i.e., rivers, streams): linear feet, wide.
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource:
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. **SUPPORTING DATA. Data reviewed for JD (check all that apply** - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **State of Colorado Division of Reclamation, Mining and Safety provided on August 22, 2014**
☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  ☐ Office concurs with data sheets/delineation report.
  ☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps:
☐ Corps navigable waters' study:
☒ U.S. Geological Survey Hydrologic Atlas: **11020008; Horse, Colorado**
  ☐ USGS NHD data.
  ☒ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; CO-KUTCH SE**
☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
☒ National wetlands inventory map(s). Cite name: **1:24K; CO-KUTCH SE**
☐ State/Local wetland inventory map(s):
☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): **Google Earth Pro 2013, ESRI Aerial 2013**
  or ☐ Other (Name & Date):
☐ Previous determination(s). File no. and date of response letter:
☐ Applicable/supporting case law:
☐ Applicable/supporting scientific literature:
☒ Other information (please specify): **USFWS Critical Habitat Mapper 2013**

B. **ADDITIONAL COMMENTS TO SUPPORT JD:**

Project site occurs entirely on uplands

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: John Dewitt, Lincoln County	File Number: 2014-00413	Date: 9/18/2014
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cwreg/ or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the DISTRICT ENGINEER for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the DISTRICT ENGINEER within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the DISTRICT ENGINEER will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the DISTRICT ENGINEER will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the DISTRICT ENGINEER for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the DIVISION (not district) ENGINEER (address on reverse). This form must be received by the DIVISION ENGINEER within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the DIVISION (not district) ENGINEER. This form must be received by the DIVISION (not district) ENGINEER within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the DIVISION (not district) ENGINEER (address on reverse). This form must be received by the DIVISION ENGINEER within 60 days of the date of this notice. Exception: JD appeals based on new information must be submitted to the DISTRICT ENGINEER within 60 days of the date of this notice.

EXCEPTION: Appeals of Approved Jurisdictional Determinations based on new information must be submitted to the District engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact: DISTRICT ENGINEER Albuquerque District, Corps of Engineers Attn: CESPA-RD, Regulatory Division 4101 Jefferson Plaza NE Albuquerque, New Mexico 87109-3435 505-342-3282	If you only have questions regarding the appeal process you may also contact: DIVISION ENGINEER Army Engineer Division, South Pacific, CESPD-PDS-O, 2042B Attn: Tom Cavanaugh, Administrative Appeal Review Officer 1455 Market Street, Room 1760 San Francisco, CA 94103-1399 Phone: 415-503-6574, Fax: 415-503-6646 Thomas.j.cavanaugh@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number: