



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources
1313 Sherman Street, Room 215
Denver, Colorado 80203

February 6, 2015

Andy Kagan
Kagan and Son, L.L.C.
555 Ernest Avenue
Westcliffe CO, 81252

Ken Klco
Anzurite, Inc.
P.O. Box 338
Cotopaxi CO, 81223

**Re: Kagan and Sons South Pit, DRMS Permit No. M-1994-114,
Reclamation Permit Conversion Application No. 1 (CN-01),
Preliminary Adequacy Review**

Dear Mr. Kagan and Mr. Klco:

The Division of Reclamation, Mining, and Safety (Division) has completed its preliminary adequacy review of your Reclamation Permit Conversion Application No. 1 (CN-01). CN-01 was called complete for review on December 22, 2014. Please be advised that if you are unable to satisfactorily address any concerns identified in this review before the decision date, it will be your responsibility to request an extension of the review period. If there are outstanding issues that have not been adequately addressed prior to the end of the review period, and no extension has been requested, the Division will deny CN-01. In order to allow the Division adequate time to review your responses to any adequacy issues, please submit your adequacy responses to the Division no later than one week prior to the decision date (March 23, 2015).

This review consisted of comparing the application with specific requirements of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Rules). In general, the application was adequate; however, as with most applications there are a few items that will require the submittal of additional information or clarification of the existing information. Inadequacies are identified under the respective exhibits, along with suggested actions to correct them.

APPLICATION FORM:

- 1) Please re-submit all portions of the conversion application where the Operator provided the company name, the conversion application will need to be filed with the company name spelled exactly the same as the entity is registered with the Secretary of State. For example on page, 8 of the application the Applicant/Operator submitted the application with the "Applicant/Operator or Company Name" as "Kagan & Son, LLC". However, after checking the registration with the



Secretary of State the entity's name is registered as "KAGAN & SON, L.L.C." (Please see the enclosed registration with the secretary of state).

EXHIBIT A - Legal Description (Rule 6.4.1):

- 2) The legal description submitted for this Exhibit describes a parcel of land encompassing 32.9 acres; however, the conversion application form, item 3.2 lists the "total acreage in the permit area" as 33 acres. Please explain or clarify this apparent discrepancy in acreage.

EXHIBIT C - Pre-mining and Mining Plan Map(s) of Affected Lands (Rule 6.4.3):

- 3) Please clarify what is defined by the term "permit/bonded boundary" used on the cross section of the privacy berm. It is DRMS's understanding that the privacy berm sits inside of the new permit boundary proposed in CN-01.
- 4) Please illustrate the existing topography of the entire permit area with contour lines sufficient to, portray the direction and rate of slope of the affected lands.
- 5) The text in the mining plan describes a maximum 10-foot setback from the southern permit boundary and the toe of the privacy berm. Please identify the 10-foot setback on the cross section design of the privacy berm.
- 6) Please label on one or all of the Pre-mining and Mining Plan Map(s), the type of present vegetation covering the affected lands.
- 7) Please have the pre-mining and mining plan map(s) signed by a registered land surveyor, professional engineer, or other qualified person as required by Rule 6.2.1(2)(b).

EXHIBIT D - Mining Plan (Rule 6.4.4):

- 8) Please specify if explosives will be used in conjunction with the mining or reclamation operations.
- 9) What is the maximum anticipated mining depth?

EXHIBIT E - Reclamation Plan (Rule 6.4.5):

- 10) The current approved post-mining land use is Rangeland. In CN-01, the Applicant/Operator indicated that the post-mining land use would be residential. Please explain the reasoning for changing the post-mining land use. How is this parcel of land currently zoned with Custer County?
- 11) Please explain how the privacy berm along the southern portion of the permit boundary will support the post-mining beneficial land use of residential?

- 12) Please provide a comparison of the proposed post-mining land use to other land uses in the vicinity, and to the adopted state and local land use plans and programs.

EXHIBIT F - Reclamation Plan Map (Rule 6.4.6):

- 13) Please provide a Reclamation Plan Map(s) that illustrates how all of the affected land will be reclaimed. DRMS believes that the map submitted in CN-01 does not provide enough detail to describe the expected physical appearance of the area of the affected land. The map must show proposed final topography of the area with contour lines of sufficient detail to portray the direction and rate of slope of all reclaimed lands. Please provide a reclamation plan map with more detailed contour lines. The Division would recommend at a maximum a 5-foot contour interval.
- 14) Please have the pre-mining and mining plan map(s) signed by a registered land surveyor, professional engineer, or other qualified person as required by Rule 6.2.1(2)(b).

EXHIBIT O - Owner(s) of Record of Affected Land (Surface Area) and Owners of Substance to be Mined (Rule 6.4.15):

- 15) Please submit a complete list of all owners of record of the surface and mineral rights of the affected land; and the owners of record of all land surface within 200 feet of the boundary of the affected lands. It is DRMS's understanding that some or all of the Mineral Rights are owned by the Bureau of Land Management. Please clarify in your submittal the owner(s) of mineral rights of the proposed affected land.

EXHIBIT R - Proof of Filing with County Clerk and Recorder (Rule 6.4.18):

- 16) The submittal for this exhibit did not demonstrate that a copy of the CN-01 application was placed with the local County Clerk and Recorder for public review, as required by Rule 1.6.2(1)(c). Please submit an affidavit or receipt indicating the date on which the application was placed with the local County Clerk and Recorder for public review, as required by Rule 1.6.2(1)(c).
- 17) Please note that any changes or additions to the application on file in our office must also be reflected in the public review copy, which was placed with the Adams County Clerk and Recorder.

EXHIBIT S - Permanent Man-Made Structures (Rule 6.4.19):

- 18) Please demonstrate that the Applicant/Operator has attempted to obtain structure agreements with the owner(s) of any permanent man-made structure located within 200 feet of the proposed affected lands. In DRMS's, file review it appears that the proposed affected lands will be within 200 feet of county road 305, and the small structure owned by the Fredrickson's. There may be other structures located within 200 feet of the affected land such as fences or power lines, and ect. In accordance with Rule 6.4.19, when mining operations will adversely affect the stability of any significant, valuable and permanent man-made structure located within 200 feet of the affected area, the Applicant/Operator may either:

- a. Provide a notarized agreement between the applicant and the person(s) having an interest in the structure, that the applicant is to provide compensation for any damage to the structure; or
- b. Where such an agreement cannot be reached, the applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or
- c. Where such structure is a utility, the Applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have "no negative effect" on their utility.
- d. Please provide evidence (such as proof of delivery of certified letter to structure owners) that a notarized agreement between the structure owners and the applicant was pursued. If an agreement is unable to be reached a geotechnical assessment may be provided to demonstrate that the structures shall not be damaged.

You must provide information sufficient to demonstrate that the stability of any structures located within two hundred (200) feet of the operation or affected land will not be adversely affected.

General Questions and Comments

- 19) Please provide proof of publication in the local newspaper as required by Rule 1.6.5. Proof of publication may consist of either a copy of the last newspaper publication that includes the date published, or a notarized statement from the paper.
- 20) Please provide proof of mailing or serving all owners of record of the surface and mineral rights of the affected land; and the owners of record of all land surface within 200 feet of the boundary of the affected lands, as required by Rule 1.6.2(1)(e).
- 21) Please address the attached comment from the State Historic Preservation Officer.
- 22) Please address the attached comments from the Bureau of Land Management.
- 23) Please address the attached comments from the Colorado Parks and Wildlife.

This concludes the Division's preliminary adequacy review of this application. This letter shall not be construed to mean that there are no other technical deficiencies in your application. Other issues may arise as additional information is supplied. The decision date for this conversion application is March 23, 2015. As previously mentioned, if you are unable to provide satisfactory responses to any inadequacies prior to this date, it will be your responsibility to request an extension of time to allow for continued review of this application. If there are still unresolved issues when the decision date arrives and no extension has been requested, the application will be denied.

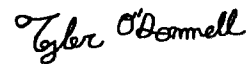
Kagan & Son, L.L.C.

February 6, 2015

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If you need additional information please contact me at the Division of Reclamation, Mining and Safety, 1313 Sherman St., Room 215, Denver, CO 80203, by telephone at 303-866-3567, extension 8131, or by email at Tyler.ODonnell@state.co.us.

Sincerely,

A handwritten signature in black ink that reads "Tyler O'Donnell". The signature is written in a cursive, slightly slanted style.

Tyler O'Donnell

Environmental Protection Specialist

Enclosures: Secretary of State Registration

Comment from the State Historic Preservation Officer

Comments from the Bureau of Land Management

Comments from the Colorado Parks and Wildlife

cc: Tom Kaldenbach, DRMS



Colorado
Secretary of State
Wayne W. Williams



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FAQs, Glossary and Information

Summary

Details			
Name	KAGAN & SON, L.L.C.		
Status	Good Standing	Formation date	03/28/2003
ID number	20031098625	Form	Limited Liability Company
Periodic report month	March	Jurisdiction	Colorado
		Term of duration	Perpetual
Principal office street address	555 ERNEST AVE, WESTCLIFFE, CO 81252 , United States		
Principal office mailing address	n/a		

Registered Agent	
Name	REBECCA KAGAN
Street address	555 ERNEST AVE, WESTCLIFFE, CO 81252, United States
Mailing address	n/a

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December 30, 2014

Tyler V. O'Donnell
Environmental Protection Specialist
Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203

RECEIVED

JAN 02 2015

**DIVISION OF RECLAMATION
MINING AND SAFETY**

Re: Notice of 110(c) to 112(c) Construction Materials Reclamation Permit Conversion Application Consideration - Kagan & Son South Pit, Permit No. M-1994-114 (SHPO Project #67178)

Dear Mr. O'Donnell:

Thank you for your correspondence dated December 22, 2014 (received by our office on December 26, 2014) regarding the subject project.

A search of the Colorado Cultural Resource Inventory database indicated that no historic properties have been recorded within the subject property. One previous survey, (CR.CH.NR1) did cover a portion of the permit area.

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,

A handwritten signature in blue ink, appearing to read "E. Nichols".

Edward C. Nichols
State Historic Preservation Officer
ECN/TCM



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Royal Gorge Field Office
3028 East Main Street
Cañon City, Colorado 81212



CNØ1

In Reply Refer To:
1330 (COF02000, SSC)

• M-1994-114

JAN 15 2015

"COMMENTS"

RECEIVED

JAN 21 2015

DIVISION OF RECLAMATION
MINING AND SAFETY

Mr. Tyler O'Donnell
CO Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203

Dear Mr. O'Donnell:

BLM recently received notification from the Colorado Division of Reclamation, Mining and Safety regarding a 110 (c) to 112(c) Construction Materials Reclamation Permit Conversion Application for the Kagan & Son, L.L.C. South Pit (M-1194-114).

Please be advised that the mineral estate comprising a majority of the Phase 3 proposal is federally owned. This mineral estate was reserved through Patent #847737 (enclosure), which was issued by the Federal Government in 1922 under authority of the December 29, 1916 Homestead Entry-Stock Raising (39 Stat. 862). The mineral reservation states the following, "Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitations of the Act of December 29, 1916 (39 Stat., 862)."

Except when authorized by sale, permit, or other authorized use under the laws and regulations of the BLM, the extraction, severance, or removal of federal mineral materials under the jurisdiction of the BLM constitutes unauthorized use.

It is BLM's policy to make mineral materials available in accordance with applicable laws and regulations. Therefore, the operator needs to provide a written request to BLM, in order to obtain these minerals.

Sincerely,

Keith E. Berger
Field Manager
Royal Gorge Field Office

Enclosure(s)

cc: Patent 847737

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at Pueblo, Colorado,

has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862,

"To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Archie D. Hess

has been established and duly consummated, in conformity to law, for the Lot one, the southeast quarter of the northeast quarter, the east half of the southeast quarter and the southwest quarter of the southwest quarter of Section five, the southeast quarter of the southeast quarter of Section six and the north half of the northeast quarter of Section eight in Township twenty-four south of Range seventy-one west of the Sixth Principal Meridian, Colorado, containing three hundred fourteen and thirty-three-hundredths acres,

according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor-General:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of Land above described; TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States. Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitations of the Act of December 29, 1916 (39 Stat., 862).

IN TESTIMONY WHEREOF, I, Warren G. Harding,

President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the SEVENTH

(SEAL)

day of FEBRUARY In the year of our Lord one thousand nine hundred and TWENTY-TWO and of the Independence of the United States the one hundred and FORTY-SIXTH.

By the President: *Warren G. Harding*
By *Viola G. High*, Secretary.

W. P. Le Roy
Recorder of the General Land Office.

tod

M-1994-114

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COLORADO *fr*
Parks and Wildlife

Department of Natural Resources

Pueblo Service Center - Area 11
600 Reservoir Road
Pueblo, CO 81005
P 719.561.5300 | F 719.561.5321

RECEIVED

JAN 26 2015

to DIVISION OF RECLAMATION
MINING AND SAFETY

December 1, 2014

✓ "Comments"

Colorado Division of Parks and Wildlife
Pueblo Service Center
600 Reservoir Road
Pueblo, CO 81005

Mr. Kenneth S. Klco
Azurite Inc.
PO Box 338
Cotopaxi, CO 81223

RE: Kagan and Son LLC., South Pit Lot 40

Dear Mr. Klco:

Recently the Colorado Division of Parks and Wildlife received a request for written comments concerning a proposed aggregate, road base, and fill extraction pit permit in Custer County. This permit is known as the South Pit, Lot 40 and operated by Kagan and Sons LLC. This request was forwarded to District Wildlife Manager Justin Krall for site inspection.

DWM Krall was able to inspect the affected area, about twelve and a half miles southeast of Westcliffe, to assess the impacts on wildlife that this proposed action may have. Wildlife species that may be commonly found on the site and surrounding areas are mule deer, pronghorn, western rattlesnake, bullsnake, and various bird species. There were no Gunnison's prairie dogs found on the site or other threatened or endangered species. The area can best be categorized as high elevation upland range consisting of both cool and warm season native grasses predominantly blue grama. There are also several native shrub species present such as currant and rabbitbrush.

Disturbance to the habitat is likely to occur due to the proposed action; however this disturbance can be minimized if some recommendations are followed.

- Care should be taken in the design and construction of access roads to the site to minimize erosion, taking into account proper drainage and sloping of road cuts. Slopes should be seeded with a native seed mix and monitored for successful vegetation establishment.




- A stockpile of topsoil should be set aside for reclamation purposes. This stockpile should also be temporarily seeded to minimize erosion losses, and then spread over the affected area prior to seeding with native grasses, forbs, and shrubs.
- It is recommended that livestock be excluded from the site until such time as the site is released and the bond returned.
- A noxious weed plan should also be developed and implemented to eliminate the establishment of invasive noxious weeds throughout the mining period.
- It is recommended that any fence construction follow wildlife friendly fencing specifications which can be provided upon request.
- The 100' buffer from the riparian habitat should be sufficient.
- Contact NRCS for an appropriate seed mix that contains native species of grasses and forbs for any erosion control or reclamation.

Although disturbance to the habitat is likely, the overall impact to wildlife species should be concentrated to a limited area, and can be further reduced if the previous recommendations are followed.

The Colorado Division of Parks and Wildlife would like to thank you for the opportunity to comment on this issue. If you have any questions, do not hesitate to contact me or DWM Justin Krall at 719-371-2240.

Sincerely,



Mike Trujillo
Area Wildlife Manager
Colorado Parks and Wildlife
719-561-5300