



COLORADO

**Division of Reclamation,
Mining and Safety**

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

October 29, 2015

Notice to Parties and Interested Persons

RE: Rational for Recommendation to Approve a 112c Application with Objections; Dollerschell Pit; Permit No. M-1986-074

Dear Party and/or Interested Person,

On October 23, 2015, the Division of Reclamation, Mining and Safety (Division) sent you a notice of its recommendation to approve the 110c to 112c Conversion Application for the Dollerschell Pit, File No. M-1986-074, submitted by Kym A. Schure. Attached is the Division's rationale for the recommendation.

If you need additional information or have any questions, please contact me at Division of Reclamation, Mining and Safety, 1313 Sherman Street, Room 215, Denver, CO 80203, by telephone at **303-866-3567 x8132**, or by email at elliott.russell@state.co.us.

Sincerely,

Elliott R. Russell
Environmental Protection Specialist

Attachment: CERTIFICATE OF SERVICE

Enclosure: Rational for Recommendation



CERTIFICATE OF SERVICE

I, Elliott Russell, hereby certify that on this 29th day of October, 2015, I deposited a true copy of the foregoing **RE: Rational for Recommendation to Approve a 112c Application with Objections; Dollerschell Pit; Permit No. M-1986-074**, in the United States Mail, postage paid, addressed to the following:

Greg and Jill Yocom
14507 Shelbe Lane
Sterling, CO 80751


Thomas J. Bledsoe
5213 Brianna Court
Cheyenne, WY 82009

Darrell and Shirley Smith
14509 Shelbe Lane
Sterling, CO 80751

Kym A. Schure; Operator
12826 County Road 37
Sterling, CO 80751

Randy Schafer; Consultant
40586 County Road 21
Haxtun, CO 80731

ec w/enclosure: Bruce Stover; Pre-hearing Conference Officer
 John Roberts; AGO for MLRB
 Jeff Fugate; AGO for DRMS
 Wally Erickson, DRMS
 Tony Waldron; DRMS



Signature



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Division of Reclamation,
Mining and Safety

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

Date: October 29, 2015

RE: Rationale for Recommendation to Approve a 110c to 112c Conversion Application (CN-01) with Objections; Kym A. Schure; Dollerschell Pit; DRMS File No. M-1986-074

Introduction

Herein, all references to the Act and Rules refer to the Colorado Land Reclamation Act for the Extraction of Construction Materials, 34-32.5-101 et seq., C.R.S. (the Act), and to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the Rules or Rule). Copy of the Act and Rules are available through the Division's web site at www.mining.state.co.us.

On October 23, 2015, the Division of Reclamation, Mining and Safety (the Division or Office) issued its recommendation to approve the 110c to 112c conversion application (CN-01) for the Dollerschell Pit, File No. M-1986-074, over public objections. This document is intended to explain the process by which the Division arrived at its recommendation to approve, over public objections, and respond to the issues raised by the objecting parties. The Division reserves the right to further supplement, amend, modify, or clarify this document and recommendation with additional details as necessary.

Summary of the Review Process

Kym A. Schure (the Applicant) filed CN-01 with the Division on March 23, 2015. The application described a construction materials mining operation with sand and gravel as primary commodities mined. The expanded permit encompasses 32 acres, an increase of 22.1 acres from the original 9.9 acre 110c permit. Affected lands would be reclaimed to support a post-mining land use of pastureland. Notice of the filing occurred in accordance with the requirements of the Act and Rules. The public comment period closed on May 15, 2015. During the public comment period the Division received written comments from the following individuals and agencies:

Timely Letters of Objection:

1. Greg and Jill Yocom, dated May 8, 2015, received May 12, 2015
2. Thomas Bledsoe, dated May 11, 2015, received May 14, 2015
3. Darrell and Shirley Smith, dated May 11, 2015, received May 15, 2015
4. Darrell and Shirley Smith, dated May 13, 2015, received May 15, 2015

Timely Commenting Agency:

5. History Colorado, SHPO, dated March 25, 2015, received April 2, 2015
6. Colorado Division of Water Resources, dated March 31, 2015, received April 1, 2015

The Division forwarded copies of all comments to the Applicant and scheduled the application for a hearing before the Colorado Mined Land Reclamation Board (the Board) and a Pre-hearing Conference.



The Division provided notice of the scheduled Board hearing and Pre-hearing Conference to all parties and interested persons. Due to the timely objections, on the decision date the Division would not make a decision on the application, but rather a recommendation to the Board.

During the review period the Division generated two adequacy letters. The Applicant addressed all adequacy issues to the Division's satisfaction. Therefore, on October 23, 2015, the Division determined the application to have satisfied the requirements of Section 34-32.5-115(4) C.R.S. and issued its recommendation to approve the application.

Issues Raised by the Objecting Parties

In these proceedings, the Division's jurisdiction is limited to enforcement of the specific requirements of the Act and Rules. The Division considers all timely submitted comments in its review, but can address only the issues that directly relate to the specific requirements of an application as stated in the Act and Rules.

The issues raised by the objecting parties and commenting agencies are represented by italic bold font. The last names of the objecting parties who raised the issue are listed after the issue. The Division's response follows in standard font.

- 1. Concerns regarding the operation being in conflict with local zoning. Concerns regarding adverse impacts to the visually appealing landscape. Concerns for devaluation of nearby property. Concerns regarding noise pollution, sight pollution, and quality of life. Concerns regarding a violation of rules associated with the Sand Creek Estates Home Owners Association. (Yocum, Bledsoe, Smith)***

The Act and Rules do not specifically address issues of zoning and land use, impacts to visually appealing landscapes, noise and sight pollution, and quality of life. Such issues are typically addressed at the local government level and not at the State government level. These issues should be addressed through the Logan County permitting process.

According to Section 34-32.5-115(4)(d) C.R.S., the Board or Office may deny an application if the proposed operation is contrary to the laws or regulations of Colorado or the United States, including but not limited to all federal, state, and local permits, licenses, and approvals, as applicable to the specific operation. On March 24, 2015, the Division provided notice of CN-01 to Logan County. Logan County has not indicated any conflict with local zoning or local regulations.

Local issues involving a community's or homeowners association's restrictions, rules, regulations, and covenants should be addressed through the homeowner's association. The Division's jurisdiction does not include the enforcement of a homeowners association's governing documents.

- 2. Concerns regarding dust and air pollution resulting from the operation. (Bledsoe, Smith)***

The Act and Rules do not specifically address air quality issues. Such issues are under the jurisdiction of Logan County and the Air Pollution Control Division of the Colorado Department of Public Health and

Environment. These issues should be addressed through the permitting process of Logan County and the Air Pollution Control Division of the Colorado Department of Public Health and Environment.

The Applicant has affirmatively stated that an air pollution permit will not be needed since the operation will remove less than 70,000 tons of material per year.

On March 24, 2015, the Division provided notice of CN-01 to the Air Pollution Control Division of the Colorado Department of Public Health and Environment. The Division received no comment from the Air Pollution Control Division.

3. Concerns regarding potential impacts to wildlife. (Smith)

On March 24, 2015 the Division provided notice of CN-01 to the Colorado Parks and Wildlife. Colorado Parks and Wildlife has not identified any conflict between the proposed Mining and Reclamation Plans and potential wildlife present on the site.

The application for CN-01 provides a description of game and non-game resources on and in the vicinity of the operation. The application also describes the general effect during and after the proposed operation on the existing wildlife of the area. The application addressed the general wildlife requirements of Rules 6.4.8 and 3.1.8 to the Division's satisfaction.

Impacts to wildlife will be minimized by a phased mining plan with contemporaneous reclamation. As mining finishes in one phase, reclamation will take place before or during the mining of the next phase, thereby limiting the maximum disturbance at any given time. Mining and reclamation activities will be conducted in six phases.

Approximately five acres of the proposed site were disturbed prior to the original 110c permit. Topsoil was not salvaged during the pre-permit operations and was not available for reclamation purposes. The absence of topsoil replacement is evident in the resulting poor vegetative cover of these lands. However, under the reclamation conditions of CN-01 the historically mined areas will be reclaimed, including topsoil replacement and the establishment of an appropriate vegetative cover, making these areas more suitable to support wildlife.

The permit file contains a Mined Land Wildlife Statement, prepared by the Colorado Division of Wildlife, dated May 23, 1986, which had been previously submitted during the 110c permit process. The wildlife statement indicates an absence of threatened or endangered species, no critical habitats or protected vegetative communities, and assessed a minor impact on wildlife.

4. Concerns regarding the absence of notice to adjacent landowners of mining activity conducted at the site in the past year.

Pursuant to Rule 1.6.2(1)(e)(ii), Applicants of new permits, and amendments or conversions of existing permits, are required to provide notice of the proposed operation to owners of record of the affected lands and to owners of record within 200 feet of the boundary of affected lands. These notices occurred not only for CN-01 but also during the original 110c permit process. However, subsequent to approval

of the permit application, Operators of existing permits are not required to notice adjacent landowners of yearly activity. Operators are required to submit an annual report, in accordance with the requirements of Section 34-32.5-116(3)(a) C.R.S., informing the Division on mining and reclamation activities conducted during the preceding year.

Conclusion

Therefore, on October 23, 2015, the Office determined the application satisfied the requirements of Section 34-32.5-115(4) C.R.S., and issued its recommendation to approve the 110c to 112c conversion application for the Dollerschell Pit, File No. M-1986-074, over public objections.