



COLORADO

**Division of Reclamation,
Mining and Safety**

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

July 31, 2017

Notice to Parties and Interested Persons to CN-01

RE: Recommendation for Denial of an Application to Convert a 110 Construction Materials Permit to a 112 Hard Rock Permit, CN-01, with Public Objections, High Speed Mining, LLC, Fairplay Au Pit, Permit No. M-1991-037

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety hereby issues its recommendation for denial of the application to convert the existing 110 Construction Materials operation to a 112 Hard Rock operation (CN-01), with public objections, at the Fairplay Au Pit, Permit No. M-1991-037.

This recommendation is based on the Division's determination the application for CN-01 does not minimally satisfy the requirements of section 34-32-115(4) of the Colorado Mined Land Reclamation Act, 34-32-101 *et seq.*, C.R.S. A copy of the Division's rationale for its recommendation to deny CN-01 is enclosed for your review.

If you have any questions about this letter or the hearing, please contact me at (303) 866-3567, ext. 8116.

Sincerely,

Michael A. Cunningham
Environmental Protection Specialist

Attachment: Certificate of Service

Enclosure: Rationale for Recommendation to Deny CN-01 at M-1991-037

cc w/enclosure: Camille Mojar, Secretary for the Mined Land Reclamation Board
John Roberts, Esq., AGO for the Mined Land Reclamation Board
Jim Stark, Pre-hearing Conference Officer
Jeff Fugate, Esq., AGO for DRMS



Certificate of Service

I, Michael A. Cunningham, hereby certify that on this 31st day of July, 2017, I deposited a true copy of the foregoing document, RE: Recommendation for Denial of an Application to Convert a 110 Construction Materials Permit to a 112 Hard Rock Permit, CN-01, with Public Objections, High Speed Mining, LLC, Fairplay Au Pit, Permit No. M-1991-037, in the US Mail, postage paid, addressed to the following:

Robin Rindsig
2698 NW 73rd Ave.
Ankeny, IA 50023

Robert and Jill White
P.O. Box 1429
Fairplay, CO 80440

Ann Lukacs
P.O. Box 366
Fairplay, CO 80440

M. Jamie Morrow
P.O. Box 1867
Fairplay, CO 80440

Ben Langenfeld
Greg Lewicki and Associates
3375 W. Powers Circle
Littleton, CO 80123

Lance Baller
High Speed Mining, LLC
8480 East Orchard Rd, Suite 3600
Greenwood Village, CO 80440

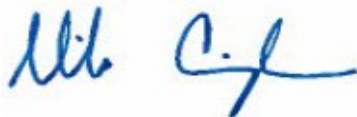
Colorado Division of Water Resources
Sarah Brucker
1313 Sherman Street, Room 821
Denver, CO 80203

Teller-Park Conservation District
Jeff Blake
P.O. Box 2027
Woodland Park, CO 80866

Colorado Parks and Wildlife
Mark Leslie
Northeast Region Manager
6060 Broadway
Denver, CO 80216

Park County Planning Department
John Deagan
Park County Planner
P.O. Box 1598
Fairplay, CO 80440

Park County Commissioners
County Commissioner
P.O. Box 220
Fairplay, CO 80440



Signature and Date

____7/31/17____



COLORADO
Division of Reclamation,
Mining and Safety
Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

July 31, 2017

RE: Rationale for Recommendation to Deny an Application to Convert a 110 Construction Materials Permit to a 112 Hard Rock Permit, CN-01, with Public Objections, High Speed Mining, LLC, Fairplay Au Pit, Permit No. M-1991-037

Introduction

Herein, all references to the Act and Rules refer to the Colorado Mined Land Reclamation Act, 34-32-101 *et seq.*, C.R.S. (the Act), and to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal and Designated Mining Operations (the Rules or Rule). Copy of the Act and Rules are available through the Division's web site at <http://mining.state.co.us>.

On July 31, 2017, the Division of Reclamation, Mining and Safety (the Division or Office) issued its recommendation to deny the conversion application, CN-01, with objections, for the Fairplay Au Pit, Permit No. M-1991-037. This document is intended to explain the process by which the Office arrived at its recommendation to deny CN-01 and respond to the issues raised by the objecting parties and commenting agencies. The Division reserves the right to further supplement, amend, modify, or clarify this document and recommendation with additional details as necessary.

As previously noticed to all parties and interested persons, the Office's recommendation is to the Mined Land Reclamation Board (Board). The Office's recommendation will be considered by the Board during a formal hearing, scheduled to occur August 23-24, 2017, at 1313 Sherman Street, Room 318, Denver, Colorado, commencing at 9:00 am, or as soon thereafter as the issue may be considered.

A live audio broadcast of the formal hearing can be found at the following link, <https://www.youtube.com/channel/UCDrrAO8bIPFIOWce-yH1fWA>. Audio stream service may be temporarily unavailable or limited, due to technical difficulties and bandwidth limitations, and could result in loss of audio signals or in the impairment of the quality of the transmission.

All parties and interested persons who intend to participate in the Board hearing are strongly encouraged to attend the Pre-hearing Conference. Failure to attend the Pre-hearing Conference will result in forfeiture of party status.



As previously noticed, the Pre-hearing Conference is scheduled to occur on August 9, 2017, at the Fairplay Community Center – Main Room at 880 Bouge Street, Fairplay, Colorado, beginning at 10:00 a.m. and concluding at or before 12:00 p.m.

Summary of the Review Process

High Speed Mining, LLC (the Applicant) filed the application with the Division on March 28, 2017. The original application described a placer mining operation with on-site processing. Recovery of placer gold will be accomplished by processing mined material through a wash plant with a hopper, trommel screen and a sluice. Placer gold is the primary commodity mined. Sand and gravel will be sold as secondary commodities. The permit boundary encompasses 41.4 acres. Of the 41.4 acres, the mining operation is anticipated to affect a maximum area of 12 acres at any given time. The Applicant has committed to concurrent reclamation to limit the area of disturbance. Affected lands will be reclaimed to support rangeland post-mining land use. The required bond amount for the operation is \$153,640.00. Notice of the filing occurred in accordance with the requirements of the Act and Rules. The public comment period closed on May 18, 2017. During the public comment period the Division received written comments from the following individuals and agencies:

Timely Letters of Objection:

1. Robin Rindsig, dated May 8, 2017, received May 8, 2017.
2. Robert and Jill White, dated May 11, 2017, received May 11, 2017.
3. Ann Lukacs, dated May 12, 2017, received May 12, 2017.
4. M. Jamie Morrow, dated May 18, received on May 18, 2017.

Timely Commenting Agency:

5. Colorado Division of Water Resources, dated April 14, 2017, received April 14, 2017.
6. Park County Planning Department, dated March 21, 2017, received April 19, 2017.
7. History Colorado, dated April 20, 2017, received April 26, 2017.

Late Agency Comments (received after the close of the public comment period):

8. Colorado Parks and Wildlife, dated July 24, 2017, received July 24, 2017.

The Office forwarded copies of all comments to the Applicant and scheduled the application for a Board hearing and a Pre-hearing Conference. The Office 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 Office would not make a decision on the application, but rather a recommendation to the Board.

During the review period the Office generated five adequacy letters. The Applicant did not address all adequacy issues to the Office's satisfaction. Therefore, on July 31, 2017, the Office determined the application for CN-01 did not satisfy the requirements of C.R.S. § 34-32-115(4) and issued its recommendation to deny the application.

Issues Raised by the Objecting Parties and Commenting Agencies

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 Office's response follows in standard font.

- 1. Concerns regarding the history of violations and character of the Applicant.
Concerns regarding the Division rewarding a repeat offender by granting a permit.
(Lukacs, White, Morrow)***

The Act and Rules provide reclamation requirements to ensure affected lands are reclaimed to a beneficial use. The Act and Rules provide performance standards for environmental protection requirements, which apply throughout the life of a permitted operation. When the Division discovers an operator has affected land outside of the approved mine permit boundary the Office schedules the issue for consideration by the Board, whereby the offending operator may be ordered to comply with the requirements of the Act and Rules. Typically, this includes the submittal of a permit application to be reviewed by the Office for adequacy with the requirements of the Act and Rules. The issuance of a permit brings the operation under the enforcement authority of the Division and obligates the operator to comply with the Act and Rules. Any operator of a permitted operation is obligated to protect off-site areas from damage. Thus, the issuance of a permit is not a reward for illegal actions, but part of a process whereby the performance standards, environmental protection measures and reclamation requirements of the Act and Rules may be applied. The environmental cost to society of an unpermitted operation exceeds that of a permitted operation.

There has been one violation issued by the Board to the Applicant. The violation, and the associated cease and desist order, corrective actions, and civil penalties, are described below.

Violation MV-2017-001 was issued on February 9, 2017, for the Katuska Pit, File No. M-1991-037. The violation was issued for engaging in a new mining operation without first obtaining a reclamation permit. Specifically, the Applicant disturbed 2.4 acres of land outside of the permit boundary. The Board issued a cease and desist order. The Board ordered corrective actions to bring the 2.4 acres of affected land into an approved permit and be fully addressed by a reclamation plan and financial warranty. The Board assessed a civil penalty in the amount of \$35,567, with \$30,000 suspended if the Applicant submitted the appropriate permit timely, and the remaining \$5,567 due within 30 days. The Applicant paid the \$5,567 civil penalty and submitted the appropriate permit in a timely manner.

No additional violations have occurred since the issuance of Violation MV-2017-001. The applicant has paid all civil penalties and complied with corrective actions in a timely manner. Therefore, the Division's enforcement actions have been effective.

2. *Concerns regarding the operation being incompatible with nearby residential areas. Concerns regarding destruction of wooded acreage. Concerns regarding adverse impacts to tourism. Concerns regarding hours of operation and quality of life. Concerns regarding proximity of mining operation to Town of Fairplay, Historic South Park and Beaver Ponds Environmental Education Center. (Lukacs, White, Morrow)*

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 which directly relate to the specific requirements of an application as stated in the Act and Rules.

The Act and Rules do not specifically address issues of land use, hours and/or days of operation, tourism and impacts to the local economy, or 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 Park County permitting process.

3. *Concerns regarding the Applicant allowing the Gold Rush Television show to operate under their permit. (Lukacs)*

The Act and Rules do not prohibit the permit holder from allowing a separate entity to conduct the mining and reclamation activities. The permit holder is obligated to ensure the operation remains in compliance with the Act, Rules and conditions of the permit. The permit holder demonstrates his ability to ensure the completion of reclamation of affected lands through the performance and financial warranties, which the permit holder must maintain throughout the life of the permit. If the Board determines the permit holder is in default the the Board may revoke the permit and cease the financial warranty, as necessary for the Board to ensure the completion of reclamation of the affected lands.

4. *Concerns regarding sediment entering the Middle Fork of the South Platte River. (Morrow)*

Pursuant to Rule 3.1.6(1)(b), the application must demonstrate compliance with applicable federal and Colorado water quality laws and regulations, including statewide water quality standards and site-specific classifications and standards adopted by the Water Quality Control Commission.

There will be no discharge of process water from the mining operation. All process water will be retained in sediment ponds and available for recycle through the processing circuits. The proposed sediment ponds will be located outside of the 100 year floodplain. The sediment ponds will be incised in native ground; no dam or impoundment will be constructed to hold process water above the native ground surface. Water levels within the sediment ponds will be monitored

and a one foot freeboard will be maintained to ensure adequate capacity. No exposure of groundwater is allowed and all mining will take place above the water table.

The Operator will maintain earthen berms between the River and the active mining phases. The berms will act as a barrier and will prevent stormwater runoff from escaping the mine site prior to treatment. During final reclamation the berms will be removed and sediment fencing will be installed and maintained until a protective vegetative cover has been established.

On March 30, 2017, the Division provided notice of the permit application to the Water Quality Control Division (WQCD) of the Colorado Department of Public Health and Environment. The Colorado Division of Water Resources has not indicated any additional permits would be required for the mining operation. However, the Applicant has committed to obtaining a stormwater and/or process water discharge permit if required by WQCD. Therefore, the Office determined the application is in compliance with the requirements of Rule 3.1.6(1)(b).

5. *Concerns regarding potential impacts to wildlife, including aquatic species.*
(Morrow)

The Act and Rules anticipate disturbances to wildlife as a result of mining and reclamation activities. It is reasonable to expect a temporary decrease in wildlife sightings in response to an increase of human activity. The Act and Rules provide reclamation requirements to ensure the affected lands are reclaimed to a beneficial use. As indicated in the application for CN-01, the affected lands will be reclaimed to support rangeland post-mining land use. The reclamation plan mandates the replacement of topsoil and vegetation of affected lands. Approximately 8 acres of the mine site were historically mined and do not currently exhibit topsoil or vegetation. The historically mined areas will be reclaimed and will receive topsoil and vegetation, rendering these areas more suitable for wildlife and current conditions.

Impacts to aquatic species will be minimized through restrictions in the Mining and Reclamation Plans. Mining and reclamation activities will not occur within 100 feet of the banks of the River and all disturbance will be outside of the 100 year floodplain.

On March 30, 2017 the Division provided notice of the permit application to Colorado Parks and Wildlife (CPW). The notice provided to CPW stated that all comments or objections must be received by the close of the public comment period, prior to close of business May 18, 2017. After the close of the comment period, on July 24, 2017, the Division received correspondence from CPW, which provided recommendations for minimizing impacts to wildlife. The comments received from CPW did not identify any threatened or endangered species, critical wildlife habitat or migration corridors. The Applicant has affirmatively stated they will work with CPW to minimize impacts to wildlife and incorporate CPW's recommendations through future revisions to the permit.

Pursuant to Rule 6.4.8(1), the application provides a description of the general effect during and after the proposed operation on the existing wildlife of the area, including but not limited to temporary and permanent loss of food and habitat, interference with migratory routes, and the general effect on the wildlife from increased human activity. The Application addressed the requirements of Rule 6.4.8(1) to the Division's satisfaction.

6. Concerns regarding the Applicant's appeal to the Division's denial of the request to utilize areas outside of the current permit boundary. (Lukacs)

The Division's denial of the Applicant's request to utilize areas outside of the current permit boundary is outside of the scope of the CN-01 objection process. On April 26, 2017, the Applicant submitted a written request to utilize ponds located outside of the permit boundary. On May 5, 2017, the Division denied the Applicant's request. Pursuant to Rule 1.4.11, the Applicant may submit a petition to appeal an Office decision. On May 5, 2017, the Applicant appealed the Division's decision and the matter was scheduled before the Board for the May 24, 2017 Board Hearing. At the May 24, 2017 Board Hearing, the Board affirmed the Division's decision to deny the Applicant's request to maintain and utilize ponds located outside of the approved permit boundary.

7. Concerns regarding a conflict between mining activities and the current zoning of the property. (Rindsig, Lukacs, White)

On April 19, 2017, the Division received written notice from Park County asserting the Applicant was in violation of Park County Land Use Regulations. Specifically, mining operations were being conducted on land zoned for residential use. On June 8, 2017, Park County Development Services ordered the Applicant to cease and desist all mining and commercial activities on lands with residential zoning. On June 22, 2017, Park County Development Services conditionally lifted the cease and desist order previously issued to the Applicant. Park County Development Services ordered the Applicant to adhere to the scheduled rezoning hearings before the Park County Planning Commission and the Park County Board of County Commissioners scheduled for July 11, 2017 and July 27, 2017, respectively.

Pursuant to C.R.S. § 34-32-115(4)(c)(I), the Office shall not deny a permit application if the Applicant demonstrates that no portion of the mining operation is in conflict with the laws or regulations of this state or the United States, including but not limited to all federal, state and local permits, licenses, and approvals, as applicable to the operation. The Applicant did not resolve the zoning conflict by the application decision date. As a result, the Applicant did not demonstrate to the Division's satisfaction that they were no longer in violation of Park County Land Use Regulations.

Conclusion

Therefore, on July 31, 2017, the Office determined the application did not satisfy the requirements of C.R.S. § 34-32-115(4)(c)(I), and issued its recommendation to deny the Hard Rock 112 Conversion application for the Fairplay Au Pit, File No. M-1991-037.