

BEFORE THE DIVISION OF RECLAMATION, MINING, AND SAFETY
STATE OF COLORADO

Petition For Declaratory Order Pursuant to Rule 2.5

DOLLERSCHELL PIT

PERMIT M-1986-074

Petitioner

The Petitioner in the matter is Kym Schure, whose address is 12826 County Road 37, Sterling, CO 80751. Mr. Schure is a permittee under DRMS Permit Number M-1986-074. Mr. Schure, by his attorney, submits this Petition for Declaratory Order

Statute, Rule or Order to which Petition relates

This Petition is submitted under DRMS Rule Number 2.5, seeking a Declaratory Order as provided in CRS 24-4-105. This Petition seeks a determination that Permit Number M-1986-074 does not require that Mr. Schure engage in new reclamation activities on lands, within the boundary of Permit Number M-1986-074, which had been previously mined and reclaimed by a different permittee under a different permit, but which Mr. Schure has not disturbed by mining or reclamation operations.

This Petition also seeks modification of the Board's Order of September 18, 2017.

Statement of Facts

Permittee petitioned for and obtained a conversion of a former 110c permit (Number M-1986-074) to a 112c permit (Number M-1986-074) on November 19, 2015. The converted permit included 2.89 acres that had previously been mined and reclaimed by the Colorado Department of Transportation under Permit Number M-1979-160 (shown on the attached Exhibits A-1 and A-2 to this Petition as "Tract 6"). The permit application was duly noticed and made subject to all the applicable procedural requirements of the 112 permit conversion process. It was approved by this Board. It was not appealed.

The Petitioner's Application to convert M-1986-074 from a 110c Permit to a 112 Permit, included an Exhibit E (Reclamation Plan), which stated that "*Reclamation in Tract 6 would only be required if a decision is made to disturb the area, and then only to the extent of the disturbance. That area was mined and claimed to be reclaimed by CDOT. Kym Schure will not reclaim any previously disturbed area if he does not disturb it.*" That Exhibit E is attached for convenient reference, and labeled as Exhibit B to this petition.

Although the 2.89 acres in Tract 6 are included in the permit boundary, Petitioner has never disturbed them.

On October 31, 2016, Permittee was informed that his legal right to enter a portion of the permit area (specifically, Tract 6) had been challenged by Deborah Hradecky (now Clark), who owns Tract 6. Ms. Clark's claim of ownership of Tract 6 is not in dispute. Mr. Schure responded with evidence that he owns the right to extract sand and gravel from Tract 6, but he has not engaged in any operations on that tract.

Following a hearing on August 23, 2017 concerning the issue of whether Mr. Schure had maintained a legal right to enter Tract 6, the Mined Land Reclamation Board issued Findings of Fact, Conclusions of Law and an Order. Those became effective on September 18, 2017

The relevant **Findings of Fact** were that Mr. Schure had failed to maintain a legal right to enter and conduct mining and reclamation operations on Tract 6, and that as of the date of that hearing he had not been successful in obtaining a ratification of legal right to enter from Ms. Clark.

At that August 23 hearing, the Board accepted uncontested testimony from Mr. Schure that he has never entered Tract 6 to conduct ground-disturbing operations.

The relevant **Conclusions of Law** were that the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board require that an operator must provide the source of its legal right to enter and initiate a mining operation on affected land. The Board found further that Mr. Schure's failure to maintain a legal right to enter and initiate a mining operation constituted a violation of Rule 6.4.14, and that in turn constituted a violation of the performance warranty part of his permit. In its conclusions of law, the Board also confirmed that Mr. Schure has never entered or initiated a mining operation on Tract 6.

In its **Order**, the Board ordered Mr. Schure to cease and desist any further activity on Tract 6, with the exception of a 25-yard strip. The Board also imposed a corrective action in the form of a requirement to obtain the legal right to enter and conduct mining or reclamation operations on the portion of Tract 6 that is owned by Ms. Clark, and to demonstrate to the Division that he had obtained such right, within 60 days of the effective date of the Order.

Mr. Schure has continued to seek ratification of the right to enter, by communicating with Ms. Clark's attorney and offering to enter into an agreement with Ms. Clark that would limit his activity on Tract 6 to reclamation only.

Mr. Schure has not been successful in obtaining such ratification. In response to requests for ratification, Ms. Clark has sought to impose a requirement that Mr. Schure remove a septic leach field, which is unrelated to reclamation activities, and that he conduct re-seeding on Tract 6 using hand scattering only, which is an unreasonable reclamation requirement, as conditions to granting a ratification of the right to enter to conduct reclamation activities. Accordingly, Mr. Schure is left with the alternative of seeking this Declaratory Order.

Petitioner Requests the following relief:

- 1. Declaratory Order confirming that Permit Number M-1986-074 does not require further reclamation of Tract 6 unless Petitioner disturbs it.**

As noted above, the reclamation plan approved by this Board in Permit Number M-1986-074 stipulated that Tract 6 had previously been mined and reclaimed by the Colorado Department of Transportation under Permit Number M-1979-160.

The Board also approved the language of the reclamation plan incorporated into Permit Number M-1986-074, *"Reclamation in Tract 6 would only be required if a decision is made to disturb the area, and then only to the extent of the disturbance. That area was mined and claimed to be reclaimed by CDOT. Kym Schure will not reclaim any previously disturbed area if he does not disturb it."* Petitioner requests that the Board confirm that, unless Petitioner disturbs the surface of Tract 6, he is not under current obligation to conduct further reclamation of that tract.

2. **Modification of the Board's Order of September 18**, to find that (a) Mr. Schure has never entered Tract 6 to conduct mining, and therefor has complied with the cease and desist portion of the Order, and (b) to remove the Corrective Action requirements that Mr. Schure obtain a legal right to enter Tract 6 from Ms. Clark to allow entry for reclamation activities, and substitute in its place a ratification of the language of Exhibit E of Permit M-1986-074, stating that reclamation of Tract 6 will be required only if Mr. Schure disturbs Tract 6, and that Mr. Schure may not enter or disturb Tract 6 without first obtaining a ratification of his right to enter from the then- current owner of Tract 6 .

Granting the relief requested in this petition will terminate a controversy between Ms. Clark and Mr. Schure. It will not cause any harm to Ms. Clark's interests. It will remove uncertainty as to whether the Petitioner will be required to reclaim lands that he has not disturbed. That, in turn, will clarify the question of whether he should be penalized for his inability to obtain ratification of his right of access to lands within his permit boundary, if he has not sought to enter or disturb those lands.

Petitioner does not have another adequate legal remedy readily available to him, other than an action for declaratory relief under C.R.C.P 57.

Respectfully submitted this 7th day of November, 2017.

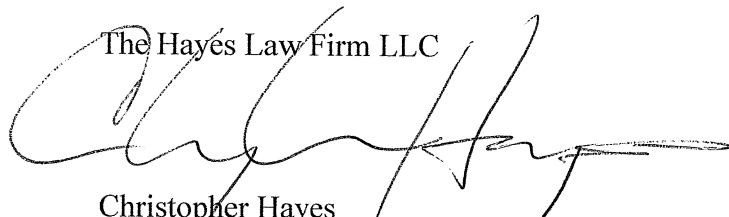
The Hayes Law Firm LLC

Christopher Hayes
Attorney for Kym Schure

Exhibit A-1

MINING
The expansion of approx. 22.1 acres to total 32 ± Acres is the maximum area that can be mined.

- 1) Mining will continue in original area South and West
- 2) When mining finishes in one tract, a new tract will be opened and boundaries set
- 3) Tract 6 may not be disturbed, depending on need for material

- 4) Final Slopes will be left 3:1
- 5) Mined material will be stockpiled on floor for processing
- 6) Mining will be 30-35' deep

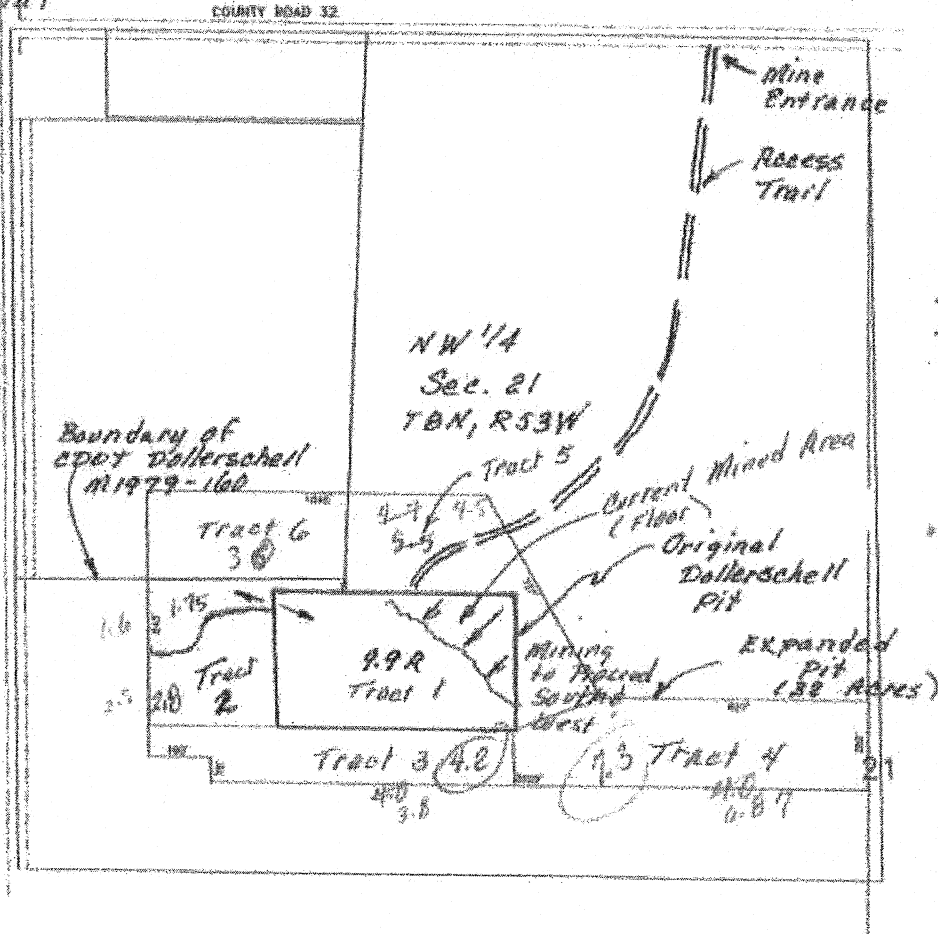


EXHIBIT D - MINING PLAN

OPERATOR - Kym Schure
SCALE - 1" = 480'
DATE - February 28, 2015
SECTION - 21, SW 1/4 NW 1/4
TOWNSHIP - 8N
RANGE - 53W
COUNTY - Logan County
PREPARED BY
Dollerschell Gravel Pit M-1986-074

REVISED
8/16/15

Dollerschell Pit, DRMS Permit No. M-1986-074

Exhibit A-2

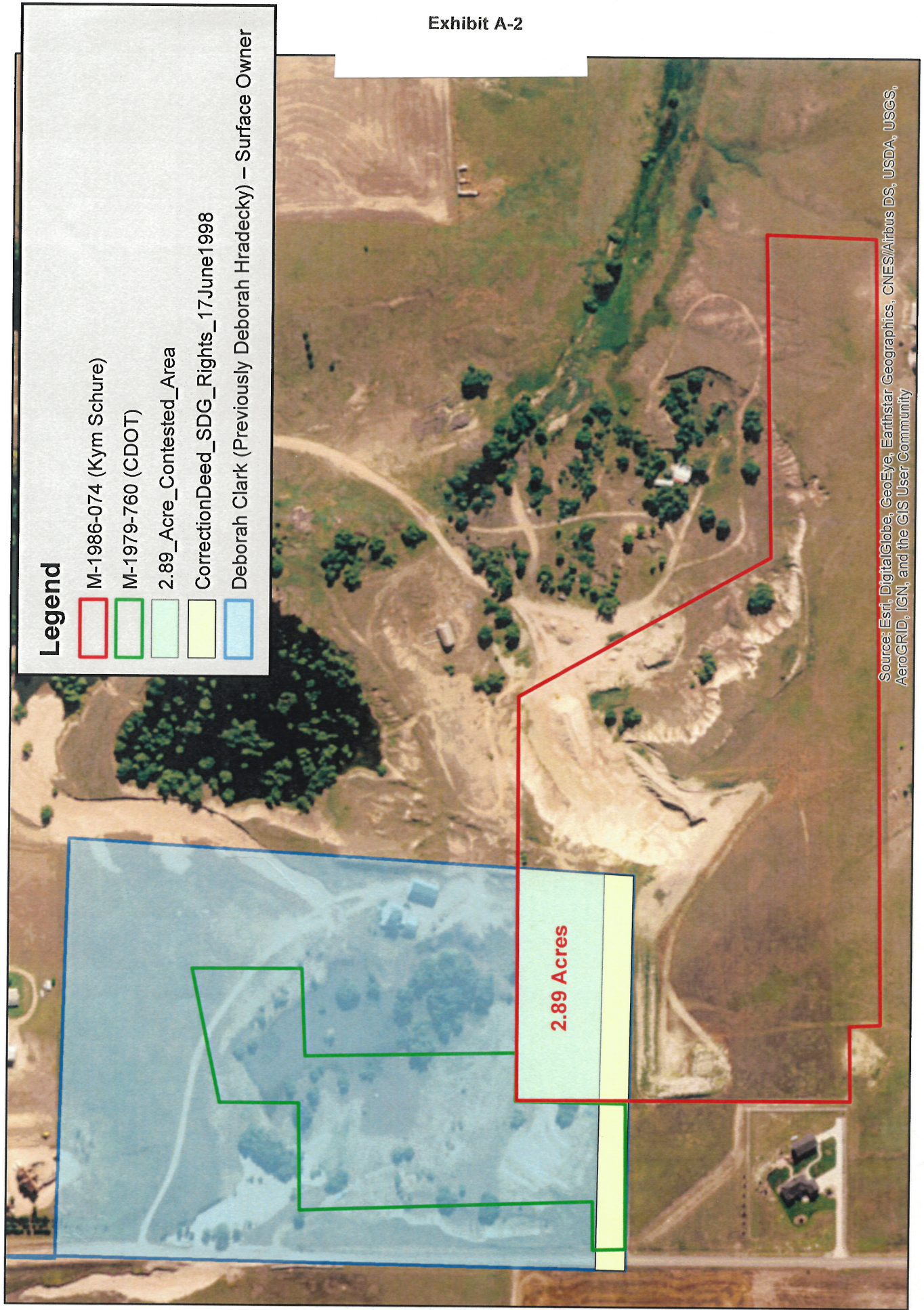


Exhibit E - Reclamation Plan

Final grading will be such that the topography is appropriate to the reclaimed use of the property, i.e., as dryland pasture. Any slopes created for reclamation will be graded 3h: 1v. The floor of the mine will have a gentle slope to the north so it is consistent with existing grades on the site. There is no topsoil on the floor of the pit. It was in that condition when the original pit was opened in 1986. That area will be seeded, but no topsoil replaced. The Reclamation Plan Map Exhibit shows the topography of the site once it is completed.

Once mining in an area is complete the area will be shaped, graded and stockpiled topsoil will be re-applied, with the exception of the current floor. Scrapers, dozers, and blades will be utilized in the grading process of the affected area. Seeding preparation will be done according to NRCS recommendations.

Seeding will occur between November and April, before first frost in the fall or after last frost in the spring. The seed will be drilled to insure maximum germination and most rapid cover establishment. The seeding mix and species of grasses, as listed in the original 110 permit, are as follows:

Little Bluestem	1.8 pounds per acre
Blue Grama	0.40 pounds per acre
Switchgrass	1.2 pounds per acre
Prairie sandreed	1.7 pounds per acre

Reclamation will begin on a tract after mining efforts are moved to opening a new tract. Reclamation in Tract 6 would only be required if a decision is made to disturb the area, and then only to the extent of the disturbance. That area was mined and claimed to be reclaimed by CDOT. Kym Schure will not reclaim any previously disturbed area if he does not disturb it.

Weed control will be implemented prior to and during re-vegetation activities. This does not mean we will attempt to kill all weeds, since some provide a natural ground cover and shade for emerging grass. We will concentrate on controlling the noxious weeds on the reclaimed area, following normal NRCS recommendations if a problem occurs.

Any internal haul roads used during the life of the mine will be reclaimed. The access road was in place before any of the gravel pits existed. It will be left intact for use by the owner.