

BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

---

**DRAFT PREHEARING ORDER**

---

IN THE MATTER OF THE AMENDMENT APPLICATION OF SUMMIT BRICK & TILE CO, INC. FOR THE FOX #1 CLAY MINE, PERMIT NO. M-1977-219, AM-03

---

The Mined Land Reclamation Board (“Board”), through prehearing officer Jim Stark (“PHO Stark”), and pursuant to Rule 2.7 of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (“Rules”), conducted a prehearing conference on February 8, 2018 in Pueblo, Colorado. The Board, having considered this order, as proposed by PHO Stark, and having considered any subsequent objections or comments from the parties, hereby enters the following Prehearing Order for the captioned proceeding:

**I. BACKGROUND**

On June 30, 2017, Summit Brick & Tile Company (“Applicant”) filed an application with the Division of Reclamation, Mining and Safety (“Division”) for an amendment (AM-03) to their 112c construction materials reclamation permit, file number M-1977-219 (“Application”). During the required period of notice of the Application filing, the Division received written comments and objections to the Application. After issuing four adequacy review letters, the Division issued its rationale and recommendation to approve the Application.

**II. FORMAL PUBLIC HEARING**

The Formal Public Hearing on this matter (unless noticed otherwise) will occur during the Board’s regularly scheduled meeting on February 21, 2018.

The Formal Public Hearing in this matter concerns whether the Board should grant or deny Applicant’s reclamation permit amendment application in accordance with the Colorado Land Reclamation Act for the Extraction of Construction Materials (Article 32.5 of Title 34, C.R.S.; the “Act”) and the Rules. The Board’s resolution of this matter, including findings of facts and conclusions of law, will be based on the Board’s review of the Application, testimony presented by the parties and Division at the hearing, and exhibits the Board admits into the record at this hearing.

In this matter, the Applicant bears the burden of proving that the Application meets the requirements set forth in the Act and Rules. If the Applicant meets this burden, any denial by the Board must be based upon one of the grounds provided in section 34-32.5-115(4), C.R.S.

### III. PARTIES

The list of parties who retain party status by appearing at the prehearing conference are as follows:

Applicant: Summit Brick & Tile Co.  
Attn: Matt Welte

Objector: Shelley Stuart-Bullock

One objector forfeited party status by failing to attend the prehearing conference in accordance with Rule 2.7.3:

Ron Miller

The remaining objector is referred to herein as “Objector.”

The Division is advisory staff to the Board in this matter, not a party. As used herein, “party” or “parties” shall mean the Applicant, Objector, or both, as the context indicates.

### IV. ISSUES

Presentations to the Board by the parties and the Division shall be limited to the following issues:

1. Hydrologic Balance. Whether the Application adequately demonstrates that any disturbances to the prevailing hydrologic balance of the proposed affected land and surrounding area, including the exposure of groundwater, will be minimized.
2. Wildlife. Whether the Application adequately addresses possible adverse impacts the mining operations will have on wildlife. This includes concerns regarding raptor guidelines and buffer zones.
3. Blasting. Whether the Application adequately addresses possible adverse impacts to off-site areas as a result of blasting operations.

### V. WITNESSES AND EXHIBITS

Pursuant to Rule 2.6(2), all parties and the Division must exchange witness and exhibits at the prehearing conference. During the prehearing conference, the Applicant, Objector, and the Division provided witness lists, exhibit lists, and exhibits that are not in the Division’s file, as follows:

## Witnesses

For Summit Brick & Tile Company:

- Matt Welte – Summit Brick & Tile Company
- Mike Leidich – Summit Brick & Tile Company
- Stevan L. O'Brian – Environment, Inc.
- Rod Schuch – Buckley Powder
- Ed Schmal – Colorado Parks and Wildlife, Pueblo Office

For Objector:

- Shelley Stuart-Bullock

For the Division:

- Tony Waldron, Minerals Program Supervisor
- Wally Erickson, Senior Environmental Protection Specialist
- Elliott Russell, Environmental Protection Specialist II
- Peter Hays, Environmental Protection Specialist III

## Exhibits

For Summit Brick & Tile Company:

- C-1977-219 Amendment 03 application and public file

For Objector:

- Objection Letter dated 9/14/2017

For the Division:

- Public Record for Division File No. M-1977-219 available on Laserfiche at <http://mining.state.co.us>

All documents and other materials admitted into evidence by the Board at the Formal Public Hearing will become part of the administrative record. Upon request, a party may recover any evidence introduced by that party.

## **VI. PROCEDURE**

The Division, parties and members of the public shall make presentations in the following order. The time limits set out below are maximum limits; however, the Board, in its discretion, may allow additional time. The Board has the authority to limit any duplicative or irrelevant testimony.

All parties will be afforded an opportunity to conduct cross-examination of any witnesses that testifies during each presentation. Time used for cross-examination of a witness shall count against the presentation time limit of the cross-examining

party or Division. Time used to respond to questions by members of the Board shall not count against the time limit of the responding party or Division.

PHO Stark solicited and considered input from the parties and the Division at the prehearing conference regarding the time requested to make presentations at the hearing, and recommends the following procedure for approval by the Board:

**A. Board Consideration and Adoption of the Prehearing Order**

The Board shall consider this draft Prehearing Order for adoption. The Board will hear any objections to the proposed Order at that time, and will make any necessary amendments prior to adopting the Order.

**B. Introduction – Division**

The Division shall have 15 minutes in which to present an overview of the Application.

**C. Presentation – Applicant**

The Applicant shall have 40 minutes in which to make a presentation to the Board, including an opening statement not to exceed 10 minutes.

**D. Presentation – Objector**

The Objector shall have 40 minutes in which to make a presentation to the Board, including an opening statement not to exceed 10 minutes.

**E. Presentation – Division**

The Division shall have 40 minutes in which to make a presentation to the Board, including an opening statement not to exceed 10 minutes.

**F. Closing Statement – Objector**

The Objector shall have 5 minutes to make a closing statement

**G. Closing Statement – Division**

The Division shall have 5 minutes to make a closing statement.

**H. Closing Statement – Applicant**

The Applicant shall have 5 minutes to make a closing statement.

Dated this \_\_\_\_ day of February, 2018.

BY: \_\_\_\_\_,

Chairperson Mined Land Reclamation Board

## **CERTIFICATE OF SERVICE**

I, James R. Stark, hereby certify that on this 14<sup>th</sup> day of February, 2018, I deposited a true copy of the foregoing Draft Prehearing Order via e-mail to the following:

James Stark  
jim.stark@state.co.us

Charles Kooyman  
charles.kooyman@coag.gov

Matt Welte  
mrwelte@summitbrick.com

Steve O'Brian  
environment-inc@outdrs.net

Shelley Stuart-Bullock  
shelleysb@icloud.com

Elliott Russell  
elliott.russel@state.co.us

Scott Shultz  
scott.shultz@coag.gov

Wally Erickson  
wally.erickson@state.co.us



---

James R. Stark