



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

March 28, 2018

Summit Brick & Tile Co.
P.O. Box 533
Pueblo, CO 81003

Re: Findings of Fact, Conclusions of Law, and Order, Summit Brick & Tile Co.
File No. M-1977-219

On March 21, 2018 the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. We strongly advise that you read this document carefully since it may contain deadlines for corrective actions, civil penalties, cease and desist orders or other actions that may require your immediate attention to avoid future board actions.

Sincerely,


Camille Mojar
Board Secretary

Enclosure(s)

Certified Mail

7017 2400 0000 9205 7035

cc:

Elliott Russell
Wally Erickson
John Roberts
Jeff Fugate
Scott Schultz
Charles Kooyman
Shelly Stuart-Bullock
c/o Frasca, Joiner, Goodman and Greenstein, P.C.
Matthew Welte



BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

IN THE MATTER OF THE APPLICATION OF SUMMIT BRICK & TILE CO.
FOR AN AMENDMENT TO 112C CONSTRUCTION MATERIALS
RECLAMATION PERMIT, PERMIT NO. M-1977-219.

THIS MATTER came before the Mined Land Reclamation Board ("Board") on February 21, 2018 in Denver for a hearing to consider the application for an amendment to a 112c construction materials reclamation permit filed by Summit Brick & Tile Co. ("Applicant"), amendment number AM-03. Assistant Attorney General Scott Schultz and Elliott Russell appeared on behalf of the Division of Reclamation, Mining and Safety ("Division"). Mike Leidich and Steve O'Brian appeared on behalf of Applicant. Shelley Stuart-Bullock ("Objector") and Jordan May, Esq. appeared on behalf of Objector.

The Board, having considered the presentations, testimony, and evidence of the Division¹; Applicant; and the Objector, and being otherwise fully informed of the facts in the matter, enters the following:

FINDINGS OF FACT

1. On June 30, 2017, the Applicant filed an application with the Division for an amendment to its 112c reclamation permit under section 34-32.5-112, C.R.S. for a site known as the Fox #1 Clay Mine, permit number M-1977-219 (the application is referred to herein as "Application"), located in section 30, Township 22 South, Range 67 West, in Pueblo County, Colorado.

2. During the public comment period, as mandated by Rule 1.7.1 of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials, 2 CCR 407-4 ("Rules"), the Division received timely letters of objection from Shelley Stuart-Bullock and Ron Miller, and comment letters from History Colorado, Pueblo County, and the Colorado Division of Water Resources.

3. Mr. Miller failed to maintain party status.

¹ The Division was advisory staff to the Board, not a party, in this proceeding.

4. During the review period, the Division generated four adequacy letters. The Applicant addressed all of the Division's adequacy issues to the Division's satisfaction.

5. On February 2, 2018, the Division issued and served on all parties both a written recommendation to approve the Application over objection and a written rationale for that recommendation.

6. On February 8, 2018, the Board, through a prehearing officer, conducted a prehearing conference in Pueblo, Colorado. The prehearing officer issued a draft prehearing order. Among other things, the draft prehearing order identified three issues for the parties to present to the Board for consideration: hydrological balance, wildlife, and blasting. At the hearing, the Board considered the draft prehearing order and invited amendments or adjustments to be proposed by the parties. The Board adopted the draft prehearing order as presented.

7. The Application described a proposed expansion of a current construction materials (brick clay, stone products and fill material) mining operation and on-site processing of mined materials, to include onsite crushing of sandstone. The permit boundary described in the Application included 1046.8 acres, an increase of 1006.5 acres from the originally permitted area with 758.5 acres to be disturbed. Active mining is limited to 40 acres at a time with concurrent reclamation. The Application proposed to reclaim the affected land for rangeland. The Division calculated the financial warranty for the operation to be \$213,000.

8. At the hearing, Mike Leidich and Steve O'Brian testified on behalf of Applicant. Applicant testified regarding the proposed operation, including the use of a blasting plan that required lower levels of ground vibration and air over pressure than set by industry standards and State regulations.

9. As to wildlife issues, Applicant presented testimony that the area has been an active mine since the 1950's, drainages potentially used for big game transit corridors will not be mined, and that Colorado Parks and Wildlife had stated that there would be no impacts to wildlife in the site and that no endangered species were on the land.

10. Applicant testified that they have discussed potential impacts on raptors with representatives of Colorado Parks and Wildlife and has committed to making observations for any raptor activity at the site. Applicant also stated that they will consult with Colorado Parks and Wildlife on any potential impacts and mitigation should raptors be observed in the area.

11. Regarding potential water issues, Applicant presented testimony that at no point will the mining operations disturb groundwater. The groundwater table is 300 feet deep, and mining will not exceed 40 feet in depth.

12. At the hearing, Objector testified regarding concerns with blasting, including that it would still be too loud and that she had concerns that the restrictions on blasting in the mining plan would not be binding. Objector also testified regarding wildlife and concerns that some of the types of animals would not return to the land if the post-mining use of rangeland did not allow for regrowth of trees currently on the property. Objector did not contact any wildlife professionals regarding her objection or the proposed amendment to Applicant's permit.

13. The Division testified at the hearing, stating that, based on its review of the permit and the Applicant's responses to the adequacy review letters, the Application complies with the Colorado Land Reclamation Act for the Extraction of Construction Materials, Article 32.5 of Title 34, C.R.S. (2017) ("Act") and Rules. The Division testified that impacts on wildlife will be minimized, ground and surface water concerns were adequately addressed, and that the Applicant's blasting plan was adequate. The Division further stated that the post-mining use of rangeland would provide excellent forage for wildlife and that it was a beneficial use that satisfied the Applicant's obligations under the Act and Rules.

CONCLUSIONS OF LAW

14. The Board has jurisdiction over this matter pursuant to the Act.

15. Under section 34-32.5-115(4), C.R.S., "the applicant must comply with the requirements of this article and section 24-4-105(7), C.R.S."

16. Under Rule 1.4.1(10), the Applicant "has the burden of demonstrating that the application meets the minimum requirements of the Act, Rules, and Regulations."

17. Under Rule 2.8.1(1) and section 24-4-105(7), C.R.S., "the proponent of an order shall have the burden of proof." As the party initiating this matter by filing the Application, Applicant was the "proponent of an order" at the hearing and, therefore, has the burden to prove that the Application is consistent with applicable laws and rules, and should be approved by the Board.

18. Reclamation plans for mining sites must, among other things, take into account water issues, including groundwater and general hydrology. Rules 3.1.6; 3.1.7; and 6.4.7. Likewise, they must also take the safety and protection of

wildlife on the mine site into consideration. Rule 3.1.8 and 6.4.8. Applicants must also demonstrate that blasting will not adversely affect off-site areas. Rule 6.5(4).

19. In consideration of the Application, information from Applicant, and other information presented at the hearing, the proposed amendment takes into account hydrological issues, the safety and protection of wildlife on the mine site, and potential adverse effects of blasting on off-site areas. Applicant is in compliance with Rules 3.1.6, 3.1.7, 3.1.8, 6.4.7, 6.4.8, and 6.5(4).

20. Under the Act, the Division and the Board shall grant a permit to an applicant who complies with section 34-32.5-115(4), C.R.S. The Application complies with section 34-32.5-115(4), C.R.S.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board hereby GRANTS the Application.

DONE AND ORDERED this 21st day of March 2018.

FOR THE COLORADO MINED LAND
RECLAMATION BOARD



Forrest Luke, Chair

NOTICE OF JUDICIAL REVIEW RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing a complaint with the district court within thirty-five (35) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2017) and the Colorado Rules of Civil Procedure. In the event that a complaint for judicial review is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at: 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Camie Mojar.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 28th day of March 2018 addressed as follows:

By certified mail to:

7017 2400 0000 9205 7035

Matthew Welte
Summit Brick & Tile Co.
P.O. Box 533
Pueblo, CO 81002

Shelly Stuart-Bullock
c/o Frasca, Joiner, Goodman and
Greenstein, P.C.
4750 Table Mesa Drive
Boulder, CO 80305

Summit Brick & Tile Co.
P.O. Box 533
Pueblo, CO 81003

By electronic mail to:

Elliott Russell
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, CO 80203

Wally Erickson
Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, CO 80203

Charles J. Kooyman
First Assistant Attorney General
Department of Law
Business and Licensing Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 8th floor
Denver, CO 80203

Jeff Fugate
First Assistant Attorney General
Department of Law
Natural Resources & Environment Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203

Scott Schultz
First Assistant Attorney General
Department of Law
Natural Resources & Environment Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th floor
Denver, CO 80203

Camille Mojar, Board Administrator