

BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

THE DIVISION OF RECLAMATION, MINING AND SAFETY'S RESPONSE TO
"MOTION TO VACATE FORMAL HEARING"

**IN THE MATTER OF THE APPLICATION OF TRANSIT MIX CONCRETE
COMPANY FOR A 112 CONSTRUCTION MATERIALS RECLAMATION
PERMIT, File No. M-2017-049**

The Division of Reclamation, Mining and Safety ("Division") submits its Response to "Motion to Vacate Formal Hearing" submitted by Amanda A. Bradley on March 28, 2018. The Division states as follows:

On April 3, 2018, the Division issued its recommendation to approve, over objections, the permit application for the Hitch Rack Ranch Quarry, File No. M-2017-049 (Application). Importantly, and most relevant here, the Application under consideration proposes an affected land area of 239.03 acres. That affected land area does not include any portion of Little Turkey Creek Road. (See Attachment A, Map) Little Turkey Creek Road is located entirely outside of the affected land area. In fact, the proposed affected land boundary is located a minimum of 10 feet south of the road centerline.

Because Little Turkey Creek Road is not affected land the Applicant is not required to include their source of the legal right to enter Little Turkey Creek Road, as argued by Ms. Bradley.

"Affected Land" is defined by Colorado's Land Reclamation Act for the Extraction of Construction Materials ("Act") as,

The surface of an area within the state where a mining operation is being or will be conducted, which surface is disturbed as a result of an operation. Affected lands include, but shall not be limited to, private ways, roads (except those roads excluded by this subsection (1)); land excavations; exploration sites, drill sites or workings;

refuse banks or soil piles; evaporation or settling ponds; work, parking, storage, or waste discharge areas; and areas in which structures, facilities, equipment, machines, tools, or other materials or property that result from or are used in such operations are situated.

“Affected land” does not include land that has been reclaimed pursuant to an approved plan or otherwise, as may be approved by the board, **or off-site roads that were constructed for purposes unrelated to the proposed operation, were in existence before a permit application was filed with the office, and will not be substantially upgraded to support the operation** nor off-site groundwater monitoring wells. C.R.S. § 34-32.5-103(1). (emphasis added)

“Mining operation” is defined by the Act as,

The development or extraction of a construction material from its natural occurrences **on affected land**. The term includes, but is not limited to, open mining and surface operation. The term also includes transportation and processing operations on affected land. The term does not include concentrating, milling, evaporation, cleaning, preparation, **transportation, and other off-site operations not conducted on affected land**. C.R.S. § 34-32.5-103(13). (emphasis added)

Finally, Rule 6.4.14 (Exhibit N – Source of Legal Right to Enter) requires, “The source of the Operator’s/Applicant’s legal right to enter and initiate a mining operation on the **affected land**. (Same requirement as Rule 6.3.7).” (emphasis added).

Nothing contained within the Application states that Little Turkey Creek Road will be substantially upgraded to support the proposed mining operation. Little Turkey Creek Road is a pre-existing off-site road that was constructed for purposes unrelated to the proposed operation.¹ See, C.R.S. § 34-32.5-103(13). As

¹ The Applicant proposes constructing a separate access road off of Hwy 115 for use by the mine operation. The application affirmatively stated the mine operation will obtain a Hwy 115 access permit from CDOT for construction of the access road. Mine traffic on Little Turkey Creek Road will be limited to light vehicles (i.e., one-ton or less pickup trucks).

required under the Act and Rules an Applicant need only submit proof of legal right to enter (Exhibit N) for lands located within the affected land boundary. As Little Turkey Creek Road is not within the Application's affected land, proof of legal right to enter and initiate a mining operation is not required.

As the Board is aware, affected land is legally important because it outlines the jurisdictional reach of the Board. The definition of "mining operation" in the Act limits the jurisdiction of the Division and Board over the Application to operations or activities occurring on affected land. Because Little Turkey Creek Road is not within the affected land boundary proposed in the Application, the Act's jurisdictional constraints therefore limit the jurisdiction of the Division and Board.

The Application does not include Little Turkey Creek Road within the Affected Lands boundary, therefore, the Motion to Vacate Formal Hearing should be denied.

Respectfully submitted to the Colorado Mined Land Reclamation Board on April 20th, 2018.

/s/ Scott Schultz
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