



COLORADO
**Division of Reclamation,
Mining and Safety**
Department of Natural Resources
1313 Sherman Street, Room 215
Denver, CO 80203

August 27, 2019

Rhett Bennett
Black Mountain Sand Weld LLC
500 Main Street, Ste. 1200
Fort Worth, TX 76102

**Re: Black Mountain Sand Weld LLC; Lost Creek Mine; File No. M-2018-051;
112c Permit Application Amendment (AM-01) Adequacy Review**

Mr. Bennett,

The Division of Reclamation, Mining and Safety (Division/DRMS/Office) reviewed the content of the Black Mountain Sand Weld LLC (Black Mountain) 112c permit application amendment (AM-01) for the Lost Creek Mine, File No. M-2018-051 and submits the following comments. The Division is required to issue a recommendation to the Board no later than October 9, 2019 since timely objections were received by the Office. Therefore, a response to the following adequacy review concerns should be submitted to the Division as soon as possible.

The review consisted of comparing the application amendment content with the specific requirements of Rules 1, 3, 6.1, 6.2, 6.4 and 6.5 of the Minerals Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials effective date July 15, 2019. Any inadequacies are identified under the respective exhibit heading along with suggested actions to correct them.

Comments and Objections

1. The Division received state agency comments from History Colorado, the Division of Water Resources and the Department of the Army Corps of Engineers for the original application and application amendment. The letters received for the application amendment are attached for review. Please address the comments submitted for the amendment application and revise the application amendment accordingly.

The Applicant submitted a response letter dated May 28, 2019 for the comment letters received for the original permit application. No additional response is required from the Applicant for the original application comments.



2. The Division sent the Applicant copies of all timely objections received for the original application from Morgan County Quality Water District, Bijou Irrigation District and Bijou Irrigation Company and Equus Farms, Inc. Please inform the Division how the Applicant intends to address the jurisdictional issues raised by Objectors.

The Applicant submitted a response letter dated May 28, 2019 for the objections received for the original permit application. No additional response is required from the Applicant for the original application objections.

3. The Division receive one (1) objection letter to the application amendment during the public comment period from RLH – ruthielove2000@yahoo.com. A copy of the objection letter was sent to the Applicant under separate cover. Please inform the Division how the Applicant intends to address the jurisdictional issues raised by Objector.
4. The Division received an additional comment letter for Bijou Irrigation District and Bijou Irrigation Company during the public comment period for the amendment application. A copy of the letter is attached. Please address the comments contained in the letter and revise the application amendment accordingly.

1.6 Public Notice

5. As required by Rules 1.6.2(1)(d) and 1.6.5(2), please submit proof of publication in a newspaper of general circulation in the locality of the proposed mining operation.

The Applicant submitted proof of publication for the amendment application on August 15, 2019. No additional response is required by the Applicant.

6. As required by Rule 1.6.2(e), please submit proof of the notice to all owners of record of surface and mineral rights of the affected land and the owners of record of all land surface within 200 feet of the boundary of the affected land including all easement holders located on the affected land and within 200 feet of the boundary of the affected land. Proof of notice may be return receipts of a Certified Mailing or by proof of personal service.

The Division received proof of notice to all owners of record for the amendment application in the form of certified mail receipts from the Applicant on August 15, 2019. Please provide the return receipts for the certified mailing or provide tracking information verifying receipt in order to comply with the requirements of Rule 1.6.2(1)(e).

The Division did not receive proof of notice for the following owners of record of the surface and mineral rights of the affected land and the owners of record of all land surface within 200 feet of the affected land, including all easement holders located on the affected

land and within 200 feet of the boundary of the affected land. Please provide proof of notice pursuant to Rule 1.6.2(1)(f) for the following owners of record:

- a. Black Mountain Land Company LP
- b. Cornhuskers Farms / Motorola C&E
- c. Nextel
- d. Colorado Interstate Gas

The Applicant submitted Certified Mail Receipts for the following owners of record of all land surface within 200 feet of the boundary of the affected land, however the owners of record are not indicated on the Exhibit C maps. Please explain these discrepancies and revise the Exhibit C maps accordingly.

- e. American Tower Asset Sub LLC
- f. John S. Painter
- g. John Yocam
- h. Lost Creek Land & Cattle Co.
- i. Cactus Energy of Colorado
- j. Continental Oil Company
- k. John Wagner
- l. Justin Korkus
- m. Paul G. Allen
- n. Stuart Corbridge

6.4 Specific Exhibit Requirements - Regular 112 Operations

The following items must be addressed by the Applicant in order to satisfy the requirements of C.R.S. 34-32.5-101 et seq. and the Mineral Rules and Regulations of the Mined Land Reclamation Board:

6.4.3 Exhibit C - Pre-Mining and Mining Plan Maps of Affected Land

7. The Applicant provided the Mining Plan Map as Exhibit D-1. Please revise the Mining Plan Map to indicate it as Exhibit C - Mining Plan Map.
8. Pursuant to Rule 6.2.1(2)(e) the acceptable range of map scales shall not be larger than 1 inch = 50 feet nor smaller than 1 inch = 660 feet. The Exhibit D map provided by the Applicant is at an approximate 8 inches = 5,000 feet or 1 inch = 625 feet scale. The map conforms to the requirement of the Rule, however the scale is difficult to use to determine accurate distances. Please provide a map or maps of the Mining Plan of Affected Land at a usable scale within the acceptable range of map scales.

9. The proposed 200 feet minimum offset between the permit boundary and affected land boundary is not indicated on the Exhibit C - Mining Plan Map. Please update the Exhibit C - Mining Plan Map to indicate the offset distance between the permit boundary and the affected land boundary.
10. The offset distance between the I-76 easement and affected land boundary is not indicated on the Exhibit C - Mining Plan Map. Please confirm the proposed affected land boundary is greater than 200 feet from the I-76 easement and update the Exhibit C - Mining Plan Map to indicate the offset distance between the I-76 easement and the affected land boundary.
11. During the pre-operational inspection, a waterline owned by Morgan County Quality Water District was observed bisecting the southern portion of the proposed mine site adjacent to Weld County Road 36. Please update the Exhibit C maps to indicate the location of the waterline.
12. During the pre-operational inspection, the oil and gas facilities indicated on the Exhibit C2: Pre-Mining Map within the proposed affected land boundary could not be located by the Division. The Applicant stated the wells were abandoned and plugged by the Oil and Gas companies. Please provide evidence of the well abandonment to the Division and revise the Exhibit C2 map to indicate the well are abandoned.
13. During the pre-operational inspection, several utilities including; a communication tower owned by Kinder Morgan, a fiber optic line owned by Wiggins Telephone, several underground powerlines owned by Morgan County REA and an overhead powerline located adjacent to a portion of the proposed southern boundary of the mine site were observed by the Division. Please revise the Exhibit C maps to indicate the owner's name, type of structure and location of all significant, valuable and permanent man-made structures contained in the area of affected land and within two hundred (200) feet of the affected land.
14. During the pre-operational inspection, a fiber optic line owned by Wiggins Telephone was observed by the Division near the location of the MGF Oil Corporation well indicated on the Exhibit C2: Pre-Mining Map. Please revise the Exhibit C maps to indicate the owner's name, type of structure and location of all significant, valuable and permanent man-made structures contained in the area of affected land and within two hundred (200) feet of the affected land.

6.4.4 Exhibit D - Mining Plan

15. On Page 2 of the Exhibit D - Mining Plan, the Applicant states material will be excavated from the pit using excavators, dozers and front-end loaders. Please provide additional

details explaining how the mining operations will be conducted including the earthmoving methods, excavation practices and highwall geometry pursuant to Rule 6.4.4(b).

16. During the pre-operational inspection, a waterline owned by Morgan County Quality Water District and a fiber optic line owned by Wiggins Telephone were observed bisecting the proposed mine site in two separate locations. Please update the Mining Plan to discuss how the Applicant intends to conduct mining operations adjacent to the waterline and fiber optic line.

6.4.5 Exhibit E - Reclamation Plan

17. On Page 5 of the Exhibit E - Reclamation Plan, the Applicant states the proposed and existing monitoring wells would allow Black Mountain to monitor groundwater levels and water quality between the Empire Reservoir and the project site as well as between the project site and the Hay Gulch Aquifer's eastern boundary prior to mining operations and throughout the life of mine. Please commit to providing the quarterly groundwater quantity and quality data with the annual report, if the permit application amendment is approved and issued by the Division.

On Page 7 of the Exhibit E - Reclamation Plan, the Applicant states the proposed water quality testing parameters are shown on Table E3 and are based on the State of Colorado Water Quality Commission's (WQCC) Regulation No. 41, The Basic Standards for Groundwater (5 CCR 1021-41). The parameters listed in Table E3 are only a portion of the parameters listed on Table 1 – Domestic Water Supply – Human Health Standards of the WQCC Regulation No. 41. The Division typically requires Operators to conduct four (4) quarters of groundwater quality analysis for the complete list of parameters listed on Table 1 to establish a baseline prior to reducing the testing parameters for the life of the mining operation. Please commit to conducting groundwater quality sampling for the complete parameters listed on Table 1 of the WQCC Regulation No. 41 or provide justification for the limited list of parameter listed on Table E3 of the Reclamation Plan. Please note the Division will require a full suite analysis prior to final release of the site if the sampling parameters are reduced during the mining operation.

18. On Page 8 of the Exhibit E - Reclamation Plan, the Applicant states topsoil stockpiles shall be vegetated within 180 days to protect from erosion. Please provide a seed mixture, application rate in pure live seed (PLS) and application method for the topsoil stockpile stabilization.
19. On Page 9 of the Exhibit E - Reclamation Plan, the Applicant states Black Mountain is developing a weed control plan in conjunction with Weld County's Weed Management Division. The draft plan is included as Exhibit E2. Please provide the Division with a copy of the final weed control plan or commit to providing the plan when available.

20. On Page 10 of the Exhibit E - Reclamation Plan, the Applicant states Black Mountain shall post a sign clearly visible from the access road. Please commit to comply with the Minerals Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials revised on July 15, 2019 requiring the entrance sign to have a minimum size equaling one hundred and eighty-seven (187) square inches, such as eleven (11) inches in height and seventeen (17) inches in width with appropriate font size.

6.4.6 Exhibit F - Reclamation Plan Map

21. Pursuant to Rule 6.2.1(2)(e) the acceptable range of map scales shall not be larger than 1 inch = 50 feet nor smaller than 1 inch = 660 feet. The Exhibit F map provided by the Applicant is at an approximate 8 inches = 5,000 feet or 1 inch = 625 feet scale. The map conforms to the requirement of the Rule, however the scale is difficult to use to determine accurate distances. Please provide a map or maps of the Reclamation Plan of Affected Land at usable scale within the acceptable range of map scales.

6.4.8 Exhibit H - Wildlife Information

22. On Page 2 of Exhibit H – Wildlife Information, the Applicant states a habitat survey (for burrowing owls) will be conducted in spring 2019 to determine whether there is activity within the first phase of the operation. If there is activity in the construction area, Black Mountain will work with CPS to relocate any individuals. The Applicant's statement differs from the burrowing owl mitigation measures discussed in Section 4.2 Special Status Species of the Biological Survey Reports prepared by TRC Environmental Corporation dated December 14, 2018 and July 15, 2019. Please explain this discrepancy and revise Exhibit H accordingly.
23. The Applicant provided a copy of the Recommended Survey Protocol and Actions to Protect Nesting Burrowing Owls from the Colorado Division of Parks and Wildlife (CPW) as part of the Biological Survey Report prepared by TRC Environmental Corporation dated July 15, 2019. Please commit to adhering to the CPW guidelines for Burrowing Owls during the operation of the proposed mining operation.

6.4.12 Exhibit L - Reclamation Costs

24. The reclamation cost estimate provided by the Applicant is not sufficient for the Division to accurately calculate the cost of reclamation which would be incurred by the State. Please provide all information necessary to calculate the cost of reclamation broken down into the various major phases of reclamation pursuant to Rule 6.4.12(1). Please include the anticipated equipment types and models, material volumes, haul distances and anticipated road grades for each reclamation task, at minimum. Additionally, please include tasks for the plant demolition including removal of all excess concrete and reclamation of the process water and slurry ponds. The Division will estimate the reclamation cost estimate following submittal of all information required to calculate the financial warranty.

6.4.15 Exhibit O - Owner(s) of Record of Affected Land (Surface Area) and Owners of Substance to be Mined

25. The Applicant submitted a warranty deed for the land previously owned by Paul G. Allen which was recently purchased by Black Mountain Land Company, LP. Please revise Exhibit O to remove the reference to the Allen owned lands and update Exhibit O to indicate the current land ownership accordingly.

6.4.18 Exhibit R - Proof of Filing with County Clerk and Recorder

26. Please provide an affidavit or receipt indicating the date on which the revised application amendment information required to address this adequacy letter and for the information provided by the Applicant since the initial amendment application documents were placed with the Weld County Clerk and Recorder for public review, pursuant to Subparagraph 1.6.2(1)(c).

6.4.19 Exhibit S - Permanent Man-made Structures

Where the affected lands are within two hundred (200) feet of any significant, valuable and permanent man-made structures, the Applicant may either:

- a. provide a notarized agreement between the Applicant and the person(s) having an interest in the structure, that the Applicant is to provide compensation for any damage to the structure; or
 - b. where such an agreement cannot be reached, the Applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or
 - c. where such structure is a utility, the Applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have "no negative effect" on their utility.
27. On Page 1 of Exhibit S - Permanent Man-made Structures, the Application states the Lost Creek Mine affected lands area have been designed to be set back from the project boundary and all significant, valuable, and permanent man-made structures by at least 200 feet. Based on the observations from the pre-operational inspection, there appears to be man-made structures not owned by Black Mountain on the property and within the 200 feet offset between the property and affected lands boundaries.

Please revise Exhibit S to indicate all structures on the property and within 200 feet of the affected land boundary and provide the Division with copies of the notarized structure agreements or proof the Applicant's attempted to obtain agreements with all owners of the

structures on and within 200 feet of the affected land boundary of the proposed mine site pursuant to Rule 6.4.19.

Please be advised the Lost Creek Mine application amendment may be deemed inadequate, and the application amendment may be denied on October 9, 2019, unless the above mentioned adequacy review items are addressed to the satisfaction of the Division. If more time is needed to complete the reply, the Division can grant an extension to the decision date. This will be done upon receipt of a written waiver of the Applicant's right to a decision by October 9, 2019 and request for additional time. This must be received no later than the deadline date.

If you have any questions, please contact me at peter.hays@state.co.us or (303) 866-3567 Ext. 8124.

Sincerely,



Peter S. Hays
Environmental Protection Specialist

Enclosures - History Colorado, the Division of Water Resources and the Department of the Army Corps of Engineers, Bijou Irrigation District and Bijou Irrigation Company comment letters

Ec: Michael Cunningham; Division of Reclamation, Mining & Safety
Kira Coff; Millcreek Engineering
Brittany Schamaun; Black Mountain Sand Weld LLC