

September 1, 2019

Mr. Russ Means  
Minerals Program Director  
Colorado Division of Reclamation, Mining, and Safety (DRMS)

**RECEIVED**

SEP 05 2019

DIVISION OF RECLAMATION  
MINING AND SAFETY

Re: Ducray Pit #2, M-2019-035, Questions Regarding Your Response of August 30, 2019

Dear Mr. Means,

Thank you for responding. The response did not address my concerns.

Please refer to my comments of July 17, 2019 (Laserfische document dated July 18, 2019), which fully explain my concerns and objections to issuance of a permit based on the most recent application submitted by Martinez Western Constructors. The objections are well supported by attachments including air photos that were taken right after the illegal mining occurred in March of 2018.

DRMS did confirm that the application becomes the permit once all items are adequately and accurately addressed. The most recent application submitted does not meet adequacy or accuracy standards. It appears that by interpretation, this illegal mining application is not being held to the same Mineral Rules and Regulations as a legal one. Why?

The application from Martinez Western Constructors has misrepresented important facts by not accurately showing the newly affected area. Areas that are newly affected will not get reclaimed if not identified, and slope stabilization would not occur in those areas. Why is this being allowed?

What civil penalties is DRMS going to impose on the applicant for encroaching onto the 601 22-½ Road property?

Why is DRMS refusing to fully address adequacy of storm water retention controls?

All of the following information was requested from the applicant by DRMS during the application process. The applicant failed to provide it. There has been no follow up to obtain the information by DRMS. An adequate geotechnical stability study has yet to be provided. The relationship of the septic leach field to the newly affected area needs to be provided. Recorded easements need to be provided and owners contacted. A list of permits required (Mesa County Road Alteration Permit) has not been provided. The applicant claimed no permits were required. When is DRMS going to follow up and obtain the information requested from this applicant, as the application is incomplete? Why is DRMS not following its process?

How will it be assured the drainage issues are corrected for the haul road (22 ½ Road) unless this impact is documented in the permit and the financial warranty withheld until correction occurs? Why would this applicant reclaim this impact, unless a financial warranty or some other enforcement tool was utilized? This impact is a result of the illegal mining and should be included in the permit so Mesa County can resolve.


Why would DRMS not apply civil penalties to obtain corrective action for the fence damage? Why would DRMS abdicate their responsibility and not address fence damage in the permit, as the Mary Ann Sink Trust did not sign a structure agreement? Fence damage and encroachment occurred on October 30, 2018 when Martinez Western Constructors violated a Board Order (August 14, 2018) cease and desist and was onsite grading/leveling without a permit. A Geotechnical Stability Study had not been performed.

Please provide answers to my questions.

Please address all of my concerns/objections, so when a permit is issued, it will not misrepresent material facts; it will comply with the Mineral Rules and Regulations; and it will require adequate reclamation of all impacts.

Please contact me, if you have any questions.

Sincerely,

  
Jonathan Sink  
(970) 241-2685

Cc: Ginny Bannon, Director

Cc: Travis Marshall, Senior Environmental Specialist, GJFO

Cc: Amy Yeldell, Environmental Protection Specialist, GJFO

Mary Ann Sink Trust, Mary Ann Sink Trustee

Mailing Address:

597 Ravenwood Lane  
Grand Junction, Colorado 81507  
(970) 241-2685

September 1, 2019

Location of property:

601 22 1/2 Road  
Grand Junction, Colorado

Mr. Russ Means, Minerals Program Director  
Colorado Division of Reclamation, Mining and Safety  
1313 Sherman Street, Room 215  
Denver, Colorado 80203

RE: Ducray Pit #2, Permit File #: M-2019-035, Violation #: MV-2019-009  
Questions Regarding Your Response of August 30, 2019  
Operator/Applicant: Martinez Western Constructors, Inc.  
& All Enforcement Actions Associated with File #: M-2018-018 &  
MV-2018-022

Dear Mr. Means,

Thank you for responding. Please refer to my comments of July 14, 2019 (Laserfische document dated July 16, 2019), which fully explain my concerns and objections to issuance of a permit based on the application M-2019-035. The applicant has not meet the requirements of the Act and Rules. The application in Laserfische document dated August 2, 2019 (23 pages) does not include many of the requirements that are listed by the Act and Rules.

This permit application (M-2019-035) is a Mined Land Reclamation Board Ordered corrective action for mining without a permit (Board Order MV-2019-009 Martinez Western Constructors MV-2018-018 & MV-2018-022.

Concerns discussed on the phone August 22, 2019 at 2:00 P.M. with Division Director Ginny Brannon, Senior Environmental Specialist Travis Marshall and yourself (Russ Means) were not addressed in your letter dated August 30, 2019. We were advised that at the consent hearing we could not speak. Thank you for allowing us to express concerns that are not addressed + included in the application (M-2019-035).

The following concerns were acknowledged by you in the telephone conference: newly affected areas should be accurately depicted on maps/exhibits; storm water permit is required (applicant stated no permits are required); slopes should be 3:1; operator grading/leveling on October 30, 2019; fence damage to 601 22 1/2 Rd and encroachment; structure agreement sent out was missing the third page notarized agreement; two recorded easements were discussed and are not in the application or depicted on Map/Exhibits.

Issues of concern that you were going to look into include: Mined Land Reclamation Board Ordered signed on August 14, 2018, Martinez Western Constructors shall cease and desist any further activities on the affected lands ....; Engineering evaluation in the application, states "Mary Ann Sink Trust fence is approximately adjacent - Bennet property is approximately 220 feet; Mesa County Clerk and Recorder's Martinez Western Constructors, Inc permit file; two

interoffice memo/review memo's dated 6/18/2018. The concerns were not addressed in your response.

Clarification was given that a new application will be submitted by the operator/applicant (permit file # M-2019-035) with a new file number. The previous permit file # M-2018-018, violation # MV-2018-022& violation # MV 2019-009 will remain attached.

There are two Interoffice Memo/Review Memo dated 6/18/2018. Permit No. M-2019-035 and M-2018-018. It states enforcement actions will remain associated with file number M-2018-018.

As mentioned the enforcement actions such as, justification for slopes steeper than 3H:1V, gradient of reclaimed slopes, rule 6.5 Geotechnical Stability Exhibit... were not pulled over and included in the adequacy review from the Division. This concern was not addressed in your letter dated August 30, 2019.

Slope Stability is an issue of concern. As you acknowledged in our telephone conference, slopes should be 3:1. Why is the southern area slope not 3:1? This is an enforcement action listed by the Division in file permit #: M-2018018. The newly affected areas as shown on the maps/exhibits are not accurately depicted by the applicant. How can an Geotechnical Stability Exhibit accurately address the newly affected areas if not identified, and slope stabilization would not occur in those areas?

The engineer signed report by Kumar & Associates, Inc. was included with applicants submittal located in Laserfische document dated June 17, 2019 page 61, 62, 63 (applicants Exhibit E - Mining Plan 1 (aka figure 1) of a 69 page document.

In your response "The report was reviewed internally and found to be satisfactory."

The new engineer signed report by Kumar & Associates, Inc. in Laserfische document dated August 2, 2019, starting on Page 13 of 23 page document.

Page 15 Figure 1 - Exhibit E - Mining Plan 1 (aka Figure 1) is an exhibit from the application and does not depict the newly affected areas accurately misrepresenting an important material fact; the Exhibit does not have the engineering stamp and M-2018-018 Ducray Pit is listed.

Page 14 cut slope that have been graded at 3:1 and flatter.

On page 7, this contradicts the applicant's Exhibit E Mining Plan 2; "The southern blue area contains cut slopes that range from 1:51 - 3: or flatter from east to west." This is also an enforcement action from M-2018-018, MV-2018-022.

The applicant's page 8 Exhibit E - Reclamation Plan - "Slopes will be no steeper than 3:1." There are inconsistency in the application and the engineer report. Why?

It was specifically discussed that the operator on October 30, 2018 was grading/leveling the Ducray Pit M-2018-018, MV-2018-022 without a permit or written approval by the Division. It is unknown other dates the operator was allowed to do work in the Ducray Pit. I was told by Amy Yeldell, Environmental Protection Specialist, GJFO of the Division gave the operator a verbal and no violation would be cited.

The Mined Land Reclamation Board Order dated August 14 2018 Martinez Western Constructors shall CEASE AND DESIST any further activities on the affected lands, except those activities approved in writing by the Division necessary to comply with the conditions of the Board's Order, prevent damage to off-site area, or protect the public health and safety. Extraction from the subject pit encroached on the Mary Ann Sink Trust (601 22 1/2 Rd) property on the West side causing some sliding and fence damage. Sliding occurred when the operator

performed some leveling/grading on October 30, 2019. The Surety-Relation Inspection of April 9, 2019 by the Division of Reclamation Mining and Safety (Division) confirmed encroachment. An inspection report dated April 9, 2019, "Reclamation work appeared to have taken place since the last inspection" (of October 16, 2018). The landowner did not receive a violation for removing material from the southern pit (the material remained on the property) inspection report dated October 16, 2018 with photos from Ms. Amy Yeldell, Environmental Protection Specialist, GJFO.

It is clear, the Division did not comply with the Board Order of August 2018 (violation #: MV2018-022 permit file #: M-2018-018)). No violation was cited to the operator by the Division, nor can I find the Board is aware of such activities that occurred affecting property west of newly affected areas encroachment and fence damage. In your response, "The fencing issue that you brought forward is a civil matter." Please explain why DRMS claims it has no jurisdiction on this issue? In your response the encroachment issue is silent. Please address.

In your response, "my review indicates staff has followed the proper processes and review."

As you acknowledged, newly affected areas should be accurately depicted on maps/exhibits. The information contained in the *application does misrepresent important material facts, such as, the areas excavated without a permit (Mar 11 through 17, 2018) is not depicted on the applicants/operators exhibits.* The City of Grand Junction, CO GIS air photo was taken March 26, 2018 nine days after the borrow material was removed without a permit. The air photo shows Martinez Western Constructors, Inc excavator in the area of illegal mining. The height is not 4' as stated in the application, based on the height of the excavator.

The Division shows the Site Location maps at the Board hearing on April 24, 2019 (southern pit not accurately depicted), while the application is depicting much different maps/exhibits. Why is the applicant allowed by the Division to depict an inaccurate newly affected areas on maps/Exhibits?

It was discussed that two recorded easements were mined over. The application does not include in the application the locations of the two recorded easements.

DRMS on July 2, 2019 to Mr Martinez, published notice in newspaper mail a copy of the notice to all owners of record of surface rights and mineral rights, holders of any recorded easements were not sent out, nor was one sent to Xcel Energy.

It was discussed that the Permanent Man Made Structure agreement sent out was missing the 3rd page (Notarized agreement), applicant's June 17, 2019 submittal.

Please clarify in your response the following statement. "Any required work on this road must b.e done through the County process. The County and landowner have acknowledge that." Why if the County and landowner? The applicant received comments from the County there is a drainage issue. Why is this not included in the application?

The Division was at the Ducray pit August 14, 2019 - Was there an inspection report associated with this visit? It is not on Laserfische.

May 22, 2019 the Mined Land Reclamation Board signed the Board Order  
RE: Findings of Fact, Conclusions of Law, and Order, Martinez Western Constructor, Inc.  
File No. M-2018-018, MV-2019-009

"ORDER: The Board affirms the cease and desist order issued in the August 2018 Order. Martinez Western Constructors shall CEASE AND DESIST any further activities on the affected lands, except those activities approved in writing by the Division, necessary to comply with the conditions of the Board's Order, prevent damage to off-site areas, or protect the public health and safety."

In your response of August 30, 2019, "my review indicates staff has followed the proper processes and review." Please explain as the application is incomplete and material facts are misrepresented in the application.

Sincerely,

A handwritten signature in blue ink that reads "Mary Ann Sink Trustee".

Mary Ann Sink as Trustee  
for The Mary Ann Sink Trust  
(970) 241-2685

cc: Ginny Brannon, Division Director  
Travis Marshall, Senior Environmental Protection Specialist, GJFO  
Amy Yeldell, Environmental Protection Specialist, GJFO