



September 11, 2019

**Re:** Ducray Pit #2, File No. M-2019-035, Rationale for Decision to Approve a 110(c) Reclamation Only Application Over Objections.

### Introduction

Herein, all references to the Act and Rule refer to the Colorado Mined Land Reclamation Act for the Extraction of Construction Materials, 34-32.5-101 *et seq.*, C.R.S. (the Act or Construction Materials Act), and Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the Rules). Copy of the current Act and Rules area available on the O's website at [www.mining.state.co.us](http://www.mining.state.co.us)

On September 11, 2019, the Office of the Division of Reclamation Mining, and Safety (Office/Division) issued its decision to approve the application for the Ducray Pit #2, file number M-2019-035. This document is intended to explain the process by which the Office arrived at its decision to approve the application.

The application for the Ducray Pit #2, Martinez Western Constructors, Inc. (Applicant) has satisfied the corrective actions of Violation MV-2018-022 and MV-2019-009 associated with File No. M-2018-018. The violations were issued by the Mined Land Reclamation Board (MLRB/Board), with effective dates of August 27, 2018 and May 22, 2019. The Board found the Operator in violation of C.R.S. 34-32.5-109(1) for failure to obtain a reclamation permit prior to engaging in a new operation. Corrective actions required the Operator to (1) Within thirty days of the effective date of this order (MV-2019-009), the Operator shall file a new application for a 110c permit and associated fee, and obtain approval and issuance within thirty days of the filing date for reclamation only activities; and (2) Within thirty days of the effective date of this order (MV-2019-009), the Operator shall submit to the Division an appropriately executed interim financial warranty totaling \$6,339, as necessary to address the existing reclamation liability. As part of the review process of the 110c application the Division shall adjust the amount of financial warranty according to the conditions of the approved reclamation plan. On August 21, 2019 the MLRB approved the Applicant's request for a modification of the Board's Order for violation number MV-2019-009 to extend the corrective action deadlines to September 20, 2019. The Operator has since submitted all required documentation. In complying with MV-2019-009 the Operator also complied with MV-2018-022, the initial violation.



The application for the Ducray Pit #2 was filed on July 1, 2019. This was a reclamation only permit, where only the disturbed portions would be reclaimed. Mining occurred within a pre-law unreclaimed historical pit. Lands affected by this operation were to be reclaimed to support a revegetated residential post-mining land use. Pursuant to Rule 1.4.6 the Office scheduled the decision date for the application for July 30, 2019. The decision date was later reset by the Mined Land Reclamation Board once under Rule 1.4.1(9) for a final decision due date of September 20, 2019.

On July 11, 2019, the applicant published a public notice in the Daily Sentinel. As noted in that newspaper notice, the public comment period for the application closed on July 22, 2019. The Office received three timely non-agency comment/objection letters from Mary Ann Sink Trust, Jon Sink and Susan Moyer. As well as four additional follow up comments/objections from the previously mentioned individuals. Under Rule 1.6.2(1)(e)(ii), not all of the Owners of Record were originally noticed. This corrective notice was mailed on July 27, 2019, the comment period for the individuals noticed under Rule 1.6.2(e), closed August 6, 2019, no additional comments were received.

The Office identified 9 adequacy issues for the application in Adequacy Review #1 dated July 24, 2019. The Office clarified that all adequacy issues must be fully addressed to the Office's satisfaction prior to the decision date. On July 30, 2019 the Office received an extension request to the decision date. On August 1, 2019 the Office clarified that the permit application deadline was set by the MLRB Order MV-2019-009 and that staff could not grant the extension. Rather the Office would put the Applicant's request on the MLRB agenda for a decision and continue to review materials submitted until directed otherwise. On August 2, 2019 the Office received the Applicant's response to adequacy issues. All previously identified adequacy items were sufficiently address and the application has meet the minimum requirements to the Act, Rules and Regulations. The MLRB approved the Applicant's request on August 21, 2019 to extend the decision date to September 20, 2019.

#### **Rationale for Approval Regarding Public Notices**

Pursuant to Rule 1.6.2(1)(c) the Applicant placed a copy of the application with the Mesa County Clerk and Recorder on June 11, 2019 prior to submitting the application to the Office. The adequacy responses were posted with the Clerk and Recorder on July 30, 2019. The Applicant did not provide an updated proof of receipt but the Office called and verified receipt with the Clerk and Recorder. The Office received the adequacy response on August 2, 2019.

Pursuant to Rule 1.6.2(1)(e) the applicant shall mail or personally serve a copy of the notice in Rule 1.6.2(1)(d) immediately after publication to all Owners of Record of the Surface and mineral rights for affected lands and the Owners of Record of all land surface within 200 feet of the boundary of the affected land. On July 15, 2019 the applicant provided this notice to five Owners of Record. Adequacy Review #1, sent on July 24, 2019 identified two Owners of Record that had not received notice as required under 1.6.2(1)(e)(ii). The adequacy response received on August 2, 2019 provided proof that these notices were sent on July 27, 2019. Under Rule 1.6.2(1)(e) since this notice did not coincide with the normal newspaper publication the Office re-opened the comment period for those Owners to be noticed. The comment

period would be re-opened for 10-days to be consistent with Rule 1.7.1(2). This comment period closed on August 6, 2019. No additional comments were received.

Pursuant to 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. The Applicant demonstrated that the application meets the minimum requirements of Rules 1.6.2(1)(c), 1.6.2(1)(e), and 1.6.2(1)(g), and C.R.S. 34-32.5-112(9)(a) and (c).

#### **Rationale for Approval Regarding the Requirements for Permanent Man-Made Structures and Engineering Evaluation**

Pursuant to Rule 6.3.12, the Applicant shall provide sufficient information to demonstrate that the stability of any permanent man-made structures located within 200 feet of the permit boundary (affected land) will not be adversely affected. If the Office determines that such information is inadequate to demonstrate that the operation will not adversely affect the stability of any significant, valuable and permanent man-made structures, the Applicant shall 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(s) 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.

The permit application identified six structure owners and provided proof of structure agreements being mailed via certified mail receipt. The structures identified at the time of application were;

1. Mesa County- 22 ½ Road;
2. Mary Ann Sink Trust-West property boundary;
3. Jay Ducray-leach field/septic, residence, water tap and new dwelling;
4. River Place LLC-Fence on North, South and East side;
5. Brian Bennet-Home and Garage;
6. Xcel Energy- overhead electric line and pole

Identified in one of the comment letters was that the Applicant failed to correctly identify all permanent man-made structures located within 200 feet of the affected land or correctly identify the owner of each structure. Also identified in a comment letter were easements not identified in the permit application. Easements where no structure exists are not required to be identified or a structure agreement to be completed. In the Office's July 24, 2019 Adequacy Review #1 the Applicant was made aware of the

deficiencies of Rule 6.3.12. The Applicant was directed to send a new agreement to the Mary Ann Sink Trust explicitly stating the structure as the west side fence rather than the west property boundary. Also a portion of 22 ½ Road within 200 ft. of the permit boundary is owned by the City of Grand Junction requiring a seventh structure agreement. On August 2, 2019 the Applicant provided proof that on July 27, 2019 new structure agreements were sent. The Office conducted a site inspection on August 14, 2019 where permanent man-made structures were verified.

Pursuant to Rule 6.3.12(b) where such agreements cannot be reached, the Applicant shall provide an appropriate engineering evaluation. None of the seven structure agreements were returned completed therefor the Applicant was required to provide an engineering evaluation. The initial engineering evaluation, completed by Michael A Berry, P.E. of Huddleston-Berry Engineering and Testing, LLC dated November 28, 2018, submitted with the permit applicant was determined to be inadequate in the Office's Adequacy Review #1. The Geotechnical Stability Analysis was inadequate in that it failed to address all of the structures for which completed damage compensation agreements were lacking.

A new engineering evaluation, completed by Robert L. Duran, E.I. of Kumar and Associates dated June 10, 2019, was included with the Applicant's adequacy responses received on August 2, 2019. The evaluation specifically identified each structure and its relative proximity to the affected/disturbed lands within the permit boundary. The evaluation indicated that based on the height of the highwalls, the natural material and the re-established 3:1 slopes, the disturbed areas meets the safety factors for DRMS.

Pursuant to Rule 6.3.12(a) the Applicant did attempt to reach an agreement with all structure owners identified in Rule 6.3.2(b). The engineering evaluation provided did adequately demonstrate that structures would not be affected by the reclamation operation for those structures in which an agreement was lacking pursuant to Rule 6.3.12(b).

Pursuant to 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. The Applicant demonstrated that the application meets the minimum requirements of Rules 6.3.12 and 6.5 and C.R.S. 34-32.5-115(4)(e).

#### **Rationale for Approval Regarding Stormwater**

Rule 6.3.3(i) requires the Applicant to characterize and describe how mining will affect the quantity and quality of surface water and methods to minimize that disturbance. According to the Applicant and as verified by the Office there is no surface water present on site. The application states that grading will direct surface drainage and flow to existing ditches. And that the ditches will be protected with a sediment retention pond to allow sediment to be maintained within the permitted area.

Rule 6.3.3(l) requires the Applicant to describe measures taken to minimize disturbances to the hydrologic balance, prevent off-site damage and provide a stable configuration of the reclaimed area consistent with the proposed future land use. The application states that grading will re-establish and direct runoff flow from the mining operation to a centralized sediment pond that will be approximately

15' across with a sediment ponding area in excess of 25' x 20' x 4' developed from onsite earthen materials and straw waddles.

Pursuant to Rule 6.3.4(1)(e) the Applicant must specify the reclamation treatment of any waste rock dumps, underground mine openings, ditches, sediment control facilities, buildings and other features specified in your mine plan but not previously addressed in the Reclamation Plan narrative. These features must be shown on Exhibit E - Map. This should describe the measures taken to minimize disturbance to the hydrologic balance, prevent off-site damage, and provide for a stable configuration consistent with the proposed future land use. The Applicant has proposed BMP's and stormwater control features to minimize impacts in the event that surface waters in the form of a stormwater event enter the site. The site will utilize a sediment control pond and straw waddles. These stormwater control features for reclamation only adequately take measures to minimize disturbances to the hydrologic balance, prevent off-site damage and provide stability consistent with the proposed future land use. Additionally these features are shown on Exhibit E-Reclamation and Water Features Maps.

Pursuant to 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. The Applicant demonstrated that the application meets the minimum requirements of Rules 6.3.3(i), (l) and 6.3.4(1)(e).

#### **Rationale for Approval Regarding the Reclamation Plan and General Site Stability**

Pursuant to Rule 6.3.4 the Applicant is required to specify the maximum gradient of reclaimed slopes and measures taken to revegetate the site to the proposed post-mining land use. The permit application specified the post-mining land-use as residential. The applicant proposed slopes of 3H: 1V which are accepted reclamation standards and require no additional justification or support. The Applicant stated that affected lands would be stabilized by revegetation of an appropriate seed mix. Adequacy Review #1 required additional clarifications on Rule 6.3.4(c)(ii) regarding the use of fertilizers and 6.3.4(c)(iv) seeding rates. These clarifications were provided in the adequacy response received on August 2, 2019. Additionally the engineering evaluation completed by Kumar and Associates indicated that site conditions had already been regraded back to a 3H: 1V slope or less. The Office does acknowledge that since this site exists within a pre-law mine site with slopes steeper than 3H: 1V small portions of the highwalls where slopes transition may be steeper than the 3H: 1V. In general the reclamation requirements require the site to be stable and vegetation to be established.

Pursuant to 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. The Applicant demonstrated that the application meets the minimum requirements of Rules 6.3.4.

#### **Conclusion**

On September 11, 2019, the Office determined the application satisfied the requirements of C.R.S. 34-32.5-115(4), and approved, over public objections, the permit for the Ducray Pit #2, Permit No. M-2019-035.