

September 26, 2019



1313 Sherman Street, Room 215
Denver, CO 80203

RE: Birdseye Pit, File # M-2019-034, Rationale for Recommendation to Approve a 112c Application with Objections

INTRODUCTION

This document provides the basis for the Division's recommendation to approve the 112c application, submitted by Schofield Excavation, Inc., for the Birdseye Pit, File # M-2019-034, over the objections to the application submitted by neighboring landowner Richard McClain.

The proposed Birdseye Pit is located approximately five miles east of Leadville in Lake County. The operation proposes to mine sand and gravel using conventional methods. The permit area will include 129 acres.

Herein, all references to the Act and Rules refer to the Colorado Land Reclamation Act for the Extraction of Construction Materials, C.R.S. 34-32.5-101 et seq. (the Act), and to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Rules or Rule).

OBJECTION

The Division received a timely objection letter from Richard McClain during the public comment period.

Issues Raised by the Objector:

The issues presented by the Objector are summarized below in bold italics. The Division's responses are also summarized, along with citations to the applicable sections of the Act and/or Rules. The Division has listed the issues it believes to be within the jurisdiction of the Board first, followed by those it believes are outside the jurisdiction of the Board.

A. ISSUES WITHIN THE JURISDICTION OF THE BOARD

- 1. The affected area is located within a nature conservancy easement. A mining operation should not be located within a nature conservancy.***

Division Response

The applicant has provided maps to show the boundary of the conservancy is over 1,000 feet away from the proposed affected area. Lake County records confirm the proposed affected area is not located within a conservancy. Therefore, the Division has determined that the operation is not located within a nature conservancy easement.



2. *A mining operation should not be located at such close proximity to the Arkansas River.*

Division Response

According to the Act and Rules, mine operators are obligated to minimize disturbances to the prevailing hydrologic balance of the affected lands and of the surrounding area, and to the quality and quantity of water in surface and groundwater systems. The application includes measures intended to minimize disturbance to the hydrologic balance. The applicant has committed to maintaining a 200 foot buffer between the Arkansas River and operations at all times, and has committed to not allow any discharge into the Arkansas River or its tributaries.

Stormwater management for the site has been designed to retain precipitation in order to prevent discharge into surface water drainages. Stormwater berms, at least two feet tall with side slopes of 2H:1V are to be placed and maintained around the processing area. Stormwater will be managed according to the requirements of a National Pollutant Discharge Elimination System (NPDES) Stormwater Permit regulated by the Colorado Department of Public Health and Environment (CDPHE).

Fuel storage on site will consist of a single 2,000 gallon diesel tank. To minimize risk of spills, the tank will be double walled in order to provide adequate secondary containment for the fuel.

Groundwater at the site is known to be at least thirty feet below the surface. In order to expose groundwater at the site, the applicant must first obtain approval of a substitute water supply plan or water augmentation plan from the Colorado Division of Water Resources (DWR). The operator has committed to keep excavation at least two feet above the groundwater level until such a time that the DWR requirements are complied with. Maintaining at least two feet of cover over the groundwater surface is consistent with Division policy requirements for eliminating evaporative loss.

Colorado Parks and Wildlife (CPW) issued recommendations regarding the operations proximity to the Arkansas River. In order to protect wildlife and habitat within the river corridor, CPW recommended that no gravel removal occur within the river itself, and that the operation maintain a 200-foot buffer distance from the river. CPW also recommended that the operation implement best management practices (BMP's) in order to reduce and/or eliminate risks of excess sediment introduction to the river, gas or oil spills, and loss of riparian vegetation along the river. The applicant has committed to comply with all of the recommendations made by CPW.

Based on the above discussion, the Division has determined that the application adequately addresses the requirements of the Act and Rules with regards to minimizing disturbance to the hydrologic balance.

B. ISSUES NOT WITHIN THE JURISDICTION OF THE BOARD

1. *The site is located along a scenic byway.*

Division Response

The Board's jurisdiction does not extend to land use decisions, visual or economic impacts, noise, traffic, dust and other nuisances, or socioeconomic issues. Local government, through the local land use and planning and permitting process, handles these issues. The Board and the Division do not have authority in such matters.

DIVISION RECOMMENDATION

The Division has determined that the 112c permit application submitted by Schofield Excavation, Inc. for the Birdseye Pit, File # M-2019-034, meets the requirements of the Act and Rules. Therefore, it is the recommendation of the Division that the Board approve the application.

CERTIFICATE OF SERVICE

I, Dustin Czapla, hereby certify that on Thursday, September 26, 2019 I deposited a true copy of the foregoing *Rationale for Recommendation to Approve a 112c Application with Objections* in the United States Mail, postage paid, addressed to the following:

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