



December 3, 2019

George Tempel
Midwestern Farms
P.O. Box 246
Wiley, CO 81092

Re: Midwestern Farms, Permit No. M-1993-059, Follow-Up on Unresolved Problems

Mr. Tempel:

The Division of Reclamation, Mining and Safety (Division) cited four problems for Midwestern Farms in its September 26, 2019 inspection report, which, according to our records, have not yet been resolved. The corrective action deadline for the problems cited was November 25, 2019. The descriptions and corrective actions for the problems cited are listed below. Please provide evidence these problems have been resolved by January 2, 2020.

Please note, if the corrective actions are not properly addressed by the date provided above, the problems could be escalated to the level of possible violations and may then be referred to the Mined Land Reclamation Board for further action.

Problems:

- 1) The Performance Warranty on file for this permit was signed (on January 20, 1994) by George H. Tempel, whom is now deceased. According to the Colorado Secretary of State's website, a new registered agent, Kelly A. Spitzer has been designated for Midwestern Farms. This is a problem pursuant to Rule 4.1.1(b), which requires a Performance Warranty be signed by the operator and/or by a person or persons authorized to bind the operator.
- 2) Erosion gullies are present along pond shorelines at several locations. Additionally, the riprap blanket installed along the eastern pond shoreline under Technical Revision No. 6 (TR-6, approved on November 7, 2017) is not effectively controlling erosion at one location in particular, where pond water is overflowing the bank onto the adjacent farm road. This is a problem pursuant to C.R.S. 34-32.5-116(4)(j) and Rule 3.1.6(3) for failure to protect all surface areas of the affected land from erosion.
- 3) The Division has no evidence that the operator has a valid well permit for the exposed groundwater at the site. This is a problem pursuant to C.R.S. 34-32.5-116(4)(h) and Rule 3.1.6(1)(a) for failure to comply with applicable Colorado water laws and regulations governing injury to existing water rights.
- 4) There are state-listed noxious weed species present on site, particularly Tamarisk (salt cedar) and Field Bindweed. This is a problem pursuant to Rule 3.1.10(6) for failure to employ weed control methods for all prohibited noxious weed species within the affected lands, and to reduce the spread of weeds to nearby areas.



Corrective Actions:

- 1) Submit to the Division an updated and properly executed Performance Warranty for this permit (see enclosed form) that is signed by an authorized agent of Midwestern Farms.
- 2) Provide the Division with photo documentation verifying the erosion damage on pond shorelines has been repaired, and the site has been reconstructed and stabilized to prevent further erosion damage. If the operator proposes an alternative method for stabilizing the eastern pond shoreline (than the plan approved in TR-6), the operator must submit this proposal in the form of a Technical Revision with the appropriate fee of \$216.00 by the corrective action date.
- 3) Demonstrate that the operation is in compliance with the Office of the State Engineer (SEO), show evidence that the operator is taking measures to bring the site into compliance with the SEO, or backfill the expanded portion of the pit to at least two feet above the groundwater surface.
- 4) Implement the approved weed control plan for all state-listed noxious weed species on the affected lands, and provide proof to the Division that this was done. If the operator wishes to revise the approved weed control plan, the proposed plan must be submitted in the form of a Technical Revision with the appropriate fee of \$216.00 by the corrective action date. The Division recommends the operator consult with the county extension agency or weed control district office in developing a plan that includes specific control measures to be applied, a schedule for when control measures will be applied, and a post-treatment monitoring plan.

If any of these problems have been resolved, please provide evidence of their completion at your earliest convenience.

If you have any questions, you may contact me by telephone at 303-866-3567, ext. 8129, or by email at amy.eschberger@state.co.us.

Sincerely,



Amy Eschberger
Environmental Protection Specialist

CERTIFIED Mail No. 7017 2400 0000 9119 2591
Return Receipt Requested

Encl: Inspection Report, sent on September 26, 2019

EC: Mel DePra, Midwestern Farms at: mfdepra@gmail.com
Baxter Kirkland, Kirkland Construction, R.L.L.P. at: baxter@kirklandconstruction.us
Bev Stithem Kirkland Construction, R.L.L.P. at: accounting@kirklandconstruction.us
Jackie Corday, Colorado Parks and Wildlife at: jackie.corday@state.co.us
Michael Cunningham, DRMS at: michaela.cunningham@state.co.us

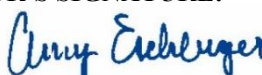




MINERALS PROGRAM INSPECTION REPORT
PHONE: (303) 866-3567

The Division of Reclamation, Mining and Safety has conducted an inspection of the mining operation noted below. This report documents observations concerning compliance with the terms of the permit and applicable rules and regulations of the Mined Land Reclamation Board.

MINE NAME: Midwestern Farms	MINE/PROSPECTING ID#: M-1993-059	MINERAL: Sand and gravel	COUNTY: Prowers
INSPECTION TYPE: Monitoring	INSPECTOR(S): Amy Eschberger	INSP. DATE: September 11, 2019	INSP. TIME: 15:15
OPERATOR: Midwestern Farms	OPERATOR REPRESENTATIVE: Mel DePra	TYPE OF OPERATION: 112c - Construction Regular Operation	

REASON FOR INSPECTION: Normal I&E Program	BOND CALCULATION TYPE: NA	BOND AMOUNT: \$382,406.00
DATE OF COMPLAINT: NA	POST INSP. CONTACTS: CPW (Kevin Kaczmarek)	JOINT INSP. AGENCY: CPW (Kevin Kaczmarek)
WEATHER: Clear	INSPECTOR'S SIGNATURE: 	SIGNATURE DATE: September 26, 2019

The following inspection topics were identified as having Problems or Possible Violations. OPERATORS SHOULD READ THE FOLLOWING PAGES CAREFULLY IN ORDER TO ASSURE COMPLIANCE WITH THE TERMS OF THE PERMIT AND APPLICABLE RULES AND REGULATIONS. If a Possible Violation is indicated, you will be notified under separate cover as to when the Mined Land Reclamation Board will consider possible enforcement action.

INSPECTION TOPIC: Availability Of Records

PROBLEM: The Performance Warranty on file for this permit was signed (on January 20, 1994) by George H. Tempel, whom is now deceased. According to the Colorado Secretary of State's website, a new registered agent, Kelly A. Spitzer has been designated for Midwestern Farms. This is a problem pursuant to Rule 4.1.1(b), which requires a Performance Warranty be signed by the operator and/or by a person or persons authorized to bind the operator.

CORRECTIVE ACTIONS: By the corrective action date, the operator shall submit to the Division an updated and properly executed Performance Warranty for this permit (see enclosed form) that is signed by an authorized agent of Midwestern Farms.

CORRECTIVE ACTION DUE DATE: November 25, 2019

INSPECTION TOPIC: Backfilling & Grading

PROBLEM: Erosion gullies are present along pond shorelines at several locations. Additionally, the riprap blanket installed along the eastern pond shoreline under Technical Revision No. 6 (TR-6, approved on November 7, 2017) is not effectively controlling erosion at one location in particular, where pond water is overflowing the bank onto the adjacent farm road. This is a problem pursuant to C.R.S. 34-32.5-116(4)(j) and Construction Materials Rule 3.1.6(3) for failure to protect all surface areas of the affected land from erosion.

CORRECTIVE ACTIONS: By the corrective action date, the operator shall provide the Division with photo documentation verifying the erosion damage on pond shorelines has been repaired, and the site has been reconstructed and stabilized to prevent further erosion damage. If the operator proposes an alternative method for

stabilizing the eastern pond shoreline (than the plan approved in TR-6), the operator must submit this proposal in the form of a Technical Revision with the appropriate fee of \$216.00 by the corrective action date.

CORRECTIVE ACTION DUE DATE: November 25, 2019

INSPECTION TOPIC: Hydrologic Balance

PROBLEM: The Division has no evidence that the operator has a valid well permit for the exposed groundwater at the site. This is a problem pursuant to C.R.S. 34-32.5-116(4)(h) and Construction Materials Rule 3.1.6(1)(a) for failure to comply with applicable Colorado water laws and regulations governing injury to existing water rights.

CORRECTIVE ACTIONS: By the corrective action date, the operator shall demonstrate that the operation is in compliance with the Office of the State Engineer (SEO), show evidence that the operator is taking measures to bring the site into compliance with the SEO, or backfill the expanded portion of the pit to at least two feet above the groundwater surface.

According to a letter received from the SEO on October 13, 2017, compliance with their Office may be gained by submitting an application to expand the use of well permit no. 53050-F. The current well permit covers an exposed groundwater surface area of 28.5 acres, and needs to be amended to cover the 73.5 acre expansion (to the existing 102 acres).

CORRECTIVE ACTION DUE DATE: November 25, 2019

INSPECTION TOPIC: Revegetation

PROBLEM: There are state-listed noxious weed species present on site, particularly Tamarisk (salt cedar) and Field Bindweed. This is a problem pursuant to Construction Materials Rule 3.1.10(6) for failure to employ weed control methods for all prohibited noxious weed species within the affected lands, and to reduce the spread of weeds to nearby areas.

CORRECTIVE ACTIONS: By the corrective action date, the operator shall implement the approved weed control plan for all state-listed noxious weed species on the affected lands, and provide proof to the Division that this was done. If the operator wishes to revise the approved weed control plan, the proposed plan must be submitted in the form of a Technical Revision with the appropriate fee of \$216.00 by the corrective action date. The Division recommends the operator consult with the county extension agency or weed control district office in developing a plan that includes specific control measures to be applied, a schedule for when control measures will be applied, and a post-treatment monitoring plan.

CORRECTIVE ACTION DUE DATE: November 25, 2019

OBSERVATIONS

This inspection of the Midwestern Farms site (Permit No. M-1993-059) was conducted by Amy Eschberger of the Division of Reclamation, Mining and Safety (Division) in response to a notification received from Colorado Parks and Wildlife (CPW) on August 8, 2019 (see enclosed email) that Tamarisk (salt cedar) is invading the areas in reclamation, the initial 2017 reclamation seeding of the site was unsuccessful, and erosion has become a big problem on pond shorelines. CPW has an interest in the final reclamation of the site as they have obtained a public access lease on 700 acres of the property, including the approximately 400 acres of lands disturbed by the mine operation, which are open to the public for recreational use.

The permittee, Midwestern Farms, was represented by Mel DePra during the inspection. Kevin Kaczmarek represented CPW during the inspection. The site is located approximately 2.5 miles west of Holly, CO in Prowers County. The site is situated between Us Hwy 50 and the Arkansas River. The main access to the site is off of Co Rd 30.5. **Photos 1-32** taken during the inspection are included with this report.

During the inspection, it was brought to the Division's attention that George H. Tempel, whom signed the Performance Warranty for this permit (on January 20, 1994; see enclosed) for Midwestern Farms, is deceased. According to the Secretary of State's website, the current registered agent for Midwestern Farms is Kelly A. Spitzer. Therefore, the Performance Warranty needs to be updated to reflect the new authorized agent for the company (see enclosed form). The Division is citing a problem in this report pursuant to Rule 4.1.1(b), which requires a Performance Warranty be signed by the operator and/or by a person or persons authorized to bind the operator. The operator will need to submit to the Division an updated and properly executed Performance Warranty that is signed by an authorized agent of Midwestern Farms. The operator will also need to revise the permittee/operator contact information for this permit, which currently lists George Tempel as the contact. This can be done through the ePermitting system accessed from the Division's website at <https://mining.state.co.us>.

This is a 112c operation permitted for 1,479.2 acres to mine sand and gravel via the floating dredge method to maximum depths of 60 feet. The maximum allowed disturbed area at any time is 439.2 acres, as approved in Technical Revision No. 5 (TR-5) on March 9, 2017. TR-5 also revised the reclamation plan to replace 8 inches of topsoil, to eliminate wetland and tree planting along shorelines, to leave 36.5 acres of sandy beaches along pond shorelines at the recommendation of CPW, and to change the post-mining land use of a 64-acre field from dryland farmland to rangeland and recreation. On November 17, 2017, the Division approved a Surety Reduction request (SR-1) to account for reclamation completed at the site as well as the revised reclamation plan approved in TR-5. The currently held financial warranty of \$382,406.00 (posted by Eastern Colorado Aggregates, RLLP) covers grading the eastern pond shoreline to 3H:1V, installing riprap along 2,000 feet of the eastern shoreline, repairing erosion along pond shorelines, seeding 255.1 acres with the approved grass seed mixture, and weed spraying on 100 acres.

The Division estimates site disturbance to consist of approximately 400 acres. Mining activities ceased at the site in February of 2016, and the site has been in final reclamation since that time. All mining equipment has been removed from the site, and all stockpiles have been removed or used for reclamation. During the Division's last inspection of the site on October 5, 2017, all reclamation earthwork had been completed in accordance with TR-5, and a cover crop had been planted on areas to be seeded with a grass seed mixture. The Division observed some erosion features along portions of the pond shorelines, particularly in the areas left as sandy beaches per TR-5. In the associated inspection report sent on December 28, 2017, the Division recommended the operator repair the erosion damage observed, and continue to monitor the sandy beaches to determine whether the slopes need to be graded flatter than 3H:1V considering they will not be stabilized by vegetative cover. The Division observed a more serious erosion problem along the eastern pond shoreline, which had been graded to the approved 3H:1V slope gradient, but was eroding rapidly toward the adjacent farm

road and agricultural ditch. The Division estimated approximately 2,000 feet of this shoreline would require additional stabilization measures. The Division did not cite a problem in its last inspection report (sent on December 28, 2017) for the erosion observed, as the operator submitted Technical Revision No. 6 (on November 2, 2017) to address this issue prior to the inspection report being completed. TR-6 included plans for regrading portions of the pond shoreline with erosion damage, and installing a 6 foot wide riprap blanket along the 2,000 foot section of the eastern shoreline requiring additional stabilization measures.

During the current inspection, the Division observed several locations along the pond shorelines where erosion gullies have formed (see enclosed Google Earth image of site showing approximate locations of erosion features observed). The Division also observed the section of the eastern pond shoreline on which the riprap blanket was installed per TR-6. The riprap appeared to be effectively controlling erosion along the majority of this shoreline. However, at one location, where the pond bank is closest to the adjacent farm road, the pond water was overflowing the bank onto the adjacent road. At this location, it appeared the pond bank had been graded too flat prior to placing the riprap, which did not properly account for seasonal fluctuations of the pond water level. According to Mr. Kaczmarek, pond water levels are currently about 16-18 inches higher than they are in winter months (when the shoreline was regraded for riprap placement). Additionally, the eastern pond shoreline receives a significant amount of wave action. Therefore, this low-lying portion of the eastern pond shoreline will require additional stabilization measures to keep the shoreline from eroding further, and migrating into the adjacent farm road and ditch. The Division is citing a problem in this report pursuant to C.R.S. 34-32.5-116(4)(j) and Construction Materials Rule 3.1.6(3) for failure to protect all surface areas of the affected land from erosion. The operator will need to repair the erosion damage present along pond shorelines and provide photo documentation to the Division that this has been done. If the operator proposes an alternative method for stabilizing the eastern pond shoreline (besides riprap placement), this proposal must be submitted in the form of a Technical Revision (see enclosed form).

The Division estimates there to be approximately 102 acres of exposed groundwater on site. According to comments received from the Office of the State Engineer (SEO) on October 13, 2017 (in response to SR-1; see enclosed letter), the pond is registered under permit no. 53050-F and operates under LAWMA's plan for augmentation decreed by the Division 2 Water Court case no. 02CW18. According to the 2017 Augmentation Plan Projection for LAWMA's case no. 02CW181, the plan is currently augmenting evaporation from 102 acres of exposed surface area. However, the SEO indicates the operator needs to make application to their office to re-permit the pond for the expansion in use of permit no. 53050-F. The well permit currently covers an exposed surface area of 28.5 acres, which is 73.5 acres less than the existing 102 acres exposed. The Division cited a problem for this matter in its last inspection report sent on December 28, 2017. This problem was considered abated after the operator demonstrated they were working with the Division of Water Resources (DWR) to bring the site into compliance with their Office, by submitting the required information to expand the use of the well permit. However, the operator never provided evidence to the Division that the expanded well permit was issued. In talking with Mr. DePra during the current inspection, it appears the expanded well permit was never finalized with the DWR. Therefore, the Division is re-citing the problem in this report pursuant to C.R.S. 34-32.5-116(4)(h) and Construction Materials Rule 3.1.6(1)(a) for failure to comply with applicable Colorado water laws and regulations governing injury to existing water rights. The operator will need to demonstrate that the operation is in compliance with the Office of the State Engineer (SEO), show evidence that the operator is taking measures to bring the site into compliance with the SEO, or backfill the expanded portion of the pit to at least two feet above the groundwater surface.

During the inspection, the Division observed numerous Tamarisk trees present on site, particularly along the western and southern pond shorelines, but also in disturbed areas north of the pond. The Division observed Field bindweed growing in several areas around the pond, especially in the disturbed areas southeast and northeast of the pond. The operator is clearly not implementing the approved weed control plan for the site.

Therefore, the Division is citing a problem in this report pursuant to Construction Materials Rule 3.1.10(6) for failure to employ weed control methods for all prohibited noxious weed species within the affected lands, and to reduce the spread of weeds to nearby areas. The operator will need to implement the approved weed control plan for all state-listed noxious weed species on the affected lands, and provide proof to the Division that this was done. If the operator wishes to revise the approved weed control plan, this can be done through the submittal of a Technical Revision. The Division recommends the operator consult with the county extension agency or weed control district office in developing a plan that includes specific control measures to be applied, a schedule for when control measures will be applied, and a post-treatment monitoring plan.

The Division observed the portions of the site undergoing revegetation, and could find very little if any evidence that the initial (2017) seeding event was successful. The vegetative cover present in these areas consisted primarily of weeds (e.g., kochia, wild sunflower, curlycup gumweed, marehail, field bindweed). According to Mr. Kaczmarek, CPW drill-seeded the areas located south and southeast of the pond in 2017, 2018, and 2019. CPW has also aerial sprayed the site for broadleaves a few times, the last of which occurred in April of 2019. This was done in hopes of giving the grass seed a chance to grow and establish. The Division observed established grasses, including yellow indian grass, big bluestem, sand dropseed, sideoats grama, and switchgrass, in the areas south and southeast of the pond. The Division also observed Illinois bundleflower growing in these areas (planted by CPW), which is a warm season legume that provides good wildlife food and cover. The vegetative cover present in the areas south and southeast of the pond (seeded by CPW) differs significantly from the areas north of the pond which have very little to no grass growth and abundant weeds. The Division recommends the operator plant a new cover crop and reseed the areas to be revegetated for final reclamation in accordance with the revegetation plan approved in TR-5. Ideally, the cover crop should be planted this September/early October, and the site reseeded this Spring.

The operator should be reminded that pursuant to Rule 3.1.3, all reclamation shall be carried to completion with all reasonable diligence, and each phase of reclamation shall be completed within 5 years from the date the operator informs the Division that such phase has commenced. In this case, the operator has informed the Division that mining activities ceased in February of 2016. Accordingly, final reclamation of the site should be completed by February of 2021. Given the current site conditions described in this report, the operator will need to act in an expeditious manner to have any chance of completing final reclamation of the site by this time.

This concludes the report.

PHOTOGRAPHS



Photo 1. View looking east across erosion feature (circled) observed at northwestern edge of pond, near CPW-designated parking area.



Photo 2. Closer view of erosion feature identified in Photo 1 (located at northwestern edge of pond).



Photo 3. View looking south, showing numerous Tamarisk trees present along northwestern pond shoreline.



Photo 4. View looking east across southern pond shoreline, showing vegetative cover consisting of grasses and weeds, including Tamarisk trees (indicated).



Photo 5. View looking west across southern pond shoreline, showing vegetative cover consisting of grasses and weeds, including Tamarisk trees (indicated).



Photo 6. View looking south across area located south of pond (near CPW-designated parking area, shown at top, right), showing good grass establishment in this area.



Photo 7. View looking east across area located south of pond, showing vegetative cover consisting of grasses and weeds (primarily kochia).



Photo 8. View looking northwest across erosion feature (outside edge outlined) observed along southern pond shoreline.



Photo 9. Closer view of erosion feature identified in Photo 8, standing at bottom of feature, looking west. Note Tamarisk trees present along shoreline (in background).



Photo 10. View of Illinois bundleflower (planted by CPW) growing on southern pond shoreline.



Photo 11. View looking east across southern pond shoreline, showing vegetative cover consisting of grasses, legumes, and weeds.



Photo 12. View looking west across area located southeast of pond, showing vegetative cover consisting of grasses (mainly sand dropseed and switchgrass) and weeds (mainly kochia and field bindweed).



Photo 13. View looking north across area located southeast of pond, showing vegetative cover consisting of grasses (mainly sand dropseed and switchgrass) and weeds (mainly kochia and field bindweed).



Photo 14. Closer view of ground in area located southeast of pond, showing vegetative cover consisting of grasses (mainly sand dropseed and switchgrass) and weeds (mainly kochia and field bindweed).



Photo 15. Ground view of area shown in Photo 13 located southeast of pond, showing field bindweed present in this area.



Photo 16. View looking south across eastern pond shoreline with riprap installed per TR-6. The riprap appears to be effectively controlling erosion along this portion of the shoreline.



Photo 17. View looking north across eastern pond shoreline with riprap installed per TR-6. The riprap appears to be effectively controlling erosion along this portion of the shoreline.



Photo 18. View looking north across portion of eastern pond shoreline where riprap placement is not effectively controlling erosion. Note pond water is overflowing bank onto adjacent farm road.



Photo 19. Closer view of area shown in Photo 18, looking northwest across portion of eastern pond shoreline where riprap placement is not effectively controlling erosion. Note pond water is overflowing bank onto adjacent farm road.



Photo 20. View looking southeast across area located northeast of pond, showing vegetative cover consisting primarily of weeds (e.g., wild sunflowers, field bindweed).



Photo 21. Ground view of area shown in Photo 20 located northeast of pond, showing field bindweed present in this area (beneath wild sunflowers).



Photo 22. View looking west across area located north of pond, showing vegetative cover consisting primarily of weeds (e.g., wild sunflowers, marehail, curlycup gumweed, field bindweed).

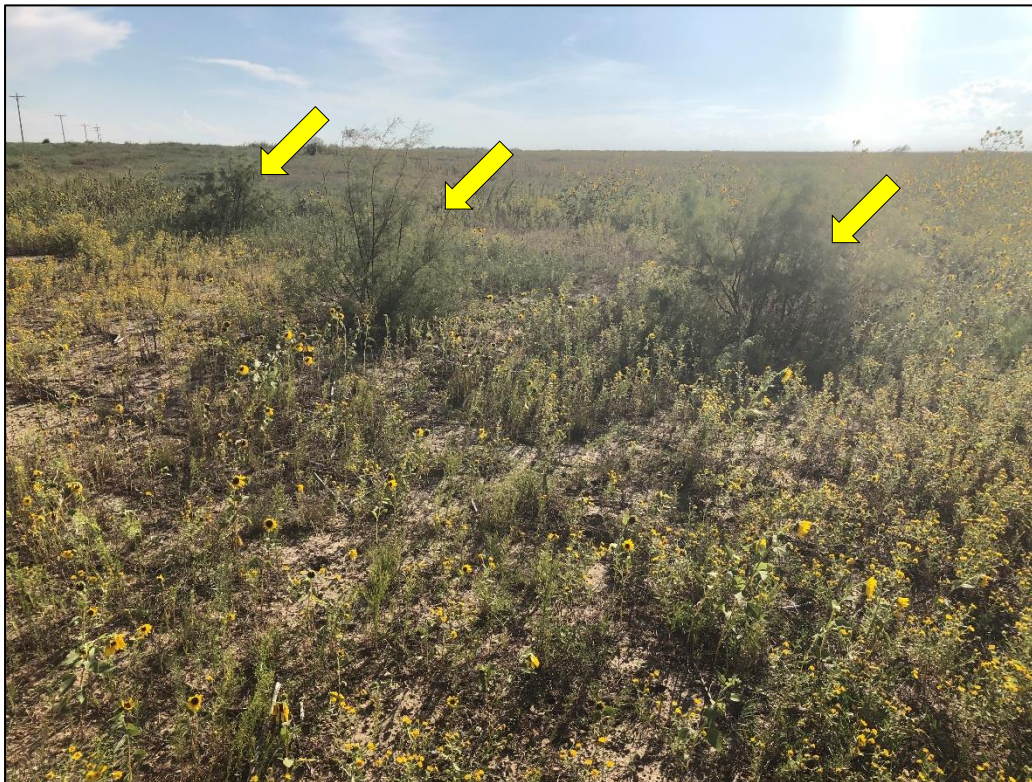


Photo 23. View looking west across area located north of pond, showing vegetative cover consisting primarily of weeds (e.g., wild sunflowers, marestail, curlycup gumweed, field bindweed). Note Tamarisk trees also present in this area (indicated).



Photo 24. View looking southeast across area located north of pond with relatively sparse vegetative cover consisting of weeds and some grasses.



Photo 25. Ground view of area shown in Photo 24 located north of pond, showing some grasses present in this area.



Photo 26. Ground view of area shown in Photo 24 located north of pond, showing sparse vegetative cover present in much of this area.



Photo 27. View looking northwest across area located northwest of pond, showing sparse vegetative cover consisting primarily of weeds with some grasses.



Photo 28. View looking north across area located northwest of pond, showing vegetative cover consisting primarily of weeds with some grasses.

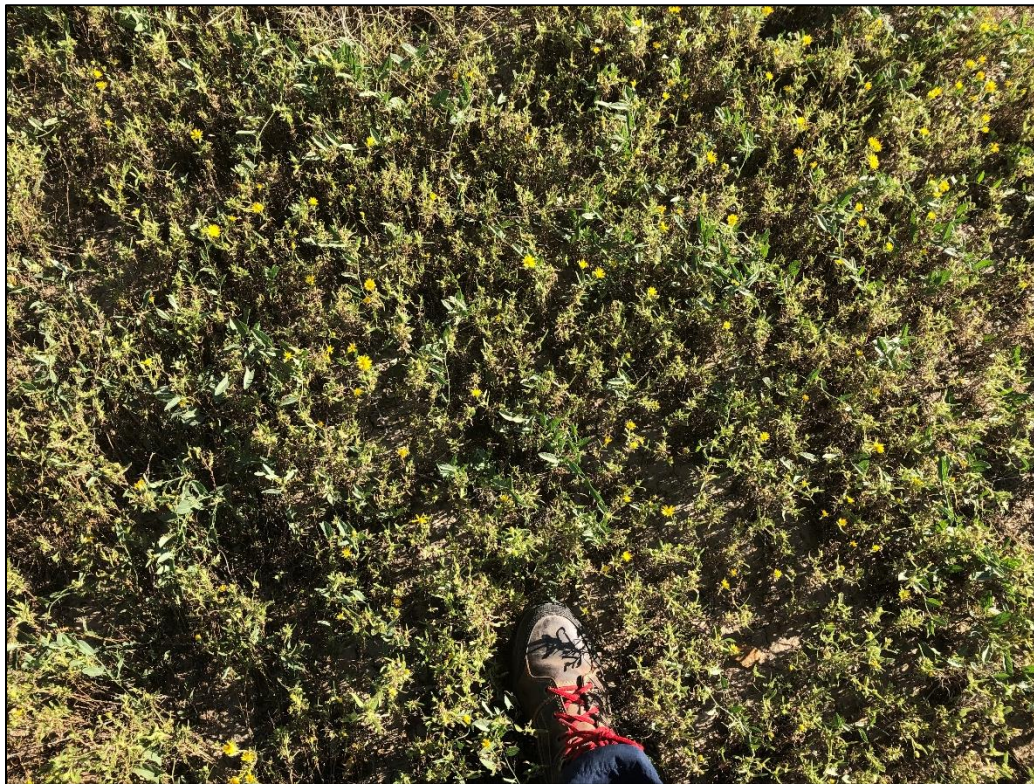


Photo 29. Ground view of area shown in Photo 28 located northwest of pond, showing field bindweed present in this area.



Photo 30. View looking east across northwestern portion of pond, showing Tamarisk trees present along northwestern pond shoreline (circled).



Photo 31. View looking east across northwestern portion of pond, showing erosion feature (circled) observed along northern pond shoreline.



Photo 32. View looking east across area located southwest of pond, showing vegetative cover consisting of grasses and weeds. Note Tamarisk trees present along southern shoreline (circled).

GENERAL INSPECTION TOPICS

The following list identifies the environmental and permit parameters inspected and gives a categorical evaluation of each

(AR) RECORDS----- PB	(FN) FINANCIAL WARRANTY----- <u>N</u>	(RD) ROADS----- <u>N</u>
(HB) HYDROLOGIC BALANCE----- PB	(BG) BACKFILL & GRADING----- PB	(EX) EXPLOSIVES----- <u>N</u>
(PW) PROCESSING WASTE/TAILING---- <u>N</u>	(SF) PROCESSING FACILITIES----- <u>N</u>	(TS) TOPSOIL----- <u>N</u>
(MP) GENL MINE PLAN COMPLIANCE- <u>N</u>	(FW) FISH & WILDLIFE----- <u>N</u>	(RV) REVEGETATION---- PB
(SM) SIGNS AND MARKERS----- <u>N</u>	(SP) STORM WATER MGT PLAN---- <u>N</u>	(RS) RECL PLAN/COMP-- <u>N</u>
(ES) OVERBURDEN/DEV. WASTE----- <u>N</u>	(SC) EROSION/SEDIMENTATION--- <u>N</u>	(ST) STIPULATIONS----- <u>N</u>
(AT) ACID OR TOXIC MATERIALS----- <u>N</u>	(OD) OFF-SITE DAMAGE----- <u>N</u>	

Y = Inspected and found in compliance / N = Not inspected / NA = Not applicable to this operation / PB = Problem cited / PV = Possible violation cited

Inspection Contact Address

Mel DePra
Midwestern Farms
P.O. Box 246
Wiley, CO 81092

Encls: Complaint email from CPW, received on August 8, 2019
Performance Warranty on file signed by George H. Tempel
Performance Warranty form
Google Earth image of site showing approved permit area
Google Earth image of site showing closer view of disturbed area
Technical Revision form
Comment letter from DWR, received on October 13, 2017

EC: Mel DePra, Midwestern Farms at: mfdepra@gmail.com
Kelly Spitzer, Midwestern Farms at: kelly@tempelgrain.com
Baxter Kirkland, Eastern Colorado Aggregates at: baxter@kirklandconstruction.us
Kevin Kaczmarek, CPW at: kevin.kaczmarek@state.co.us
Travis Black, CPW at: travis.black@state.co.us
Jackie Corday, CPW at: Jackie.corday@state.co.us
Michael Cunningham, DRMS at: michaela.cunningham@state.co.us

STATE OF
COLORADO

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

Fwd: Mid Western Reclamation

Corday - DNR, Jackie <jackie.corday@state.co.us>

Thu, Aug 8, 2019 at 2:12 PM

To: "Eschberger - DNR, Amy" <amy.eschberger@state.co.us>

Cc: "Black - DNR, Travis" <travis.black@state.co.us>, Kevin Kaczmarek - DNR <kevin.kaczmarek@state.co.us>

Hello Amy,

Please see Kevin's email below regarding reclamation issues needing attention at the Midwestern Farms site. CPW would greatly appreciate a site visit in September if possible- you can coordinate directly with Kevin and Travis.

Can you please confirm receipt of this email and confirm you are still in charge of this area. Hope your summer is going well! Jackie

----- Forwarded message -----

From: **Kaczmarek - DNR, Kevin** <kevin.kaczmarek@state.co.us>

Date: Wed, Aug 7, 2019 at 5:02 PM

Subject: Mid Western Reclamation

To: Corday - DNR, Jackie <jackie.corday@state.co.us>, Travis Black <travis.black@state.co.us>

Jackie-

There are several items that need attention regarding the reclamation work at Mid Western. I have seen no activity from Kirkland in over a year. They are as follows:

1. Tamarisk has exploded along the entire border of the lake as well in the surround fields that are to be reseeded to grass. They will need to be sprayed with "Habitat" in the month of September to eradicate. One item to note, Habitat is a non discriminatory killer, and will kill all vegetation it comes into contact with. So care must be taken not to kill desirable vegetation such as Cottonwoods, willows and other wetland vegetation.
2. I can not find any grass from the first attempt in 2017 of kirkland to reestablish grass on the site. Reseeding is going to have to be done in spring of 2020. Along with more weed control in order to get grass established. This will also have to be done in September 2019.
3. Erosion has become a big problem in alot of areas all the way around the lake. Large gullies are forming virtually on all sides of the lake. Heavy Equipment will be needed to fill these in and possible make some diversions to channel water away from gullies. Thanks,

*Kevin Kaczmarek**Wildlife Technician*

#9813

*Colorado Parks and Wildlife**(719) 940-3590*

Jackie Corday

Water Resources Section Manager



P 303.291.7550

6060 Broadway, Denver, CO 80216

Jackie.Corday@state.co.us



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STATE OF COLORADO

DIVISION OF MINERALS AND GEOLOGY
Department of Natural Resources

1313 Sherman St., Room 215
Denver, CO 80203
Phone: (303) 866-3567
FAX: (303) 832-8106



Roy Romer
Governor
Michael B. Long
Division Director

RECEIVED

JAN 21 1994

Division of Minerals and Geology

PERFORMANCE WARRANTY

Operator: Mid-Western Farms

Operation: Mid-Western Farms

Permit No: M-93-059

RECEIVED

JAN 21 1994

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the Colorado Mined Land Reclamation Act, C.R.S., 34-32-101 et seq. (the "Act"), as amended, provides that no permit may be issued under the Act until the Mined Land Reclamation Board (the "Board") receives a performance warranty (or warranties) that is a written promise to comply with all applicable requirements of the Act.

WHEREAS, Mid-Western Farms (the "Operator"), has applied for a permit to conduct a mining operation known as Mid-Western Farms (the "Operation") on certain lands in Prowers County, Colorado. These lands are described in the permit application, as amended and supplemented, and are referred to herein as the "Affected Lands."

WHEREAS, in its application for the permit, the Operator has agreed to be bound by all requirements of the Act and all applicable rules and regulations of the Board, as amended from time to time.

WHEREAS, the Board has determined, in accordance with the Act, that the estimated costs of reclamation with regard to those affected lands in Prowers County which are now or may become subject to the permit are those amounts for the stated periods of time as set forth in the financial warranty, which may be amended from time to time to reflect revised estimates of said costs of reclamation.

WHEREAS, the Operator hereby gives the Board a performance warranty pursuant to Section 34-32-117(2) of the Act, and herein promises the Board that it will comply with all applicable requirements of the Act with regard to those Affected Lands.

NOW, THEREFORE, the Operator hereby promises the Board that it will comply with all applicable requirements of the Act and rules and regulations of the Board with respect to the Affected Lands.

FURTHER, the Operator hereby promises the Board that it will comply with all of the terms of the application for a permit, as amended and supplemented, as well as any conditions attached to the permit by the Board.

Further, the Operator promises the Board, pursuant to 34-32-112(1)(d) of the Act, that it has the lawful authority to enter upon the Affected Lands to conduct mining operations, including, but not limited to, reclamation. The Operator further recognizes the right of the Board to enter to reclaim lands affected by the operation.

The description of lands herein is for convenience of reference only, and no error in such description, nor any revision of the permitted mining area, nor the disturbance by the Warrantor of lands outside of the permitted mining area shall alter or diminish the Operator's obligation hereunder, which shall extend to the reclamation of all such lands disturbed.

The obligation of the Operator hereunder is such that, if the Operator shall successfully comply with the requirements of the Act, applicable rules and regulations, and the permit, then the Board, upon a finding that the Operator has so complied, shall release this performance warranty, and the Operator from its obligation hereunder, to the extent that the Board determines that such compliance has been accomplished. The obligation of the Operator hereunder shall continue until released in whole or in part by the Board in accordance with applicable law.

In further satisfaction of the requirements of the Act, the Operator has attached hereto its financial warranty, which may be amended from time to time. The Operator agrees that it will maintain a financial warranty (or warranties) for the estimated costs of reclamation in good standing for the entire life of the permit.

If the Board determines that the Operator is in default under this performance warranty and has failed to cure such default, although written notice of such default and ample time to cure such default have been given, the Operator's financial warranty shall be subject to forfeiture.

This performance warranty may be executed in multiple copies, each of which shall be treated as an original, but together they constitute only one agreement, the validity and interpretation of which shall be governed by the laws of the State of Colorado.

The provisions hereof shall bind and inure to the benefit of the parties hereto and their successors and assigns.

SIGNED, ~~SEALED~~ AND DATED, this 20th day of January, 1994.

George H. Lempel (SEAL)
Mid-Western Farms
Operator

By: George H. Lempel
Title: Partner

NOTE: Notarization must also be completed on following page.

NOTARIZATION OF OPERATOR'S ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF PROWERS)

The foregoing instrument was acknowledged before me this 20th day
of January, 1994, by George H. Tempel
as General Partner of Midwestern Farms



NOTARY PUBLIC

My Commission expires:
July 21, 1996

APPROVED:

State of Colorado
Division of Minerals and Geology
Mined Land Reclamation Board

By _____ Date _____,
Director

TAS/ern

7275G



COLORADO

Division of Reclamation,
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

PERFORMANCE WARRANTY

Permittee/Operator: _____

Operation known as: _____

Permit Number: _____

This form is approved by the Colorado Mined Land Reclamation Board (“Board”) pursuant to C.R.S. 34-32-117 of the Colorado Mined Land Reclamation Act and C.R.S. 34-32.5-117 of the Colorado Land Reclamation Act for the Extraction of Construction Materials.

All parties are on Notice from this Document that:

The above listed Operator provides this warranty to the Board in conjunction with a reclamation Permit to conduct the above described mining operation on certain lands in Colorado. The “Affected Lands” are described in the above listed reclamation Permit, and include any Permit Amendment(s) approved by the Division of Reclamation Mining and Safety (“Division”).

The Colorado Mined Land Reclamation Act, C.R.S. 34-32-101 *et seq.* (“Hard Rock Act”), and the Colorado Land Reclamation Act for the Extraction of Construction Materials, C.R.S. 34-32.5-101 *et seq.* (“Construction Materials Act”), both require a permit issued by the Board to include a written promise by the Operator to comply with all requirements of the Hard Rock and Construction Materials Acts (referred to herein together as “Acts”).

Through the terms and conditions of this performance warranty and Permit, the Operator agrees to be bound by all requirements of the Acts and all Mineral Rules and Regulations of the Board for Hard Rock, Metal, and Designated Mining Operations (2 C.C.R. 407-1) and all Mineral Rules and Regulations of the Board for the Extraction of Construction Materials (2 C.C.R. 407-4) (referred to herein together as “Rules”).

The Operator hereby provides the Board warranties of performance pursuant to C.R.S. 34-32-117(2), (3), and (4)/C.R.S. 34-32.5-117(2), (3), and (4), and promises the Board it will comply with all applicable requirements of the Acts and Rules.

The Operator hereby promises the Board it will comply with all of the terms of the reclamation Permit, including any Permit Amendment(s) approved by the Division. This performance warranty obligation of the Operator shall continue until the Operator’s liability is released by the Board.

The Operator promises to be responsible for reclamation costs up to the amount established by the Board and incorporates its financial warranty to this performance warranty. The Operator agrees to maintain a financial warranty (or warranties) in good standing for the reclamation costs for the entire life of the



Permit. The amount of the financial warranty shall be sufficient to assure the completion of reclamation of affected lands if the Division has to complete such reclamation due to forfeiture. If the Board determines the Operator is in default under this performance warranty and the Operator fails to cure such default, the Operator's financial warranty shall be subject to forfeiture pursuant to C.R.S. 34-32-118/34-32.5-118.

This performance warranty by the Operator is perpetual and shall remain in full force and effect until all obligations have been met and all associated financial warranty is released by the Board. Any release of liability in a succession of Operators shall comply with C.R.S. 34-32-119/34-32.5-119.

The provisions hereof shall bind and inure to the benefit of the parties hereto and their successors and assigns.

SIGNED, SEALED AND DATED this _____ day of _____, 20_____.

Operator: _____

Signature: _____

Name: _____

Title: _____

NOTARIZATION OF OPERATOR'S ACKNOWLEDGEMENT

STATE OF _____)
) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____
(Day) (Month) (Year)

by _____ as _____
(Name) (Title)

of _____.
(Operator)

NOTARY PUBLIC

My Commission expires: _____

APPROVED:
State of Colorado
Mined Land Reclamation Board
Division of Reclamation, Mining and Safety

By: _____ Date: _____
Division Director

M-1993-059 / Midwestern Farms / Midwestern Farms (112c)

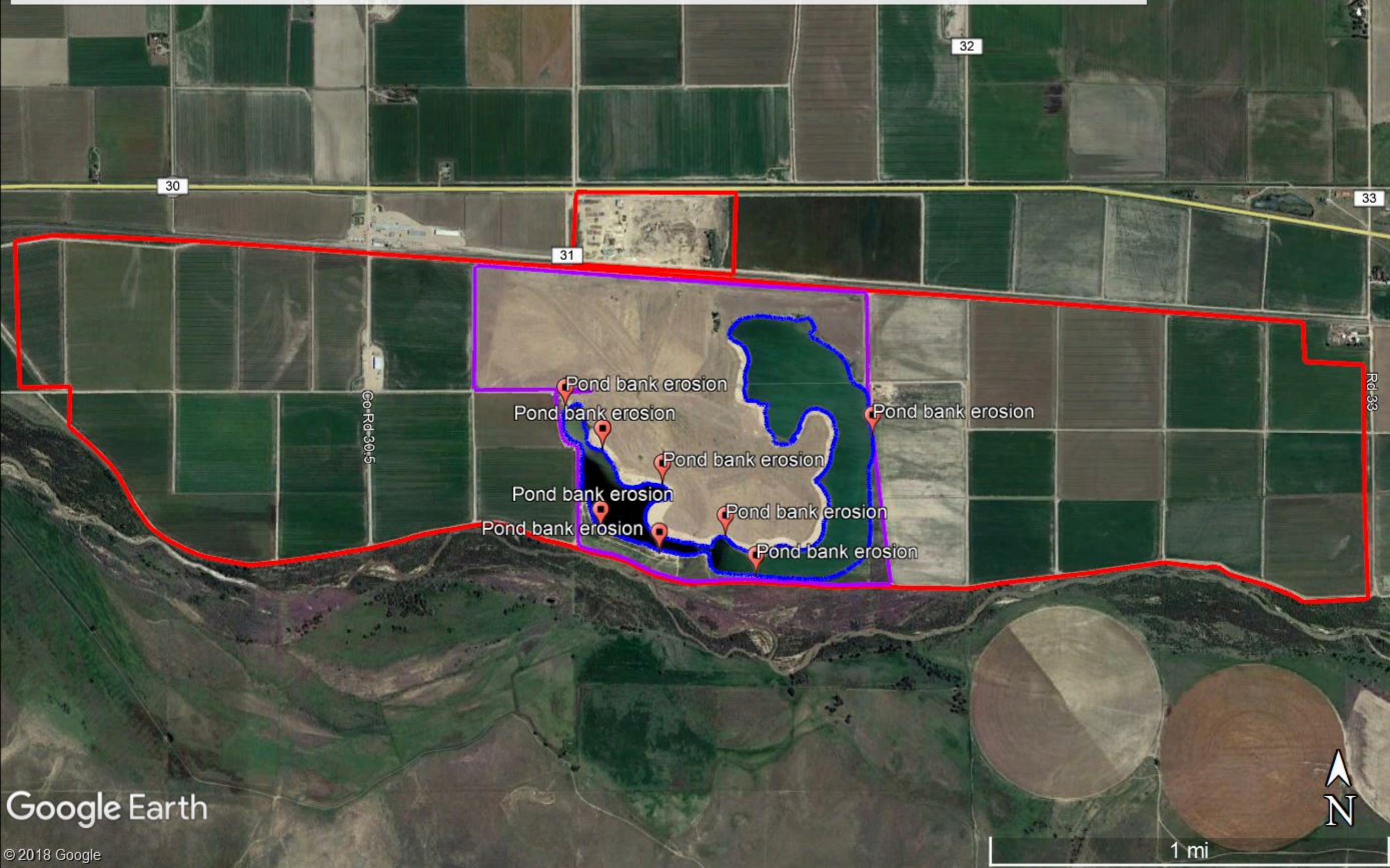
Red Outline = 1,479.20 acres = Approved permit area (49.2 acres north + 1,430 acres south)

Purple Outline = 398 acres = Disturbed area in reclamation

Blue Outline = 102 acres = Pond surface area

Approximate locations of erosion features observed on pond shorelines during 9/11/2019 inspection indicated with red markers.

(Image data from 6/12/2017)



M-1993-059 / Midwestern Farms / Midwestern Farms (112c)

(Closer View of Disturbed Area)

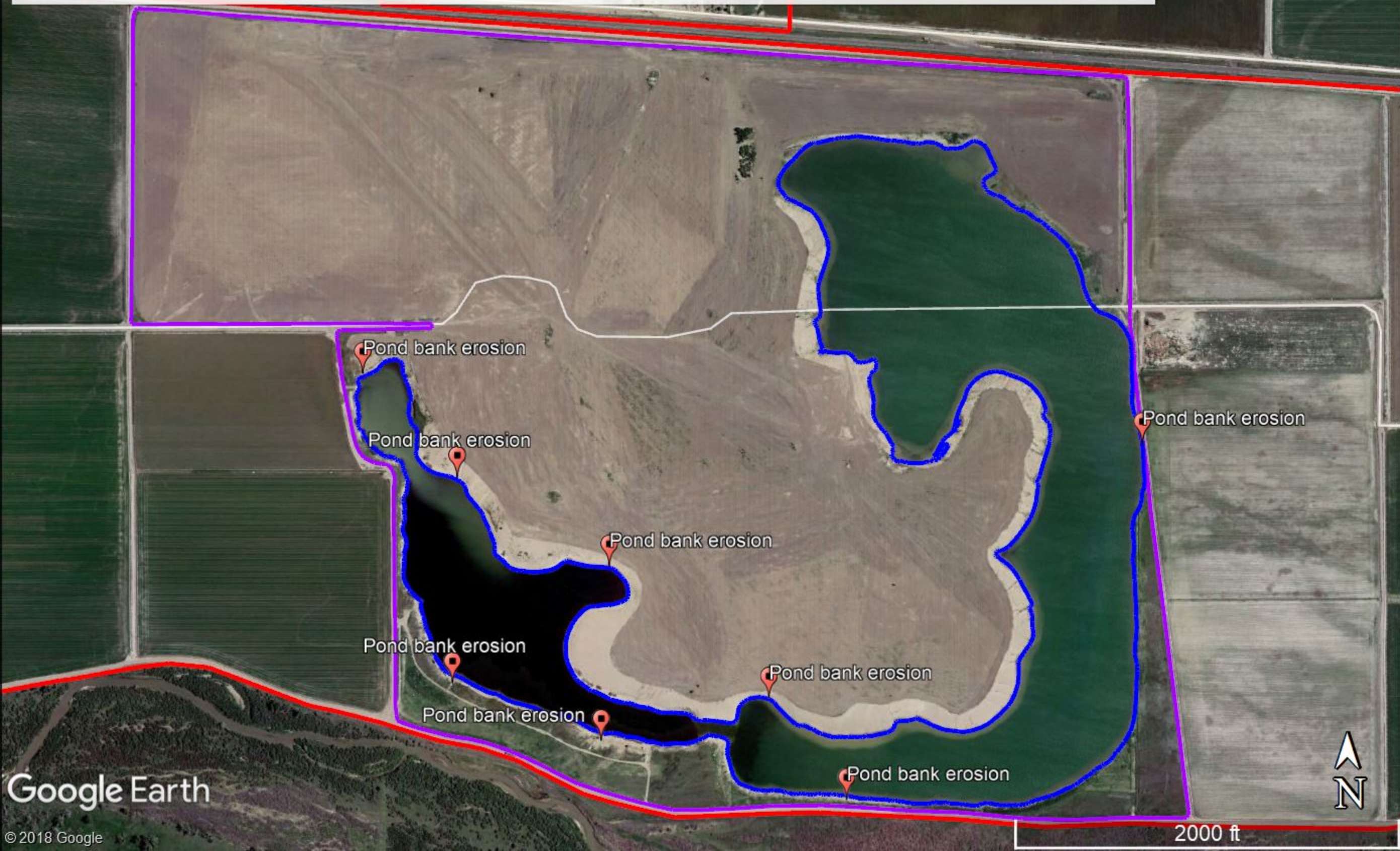
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(Image data from 6/12/2017)

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COLORADO DIVISION OF RECLAMATION, MINING AND SAFETY

1313 Sherman Street, Room 215, Denver, Colorado 80203 ph(303) 866-3567

REQUEST FOR TECHNICAL REVISION (TR) COVER SHEET

File No.: M- _____ Site Name: _____

County _____ TR# _____ (DRMS Use only)

Permittee: _____

Operator (If Other than Permittee): _____

Permittee Representative: _____

Please provide a brief description of the proposed revision: _____

As defined by the Minerals Rules, a Technical Revision (TR) is: “a change in the permit or application which does not have more than a minor effect upon the approved or proposed Reclamation or Environmental Protection Plan.” The Division is charged with determining if the revision as submitted meets this definition. If the Division determines that the proposed revision is beyond the scope of a TR, the Division may require the submittal of a permit amendment to make the required or desired changes to the permit.

The request for a TR is not considered “filed for review” until the appropriate fee is received by the Division (as listed below by permit type). Please submit the appropriate fee with your request to expedite the review process. After the TR is submitted with the appropriate fee, the Division will determine if it is approvable within 30 days. If the Division requires additional information to approve a TR, you will be notified of specific deficiencies that will need to be addressed. If at the end of the 30 day review period there are still outstanding deficiencies, the Division must deny the TR unless the permittee requests additional time, in writing, to provide the required information.

There is no pre-defined format for the submittal of a TR; however, it is up to the permittee to provide sufficient information to the Division to approve the TR request, including updated mining and reclamation plan maps that accurately depict the changes proposed in the requested TR.

Required Fees for Technical Revision by Permit Type - Please mark the correct fee and submit it with your request for a Technical Revision.

<u>Permit Type</u>	<u>Required TR Fee</u>	<u>Submitted</u> (mark only one)
110c, 111, 112 construction materials, and 112 quarries	\$216	<input type="checkbox"/>
112 hard rock (not DMO)	\$175	<input type="checkbox"/>
110d, 112d(1, 2 or 3)	\$1006	<input type="checkbox"/>



Response to Reclamation Permit Financial Warranty Reduction Request Consideration

DATE: October 13, 2017

TO: Amy Eschberger, Environmental Protection Specialist

CC: Division 2 Office; District 67 Water Commissioner

FROM: Caleb Foy, P.E.

RE: Midwestern Farms, File No. M-1993-059
Operator: Prowers County
Contact: George Tempel
Sec. 18, Twp. 23S, Rng. 42W, 6th P.M., Prowers County

CONDITIONS FOR APPROVAL

- ☒ If storm water is contained on-site, the applicant should be aware that, unless the storm water detention structures can meet the requirements of a "storm water detention and infiltration facility" as defined in section 37-92-602(8), Colorado Revised Statutes, the structure may be subject to administration by this office. The applicant should review DWR's *Administrative Statement Regarding the Management of Storm Water Detention Facilities and Post-Wildland Fire Facilities in Colorado* (available at: <http://water.state.co.us/DWRIPub/Documents/DWR%20Storm%20Water%20Statement.pdf>) to ensure that the notification, construction and operation of the proposed structure meets statutory and administrative requirements. The applicant is encouraged to use *Colorado Stormwater Detention and Infiltration Facility Notification Portal*, located online at: <https://maperture.digitaldataservices.com/gvh/?viewer=cswdif>, to meet the notification requirements.
- ☒ The proposed operation will consume ground water by: ☒ evaporation, ☒ dust control, ☒ reclamation, ☒ water removed in the mined product, ☒ processing, ☐ other:.
- All conditions of approval for well permit no. 53050-F terms and conditions of the decree entered by the Division 2 Water Court in case no. 02CW181 shall be followed.
- ☒ Should the combined exposed surface area of the two gravel pit ponds exceed 28.5 acres, as allowed by permit no. 53050-F, the applicant must make application to this office to repermit the gravel pit ponds for the expansion in use of permit no. 53050-F.

COMMENTS: The two gravel pit ponds are currently registered under permit no. 53050-F and operate under LAWMA's plan for augmentation decreed by the Division 2 Water Court in case no. 02CW181. According to the 2017 Augmentation Plan Projection for LAWMA's case no. 02CW181, the plan is currently augmenting evaporation from 102 acres of exposed surface area.



An application to expand the use of permit no. 53050-F was received by this office on March 4, 2015 under receipt no. 3668653; however, the application was returned to the applicant for additional information by letter dated November 18, 2015 (a copy is available online at: <http://dwrweblink.state.co.us/dwrweblink/0/doc/2889322/Page1.aspx?searchid=b5637bc4-5271-4f22-94c0-9debee56db18>). To date, the applicant has not responded to the request for additional information.