



August 6, 2020

Melvin Bickling  
6690 Lakota Ct.  
Loveland, CO 80534

RE: Response to Citizen Complaints; Derr Pit (M-2008-017) and Loloff Mine (M-1985-112)

Dear Mr. Bickling,

The Division of Reclamation, Mining and Safety (Division) is in receipt of the citizen complaints for the above referenced mines. On July 9, 2020, the Division received correspondence from you concerning the Loloff Mine and the Derr Pit. On July 29, 2020, the Division received two additional complaints for the Loloff Mine. Copies of the citizen complaints have been placed in the public files for each of the mines and have been forwarded to the respective Operators. This letter serves as the Division's response to the above referenced complaints.

After careful review of your complaint letters, the Division has determined the issues you raise and the questions you pose have already been addressed in correspondence from the Division. The numerous complaints you have filed for the Loloff Mine and the Derr Pit contain duplicative and incomplete information. You have routinely filed multiple complaints concerning the same issue before the Division has an opportunity to respond to your initial complaint. Additionally, the complaint letters often conflate the alleged issues at the Loloff Mine and the Derr Pit, making it difficult for the Division to discern your specific concerns. In your correspondence you have stated you are acting on behalf of the surrounding property owners. The Division appreciates your efforts to represent landowners in the vicinity of the mines. However, the Division encourages any landowners to directly contact our Office with any issues they have. The Division believes this approach will better serve the surrounding property owners, rather than working through an unassigned intermediary.

#### **Responses to July 9, 2020 Complaint:**

In the letter you note that the groundwater monitoring requirements at the Loloff Mine have not been consistently adhered to. The public record clearly reflects the Division has acknowledged these deficiencies with respect to reporting groundwater level measurements in the past. As a regulatory agency, the Division has exercised its prosecutorial discretion to not pursue enforcement actions. Enclosed are two memorandums from DRMS staff that discuss the current groundwater monitoring compliance for the Loloff and Derr Pit. Based on DRMS staff analysis, the Operators of these sites are currently in compliance with their water monitoring requirements and any corrective action promulgated from an enforcement action has already occurred negating the need to take enforcement action at this time. The Division is committed to ensuring impacts to the prevailing hydrologic balance are minimized and will take the necessary enforcement actions if the conditions of the groundwater monitoring programs are not met at the Loloff Mine and / or the Derr Pit.

In the letter you raise questions about the citizen complaint process. The Mined Land Reclamation Board has directed staff to respond to citizen complaints within 30 days. The Division carefully reviews each citizen complaint to identify compliance issues at mine sites. As noted above, it is difficult to respond to complaints which are submitted simultaneously with overlapping issues. As a regulatory agency, the Division's role is to investigate citizen complaints and ensure that mining operations are in compliance with their approved Reclamation Permits. The Division is not in an advisory position with respect to providing guidance on how to submit a citizen complaint. However, the Division does follow up with complainants, as necessary, to ensure



we understand their specific concerns. Finally, it is the Division's policy to include documentation of resolution to a citizen complaint in the public file.

In the letter you assert that the Koehler Wells have been negatively impacted by the Derr Pit. The Koehler's have signed an agreement with Broken Arrow Investments, LLC, Loloff Construction, Inc, and Global Assets Recovery, LLC. The agreement outlines the mitigation measures the Operator must undertake upon demonstration the Koehler wells have been impacted by either the Loloff Mine or the Derr Pit. Additionally, the agreement specifies baseline levels will be established from groundwater measurements taken in 2019. The data which you assert demonstrates damage to the Koehler Wells is from the McGrane Water Engineering Report, dated January 31, 2020. The Report shows a decrease in the water levels in the Koehler Wells from pre-development conditions. The pre-development water levels in the Koehler wells are no longer relevant, as the Koehler's have agreed to establish baseline conditions from groundwater measurements taken in 2019. Furthermore, the Division does not have an open complaint from the Koehler's asserting damage to their wells, nor has the Division been provided with a letter authorizing you to act on their behalf. The Division has incorporated the Koehler agreement into the Derr Pit Reclamation Permit and considers the Operator to be in compliance with the agreement at this time.

#### **Responses to July 29, 2020 complaint regarding groundwater monitoring and reporting (CT17)**

DRMS has found the Operator has submitted the required monthly monitoring data for the surrounding private wells with the last two annual reports for the Loloff Pit. The Operator is currently working with surrounding wells owners and providing mitigation for impacts if necessary. Based on DRMS' analysis of the groundwater monitoring data to date, the surrounding groundwater wells have returned to near historic groundwater elevations since the installation of the slurry wall in 2017. DRMS considers this matter resolved. Please see the response to your July 9, 2020 letter above and the enclosed memorandum from Peter Hays dated August 3, 2020 for more information.

#### **Responses to July 29, 2020 complaint regarding the pipeline (CT18)**

Please note due to the COVID-19 pandemic, DRMS suspended inspections for the month of April but resumed inspections in May of 2020. DRMS staff conducted an inspection on May 22, 2020 and observed the water conveyance equipment at the Loloff Pit. Please see the enclosed memorandum from Peter Hays for details. The water pumping equipment observed during the inspection was portable. The Operator was informed of the need to submit a technical revision should permanent structures be constructed for water conveyance prior to final release of the site by the Division. This issue is considered resolved at this time.

The Loloff Mine is under the supervision of Jared Ebert. If you have any questions concerning the Loloff Mine, please contact Jared Ebert by telephone at (303)866-3567 ext. 8120.

The Derr Pit is under the supervision of Michael Cunningham. If you have any questions concerning the Derr Pit, please contact Michael Cunningham by telephone at (303)866-3567 ext. 8116.

Mr. Bickling  
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August 6, 2020

Sincerely,



Jared Ebert  
Senior Environmental Protection Specialist



Michael A. Cunningham  
Senior Environmental Protection Specialist

Enclosures:     1. *Memorandum, August 3, 2020, Loloff Construction, Inc.; Loloff Pit; M-1985-112; CT17 and CT18*  
                      2. *Memorandum, July 31, 2020, Derr Pit, M-2008-017, Summary of Groundwater Monitoring Plan and Data*

Cc:     Ginny Brannon, DRMS  
          Russ Means, DRMS  
          Eric Scott, DRMS  
          Peter Hays, DRMS



## MEMORANDUM

Date: August 3, 2020

To: Jared Ebert; Division of Reclamation, Mining and Safety  
Michael Cunningham; Division of Reclamation, Mining and Safety

From: Peter Hays; Division of Reclamation, Mining and Safety

**Re: Loloff Construction, Inc.; Loloff Pit; Permit No. M-1985-112; CT-17 and CT-18**

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The Division of Reclamation, Mining and Safety (Division/DRMS) received complaints (CT-17 and CT-18) against the Loloff Mine from Mr. Mel Bickling on July 29, 2020 regarding a pipeline under Balsam Ave. and groundwater monitoring reports from 2017 through 2019.

### **CT-18 – Pipeline Complaint**

As discussed in the May 22, 2020 inspection report for the Loloff Mine, two (2) portable pumps were observed during the inspection. One (1) pump was located in the southeast corner of the site and one (1) pump was along the west shoreline of the site. The southeast pump is used to fill the reservoir from the Platte River during free-water only. The west pump is used to discharge water from the reservoir as needed by the Operator. No water was being pumped during the inspection. No permanent pumping structures were observed during the inspection. The Operator was reminded if permanent structures are constructed prior to final release of the site by the Division, the Operator will be required to submit and get approval for the structures through the technical revision process.

The inlet pipeline is located under Balsam Ave. and on the surface of land owned by the Operator. The pipeline under Balsam Ave. is temporary and the financial warranty held for the site is adequate to account for the removal of the pipeline. The pipeline east of Balsam Ave. is located on the surface without causing significant disturbance to the land or existing vegetation.



### **CT-17 – Groundwater Reporting**

The Operator has submitted the required monthly monitoring well data for the surrounding private wells and western Derr Pit monitoring wells with the last two annual reports. For several years prior, the surrounding well data was not collected due to the landowners not allowing the Operator or their consultant on their property. Monitor data on surrounding wells was provided in 2015 for the Parker, Harrell, and Francis Wells from April through June. The data for readings prior to 2015 was lost by the Operator due to a corrupted computer hard drive and was not retrievable. The Operator is currently using Agpro to monitor the adjacent private wells and Derr Pit monitoring wells monthly.

The approved Groundwater Impact Mitigation Plan for the site states should the levels in the existing wells change by 2-4 feet then Loloff Construction, Inc. will mitigate by recharging at locations along the pit to increase the levels of the groundwater so that the impact from dewatering is minimized. If the recharging method is not effective the mitigation measures would be:

1. Work with the well owners that is affected to re-set their existing pumps to a lower level in order to mitigate any flow impacts to the existing well.
2. If the method in Number 1 is not effective then drilling a new well or deepening the existing well or providing water service from the City of Greeley or North Weld Water.

The Operator has been working with the surrounding well owners to coordinate well inspections and to mitigate any impact to the wells. The migration measures have included providing water service from North Weld Water, paying the monthly water service bills and investigating and repairing impacted groundwater wells. The Loloff Mine slurry wall was completed in 2017. The surrounding groundwater wells have returned to near historic groundwater elevations since the installation of the slurry wall.

If you have any questions regarding these adequacy items, please contact me at [peter.hays@state.co.us](mailto:peter.hays@state.co.us) or at (303) 866-3567, ext. 8124.



Date: July 31, 2020

To: Michael Cunningham, Jared Ebert

From: Eric Scott P.G./R.G.

RE: Derr Pit, DRMS Permit M2008-017;  
Summary of Current Groundwater Monitoring Plan and Data

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This memo is submitted in response to the e-mail sent by Jared Ebert on July 29, 2020 requesting information to respond to a citizen complaint against the Division's actions with respect to enforcement of the groundwater monitoring requirements for the Derr Pit.

As part of the permittee's actions to secure a Weld County USR permit for the amended area of the Derr permit, a Technical Revision to the Derr Pit permit (TR05) was submitted to DRMS on May 26, 2020. These modifications mirror the conditions specified in the signed agreements with the off-site well owners that were included in the submittal.

This revision modified the prior groundwater monitoring requirements and locations for the Derr Permit. TR05 included several additional off-site monitoring locations, primarily nearby domestic and irrigation wells. These privately owned off-site wells were not part of the previous monitoring plan which consisted solely of on-site monitoring wells. This revision also modified the "trigger levels" for implementation of potential mitigation activities for off-site wells from 3 feet below historic levels, to 2 feet below historic levels for two consecutive months. Completed and proposed well mitigation measures for existing nearby wells were included, and detailed agreements with nearby well owners were provided. The revision also specifies that monthly monitoring data is to be provided to both the well owners and DRMS, and includes a list of potential mitigation measures that may be implemented if trigger levels are exceeded in off-site wells.

TR05 was approved by DRMS on June 1, 2020. The June 2020 groundwater monitoring data submitted by the operator and received by DRMS on June 22, 2020 included the monthly on-site monitoring wells data from 9/2018 to June 11, 2020.

This week I have communicated by phone with both Kelly Hodge, site operator, and his consultant, JC York. I made it clear to them that DRMS expects the July 2020 groundwater monitoring data submittal to include all locations approved in TR05 in addition to the on-site data. The submittal will also clearly identify the trigger levels



for off-site wells, and present the data in such a way that it would be easy to determine if these levels have been exceeded on a monthly basis. They stated that the submittal of the July monitoring data should be received by DRMS sometime the first half of August. They also stated that the proposed well improvements to the Kohler well included in TR05 have been successfully completed, and that pumping of the exposed groundwater at the site this summer has been limited to circulation of the water for use in washing product and returning it to the excavation.

The recently approved TR05, which adds the offsite wells to the groundwater monitoring plan for the site, states that trigger levels must be exceeded for two consecutive months in off-site wells for mitigation actions to be considered. DRMS has not yet received any monthly data for the off-site wells subsequent to the approval of TR05.

Further, groundwater levels in the on-site monitoring wells located on the north side of the Derr Pit amended area (MW17 and MW 18) have varied by less than 1 foot from the time they were installed in August 2019 to the most recent June 2020 data (water level in MW18 is actually slightly higher at this point). This would seem to indicate that it is exceedingly unlikely that the Kohler wells, located even further north, have been adversely impacted by pumping on the south side of the Derr permit during this period. Even MW15, located near the center of the permit and much closer to the excavated/pumped area, has varied (dropped) by only 1.9 feet at this time from the monitoring interval spanning September 2018 to June 2020.

I hope this summary adequately addresses the current status of the Derr Pit groundwater monitoring program, but feel free to contact me if you have any questions. TR05, and the June 2020 monthly monitoring data are in the site file in LaserFiche.