



COLORADO
Division of Reclamation,
Mining and Safety
Department of Natural Resources

October 6, 2020

Mr. Andy Kagan
Kagan & Sons
555 Ernest Ave
Westcliffe, CO 81252

**RE: Spotted Burro Pit - File No. M-1979-192;
Preliminary Adequacy Review Amendment 1 (AM-1)**

Dear Mr. Kagan:

The Division of Reclamation, Mining and Safety (DRMS) has completed its preliminary adequacy review of your 112 Construction Materials Reclamation Permit Amendment Application (AM-01) for the Spotted Burro Pit, Permit No. M-1979-192. The application was received on June 26, 2020 and after receiving corrections, called complete for review on August 3, 2020. **The decision date for this application is November 2, 2020.** Please be advised that if you are unable to satisfactorily address any concerns identified in this review before the decision date, it will be your responsibility to request an extension of the review period. If there are outstanding issues that have not been adequately addressed prior to the end of the review period, and no extension has been requested, the DRMS may deny this application.

The review consisted of comparing the application content with specific requirements of Rules 3.1, 6.4 and 6.5 of the Minerals Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials. Any inadequacies are identified under the respective exhibit heading along with suggested actions to correct them.

The following items must be addressed by the applicant in order to satisfy the requirements of C.R.S. 34-32.5-101 et seq. and the Mineral Rules and Regulations of the Mined Land Reclamation Board:

APPLICATION

Post-Mining Land use. Item 12 on page 4 of the Application indicates the post-mining land use will be rangeland. The current approved post-mining land use is wildlife habitat. In Exhibits E and H, the narrative states Colorado Parks and Wildlife will have been asked about “requested to review and comment on the reclamation plan regarding local wildlife concerns or opportunities for support or improvement of wildlife habitat found at this location”. Please clarify whether the post-mining land use is intended to be rangeland or wildlife habitat. If it is to be wildlife habitat, please provide a corrected page 4 of the Application (see Comments 4 and 6 below).

6.4 SPECIFIC EXHIBIT REQUIREMENTS – REGULAR 112 OPERATIONS

6.4.1 EXHIBIT A - Legal Description

1. **Permit Area.** The area discrepancy identified in our July 10, 2020 incompleteness notice was corrected in your response on the application, but not corrected on Exhibit A where the legal description still shows 94 acres instead of the 87.5 acres. Please provide a corrected Exhibit A.



6.4.2 EXHIBIT C – Pre-mining & Mining Plan Map(s) of Affected Lands

2. Structures within 200 feet of the affected land. Pursuant to Rule 6.4.3(g) the Exhibit C map needs to portray the owner's name, type of structures, and location of all significant, valuable, and permanent man-made structures contained on the area of affected land and within two hundred (200) feet of the affected land. There appear to be several structures meeting this criteria on the Osborn property (see Figure 1 below). If some of these structures are not permanent (perhaps portable), please indicate as much. Please provide this information either as supporting text or on a map of a larger scale.

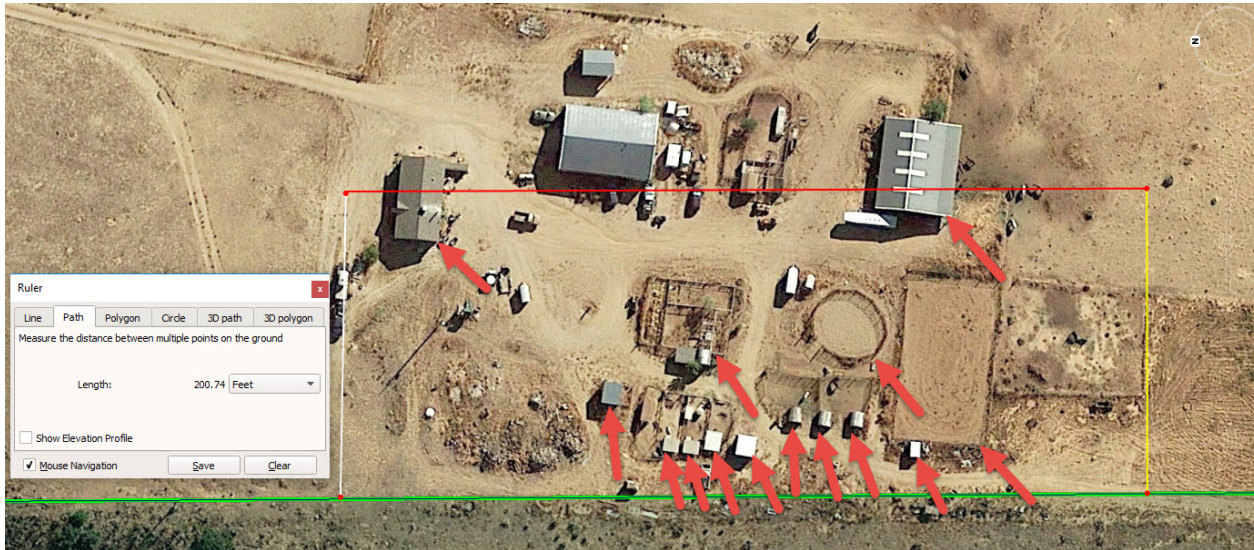


Figure 1. Multiple structures needing identification

6.4.4 EXHIBIT D – Mining Plan

3. Exhibit D Working Areas. The size of areas to be worked at one time is required to assist the DRMS in determining an appropriate reclamation bond amount. On the bottom of the second page, the narrative indicates phase 1 will be 3 acres. Based on other information in the application, it appears phase 1 is to be 12.3 acres. Please provide clarification on the area of phase 1.

6.4.5 EXHIBIT E – Reclamation Plan

4. Sediment Ponds. There are several references in the reclamation plan indicating the sediment pond(s) will remain after reclamation. Pursuant to Rule 3.1.5(3), all grading shall be done in a manner to control erosion and siltation of the affected lands and to protect areas outside of the affected land from slides and other damage. If this is accomplished, it is not clear why sediment ponds would need to remain. Please commit to removing the sediment pond(s) for final reclamation or provide rationale as to why the pond(s) should remain and how they would be consistent with the proposed change to rangeland for the post-mining land use (currently approved post mine land use is wildlife habitat).
5. Rule 3.1.6(3) - Stabilized/Protected Affected Land. The narrative under Rule 3.1.6(3), states “All surface areas within the affected area will either be planted to an approved grass mix or covered in gravel for use as stockpile or truck loading areas.” Please clarify whether the area covered in gravel is just during operations or does that apply to final reclamation also. If the intent is leave some areas graveled for reclamation, please provide rationale as to how that conforms to the proposed change to rangeland for the post-mining land use and show this area on Exhibit F. (note: from a bonding standpoint, if this graveled area is already covered with gravel, please also show it on Exhibit C so it is not added to the bond calculation.)

6. Rule 3.1.8 Wildlife. The narrative here and in Exhibit H indicate Colorado Parks and Wildlife will/have been asked for comment. Have they responded? If so, please provide their comments.
7. Rule 3.1.10 Seeding. The proposed seeding differs significantly from that approved in the 1999-2000 conversion application.

Species	Conversion Application (currently approved broadcast seed rate)	AM-01 Proposed broadcast seed rate
Thickspike or Western Wheatgrass, Arriba	10.0	8.0
Sideoats grama, Vaughn	5.65	5.0
Blue grama, Lovington	n/a	2.5
Sand dropseed	n/a	0.12
Smooth brome grass, Lincoln	7.5	n/a
Switchgrass, Grenville	3.1	n/a
Yellow sweetclover	2.0	n/a
Total	28.25	15.62

Please the change in species and reduction in seeding rate.

6.4.6 EXHIBIT E – Reclamation Plan Map

8. Exhibit E. If the response to Comment 5 is that some gravel covered area will remain, a new Exhibit F will be required showing where this area will be. If not, no response is necessary. Also, depending on the response to Comment 4 above, the sediment pond(s) may need to be removed from Exhibit F.

6.4.7 EXHIBIT O – Owner(s) of Record of Affected Land (Surface Area) and Owners of Substance to be Mined

9. Exhibit Clarification. The revised Exhibit O indicates there are 90 acres of affected land rather than the revised 87.5 in the updated application. In addition, it is stated 83.5 acres are owned by Kagan and Son, LLC. However, Exhibit O, along with other application information, indicate approximately 27 acres is owned by Wild Burro Investments, LLC. Please clarify and correct as necessary this discrepancy.

6.4.19 EXHIBIT S – Permanent Man-made Structures

10. Structure Omissions. Please address the multiple structures in Figure 1 under Comment 2 and either provide the agreement for the overhead powerline running roughly north-south through the permit area, or indicate where this can be found in a previous submittal to the DRMS.

General Comments

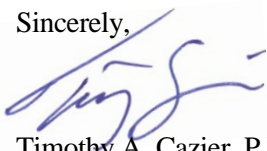
11. Additional Changes to Application. Please be aware any changes or additions to the application on file in our office (including your responses to this letter) must also be reflected in the public review copy which has been placed with the Fremont County Clerk and Recorder. A receipt or other proof of placement will be required with future submittals related to this amendment application.
12. General Formatting Comment. There are no page numbers on the text portions of the exhibits. This makes it challenging to reference specific text related comments in our adequacy review. For future submittals, please number all pages of text.

13. Agency Comments. The DRMS received comments from the State Historic Preservation Office and the Division of Water Resources. Both comment letters are attached for your records.

Please remember that the decision date for this application is November 2, 2020. As previously mentioned if you are unable to provide satisfactory responses to any inadequacies prior to this date, it will be your responsibility to request an extension of time to allow for continued review of this application. If there are still unresolved issues when the decision date arrives and no extension has been requested, the application may be denied.

If you need additional information or have any questions, please contact me at Division of Reclamation, Mining and Safety, 1313 Sherman Street, Room 215, Denver, CO 80203, by telephone at 303-328-5229 (mobile), or by email at tim.cazier@state.co.us.

Sincerely,



Timothy A. Cazier, P.E.
Environmental Protection Specialist

Enclosures: Agency comments

ec: Michael Cunningham, DRMS
DRMS file
Rebecca Kagan, RockBottom
Ken Klco, Azurite