

April 30, 2021

Mr. Ed Lyons
MVE
228 County Road 251
PO Box 875
Westcliffe, CO 81252

Re: Lyons Pit, Permit No. M-2021-018; Preliminary Adequacy Review for 110c Limited Impact Operation Reclamation Permit Application

Dear Mr. Lyons:

The Division of Reclamation, Mining and Safety (DRMS) has completed its preliminary adequacy review of your 110c Limited Impact Operation Reclamation Permit Application for the Lyons Pit, Permit No. M-2021-018. The application was received on March 22, 2021 and after receiving corrections, called complete for review on April 12, 2021. **The decision date for this application is May 12, 2021.** 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, 6.3 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

1. Item 3, Page 1, Permitted Acreage: The DRMS expressed a concern in Item 2 of our April 2, 2021 Incompleteness Notice related to the area of the permit. You were informed then that limited impact operation permits are limited in area to less than 10 acres. Based on information provided in the current application (specifically, the stormwater management plan), phase 1 is 4.13 acres, phase 2 is 5.81 acres and the access road is 0.39 acres (60 feet wide by 280 feet long). This results in a total impacted area of 10.33 acres, thereby exceeding the limit. Either



the affected and permit boundary area will need to be reduced or you will need to apply for a 112c Construction Materials Reclamation permit.

2. Item 10, Page 3, Location Information: This item is for where the center of the mining operation is to occur. There seems to be some confusion as to which quarter section and which quarter/quarter section is the center of the operation. Based on maps provided with the application, all mining will occur in the SE Quarter of Section 19 and the vast majority of mining will be in the NW Quarter of that SE Quarter of Section 19. Please resubmit page 3 with just the SE Quarter Section box checked and the NE Quarter/Quarter Section box checked.
3. Item 10, Page 3, General Description: The location description states the site is 2.75 miles south of Texas Creek. The DRMS interprets Texas Creek as the intersection of US Hwy 50 and State Hwy 69. Based on this assumption, the site is 1.75 miles south of Texas Creek. This is of particular importance to the DRMS as another permit is approximately 0.6 miles south of the proposed Lyons Pit on Hwy 69. Given the proximity of the two pits, the difference in a mile with respect to the location could lead to confusion. Please clarify the location of Texas Creek as being about a mile farther away that we are assuming, or correct the distance to the site. *(The DRMS notes the 2.75 mile distance is stated in multiple locations of the permit application [Exhibits B, C, Stormwater Management Plan and Exhibit H]. These all need to be changed if our assumption of the location of Texas Creek is correct.)*
4. Item 11, Page 3, Primary Mine Entrance Location: This item is for where the entrance of the mine is located. The coordinates provided (38.383120° N, 105.579290° W) are more for the center of the operation. Again, based on the proximity of the nearby existing pit, the entrance location is an important distinction. Based on mapping provided, the DRMS believes the entrance location is closer to 38.384723° N, 105.580084° W. Please submit a corrected page 3 with the appropriate site entrance coordinates.
5. Items 12 and 13, Page 4, Land Uses: The application instructs the Applicant to check only one box for both post-mining and present primary land use. Both rangeland and recreation are checked for each land use category. Assuming the two uses are essentially equal, please describe the types of recreational use here as it may be important to the reclamation plan.
6. Public Notice: The application provided proof of the required newspaper notice publication, but that notice was published prematurely. Please provide proof the notice was published in the newspaper after the April 12, 2021 completeness notice.
7. Notice to all Mineral and Surface Owners, and Owners of Structures within 200 feet: Pursuant to Rule 1.6.2(1)(e), the Applicant is required to mail the same notice published in the newspaper (Comment No. 6 above) immediately after the date of the newspaper publication to all Owners of Record of the surface and mineral rights of the affected land; and the Owners of Record of all land surface within 200 feet of the boundary of the affected lands. Please provide proof of these notices.

6.3 SPECIFIC EXHIBIT REQUIREMENTS – LIMITED IMPACT OPERATIONS

6.3.1 EXHIBIT A - Legal Description and Location Map

8. Exhibit A: Although the coordinates provided for the site are consistent with that provided in the Application, they are not for the entrance location as required. There are two other items in Exhibit A previously alluded to, which require clarification: 1) the first line states the leased land is 10 acres (reference Comment 1 above); and 2) the pit is approximately 2.75 miles south of Texas Creek (reference Comment 3 above). Please address the following:
- a. Revise the coordinates to be consistent with the entrance coordinates revised for Comment 4 above
 - b. Clarify the lease with BLM is for 10 acres, but the affected area and permit boundary for the DRMS permit is less than 10 acres, and
 - c. Based on your response to Comment 3 above, revise the distance to the site from Texas Creek.

6.3.2 EXHIBIT B – Site Description

9. Exhibit B: Pursuant to Rule 6.3.2(a), a description of the site soil characteristics is required. No description is included. In addition, Rule 6.3.2(b) requires the Applicant to identify any permanent man-made structures within two hundred (200) feet of the affected area and the owner of each structure. There are not structures or their owners listed. The DRMS considers, roads, fences and utilities to be permanent man-made structures. Based on other information in the Application, State Hwy 69, the BLM fence, and the utility poles (Sangre De Cristo powerline) are all within 200 feet of the proposed permit area and need to be identified in Exhibit B as well as be shown on Exhibit E maps. Please provide the following:
- a. A description of the site soils (the local Soil Conservation Service can assist with this information).
 - b. A list of all permanent man-made structures within 200 feet of the affected/permit area and their owners.

6.3.3 EXHIBIT C - Mining Plan

10. Estimated End date of Mining Operations: Rule 6.3.3(a) requires an estimate for the end of mining operations. Please provide an estimated date when mining will cease.
11. Estimated Depths of Materials: Rules 6.3.3(b) through (d) require estimated depths of topsoil to be salvaged, thickness of overburden, and thickness of the deposit to be mined. The provided narrative only states the mining depth will be 35 feet. Please describe how much is topsoil to be salvaged for reclamation and if there is any overburden, what is the estimated thickness.
12. Blasting: The provided narrative indicates no blasting will be performed “until needed”. The DRMS will require a blasting plan prior to any blasting operations on site. You may submit a

blasting plan for review with your response to this letter or commit in writing to submitting a blasting plan through a technical revision to this permit accompanied by the required \$216 fee.

13. Mining versus Groundwater Depth: The third paragraph on the second page of Exhibit C states the mining depth is 35 feet and the groundwater is estimated to be 30 to 40 feet below the surface. If groundwater is exposed through mining a well permit is required from the Colorado Division of Water Resources and either a substitute water supply plan or permanent augmentation plan is required. If the intent is to not expose groundwater, the DRMS requires any groundwater exposed as the result of mining be immediately covered with at least two feet of backfill. Please clarify your intentions with respect to groundwater exposure.
14. Water usage: Rule 6.3.3(h) requires the Applicant to provide an estimated amount of water to be used and to specify the source of that water. The fourth paragraph on the second page of Exhibit C indicates a water truck will be used for dust control. Please provide an estimated amount of water for site operations and where the water will be obtained.
15. Water Rights: Rule 6.3.3(j) requires specify how you will comply with applicable Colorado water laws and regulations governing injury to existing water rights. Given the implied potential to expose groundwater (reference Comment 13) and the use of water for dust control, please describe how you will comply with Colorado water laws.
16. Hydrologic Impacts: Both Exhibits C and D mention water diversions. Furthermore there is the aforementioned potential to expose groundwater. Rule 6.3.3(i) requires the Applicant describe how mining will affect the quantity and quality of the surface or groundwater and the methods to be used to minimize disturbance to the surface and groundwater systems including proposed dewatering, sediment-containment, stormwater run-off controls, and groundwater points of compliance. Please describe how these requirements will be met.
17. Noxious Weed Plan: The provided narrative (third bullet on p. 3 of Exhibit C) indicates have a noxious weed plan. Rule 3.1.10(6) requires control of noxious weeds and the DRMS will need to review and approve a site weed control plan if noxious weeds become a site problem. You may submit a weed control plan for review with your response to this letter or commit in writing to submitting a weed control plan through a technical revision to this permit accompanied by the required \$216 fee, should it become necessary.

6.3.4 EXHIBIT D – Reclamation Plan

18. Reclamation Performance Standards: Rule 6.3.4(1) requires the Applicant address reclamation performance standards in Rule 3.1. Please provide responses to the following:
 - a. Rule 3.1.9 requires the Applicant address topsoil protection. Please address the following:
 - i. How much topsoil (depth) is expected to be salvaged?
 - ii. What method(s) will be used to minimize topsoil stockpile erosion?

- iii. Describe measures to be taken to assure the stability of replaced topsoil on graded slopes
 - b. Rule 3.1.10 requires the Applicant describe how successful revegetation will be accomplished. Please provide the following:
 - i. A seed mix (in pounds of pure live seed per acre) needed to establish diverse, effective, lasting vegetative cover (*assistance can be obtained from the local Soil Conservation Service or the BLM*);
 - ii. Number (trees per acre) and types of trees to be replanted;
 - iii. Method(s) to be used to prepare the site for planting (tilling, ripping, etc.) and method of seeding (drill, broadcast, hydroseed, etc.)
 - c. Rule 3.1.12(2) requires the permit/affected area boundaries be clearly and adequately marked. Given the permit boundary is expected to be very close to the upper limit allowed under a limited impact permit, please describe how the permit boundary will be adequately marked so as to prevent any disturbance outside the permit boundary.
19. Overburden replacement: If any overburden is to be removed and stockpiled, please describe how it will be replaced for reclamation.
20. Stream Diversion Reclamation: Please describe how the diversions in Comment 16 will be reclaimed.
21. Access Road: The reclamation plan indicates the BLM is to determine whether the access road is to remain post reclamation. The DRMS requires a determination at this time as it impacts the reclamation cost estimate. Please get a determination from the BLM on whether the access road will remain and provide appropriate documentation to the DRMS.
22. Reclamation Costs: Rule 6.3.4(2) requires the Applicant provide all information necessary for the DRMS to estimate the cost for reclamation. Only a total of \$8500 is provided. Please provide topsoil volumes, overburden replacement volumes, grading and ripping areas, etc., and tasks necessary to reclaim the diversions and access road if appropriate. Please also provide a list of equipment (and sizes) planned for reclamation such as dozers, motor graders, excavators, haul trucks, seed bed preparation tractors, hydroseeders, etc. Based on your responses to this letter the DRMS will generate its own reclamation cost estimate and coordinate with BLM representatives as to its adequacy.

6.3.5 EXHIBIT E - Map

23. Exhibit Map Requirements: Rule 6.2.1(2) provides criteria all maps, with the exception of the Index Map in Exhibit A, must follow. Among these requirements, the following are missing on some or all the provided maps:
- a. Show name of Applicant (missing on all maps not prepared by the BLM);
 - b. Signature of the person creating the map (missing on all maps);
 - c. Date the map was prepared (missing on all maps);

- d. Identify and outline the area which corresponds with the application (missing on some maps). This should include an Exhibit letter such as “B”, “C”, “D” or “E”;
- e. appropriate legend (missing on Maps not prepared by the BLM); and
- f. Map title (missing on most maps).

Comments below indicate which specific items are missing from which maps. (*The DRMS recommends these items all be included in a title block on the drawing.*)

- 24. Land Owners and Structures: Rule 6.3.5(2) requires the following information not already shown, be included on Exhibit E map(s): A) all surface owners, B) permanent man-made structures, and C) diversion structures. Please resubmit Exhibit E with this information.
- 25. Reclamation Features: Rule 6.3.5(3) requires the following information not already shown, be included on Exhibit E map(s): A) general area(s) for shrub or tree planting, B) average thickness of replaced overburden by reclamation area or phase, and C) the average thickness of replaced topsoil by reclamation area or phase. Please resubmit Exhibit E with this information.

6.3.7 EXHIBIT G - Source of Legal Right to Enter

- 26. Right to Enter: There appears to be a misunderstanding of the purpose of this Exhibit. The intent is to demonstrate to the DRMS that the land and mineral owner(s) of the site have given legal permission for the Applicant to enter the site, mine the material and complete reclamation. For privately owned sites, this is typically a lease. For sites on Federal land, this is typically a Plan of Operations (PoO) approved by the appropriate Federal Agency (the BLM in this case). Please provide an approved PoO or other appropriate documentation demonstrating the legal right to enter.

6.3.8 EXHIBIT H - Municipalities Within Two Miles

- 27. Clarification: The intent of Exhibit H is to provide a list of all municipalities and their addresses within two miles of the proposed operation in order for the town officials to be noticed of the proposed operation. A map was submitted indicating Texas Creek is the nearest community at 2.75 miles away. Based on Comment 3, Texas Creek is likely less than two miles from the site. However, it is not a municipality and does not require notification. Please confirm there are no municipalities within two miles of the site.

6.3.12 EXHIBIT L – Permanent Man-Made Structures

- 28. Eligible Structures: The purpose of Exhibit S is to provide damage compensation agreements, or where those cannot be obtained, engineering analyses demonstrating structures within 200 feet of the affected area will not be damaged by the proposed activity. Based on information presented elsewhere in the Application, damage compensation agreements need to be obtained for State Hwy 69, the BLM fence and the Sangre De Cristo powerline. Please provide the

required documentation for these three structures and any others that you may be aware of given the clarification of man-made structures in Comment 9 above.

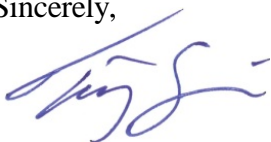
NOTICE TO MINERAL/SURFACE & OWNERS OF STRUCTURES WITHIN 200 FEET

29. Rule 1.6.2(1)(e) Notices: As stated in our January 29, 2021 letter and required by Rule 1.6.2(1)(e), proof of mailing a copy of the notice (identical to that in the newspaper notice published on February 5, 12, 19 and 26) to all owners of record of surface and mineral rights, holders of any recorded easements, and all owners of record of lands that are within 200 feet of the boundary of the affected land. Proof of these required mailings has not been received by the DRMS. Please submit the required proof of mailing (e.g., Certified Mail - Return Receipt Requested) these notices. *(Note: If these notices have not been mailed, the decision date may need to be extended in order allow sufficient time for comment from these owners.)*

Please remember that the decision date for this application is May 12, 2021. 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 have any questions, please contact me at (303) 328-5229.

I have included a copy of the comment letter we received from the State Historic Preservation Office for your records.

Sincerely,



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

Enclosure: State Historic Preservation Office comment letter

ec: Michael Cunningham, DRMS
DRMS file
Vi Lyons, MVE
Amber Sanderson, BLM