



August 17, 2021

John Paul Ary
Fremont Paving and Redi Mix
839 Mackenzie Ave.
Cañon City, CO 81212

Re: Penrose Pit, Permit No. M-1987-131; Second Adequacy Review for 112 Construction Materials Reclamation Permit Amendment Application (AM-03)

Dear Mr. Ary:

The Division of Reclamation, Mining and Safety (DRMS) has completed its review of your responses (received July 19, 2021 to our April 5, 2021 preliminary adequacy review (PAR) of your 112 Construction Materials Reclamation Permit Amendment Application (AM-03) for the Penrose Pit, Permit No. M-1987-131. **The current decision date for this application is August 27, 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 following comments 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. The original comment numbers have been retained for tracking purposes.

APPLICATION

1. Responsibilities as a Permittee, pp. 5-6: The response is adequate.
2. Certification, p. 8: The response is adequate.
3. Site Notice Posting Certification: The response is adequate.

6.4 SPECIFIC EXHIBIT REQUIREMENTS – REGULAR 112 OPERATIONS

6.4.1 & 2 EXHIBITS A and B - Legal Description and Index Map

4. Exhibits A and B: Depending on your responses to Comment 7 below, Exhibits A and B may yet still require revisions.



5. Exhibit B: The submitted Exhibit A.1 map meets the requirements for Exhibit B. No further response is necessary.

6.4.3 EXHIBIT C - Pre-mining and Mining Plan Map(s) of Affected Lands

6. Exhibit Map Requirements: Rule 6.2.1(2) provides criteria all maps, with the exception of the Index Map in Exhibit B, must follow. Among these requirements, the following are missing on some or all the provided maps:
- Show name of Applicant (missing on all maps);
 - Identify and outline the area which corresponds with the application (missing on some maps). This should include an Exhibit letter such as “B”, “C”, or “F”;
 - appropriate legend (missing on the Penrose Pit Phase Map); and
 - Map title (missing on some maps) ; and
 - Scale: the map scale must be between 1 inch = 50 feet and 1 inch = 660 ft.

Comments below indicate which specific items are missing from which maps. (*The DRMS recommends items a, b, d and the required signature and date all be included in a title block on the drawing.*)

7. Exhibit C Maps: The response requires additional information. Included in the response are two Exhibit C maps (Exhibits C and C.1); a Mining Map, labeled Exhibit D and the Penrose Pit Phase Map (still having no Exhibit label). Please revise Exhibits C, C.1 D and the “Phase” maps as follows:
- Exhibit C Map. Owners of the land and adjacent properties are identified, as are creeks and roads on the new map, but the white and yellow text is very difficult to read (red or preferably black text is readable). The legend is incomplete as it does not identify the thick orange line running southwest to northeast on the west side of Hwy 115. The blue shaded permit boundary appears to include the Fremont Sanitation District and the Fountain Hills Land & Equipment properties. The affected area boundary is not shown. The fence and building on the Fremont Sanitation District are not identified. The scale is too small at 0.67 inches = 600 feet (or 1 inch = 895.5 feet). Please resubmit the Exhibit C map with a scale of at least 1 inch = 660 feet; a completed legend; labels with black text; **affected area boundaries**; and corrected permit boundaries.
 - Exhibit C.1 Map. This map identifies six water related features, but it is missing scale, north arrow, legend, affected area boundaries, Applicant name, name of the map preparer, and the creation/revision date of the map. Please resubmit the Exhibit C.1 map with a scale bar (showing a scale of at least 1 inch = 660 feet); a completed legend (with the green circles, red squares and blue triangles identified); **affected area boundaries**; and corrected permit boundaries. (*please be aware your response needs to be consistent with your response to Comment 7.d below*)
 - Exhibit D Map. Existing topographic contours are shown and landowners of the land and adjacent properties are identified, as are creeks and roads on the new map, but

- the white text is very difficult to read on anything but a red background. The legend is appears complete. The blue shaded permit boundary appears to include the Fremont Sanitation District and the Fountain Hills Land & Equipment properties. The affected area boundary is not shown. The fence and building on the Fremont Sanitation District are not identified. The scale is too small at 0.67 inches = 600 feet (or 1 inch = 895.5 feet). Please resubmit the Exhibit D map with a scale of at least 1 inch = 660 feet; labels with black text (unless on a red background where white text works better; **affected area boundaries**; and corrected permit boundaries.
- d. Penrose Pit Phase Map. This is the only map that shows the affected area boundary and the only map that does not have an Exhibit identifier. However, it does not show any structures, and the south end of the Phase 4 area appears to include the land managed by the BLM. The Exhibit C, C.1, D and F show the permit boundary notched out to avoid the BLM land. As currently presented all features are labeled with the exception of the topographic contour line interval. Finally, the scale is too small at 1.95 inches = 1500 feet (or 1 inch = 769.2 feet). Please resubmit the Penrose Pit Phase Map with an Exhibit identifier (Exhibit C.2 or D.1?) and at a scale of at least 1 inch = 660 feet. Please also include: all structures within 200 feet of the affected area boundary (including the fence and building in the Fremont Sanitation District area), contour interval and contours within the Fremont Sanitation District and the Fountain Hills Land & Equipment properties.
 - e. Rule 6.4.3(e) requires the type of present vegetation be provided. Exhibit C provides a list of native vegetation. No additional response is necessary.
 - f. Rule 6.4.3(f) requires water resources information. Most of this information appears to have been provided. However, a final determination cannot be made until a map is submitted with all pertinent structures identified relative to the affected area boundary. NO further response is necessary at this time.
 - g. Rule 6.4.3(g) requires all structures within 200 feet of the affected land be identified in Exhibit C. It appears the affected land boundary requires additional revisions (see Comment 7d above). The DRMS also notes the 200 foot buffer shown on Exhibits C and D appears to offset the permit boundary (not the affected area boundary) 200 feet from the centerline of Hwy 115. In order to avoid the requirement to obtain a structure damage compensation agreement with CDOT (the CDOT access agreement referenced elsewhere in the adequacy response does not meet the requirement for a structures agreement), the 200-foot offset must be from the CDOT right-of-way. When the DRMS is provided with a map showing ALL structures within 200 feet of the affected area boundary, we will make a determination for which structures (including power lines, ditches, fences and buildings) will require damage compensation agreements in accordance with Rule 6.4.19.
 - h. Rule 6.4.3(h) requires soils information. The soils description in the revised Exhibit I includes sufficient soils information. No additional response is necessary.

6.4.4 EXHIBIT D – Mining Plan

8. Batch Plant: The response states the batch plant will be portable, no further response is necessary.
9. Mining Slopes: The response requires clarification and additional information. First, the response limits the length of the highwall to 100 feet. This appears impractical based on the practice to date. A review of historic satellite imagery indicates the total length of near vertical highwalls (both for overburden stripping and/or benched mineable material) varies between 800 and 1,100 feet at any given time. If you wish to commit to a maximum 100 feet of highwall at a given time and longer highwalls are observed during future inspections, possible violations may be issued and a surety increase will likely be needed. Second, no active highwall slope was provided as requested. The DRMS will assume vertical highwalls for reclamation costing unless you provide different information. Please clarify the active face slope (if not vertical) and reconsider the expected maximum length of the highwall.
10. Active Mining Erosion Control: The response is adequate.
11. Groundwater: The response is adequate.
12. Wells: The response is adequate.
13. Wash Plant: The response is adequate.
14. Clarification: The response is adequate.
15. New Access Roads: The response is adequate.

6.4.5 EXHIBIT E – Reclamation Plan

16. Topsoil Thickness: The response requires clarification. Given the information in the soil survey, the DRMS accepts the commitment to replace three inches of topsoil or growth media. There is an added sentence in paragraph (a) of the response stating overburden will be used to backfill the highwalls to 3H:1V. However, the first part of the same paragraph states “There is virtually no overburden ...”. The DRMS estimates 89 cubic yards of material are required per linear foot of a 40-foot vertical highwall to backfill to 3H:1V. Please explain where this volume of overburden can be found if there is virtually no overburden on site.
17. Reclamation Performance Standards: The response is adequate.

6.4.6 EXHIBIT F – Reclamation Plan Map

18. Exhibit Map Requirements: The response is adequate.
19. Exhibit F Proposed topography: *This comment did not appear to be addressed on the new Exhibit F map.* Rule 6.4.6(a) requires topography and contours of the reclaimed areas. The map provided appears to be more of a mining plan map as it does not show final reclamation except the 3H:1V slopes adjacent to the Fountain Hills Land & Equipment parcel. No contours or grading are shown in the current affected area or phases 1 and 2. The rest of the site shows only existing contours rather than those for final reclamation. **Please provide a revised Exhibit F showing post reclamation grading.**

20. Exhibit F Final Land Use: *This comment did not appear to be addressed on the new Exhibit F map.* Rule 6.4.6(b) requires showing the proposed final land use. Based on information in the application the DRMS understands the entire site is intended to be rangeland. If this is the case, please add a note on the Exhibit F map stating as much. If there are exceptions, please indicate what those are and where they are on the map.

6.4.6 EXHIBIT G – Water Information

21. Impact to surface water: The response is adequate.
22. Wells: The response is adequate.
23. Paragraph 2: The response is adequate.
24. Contradictions: Please provide the following:
- a. The DRMS accepts the submitted water lease. However, the lease expires on 10/31/2021. Do you expect to renew the lease then? Please commit to providing a copy of the renewed water lease upon t being finalized.
 - b. The response is adequate.
 - c. The response is adequate.

6.4.8 EXHIBIT H – Wildlife Information

25. Habitat Improvements: The response is adequate.

6.4.9 EXHIBIT I – Soils Information

26. Exhibit Label: The response is adequate.

6.4.10 EXHIBIT J – Vegetation Information

27. Carrying Capacity: The soil survey report submitted as part of Exhibit I provided the necessary information. The response is adequate.

6.4.12 EXHIBIT L – Reclamation Costs

28. DRMS Estimate: The DRMS will generate a reclamation cost estimate based on this amendment application and responses to this second adequacy review letter. Please be aware the bond estimate provided in Exhibit L may be modified based on our reclamation cost estimate. No response is necessary.

6.4.13 EXHIBIT M – Other Permits and Licenses

29. Conditional Use Permit: The response is adequate.
30. Stormwater Permit: The response is adequate.

6.4.14 EXHIBIT N – Source of Legal Right to Enter

31. Update required: The response is adequate.

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

32. Anne Emerson Trust: The response is adequate.

6.4.16 EXHIBIT P – Municipalities Within a Two-mile Radius

33. Cañon City: The response is adequate.

6.4.19 EXHIBIT S – Permanent Man-Made Structures

34. Eligible Structures: The only map exhibit that shows the affected area boundary is the “Penrose Pit Phase Map” which still does not have an Exhibit identifier or Figure number. This map also appears to include the land managed by the BLM on the south end of Phase 4. Other maps provide in the response only show the permit boundary, which appears to avoid this BLM managed land. Comments 34 c and d require a map showing these structures relative to the affected area boundary to determine if damage compensation agreements are required for those structures listed in c and d below. The responses to Comments 34 a and b are adequate. Please provide an Exhibit map showing the affected area boundary and the structures listed in parts c and d below:
- a. Based on the information provided in Exhibit C.1, the DRMS has determined the following elements do not require damage compensation agreements: Dooley Ditch, Brush Hollow Ditch No. 1, Brush Hollow Ditch No. 2, Bragg Ditch, and Penrose (Pleasant Valley) Pueblo Res Exch. No further response is necessary.
 - b. Ownership of the scale house nearest Hwy 115. The scale house is on property owned by John Paul Ary. As such it is assumed to be owned by him and no damage compensation agreement is required. No further response is necessary.
 - c. Damage compensation agreements for the well owned by Castle Concrete; the diversion structure just west of Hwy 115 on the north side of the Arkansas River owned by the Grisenti and the Bureau of Land Management; and the building, fence and concrete apron associated with the Fremont Sanitary District Processing Facility.
 - d. If the affected area boundaries are not adjusted near the powerlines, damage compensation agreements are required for powerline, Hwy 115, the irrigation ditch on the east side of Hwy 115, and two out buildings on the west side of the Grisenti property next to Hwy 115.

6.5 GEOTECHNICAL STABILITY EXHIBIT

35. Geotechnical Stability Exhibit: *This exhibit has not yet been provided. The DRMS cannot approve this amendment without reviewing this exhibit.*

Mining has progressed to very near the edge of the bluff above the Arkansas River and is proposed to continue near the edge of this steep geologic structure above the river on both sides of Eightmile Creek. Rule 6.5(3) requires where there is the potential for off-site impacts due to failure of any geologic structure which may be caused by mining or reclamation activities, the Applicant shall demonstrate through appropriate geotechnical and stability analyses that

off-site areas will be protected with appropriate factors of safety incorporated into the analysis. The acceptable safety factors are presented in the Mined Land Reclamation Board Policy No. 30 (enclosed). Please provide appropriate stability analyses demonstrating mining and reclamation activities near the bluff can be accomplished while maintaining the required factor of safety. The analyses should include appropriate loads for all the equipment expected to be operating near the edge of the bluff at any given time.

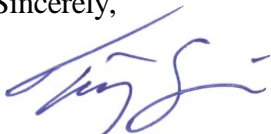
NOTICE TO MINERAL/SURFACE & OWNERS OF STRUCTURES WITHIN 200 FEET

36. Rule 1.6.2(1)(e) Notices: *Proof of notices has not yet been provided. The DRMS cannot approve this amendment without receiving this proof of mailing.*

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 August 27, 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.

Sincerely,



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

ec: Michael Cunningham, DRMS
DRMS file
Jodi Schreiber, Fremont Paving & Redi-Mix
Stephanie Carter, BLM