



December 27, 2021

Gary Linden, P.E.
Civil Resources, LLC.
8308 Colorado Blvd., Suite 200
Firestone, CO 80504

Re: Recommendation to Approve with a Condition the Aggregate Industries - WCR, Inc. Construction Materials 112 Amendment Application (AM2) with Objections, Tucson South Resource, File No. M-2004-044

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (Division/Office/DRMS) hereby issues its recommendation to approve with a condition the Aggregate Industries – WCR, Inc. 112c amendment application (AM2) for the Tucson South Resource, File No. M-2004-044.

The Division's recommendation to approve with a condition is based upon the amendment application meeting the requirements of Section 34-32.5-115(4) of the Colorado Land Reclamation Act for the Extraction of Construction Materials (C.R.S. § 34-32.5-101, *et seq.*). A copy of the Division's rationale for its recommendation to approve with a condition the amendment application is enclosed for your review.

The Division's recommendation to approve with a condition the amendment application with objections will be considered by the Colorado Mined Land Reclamation Board (Board) during a formal hearing, scheduled to occur January 19-20, 2022, beginning at 9:00 a.m. or as soon thereafter as the matter can be considered. Due to the impacts of the COVID-19 virus on availability of State facilities and Division resources the Board hearing will be by a virtual ZOOM hearing. Pursuant to Rule 2.8.1(1) of the Minerals Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Rules), any party who does not attend the Board hearing forfeits its party status and all associated rights and privileges.

All parties and interested persons who intend to participate in the Board hearing are strongly encouraged to attend the Pre-hearing Conference. Pursuant to Rule 2.7.3(4), any party who does not attend the Pre-hearing Conference forfeits its party status and all associated rights



and privileges, unless such party provides a fully executed proxy authorization form to the Pre-hearing Conference Officer and the party's authorized representative is present.

The Pre-hearing Conference is scheduled for January 7, 2022, at 11:00 a.m. and will end no later than 12:00 p.m. The Pre-hearing Conference will be held virtually. The Division will provide an authorization code to attend the meeting by Zoom prior to the meeting date.

If you need additional information or have any questions, please contact me by telephone at **303-866-3567 x8114**, or by email at patrick.lennberg@state.co.us.

Sincerely,



Patrick Lennberg
Environmental Protection Specialist

Enclosure: Rational for Recommendation

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Russ Means; Division of Reclamation, Mining and Safety
Jared Ebert; Division of Reclamation, Mining and Safety
Jeff Fugate; Esq., AGO for Division of Reclamation, Mining and Safety
Charles Kooyman; Esq., AGO for the MLRB

Enclosure



December 27, 2021

**Re: Rationale for Recommendation for Approval with a Condition of a Construction Materials
112 Amendment Application (AM2) with Objections, Aggregate Industries - WCR, Inc.,
Tucson South Resource, File No. M-2004-044**

Introduction

On December 27, 2021, the Division of Reclamation, Mining and Safety (Division/Office/ DRMS) issued its recommendation to approve with a condition the permit amendment application (AM2) for the Tucson South Resource, File No. M-2004-044, over public objections. This rationale document is intended to explain the process by which the Division arrived at its recommendation for approval with a condition over public objection and respond to the issues raised by the objecting parties. The Division reserves the right to further supplement, amend, modify, or clarify this document and recommendation with additional details as necessary.¹

Summary of the Review Process for the Amendment Application

Aggregate Industries - WCR, Inc. (AI/Applicant) submitted a 112c amendment application (AM2) on September 9, 2021. The amendment application was deemed complete for the purposes of filing and review on September 27, 2021.

AM2 proposes to add 7.7 acres for a new conveyor route, and remove 3.3 acres of unaffected land related to a former conveyor route to the existing 283.2 acre site. The site is located in Adams County approximately 0.75 miles west of Brighton, CO. The Applicant intends to mine construction aggregate for industrial, commercial and residential uses. The amendment seeks to add approximately 1.9 miles of conveyor belt corridor to transport mined material from the Tucson South site north to the Applicant's Wattenberg Lakes site, M-2004-051. Once at the Wattenberg Lakes site it would be conveyed, using an existing conveyor belt system, to the Applicant's Platte Valley Operation (M1989-120) for final processing. The proposed conveyor corridor would have a combination of overhead and underground road crossings.

Pursuant to Section 34-32.5-112(9)(b), Rule 1.6.2(1)(d) and Rule 1.6.5, the Applicant published the required public notice for the amendment application once a week for four consecutive weeks beginning on October 6, 2021 with the last date of publication on October 27, 2021. The public

¹ Herein, all references to the Act and Rules refer to the Colorado Land Reclamation Act for the Extraction of Construction Materials, 34-32.5-101 et seq., C.R.S. (the Act), and to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the Rules or Rule). Copy of the Act and Rules are available through the Division's web site at <https://drms.colorado.gov/>.



comment period closed on November 16, 2021. The public notices were published in the Brighton Standard Blade, a publication in general circulation in the vicinity of the mine. During the public comment period, the Division received three (3) written objections and three (3) comment from the individuals and agencies listed below. There were no untimely letters of objection or comment letters to the application.

Timely Letters of Objection:

Person or Entity	Date Objection Received
B. Michl Lloyd	November 15, 2021
Wayne Muhler	November 16, 2021
Sherie Gould	November 16, 2021

Timely Commenting Agency:

Agency	Date Comment Received
History Colorado	October 12, 2021
Division of Water Resources	October 14, 2021
Colorado Parks and Wildlife	November 16, 2021

The Division forwarded copies of the objections and comments to the Applicant and scheduled the amendment application for a hearing before the Colorado Mined Land Reclamation Board (Board) and a Pre-hearing Conference. The Division provided notice of the scheduled Board hearing and Pre-hearing Conference to all parties and interested persons. Due to the timely objections, on the decision date the Division cannot make a decision on the application amendment, but rather a recommendation to the Board.

During the review period the Division generated three (3) adequacy letters. The Applicant addressed all adequacy issues to the Division's satisfaction. Therefore, on December 27, 2021, the Division determined AM2 satisfied the requirements of C.R.S. § 34-32.5-115(4) and issued its recommendation to approve with a condition the amendment application over objections.

Issues Raised by the Objecting Parties

The timely objections received by the Division have been categorized as issues pertaining to the application process, mining plan, reclamation plan, geotechnical stability, hydrology, wildlife and non-jurisdictional issues. The issues raised by the objecting parties are represented by italic bold font. The last names of the objecting parties who raised the issue are listed after the issue. The Division's response follows in standard font. .

1. Application Process Issues

a. Availability of amendment application documents for public review (Lloyd, Gould)

The Applicant provided copies of the amendment application and subsequent revisions to the Clerk of the Weld County Board of Commissioners and Adams County Clerk and Records Offices for public review in accordance with Rule 1.6.2(1)(b) and 6.4.18. Due to COVID restrictions access to the documents may have been limited. In addition to making copies available at the county office, the Division maintains a website that allows access to the amendment application documents. Division staff routinely assists the public in accessing documents and the AM2 documents were publicly available during the comment period. The Division did provide a copy of the application documents in the requested searchable form to an objector prior to the closing of the public comment period. The Division finds the Applicant has complied the applicable Rules 1.6.2(1)(b) and 6.4.18 and C.R.S. § 34-32.5-112.

b. Publication notice being miscategorized online (Gould)

During the public comment period it was found the published public notice was incorrectly categorized online. The Applicant did publish public notice in a newspaper of general circulation, Brighton Standard Blade, for four consecutive weeks. The notice was properly published in the print copy of the Brighton Standard Blade. It is unclear why the online notice was miscategorized but review of the website indicated multiple similar errors throughout the website. The Applicant did provide an affidavit of publication from the Brighton Standard Blade indicating proof of publication under the appropriate heading "Public Notice". The Division has determined that, although unfortunate, the online publication error did not negatively impact the public notice of the pending application or impede the public's ability to comment to the Division. The Division finds the Applicant has complied the applicable Rules 1.6.2(1)(d) and 1.6.2(1)(g) and C.R.S. § 34-32.5-112.

2. Mining Plan Issues

a. Limits of Extraction (Muhler)

The Applicant is limited to extraction of material from within the slurry wall boundaries of the East Cell and West Cell, as shown in Mining Plan Maps C-5 and C-6. A minimal amount of material will be removed from each underground crossing but only material needed for construction will be removed. The Division finds the Applicant has complied the applicable Rule 6.4.4 and C.R.S. § 34-32.5-112(2)(d).

b. *Missing Mine Signage (Muhler)*

During the pre-operation inspection the Division documented the Applicant had posted mine signs at the entrances to the West Cell and East Cell locations clearly visible from Tucson Street. The Applicant stated additional mine signs would be added to other access locations as they are established. The Division finds the Applicant has complied the applicable Rule 3.1.12.

c. *Compliance with Permit Conditions (Lloyd)*

The Colorado Mined Land Reclamation Board (MLRB) conditionally approved the original permit application for the Tucson South Resource site with five conditions. Those conditions are as follows:

Condition 1 - If final specifications for construction of the slurry walls differ from the draft specifications, Aggregate Industries will provide DMG a copy of the final version for review, as a technical revision.

The Applicant provided the final slurry wall designs as part of AM2.

Condition 2 – Aggregate Industries' mining operation will not intersect ground water in East and West Cells until the DMG has reviewed and accepted the final slurry wall construction report, including quality assurance test results.

Ongoing commitment.

Condition No. 3 – Aggregate Industries will not expose ground water to the surface in Phases East or West Cells until a copy of a document from the State Engineer's Office proving that it is legal to do so is provided to the DMG.

The Applicant has an up to date Substitute Water Supply Plan that allows for 10 acres of exposed groundwater. It is noted the Applicant plans on mining from within installed slurry walls minimizing the amount of exposed groundwater. Groundwater removed from within the slurry walls will be conveyed directly to the river.

Condition No. 4 – Aggregate Industries will not affect land within 200 feet of the Brantner Ditch, Brighton Ditch, Kerr McGee oil and gas well pipelines and appurtenances or the Union Rural Electric overhead power line and poles until a notarized agreement between the applicant and the persons having an interest in the structure(s) that the applicant is to provide compensation for any damage to the structures.

This commitment was satisfied during AM1 adequacy review process.

Condition No. 5 - Aggregate Industries shall not affect land south of and within 200 feet of the Todd Creek Farms water supply pipeline and shall not further affect land within 200 feet of the north side of the pipeline, in the Phase 2A area, except for reclamation work, until a notarized agreement between Aggregate Industries and Todd Creek farms stating that Aggregate Industries is to provide compensation to Todd Creek Farms for any damage to the pipeline, or Aggregate Industries otherwise complies with the requirements of Rule 6.4.19(b)(c).

This commitment was satisfied during AM1 adequacy review process.

The Division finds the Applicant has complied with or acknowledges ongoing permit commitments and is in compliance with Rule 6.4.4.

d. *Berms and Stockpile Management (Lloyd)*

The Applicant is required install a visual berm along the south end of the West Cell and must manage topsoil and overburden stockpiles in a specific manner. These items are depicted on Mining Plan Maps C-5 and C-6. Since activities have only recently been initiated at the site compliance is considered on-going. The Division conducts routine inspections of the site and will evaluate the Applicants compliance with these on-going items as part of Rule 6.4.4 and C.R.S. § 34-32.5-116(4).

3. Reclamation Plan Issues

a. *What is meant by concurrent reclamation (Lloyd)*

The Applicant defines concurrent reclamation to mean: Topsoil, overburden, and non-marketable material excavated during mining will be used almost immediately. The reserved topsoil and overburden will be used to create the finished grade prior to revegetation. Small temporary stockpiles may be created within or along the edge of the mining cells. When enough material is available in the stockpile, the material will be graded into the previously mined areas. For the slurry wall areas, when an area is completely mined out from grade to bedrock, each section approximately 800-foot-wide (or approximately 30 acres), will begin side slope construction while the next contiguous area or consecutive phase is beginning mining. Due to the floodway, there is limited space for stockpile placement at this site; by concurrently reclaiming, as an area is being prepared for mining, the overburden and topsoil can be stripped and immediately placed, or stockpiled in the previously mined area, limiting the material handling. It is estimated that within 6 months of an area being completely mined, it will be reclaimed.

The Division finds the Applicant has complied the applicable Rule 6.4.5.

b. *Reclamation of Previously Mined Area (Muhler)*

During the original permitting of the Tucson South Resource site a portion of land that was mined under the Tucson Resource Mine (M1991-140) was incorporated into the permit. This area is located north of the East Cell and has been partially reclaimed by backfilling and grading and currently consists of an open groundwater pond. According to Reclamation Plan Map F-3 the area is to be reclaimed as Upland Meadow. The grass seed mix in Exhibit E is composed of a long lasting and regenerating native upland seed mixture and will be used in upland areas where no future irrigated/dryland agriculture or other development is anticipated.

The Division finds the Applicant has complied the applicable Rule 6.4.5.

c. *Noxious Weed Control (Muhler)*

The Applicant included a weed control plan with the AM2 application. Further, the applicant will be required through the life of the mine to control weeds in accordance with Rule 3.1.10(6). The Division conducts routine inspections of the site and will evaluate the Applicant's implementation of the noxious weed plan.

4. Hydrology Issues

a. *Concerns regarding groundwater mounding, effects on adjacent wells and septic systems (Lloyd, Muhler, Gould)*

The purpose of AM2 is to only add 7.7 acres for a new conveyor belt corridor to transport mined material from the Tucson South Resource site to the Wattenberg Lakes site. The subject of AM2 does not have any impacts to groundwater. A groundwater mounding mitigation plan was reviewed and approved by the Division with AM1. Additionally with the approval of AM1, the Applicant re-affirmed their commitment to a groundwater mitigation plan to determine if site activities were responsible for impacts to groundwater.

During the review of AM1 groundwater modeling was completed to determine the effects of the slurry wall installation on nearby wells. The modeling did predict there was a possibility nearby wells would be negatively affected. In AM1 the Applicant committed to installing an underdrain system to minimize disturbances to the prevailing hydrologic balance of the groundwater regime near the mine. In the areas of the groundwater mounding the groundwater will flow into the drain then flow down gradient through the drainpipe and discharge back to the groundwater. A discharge permit is not required for this system. During the pre-operation inspection the Division observed the initial phase of the underdrain construction. Additionally the Applicant maintains a monitoring well network of 16 monitoring wells. Monitoring data will be used to identify potential changes in alluvial groundwater flow or elevation associated with mining and reclamation activities. Baseline data collected from the monitoring program provide a range of relative water levels associated with pre-mining groundwater conditions. Finally, the Applicant has committed to a groundwater monitoring plan to determine if mining and reclamation activities at the site are responsible for impacting nearby structures, including water wells and septic system.

The Division finds impacts to groundwater quantity in and adjacent to the affected land will be minimized in accordance with Rule 3.1.6. The Division finds the applicant has provided the information required for Exhibit G – Water Information, in accordance with Rule 6.4.7 and C.R.S. § 34-32.5-116(4)(h).

5. Wildlife Issues

a. Concerns regarding the conveyor corridor on wildlife (Lloyd, Muhler)

Concerns the conveyor corridor would be a barrier to wildlife movement in the area along the unfenced portion of the corridor north of 168th Ave. During the comment period the Division received a comment letter from the Colorado Parks and Wildlife (CPW). In the letter, CPW does not believe the proposed corridor will have a significant effect to local wildlife. CPW did request the corridor not be fenced and since a small portion of the conveyor belt is located in mule deer severe winter range, then, to the extent possible, avoid installation between the dates of December 1 to April 30. The Applicant agreed to the requests from CPW.

The Division finds the applicant has submitted the information required by Rule 6.4.8, Exhibit H – Wildlife Information and that the Applicant has taken into account the safety and protection of wildlife on the mine site in accordance with Rule 3.1.8.

6. Access Agreements

a. Concerns the Applicant does not have all the needed lease agreements to install conveyor corridor (Lloyd)

The proposed conveyor corridor will cross land owned by the City of Aurora, Adams County, Yoshi & Suzu LLP, Dorothy and James Struck, Toby Struck, and Weld County. The Applicant has supplied signed lease agreements for all the entities listed above except for Weld and Adams Counties. The crossings located at Tract L, Tract O and County Road 23.5 are still in the design phase with Adams and Weld Counties. The Counties have supplied letters acknowledging the Applicant is working closely with the Counties and legal right to enter will be granted upon final crossing design approval. Once the crossings are approved by each County the Applicant has committed to providing the final design drawings and approval documentation to the Division prior to construction of the crossing.

The Division finds the Applicant has submitted the information required by Rules 6.4.14 Exhibit N – Source of Legal Right to Enter and recommends conditional approval. The condition being:

Land shall not be affected in Tract L, Tract O and County Road 23.5 until final crossing designs are approved by the respective County and documentation of the approval has been submitted to the Division.

7. Geotechnical Stability

a. Effect of the corridor on the stability of Challenger Reservoir (Gould)

The Applicant provided a geotechnical stability analysis as required by Section 6.5 of the Act and Rules. The stability analysis looked at the stability of the conveyor corridor along the east and a portion of the north side of the Challenger Reservoir. The stability analysis was modeled using site

specific rock and soil properties determined by laboratory and field testing in prior permitting actions. The results of the stability analysis demonstrated the minimum Factors of Safety (FOS) approved by the Board were met or exceeded in accordance with Table 1 - Recommended Minimum Factors of Safety for Slope Stability Analyses for Operations and Reclamation within Section 30.4 of the Policies of the Mined Land Reclamation Board (MLRB), effective May 16, 2018. The results indicate the conveyor corridor will not adversely affect the Challenger Reservoir. The Division finds the Applicant provided the required information in accordance with Rule 6.5 and C.R.S. § 34-32.5-116(4)(i).

The City of Aurora will be repairing the Challenger Reservoir sometime in the future. The Applicant has coordinated with the city to insure there is adequate access to get heavy equipment into the site. The Applicant has designed an overhead crossing into the southern portion of the Challenger Reservoir that will allow for ingress and egress of heavy equipment and associated trailers.

b. Stability Structures Near the Reservoirs Under Rapid Drawdown Saturated Conditions (Gould)

The Applicant provided the results of a stability analysis for both the West Cell and East Cell to Tucson Street. The stability analysis looked at the stability of Tucson Street that is located in between the reservoirs. The stability analysis was modeled using site specific rock and soil properties determined by laboratory and field testing actions. The results of the stability analysis demonstrated the minimum FOS were exceeded in accordance the Dam Safety Board minimum requirements and minimum FOS required by the MLRB. Additionally, the Applicant will perform the same analysis as a requirement for Adams County after the reservoirs have been constructed. The Division finds the Applicant provided the required information in accordance with Rule 6.5 and C.R.S. § 34-32.5-116(4)(i).

8. Non-Jurisdictional Items

In these proceedings, the Division's jurisdiction is limited to enforcement of the specific requirements of the Act and Rules. The Division considers all timely submitted objections and comments in its review, but can address only the issues that directly relate to the specific requirements of an application as stated in the Act and Rules.

a. Concerns regarding aesthetic impact and quality of life. (Lloyd, Gould)

The Act and Rules do not specifically address impacts to visually appealing landscapes (empty reservoirs), aesthetics, hours and/or days of operation, noise and sight pollution, and quality of life. Such issues are typically addressed at the local government level and not at the State government level. These issues should be addressed through Adams County. The Applicant has a current Conditional Use Permit for the operation and must abide by all conditions of the use permit.

b. Concerns regarding dust and air pollution. (Lloyd, Muhler, Gould)

The Act and Rules do not specifically address air quality issues. Such issues are under the jurisdiction of Adams County and the Air Pollution Control Division (APCD) of the Colorado Department of Public Health and Environment (CDPHE). The Applicant has affirmatively stated in Exhibit M of the AM2 application that an Air Pollution Permit will be obtained prior to operations.

Conclusion

After conducting a thorough technical review of the application, as outlined in part in the discussion above, on December 27, 2021, the Division determined the amendment application satisfied the requirements of the Act and Rules, and specifically C.R.S. § 34-32.5-115(4), and issued its recommendation to conditionally approve the Construction Materials 112 amendment application for the Tucson South Resource (AM2), File No. M-2004-044. The condition is as follows:

Land shall not be affected in Tract L, Tract O and County Road 23.5 until final crossing designs are approved by the respective County and documentation of the approval has been submitted to the Division.