



December 28, 2021

Cal Kelley  
Kelley Trucking, Inc.  
6201 McIntyre Street  
Golden, CO 80403

**Re: Recommendation to Deny the Kelley Trucking, Inc. Construction Materials 112 Permit Application with an Objection, Watkins Mine, File No. M-2019-053**

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (Division/Office/DRMS) hereby issues its recommendation to deny the Kelley Trucking, Inc. 112c permit application for the Watkins Mine, File No. M-2019-053.

The Division's recommendation to deny is based upon the permit application not 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 deny the permit application is enclosed for your review.

The Division's recommendation to deny the permit application with an objection 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 2:00 p.m. and will end no later than 3:00 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](mailto:patrick.lennberg@state.co.us).

Sincerely,



Patrick Lennberg  
Environmental Protection Specialist

Enclosure: Rational for Recommendation

ec: Cal Kelley, Kelley Trucking, Inc., [calkelley@kelleytruckinginc.com](mailto:calkelley@kelleytruckinginc.com)  
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 28, 2021

**Re: Rationale for Recommendation for Denial of a Construction Materials 112 New Permit Application with Objection, Kelley Trucking, Inc., Watkins Mine, File No. M-2019-053**

**Introduction**

On December 28, 2021, the Division of Reclamation, Mining and Safety (Division/Office/ DRMS) issued its recommendation to deny the permit application for the Watkins Mine, File No. M-2019-053. This rationale document is intended to explain the process by which the Division arrived at its recommendation for denial and respond to the issue raised by the objecting party. The Division reserves the right to further supplement, amend, modify, or clarify this document and recommendation with additional details as necessary.<sup>1</sup>

**Summary of the Review Process for the Permit Application**

Kelley Trucking, Inc. (Applicant) submitted a 112c permit application on April 13, 2020. The permit application was deemed complete for the purposes of filing and review on July 4, 2020.

The permit proposes a 116.02 acre mine site for borrow material for construction purposes. The site is located in Adams County approximately 4 miles north of Watkins, CO. The application was submitted in response to a Mined Land Reclamation Board (MLRB/Board) Order dated January 13, 2020 (MV-2019-031). In the Conclusions of Law the Board found the Applicant had engaged in a new mining operation without first obtaining a permit in violation of C.R.S. § 34-32.5-109(1). The Board ordered the Applicant to submit a permit application for a 112c reclamation permit.

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 permit application once a week for four consecutive weeks beginning on July 10, 2020 with the last date of publication on July 30, 2020. The public comment period closed on August 19, 2020. The public notices were published in the Denver Post, a publication of general circulation in the vicinity of the mine. During the public comment period, the Division received one (1) written objection and two (2) comments from the individual and agencies listed below. There were no untimely letters of objection or comment letters to the application.

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<sup>1</sup> 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/>.



### Timely Letters of Objection:

Person or Entity	Date Objection Received
Danni Danko-Holloway	August 19, 2020

### Timely Commenting Agency:

Agency	Date Comment Received
History Colorado	August 7, 2020
Division of Water Resources	July 15, 2020

The Division forwarded a copy of the objection and comments to the Applicant and scheduled the permit 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 objection, the Division cannot make a decision on the permit application, but rather a recommendation to the Board.

During the review period the Division generated two (2) adequacy letters. In the Preliminary Adequacy Review, dated August 20, 2020, the Division notified the Applicant the road used to accommodate site activities, the Board determined were mining, met the definition of “Affected Lands” pursuant to Rule 1.1(3) and must be incorporated into the permit boundary. For the access road to be incorporated into the permit boundary an amendment to the permit application needed to be submitted in accordance with Rule 1.8. In early September 2020 the Division had correspondence with a senior engineer with the Community and Economic Development Department of Adams County and at that time Adams County indicated there was an unimproved public right-of-way (ROW) where the access road had been constructed. Originally, Adams County had also informed the Applicant there was a public ROW in that location and the Applicant could improve the ROW through the proper permitting. In October 2020 the Objector contacted Adams County indicating there was conflicting information whether or not there was a ROW dedication where the access road is located. Upon further review of additional documentation Adams County, on November 13, 2020, informed the Division there was no right-of-way, formal or informal, that exists where access road is located. In response to the Division’s Preliminary Adequacy Review the Applicant stated they were evaluating options to access the permit area.

The Applicant submitted an amendment application (AM1) on July 1, 2021. AM1 was to include the current access road to the site using what was believed to be a City of Aurora ROW easement. The Division issued a Notice of Incompleteness on July 9, 2021 requesting, among other things, demonstration of the legal right to enter the access road. On November 23, 2021 the Applicant notified the Division, by email, the City of Aurora does not have ROW easement in the location of the access road and the property is landlocked. The Applicant will have to pursue other manners of securing ingress and egress to the property. The Division denied AM1 pursuant to C.R.S. 34-32.5-115(4)(a), on December 1, 2021, as the amendment application could not be called complete because

the Applicant cannot not demonstrate legal right of entry to conduct mining and reclamation on the affected land that comprises the amendment.

The Applicant failed to address all adequacy issues to the Division's satisfaction. Therefore, on December 28, 2021, the Division determined the permit application did not satisfied the requirements of C.R.S. § 34-32.5-112(1) and 115(4) and issued its recommendation to deny the application.

### **Issue Raised by the Objecting Party**

#### **1. No Legal Right Of Entry**

The Objector maintained there has never been a ROW dedication for the land between East 72<sup>nd</sup> Ave and East 64<sup>th</sup> Ave which comprises the area where the access road used to accommodate site activities, the Board determined were mining. Through technical review of the permit application the Applicant has been unable to obtain or demonstrate the legal right to enter the access road to the proposed mine site. The Division finds the Applicant has not complied the applicable Rule 6.4.14 and C.R.S. § 34-32.5-112(1)(c)(IV).

### **Conclusion**

After conducting a thorough technical review of the application, as outlined in part in the discussion above, on December 28, 2021, the Division determined the permit application does not satisfy the requirements of the Act and Rules, specifically C.R.S. § 34-32.5-112(1)(c)(IV) and Rule 6.4.14. Therefore, pursuant to C.R.S. § 34-32.5-115(4)(a), the application is considered incomplete and the performance and financial warranties have not been provided and the Board must deny the permit.

Given the lack of legal right of access, DRMS Staff issued its recommendation to deny the Construction Materials 112 permit application for the Watkins Mine, File No. M-2019-053.