



## COLORADO

Division of Reclamation,  
Mining and Safety

Department of Natural Resources

August 3, 2021

Kilgore Companies dba Peak Materials  
1550 Wykoop St 3rd Floor  
Denver CO 80202

Re: Findings of Fact, Conclusions of Law, and Order, Kilgore Companies dba Peak  
Materials  
File No. M-2021-041

On August 2, 2021 the Mined Land Reclamation Board signed the enclosed Board Order  
for the above captioned operation. Because this document is the final order of the  
Board, it is legally binding on and affects the above-captioned operation, and we  
strongly advise that you read this document carefully.

Sincerely,

  
Camille Mojar  
Board Administrator

Enclosure(s)

Certified Mail

7018 2290 0001 8923 0734

cc:

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Charles Kooyman  
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Ben Langenfeld, P.E.  
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Harris Sherman  
Jonathan Knopf  
Susan Knopf



John Fielder  
Rob Hooke  
Paul Lippe  
Toni Napolitano  
Elizabeth Sanjuan  
Sioux Barr



BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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IN THE MATTER OF THE APPLICATION OF KILGORE COMPANIES  
D/B/A PEAK MATERIALS FOR A 112 CONSTRUCTION MATERIALS  
RECLAMATION PERMIT, File No. M-2020-041

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THIS MATTER came before the Mined Land Reclamation Board ("Board") on April 21, 22, and 28, 2021 via video conference for a hearing to consider the application for a 112 construction materials reclamation permit filed by Kilgore Companies d/b/a Peak Materials ("Applicant"), file number M-2020-041.

Eric Scott, Michael Cunningham, and First Assistant Attorney General Jeff Fugate appeared on behalf of the Division of Reclamation, Mining and Safety ("Division"). Chris Neumann, Esq.; Ben Langenfeld, P.E.; and Russ Larsen appeared on behalf of Applicant. Steven Mulliken, Esq. and Harris Sherman, Esq. appeared on behalf of Objectors Lower Blue Residents United and John Fielder. Objector Jonathan Knopf appeared on behalf of Friends of Lower Blue River. Objector Susan Knopf appeared on behalf of Elk Run Neighbors. Objector R. Hooke appeared on behalf of Eagle's Nest Mountain Ranch, LLC. Objectors Paul Lippe, Toni Napolitano, Elizabeth Sanjuan, and Sioux Barr appeared on their own behalf.

The Board, having considered the presentations, testimony, and evidence of the Division;<sup>1</sup> Applicant; and the objectors; and being otherwise fully informed of the facts in the matter including through the testimony presented and exhibits submitted by the parties, enters the following:

FINDINGS OF FACT

1. On August 8, 2020, the Applicant submitted an application to the Division for a 112c reclamation permit under section 34-32.5-112, C.R.S. for a site known as the Peak Ranch Resource, Colorado, file number M-2020-041 ("Application"). The Application proposed an operation to be located in section 20, Township 3 South, Range 78 West, 6<sup>th</sup> Principal Meridian, in Summit County.

2. On August 19, 2020, the Division deemed the application complete for purposes of filing.

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<sup>1</sup> The Division was advisory staff to the Board, not a party, in this proceeding.



3. On October 16, 2020 the Division deemed the Application "complex" because of the number of interested parties and related procedural complexities, extending the standard ninety-day decision deadline by sixty days, from November 17, 2020 to January 15, 2021, pursuant to Rule 1.4.1(7) of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials, 2 CCR 407-4 ("Rules").
4. On January 16, 2021, Applicant requested a sixty-day extension of the decision date, moving it to March 16, 2021.
5. During the public comment period, as mandated by Rule 1.7.1, the Division received written comments from approximately 160 individuals and organizations and seven comment letters from agencies or government entities. The public comment period closed on October 8, 2020.
6. During the review period, the Division generated two adequacy letters. Applicant submitted adequacy responses and addressed all adequacy issues to the Division's satisfaction.
7. On March 3, 2021, the Division held an informal public meeting via Zoom to explain the Division's permit review process, the Board hearing process, and answer questions from interested persons.
8. On March 8, 2021, Objector Lower Blue Residents United filed a motion to deny the Application or continue the hearing.
9. In an order effective March 12, 2021, the Board ordered that the arguments made by Lower Blue Residents United in its motion were intertwined with the merits of the Application set to be heard at the Board's April 21-22, 2021 meeting and that bifurcation of the issues for a separate hearing outside of the process provided by the Rules and Act was inefficient and a waste of resources.
10. On March 16, 2021, the Division issued and served on all parties both a written recommendation to approve the Application over objections and a written rationale for that recommendation.
11. On March 31, 2021, the Board, through a prehearing officer, conducted a prehearing conference via Zoom. The prehearing officer issued a draft prehearing order. Among other things, the draft prehearing order identified six categories of issues for the parties to present to the Board for consideration at the hearing.



12. On April 2, 2021, Applicant filed a motion to exclude testimony relating to the Maryland Creek Ranch Facility<sup>2</sup>, a separately permitted operation where materials mined at the Peak Ranch Resource site would be processed.

13. At the hearing, the Board considered the Applicant's motion to exclude testimony, granting it as to any testimony regarding the merits of any amendment or revision that would be necessary for the Maryland Creek Ranch Facility but denying it as to testimony relevant to the merits of the Application.

14. The Board also considered the draft prehearing order at the hearing and invited amendments or adjustments to be proposed by the parties. With minor amendments to time allocations, the Board adopted the prehearing order.

15. The Application described a proposed construction materials mining operation to be conducted in two phases. Phase one, as proposed, would not disturb groundwater and would use earthmovers to remove alluvial material that would be transported offsite for processing. Mining under phase one would begin in the spring of each year, when the water table is at its highest, by digging a trench targeting the highest estimated and actual water level. Mining throughout the year would then remain at least two feet higher than that level.

16. Phase two, as proposed, would involve dredging to mine alluvial materials below the groundwater line, leaving two unlined, open water ponds. Phase two would require Applicant to obtain a court-approved water augmentation plan prior to excavating to or below groundwater level. If Applicant obtained the augmentation plan, the pit in the northern portion of the site would become a 2.8-acre pond, and the excavation in the southern portion of the site would become a 23.2-acre pond. The ponds would be unlined, and pond water could communicate with the Blue River through the alluvial aquifer. The ponds would lose an estimated 50 acre-feet of water per year through evaporation. There would be no surface communication between the ponds and the river.

17. Under the proposed mining plan, all materials excavated from the site during each phase would not be processed onsite. Rather, materials would be moved by truck to Applicant's separately-permitted Maryland Creek site for processing.

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<sup>2</sup> The Maryland Creek Ranch site is located in Summit County and is operated by Applicant under a separate reclamation permit and local permits. Those permits allow for the processing of construction materials mined at the Maryland Creek Ranch site and would require amendment prior to importing and processing material mined at the at the Peak Ranch site.



18. Berms, created during the mining phases, would be revegetated and remain around the ponds and along the southern portion of the site after final reclamation.

19. The Application proposed to reclaim affected lands as rangeland with two open water lakes. If Applicant cannot obtain an augmentation plan, phase two would not begin and the site would be reclaimed as rangeland.

20. The Applicant has not yet obtained or filed an application for an augmentation plan and estimates that it would take approximately three years from the time the augmentation plan was filed to obtain approval. Applicant estimates that phase two would require approximately 785 acre-feet of water for augmentation over the life of the mine. Following final reclamation, the augmentation plan would run with the land and would address evaporative losses from the ponds, which Applicant estimated at 50 acre-feet per year.

21. The Application included a groundwater monitoring plan to monitor impacts to both water quantity and quality. Five monitoring wells and six water level monitoring piezometers were installed. The Application also requires a three-hundred-foot offset between mined areas and the Blue River and a twenty-five-foot offset between mined areas and any jurisdictional wetlands.

22. A drainage ditch owned by the City of Breckenridge crosses the southern portion of the proposed permitted area, intended to flow from culverts under Highway 9 to the Blue River. The ditch was blocked in several locations, causing water that should have flowed to the Blue River to pool and create marshy areas on the site. The City of Breckenridge repaired the drainage ditch during the fall and winter of 2020, which may reduce the footprint of wetland areas within the permitted area.

23. At the hearing, the parties and Division presented testimony regarding hydrologic balance, including quantity and quality.

24. The Board received testimony on the potential for the mining operation to impact the quantity of water in the surrounding hydrologic systems. The Board found, after receiving testimony, that phase two has the potential to impact wells surrounding the site. Both the Division and Applicant presented testimony that residential wells to the east of the site were sunk into an impermeable shale layer that was not connected to the alluvial aquifer. The shale layer is between forty-five to sixty-five feet below ground level at the site.

25. Objectors presented testimony that those same residential wells, which currently suffer from low flow and poor quality, are in a fragile system that



recharges the river through fractured rock in the shale layer. Changes to the water level in the alluvial aquifer can impact the fractured rock water system through "mountain block recharge," which can cause the water level in the fractured rock water system to decrease as it is drawn into the adjacent alluvial aquifer. Mining impacts to the amount of water in the alluvial aquifer, including drawdowns from creating the ponds and subsequent evaporation, could draw more water from the fractured shale system and potentially decrease water in adjacent wells for fifty homes.

26. Testimony demonstrated that the ponds established during phase two would lose significant amounts of water through evaporation, more than drawn for residential use by the surrounding residential wells. This evaporative loss of more than fifty acre-feet per year could exacerbate quantitative impacts to the surrounding hydrologic balance in both the alluvial aquifer and any connected water systems.

27. Phase one could also result in the unintended exposure of ground water during operations. Applicant's baseline groundwater estimates, which dictate how deep Applicant would excavate during phase one of the project, were based on groundwater level monitoring data from or following dry years. Objectors presented testimony that these estimates did not account for the possibility of snowier years raising the groundwater level in the future. According to Objectors' experts, snowpack levels, which lead to spring runoff and directly impact groundwater levels, vary widely from year to year and have in the past exceeded the snowpack levels in the years on which Applicant based its estimated groundwater levels. During particularly snowy years in the future, groundwater levels may be above the upper limit of Applicant's phase one mining plan because those levels are based on drier years and lower groundwater levels.

28. Regarding potential impacts to water quality, the water in the proposed ponds to be created during phase two could stratify and stagnate. The stagnation, particularly of deeper layers of water, can increase the potential for hypoxia and water in the ponds becoming aneorobic. The anerobic water can increase the likelihood of harmful materials leaching from the shale underlying the alluvial aquifer. Both the aneorobic water and any contaminants in it could impact the quality of the alluvial aquifer and the Blue River as water lower in the alluvial aquifer communicates into the river.

29. This same degradation of water quality can negatively impact wildlife. The portion of the Blue River adjacent to the site was delisted as a Gold Medal fishery in 2016, and the operation's potential impacts to water quality could exacerbate problems with the fishery. Decreases in water quality, including communication to the Blue River of stagnated pond water, silt, or leaching of



contaminants from the operation, could reduce macroinvertebrates in the river, which would decrease food sources for fish.

30. In addition to concerns that the ponds proposed for phase two could adversely impact water quality, Objectors presented testimony that the ponds could negatively impact wildlife because they were not designed with enough shallow contours near shore to create habitat for riparian animals. Colorado Division of Parks and Wildlife noted the relatively steep slope of the proposed ponds and recommended a diversity of slopes, with approximately 20-30% shoal area (water depth of 4-8 feet). Though Applicant made changes to its proposed sloping for the ponds, including setting a minimum slope of 3:1 and as much as 20:1, Objectors presented testimony that the changes were insufficient and did not include enough variation in slopes or proper vegetation for the ponds to provide sufficient wildlife habitat. The lack of shoal area, insufficiently varied slopes, and retention of berms around the ponds would impede wildlife use of the ponds.

31. Objectors presented testimony that the reclamation plan, including proposed vegetation, was inadequate to minimize impacts to wildlife that use the site. Elk and deer use the river corridor either as part of their migration or for forage. Other than sagebrush, the reclamation plan does not contemplate planting brush or trees during reclamation. The lack of trees and limited brush proposed in the reclamation plan is inconsistent with the vegetation in surrounding areas.

32. Applicant presented testimony that because the site was overgrazed through the previous owner's use and is crisscrossed by fences, it does not currently provide ideal habitat for animals like deer and elk. The reclamation plan would leave no fences and would provide forage for wildlife following revegetation, which would provide an improved area for wildlife use.

### CONCLUSIONS OF LAW

33. The Board has jurisdiction over this matter pursuant to the Colorado Land Reclamation Act for the Extraction of Construction Materials, Article 32.5 of Title 34, C.R.S. (2020).

34. Under section 34-32.5-115(4), C.R.S., "the applicant must comply with the requirements of this article and section 24-4-105(7), C.R.S."

35. Under Rule 1.4.1(10), the Applicant "has the burden of demonstrating that the application meets the minimum requirements of the Act, Rules, and Regulations."



36. Under Rule 2.8.1(1) and section 24-4-105(7), C.R.S., "the proponent of an order shall have the burden of proof." As the party initiating this matter by filing the Application, Applicant was the "proponent of an order" at the hearing and, therefore, has the burden to prove that the Application was consistent with applicable laws and rules, and should be approved by the Board.

37. In considering whether to grant a permit to an applicant, the Board "shall not deny a permit except on one or more of the following grounds," as relevant here, "(c) Any part of the proposed mining operation, the reclamation program, or the proposed future use is contrary to the laws or regulations of this article ... (g) The proposed reclamation plan does not conform to the requirements of section 34-32.5-116 ..." C.R.S. § 34-32.5-115(4) (2020).

38. Section 34-32.5-116(4)(h), C.R.S. provides:

Reclamation plans and their implementation are required on all affected lands and shall conform to the following requirements:

(h) Disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and groundwater systems, both during and after the mining operation and during reclamation, shall be minimized. Nothing in this paragraph (h) shall be construed to allow the operator to avoid compliance with other statutory provisions governing well permits and augmentation requirements and replacement plans when applicable.

39. The Application failed to demonstrate to the satisfaction of the Board that the impact of the proposed mining operation on the prevailing hydrologic balance of the proposed affected land and the surrounding area and on the quantity and quality of groundwater systems and the Blue River, both during and after the mining operation and during reclamation, will be minimized.

40. By failing to demonstrate that the impact of the proposed mining operation on the prevailing hydrologic balance of the proposed affected land and the surrounding area, and on the quality and quantity of groundwater systems and the Blue River will be minimized, the reclamation plan in the Application does not meet the requirements of section 34-32.5-116(4)(h), C.R.S. and Rule 3.1.6.

41. The Applicant did not meet its burden of demonstrating that the application met the minimum requirements of the Act, Rules, and Regulations pursuant to Rule 1.4.1(10).

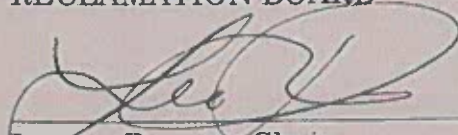
42. Because the reclamation plan in the Application failed to conform to the requirements of section 34-32.5-116(4)(h), C.R.S., the Board denies the Application in accordance with section 34-32.5-115(4)(c) and (g), C.R.S.

### ORDER

Based on the foregoing findings of fact and conclusions of law, the Board hereby DENIES the Application.

DONE AND ORDERED this 2<sup>nd</sup> day of August 2021.

FOR THE COLORADO MINED LAND  
RECLAMATION BOARD

  
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Lauren Duncan, Chair

### NOTICE OF JUDICIAL REVIEW RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing a complaint with the district court within thirty-five (35) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2020) and the Colorado Rules of Civil Procedure. In the event that a complaint for judicial review is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at: 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Camie Mojar.



## CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 3<sup>rd</sup> day of August 2021 addressed as follows:

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\_\_\_\_\_  
Camille Mojar, Board Administrator

*(Continued from Page 9)*

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