



**COLORADO**  
**Division of Reclamation,  
Mining and Safety**  
Department of Natural Resources

March 22, 2022

Joe Forster  
Jack D. Tabb, LLC.  
1614 Saratoga St.  
Antigo, WI 54409

Re: Findings of Fact, Conclusions of Law, and Order, Jack D. Tabb, LLC.  
File No. MV-2022-004, M-2021-068

On March 18, 2022 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 Nojar  
Board Administrator

Enclosure(s)

Certified Mail  
7018 2290 0001 8923 1052

cc:  
Michael Cunningham  
Russ Means  
Jeff Fugate  
Scott Schultz  
Charles Kooyman



**BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO**

Notice of Violation No. MV-2022-004

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

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**IN THE MATTER OF A POSSIBLE VIOLATION BY JACK D. TABB, LLC, CEASE AND DESIST ORDER, CORRECTIVE ACTION, AND CIVIL PENALTIES FOR FAILURE TO OBTAIN A RECLAMATION PERMIT PRIOR TO ENGAGING IN A NEW MINING OPERATION, File No. M-2021-068**

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THIS MATTER came before the Mined Land Reclamation Board ("Board") on February 16, 2022, via videoconference as a consent agenda item to consider a possible violation by Jack D. Tabb, LLC ("Operator"), cease and desist order, corrective actions, and a civil penalty for failure to obtain a reclamation permit before engaging in a new mining operation, file number M-2021-068.

The Board, having considered the materials presented with this consent agenda item and having been otherwise fully informed of the facts in the matter, enters the following:

**FINDINGS OF FACT**

1. On December 7, 2021, the Division of Reclamation, Mining and Safety ("Division") received an anonymous citizen complaint about a possible illegal mining operation at a site known as the Gunnell Mine, where mine tailings were being removed. The Gunnell Mine is located in Section 11, Township 3 South, Range 73 West, 6th Principal Meridian in Gilpin County, Colorado.

2. On December 8, 2021, the Division received a call from Joe Forster who inquired about permitting a new mining operation in Gilpin County. After discussion with Mr. Forster, the Division determined that he had been engaged in the activity related to the citizen complaint for the Gunnell Mine. The Division arranged to meet Mr. Forster at the mine on December 9, 2021.

3. On December 9, 2021, the Division and representatives from Central City met with Mr. Forster. The Division observed 15 super sacks full of waste rock at the meeting location, staged by the side of the road for transportation to a mill in Arizona for processing. Mr. Forster stated that the material in the sacks came from the Gunnell Mine and had been transported to the staging area.

4. Mr. Forster stated that approximately ten cubic yards of material had been removed from the Gunnell Mine and transported to the out-of-state mill in the two weeks

prior to the inspection. The primary staging area is located on property owned by Central City, and Operator does not have a legal right to use the property for mining.

5. On the way to the mine, the Division observed a second staging area with an additional ten super sacks full of waste rock. This second area is approximately .06 miles from the Gunnell Mine and is on property owned by Central City.

6. At the Gunnell Mine, the Division observed historic structures, including a headframe and stone foundation. There is a large waste rock pile to the immediate north of the headframe that covers approximately 1.3 acres and sits above Prosser Gulch. The Division also observed two skid steer loaders parked adjacent to the waste rock pile. The excavation of the waste rock pile was approximately ten feet high and created a vertical face. The Division did not observe any instabilities caused by the excavation.

7. Operator owns the portion of the Gunnell Mine where the excavation had taken place. Though no excavation had occurred there, the northern portion of the waste rock pile is located on Bureau of Land Management property. The Division did not observe any noticeable damage to the roads nor did the roads appear to have been modified to accommodate Operator's hauling activities.

8. On January 6, 2022, the Division sent the Operator a Reason to Believe a Violation Exists letter. The Division's letter provided notice regarding the alleged violations and information about the February 16-77, 2022, hearing.

9. On February 4, 2022, the Operator admitted the violation and agreed to the Division's recommendations to the Board.

### **CONCLUSIONS OF LAW**

10. The Board has jurisdiction over this matter pursuant to the Colorado Mined Land Reclamation Act, Article 32 of Title 34, C.R.S. (2021) ("Act").

11. The material that the Operator removed at the site constitutes a "mineral" as that term is defined in section 34-32-103(7), C.R.S.

12. Section 34-32-109(2), C.R.S., provides that "any operator proposing to engage in a new mining operation must first obtain from the board or office a reclamation permit as specified in this article." By removing a mineral from the site, the Operator engaged in a new mining operation without first obtaining a reclamation permit, in violation of section 34-32-109(2), C.R.S.

13. Pursuant to section 34-32-123(1), C.R.S., the Board may issue a cease and desist order when it finds that an operator has failed to obtain a valid permit.

14. The Board may impose a civil penalty of not less than \$50.00 per day or more than \$200.00 per day for each day during which a violation occurs. § 34-32-123(3), C.R.S. (2021). Here, the Board may impose a penalty based on 70 days of violation (from the December 9, 2021 inspection to the February 16, 2022 hearing) at \$50.00 to \$200.00 per day for a civil penalty of \$3,500.00 to \$14,000.00.

### ORDER

Based on the foregoing findings of fact and conclusions of law, the Board finds the Operator in violation of section 34-32-109(2), C.R.S. for engaging in a new mining operation without first obtaining a reclamation permit.

The Operator shall CEASE AND DESIST any further mining activities at the site, except those activities, approved by the Division in writing, as necessary to comply with the conditions of this order, prevent damage to off-site areas, or to protect public health and safety, until the corrective actions set forth herein have been resolved to the satisfaction of the Division and the Board.

The Board imposes against the Operator the following CORRECTIVE ACTION: the Operator shall, within 30 days of the effective date of this order, submit a new 110d permit application to incorporate all affected lands, with all material in an approvable form within statutory timeframes.

The Board imposes a CIVIL PENALTY for 70 days of violation at \$50.00 per day for a total civil penalty of \$3,500.00. All but \$500 of the penalty is suspended if the Operator complies with the corrective action within the time specified. The portion of the civil penalty not suspended, \$500, shall be due and payable within 30 days of the effective date of this Order. If the Operator fails to timely complete the corrective action stated in this Order, the suspended civil penalty, \$3,000, will become due and payable within 30 days of the deadline to complete the corrective action.

DONE AND ORDERED this 18 day of March 2022.

FOR THE COLORADO MINED LAND  
RECLAMATION BOARD

  
John Singletary, 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

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complaint with the district court within 35 days after the effective date of this order, pursuant to section 24-4-106, C.R.S. 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.

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**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 22<sup>nd</sup> day of March 2022 as follows:

*By certified mail:*

7018 2290 0001 8923 1052

Joe Forster  
Jack D. Tabb, LLC  
1614 Saratoga St.  
Antigo, WI 54409

*By electronic mail to:*

Michael Cunningham  
Division of Reclamation, Mining & Safety  
1313 Sherman Street, Room 215  
Denver, CO 80203

Russ Means  
Division of Reclamation, Mining & Safety  
1313 Sherman Street, Room 215  
Denver, CO 80203

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1300 Broadway, 10<sup>th</sup> floor  
Denver, CO 80203

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Camille Mojar, Board Administrator

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