

May 17, 2022

**RE: Recommendation to Approve a 112c Permit Application with Objections,
Young Ranch Resource LLC, Young Ranch Resource Quarry, File No. M-2021-009**

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (Division) hereby issues its recommendation for approval of the 112c permit application (Application) for the Young Ranch Resource Quarry, File No. M-2021-009, submitted by Young Ranch Resource LLC (Applicant).

This recommendation is based on the Division's determination that the Application satisfied the requirements of Section 34-32.5-115(4) of the Colorado Land Reclamation Act for the Extraction of Construction Materials, 34-32.5-101 *et seq.*, C.R.S. (Act). The Applicant addressed all adequacy issues which were identified by the Division during the adequacy review process to the Division's satisfaction. Therefore, on May 17, 2022, the Division determined the Application satisfied the requirements of C.R.S. 34-32.5-115(4) and issued its recommendation to approve the Application over objections. The Division's rationale for approval (Rationale) identifies the jurisdictional issues raised by objecting parties and commenting agencies, and groups them into the following eight categories:

- 1) Reclamation Plan
- 2) Reclamation Bond
- 3) Wildlife
- 4) Water Quality
- 5) Water Quantity
- 6) Geological Concerns
- 7) Application Review Timeframe
- 8) Other Permits and Licenses

The Division's Rationale provides a full and thorough analysis of the eight broad categorical issues (listed above) which were raised by objecting parties. A copy of the Division's Rationale is enclosed, and is also available for public review on the Division's website at <https://drms.colorado.gov>, by clicking on DRMS Weblink (Laserfiche) then entering the file number "M2021009" into the Permit No field and hitting Enter.

The Division's recommendation to approve the Application is to the Colorado Mined Land Reclamation Board (Board). The Division received timely written objections to the Application. Therefore, pursuant to Rules 1.4.9(2)(a) and 1.7.4(2), the Division has scheduled the Application for consideration by the Board. During the hearing, the Board will consider the Application with objections and may decide to approve, approve with conditions, or deny the Young Ranch Resource Quarry application.

The Pre-hearing Conference is scheduled to occur virtually (via Zoom) on Monday, June 6, 2022 starting at 1:30 p.m. and ending no later than 3:30 p.m. The Formal Board Hearing is scheduled to occur (also via Zoom) during the June 22-23, 2022 Board meeting, beginning at 9:00 a.m., or as soon thereafter as the matter can be



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considered. The Division will provide an authorization code to attend the meeting by Zoom prior to the meeting date. Additional details on the Pre-Hearing Conference and Formal Board Hearing will be provided under separate cover.

If you have any questions, you may contact me by telephone at 303-866-3567, ext. 8129 or by email at amy.eschberger@state.co.us.

Sincerely,



Amy Eschberger

Environmental Protection Specialist

Encls: Rationale for Recommendation to Approve a 112c Permit Application with Objections for the Young Ranch Resource Quarry, File No. M-2021-009

Guide to Public Participation in the 112 Reclamation Permit Application Process for Construction Materials and Hard Rock/Metal Mining Operations

Ec: Matthew Marques, History Colorado at: matthew.marques@state.co.us
Jerad Chipman, City of Idaho Springs at: planning@idahospringsco.com
Carolyn Goltra, Goltra Ranch West LLC at: csgoltra@gmail.com
Peech Keller at: danandpeech@yahoo.com
Robert Bowland at: jabowland08@gmail.com
Dana Jones at: danaellenjones@gmail.com
Jim Reid at: applestreet@q.com
Clare Stone at: clare.e.stone@hotmail.com
Virginia Unseld at: vjunseld@aol.com
Cecilia Waldron at: dedeleen@gmail.com
Gail Watson at: gail@birdwoodpress.com
Robert Wise at: wav_links@earthlink.net
Julia Ziobro at: juliaz@gmail.com
Anthony Zotti at: zottianthony@gmail.com
Jonalyn Agar at: lagar@wispertel.net
Candy Decker, EMERGE at: candybdeck@aol.com
Steven Eppelheimer at: eppelheimer@aol.com
Ted Johnson at: tedcjohnsondmd@gmail.com
Anthony Kaspari at: tonyjkaspari@gmail.com
Margi Kaspari, Friends of Clear Creek at: margikaspari@yahoo.com
Jannell Lowe at: jlowe0527@att.net
Joseph Lucas III at: rockymtnmojo1@gmail.com
Dienne Powell at: comtnlady@yahoo.com
Robin Raulf-Sager at: robin.raulfsager@gmail.com
Marith Reheis at: marith16@gmail.com

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Constance Reid at: aspinpines837@msn.com

Sally Shriner at: sallyashriner@gmail.com

James White, SOLVE Clear Creek County at: chairman@solveccc.org

Katie Todt, Lewicki and Associates, PLLC at: katie@lewicki.biz

Ben Miller, Lewicki and Associates, PLLC at: ben@lewicki.biz

Ben Langenfeld, Lewicki and Associates, PLLC at: benl@lewicki.biz

Robert L. Young Jr., Young Ranch Resource, LLC at: youngranchresource@gmail.com

Rob Zuber, DRMS at: rob.zuber@state.co.us

Zach Trujillo, DRMS at: zach.trujillo@state.co.us

Michael Cunningham, DRMS at: micheala.cunningham@state.co.us

Susan Burgmaier, DRMS at: susan.burgmaier@state.co.us

Russ Means, DRMS at: russ.means@state.co.us

Scott Schultz, AGO at: scott.schultz@coag.gov

Charles Kooyman, AGO at: charles.kooyman@coag.gov

May 17, 2022

**RE: Rationale for Recommendation to Approve a 112c Permit Application with Objections,
Young Ranch Resource LLC, Young Ranch Resource Quarry, File No. M-2021-009**

Introduction

On May 17, 2022, the Division of Reclamation, Mining and Safety (Division or Office) issued its recommendation to approve, over objections, the permit application for the Young Ranch Resource Quarry, File No. M-2021-009 (Application). This document seeks to explain the process by which the Division arrived at its recommendation to approve the Application over objections, and respond to the issues raised by the objecting parties and commenting agencies. The Division reserves the right to further supplement, amend, modify, or clarify this document and recommendation with additional details as necessary.

Summary of the Review Process¹

Young Ranch Resource LLC (Applicant) filed the Application with the Division on May 17, 2021. The Application is for a proposed permit area of 469.7 acres (located in Gilpin and Clear Creek Counties), with 335.1 acres to be affected by the operation. The Application describes a granite quarry operation which will utilize traditional drill and blast techniques to ultimately develop two large excavation areas with highwalls maintained at a benched configuration. The operation will include on-site crushing, screening, and washing of aggregate products. The primary commodity to be mined is metamorphic bedrock. The operation will also mine the overlying gravel deposit, from which, gold may be recovered as an incidental commodity. Any waste fines generated from the screening operation, which are not used for reclamation, will be disposed of on site in an area designated as the waste rock landform (WRL). The quarry operation will advance through five mining phases with reclamation of affected lands occurring concurrently as the operation progresses, thereby reducing the extent of unreclaimed disturbance at any time. Given the nature of the phased mining plan with concurrent reclamation, the Division requires a financial warranty in the amount of \$330,461.00 to address the cost of reclamation through the development of the first mining phase (43.6 acres). The affected lands will be reclaimed to support a combination of rangeland and wildlife habitat post-mining land use.

Pursuant to Rule 1.4.1(7), the Division deemed the Application “complex”, and extended the typical 90-day decision deadline by 60 days, from August 15, 2021, to October 14, 2021. A technical review team composed of three Division staff members reviewed the Application for adequacy. During the review

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. (Act), and to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials, 2 C.C.R. 407-4 (Rules or Rule). A link to the Act and Rules can be found at <https://drms.colorado.gov>.



period, the Application decision date was extended five additional times at the Applicant's request, to allow the Applicant sufficient time to address the adequacy requirements identified by the Division.

The Applicant published notice of the Application once a week for four consecutive weeks, in accordance with Rules 1.6.2(1)(d) and 1.6.5(1), in three separate newspapers of general circulation in the locality of the proposed mining operation, including: the Clear Creek Courier, The Mountain-Ear, and the Weekly Register-Call. Per Rule 1.7.1(2)(a), the public comment period closed twenty (20) calendar days after the last date for the newspaper publication, on July 21, 2021. During this period, the Division received a total of 40 timely objections on the Application and one agency comment from History Colorado. An extended comment period deadline of August 22, 2021 was provided to the City of Idaho Springs as they received late notice of the Application as a municipality located within two miles of the proposed operation (other nearby municipalities include Central City and Black Hawk, which were noticed with all other agencies on May 17, 2021). During this additional comment period, the City of Idaho Springs submitted a timely comment letter expressing their concerns with the proposed operation.

The Division forwarded copies of all timely comments to the Applicant in accordance with Rule 1.7.1(3). The Division received 14 objection withdrawals during the Application review period, leaving 26 timely objectors and two commenting agencies as parties to the Application. A detailed list of all timely objections (after withdrawals), timely agency comments, untimely objections, and withdrawn objections is provided in Appendix A below.

The Division has scheduled the Application for consideration by the Mined Land Reclamation Board (Board), to occur during the June 22-23, 2022 Board meeting. The Pre-hearing Conference is scheduled for June 6, 2022. The Division is providing notice of the scheduled Board hearing and Pre-hearing Conference to all parties in accordance with Rule 1.4.9(2)(b).

During the review period, the Division considered all timely comments received from the public and agencies, as listed in Appendix A. The Division generated a total of five adequacy review letters enumerating all adequacy issues for the Application. The Applicant addressed all adequacy items to the Division's satisfaction. Therefore, on May 17, 2022, the Division determined the Application satisfied the requirements of C.R.S. 34-32.5-115(4) and issued its recommendation to approve the Application. On that same date, the Division forwarded a copy of its recommendation and rationale for approval to all parties in accordance with Rule 1.4.9(2)(c), and also made this document available to the public through the Division's website.

Jurisdictional Issues

The jurisdictional issues raised by objecting parties and commenting agencies have been grouped into eight broad categories, including: Reclamation Plan, Reclamation Bond, Wildlife, Water Quality, Water Quantity, Geological Concerns, Application Review Timeframe, and Other Permits and Licenses. The categories are listed below in bold font. Under each category, objector concerns are attempted to be summarized in underlined text (the number at the end represents the number of parties that raised that particular concern), with specific issues related to that subcategory listed below in italic font. The Division's response follows the issue(s) in standard font.

1. Reclamation Plan

A. Concerns regarding adequacy of the reclamation plan (6):

To say that the lands will be reclaimed is a stretch; The land will never look the same or function the same; It is not a benign use of land but rather forever alters the landscape; Stating that the affected lands will be reclaimed to support a rangeland and wildlife habitat post-mining land use is an obfuscation; It constitutes tearing down mountains leaving ugly scars; Land can never be reclaimed to its natural state; Open pit strip mining can never be completely "reclaimed" out here in the arid West; Back East it can be recontoured, seeded, and not look too awful in a few decades, but out here the land doesn't recuperate well or easily.

C.R.S. 34-32.5-103(19) describes “reclamation” as the employment, during and after an operation, of procedures reasonably designed to minimize as much as practicable the disruption from an operation and provide for the establishment of plant cover, stabilization of soil, protection of water resources, or other measures appropriate to the subsequent beneficial use of the affected lands. Reclamation of land does not necessarily mean the restoration of land to its pre-mining condition. Pursuant to Rule 3.1.1(1), the operator, in consultation with the landowner, shall choose how the affected lands will be reclaimed. These decisions can be for forest, rangeland, pastureland, cropland, general agriculture, residential, recreational, industrial/commercial, developed water resource, wildlife habitat, or other uses. Pursuant to the Act, the Division must accept the proposed post-mining land use and reclamation plan if they meet all the applicable requirements of the Act and Rules and do not conflict with local land use and zoning requirements.

The Applicant proposes a post-mining land use of rangeland and wildlife habitat for the affected lands. The site will be developed through a series of five mining phases, during which, reclamation of affected lands will occur concurrently with mining. Highwalls will be maintained at a benched configuration with each bench limited to 25 feet in height. Highwall benches will be backfilled to a final slope gradient of 2H:1V for reclamation. Reclamation of each highwall bench will occur soon after mining on that bench is complete. The Application states that no more than one highwall bench will be unreclaimed at any time during operations. Approximately 10% of reclaimed highwalls will remain as intentional roughened faces and cliff bands to mimic the natural landscape and provide additional desired habitat for local ungulates that desire such cliff faces for protection from the elements and from predators.

The waste rock landform (WRL) will be constructed in 50 foot lifts then backfilled to a 2.2H:1V slope gradient for reclamation. Reclamation of lower WRL lifts will occur as new lifts are created. The Application states that no more than two WRL lifts will be unreclaimed at any time during operations. On-contour single shank ripping to a minimum depth of two feet will be conducted at 10-foot vertical intervals on WRL lifts to control erosion along final reclaimed slopes. The two toes of the WRL will be armored with appropriately sized riprap installations.

The final reclaimed slope configurations will match the natural landforms surrounding the mine area. All grading will be done in a manner to control erosion and siltation of the affected lands, and to protect areas outside the affected land from slides and other damage. All reclaimed slopes, including backfilled highwall benches and graded WRL lifts will be further stabilized with a “rock mulch” composed of coarse blasted rock generated on site. This rock layer will be placed at a 30-50% coverage rate to help control erosion and

also provide micro-climates for seed germination by increasing shade, moisture retention, and protection from drying winds.

Growth medium will be generated on site from partially decomposed plant material, sandy loam, and site derived tree mulch paired with crusher fines, as needed. The prepared growth medium will be tested prior to application, and the results compared with the results of baseline soil sampling conducted prior to disturbance, to determine whether any amendments or fertilizers are needed. Growth medium will be placed on affected lands at a minimum depth of 6 inches. All compacted areas, including the top of the WRL and the processing/scale house areas will be ripped prior to growth medium application. Reclamation materials will be temporarily stored in a designated area on site to minimize any disturbances to these materials by the ongoing mining operations. Given that reclamation will occur concurrently with mining, it is not anticipated that stockpiled growth medium will be stored for longer than 180 days. However, if the growth medium is not used for reclamation within a time short enough to avoid deterioration, the material will be seeded with a grass mixture to protect this material from erosion and ensure it is in a usable condition for reclamation.

The revegetation plan is designed to return the affected lands back to one of two pre-mining ecosystems: the wetter north and east facing slopes will be revegetated with an evergreen forest mixture (comprised of Lodgepole pine and Limber pine trees) and a shrub mixture (comprised of True mountain mahogany, Green rabbitbrush, Antelope bitterbrush, Skunkbush sumac, Wax currant, and Yucca); and the drier south and west facing slopes will be revegetated with a dry rangeland grass mixture (comprised of Western yarrow, Indian ricegrass, Blue grama, Mountain brome, Bottlebrush squirreltail, Thickspike wheatgrass, Sand lovegrass, Prairie junegrass, Blue flax, Green needlegrass, Western wheatgrass, Sandberg bluegrass, Bluebunch wheatgrass, Little bluestem, and Yellow indiagrass). Tree tubelings will be planted at a minimum density of 150 saplings per one acre, in 20-foot x 20-foot x 20-foot triangular spacing, as suggested by the USDA. Flat areas including the processing/scale house areas, quarry floors, and the top of the WRL will be revegetated with the dry rangeland grass mixture. Drill seeding will be utilized on flatter areas, whereas hydroseeding will be utilized on reclaimed slopes where drill seeding is not feasible. Wood mulch derived from onsite trees will be used for reclamation, as needed, to provide additional micro-climates for seed germination and slope stabilization. The only structures to remain for final reclamation (per the landowner's request) include internal access roads, wildlife crossings, and the riprap installations at the toes of the WRL.

The Application includes a comprehensive Weed Management Plan prepared for the site by Ecological Resource Consultants, Inc. This plan includes early detection protocols, confinement strategies, specific control measures, and a monitoring plan to minimize the spread of noxious weeds during mining operations and reclamation activities. Implementation of this plan will ensure that methods of weed control are employed for all prohibited noxious weed species, and whenever invasion of a reclaimed area by other weed species seriously threatens the continued development of the desired vegetation in accordance with Rule 3.1.10(6).

On May 17, 2021, the Division sent notice of the Application to the following agencies: Gilpin County, Clear Creek County, City of Black Hawk, City of Central City, Colorado Department of Public Health and Environment (CDPHE) [Air Pollution Control Division (APCD) and Water Quality Control Division (WQCD)], History Colorado, Colorado Parks and Wildlife (CPW), Colorado Division of Water Resources (DWR), Colorado State Land Board (SLB), Jefferson County Soil Conservation District (JCD), and U.S.

Army Corps of Engineers (USACE). Additionally, notice of the Application was sent to the City of Idaho Springs on August 2, 2021. The Division received comments on the Application from History of Colorado and City of Idaho Springs. The agencies notified did not indicate any conflict of the proposed reclamation plan or post-mining land use with laws or regulations of this state or the United States. Gilpin and Clear Creek Counties did not indicate any conflict with local land use or zoning requirements.

The Division determined the proposed reclamation plan is appropriate to the type of reclamation necessary to achieve the post-mining land use of rangeland and wildlife habitat, and satisfied the requirements of C.R.S. 34-32.5-116, Rules 6.4.5 and 6.4.6, and the reclamation performance standards of Rule 3.1.

B. Concerns regarding the excavations becoming reservoirs (1):

It appears there will be depressions in two locations upon the final excavation configuration - would these locations become reservoirs? Where would the outlet be for these reservoirs?

The Application initially proposed an alternative reclamation plan which would include filling one or both of the excavated quarries with water for reservoir use. In its preliminary adequacy review letter issued on August 23, 2021, the Division asked the Applicant to commit to one reclamation plan at this time (ensuring the plan is consistent with the post-mining land use proposed in the Application). Accordingly, the Applicant removed the alternate reservoir plan in the revised Application materials submitted on December 22, 2021. The reclamation plan includes leaving two revegetated excavation areas (separated by an internal road) which will be graded to drain to the south toward the constructed road corridor, through which, stormwater will discharge into the natural drainage (at a CDPHE permitted outfall). The proposed final configuration of affected lands is designed so that no stormwater will be retained on site for more than 72 hours.

C. Concerns regarding the project becoming another Superfund Site (1):

It's unacceptable to allow this project to create another Super Fund Site needing cleaned up by taxpayers who not only didn't gain anything from this mining operation, but actually lost too much to calculate (impacts on our quality of life, our environment, our own livelihoods, the destruction of the reasons we moved to these counties in the first place, etc.).

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), informally called "Superfund" was established by the U.S. Congress in 1980. This Act allows the Environmental Protection Agency (EPA) to clean up contaminated sites and to force the parties responsible for the contamination to either perform cleanups or reimburse the government for EPA-led cleanup work. Superfund sites are polluted locations requiring a long-term response to clean up hazardous material contaminations, commonly including manufacturing facilities, processing plants, industrial landfills, and historic mining sites.

The proposed Young Ranch Resource Quarry will be developed within inert metamorphic bedrock and the overlying gravel deposit to produce construction aggregate. No acid-forming or toxic producing materials are expected to be encountered during mining. Additionally, no designated chemicals will be used or stored on site. Only water will be used in on-site material processing. Therefore, the proposed operation is not expected to become a contaminated site, and not a site requiring cleanup through CERCLA.

Additionally, unlike with historic (pre-law) mining sites, the proposed operation is required to operate in accordance with the Colorado Land Reclamation Act for the Extraction of Construction Materials (Act). The intent of the Act is to encourage the orderly development of the state's natural resources while requiring those persons involved in extraction operations to reclaim land affected so that it may be put to a use beneficial to the people of this state. The Act requires all mining operations to obtain a reclamation permit which describes how affected lands will be reclaimed to support the proposed post-mining land use. The proposed reclamation plan must meet all requirements of the Act and Rules, including measures for protecting water resources and leaving a final topography that is appropriate to the final land use selected. A permit is not issued until an operator has provided a performance warranty (a written promise by the operator to comply with all requirements of the Act) and, for non-government entities, a financial warranty sufficient to assure the completion of reclamation of affected lands if, because of forfeiture, the State were to take over the reclamation liability. A permitted mine operation is inspected routinely throughout the life of mine to confirm the operator is following the approved mining and reclamation plans, and that the financial warranty amount posted is sufficient for completing reclamation of lands disturbed by the operation.

The protections afforded by the regulations that govern modern-day mine operations help ensure that affected lands are reclaimed to beneficial use and that contamination of the environment is prevented.

2. Reclamation Bond

A. Concerns regarding adequacy of the reclamation bond (3):

A mandatory bond that will cover 100% of the cleanup has to be included in any permitting process; It's important that there be no "Oops, sorry, but we can't pay for that" after it shuts down - without safeguards like that, the project should not be permitted; We find it surprising that financial security in the form of a bond or letter of credit has not been required of the developer - security is needed to assure that proper restoration is conducted along with erosion control and other mitigation measures; There are concerns about abandonment - there need to be better provisions in case the operation fails, so that even if it came to as bad an end as bankruptcy, the land would be restored - there are already too many bad experiences in the area with abandoned mines.

C.R.S. 34-32.5-117(1) and Rule 4.1(2) require that no permit be issued pursuant to the Act and Rules until the Division receives and approves the required performance and financial warranties.

C.R.S. 34-32.5-117(4)(b) and Rule 4.2.1(1) require the financial warranty to be set and maintained at a level which reflects the actual current cost of fulfilling the requirements of the approved reclamation plan. This amount must reflect what it would cost the Division to complete reclamation of the site in accordance with the approved reclamation plan in the event the permit is revoked and the financial warranty is forfeited. Permitted operations are inspected routinely by the Division to ensure the operation is following the approved mining and reclamation plans and the financial warranty amount posted is sufficient for completing reclamation of the affected lands.

Pursuant to C.R.S. 34-32.5-117(4)(b) and Rule 4.2.1(4), in any single year during the life of the permit, the amount of required financial warranty shall not exceed the estimated cost of fully reclaiming all lands to be affected in said year, plus all lands affected in previous permit years and not yet fully reclaimed.

The Application proposes a phased mining plan in which unreclaimed mining disturbance will be limited as much as feasible throughout each mining phase. The Application proposes an initial reclamation bond for the maximum disturbance to occur under the first mining phase, a total of 43.6 acres. The first mine phase is expected to be developed over a period of approximately 6 years. Of the total 43.6 acres of disturbance anticipated for the first mining phase, 35.7 acres will require reclamation (internal mine roads and underpass will remain). Based on this proposed disturbance and the reclamation plan provided, the Division calculated a required financial warranty in the amount of \$330,461.00. The Applicant has acknowledged and accepted the Division's bond estimate. The permit will not be issued until the Applicant has posted the required financial warranty. Prior to moving into the next mining phase, the Applicant would need to submit a Technical Revision to increase the maximum allowed disturbance and update the financial warranty accordingly.

3. Wildlife

A. Concerns regarding impacts to wildlife, wildlife habitat, and/or wildlife migration corridors (21):

Impacts to wildlife; Will destroy animal habitat and migration; Concerned the quarry blasting and drilling will severely degrade the environment and later the landscape which in turn will disrupt wildlife; Close proximity to the existing Frei Quarry only increases concerns about wildlife corridors; Note the area around Idaho Springs has usually been populated by wild longhorn sheep - how will this population be affected? Not just by reduced land but by heavy industry which includes blasting; Quarry blasting and drilling degrades the environment and alters the landscape which disrupts wildlife; Will affect wildlife populations; I'm disturbed by the potential for negative effects on migration patterns of large game animals in the area; How will wildlife be impacted, especially with regard to sheep lambing? The CCP already cut through a wildlife corridor which provides access to North Clear Creek - there certainly won't be any wildlife in the vicinity of the proposed quarry; Migration patterns of the wildlife will be altered by the new mine; Will chase our animals away; Disrupts migratory routes of big horn sheep, elk, deer; The wildlife in that area is already overstressed - the Big Horns are hanging on by a thread, already crowded out by the encroachment of human population and roads - there is no way to adequately mitigate the noise and additional disruption of habitat - the noise of a mining operation alone makes wildlife mitigation impossible; Wildlife impacts have to be studied closely! We are concerned about wildlife preservation and the protection of their habitat - we have recently worked with the state regarding the protection and preservation of wildlife in the Virginia Canyon Mountain Park - those concerns are most likely valid for this site due to its close proximity.

Pursuant to Rule 3.1.8(1), all aspects of the mining and reclamation plan shall take into account the safety and protection of wildlife on the mine site, at processing sites, and along all access roads to the mine site with special attention given to critical periods in the life cycle of those species which require special consideration (e.g., elk calving, migration routes, peregrine falcon nesting, grouse strutting grounds). Pursuant to Rule 3.1.8(2), habitat management and creation, if part of the reclamation plan, shall be directed toward encouraging the diversity of both game and non-game species, and shall provide protection,

rehabilitation or improvement of wildlife habitat. Operators are encouraged to contact Colorado Parks and Wildlife (CPW) and/or federal agencies with wildlife responsibilities to see if any unique opportunities are available to enhance habitat and/or benefit wildlife which could be accomplished within the framework of the reclamation plan and costs.

The Division sent notice of the Application to CPW on May 17, 2021. Per CPW's request, the Division held an on-site meeting with CPW and the Applicant on June 10, 2021. During the meeting, CPW indicated plans to submit formal comments on the Application before the comment period closed on July 21, 2021. The Applicant indicated they looked forward to receiving CPW's feedback on the proposed wildlife mitigation plan, and would be willing to incorporate any recommendations they might have. However, CPW did not submit any comments or recommendations on the Application.

The Application included a site-specific Wildlife Mitigation Plan prepared by Ecological Resource Consultants, Inc. (ERC). This plan meets all requirements of Rule 6.4.8 by including a description of the game and non-game resources on and in the vicinity of the application area, including: a description of the significant wildlife resources on the affected land; seasonal use of the area; the presence and estimated population of threatened or endangered species from either federal or state lists; and a description of the general effect during and after the proposed operation on the existing wildlife of the area, including but not limited to temporary and permanent loss of food and habitat, interference with migratory routes, and the general effect on the wildlife from increased human activity, including noise.

The Wildlife Mitigation Plan identifies potential wildlife impacts resulting from construction and operation of the project and provides a proactive framework to avoid, minimize, and mitigate potential adverse impacts. Additionally, the plan provides an assessment of current conditions, including a description of vegetation communities and an evaluation of wildlife habitat and use within the footprint of the proposed project area. The plan contains an evaluation of potential impacts to wildlife along the Central City Parkway (CCP) corridor, a portion of which, is located within the permit area. The plan also provides a variety of mitigation recommendations for preservation and enhancement of wildlife resources at the proposed operation.

The proposed affected lands are located within the CPW mapped seasonal range for mule deer, elk, moose, black bear, and bighorn sheep. The specific CPW-mapped wildlife use areas or ranges for these species comprise overall/summer/winter range. No CPW-mapped critical winter range, winter concentration areas, or migration corridors are mapped within the proposed affected lands. Based on available CPW mapping (CPW 2020), the proposed affected lands are not identified within any production areas, severe winter range, or priority habitat, which are typically considered the highest priority ranges by CPW. The identified habitat ranges for mule deer, elk, moose, black bear, and bighorn sheep designate very large regional territories utilized by the identified species. The proposed affected lands represent only a *de minimis* portion of some of these species' regional habitat ranges. Therefore, mining activities are not expected to negatively impact individuals or populations of these wildlife species. The footprint of the proposed affected lands is intentionally designed to minimize the impact to south-facing slopes within Clear Creek County, which are part of a proposed deed-restricted wildlife migration corridor to remain for reclamation along the southern portion of the permit area.

The proposed wildlife migration corridor will allow for populations of big game species to access the Clear Creek corridor to the south of the proposed site. This wildlife migration corridor will be expanded from

77.2 acres to a final 131.5 acres following completion of mining, to include additional north-facing reclaimed quarry slopes. Safeguarding this landform in its undisturbed state will maintain the existing wildlife migration corridor/habitat along this portion of the CCP (as well as allow the undisturbed portion of this natural landform to function as a visual shield from the I-70 corridor).

The Wildlife Mitigation Plan found that some migratory birds may utilize the proposed affected lands; however, they are not anticipated to be impacted by the operation. Migratory birds are protected under the Migratory Bird Treaty Act and killing or possession of these birds is prohibited. Proposed activities which will remove native vegetation, in particular, large overstory trees, should first ensure that active nests are not disturbed. Generally, the active nesting season for most migratory birds in this region of the state occurs between April 1 and August 31. The Applicant committed to conducting migratory bird surveys as well as raptor surveys prior to creating disturbances in each mine phase during the active nesting season, and working with the appropriate wildlife authority (e.g., CPW, USFWS) to address any active nests found.

No federally listed threatened and endangered species and/or habitat protected under the Endangered Species Act were identified within the proposed affected lands. Potential federally listed threatened and endangered species habitat was found to lack one or more habitat components critical for the federally listed species likely to occur in the area. Therefore, federal and/or state threatened and endangered species will not likely be impacted as a result of the operation.

Disturbance to wildlife is inevitable with any proposed activity, especially in the mountainous areas of Colorado and Clear Creek/Gilpin Counties. Impacts on wildlife use from the proposed operation would include direct temporary elimination of potential habitat within the affected lands, and temporary localized displacement associated with additional noise and lighting from the proposed operation. This localized loss of habitat would not disrupt regional migration or significant movement patterns, and would not threaten the overall health and viability of a species. Nearby lands that adjoin the permit area are largely undeveloped. Therefore, it is anticipated that local wildlife (specifically elk, mule deer, and bighorn sheep) would easily adapt to disturbances and find sufficient habitat to sustain locally displaced species. In the long-term, the affected lands will be fully reclaimed at the conclusion of mining, which will restore some degree of wildlife habitat over time, unlike residential/commercial developments which may persist permanently. The site will be mined through a series of five mining phases over a period of approximately 100 years. Throughout each mine phase, reclamation will be performed concurrently with mining, thereby limiting unreclaimed disturbance at any time and ensuring vegetation within previously developed areas becomes re-established to provide forage for wildlife.

The Wildlife Mitigation Plan provides suggested locations for the placement of site-specific mitigation features during each of the five mine phases proposed, including: wildlife crossing signs (along the CCP), wildlife monitoring cameras, wildlife fencing, smart technology, wildlife underpasses, and wildlife exit ramps. The purpose of these mitigation features is to allow for continued wildlife use of the area throughout the life of the project, while implementing protective measures to help avoid human-wildlife interactions. The locations of these mitigation features were selected based on local site knowledge, topographical constraints, knowledge of wildlife movement/migration routes, as well as overall habitat considerations. Prior to each mining phase, the suggested mitigation features for that phase will be re-evaluated to determine the appropriate type of technology (i.e., smart technology vs underpass). It should be noted, no wildlife mitigation is currently present along the CCP.

The Wildlife Mitigation Plan provided the following recommended mitigation measures for the proposed operation:

- Berms and fencing – Tall earthen berms with native vegetation should be placed strategically around the project area in an effort to reduce visual disturbance and noise. Wildlife-safe exclusion fencing should also be considered to surround the active work zones to discourage wildlife access thereby minimizing human-wildlife conflict with operations. Fencing should be eliminated in non-active work zones to promote wildlife use.
- Mitigation project locations – There are numerous locations within the proposed affected lands where underpasses, exit ramps, or other structures may be placed to promote wildlife movement through the project area. To identify the location of these features, habitat suitability or areas where animals are likely to concentrate should be the primary indicator of crossing activity. Consider how landscape features (i.e., steep slopes, natural barriers) interact with habitat suitability to increase the level of wildlife use for an area. The type of mitigation features to be installed should be re-evaluated during each mine phase.
- Phase mining approach – Mining will occur in five phases. Interim reclamation will occur between phases, allowing potential wildlife habitat to become re-established prior to the completion of overall mining activities. Reclamation should be completed as soon as possible with each phase to allow potential wildlife use on portions of the project area during the operating period.
- Weed control – All disturbed and non-disturbed lands should be routinely maintained to prevent the establishment and spread of noxious weeds. Any non-active disturbed lands should be temporarily or permanently reclaimed with appropriate native species.
- CCP wildlife signage – Upon further discussion and approval from CCP management, additional wildlife caution signs may be appropriate in the vicinity of the project area along the CCP to warn motorized vehicles and minimize wildlife collisions.
- Employee education – Employees at the site should be educated on the sensitivity of wildlife harassment in the area.
- Secure dumpsters and debris – All dumpsters and debris should be contained in wildlife safe containers from not only bears but also birds and small mammals.
- Final reclamation – The final reclamation plan is essential to ensure only temporary disturbances occur. The reclamation plan should consider re-establishment of appropriate native species and local habitat communities. Upon reclamation, the area should be reopened for wildlife use and general open space to minimize long-term regional impacts to wildlife. The seed mix chosen for revegetation of the affected lands should be selected to establish a diverse, effective, and long-lasting vegetative cover that is capable of self-regeneration without continued dependence on irrigation, soil amendments or fertilizer, and provides equal or better coverages than the existing vegetation of the surrounding area. Plantings should be limited to grasses, forbs, and trees that are well-suited to the project area considering the soils and climate. The overall goal (and it is anticipated) that

revegetation of the affected lands will provide better forage/habitat for wildlife than existing conditions, which are degraded and overgrazed.

- Traffic control – Posted speed limits should be observed and slow down lanes will be installed at the project entrance (CCP on/off ramp) to enhance safety. During mining operations, truck operators should be advised of potential wildlife hazards. Additional wildlife signage will be placed along the CCP.

The Applicant committed to following all site-specific recommendations provided in the Wildlife Mitigation Plan, including installing the mitigation features suggested for each mine phase. These recommendations have been incorporated into the proposed mining and reclamation plans.

The Division determined the Application satisfied the requirements of Rules 3.1.8 and 6.4.8 pertaining to the identification and protection of wildlife in the area of the proposed operation.

4. Water Quality

A. Concerns regarding impacts to water quality (10):

Leeching into the water runoff and stream; Impacts to water quality; An in depth EIS (Environmental Impact Statement) should be completed proving there aren't any heavy metals that would be disrupted and exposed to leach into the environment during their proposed mining; They also must be held responsible for all run-off and groundwater pollution from open exposed granite; I am sure that construction material mining impacts the water; It must be studied how the quarry's water use could affect pollution to creeks and water sources; We are concerned with water quality in Clear Creek and also for potential of contaminating the aquifer underneath the site - it is highly probable there are mineral veins through the site, and if those veins are disturbed it could become possible that stormwater accesses the heavy metals altering the pH balance of the water and carrying contaminants into the groundwater and downstream; Would the developer be required to construct a water treatment facility similar to the one located in the Argo Tunnel? We are concerned about future contamination and infiltration into the groundwater from mineral content; Stormwater from the waste rock landform will erode into North Clear Creek prompting concerns for water quality in the creek, which is utilized by many downstream residents for water, and there's already high scrutiny on the watershed's water quality. Is there environmental data from the construction of the CCP? Have soil borings been taken? This information should provide insights into the composition of the site and the potential mineral veins that could be encountered - we would like to review that data.

The proposed quarry will be developed within inert metamorphic bedrock and the overlying gravel deposit to produce construction aggregate. No acid-forming or toxic producing materials are expected to be encountered during mining. Additionally, no designated chemicals will be used or stored on site. Only water will be used in on-site material processing. Therefore, no release of pollutants to surface or groundwater is expected. However, the Applicant has committed to immediately notifying the Division in the event that potentially acid-generating materials are encountered during mining, so the appropriate permitting action can be determined.

No pit dewatering will take place during mining, as the groundwater table is well below the pre-mining and post-mining pit floor elevations. Groundwater levels in the area of the proposed affected lands is greater than 500 feet below the pre-mined ground surface, based on well and spring data in the surrounding area. The lowest post-mining pit floor elevation (~7,850 feet) will be approximately 500 feet above the elevation of the groundwater table (~7,350 feet). No known aquifers exist within the deposit to be mined. South of the site, Clear Creek is located approximately 500 feet lower than the proposed final pit floor elevation. North of the site, the North Fork of Clear Creek is located more than 400 feet lower than the proposed final pit floor elevation. In the unlikely event that groundwater is encountered during mining, excavation will immediately stop and the area will be backfilled with at least two feet of overburden type material to cover any exposed groundwater.

The Application includes a Spill Prevention, Control, and Countermeasure (SPCC) plan that meets EPA requirements (40 CFR part 112) for the storage of oil/diesel fuel on site. This plan describes measures to be implemented by the operation to prevent oil discharges from occurring, and to prepare the operation to respond in a safe, effective, and timely manner to mitigate the impacts of a discharge if one were to occur. Prior to commencing with operations and/or storing more than 55-gallons of fuel on site, the SPCC plan will be updated to reflect current site conditions, and a copy of the plan will be stored within the site office. The proposed quarry area (where oil/fuel will be stored) is located approximately 0.6 mile from Clear Creek (to the south) and approximately 0.5 mile from the North Fork of Clear Creek (to the north).

The Application also includes a Stormwater Management Plan to mitigate potential impacts to surface water resulting from the proposed mining operation. Surface flows that do not occur within the active mining area will be diverted around the disturbed area via two foot or taller isolation berms. All water runoff within the disturbed area will be contained with perimeter berms which will route the runoff to internal sumps. Water in the sumps will be stored for 24 hours to evaporate or infiltrate into the ground before being pumped and discharged into the natural drainage. All stored runoff will be pumped to the discharge location within 72 hours, in accordance with DWR's requirements. Ultimately, the site will include a total of three stormwater discharge locations, two of which, will occur at the toes of the proposed WRL (into natural drainages that flow into the North Fork of Clear Creek), and one of which, will occur at the southern quarry boundary via a constructed road corridor (into a natural drainage that ultimately flows into Clear Creek). A discharge permit will be obtained from CDPHE, WQCD for the outfalls, under which, the Applicant will conduct the required water quality sampling. All stormwater discharges from the site will be regulated under the CDPHE discharge permit. The utilization of Best Management Practices (BMPs) at the site, such as erosion control and silt fencing, will also ensure water discharged from the site is clean and sediment free.

The WRL will be constructed in 50 foot lifts in the drainages located east of the proposed quarry (east of the CCP). The western toe of the WRL will be located approximately 1,200 feet from the North Fork of Clear Creek. The eastern toe of the WRL will be located approximately 270 feet from the North Fork of Clear Creek. The toes of the WRL will be armored with an appropriately sized riprap installation. The paired lift and berm configuration implemented during WRL construction will create a stormwater containment sump behind the stormwater berm on each lift, which can accommodate a 100-year, 24-hour storm event. All stormwater that falls on the active working lift of the WRL will infiltrate within the porous working lift within 72 hours. Underdrains will be installed along the bottom of the drainages prior to WRL construction to help drain water infiltrating the WRL (including meteoric and natural seep water) to the permitted discharge locations at the toes of the WRL. The operation will perform concurrent reclamation of WRL lifts during construction, so that no more than two lifts are unreclaimed at any time. WRL lifts will

be graded to a stable 2.2H:1V configuration, retopsoiled, receive a rock mulch application, and then revegetated with a shrub/tree mixture. The Application included a geotechnical stability analysis which demonstrated that WRL slopes will be stable during construction and following reclamation, thereby protecting off-site areas from impacts. By constructing the WRL in lifts at a stable slope configuration, ensuring positive drainage, performing concurrent reclamation during construction, and implementing stormwater control measures, the slope stability of the WRL will be protected, preventing sedimentation of the North Fork of Clear Creek. In addition, the operation will maintain sufficient buffers between the WRL and adjacent permit boundaries to further protect off-site lands.

According to the Division of Water Resources (DWR) online database, there are three sampling and monitoring wells that are permitted within 600 feet of the proposed permit area (with total depths of 20, 26, and 30 feet). These wells have a permit but do not have construction records or any other records listed with the DWR digital data platform. Additional constructed wells (seven total) are located within ½ mile from the southern permit boundary, adjacent to Clear Creek (with total depths ranging from 0 to 425 feet).

The Preliminary Blast Plan included in the Application states the operation will offer pre-blast surveys to all landowners with structures located within ½ mile of the permit boundary (at least 30 days prior to the initiation of blasting). This survey will include an evaluation of any groundwater wells for water quality, water elevation, and flow rate. Should a well owner participate in the pre-blast survey, the information collected from their well would represent pre-blast conditions in the event there is a marked change in water quality during the mining operation. The Application includes a comprehensive mitigation plan for groundwater complaints. If a groundwater quality complaint is received, an on-site investigation will typically be initiated within 24 hours. The same consulting firm that completed the pre-blast surveys will be contracted to complete a follow up survey and take water quality samples from the well(s) in question. These samples will be sent to the same laboratory that analyzed the samples taken during the pre-blast survey. For the time period that it takes the water samples to be analyzed, the operator, at their cost, will supply household water to the neighbor. If the sample results indicate degraded water quality, the operator will conduct a regimented weekly water sampling program for an 8-week duration at the subject well, and continue to provide potable water to the neighbor during the course of the investigation. If the results of this investigation indicate blasting at the quarry was the cause for the degraded water quality, and the quality never returns to the same conditions documented during the pre-blast survey, the operator will, at their expense, drill a new well that produces a similar or greater quantity and quality of water as the original well. Throughout this process, the operator will review operation practices and complete an internal investigation to determine whether any operating practices may be impacting the groundwater. It should be noted, any potential impacts to the groundwater system by the operation would also be investigated by the Division, with enforcement actions pursued as necessary.

The Division determined the Application adequately demonstrated that 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 will be minimized, as required under C.R.S. 34-32.5-116(4)(h) and Rule 3.1.6. Additionally, the Application addressed all requirements of Rule 6.4.7 regarding the identification and protection of hydrologic resources, and the applicable reclamation performance standards of Rule 3.1.

The Division sent notice of the Application to CDPHE, WQCD on May 17, 2021. However, CDPHE, WQCD did not submit any comments or recommendations on the Application.

5. Water Quantity

A. Concerns regarding impacts to water quantity (16):

Impacts to water quantity; Will use precious water; Concerned the quarry operations will use vast amounts of water - which is becoming ever more precious - for dust suppression; The threat of severe drought conditions is ever present in this county as it is in the rest of the state and the country for that matter; Is this how the state wants to use such a precious asset? Concerned about damage to environment from water usage; Quarry operations use vast amounts of water for dust suppression and although the severe drought conditions in CO are further west, we are in abnormally dry conditions per the US Drought Monitor; Is this the best use of our limited water resources? Water and lack thereof is becoming a significant issue in CO and Clear Creek County because of climate change and increased drought - how much water would be required for this project for dust mitigation? Very large amounts of water from the shared aquifer will be necessary for the new mine to run; Consumes massive amounts of water that our county and state cannot lose; With no end in sight for the climate changes that are creating our drought conditions, where and how does the applicant plan to get water to knock the dust down? With the on-going water shortages, junior rights will be cut off more and more in the coming years - are they proposing high-tech filters, and so on, that will remove the dust instead? Where will the water come from? The dust generated, and thus the water needed to suppress dust, will have strong impacts on water availability in an increasingly hotter climate; Quarry operations use vast amounts of our valuable water resources and it must be studied how this water use could affect wells and aquifers; There are concerns about the impact on water supply for people who live in the area, but outside the surrounding municipalities; We have concerns that the groundwater could start to evaporate if the site was disturbed.

As mentioned above, no dewatering will take place during the operation as the groundwater table is well below the pre-mining and post-mining pit floor elevations. No known aquifers exist within the deposit to be mined and there are no water rights associated with it. However, in the unlikely event that groundwater is encountered during mining, excavation will immediately stop and the area will be backfilled with at least two feet of overburden type material to cover any exposed groundwater.

During operations, all runoff within the quarry area will be directed via stormwater berms to designated sumps on the pit floor. Water in these sumps will be stored for 24 hours to evaporate or infiltrate into the ground before being pumped and discharged into the natural drainage (at the permitted outfall). All stored runoff will be pumped to the discharge location within 72 hours, in accordance with DWR's requirements. The WRL will be designed in a manner that allows for stormwater management on active and reclaimed lifts and positive drainage of infiltrated water to the natural drainages below. All stormwater discharges from the site will be regulated under a CDPHE discharge permit.

For final reclamation, the quarry floors will be graded to create positive drainage to the south toward the constructed road corridor, through which, stormwater will discharge into the natural drainage that ultimately drains to Clear Creek. Additionally, the reclaimed WRL will continue to drain to the north toward the North Fork of Clear Creek. The final configuration of the affected lands will ensure no water is retained for more than 72 hours per DWR requirements, thereby protecting water rights.

The Application estimates that approximately 40,000-50,000 gallons of water a day (36-46 acre feet per year) will be needed for initial development of the quarry and into phase one mining, including for dust control, drilling, and material washing. This is a conservative estimate of water use based on peak production conditions. The water will be supplied from a legal source through leased fully consumable water rights. The site lies within multiple water district areas with currently available leasable water. Potential sources for the water include commercially available leases with Central City or Clear Creek County and/or purchased and trucked water from private sources. The Applicant has committed to providing the Division with a copy of the fully executed water lease(s) prior to operations commencing. No water requirements are anticipated for reclamation phases of the project.

As an additional protective measure, the Application includes a Preliminary Blast Plan which commits to offering pre-blast surveys to all landowners with structures located within ½ mile of the permit boundary, including groundwater wells. This survey will include an evaluation of groundwater wells for water quality, water elevation, and flow rate. Should a well owner participate in the pre-blast survey, the information collected from their well would represent pre-blast conditions in the event there is a marked change in water elevation and/or flow rate during the mining operation. A total of 10 wells have been identified as being located within a ½ mile radius of the permit boundary (most of which are located to the south of the proposed operation, adjacent to Clear Creek), for which, pre-blast surveys will be offered prior to blasting being conducted at the site.

The Application includes a comprehensive mitigation plan for groundwater complaints, which calls for initiating an investigation of the well in question within 24 hours. If a well is determined to be damaged or “dry”, the operation, at their cost, will install a cistern and transport potable water from a local source to the property. The operation will begin this process upon notification of the complaint and continue to transport water to the property for the duration of the investigation. If it is determined the operation is at fault, a new well producing a similar or greater quantity and quality of water as the original well will be drilled at the operator’s cost. If it is determined the operation is not at fault, resolution of the issues will continue at the well owner’s expense. However, the operator will leave the temporary cistern and supply in place and available to the homeowner for 60 days, or until the repairs/replacement are completed. Throughout this process, the operator will review operation practices and complete an internal investigation to determine whether any operating practices may be impacting the groundwater. It should be noted, any potential impacts to the groundwater system by the operation would also be investigated by the Division, with enforcement actions pursued as necessary.

Pursuant to C.R.S. 34-32.5-116(4)(h) and Rule 3.1.6(1)(a), the Application must demonstrate compliance with Colorado water laws and regulations governing injury to existing water rights. The Division of Water Resources (DWR) is the state authority for interpretation and enforcement of Colorado water laws and regulations governing injury to existing water rights. The Division sent notice of the Application to DWR on May 17, 2021. However, DWR did not submit any comments or recommendations on the Application. The Application states the operation will obtain water from a legal source, that no groundwater will be exposed during mining, and includes a stormwater management plan that will ensure stormwater is not retained on site for more than 72 hours (during both mining and reclamation conditions), in accordance with DWR requirements. These measures will ensure no water rights are impacted by the operation.

The Division determined the Application adequately demonstrated that 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 will be minimized, as required under C.R.S. 34-32.5-116(4)(h) and Rule 3.1.6. Additionally, the Application addressed all requirements of Rule 6.4.7 regarding the identification and protection of hydrologic resources and project water requirements, and the applicable reclamation performance standards of Rule 3.1.

6. Geological Concerns

A. Geological concerns (1):

There are geological concerns relative to nearby operations and roadways.

While the objection letter did not go into detail on the geological concerns expressed, the Division considered these concerns as they relate to the protection of nearby structures and offsite areas from blasting and/or slope failure of the proposed highwalls and WRL.

Pursuant to Rule 6.4.4(i), the Application must specify if explosives will be used in conjunction with the mining (or reclamation). In consultation with the Division, the Applicant must demonstrate pursuant to 6.5(4) – Geotechnical Stability Exhibit, through appropriate blasting, vibration, geotechnical, and structural engineering analyses, that off-site areas will not be adversely affected by blasting.

The Applicant specified in Exhibit D that explosives will be used in conjunction with mining. Additionally, the Application provided a Preliminary Blast Plan which details the pre-blast procedures, blasting plan (including a flyrock and air blast control plan), blast monitoring procedures, and a response and mitigation plan for complaints regarding impacts to off-site structures. The operation plans to use a licensed third-party blasting contractor or their internal licensed blaster to conduct all blasting activities on site to support the development and production of the quarry. The blasting plan was prepared in accordance with the Mine Safety and Health Administration (MSHA) Code of Federal Regulations (CFR) 30 Part 56 Subpart E – Explosives and Office of Surface Mining Reclamation and Enforcement (OSM) Blasting Performance Standards.

All blast monitoring will be completed by a third-party blasting consulting firm that specializes in blast monitoring. Measurements will be taken at the closest significant structure (e.g., home, building, road, well). All blasts will be monitored with three separate monitoring units made up of a seismograph, a geophone (seismic unit), and a microphone. The locations of the units will be at the intersection of the property line and a line between the center of the blast and the following significant structures: the cluster of structures located approximately 1,000 feet south of the permit boundary along I-70, and State Highway 119 near the outfall of Russell Gulch into the North Fork of Clear Creek. Peak particle velocities will be kept below the maximum limits established by the OSM. All records, including blast statistics and blast monitoring will be kept on file by the operator for a minimum of three years. These records will be reviewed by the Division in the event a blasting complaint is received by our Office.

It should be noted, the Applicant provided fully executed structure agreements for all permanent man-made structures located within 200 feet of the proposed affected lands, including structures owned by Central City (e.g., Central City Parkway, culverts, overhead powerlines, etc.) mostly located within the proposed permit area, and structures owned by Albert and Mary Jane Frei Irrevocable Trust (fences and gates) located

north of the permit boundary. In addition, the Applicant's Preliminary Blast Plan states that pre-blast surveys will be offered to all owners of structures within ½ mile of the permit boundary prior to blasting operations. Should a structure owner participate in the pre-blast survey, the information collected on their structure would represent pre-blast conditions in the event there is an observed change in the condition of the structure during the mining operation.

On a site-specific basis, the Application must also demonstrate, through appropriate geotechnical and stability analyses, stability of the proposed slope configuration of both highwalls and waste rock piles during mining and for final reclamation, and that off-site areas will be protected with appropriate factors of safety incorporated into the analysis, in accordance with Rule 6.5(2) and (3), Rule 3.1.5(3), and Section 30 of the Policies of the Mined Land Reclamation Board (MLRB).

The Application included a Geotechnical Stability Exhibit which evaluated the stability of the proposed highwall and WRL slope configurations under mining and reclamation conditions. The tallest mining highwall and WRL scenarios were modelled under both static and seismic conditions. The analysis demonstrated all permanent factors of safety are greater than 1.5 (1.3 for seismic) which is consistent with the minimum factors of safety recommended by MLRB policy. During mining operations, the mining highwall will be visually monitored for any signs of sloughing or movement on active benches. Once bedrock is exposed (in mine phase one), a geologic evaluation of the bedrock (including any faults) will be performed by a qualified person on an annual basis. Additionally, once the overlying gravel deposit is exposed (in mine phase two), a geotechnical assessment will be performed to evaluate joint orientation, etc. A geotechnical report detailing the results of these studies will be submitted to the Division on an annual basis. The WRL will also be visually monitored during construction for any signs of sloughing or movement in active areas. Piezometers will be installed on every two lifts during construction of the WRL, extending to the base of the WRL. The piezometers will allow for monitoring of water levels within the WRL (to ensure it is freely draining as designed) and of any settling or slope movement over time.

The Division determined the information presented in the Preliminary Blast Plan and the Geotechnical Stability Exhibit sufficiently demonstrates that off-site areas will not be adversely affected by blasting, as required by Rules 6.4.4(i) and 6.5(4). The analyses presented in the Geotechnical Stability Exhibit also demonstrate the proposed highwall and WRL slope configurations will be stable during mining and reclamation conditions, thereby protecting off-site areas.

7. Application Review Timeframe

A. Concerns regarding application review timeframe (2):

I am writing to request that the permit be delayed, to allow more time for investigation into the impacts of this proposed quarry; I need time to complete my review of this application.

The review period for a 112c reclamation permit application to which objections have been received is defined by Rule 1.4.9. Pursuant to Rule 1.4.9(1), the Division shall set a date for consideration of the application no more than ninety (90) days after the application is filed with the Office. The date for consideration may be extended pursuant to Rules 1.4.1(7), (9), or (13), or 1.8 [unless any submitted materials satisfy Rule 1.8.1(4)].

The Application was filed with the Division on May 17, 2021. This originally gave a date for consideration of August 15, 2021. However, the Division determined the Application to be “complex” pursuant to Rule 1.1(10). Therefore, in accordance with Rule 1.4.1(7), the date for consideration established by the Division was extended by sixty (60) days beyond the usual maximum limit for an operation of this particular type and size. This extended the date for consideration to October 14, 2021. Over the course of the review period, the Application decision date was extended five times at the Applicant’s request, to allow sufficient time for all adequacy items identified by the Division to be addressed. The Division found the Applicant satisfactorily addressed all adequacy items and issued a recommendation to approve the Application on May 17, 2022.

The public comment period for a 112c reclamation permit application is defined by Rule 1.7.1(2)(a), which states that all written comments, protests, and petitions for a hearing must be received by the Division not more than twenty (20) calendar days after the last date for the newspaper publication of notice of the application provided for in Rules 1.6.2(1)(d) and 1.6.5(1). In this case, the Applicant published notice of the Application once a week for four consecutive weeks as required by Rule 1.6.2(1)(d) in three separate newspapers of general circulation in the locality of the proposed mining operation, including: the Clear Creek Courant, The Mountain-Ear, and the Weekly Register-Call. Per Rule 1.7.1(2)(a), the public comment period closed twenty (20) calendar days after the last date for the newspaper publication, on July 21, 2021. Comments on an application may be submitted as early as the application filing date, which in this case, was May 17, 2021. Therefore, the public comment period lasted for a total of 65 days.

8. Other Permits and Licenses

A. Concerns regarding pursuing a state permit prior to obtaining local land use permits (1):

That the applicants are going to the State level before getting the local land use permits says that this applicant either doesn't understand proper procedure, or doesn't care, neither of which bode well for their future actions.

Pursuant to C.R.S. 34-32.5-115(4)(d), the Board or Office may deny a permit application if the proposed operation is contrary to the laws or regulations of this state or the United States, including but not limited to....local permits, licenses, and approvals, as applicable to the specific operation.

The Division provided notice of the Application to Gilpin and Clear Creek Counties on May 17, 2021. Neither county submitted comments or recommendations on the Application or indicated any conflict of the proposed operation with local land use and zoning laws.

The Act and Rules do not require an Applicant to obtain all necessary permits, licenses, and approvals from other agencies prior to seeking a permit from the Division. This would include any local land use or zoning permits.

Pursuant to Rule 6.4.13, the Application affirmatively stated (in Exhibit M) that the necessary land use and zoning approvals will be obtained from the appropriate local government prior to operation of the quarry. No mining shall occur at the site until all necessary permits, licenses, and approvals are obtained.

Non-Jurisdictional Issues

A. Concerns that the proposed operation goes against the intention of a deed restriction (1):

In 2017, we sold property located East of the CCP (in Sections 27 and 28) to Young Ranch LLC, which is now proposed to be a valley fill or a waste dump for the quarry; The land deed contains a deed restriction which had clear intent to restrict mining on the property as well as restricting ridgeline impacts on these lands; We believe Young Ranch is attempting to circumvent the intention of this deed restriction through this application.

The Division does not have the jurisdictional authority to determine the merits or the alleged intent of the deed restriction provided.

The Applicant identified all owners of record of the affected lands as required by Rule 6.4.15, and provided demonstration of their legal right to enter the affected lands to conduct mining and reclamation for all owners of record, as required by C.R.S. 34-32.5-112(1)(c)(IV) and Rule 6.4.14.

B. Concerns regarding increased truck traffic and traffic safety on the CCP, I-70, and Hwy 6 (23):

The trucks would most likely take the CCP to I-70 and then exit onto Hwy 6 - here they will pass the Frei Quarry and add to the heavy truck traffic heading down and back to Golden; Clear Creek Canyon Park along Hwy 6 is now a major recreation destination and Clear Creek County is increasing work on their portion of the 65-mile Peaks to Plains Trail - the added truck traffic, noise, and air pollution will impact the visitors to this world class trail system; Increasing I-70 traffic; Traffic congestion; There will be increased volume of truck traffic on the already overloaded state and federal highways; Hwy 6 is the main artery east for Gilpin residents and for visitors coming to our two gaming cities as well as students going to Red Rocks Community College; If the new trucks take the steep grade up to I-70, we will see more heavy trucks on an already crowded interstate with steep grades down into Golden; Traffic from the number of trucks from this quarry on the already busy Hwy 6 is dangerous; Please look at statistics of accidents involving trucks from the current quarry; I do not believe either I-70 or Hwy 6 are sufficient for even the current traffic load evidenced by the number of traffic jams, accidents, etc; We already have a huge number of heavy trucks traveling the roads in Gilpin County from the existing quarry - in addition there are hundreds of people drinking and driving from the casinos; It feels unsafe on these roads - and now there will be more heavy trucks; There won't be a safe route to drive to get to I-70; Hwy 6, Clear Creek Canyon is often heavy with truck traffic - those of us who live on the I-70 corridor in Clear Creek County have been severely impacted by the construction there and the process of adding a third lane in both directions - we deal with heavy traffic and backups frequently because of that; We do not need one more industry here on I-70, creating heavy truck traffic; Though this does not directly affect Empire, the impacts of this project do affect the I-70 corridor through Clear Creek County, as well as the town of Idaho Springs; Will increase heavy truck traffic and truck accidents; I am vehemently opposed to the addition of a quarry right off the County's main traffic artery and access to I-70; Increased truck traffic on CCP, I-70, and Hwy 6; Rock quarries create heavy truck traffic - I already avoid Clear Creek Canyon due to the heavy truck traffic, and use the Parkway instead - these trucks go FAST - additional traffic would create more dangerous traffic situations, and make the Parkway unsafe; Traffic is already greatly increased on US 6 with the large semi-trucks speeding through

the Clear Creek Canyon; This county and community is already heavily impacted with high numbers of visitor traffic; Truck traffic on highways and Clear Creek canyon would increase to an even more dangerous level; With limited ingress and egress, it puts the local drivers at risk of life and limb - who's responsible when (not if) residents are hit or killed by these heavy trucks? The area is not suited to this increased traffic; The haul truck traffic generated will undoubtedly travel down Clear Creek Canyon on US-6 to double the existing huge amount of gravel haulage from the Frei Quarry; Our current infrastructure does not allow for additional quarry trucks traveling on CCP to I-70 where they will encounter the Frei Quarry trucks merging all of this traffic to Hwy 6; We are concerned about the number of trucks per day this would add to the area - I-70 and Hwy 6 are already beleaguered by heavy traffic including many truck related delays and fires; How many trucks per day are envisioned to be generated from the site? Most of this traffic will traverse a portion of the City of Idaho Springs - this will affect the business residents in the Hidden Valley area.

Pursuant to C.R.S. 34-32.5-103(1), "affected land" does not include off-site roads that were constructed for purposes unrelated to the proposed operation, were in existence before a permit application was filed with the office, and will not be substantially upgraded to support the operation or off-site groundwater monitoring wells. Therefore, the transportation of material off site (on the CCP, I-70, or Hwy 6) would not be considered affected land covered under the mine permit.

The Act and Rules do not specifically address traffic or traffic safety on roads located off-site from a mining operation. Such issues are under the jurisdiction of Gilpin and Clear Creek Counties, Central City (for the CCP), and the Colorado Department of Transportation (CDOT), and should be addressed through their permitting processes.

Pursuant to Rule 6.4.13, the Application stated (in Exhibit M) that the Applicant will obtain the required local government land use and zoning approvals, and any required permitting from Central City for the access and use of their parkway by mine traffic.

C. Concerns regarding impacts to roads (5):

We haven't seen any intent or due diligence to safeguard the road; The quarry will cause uncompensated wear and tear on our roadways; The increased truck traffic added to the existing Frei quarry traffic would further degrade the roads (I-70 and Hwy 6); The increased heavy truck traffic will destroy the roads there - the state and local governmental agencies should not have to rebuild and repair the damage - it's unacceptable to transfer those costs onto the local tax base, or even the state's; Increased haul truck traffic will add significant impact to the road itself, a 2-lane US highway with large recreational usage today.

A portion of the CCP is located on and within 200 feet of the proposed affected lands. Pursuant to C.R.S. 34-32.5-115(4)(e), the Board or Office may deny a permit application if the proposed operation will adversely affect the stability of any significant, valuable, and permanent man-made structure located within 200 feet of the affected land; except the permit shall not be denied if there is an agreement between the Applicant and the persons having an interest in the structure that damage to the structure is to be compensated for by the Applicant or, where such an agreement cannot be reached, the Applicant provides

an appropriate engineering evaluation which demonstrates such structure shall not be damaged by the proposed mining operation.

The Application identified all structures located within 200 feet of the proposed affected lands, including structures owned by the Applicant, Central City, and Albert and Mary Jane Frei Irrevocable Trust. These structures include the portion of the CCP and its associated structures located on and within 200 feet of the proposed affected lands, which are owned by Central City. Pursuant to Rule 6.4.19(a) and C.R.S. 34-32.5-115(4)(e), the Application included (in Exhibit S) a notarized agreement between the Applicant and Central City, that the Applicant is to provide compensation for any damage to structures owned by Central City, including the CCP.

Additional measures of the proposed operation to protect the stability of the CCP are included in the Preliminary Blast Plan and the Geotechnical Stability Exhibit.

The Act and Rules do not specifically address impacts (such as wear and tear or degradation due to haul truck traffic) to roads located off-site from a mining operation. Such matters are under the jurisdiction of Gilpin and Clear Creek Counties, Central City (for the CCP), and the Colorado Department of Transportation (CDOT), and should be addressed through their permitting processes.

Pursuant to Rule 6.4.13, the Application stated (in Exhibit M) that the Applicant will obtain the required local government land use and zoning approvals, and any required permitting from Central City for the access and use of their parkway by mine traffic.

D. Concerns regarding impacts to air quality (17):

The existing quarry on Floyd Hill/I-70 is not just an eyesore but creates huge air quality issues from dust and truck traffic on Hwy 6 - this project will just add to the air quality impacts; Additional air quality impacts combined with existing Frei Quarry operations; Current Frei quarry on Hwy 6 already causes large amounts of dust to blow up into the air on our numerous windy days, affecting homes in the Douglas Mountain/Robinson Hill Road area - this is already an environmental hazard and with recent Jeffco plans to land swap I understand this mine will get even larger - a second quarry nearby will only add to this problem; The combination of impacts from this quarry with rapidly increasing wildfire smoke that now persists over this immediate area for weeks at a time must be evaluated in terms of additional burdens on public health; Concerned about damage to environment from dust; We do not need one more industry here on I-70 creating dust: Impacts to air quality; Will increase potentially toxic dust emissions; Will affect our clean air; A new rock quarry would seriously degrade the air quality from dust and particulates; Rock quarries create air pollution; The Frei Mine is still present and is visible from our house - it is a huge scar on our view of the beautiful mountains when windy, massive clouds of dust are blown and deposited throughout the entire valley; How will the applicants deal with air quality? I don't want to have more particulates in the air; I am sure that construction material mining impacts the air; We are concerned about potential for dust to affect residents and businesses in Idaho Springs - wind is predominantly from the west, however, a northern or eastern wind could spread dust into portions of the City creating health and welfare concerns; The air quality in and around Idaho Springs is already compromised with the traffic from I-70 hanging in the valley and the new annual summer haze created by wildfires near and far.

The Division's jurisdictional authority is limited to the specific requirements of the Act and Rules. The Act and Rules do not provide jurisdiction over air quality issues. Such issues are under the jurisdiction of the Air Pollution Control Division (APCD) of the CDPHE and Gilpin and Clear Creek Counties, and should be addressed through their permitting processes.

Pursuant to Rule 6.4.13, the Application affirmatively stated (in Exhibit M) that the Applicant will obtain the required local government permits and the appropriate air quality permits from the CDPHE, APCD prior to conducting the proposed mining operation.

The Division sent notice of the Application to Gilpin and Clear Creek Counties and the CDPHE, APCD on May 17, 2021. However, these agencies did not submit any comments or recommendations on the Application.

The protection and preservation of stockpiled topsoil against erosion (wind) is addressed under the reclamation performance standards of Rule 3.1.9. Pursuant to Rule 3.1.9(1), if salvaged topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that the topsoil is protected from erosion, remains free of any contamination by toxic or acid-forming material, and is in a usable condition for reclamation. The Applicant indicated long-term stockpiles of growth medium are not anticipated as this material will be used for concurrent reclamation during mining. However, the Applicant committed to seeding stockpiled growth medium with a grass seed mixture if it is not used for reclamation within a time short enough to avoid deterioration. The Division determined the Application met the requirements of Rule 3.1.9(1).

Additional measures the operation will take to control dust on site include using water trucks (a standard practice for construction and mine sites), and limiting the amount of unreclaimed disturbance at any time.

E. Concerns regarding noise and/or light pollution (8):

The quarry will cause an increase in noise pollution; A new rock quarry would raise the noise level of the area; There is no way to adequately mitigate the noise; The quarry will cause an increase in light pollution.

The Division's jurisdictional authority is limited to the specific requirements of the Act and Rules. The Act and Rules do not provide jurisdiction over noise and light pollution. Such matters are typically regulated on the county level, and should be addressed through their permitting processes.

Pursuant to Rule 6.4.13, the Application affirmatively stated (in Exhibit M) that the Applicant will obtain the required local government permits prior to conducting the proposed mining operation.

The Division sent notice of the Application to Gilpin and Clear Creek Counties on May 17, 2021. However, neither county submitted any comments or recommendations on the Application.

Additional measures the operation will take to limit noise are included in the Preliminary Blast Plan and the Wildlife Mitigation Plan. As part of the blast monitoring program, microphones will be used to measure air over pressure (air blast) and noise from blasting. Peak particle velocities will be kept below the maximum

limits established by the OSM. The maximum decibel level for air blasts will be 133 decibels, as measured at the seismic instrument set up at the closest significant structure. All attempts will be made by the operation to keep peak particle velocities well below the established limits. In addition, the Wildlife Mitigation Plan recommends minimizing the use of artificial light at night to reduce detrimental effects on wildlife and plant-wildlife cycles. The Applicant has committed to incorporating the recommended wildlife mitigation actions into the mining operation as much as practicable.

F. Concerns regarding impacts to tourism and/or recreation (5):

The economy of Clear Creek County relies heavily on tourism and recreation - any proposed application that would negatively impact this section of our economy needs to be seriously examined; Because Clear Creek County has significant tourist use, we wonder how a new quarry with the accompanying dust, noise, and degradation of the views impact tourists wanting to recreate in the area; Will the tax generated by the quarry offset the possible decrease in tourism dollars? Outdoor activity and the influx of tourists into our state has shown a tremendous increase since the pandemic and they do not come to Colorado to view quarry sites; This quarry would reduce further outdoor opportunities for our residents; We are becoming more of a tourist and recreation destination and adding to the eyesore will impact the ability to attract visitors; It's bad enough that tourists, a major source of the two counties' economies, see the Frei mine just as they are going into the high country; Idaho Springs continues to progress as a tourist destination - one of most recent developments is the recently approved construction of trails and possible event space within the Virginia Canyon Mountain Park located approximately 2 miles away from the quarry site - the City is concerned the quarry will affect the views from this tourist destination diminishing the enjoyment of the public that wishes to frequent the amenities.

The Act and Rules do not specifically address impacts of a proposed operation on tourism and/or recreation in the area of the operation. These concerns are not within the purview of the Division's jurisdiction. Such issues are typically handled on the local government level, and should be addressed through their permitting processes.

Pursuant to Rule 6.4.13, the Application affirmatively stated (in Exhibit M) that the Applicant will obtain the required local government permits prior to conducting the proposed mining operation.

The Division sent notice of the Application to Gilpin and Clear Creek Counties on May 17, 2021. However, neither county submitted any comments or recommendations on the Application.

G. Concerns regarding the location of the proposed operation (7):

We do not need two quarries so closely located in this region; Do we really need a new quarry right next to an existing one? It doesn't make any sense to me; I wholly object to having another quarry in this region; I do not think we need two quarries in this area; Clear Creek and Gilpin counties seem to take the brunt of the most impactful projects, i.e. mining and the 4-lane highway to nowhere (CCP); That acreage, if it is to be developed at all, would be better used for housing; Central City has already promised water and sewer taps for residential use; It would destroy the area to develop it for housing, but the impacts would be so much more manageable and the damage more easy to mitigate; With the FAA flight paths overhead and the proposed transportation plan from the Gross

Dam Expansion which would bring thousands of logging truck trips through Gilpin County, I feel as if we are under siege - let's not add a quarry to the mix! Please consider those of us that call Clear Creek County home - do not allow any further destruction to this already fragile and beautiful place

The Act and Rules do not specifically address whether a location is appropriate for a mine. It is anticipated that mining operations will locate wherever mineable resources exist. The Act and Rules provide reclamation requirements to ensure affected lands are reclaimed to a beneficial use, and performance standards and environmental protection requirements which apply throughout the life of mine. Pursuant to Rule 1.4.1(10), each application is reviewed, and ultimately approved or denied, based on the applicant's ability to demonstrate the application meets the minimum requirements of the Act and Rules.

The Division determined the Application satisfied the requirements of the Act and Rules for a 112c reclamation permit application, and thus issued its recommendation for approval in accordance with Rule 1.4.9(2)(c).

Concerns related to land use and zoning, such as the appropriateness of a location for a mine, should be directed to the Gilpin and Clear Creek County permitting processes. Pursuant to Rule 6.4.13, the Application affirmatively stated (in Exhibit M) that the Applicant will obtain the required local government permits prior to conducting the proposed mining operation.

H. Concerns regarding increased impacts to an area already impacted by mining (9):

We already have one quarry in this area which does environmental damage, destroys animal habitat and migration, uses precious water, and looks horrendous; Another quarry almost adjacent to the current Frei quarry, even though in different counties will cause even more damage to our mountain environment; There is already another quarry near Floyd Hill, owned by Frei Bros. and the traffic, dust, and congestion from that has become worse over the years as the quarry seems to be larger than it used to be; I cannot imagine the impact to the air quality and wildlife with having rock processed from two quarries in the same area - the current quarry is already a nasty scar that can be seen from my road; An additional quarry in a county that already suffers from a long history of mining and pollution does not deserve this type of development - Russell Gulch is an example of the mining industry polluting the water ways and residents must now truck in their water because of the high mineral content making it non-potable; Gilpin County has a long history of mining and we have Superfund sites and a multi-million dollar water treatment plant needed to mitigate the years of mining activity - let's not add to the burden the land here already carries; There are already too many bad experiences in the area with abandoned mines

The Act and Rules do not prohibit the concentration of mining operations and their cumulative impacts. Conversely, the Act and Rules anticipate mining operations will locate wherever mineable resources exist. The Act and Rules provide reclamation requirements to ensure affected lands are reclaimed to a beneficial use, and performance standards and environmental protection requirements which apply throughout the life of mine. Pursuant to Rule 1.4.1(10), each application is reviewed, and ultimately approved or denied, based on the applicant's ability to demonstrate the application meets the minimum requirements of the Act and Rules.

The Division determined the Application satisfied the requirements of the Act and Rules for a 112c reclamation permit application, and thus issued its recommendation for approval in accordance with Rule 1.4.9(2)(c).

Concerns related to land use and zoning, such as the appropriateness of a location for a mine, should be directed to the Gilpin and Clear Creek County permitting processes. Pursuant to Rule 6.4.13, the Application affirmatively stated (in Exhibit M) that the Applicant will obtain the required local government permits prior to conducting the proposed mining operation.

I. Concerns regarding visual impacts (6):

Impacts to scenic beauty of the area; Destroys the natural beauty of our mountains and viewshed; We don't need, nor can we afford, a second eye-sore strip operation destroying our bucolic mountain vistas; What about protecting the beauty of the mountains? What will be the visual impact, especially from the highways and view corridors? City of Idaho Springs is concerned about visual impacts from a recently approved development within Virginia Canyon Mountain Park located approximately 2 miles away from the quarry site.

In these proceedings, the Division's jurisdiction is limited to the specific requirements of the Act and Rules, which do not address visual impacts from a proposed mining operation. Such concerns relate to land use and zoning and should be directed to the Gilpin and Clear Creek County permitting processes. Pursuant to Rule 6.4.13, the Application affirmatively stated (in Exhibit M) that the Applicant will obtain the required local government permits prior to conducting the proposed mining operation.

The Application does include measures for limiting visual impacts of the proposed operation, including conducting mining in a phased manner to limit disturbance, performing reclamation of affected lands concurrently with mining, and preserving the majority of the ridgeline along the southern portion of the permit area as a wildlife migration corridor and a visual buffer from I-70.

J. Concerns regarding impacts to quality of life, the quiet rural character of Gilpin County, property values, and/or businesses (5):

Impacts to the quality of life of Gilpin County residents and visitors; Impacts to the quality of life of those who live in Clear Creek County; Impacts on our quality of life; The quiet rural character of Gilpin County will be reduced; The quarry will potentially affect property values; The quarry will harm my business potential and quality of life; Idaho Springs is concerned about increased truck traffic affecting business residents in the Hidden Valley area.

In these proceedings, the Division's jurisdiction is limited to the specific requirements of the Act and Rules, which do not address impacts of a proposed mining operation on quality of life, the character of the county, property values, and/or businesses. Such concerns relate to land use and zoning and should be directed to the Gilpin and Clear Creek County permitting processes.

Pursuant to Rule 6.4.13, the Application affirmatively stated (in Exhibit M) that the Applicant will obtain the required local government permits prior to conducting the proposed mining operation.

K. Concerns regarding a reduced demand for construction materials (2):

The State demographer forecasts a slow down in growth for the Metro area meaning a reduced demand for construction materials in the future.

There is no provision in the Act and Rules that limits or restricts the Division's review and/or approval of an application based on current market conditions.

Pursuant to Rule 1.4.1(10), each application is reviewed, and ultimately approved or denied, based on the Applicant's ability to demonstrate the application meets the minimum requirements of the Act and Rules.

The Division determined the Application satisfied the requirements of the Act and Rules for a 112c reclamation permit application, and thus issued its recommendation for approval in accordance with Rule 1.4.9(2)(c).

L. Concerns regarding tax liability associated with the proposed operation (2):

The Mineral Severance tax for construction materials is lower than that for metals - I need to research what the rate is but that goes to the state with a small portion returned to cities and counties where employees live and some to fund a grant program; Property and business personal property taxes have to be estimated but I'm hoping our current financial short fall due to the pandemic will not influence a poor decision for the overall health and future well-being of the county - if annexed, Central City would see significant financial gain and I understand the need to diversify revenue but at what cost? I am concerned that if not studied properly and in great detail the approval may put county and state residents in a position of providing tax monies to support infrastructure, pollution control and even clean up if the quarry is unsuccessful.

The Act and Rules do not address the tax liability of a proposed operation. This concern is not within the purview of the Division's jurisdiction.

The Act and Rules do provide reclamation requirements to ensure affected lands are reclaimed to a beneficial use, and performance standards and environmental protection requirements which apply throughout the life of mine. Additionally, for permit issuance, the Applicant must post a financial warranty with the Division that is sufficient for reclaiming disturbed lands in accordance with the approved reclamation plan. The financial warranty must be maintained at a sufficient level throughout the life of mine to assure completion of reclamation of the disturbed lands if the Division has to complete such reclamation due to forfeiture.

M. Concerns regarding a flagpole annexation to Central City (1):

There are concerns that the project's approach could effectively cut off the ability of people who will be adversely affected from having input at the local government level - these concerns arise from the concept of a flagpole annexation to Central City.

The Application initially proposed realigning the portion of the CCP located within the affected lands. It is the Division's understanding the realignment of the parkway would require an annexation process with

Central City. This proposal was removed from the revised Application submitted on December 22, 2021. The revised Application includes grading plans for an internal road with no public access off of the CCP. This internal road will remain for continued use by the landowner after reclamation. In the event that Central City approves the realignment project, the Applicant would need to submit the appropriate permit revision to the Division to update the mining and reclamation plans accordingly. At that time, there would be opportunities for public comment on the proposed road realignment through the Division's permitting process. It is the Division's understanding there would also be opportunities for public comment on the local government level if the Applicant chooses to pursue the road realignment project at a later date.

N. Concerns regarding another proposed mine operation after having recently defeated a proposed operation near Empire (3):

I live in Empire, CO - in recent years we were faced with a proposed quarry on land next to the town - the disruptions this would have caused, and the environmental damage were significant, and enough to cause the permit process to fail; I am a resident outside of Empire and we thankfully stopped a quarry pit that was proposed on a beautiful plateau outside of Empire - now CDOT and CPW are working together to build an animal bridge across the high volume traffic of Hwy US-40 heading thru Empire; I am a disabled veteran and co-founder of the Friends of Clear Creek - we have defeated the proposed gravel pit in Empire, and we will work together with the public to DEFEAT this outrage to our environment.

The Act and Rules require the Division to review properly submitted applications. There is no provision in the Act and Rules that limits or restricts the Division's review of an application based on previous application denials for the same applicant or for a different applicant. Each permit application is reviewed separately according to the specific requirements of the Act and Rules. Pursuant to Rule 1.4.1(10), the Applicant has the burden of demonstrating that the application meets the minimum requirements of the Act and Rules.

After conducting a comprehensive adequacy review of the Application, the Division determined the Application satisfied the requirements of the Act and Rules, and thus issued its recommendation for approval in accordance with Rule 1.4.9(2)(c).



MEMORANDUM

To: Whom it May Concern

From: Division of Reclamation, Mining and Safety, Minerals Program

Date: October 2, 2001; Revised on October 19, 2001, August 2, 2004, January 12, 2006, and October 7, 2021

Re: **Guide to Public Participation in the 112 Reclamation Permit Application Process for Construction Materials and Hard Rock/Metal Mining Operations**

Thank you for taking the time to be involved in the State of Colorado's process of reviewing applications for new mining operations or amendments to existing permits. The purpose of this memorandum is to explain the 112 reclamation permit application process for construction materials and hard rock/metal mining operations, your rights as either a party or a non-party, and the jurisdiction of the Mined Land Reclamation Board (MLRB or the Board).

Background

Colorado's general assembly codified Colorado's Mined Land Reclamation Act (§ 34-32-101, C.R.S., *et seq.*) and the Land Reclamation Act for the Extraction of Construction Materials (§ 34-32.5-101, C.R.S., *et seq.*; together "Acts") to regulate mining operations in the state. The corresponding Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal, and Designated Mining Operations ("Hard Rock/Metal Mining") and Extraction of Construction Materials ("Construction Materials") were subsequently promulgated by the Mined Land Reclamation Board (2 C.C.R. 407-1 and 2 C.C.R. 407-4; together "Rules"). The Acts and Rules are available at: <https://drms.colorado.gov/rules-and-regulations>.

The Minerals Program of the Division of Reclamation, Mining and Safety (Division or DRMS) issues various types of mining permits, including for: 110 Limited Impact Operations, 110 Limited Impact Designated Mining Operations, 111 Special Operations, 112 Regular Operations, and 112 Regular Designated Mining Operations. All permit applications are available at: <https://drms.colorado.gov/forms/minerals-program-forms>. This document is focused solely on the application review process for 112 reclamation permit applications.

The Role of the Mined Land Reclamation Board

Pursuant to the Acts, the Board has exclusive jurisdiction over the reclamation of a mining operation's affected lands. A reclamation permit establishes a post-mining land use for the affected lands. The post-mining land use may be for forest, rangeland, cropland, general agriculture, residential, recreational, industrial/commercial, developed water resources, or other "uses". Although the Board does not have jurisdiction over local land use decisions (e.g., visual impacts, economic impacts, noise, traffic), a permit Applicant must obtain all required permits, licenses, and approvals prior to conducting any mining operations. Local governmental entities have jurisdiction over their land use, zoning, and permitting processes. A reclamation permit Applicant may not be required to have all necessary approvals or permits from other agencies in place, including city and county zoning and land use permits, before a reclamation permit is issued.

The Board is a multi-interest citizen board which establishes the regulations, standards, and policies that guide the Division. Colorado's governor appoints five Board members from nominations submitted by each of the various constituencies represented, resulting in two members with substantial experience in the mining industry, two with substantial experience in conservation and environmental resources, and one with substantial experience in agriculture. A sixth Board member is the Executive Director of the Department of Natural Resources, or his/her appointee, and the seventh is a member of the State Soil Conservation Board. (§ 34-32-105, C.R.S.). The Board typically meets for one to two days every month. Some of the Board's responsibilities include: promulgating Rules that implement the Acts; issuing violations, civil penalties, and cease and desist orders; determining corrective actions for operators found in violation of the Acts and Rules; and conducting hearings regarding reclamation permit applications.

The Role of the Division

Division staff specialize in numerous areas including geology, biology, wildlife management, range and soil science, engineering, hydrology, and chemistry. During the reclamation permit application process, the Division is responsible for ensuring that the contents of the application adequately address the requirements of the Acts and Rules. To monitor compliance with permit requirements, the Division conducts periodic inspections of all permitted mining, exploration, and prospecting operations in Colorado. If an operator fails to timely correct any compliance issues identified during an inspection, the Division may present the possible violations to the Board. The Division calculates the reclamation bond required for a proposed mining operation based on the operator's proposed reclamation plan. The bond is reassessed periodically throughout the life of mine to ensure it is sufficient for reclaiming the site in accordance with the approved plan. Where there is a written objection to a permit application or a request for reconsideration of a Board decision, the Division serves as staff to the Board. For 112 applications that receive no timely objections, or for which, all objecting parties withdraw prior to the scheduled Board Hearing, the Division is authorized to approve or deny the application without a hearing before the Board.

The Role of the Applicant

During the reclamation permit application process, the Applicant has the burden of proving the application submitted to the Division meets all requirements of the Acts and Rules, including providing sufficient evidence that all required notices have been posted or delivered within the required timeframes.

Applicants for 112 Reclamation Permits or Amendments must place a copy of the application at the County Clerk or Recorder's office in the county containing the land to be affected by mining. The Applicant must notify the local Board of County Commissioners, the Board of Supervisors of the local Soil Conservation District, all surface and mineral rights owners of the affected lands, and all surface owners within 200 feet of the affected lands. The Applicant must also post signs at the proposed mine site and publish a public notice in a local newspaper of general circulation once a week for four consecutive weeks.

The Role of the Public Participant

A person may participate in the Board Hearing process regarding a contested reclamation permit application as a party or a non-party. Pursuant to the Acts and Rules, a person may participate as a "party" if they:

- (1) Submit a written comment or objection to the Division not more than 20 calendar days after the last date for the newspaper publication of notice of the application. The comment or objection letter must include the person's: name, mailing address, telephone number, and an explanation of how they are directly and adversely affected or aggrieved by the proposed mining operation [see "party" definition in Construction Materials Rule 1.1(38) and Hard Rock/Metal Mining Rule 1.1(50)]. To ensure timely receipt, any comments or objections on an application should be submitted via our website at: https://dnrlaserfiche.state.co.us/Forms/DRMS_Comment; and
- (2) Attend the Pre-hearing Conference *or* provide a proxy authorization form (see attached Authorization to Appear on Behalf of a Party) to the Board's Pre-hearing Conference Officer on or before the date of the Pre-hearing Conference and the Party's authorized representative is present at the conference [pursuant to Rule 2.7.3(4)]. Any party may be represented by an attorney; and
- (3) Attend the Board Hearing.

A party may present evidence, call witnesses, and cross-examine witnesses during the Board Hearing on the application. A party also has the right to sue or be sued in district court on matters regarding the Board's decision on the application. For additional information regarding a party's rights and responsibilities, please refer to Rules 1.7, 2.6, 2.7, 2.8, and 2.9.

Per Rule 2.7.3(3), any person who is a party to a matter before the Board, and who wishes to withdraw as a party, must do so in writing prior to the commencement of, or on the record during, the Formal Board Hearing on the matter (see attached Party Status Withdrawal Form).

If you choose not to be a party, or to withdraw your party status, as a non-party, you may still address the Board on matters of concern during the public comment portion of the Board meeting. However, in this case, you will not preserve or be entitled to the rights of a party. In the event that all objecting parties withdraw prior to the Board Hearing, the Division is authorized to approve or deny the application without consideration by the Board. Thus, in this instance, there would be no opportunity for a non-party to provide public comment at a Board Hearing.

The Role of Other Governmental Agencies

Once a reclamation permit application is received by the Division and considered “filed” (or “complete”), the Division sends a notice of the application to various local, state, and federal agencies. These governmental agencies may include: county commissioners, county planning and zoning departments, Colorado Parks and Wildlife, Colorado Department of Public Health and Environment, Colorado Division of Water Resources/Office of the State Engineer, local Conservation District(s), Colorado State Land Board, State Historic Preservation Office, U.S. Army Corps of Engineers, Colorado Oil and Gas Conservation Commission (for sites that overlap oil and gas facilities or are surrounded by oil and gas activity), Urban Drainage (for sites located within the 100 year floodplain in Adams, Arapahoe, Boulder, Denver, Douglas, or Jefferson County), U.S. Bureau of Land Management and/or U.S. Forest Service (for sites located on federal lands), and any municipalities located within 2 miles of the proposed affected lands. The Division’s review of the application may be coordinated with these and/or other governmental agencies as appropriate.

The 112 Reclamation Permit Application Process

Completeness Review: Upon receipt of an application, the Division first determines whether it contains sufficient information for it to be considered “filed” (or “complete”), as defined by Construction Materials Rule 1.1(23) and Hard Rock/Metal Mining Rule 1.1(27).

Adequacy Review: Once a 112 reclamation permit application is considered filed, the Division has 90 days to complete its adequacy review of the application and to make its decision to approve, approve with conditions, or deny the application. During the adequacy review process, the Division evaluates each exhibit in the application to verify that it meets all applicable requirements of the Acts and Rules (exhibit requirements are outlined in Rule 6). If the Division determines an exhibit is inadequate, it will send an adequacy review letter to the Applicant identifying the deficiencies. The Applicant must address all deficiencies in the application to the satisfaction of the Division in order for the application to be approved. The 90-day application review period may be extended at the request of the Applicant, not to exceed 365 days from the date the application was filed, in order to provide the necessary information to meet the adequacy requirements. The 90-day application review period may also be extended by the Division in accordance with Rule 1.4.1(7) in the case of “complex” applications, serious unforeseen circumstances, or significant snow cover on the affected land that

prevents a necessary on-site inspection, or Rule 1.4.1(13) where the Applicant failed to publish the public notice pursuant to Rule 1.6.2(1)(d). If the Division's review period is extended, the decision date on the application is reset.

If no timely objections are received on a 112 reclamation permit application, the Division will make the decision to approve, approve with conditions, or deny an application on or before the decision date.

If timely objections are received on a 112 reclamation permit application, the Division will schedule the matter for a formal Board Hearing, during which, the Board will make the final decision on the application. In this case, on or before the application decision date, the Division will make a recommendation to the Board on whether to approve or deny the application. Such recommendation shall identify the issues raised by the Division or by timely objectors. The Division's recommendation and rationale for approval or denial shall be sent to all parties at least 3 working days prior to the Pre-hearing Conference.

While a reclamation permit application may be *approved* by the Division or the Board, the permit is not issued until the required performance and financial warranties are received.

Pre-hearing Conference: A Pre-hearing Conference is held after the Division has issued its recommendation and rationale on the application, and at least 10 calendar days prior to the Board Hearing. Persons seeking to participate in the hearing process are encouraged to review Rules 2.6, 2.7, and 2.8 prior to the Pre-hearing Conference. The purpose of the Pre-hearing Conference, which is held by a Pre-hearing Conference Officer ("PHCO") delegated by the Board, is to explain the Division's application review and Board Hearing processes, identify issues raised that are within and outside of the Board's jurisdiction, and recognize the parties. Following the Pre-hearing Conference, the PHCO drafts a proposed Pre-hearing Order for the Board to consider at the hearing. The PHCO's proposed Order recommends a list of parties, identifies issues within the Board's jurisdiction to be considered at the Board Hearing, and proposes a hearing schedule with time allotments (the Board may adopt this Order as drafted or amend it). *Please note that parties are required to present their list of all potential witnesses and exhibits at the Pre-hearing Conference in accordance with Rule 2.6(2).*

Board Hearing: The Division shall provide all parties to an application at least 30 days written notice of the Board Hearing date. During the hearing, the Board will consider all of the evidence presented, deliberate on the issues, and vote on whether to approve the reclamation permit application. Subsequently, the Board's written decision, in the form of a Board Order, will be sent to all parties that participated in the hearing. Any decision by the Board is considered final agency action for purposes of appeal.

Helpful Weblinks:

Colorado Division of Reclamation, Mining and Safety homepage: <https://drms.colorado.gov>

The Acts and Rules for Construction Materials and Hard Rock/Metal Mining operations are available at: <https://drms.colorado.gov/rules-and-regulations>.

A list of permitting actions currently under review is available at:
<https://drms.colorado.gov/information/permitting-actions-currently-under-review>.

Comments or objections on an application under review can be submitted at:
https://dnrlaserfiche.state.co.us/Forms/DRMS_Comment.

All (non-confidential) permit files are available for public review through our online imaged document system (called Laserfiche) at: <https://dnrweblink.state.co.us/drms/search.aspx>. A Laserfiche User Guide is available at: https://drive.google.com/file/d/1l8OUdf_Mpjo3kxIHkP5hMH-w7MeBtxX7/view.

This guidance document as well as the attached Proxy Authorization and Party Status Withdrawal forms are available on our website (under the section labeled “Information”) at:
<https://drms.colorado.gov/forms/minerals-program-forms>.

AUTHORIZATION TO APPEAR ON BEHALF OF A PARTY

(Please Type or Print the Requested Information)

SIGNATURES MUST BE IN BLUE INK

I _____,
(person's name) (title, if applicable)

of _____ (name of company, association, organization,
etc., if applicable)

hereby delegate to _____,
(person or entity's name)

the right to appear on behalf of _____
(person, company, association, organization, etc.)
at the Pre-hearing Conference.

SIGNED AND DATED THIS _____ DAY OF _____, _____.

_____ If corporate attest (seal)
Authorized Signature (must be signed in blue ink)

Title: _____

State of _____)

)

County of _____)

The forgoing instrument was acknowledged before me this _____ day of _____, _____
_____ by _____ as _____ of _____.

Notary Public

My commission expires: _____

SIGNATURES MUST BE IN BLUE INK

PARTY STATUS WITHDRAWAL FORM

Signature