



February 9, 2023

Drew Damiano  
Red Tierra Equities, L.L.C.  
8301 East Prentice Ave., Suite 120  
Greenwood Village, CO 80111

**Re: Recommendation to Approve the Red Tierra Equities, L.L.C. Construction Materials 112c Application with Objections, Section 20 Gravel Mine, File No. M-2022-001**

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (Division/Office/DRMS) hereby issues its recommendation to approve the Red Tierra Equities, L.L.C. (Red Tierra/Applicant) 112c application for the Section 20 Gravel Mine, File No. M-2022-001.

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

The Division's recommendation to approve the Red Tierra application with an objection will be considered by the Colorado Mined Land Reclamation Board (Board) during a formal hearing, scheduled to occur March 22-23, 2023, at 1313 Sherman Street, Room 318, Denver, Colorado, beginning at 9:00 a.m. or as soon thereafter as the matter can be considered. Pursuant to Rule 2.8.1(1) of the Minerals Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Rules), any party who does not attend the Board hearing forfeits its party status and all associated rights and privileges.

All parties and interested persons who intend to participate in the Board hearing are strongly encouraged to attend the Pre-hearing Conference. Pursuant to Rule 2.7.3(4), any party who does not attend the Pre-hearing Conference forfeits its party status and all associated rights and privileges, unless such party provides a fully executed proxy authorization form to the Pre-hearing Conference Officer and the party's authorized representative is present.

The Pre-hearing Conference is scheduled for March 8, 2023, at 1:00 p.m. at 1313 Sherman Street, Room 318, Denver, Colorado, and will end no later than 2:00 p.m. The Pre-hearing Conference will be held in person with the option to appear virtually upon request.



If you have any questions, please contact me at [peter.hays@state.co.us](mailto:peter.hays@state.co.us) or (303) 866-3567 Ext. 8124.

Sincerely,



Peter S. Hays  
Environmental Protection Specialist

Enclosure:      Rationale for Recommendation

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



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**Re: Rationale for Recommendation for Approval of a Construction Materials 112c Application  
with Objections, Red Tierra Equities, L.L.C., Section 20 Gravel Mine, File No. M-2022-001**

**Introduction**

On February 9, 2023, the Division of Reclamation, Mining and Safety (Division/Office/ DRMS) issued its recommendation to approve the permit application for the Section 20 Gravel Mine, File No. M-2022-001, over public objection. This rationale document is intended to explain the process by which the Division arrived at its recommendation for approval over public objection and respond to the issues raised by the objecting party. The Division reserves the right to further supplement, amend, modify, or clarify this document and recommendation with additional details as necessary.<sup>1</sup>

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

Red Tierra Equities, L.L.C. (Red Tierra/Applicant) submitted an 112c application on January 3, 2022. The application was deemed complete for the purposes of filing and review on February 9, 2022.

The Section 20 Gravel Mine is a proposed 631.58 acre construction materials site divided into eight (8) mining cells; Cells 1-8. Each mining phase is approximately 25-30 acres in size. The Operator intends to mine multiple phases concurrently in order to obtain a range of material for production. The Operator estimates the size of the areas to be worked at one time will range from 25 to 120 acres.

The proposed post-mining land use for the site is developed water resources. The majority of the site, Cells 3-8 will be reclaimed to lined water storage reservoirs. The mined area in the silt pond

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and the southwest corner of Cell 6 may be backfilled and used as future commercial sites or may be converted to a water storage facility.

The site is located approximately 1 mile northwest of Gilcrest, CO in Weld County. Pursuant to Section 34-32.5-112(9)(b), Rule 1.6.2(1)(d) and Rule 1.6.5(1), the Applicant published the required public notice for the application once a week for four (4) consecutive weeks beginning on February 24, 2022 with the last date of publication on March 17, 2022. The public comment period closed on April 6, 2022. The public notices were published in the Fort Lupton Press, a publication in general circulation in the vicinity of the mine. During the public comment period, the Division received one (1) written objection and three (3) comments from the state agency listed below.

**Timely Letters of Objection:**

Person or Entity	Date Objection Received
Neil Shimon	April 6, 2022

**Timely Commenting Agency:**

Agency	Date Comment Received
Colorado Parks and Wildlife	February 11, 2022
Colorado Division of Water Resources	February 24, 2022
History Colorado	February 28, 2022

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

During the review period the Division generated seven (7) adequacy letters. The Applicant addressed all adequacy issues to the Division's satisfaction. Therefore, on February 9, 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.

**Issues Raised by the Objecting Party**

The timely objection received by the Division was categorized by the issues pertaining to the mining and reclamation activities potentially causing adverse effects to Mr. Shimon's property and the surrounding area, including;

1. Water quality and quantity of Mr. Shimon's shallow well.
2. Loss of water to Mr. Shimon's well because of the depth of the mining operation.

3. Noise and dust pollution from the mining heavy equipment, conveyors, crushers, and trucks.
4. Road and bridge damage from the heavy truck traffic.
5. Safety of residents' running, walking and biking on the adjacent roads from the truck traffic.
6. Devaluation of Mr. Shimon's property because of the mining operations, road damage and truck traffic.
7. Loss of irrigation water.
8. Loss of farm land and commodities from that farming.

These categories are listed below and titled with bold font.

*Jurisdictional Items*

- 1. Groundwater and Surface Water Concerns including; water quality and quantity of Mr. Shimon's shallow well (Item #1), loss of water to Mr. Shimon's well because of the depth of the mining operation (Item #2) and loss of irrigation water (Item #7).**

Based on the Division's review of the Colorado Division of Water Resources (DWR) well permit database, Mr. Shimon's irrigation well is unregistered with the DWR with no legal support. The Shimon's residence is served by Central Colorado Water Conservancy according to Mr. Shimon.

The mining activities at the proposed site will be primarily conducted using dry mining methods, including all the mining cells along Weld County Road 29, which is located west of the Shimon's property. Prior to exposing groundwater in the mining cells, a bentonite soil slurry wall will be constructed around each cell. The slurry wall will isolate the mining cells from the surrounding groundwater.

The slurry walls will act as a barrier protecting the surrounding groundwater from any pollutants in the mining cells and from impacts to the surrounding hydrologic balance. The construction of the slurry walls will be evaluated and approved by the DWR to ensure proper construction by the Applicant.

The slurry walls will form a barrier to groundwater flow at the proposed site without the proposed mitigation measures. The up-gradient side of the site, south side, is estimated to see mounding (increase) of the groundwater elevation and the down-gradient side of the site, north side, is estimated to see shadowing (decrease) of the groundwater elevation. The Shimon's property is located on the east side of the site and is projected to see mounding of the groundwater elevation.

The Applicant installed seven (7) monitoring to investigate the groundwater on the Section 20 property. The depth to groundwater indicates the direction of flow of groundwater is predominantly from the south to north. Monitoring well #4 is located west of the Shimon's property and on the west side of WCR 29. The Applicant will be required to monitor and report the groundwater elevations for eighteen (18) months in order to obtain a baseline elevation. The monitoring wells will be measured monthly by the Applicant for the life of the mine to demonstrate the surrounding wells have not been negatively impacted from the mining operation.

The Applicant submitted a groundwater model titled, “Gilcrest Area Alluvial Groundwater Model – Potential Impacts of Proposed Gravel Mine” with the application. The model took into consideration the operations proposed at the Section 20 site and the Monarch DENM site. The Monarch DENM site is an approved permit application located immediately west of the proposed Section 20 property. The model predicts an increase in the groundwater elevation at the Shimon’s property of 4.9 feet with the final construction of the proposed Section 20 slurry walls and an increase of 6.7 feet with the completion of the proposed slurry walls for the Section 20 and the Monarch DENM sites without the proposed mitigations measures. The installation of the proposed mitigation measures decrease the projected rise of groundwater to 0.10 feet at the Shimon’s property.

The primary proposed mitigation plan involves the installation of underdrains or a series of wells to remove groundwater from the aquifer along the southern boundary of the site. The removed groundwater will be conveyed to a manhole located at the mid-point of the southern permit boundary and piped to an infiltration pond located on the north end of the permit boundary. All mitigation structures are located within the proposed permit boundary. The secondary proposed mitigation plan would collect groundwater along the southern permit boundary, the same manner as stated above, but the removed groundwater would be conveyed in a pipe and discharged South Platte River. If the Applicant were to utilize the secondary mitigation measures, they are required to submit and obtain approval of an amendment application due to the increase in affected lands to the permit. Both mitigation plans are designed to maintain the groundwater elevation at or slightly above the historic groundwater elevations on the Shimon’s property. Finally, any impacts to the groundwater elevation will dissipate with distance away from the permit boundary. The Division reviewed and accepted the groundwater model for the Section 20 permit application.

The Applicant submitted a groundwater quantity monitoring plan with the groundwater report. The monitoring wells will be measured monthly to identify potential changes in the groundwater flow or elevation associated with mining and reclamation activities. Baseline data will be collected prior to dewatering or construction of the slurry walls. The baseline data will provide a range of relative groundwater elevation associated with pre-mining groundwater conditions. Groundwater elevations tend to fluctuate seasonally with the highest elevations during the summer irrigation season and the lowest elevations in the winter and early spring.

If the Applicant receives a complaint or if a defined groundwater elevation trigger point is reached, the following mitigation plan will be implemented by the Applicant. If during mining or reclamation, the groundwater elevation at monitoring wells #5 (MW-5) or #6 (MW-6) indicate mounding of more than two (2) feet and the condition was not observed during baseline monitoring, or if the Applicant and/or the Division receives a complaint from any water user within the vicinity of the site, the Applicant will notify the Division, evaluate the cause and take action within 7 days of the complaint.

After the Division is notified, the Applicant will review the data and available information and submit a report to the Division within 30 days. The report will include discussions with the water

user who contacted the Applicant regarding a concern and a review of baseline data from the affected well and vicinity to evaluate whether changes were due to seasonal variations, climate, mining, slurry wall installation or other factors. The report will identify the extent of potential or actual impacts associated with the factors. If the mining or reclamation activities are determined to be due to or a significant contributing factor to the groundwater impacts, the impacts will be addressed by the Applicant to the satisfaction of the Division.

The Applicant will implement one (1) or more mitigation measures if the mining and reclamation activities are determined to be a significant factor to the groundwater impacts.

Mitigation measures may include, but are not limited to:

- Placing water in a recharge pond to raise groundwater elevations around the impacted well.
- Constructing a local clay liner at the edge of the mining cell (i.e. between the dewatering point and the well) in order to raise groundwater elevations on the well side of the liner and mitigate the dewatering effects.
- Rehabilitating the well to improve efficiency.
- Providing an alternative source of water or purchasing additional water to support the historic well use in terms of water quantity and quality. The groundwater quality parameters will be checked in the affected well(s) to ensure the alternative sources supports the historic use.
- Modifying a well to operate under lower groundwater conditions. This could include deepening the well or lowering pumps. All work would be done at the Applicant's expense with the exception of replacing non-functional equipment in-place prior to the mining activities.

The Applicant submitted a groundwater quality monitoring plan in the groundwater report. In order to establish pre-mining groundwater quality for the site, the Applicant will sample monitoring well #2 (MW-2) on the downgradient side of the site and monitoring well #5 (MW-5) on the up-gradient side of the site prior to starting mining operations.

The Applicant will sample MW-2 annually during the same quarter as the initial baseline monitoring. The groundwater quality samples will be tested for the analytes listed in Tables 1 through 4 of "The Basic Standards for Ground Water," excluding the radiological section of Table 1. The Applicant will notify the Division within 7 days of receiving a lab report indicating any exceedance of the standards set forth in Tables 1 through 4. The groundwater quality lab results will be included in the annual report for the site. Annual groundwater testing will be conducted for the life of the mine unless the requirement is reduced or eliminated through the Technical Revision process with the Division.

The proposed Mining Plan states all ditches transporting water across the site will remain or will be piped across the site to allow for continued use.

The Division finds the Applicant's plan shall minimize disturbances to the prevailing hydrologic balance of the affected land and surrounding area. Additionally, the Applicant shall implement the groundwater quantity and quality monitoring plans for the site as discussed above. These plans will



adequately detect impacts to the hydrologic balance. Red Tierra shall be required to comply with all applicable federal and state water quality laws in accordance with Rule 3.1.6. The Division finds the Applicant provided the information required to address the potential groundwater quality and quantity impacts at the site in accordance with Rules 6.4.4, 6.4.7 and C.R.S. 34-32.5-116(4)(h).

*Non-Jurisdictional Items*

**2. Noise and dust pollution from the mining heavy equipment, conveyors, crushers, and trucks (Item #3).**

The Act and Rules do not specifically address noise and dust pollution from the mining heavy equipment, conveyors, crushers and trucks. The issue of air quality is under the jurisdiction of Weld County, the Town of Gilcrest and the Air Pollution Control Division (APCD) of the Colorado Department of Public Health and Environment (CDPHE). The Applicant committed to obtain an Air Pollution Emissions Notice (APEN) and Construction Air Permit from the CDPHE.

The issues of noise levels are typically addressed at the local government level, not at the State government level. These issues should be addressed through the Weld County and Town of Gilcrest permitting process.

**3. Road and bridge damage from the heavy truck traffic (Item #4).**

The Act and Rules do not specifically address road and bridge damage from heavy truck traffic for roads located outside of a permitted mining operation. These issues are under the jurisdiction of Weld County, the Town of Gilcrest and the Colorado Department of Transportation. These issues should be addressed through the permitting processes of Weld County, the Town of Gilcrest and the Colorado Department of Transportation.

**4. Safety of residents' running, walking and biking on the adjacent roads from the truck traffic (Item #5).**

The Act and Rules do not specifically address safety of residents' running, walking and biking on the adjacent roads from the truck traffic outside of a permitted mining operation. These issues are under the jurisdiction of Weld County, the Town of Gilcrest and the Colorado Department of Transportation. These issues should be addressed through the permitting processes of Weld County, the Town of Gilcrest and the Colorado Department of Transportation.

**5. Devaluation of Mr. Shimon's property because of the mining operations, road damage and truck traffic (Item #6).**

The Act and Rules do not specifically address the devaluation of property values, road damage and truck traffic outside of a permitted mining operation. These issues are under the jurisdiction of Weld County, the Town of Gilcrest and the Colorado Department of Transportation. These issues



should be addressed through the permitting processes of Weld County, the Town of Gilcrest and the Colorado Department of Transportation.

**6. Loss of farm land and commodities from that farming (Item #8).**

The Applicant must comply with the requirements of the Act and Rules and all applicable performance standards if the permit application is approved by the Board. The Applicant is obligated to protect areas outside the affected land from slides and damage pursuant to Rule 3.1.5(3) and C.R.S. § 34-32.5-116(4)(i) and to prevent disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quantity or quality of water in surface and groundwater systems both during and after the mining operation and during reclamation pursuant to Rule 3.1.6(1) and C.R.S. § 34-32.5-116(4)(h).

Zoning determinations and changes are under the jurisdiction of Weld County and the Town of Gilcrest. These issues should be addressed through the permitting processes of Weld County and the Town of Gilcrest.

**Conclusion**

After conducting a thorough technical review of the application, as outlined in part in the discussion above, on February 9, 2023, the Division determined the application satisfied the requirements of the Act and Rules, and specifically C.R.S. § 34-32.5-115(4), and issued its recommendation to approve the Construction Materials 112 application for the Section 20 Gravel Mine, File No. M-2022-001.



February 9, 2023

Neil Shimon  
20300 CR 29  
Platteville, CO 80651

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Application with Objections, Section 20 Gravel Mine, File No. M-2022-001**

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Sincerely,



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Environmental Protection Specialist

Enclosure:      Rationale for Recommendation

Ec:      Russ Means; Division of Reclamation, Mining and Safety  
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**Issues Raised by the Objecting Party**

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The Applicant will sample MW-2 annually during the same quarter as the initial baseline monitoring. The groundwater quality samples will be tested for the analytes listed in Tables 1 through 4 of "The Basic Standards for Ground Water," excluding the radiological section of Table 1. The Applicant will notify the Division within 7 days of receiving a lab report indicating any exceedance of the standards set forth in Tables 1 through 4. The groundwater quality lab results will be included in the annual report for the site. Annual groundwater testing will be conducted for the life of the mine unless the requirement is reduced or eliminated through the Technical Revision process with the Division.

The proposed Mining Plan states all ditches transporting water across the site will remain or will be piped across the site to allow for continued use.

The Division finds the Applicant's plan shall minimize disturbances to the prevailing hydrologic balance of the affected land and surrounding area. Additionally, the Applicant shall implement the groundwater quantity and quality monitoring plans for the site as discussed above. These plans will adequately detect impacts to the hydrologic balance. Red Tierra shall be required to comply with

all applicable federal and state water quality laws in accordance with Rule 3.1.6. The Division finds the Applicant provided the information required to address the potential groundwater quality and quantity impacts at the site in accordance with Rules 6.4.4, 6.4.7 and C.R.S. 34-32.5-116(4)(h).

*Non-Jurisdictional Items*

**2. Noise and dust pollution from the mining heavy equipment, conveyors, crushers, and trucks (Item #3).**

The Act and Rules do not specifically address noise and dust pollution from the mining heavy equipment, conveyors, crushers and trucks. The issue of air quality is under the jurisdiction of Weld County, the Town of Gilcrest and the Air Pollution Control Division (APCD) of the Colorado Department of Public Health and Environment (CDPHE). The Applicant committed to obtain an Air Pollution Emissions Notice (APEN) and Construction Air Permit from the CDPHE.

The issues of noise levels are typically addressed at the local government level, not at the State government level. These issues should be addressed through the Weld County and Town of Gilcrest permitting process.

**3. Road and bridge damage from the heavy truck traffic (Item #4).**

The Act and Rules do not specifically address road and bridge damage from heavy truck traffic for roads located outside of a permitted mining operation. These issues are under the jurisdiction of Weld County, the Town of Gilcrest and the Colorado Department of Transportation. These issues should be addressed through the permitting processes of Weld County, the Town of Gilcrest and the Colorado Department of Transportation.

**4. Safety of residents' running, walking and biking on the adjacent roads from the truck traffic (Item #5).**

The Act and Rules do not specifically address safety of residents' running, walking and biking on the adjacent roads from the truck traffic outside of a permitted mining operation. These issues are under the jurisdiction of Weld County, the Town of Gilcrest and the Colorado Department of Transportation. These issues should be addressed through the permitting processes of Weld County, the Town of Gilcrest and the Colorado Department of Transportation.

**5. Devaluation of Mr. Shimon's property because of the mining operations, road damage and truck traffic (Item #6).**

The Act and Rules do not specifically address the devaluation of property values, road damage and truck traffic outside of a permitted mining operation. These issues are under the jurisdiction of Weld County, the Town of Gilcrest and the Colorado Department of Transportation. These issues should be addressed through the permitting processes of Weld County, the Town of Gilcrest and the Colorado Department of Transportation.

## **6. Loss of farm land and commodities from that farming (Item #8).**

The Applicant must comply with the requirements of the Act and Rules and all applicable performance standards if the permit application is approved by the Board. The Applicant is obligated to protect areas outside the affected land from slides and damage pursuant to Rule 3.1.5(3) and C.R.S. § 34-32.5-116(4)(i) and to prevent disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quantity or quality of water in surface and groundwater systems both during and after the mining operation and during reclamation pursuant to Rule 3.1.6(1) and C.R.S. § 34-32.5-116(4)(h).

Zoning determinations and changes are under the jurisdiction of Weld County and the Town of Gilcrest. These issues should be addressed through the permitting processes of Weld County and the Town of Gilcrest.

## **Conclusion**

After conducting a thorough technical review of the application, as outlined in part in the discussion above, on February 9, 2023, the Division determined the application satisfied the requirements of the Act and Rules, and specifically C.R.S. § 34-32.5-115(4), and issued its recommendation to approve the Construction Materials 112 application for the Section 20 Gravel Mine, File No. M-2022-001.



February 9, 2023

Kyle Regan  
Civil Resources, LLC  
8308 Colorado Blvd., Suite 200  
Firestone, CO 80504

**Re: Recommendation to Approve the Red Tierra Equities, L.L.C. Construction Materials 112c  
Application with Objections, Section 20 Gravel Mine, File No. M-2022-001**

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (Division/Office/DRMS) hereby issues its recommendation to approve the Red Tierra Equities, L.L.C. (Red Tierra/Applicant) 112c application for the Section 20 Gravel Mine, File No. M-2022-001.

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

The Division's recommendation to approve the Red Tierra application with an objection will be considered by the Colorado Mined Land Reclamation Board (Board) during a formal hearing, scheduled to occur March 22-23, 2023, at 1313 Sherman Street, Room 318, Denver, Colorado, beginning at 9:00 a.m. or as soon thereafter as the matter can be considered. Pursuant to Rule 2.8.1(1) of the Minerals Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Rules), any party who does not attend the Board hearing forfeits its party status and all associated rights and privileges.

All parties and interested persons who intend to participate in the Board hearing are strongly encouraged to attend the Pre-hearing Conference. Pursuant to Rule 2.7.3(4), any party who does not attend the Pre-hearing Conference forfeits its party status and all associated rights and privileges, unless such party provides a fully executed proxy authorization form to the Pre-hearing Conference Officer and the party's authorized representative is present.

The Pre-hearing Conference is scheduled for March 8, 2023, at 1:00 p.m. at 1313 Sherman Street, Room 318, Denver, Colorado, and will end no later than 2:00 p.m. The Pre-hearing Conference will be held in person with the option to appear virtually upon request.



If you have any questions, please contact me at [peter.hays@state.co.us](mailto:peter.hays@state.co.us) or (303) 866-3567 Ext. 8124.

Sincerely,



Peter S. Hays  
Environmental Protection Specialist

Enclosure:      Rationale for Recommendation

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



February 9, 2023

Kyle Regan  
Civil Resources, LLC  
8308 Colorado Blvd., Suite 200  
Firestone, CO 80504

**Re: Rationale for Recommendation for Approval of a Construction Materials 112c Application with Objections, Red Tierra Equities, L.L.C., Section 20 Gravel Mine, File No. M-2022-001**

**Introduction**

On February 9, 2023, the Division of Reclamation, Mining and Safety (Division/Office/ DRMS) issued its recommendation to approve the permit application for the Section 20 Gravel Mine, File No. M-2022-001, over public objection. This rationale document is intended to explain the process by which the Division arrived at its recommendation for approval over public objection and respond to the issues raised by the objecting party. The Division reserves the right to further supplement, amend, modify, or clarify this document and recommendation with additional details as necessary.<sup>1</sup>

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

Red Tierra Equities, L.L.C. (Red Tierra/Applicant) submitted an 112c application on January 3, 2022. The application was deemed complete for the purposes of filing and review on February 9, 2022.

The Section 20 Gravel Mine is a proposed 631.58 acre construction materials site divided into eight (8) mining cells; Cells 1-8. Each mining phase is approximately 25-30 acres in size. The Operator intends to mine multiple phases concurrently in order to obtain a range of material for production. The Operator estimates the size of the areas to be worked at one time will range from 25 to 120 acres.

The proposed post-mining land use for the site is developed water resources. The majority of the site, Cells 3-8 will be reclaimed to lined water storage reservoirs. The mined area in the silt pond

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



and the southwest corner of Cell 6 may be backfilled and used as future commercial sites or may be converted to a water storage facility.

The site is located approximately 1 mile northwest of Gilcrest, CO in Weld County. Pursuant to Section 34-32.5-112(9)(b), Rule 1.6.2(1)(d) and Rule 1.6.5(1), the Applicant published the required public notice for the application once a week for four (4) consecutive weeks beginning on February 24, 2022 with the last date of publication on March 17, 2022. The public comment period closed on April 6, 2022. The public notices were published in the Fort Lupton Press, a publication in general circulation in the vicinity of the mine. During the public comment period, the Division received one (1) written objection and three (3) comments from the state agency listed below.

**Timely Letters of Objection:**

Person or Entity	Date Objection Received
Neil Shimon	April 6, 2022

**Timely Commenting Agency:**

Agency	Date Comment Received
Colorado Parks and Wildlife	February 11, 2022
Colorado Division of Water Resources	February 24, 2022
History Colorado	February 28, 2022

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

During the review period the Division generated seven (7) adequacy letters. The Applicant addressed all adequacy issues to the Division's satisfaction. Therefore, on February 9, 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.

**Issues Raised by the Objecting Party**

The timely objection received by the Division was categorized by the issues pertaining to the mining and reclamation activities potentially causing adverse effects to Mr. Shimon's property and the surrounding area, including;

1. Water quality and quantity of Mr. Shimon's shallow well.
2. Loss of water to Mr. Shimon's well because of the depth of the mining operation.



3. Noise and dust pollution from the mining heavy equipment, conveyors, crushers, and trucks.
4. Road and bridge damage from the heavy truck traffic.
5. Safety of residents' running, walking and biking on the adjacent roads from the truck traffic.
6. Devaluation of Mr. Shimon's property because of the mining operations, road damage and truck traffic.
7. Loss of irrigation water.
8. Loss of farm land and commodities from that farming.

These categories are listed below and titled with bold font.

*Jurisdictional Items*

- 1. Groundwater and Surface Water Concerns including; water quality and quantity of Mr. Shimon's shallow well (Item #1), loss of water to Mr. Shimon's well because of the depth of the mining operation (Item #2) and loss of irrigation water (Item #7).**

Based on the Division's review of the Colorado Division of Water Resources (DWR) well permit database, Mr. Shimon's irrigation well is unregistered with the DWR with no legal support. The Shimon's residence is served by Central Colorado Water Conservancy according to Mr. Shimon.

The mining activities at the proposed site will be primarily conducted using dry mining methods, including all the mining cells along Weld County Road 29, which is located west of the Shimon's property. Prior to exposing groundwater in the mining cells, a bentonite soil slurry wall will be constructed around each cell. The slurry wall will isolate the mining cells from the surrounding groundwater.

The slurry walls will act as a barrier protecting the surrounding groundwater from any pollutants in the mining cells and from impacts to the surrounding hydrologic balance. The construction of the slurry walls will be evaluated and approved by the DWR to ensure proper construction by the Applicant.

The slurry walls will form a barrier to groundwater flow at the proposed site without the proposed mitigation measures. The up-gradient side of the site, south side, is estimated to see mounding (increase) of the groundwater elevation and the down-gradient side of the site, north side, is estimated to see shadowing (decrease) of the groundwater elevation. The Shimon's property is located on the east side of the site and is projected to see mounding of the groundwater elevation.

The Applicant installed seven (7) monitoring to investigate the groundwater on the Section 20 property. The depth to groundwater indicates the direction of flow of groundwater is predominantly from the south to north. Monitoring well #4 is located west of the Shimon's property and on the west side of WCR 29. The Applicant will be required to monitor and report the groundwater elevations for eighteen (18) months in order to obtain a baseline elevation. The monitoring wells will be measured monthly by the Applicant for the life of the mine to demonstrate the surrounding wells have not been negatively impacted from the mining operation.

The Applicant submitted a groundwater model titled, “Gilcrest Area Alluvial Groundwater Model – Potential Impacts of Proposed Gravel Mine” with the application. The model took into consideration the operations proposed at the Section 20 site and the Monarch DENM site. The Monarch DENM site is an approved permit application located immediately west of the proposed Section 20 property. The model predicts an increase in the groundwater elevation at the Shimon’s property of 4.9 feet with the final construction of the proposed Section 20 slurry walls and an increase of 6.7 feet with the completion of the proposed slurry walls for the Section 20 and the Monarch DENM sites without the proposed mitigations measures. The installation of the proposed mitigation measures decrease the projected rise of groundwater to 0.10 feet at the Shimon’s property.

The primary proposed mitigation plan involves the installation of underdrains or a series of wells to remove groundwater from the aquifer along the southern boundary of the site. The removed groundwater will be conveyed to a manhole located at the mid-point of the southern permit boundary and piped to an infiltration pond located on the north end of the permit boundary. All mitigation structures are located within the proposed permit boundary. The secondary proposed mitigation plan would collect groundwater along the southern permit boundary, the same manner as stated above, but the removed groundwater would be conveyed in a pipe and discharged South Platte River. If the Applicant were to utilize the secondary mitigation measures, they are required to submit and obtain approval of an amendment application due to the increase in affected lands to the permit. Both mitigation plans are designed to maintain the groundwater elevation at or slightly above the historic groundwater elevations on the Shimon’s property. Finally, any impacts to the groundwater elevation will dissipate with distance away from the permit boundary. The Division reviewed and accepted the groundwater model for the Section 20 permit application.

The Applicant submitted a groundwater quantity monitoring plan with the groundwater report. The monitoring wells will be measured monthly to identify potential changes in the groundwater flow or elevation associated with mining and reclamation activities. Baseline data will be collected prior to dewatering or construction of the slurry walls. The baseline data will provide a range of relative groundwater elevation associated with pre-mining groundwater conditions. Groundwater elevations tend to fluctuate seasonally with the highest elevations during the summer irrigation season and the lowest elevations in the winter and early spring.

If the Applicant receives a complaint or if a defined groundwater elevation trigger point is reached, the following mitigation plan will be implemented by the Applicant. If during mining or reclamation, the groundwater elevation at monitoring wells #5 (MW-5) or #6 (MW-6) indicate mounding of more than two (2) feet and the condition was not observed during baseline monitoring, or if the Applicant and/or the Division receives a complaint from any water user within the vicinity of the site, the Applicant will notify the Division, evaluate the cause and take action within 7 days of the complaint.

After the Division is notified, the Applicant will review the data and available information and submit a report to the Division within 30 days. The report will include discussions with the water

user who contacted the Applicant regarding a concern and a review of baseline data from the affected well and vicinity to evaluate whether changes were due to seasonal variations, climate, mining, slurry wall installation or other factors. The report will identify the extent of potential or actual impacts associated with the factors. If the mining or reclamation activities are determined to be due to or a significant contributing factor to the groundwater impacts, the impacts will be addressed by the Applicant to the satisfaction of the Division.

The Applicant will implement one (1) or more mitigation measures if the mining and reclamation activities are determined to be a significant factor to the groundwater impacts.

Mitigation measures may include, but are not limited to:

- Placing water in a recharge pond to raise groundwater elevations around the impacted well.
- Constructing a local clay liner at the edge of the mining cell (i.e. between the dewatering point and the well) in order to raise groundwater elevations on the well side of the liner and mitigate the dewatering effects.
- Rehabilitating the well to improve efficiency.
- Providing an alternative source of water or purchasing additional water to support the historic well use in terms of water quantity and quality. The groundwater quality parameters will be checked in the affected well(s) to ensure the alternative sources supports the historic use.
- Modifying a well to operate under lower groundwater conditions. This could include deepening the well or lowering pumps. All work would be done at the Applicant's expense with the exception of replacing non-functional equipment in-place prior to the mining activities.

The Applicant submitted a groundwater quality monitoring plan in the groundwater report. In order to establish pre-mining groundwater quality for the site, the Applicant will sample monitoring well #2 (MW-2) on the downgradient side of the site and monitoring well #5 (MW-5) on the up-gradient side of the site prior to starting mining operations.

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adequately detect impacts to the hydrologic balance. Red Tierra shall be required to comply with all applicable federal and state water quality laws in accordance with Rule 3.1.6. The Division finds the Applicant provided the information required to address the potential groundwater quality and quantity impacts at the site in accordance with Rules 6.4.4, 6.4.7 and C.R.S. 34-32.5-116(4)(h).

*Non-Jurisdictional Items*

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The Act and Rules do not specifically address noise and dust pollution from the mining heavy equipment, conveyors, crushers and trucks. The issue of air quality is under the jurisdiction of Weld County, the Town of Gilcrest and the Air Pollution Control Division (APCD) of the Colorado Department of Public Health and Environment (CDPHE). The Applicant committed to obtain an Air Pollution Emissions Notice (APEN) and Construction Air Permit from the CDPHE.

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Zoning determinations and changes are under the jurisdiction of Weld County and the Town of Gilcrest. These issues should be addressed through the permitting processes of Weld County and the Town of Gilcrest.

**Conclusion**

After conducting a thorough technical review of the application, as outlined in part in the discussion above, on February 9, 2023, the Division determined the application satisfied the requirements of the Act and Rules, and specifically C.R.S. § 34-32.5-115(4), and issued its recommendation to approve the Construction Materials 112 application for the Section 20 Gravel Mine, File No. M-2022-001.