



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

March 4, 2024

Joseph Forster  
Jack D. Tabb, LLC  
1650 Saratoga St.  
Antigo, WI 54409

**RE: Gunnell Mine, File No. M-2021-068, Consent Agenda Summary Form**

Dear Mr. Forster:

A possible violation hearing is scheduled for consideration by the Mined Land Reclamation Board (Board). As indicated in the Division's correspondence dated February 27, 2024 Re: Reason to Believe a Violation Exists and Notice of Enforcement Hearing (RTB letter), the formal Board hearing is scheduled to occur during the April 17-18, 2024 Board meeting.

Please find enclosed the Staff Summary Form for Consent Agenda Items (consent form) for the possible violation at the site. If you concede to the violation, corrective actions, and civil penalties, please affix your notarized signature on the enclosed consent form and return the signed form, with original signatures, to the Division no later than April 5, 2024. Please note, the Division plans to proceed with the scheduled Board hearing, so you will have the opportunity to address the Board during that hearing. Please refer to the Division's February 27, 2024 RTB letter for additional details on the scheduled hearing.

If you wish to contest the possible violation or any of the conditions of the enclosed consent form, please inform the Division at your earliest convenience and do not sign the consent form.

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](mailto:amy.eschberger@state.co.us).

Sincerely,

Amy Eschberger  
Senior Environmental Protection Specialist

Encl: Staff Summary Form for the Consent Agenda Items

Cc: Russ Means, DRMS  
Scott Schultz, Attorney General's Office  
Jeff Fugate, Attorney General's Office





## COLORADO

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### STAFF SUMMARY FORM FOR CONSENT AGENDA ITEMS

|                   |                |                        |                   |
|-------------------|----------------|------------------------|-------------------|
| <b>Date</b>       | March 4, 2024  | <b>Operator</b>        | Jack D. Tabb, LLC |
| <b>File No.</b>   | M-2021-068     | <b>Site Name</b>       | Gunnell Mine      |
| <b>Specialist</b> | Amy Eschberger | <b>Objecting Party</b> | N/A               |
| <b>County</b>     | Gilpin         | <b>Permit Type</b>     | Illegal Mine      |

#### Action:

Possible violation of:

- C.R.S. 34-32-124 for failure to comply with the conditions of an order.

#### Resolution:

Jack D. Tabb, LLC (Operator) voluntarily consents to a violation of C.R.S. 34-32-124 for failure to comply with the conditions of an order. The Operator also consents to the Cease and Desist Order, Corrective Actions, and Civil Penalties provided herein, for the Gunnell Mine, File No. M-2021-068.

#### Chronology:

- December 7, 2021 – DRMS received an anonymous complaint alleging illegal mining activities occurring at the Gunnell Mine.
- December 9, 2021 – DRMS conducted an inspection of the Gunnell Mine, along with Central City staff, and found the Operator had excavated approximately 10 cubic yards of material from the historic Gunnell Mine waste rock pile and transported this material to an out of state facility for processing. In addition, approximately 25 cubic yards of waste rock had been excavated and placed into super sacks that were staged on properties adjacent to and nearby the Gunnell property. (Inspection report sent to Operator on January 4, 2022.)
- January 6, 2022 – DRMS sent a Reason to Believe a Violation Exists and Notice of Board Hearing letter to Operator for a possible violation of C.R.S. 34-32-109 for failure to obtain a reclamation permit prior to engaging in a new mining operation.
- February 7, 2022 – DRMS received a signed consent agenda form from the Operator conceding to the violation and agreeing to comply with the Cease and Desist Order, Corrective Actions, and Civil Penalties proposed in the form by DRMS staff.
- February 16, 2022 – MLRB considered and approved the consent agenda form signed by the Operator.

Physical Address: 1313 Sherman Street, Room 215, Denver, CO 80203 P 303.866.3567 F 303.832.8106

Mailing Address: DRMS Room 215, 1001 E 62nd Ave, Denver, CO 80216 <https://drms.colorado.gov>

Jared S. Polis, Governor | Dan Gibbs, Executive Director | Michael A. Cunningham, Director



- March 18, 2022 – MLRB signed a Findings of Fact, Conclusions of Law, and Order for Violation No. MV-2022-004. This Order included the following:
  - Found the Operator in violation of C.R.S. 34-32-109(2) for engaging in a new mining operation without first obtaining a reclamation permit.
  - Issued a Cease and Desist Order for any further mining activities at the site, except those activities, approved by the Division in writing, as necessary to comply with the conditions of this Order, prevent damage to off-site areas, or to protect public health and safety, until the corrective actions set forth herein have been resolved to the satisfaction of the Division and the Board.
  - Imposed Corrective Actions requiring the Operator to, within 30 days of the effective date of the Order, submit a new 110d permit application to incorporate all affected lands, with all materials in an approvable form within statutory timeframes.
  - Imposed a Civil Penalty for 70 days of violation at \$50.00 per day for a total civil penalty of \$3,500.00, with all but \$500.00 of the penalty suspended if the Operator complies with the corrective actions within the time specified. The portion of the civil penalty not suspended, \$500.00, shall be due and payable within 30 days of the effective date of the Order. If the Operator fails to timely complete the corrective actions stated in the Order, the suspended civil penalty of \$3,000.00 will become due and payable within 30 days of the deadline to complete the corrective action.
- April 20, 2022 – DRMS received a 110d permit application from the Operator for the Gunnell Mine, proposing a permit area of 1.38 acres.
- July 13, 2022 – DRMS called the 110d permit application complete/filed for review and sent out the required notices.
- July 26, 2022 – DRMS determined the 110d permit application to be “complex” per Rule 1.1(16), extending the application decision date by 60 days, to October 11, 2022.
- July 28, 2022 – DRMS received comments on the application from History Colorado. DRMS also received an objection on the application from Carl Schembri, expressing concerns about the site survey, land/claim ownership, and legal access to the site.
- July 28, 2022 – DRMS received comments on the application from the Central City Community Development Director, stating that part of the subject property is within city limits and local approvals may be required for access, hauling, grading and excavation, and the use. Additionally, the property does not appear to have access via a public roadway and the proposed “haul route” appears to cross over both public and privately owned properties. If the “haul route” crosses over city-owned property, the Operator must obtain the necessary approvals from the City for access to the site. Additional permits may be required from the

City for hauling, grading, and excavation activities. If any mineral extraction is to take place on property located within city limits, a Conditional Use Permit is required.

- August 1, 2022 – DRMS received comments on the application from Division of Water Resources.
- August 29, 2022 – DRMS issued its preliminary adequacy review letter for the application, identifying a total of 38 adequacy items in the application.
- October 10, 2022 – DRMS approved the Operator's request to extend the application decision date to November 11, 2022.
- November 11, 2022 – DRMS approved the Operator's request to extend the application decision date to December 11, 2022.
- December 12, 2022 – DRMS approved the Operator's request to extend the application decision date to February 28, 2023.
- February 27, 2023 – DRMS approved the Operator's request to extend the application decision date to May 1, 2023.
- May 2, 2023 – DRMS approved the Operator's request to extend the application decision date to June 30, 2023.
- May 18, 2023 – DRMS conducted a pre-operation inspection of the site and found that no additional material had been mined or moved. (Inspection report sent to Operator on June 6, 2023.)
- June 8, 2023 – Operator submitted the unsuspended portion of the civil penalty imposed by the Board for Violation No. MV-2022-004, in the amount of \$500.00. Operator also submitted a signed consent agenda form requesting to modify the corrective action from the March 18, 2022 Board Order to allow for a 112d permit application to be submitted within 90 days. This modification was requested due to the Operator having purchased adjoining properties to address right of entry issues at the site and would allow the Operator to propose a total permit area of 10 acres or more.
- June 21, 2023 – MLRB considered and approved the consent agenda form signed by the Operator.
- July 13, 2023 – DRMS withdrew the 110d application, per the Operator's request.

- October 16, 2023 – MLRB signed a Findings of Fact, Conclusions of Law, and Order which amended its March 18, 2022 Order for Violation No. MV-2022-004. This amended Order included the following:
  - Imposed Corrective Actions requiring the Operator to, within 90 days of the effective date of the Order, submit an appropriate reclamation permit application to incorporate all affected lands, with all materials in an approvable form within statutory timeframes.
- January 14, 2024 – Board-Ordered corrective action deadline from the October 16, 2023 Order; no application was submitted by the Operator.
- February 9, 2024 – DRMS sent notice to the Operator of the civil penalties due for Violation No. MV-2022-004, particularly the suspended portion of the civil penalty in the amount of \$3,000.00, which was due within 30 days of the missed corrective action deadline.
- February 13, 2024 – Board-Ordered deadline for submitting suspended portion of the civil penalty in the amount of \$3,000.00; no civil penalty was submitted by the Operator.
- February 27, 2024 – DRMS sent a Reason to Believe a Violation Exists and Notice of Board Hearing letter to Operator for a possible violation of C.R.S. 34-32-124 for failure to comply with the conditions of an Order. A formal public hearing is scheduled for the April 17-18, 2024 Board meeting for consideration of the possible violation.

**Reason for Violation:**

The Operator has failed to comply with the conditions of the Order issued on March 18, 2022, and amended on October 16, 2023, by not submitting an appropriate reclamation permit application to incorporate all affected lands at the Gunnell Mine. Additionally, the Operator has failed to submit the suspended portion of the civil penalty assessed for Violation No. MV-2022-004, in the amount of \$3,000.00, which was due within 30 days of the missed corrective action deadline.

**STAFF RECOMMENDATIONS**

**Violation:**

- Find the Operator in violation of C.R.S. 34-32-124 for failure to comply with the conditions of an order.

**Cease and Desist Order:**

- Affirm the Cease and Desist Order that was issued by the Board on March 18, 2022 pursuant to C.R.S. 34-32-123(1), prohibiting any further activities at the Gunnell Mine, except those activities approved by the Division, in writing, as necessary to comply with the conditions of a Board Order, prevent damage to off-site areas, complete reclamation,

or to protect public health and safety, until the appropriate permit application has been issued for the affected lands.

**Corrective Action(s):**

- Require the Operator to:
  - 1) Move the super sacks and mining equipment from any lands not owned by the Operator and place them on lands that are owned by the Operator.
  - 2) Grade the disturbed portion of the historic waste rock pile at the Gunnell Mine to a minimum 3H:1V slope configuration for safety, limiting the total disturbance created by this grading work to the current disturbance footprint.
  - 3) Within 90 days of the effective date of the Board Order, submit to the Division sufficient documentation demonstrating these corrective actions have been completed.

**Civil Penalty:**

In its March 18, 2022 Order, the Board imposed a total civil penalty of \$3,500.00 for Violation No. MV-2022-004, with all but \$500.00 of the penalty suspended if the Operator complied with the corrective action within the time specified in the Order. The Operator submitted the \$500.00 unsuspended portion of the civil penalty on June 8, 2023. Because the Operator did not comply with the Board-Ordered corrective action by the deadline specified (in the October 16, 2023 amended Order), the suspended portion of the civil penalty, in the amount of \$3,000.00, is due.

- Require the Operator to submit the suspended portion of the civil penalty imposed by the Board for Violation No. MV-2022-004, in the amount of \$3,000.00, within 30 days of the effective date of the Board Order.

**Operator’s Notarized Signature:**

As an authorized representative of the Operator, I hereby attest that the Operator voluntarily consents to the above described violation and agrees to comply with the Cease and Desist Order, Corrective Actions, and Civil Penalty proposed in this STAFF SUMMARY FORM FOR CONSENT AGENDA ITEMS.

Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_ Jack D. Tabb, LLC \_\_\_\_\_  
(Operator)

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024,

by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ Jack D. Tabb, LLC \_\_\_\_\_.  
(name) (title)

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**PLEASE PRINT CLEARLY  
SIGNATURES MUST BE IN BLUE INK**