

STATE OF
COLORADO

Lennberg - DNR, Patrick <patrick.lennberg@state.co.us>

Kirtright Pit Reclamation Plans, An Owner's Viewpoint

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To: "Lennberg - DNR, Patrick" <patrick.lennberg@state.co.us>

Cc: Kent Naughton <knaughton@witwerlaw.com>, Daniel Giroux <DanGiroux@terramax.us>

Patrick, I know Coulsons are due today to submit a revised reclamation plan for the Kirtright Pit. Attached is a summary of my concerns, as things stand before their documentation is posted.

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6-10-2024 Response to DRMS by LDOB.docx

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LETTER TO DRMS REGARDING RECLAMATION OF THE KIRTRIGHT PIT

Version: 6-10-2024, by Linda O'Brien

BACKGROUND

On September 20, 2023, I attended a hearing before the DRMS Board where the Board found that Coulsons had mined outside of their pit boundaries, imposed a penalty of \$200,000 (with all but \$4,783.20 suspended), and ordered Coulsons to submit a proposed permit amendment that only updated the reclamation plan. Coulsons did not submit any proposed amendment until February 27, 2024, nearly five months after the DRMS Board Hearing. And even though Coulsons are experienced operators of a large mining company, both their first proposed amendment application and their second proposal (submitted May 6, 2024) failed to comply with various DRMS rules and regulations as indicated by two different incompleteness notices that DRMS had to send out. As a result, it has been well over eight months since the DRMS Board Hearing, and Coulsons still have not submitted anything that can be considered a complete amendment application, and Coulsons still have not complied with the Board's order.

As I understand it, since their application is not considered filed yet, Coulsons should be submitting revisions following DRMS's Second Incompleteness Notice and no deadline for objections has even been established yet. But since my home basically sits in the middle of the Kirtright Pit, I write to try to express my frustrations with the lack of progress and to try to explain the impact of Coulsons' actions upon our family. But since more revisions are coming, I reserve the right to amend and supplement the following objections and comments.

EXPECTATIONS OF LAND OWNERS FOR FINISHING THE KIRTRIGHT PIT

As a homeowner and owner of the O'Brien part of the Kirtright Pit, I am relying on DRMS and Larimer County to adequately oversee the revised reclamation plan. As with all property owners, we need to feel safe from routine flooding and be able to use the property as promised in the original plan for pasture and wildlife (not the newly introduced industrial/commercial). But the land engineer I have had to hire is not convinced the current plan will keep routine, damaging floodwaters from infiltrating the O'Brien property.

HISTORY OF RECENT FRUSTRATIONS WITH THE KIRTRIGHT PIT

For a few years now, I have been very frustrated with Coulsons' responses when I have tried to express my concerns and requests regarding flooding and the state of reclamation on my property. I was never taken seriously by Coulsons, so I hired an expert land engineer and an attorney, both at my own expense, to try to explain my concerns better. An investigation report by Brock Bowles from DRMS in spring of 2022 pressed upon Coulsons to get right-of-entry forms from the land owners and submit new leases for each parcel within the permit boundary by June 20, 2022. Yet until very recently, Coulsons have shown extremely little willingness to talk with me.

In February, 2023, Dick Coulson left me a phone message stating, "We have nothing to talk about." It was only when I agreed to meet with Coulsons... without my representatives... that they hosted a meeting to update me. We had a second meeting in September, 2023, when my land engineer, Dan Giroux, and I met Dick without my attorney (at Dick's insistence). But Dick was quite uninformed about the Kirtright Pit. He falsely told us that the Kirtright Pit encompassed all of the Kirtright/O'Brien acreage. Dick didn't even know Patrick Lennberg's name. He also claimed to be unaware of issues with Larimer County Engineering. Nothing ever came of those meetings with Coulsons and much of what was shared turned out to be unworkable.

In April, 2023, Kirtright dug a ditch 8-10 feet deep that ran from a pond north of the Kirtright house to the boundary of the O'Brien property. I called Ken Coulson that April morning when this ditch was being dug, and Ken said he knew nothing about Randy's digging, but he dismissed my fears of flooding, saying our property would not flood. Ken said he would fix the problem, but he never did. The ditch is still there today. Later, in May of 2023, Dick Coulson and an employee that he introduced as Lonnie stopped to talk to me. During this conversation, Lonnie mentioned that he had been working with large equipment on this ditch in an effort to drain water from the pond north of the Kirtright house onto my property! I do not think there is any justifiable reason for Coulsons to be doing this. In addition, Kenny was wrong about the flooding. About a month later, in June of 2023, the river flooded, and I still have a lot of water on my property to this day that has never fully receded after that flood. One area very close to my house, remains very marshy with large patches that are mudflats. It is effectively a big, unpleasant mosquito breeding area.

In addition, Coulsons seem to be cooperating with Randy Kirtright's plans to build an unauthorized new home on Randy's east property within the Pit. In two 2022 DRMS investigation reports, Coulsons were notified that their piling of over 25 dump truck loads of

apparent topsoil was inconsistent with their reclamation plan and thus needed to be either removed or spread out, incorporated into the soil, and revegetated consistent with the reclamation plan. Yet Coulsons never complied, and instead they added six more dump truck loads in the same area. They appear to be allowing Kirtright to use this topsoil in connection with his plans to build a house for which he has no permit. The County has never approved the building of this new home, and recently Larimer County Engineering reiterated this fact to the builder who contacted them about proceeding with the construction.

ISSUES WITH CURRENT RECLAMATION PLAN (Not Recognized by DRMS in Incomplete Notices)

Current Bond Amount is Inadequate

It is clear that the current bond for finishing the Kirtright Pit is far below what it needs to be. Even the estimate in the May 6th document by Coulsons shows over \$81,000 to execute the current plan. That is significantly greater than the current bond. It is not at all clear at this point that Coulsons will ever be able to mine the Stroh Pit as they apparently plan to do. If the Stroh Pit doesn't happen, they will need to move dirt from Coulson land somewhere else. And if the Reclamation Plan takes longer than expected, Coulsons could try to walk away from the Kirtright Pit as Kenny Coulson had threatened to do already with at least two other outsiders. And what if Coulsons abandon their Coulson Ex business due to financial reasons?

Stroh Pit Mining Plan Has No Agreement with O'Briens

It has recently come to my attention that Coulsons' current plans to mine the Stroh pit rely upon a false assumption that they can use my property to do so. A map attached to the Coulsons' latest response to DRMS's Incompleteness Notice shows a conveyor from the Stroh pit on O'Brien land and a "Pit Run Stockpile from Stroh Pit for Loadout" on O'Brien land. I do not believe Coulsons have any right to do what they are telling DRMS that they are going to do. The O'Briens have never approved or signed any contracts giving Coulsons the right to install conveyor equipment across O'Brien property or use O'Brien property to store and truck materials from the Kirtright Pit. We also are not in favor of fuel tanks being placed within the flood plain or of significantly increased truck traffic on our property.

Yet Coulsons most recent submittals to DRMS are entirely dependent upon their apparent plans to operate the Stroh pit for the next seven years as indicated in the map they submitted.

Coulsons Want Seven Years to Finish Kirtright Pit

This is unacceptable. We disagree that it should take seven years for Coulsons to protect O'Brien property with the new plan. That would be seven springs and seven autumns when the Big Thompson could flood, and we can get torrential rains. When they want to, Coulsons can move quickly. Coulsons filled one pond on Kirtright property within two months in the spring of 2023. They can use plenty of dirt and gravel one mile away to the west. The original contract with Virgil Kirtright was signed in 1986. Thus it has been nearly 40 years and Coulsons have still not finished reclamation on O'Brien property, even though annual reports show that mining ended in 2008. The DRMS regulations require completing the pit within five years of the end of mining, but it has now been seventeen years since the end of mining.

Coulsons Want to Expand the Pit Boundaries to 111 acres from the Original 80 Acres

This is only to accommodate the use of the Stroh Pit for finishing the Kirtright reclamation.

Sixteen Acres in the SW Corner Are Not Pre-1981 Status

The statements about the current state of the 16 acres in the SW part of the Kirtright Pit being similar to pre-1981 levels just isn't true. These ponds were excavated, leveled and completely filled in in the spring of 2023, by Coulson employees for the purpose of filling in the pond north of the Kirtright house. Division of Water Resources have in the past said owners forfeit their pre-1981 benefits if the ponds are disrupted. And these ponds can spawn dangerous mosquito breeding.

Coulsons Need to Finish the O'Brien Property Reclamation First Before the Kirtright Property

We recommend that the work be finished on O'Brien property before they work on Kirtright-owned land, and a partial release can be made to the Coulsons for that work.

After working on Kirtright property for months, and not finishing it, it is time to restore the O'Brien property.

COULSON MANAGEMENT CANNOT BE TRUSTED TO COMPLY WITH REQUIREMENTS

If you would have asked me five years ago that I'd be writing such a letter about Coulson Excavating, I would not have believed it. I always trusted Dick Coulson and thought a lot of their employees. Since management has changed, I believe the corporate values have changed. I have learned that Kenny Coulson does not keep his word, and the company under his leadership does not seem to be able to competently comply with DRMS and DWR regulation requirements. As an example, as discussed above, DRMS has had to send Coulsons two Incompleteness Notices highlighting numerous issues, because Coulsons disregarded DRMS rules and important parts of the Board's Orders.

When Coulsons worked on the area north of the Kirtright house, Kenny admitted to me that he had no idea how much effort it would take to fill in that smaller pond than the one north of the O'Brien home, and that it took much longer than he planned. There were at times 6-8 large pieces of equipment and numerous employees deployed, and for many weeks, into months. Therefore, I have no confidence in the viability of their estimate of what it will take to execute the revised reclamation plan of the Kirtright Pit.