

July 11, 2024

**RE: Recommendation to Approve a 112c Permit Application with Objections;
W.W. Clyde & Co.; Bernhardt Sand and Gravel Pit;
File No. M-2023-025**

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (Division) hereby issues its recommendation to approve the 112c permit application (Application) for the Bernhardt Sand and Gravel Pit, File No. M-2023-025, submitted by W.W. Clyde & Co. (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 July 11, 2024, 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 groups them into the following three categories:

- 1) Notification Process
- 2) Impacts on Wildlife
- 3) Impacts to the Prevailing Hydrologic Balance

The Division's Rationale provides a full and thorough analysis of the three 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 Electronic Documents (Laserfiche Weblink) then entering the file number "M2023025" 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 Bernhardt Sand and Gravel Pit application.

The Formal Board Hearing is scheduled to occur during the August 21-22, 2024 Board meeting, beginning at 9:00 a.m. on August 21st, or as soon thereafter as the matter can be considered. Pursuant to Rule 2.7.1(5), the Pre-hearing Conference will be held after the Office has issued its written recommendation and at least 10 calendar days prior to the Formal Board Hearing. Additional details on the Pre-hearing Conference (once it is scheduled) and the Board Hearing will be provided under separate cover.



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If you have any questions, you may contact me by telephone at 720-601-2276 or by email at rob.zuber@state.co.us.

Sincerely,



Rob Zuber, P.E.

Environmental Protection Specialist

Encls: Rationale for Recommendation to Approve a 112c Permit Application with Objections, W.W. Clyde & Co., Bernhardt Sand and Gravel Pit, File No. M-2023-025, dated July 11, 2024

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

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July 11, 2024

**RE: Rationale for Recommendation to Approve a 112c Permit Application with Objections,
W.W. Clyde & Co., Bernhardt Sand and Gravel Pit, File No. M-2023-025**

Introduction

On July 11, 2024, the Division of Reclamation, Mining and Safety (Division or Office) issued its recommendation to approve, over objections, the permit application for the Bernhardt Sand and Gravel Pit, File No. M-2023-025 (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. 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

IHC Scott, Inc. filed the Application with the Division on September 14, 2023. Subsequently, the name of the applicant was changed to W.W. Clyde & Co. (Applicant) via Succession of Operators action SO-01, issued on November 21, 2023. The Application is for a proposed permit area of 111.01 acres located in Weld County, with approximately 98 acres of primary disturbance, including an extraction area and an on-site processing area with wash ponds. The Application describes a sand and gravel mining operation which will ultimately develop one large excavation area that will, after reclamation, be a lined water storage reservoir with grass embankments. The reservoir will be lined with a slurry wall.

The Division requires a financial warranty in the amount of \$3,550,146.00 to address the cost of reclamation. The affected lands will be reclaimed to support a post-mining land use of developed water resources.

A technical review team composed of four Division staff members reviewed the Application for adequacy. During the review period, the Application decision date was extended seven 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 a newspaper of general circulation in the locality of the proposed mining operation, namely the Johnstown Breeze. Per Rule 1.7.1(2)(a), the public comment period closed

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>.



twenty calendar days after the last date for the newspaper publication, on November 8, 2023. During this period, the Division received a total of five timely objection letters on the Application (from six objecting parties) and three agency comments from Colorado Parks and Wildlife (CPW), History Colorado, and the Division of Water Resources (DWR). One untimely objection was also received. The Division forwarded copies of all timely objections and comments to the Applicant in accordance with Rule 1.7.1(3). The full list of commenting individuals and agencies is attached as Appendix A.

The Division has scheduled the Application for consideration by the Mined Land Reclamation Board (Board), to occur during the August 21 and 22, 2024 Board meeting. Pursuant to Rule 2.7.1(5), the Pre-hearing Conference will be held after the Office has issued its written recommendation and at least 10 calendar days prior to the Formal Board Hearing. 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 four adequacy review letters enumerating all adequacy issues for the Application. The Applicant addressed all adequacy items to the Division's satisfaction. Therefore, on July 11, 2024, 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 made this document available to the public through the Division's website.

Jurisdictional Issues

The jurisdictional issues raised by objecting parties have been grouped into three broad categories, including: Notification Process, Impacts on Wildlife, and Impacts to the Prevailing Hydrologic Balance.

The categories are listed below in bold font. Under each category, specific concerns are summarized in underlined text, with the last name of the party or parties that raised that concern in parentheses. Further description of each concern is provided in italic font. The Division's response follows the issues in standard font.

1. Notification Process

A. Concerns that nearby landowners were not given sufficient notice of the proposed operation (Gochis, Janeczko, Kasten, Stroh, Currier, Ladd):

- I am disappointed [the Applicant] has never reached out to me regarding this project.*
- I received no notice of any kind from the State on this proposal.*
- Very concerned that the lack of any kind of communication with a direct neighboring landowner on this proposal has been so staggering.*
- We were initially sent a letter from the Town of Milliken stating there was a meeting that was going to be held concerning the gravel pit proposal. We were never contacted again after that initial letter until I received a letter from [the Applicant] stating we could view the entire*

permit application at the Weld County Clerk to the Board or the DRMS office. If we had been contacted previously to this last letter, we wouldn't have as many questions/concerns as we do now.

- *I just learned of the proposed mining operation yesterday, and I am shocked by the lack of disclosure required to affected landowners at the time the permit application was first filed.*

The required public notice procedures for a permit application are described in Rule 1.6 and C.R.S 34-32.5-112(9).

Rules 1.6.2(1)(d) and 1.6.5(1) and C.R.S 34-32.5-112(9)(b) require the Applicant to publish a public notice in a newspaper of general circulation in the locality of the proposed mining operation four times, once a week for four consecutive weeks. After the Application was filed for review, the Applicant published a public notice in the Johnstown Breeze on four dates in 2023: September 28, October 5, October 12, and October 19. This notice was found to be in compliance with the rules. (Please see Appendix C for the affidavit related to this publication.) The public comment period for the Application began upon the date of filing, September 14, 2023. Per Rule 1.7.1(2)(a), the public comment period for a 112c permit application closes 20 calendar days after the last date of the newspaper publication, which in this case was November 8, 2023. Therefore, the public comment period for the Application lasted for a total of 55 days.

Rule 1.6.2(1)(e) and C.R.S 34-32.5-112(9)(c) require the Applicant to mail or personally serve a copy of the public notice (described above) to all Owners of Record of the surface and mineral rights of the affected land and the Owners of Record of all land surface within 200 feet of the boundary of the proposed affected lands. The Applicant demonstrated that all applicable Owners of Record received a copy of the public notice in accordance with this requirement, including the following surface owners (and right-of-way/easement owners) within 200 feet of the proposed affected land boundary:

- Chevron Pipeline & Power
- Cureton Midstream
- DCP Midstream
- Halflight Land & Minerals, LLC
- Hidden Platte Ranch, LLC
- Kerr-McGee Oil & Gas Onshore, LP
- Ms. Cheryl Kasten, Ms. Karen Currier, and Ms. Carlene Stroh
- Noble Energy
- PDC Energy
- Public Service Company of Colorado
- Union Pacific Railroad

Rule 1.6.2(1)(b) requires the Applicant to post notices (signs) at the location of the proposed mine site prior to submitting the application to the Office for a 112 Reclamation Permit, then to provide a signed affidavit with the application that such notices (signs) were posted according to the provisions of this rule. The Applicant posted the public notice at the proposed mine site in accordance with this rule and provided a signed affidavit with the Application attesting to such. The Division observed a public notice sign posted at the proposed site entrance off County Road 46 during its pre-operation inspection conducted on

November 9, 2023. (Please see Appendix B for a Division photograph of this sign.) The sign was found to be in compliance with Rule 1.6.2(1)(b).

Rule 1.6.2(1)(c) and C.R.S 34-32.5-112(9)(a) require the Applicant to place for public review a copy of the application with the Clerk or Recorder of the county or counties in which the affected land is located and provide proof as required by Rule 6.4.18 for 112 Reclamation Operations. The Applicant provided proof that a copy of the Application was placed with the Weld County Clerk and Recorder for public review in accordance with this requirement.

Once an application is considered filed for review, the Division sends notice of the application to various local, state, and federal agencies. The Act and Rules do not require the Division to send notice to adjacent landowners of a proposed mining operation. However, this notice is a requirement for the Applicant, as stated above. The Division sent out all required notices on September 14, 2023, the date the Application was filed for review. As mentioned above, three of the agencies notified provided comments on the Application. All Application materials have been available for public review on the Division's website at <https://dnrweblink.state.co.us/drms/search.aspx> since the Application was received on August 3, 2023.

The Division determined that all notice requirements for the Application were complied with.

It should be noted that the Applicant has reached out to objecting parties multiple times throughout the Application review period to address their concerns and to answer any additional questions about the proposed operation. The primary correspondences were added to the permit file.

2. Impacts on Wildlife

A. Concerns regarding impacts to wildlife, wildlife habitat, and wildlife migration corridors (Janeczko, Kasten, Stroh, Currier, Ladd):

- *An eagle's nest is located approximately 1,300 feet from the north boundary of their "cell 4"; this nest could be abandoned due to the operation of the facility (truck traffic, dust, and noise).*
- *I am very saddened that the beautiful and productive Phelps farm which over the years also protected (and provided forage for) the wildlife is being turned into a huge sand and gravel pit. There just aren't very many places left for the mule deer, whitetails, and numerous other critters as well as waterfowl to be safe along the river corridor in this area.*
- *The South Platte River in this area is a place where turkeys, deer, and other wildlife migrate to. There are deer trails all over our property going to the former Bernhardt property to get to the South Platte River (especially under the railroad trestle). The proposed gravel pit will greatly impact the wildlife in this area.*
- *What would be the impacts on wildlife habitat and migration?*

Disturbance to wildlife is likely with any significant mining activity, and the proposed Bernhardt Sand and Gravel Pit is no exception. Impacts on wildlife from the proposed operation could include temporary elimination of potential habitat within the affected lands and temporary localized displacement associated

with additional noise and lighting from the proposed operation. The wildlife requirements for a 112c permit application are described in Rules 3.1.8 and 6.4.8.

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.

Pursuant to Rule 6.4.8, the Application shall include a description of the game and non-game resources on and in the vicinity of the application area, including:

- a) a description of the significant wildlife resources on the affected land;
- b) seasonal use of the area;
- c) the presence and estimated population of threatened or endangered species from either federal or state lists; and
- d) 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 Application included a Wildlife Information exhibit (Exhibit H) and a “Screening Report for Federal-State Listed Threatened and Endangered Species and General Wildlife for Bernhardt Site, Weld County, Colorado” prepared by Ecological Resource Consultants, LLC (ERC), dated February 3, 2023.

ERC analyzed the site to identify potential federal and state listed threatened and endangered species and/or habitat that could exist on or immediately surrounding the survey area. In addition, their report provided a cursory screening of general wildlife use characteristics and existing vegetation community types. The ERC report was prepared in accordance with the Migratory Bird Treaty Act (MBTA), Endangered Species Act (ESA), Colorado Parks and Wildlife (CPW), Colorado Statute Title 33, and Rule 6.4.8 of the Construction Materials Rules of the Colorado Mined Land Reclamation Board Exhibit H – Wildlife Information. Key items identified as part of the ERC report included:

- 1) Two primary land use class/vegetation cover types exist within the survey area. Habitat within the survey area is characterized as the Great Plains Ruderal Grassland and Shrubland (98%) and disturbed (2%). Historic land use for agricultural practices has led to degradation of the native vegetation community.

- 2) Generally, there are features on the survey area and the surrounding area that provide general habitat for local songbirds, raptors, and small to mid-size mammals. However, habitat within the survey area is somewhat degraded and of lower ecological value from a wildlife perspective due to historic and current land use for agriculture, which has restricted overall growth and establishment of vegetation. The South Platte River, and adjacent eastern cottonwood floodplain and woodland, provides suitable habitat for wildlife species and MBTA species. The South Platte River and associated vegetative community will not be impacted by the proposed project.
- 3) Non-Raptor Birds - No non-raptor migratory bird nests were observed within the survey area. However, prior to vegetation removal, a nest survey should be completed to ensure that no nests have become established within the survey area and active nests, if any, are not disturbed.

Non-Eagle Raptors – No non-eagle raptor nests were observed, and no CPW mapped non-eagle raptor nest protection zones are located within the survey area. However, nest activity status can vary seasonally and from year-to-year. Future land use changes may require additional nest surveys (generally between February 1 and September 15) to determine activity status within ½ to ¼ mile of the survey area to ensure compliance with CPW recommendations.

Eagles – CPW SAM data (species activity mapping) identifies a bald eagle nest listed as “destroyed” being directly northeast of the survey area. Per CPW monitoring logs, the eagle nest has been inactive from 2019-2021, and destroyed in 2022. A field visit by ERC on January 25, 2023 confirmed the identified nest no longer exists and the nest area is no longer being utilized with no efforts by eagles to rebuild the nest. Therefore, the nest site and the survey area are not subject to restriction per CPW protective buffer zone recommendations or USFWS Bald Eagle Protection Act.

- 4) No federally listed threatened and endangered species and/or habitat protected under the ESA were identified within the survey area. The survey area is not within designated critical habitat of any federally listed species. The vegetation community and features within the survey area were investigated as potential habitat for federally listed species. Any future land use changes will result in No Take on any federal listed species, their habitats, or proposed or designated critical habitat.
- 5) No State listed threatened or endangered species and/or habitat protected by CPW under Colorado Statute Title 33 were identified within the survey area. The vegetation communities within the survey area were investigated as potential habitat for state listed species. Any future land use changes will have no effect on any state listed species, their habitats, or proposed or designated critical habitat.

ERC also provided a Technical Memorandum titled “Bald Eagle Nest Evaluation – Bernhardt Property, Weld County, Colorado”, dated February 3, 2023, summarizing the findings of the bald eagle nest site evaluation and the interpreted applicable regulations, enforcements and potential restrictions that may be subject to the proposed Bernhardt Sand and Gravel Pit due to the nest site. This evaluation included the following conclusions:

- CPW recommended guidelines only consider a nest active when it is “frequented or occupied by a raptor during the breeding season, or which has been occupied in any of the five previous breeding seasons”. Information regarding destroyed nests is not available within the CPW recommended guidelines.
- The nest site adjacent to the project area is considered destroyed and inactive as there has been no nesting activity for 5 consecutive breeding seasons (2019, 2020, 2021, 2022, 2023). Therefore, neither the nest site nor the project area is subject to CPW recommended protective buffer zones.
- In review of the USFWS 2007 Bald Eagle Guidelines, the guidelines state that a bald eagle nest site is also considered not active if not used or occupied during the 5 previous breeding seasons. In addition, the guidelines state where “nests are blown from trees or are otherwise destroyed by the elements, a nest site should be continually protected in the absence of a nest for up to 3 complete breeding seasons to ensure that eagles do not rebuild and reoccupy a nest site.”
- Taking into consideration that the nest site has not been active for the past 5 breeding seasons and has recently been destroyed, these additional monitoring years do not apply. Therefore, the nest site and the project area are not subject to USFWS restrictions for activities within the project area.
- Based on this evaluation, the nest site (identified NE of the proposed permit area) is considered inactive and destroyed and therefore, the project area is not subject to any bald eagle related restrictions from the USFWS or the CPW.

On September 21, 2023, Colorado Parks and Wildlife (CPW) provided comments on the Application, including the following recommendations:

- If prairie dogs are present or become present within any of the project boundaries and initial construction occurs from March 15 to October 31, then please complete a burrowing owl survey per CPW recommendations.
- If initial construction is slated for the spring and summer, please incorporate active raptor nest buffers and avoidance periods.
- Be aware of the Migratory Bird Treaty Act. Removal or disturbance of any migratory bird nest would require consultation with CPW and USFWS prior to disturbance.
- Mule Deer Severe Winter Range, Mule Deer Winter Concentration Areas, and Mule Deer Migration Corridor are all mapped High Priority Habitats (HPHs) within the project boundaries. Because of this, CPW recommends that construction not occur in winter and spring and that no human activities be authorized from December 1 to April 30 during the construction phase.
- If fencing is erected at the site, either during or after the project, it should be the type that would allow the free passage of wildlife. Fencing plans should avoid the use of woven wire type fences that will trap or prevent the movement of wildlife. CPW recommends using three or four-strand smooth-wire fencing with a bottom strand height of 17 inches above ground level and a

maximum top strand height of 42 inches above ground level, along with the installation of double stays between posts. Follow CPW's "Fencing with Wildlife in Mind" brochure.

- Develop a noxious weed management plan prior to initiating construction activities. It is critically important that the site be restored back to the native plant community that currently exists on site.
- If tree and/or shrub removal will occur, trees and shrubs should be replaced at a 3:1 ratio. If onsite mitigation of trees and shrubs cannot be achieved onsite, CPW would like to coordinate off-site mitigation for those losses.
- During open pit or open trench mining operations, CPW recommends backfilling escape ramps in areas where steep slopes occur. Escape ramps will allow wildlife to safely exit an open pit or trench if they become entrapped.
- Ponds created by reclamation efforts should be designed to include irregular shorelines and one or more islands to provide cover, shelter, and nesting areas for migratory birds. Pond shoreline and island slopes should be graded to a ratio of 4H:1V, with some areas having slopes no steeper than 8H:1V. Such shallow areas will allow for the establishment of a variety of aquatic vegetation and invertebrate prey for waterfowl and shorebirds. Shorelines should be re-vegetated with native aquatic vegetation.
- Because there are sensitive aquatic native species (fish and amphibians) located within the South Platte River, CPW recommends no surface occupancy and no ground disturbance (year-round) within 500 feet of the ordinary high-water mark of the South Platte River.
- The operation should implement appropriate stormwater BMPs.

On December 1, 2023, ERC provided the following responses to CPW's recommendations (submitted with the Applicant's first adequacy response, received on April 8, 2024):

- ERC did not identify any prairie dogs or burrowing owl habitat within the permit area, therefore no burrowing owl survey is required, and operations will not be restricted by seasonal closures.
- ERC did not identify any raptor nests (active or inactive) within CPW recommended buffers from the permit area. A documented destroyed eagle nest was confirmed and is not considered active. Therefore, the permit area is not subject to CPW recommended raptor buffers and timing limitation. Active non-raptor migratory bird nests will not be disturbed.
- No new fencing is proposed as part of the project. Existing fencing will remain. Any future new fencing will consider CPW recommended guidelines where appropriate.
- A weed management plan will be developed and provided as part of Application Exhibit J.
- Reclamation seeding will incorporate native species as part of Exhibit F2.

- The permit area does not contain trees/shrubs that will be disturbed. Therefore, no replacement compensation is required or proposed.
- During open pit operations side slopes will be initially cut to a maximum slope of 2H:1V and reclaimed to 4.5H:1V. In addition, operations will always maintain a minimum of one equipment access ramp typically no steeper than 5H:1V. These measures will provide adequate escape routes for any wildlife entering the pit.
- The proposed post-mining use is not intended as wildlife habitat, but rather defined as water storage. The shoreline perimeter does incorporate some level of variability. Creation of islands within the water surface area is not considered appropriate for this project.
- Standard stormwater BMPs will be employed and routinely inspected/maintained in accordance with permits to protect water quality in the South Platte River.
- Plans will be revised to maintain a 400-foot no disturbance buffer from the ordinary high water mark of the South Platte River. The distance of 400 feet has been considered adequate for this project per DRMS comments.
- Per CPW recommendations, no initial (first year of construction and vegetation removal) ground disturbance will occur between December 1 to April 30.
- Year-around operations will commence after the initial year.
- A 400-foot riparian corridor (400 feet from the ordinary high water mark of the South Platte River) will be maintained to preserve a migration corridor along the South Platte River.

In its fourth adequacy response, received by the Division on June 21, 2024, the Applicant expanded on their previous commitment to conduct a raptor survey prior to mobilization of earth-moving equipment or excavation at the site and submitting the results to the Division as a Technical Revision 30 days prior to mobilization of earth-moving equipment or excavation. Based on the results of the raptor survey, the Applicant will coordinate with CPW and update the Mining Plan as appropriate to comply with any recommendations to limit wildlife impacts.

The Applicant will implement the following measures to avoid, minimize, and mitigate potential adverse impacts to wildlife from the proposed operation:

- Mining in pre-disturbed areas – Mining will predominantly occur in areas previously disturbed by human activities, primarily by agriculture and roads.
- Reclamation to enhance habitat – The final reclamation of much of the site will be a reservoir. The design includes some irregular shorelines to further enhance habitat. Disturbed areas around the reservoir will be reclaimed with native grasses, which will also enhance habitat relative to the existing agricultural uses of the land.

- Riparian setbacks – The project will avoid fragmenting riparian corridors and cottonwood trees, and other species along the terraces by the rivers will be preserved. In addition, the Applicant has agreed to maintaining a mining setback of 400 feet from the riverbank, further protecting the riparian corridor.
- Stormwater management – The Applicant will implement Best Management Practices (BMPs), as necessary, to protect water quality in the river. BMPs will be routinely inspected and maintained.
- No impact on wetlands – The small wetlands identified along the southern and southeastern edges of the proposed permit area will not be disturbed per the mining and reclamation plans.
- Dust impacts – These impacts will be regulated by the Colorado Department of Public Health and Environment (CDPHE), Air Pollution Control Division (APCD).
- Fencing – The Applicant does not propose new fencing. If fencing is added, wildlife friendly fencing will be used.
- Wildlife egress – During mining, pit slopes will have flatter portions that allow wildlife to “escape.” For reclamation, the reservoir slopes will be graded to 4.5H:1V.
- Weed control – All disturbed and non-disturbed lands within the permit area will be routinely inspected and maintained to prevent the establishment and spread of noxious weeds.

The Applicant committed to following all applicable recommendations provided by the ERC evaluation and CPW to consider the safety and protection of wildlife on the mine site per Rule 3.1.8(1).

Habitat management and creation is not a significant part of the proposed reclamation plan, as the primary post-mining land use is for developed water resources. Therefore, Rule 3.1.8(2) is not applicable to this Application. However, the Applicant has stated the reclaimed reservoir will create more opportunity for waterfowl in the area.

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.

3. Impacts to the Prevailing Hydrologic Balance

Rule 3.1.6(1) requires 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 be minimized.

Rule 6.4.7(2)(c) requires the Applicant to submit a plan showing how water from de-watering operations or from runoff from disturbed areas, piled material and operating surfaces will be managed to protect

against pollution of either surface or groundwater (and, where applicable, control pollution in a manner that is consistent with water quality discharge permits), both during and after the operation.

The Application included text in Exhibits D, E, and G; a site-specific groundwater evaluation conducted by McGrane Water Engineering, LLC (dated May 31, 2023); and a groundwater monitoring plan that describe the existing surface and groundwater systems at the site and how the proposed operation will minimize disturbance to those systems.

The following general measures for protecting the hydrologic balance are discussed in the Application:

- The pit will be lined (with a slurry wall) to minimize impacts to the hydrologic system, including the alluvial aquifers along the South Platte River.
- The operation was designed to avoid riparian corridors, and a 400-foot mining setback from the river will be maintained by the operation. This will protect the riverbanks, limiting the risk of “capture” of the river by the mined pit. The distance of 400 feet has been adopted by the Division and is discussed in its guidance document “Floodplain Protection Standards for Sand and Gravel Pits Adjacent to Rivers and Perennial Streams.” This document was issued in February 2024, but the substance of this guidance document was applied throughout the review of this Application.
- A portion of the site is within the 100-year floodplain. The Division understands that the project will be evaluated by Weld County for floodplain impacts. Additionally, a floodplain permit may be required by the Town of Milliken. Per the Division’s floodplain guidance (mentioned above), mining operations located within the floodplain are provided three options: 1) commit to maintaining a 400-foot buffer from the adjacent river, 2) provide detailed designs for pit side and/or river side bank protection and inlet/outlet structures for the final pit/reservoir (which would allow for a reduced river buffer), or 3) provide a detailed analysis of the 100-year flow in the river during the worst-case conditions of the proposed mining and reclamation scenarios which sufficiently demonstrates the proposed pit banks during mining and after reclamation will not be significantly eroded by the flood event. In this case, the Applicant committed to maintaining a 400-foot buffer from the river.
- The operation was designed to prevent runoff from rainfall and snowmelt events from causing erosion or loading sediment into the river. In the pit area, runoff will remain in the pit until pumped to a sediment pond designed to allow sediment to settle prior to discharge of the water to the South Platte River (under a CDPS permit).
- Soil stockpiles will be stabilized with temporary seeding and other practices to prevent erosion and sediment loading to adjacent lands.
- Prior to long-term vegetation establishment, reclaimed areas will be stabilized with initial cover crops (hybrid grasses), swales, roughening, organic additives, and other practices.

- Regarding exposed groundwater and water rights, the Applicant has committed to obtaining a well permit and a Substitute Water Supply Plan with the Division of Water Resources (DWR) before excavation reaches the groundwater table.
- Per Rule 6.4.7(5), the Applicant has stated that a CDPS permit will be obtained from the Water Quality Control Division (WQCD) at the Colorado Department of Public Health & Environment prior to discharging any water from the site. This permit will be kept current and amended as necessary to ensure that any water discharged from the site will comply with Colorado water quality laws and regulations, as required by Rule 3.1.6(1)(b).
- The U.S. Army Corps of Engineers (USACE) was contacted by the Applicant regarding the proposed project and asked for an Approved Jurisdictional Determination regarding the need for a Section 404 Permit. The USACE determined that the project site does not contain waters of the United States, and, therefore, a permit is not required for the discharge of dredged or fill material onto the site (per letter dated October 19, 2023). The three small wetland areas identified along the southern and southeastern edges of the proposed permit area will not be disturbed by the operation based on the proposed mining and reclamation plans.

A. Concerns regarding flooding (Gochis, Janeczko, Kasten, Stroh, Currier, Ladd):

- *Historically during flood events, water has flowed through my property and into the proposed mining property. In recent years, it appears that a berm up to 10 feet in height in places has been constructed on the west side of the mining property. This will protect the mining property to the detriment of my property and surrounding properties since the farmland historically used to accommodate flood volumes will no longer be available.*
- *I think the building of the berm that let the water flow across the mining property, and the fact that the old canal along the property line has been filled with trees and other debris that could lead to a high water situation that could be detrimental to not only my property but to the surrounding properties as well.*
- *Approximately 95% of the mining site is in the floodplain. How will the mining and reservoir affect the floodplain and flooding on my property?*
- *Will the reservoir have a structure to control flows into the reservoir during flood events?*
- *If there is any type of berm, retaining wall or other structure being built on the west side of this mine it most likely will streamline the flow of the channel against the north side of the riverbank (on my property) thereby enhancing the likelihood of a major breach of the existing berms and consequent flooding of my land.*
- *Putting up a berm around the proposed gravel pit will cause flooding on our property, especially during heavy rains.*
- *If there is a berm in place, how can the water drain back into the South Platte River from our property?*
- *Putting in a reservoir will cause flooding on our property.*
- *In the event of another flood, where does the overflow of the water from this reservoir go to? On our property? How are you going to keep the water/erosion from the reservoir from seeping under the railroad trestle onto our property? There is a natural ravine under the railroad trestle on our side. Putting in a reservoir does not make sense to us.*

- *My land lies along the South Platte River, on both banks of the river. Flood water is a major concern, based on the events of 2013, and elevated water flows this past summer.*
- *Floodwater management is a major concern, because the proposed mine is located directly within the flood plain. The mine would have a damming effect on flood waters, which could significantly raise water levels immediately upstream.*

The proposed mining and reclamation operations will be conducted in a manner that does not cause flooding issues for surrounding landowners. In addition to the measures for protecting the hydrologic balance mentioned above (including the Applicant's commitment to maintain a 400-foot mining buffer from the riverbank), the project plan includes the following:

- No berms or walls are proposed for the operation.
- The reservoir will be constructed below the existing topography and will not cause flooding.
- Water leaving the site will be controlled per the CDPS permit (obtained from CDPHE).
- After reclamation, a riprap rundown will be constructed on the southwestern slope of the final reservoir to facilitate flow of runoff from the west side of the site into the reservoir.
- The reclaimed reservoir will provide water storage after reclamation.

The Division determined that 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 Rule 3.1.6.

Additionally, the Application addressed all requirements of Rule 6.4.7 (Exhibit G) regarding the identification and protection of hydrologic resources, and the applicable reclamation performance standards of Rule 3.1.

B. Concerns regarding groundwater (Gochis, Kasten, Stroh, Currier):

- *The water table is very close to the surface 3-7 feet per Exhibit G. Slurry walls often cause mounding. The proposed slurry wall is essentially along the property line and thus any off-site impacts on the upstream side will be on my property. I do not want the north end of my property to become wetlands.*
- *The operator should be required to install a drain pipe to alleviate upstream mounding.*
- *Our water well is in the same area. The proposal said it would not impact our well. If the water from flooding cannot drain back into the South Platte, then it will affect our water well.*

On September 19, 2023, the Division of Water Resources (DWR) provided the following conditions for approval of the Application:

- Prior to initiation of the proposed uses of groundwater (evaporation, dust control, dewatering, water removed in the mined product, washing), the Applicant will need to obtain either a gravel pit or other type of well permit, as applicable.
- Prior to obtaining a well permit, an approved substitute water supply plan (SWSP) or decreed plan for augmentation is required.
- Prior to approving a well permit, the Applicant must conduct a field inspection of the site and document the locations of all wells within 600 feet of the permit area. The Applicant must then obtain a waiver of objection from all well owners with wells within 600 feet of the permit area or request a hearing before the State Engineer.

DWR also provided the following comments on the Application:

- The site must continue to be operated under a SWSP until such time as the proposed reservoirs are lined (lining approved by this office, backfilling is completed, and replacement of lagged depletions shall continue until there is no longer an effect on stream).
- As this pit is lined and additional pits become lined in this area, this office requests that DRMS consider the siting and design of lined gravel pits to ensure that they will not individually, or cumulatively, result in impacts to the timing and quantity of groundwater flow from upgradient locations back to the stream system.
- The installation of a gravel pit liner should not result in changes to the timing, location, and amount of such groundwater flow.
- In the design and construction of the liner, the Applicant and DRMS should consider whether drainage structures are needed to allow water to flow back to the stream and to prevent water mounding behind the liner.
- Any storm water runoff intercepted by this operation that is not diverted or captured in priority must infiltrate into the ground or be released to the stream system within 72 hours. Otherwise, the operator will be required to make replacements for evaporation.

The Applicant has committed to complying with all conditions and recommendations provided by DWR.

In addition to the measures for protecting the hydrologic balance mentioned above, the Applicant has initiated the following measures to address the protection of groundwater resources:

- Assessment of the potential for mounding and shadowing – The Applicant hired McGrane Water Engineering, LLC to perform an analysis of groundwater at and around the site using MODFLOW, an industry standard software program commonly used for these types of analyses. The Division reviewed and accepted the model inputs, assumptions, and results in the analysis. Elevation changes during the operation of the mine, with different groundwater drain scenarios, were calculated by the model to determine the potential for mounding and shadowing. The analysis revealed that a drain could be installed to stabilize the upgradient seasonal fluctuations (mounding) such that groundwater will not reach the ground surface and upset the hydrologic balance. That is, the drain system will prevent the upgradient fields from inundation with groundwater, and these fields will not become “wetlands.” While the system will not mitigate shadowing impacts, this should not be an issue because there are no wells located within the shadow zone.

- Plan for construction of a perimeter groundwater drain – The Applicant has committed to building a perimeter groundwater drain. This will mitigate the impacts on groundwater and wells due to construction of the slurry wall by directing excess groundwater to the river. Detailed drawings for this structure will be provided for Division review and approval, along with the slurry wall design, prior to construction.
- Assessment of the potential for impacts on nearby wells – Based on the MODFLOW analysis discussed above, the impact on nearby wells will be mitigated by the perimeter groundwater drain.
- Developed mitigation plan for impacts on wells – In addition to installing the perimeter groundwater drain, the Applicant will monitor groundwater wells around the site on a quarterly basis for quantity and quality. Mitigation triggers have been set based on baseline seasonal levels. If these levels are exceeded, an investigation into the causes and impacts, if any, will be evaluated by the Division and the Applicant. If it is determined the mine is having an impact, then additional mitigation measures will be initiated.
- Developed groundwater monitoring plan – The Applicant has committed to an extensive groundwater monitoring effort for both water quantity (water elevations) and quality (chemical analysis). This will entail baseline monitoring for five quarters prior to initiation of the project. Four wells will be monitored for the ongoing monitoring plan. The monitoring wells will be located around the perimeter of the site, including one upgradient and three downgradient wells. The suite of parameters to be analyzed is based on Water Quality Control Commission's Regulation 41 – The Basic Standards for Ground Water (Regulation 41). The Applicant's monitoring procedures will follow the USGS National Field Manual for Collecting Water Quality Data and the Groundwater Sampling Guide from EPA Region 9. The resulting data will be submitted quarterly to the Division in a report that includes analysis of the data.
- Commitment to a point of compliance – The Applicant has committed to establishing three downgradient points of compliance in groundwater, at which, water quality will be compared to the standards set by Regulation 41 and the baseline data collected prior to operations.

Per DWR's recommendation that the Division consider the siting and design of lined gravel pits to ensure they will not individually, or cumulatively, result in impacts to the timing and quantity of groundwater flow from upgradient locations back to the stream system, these potential impacts were considered during the Division's review of the Application. Through modelling it was determined that impacts to the hydrologic balance would be minimized through the installation of a subsurface drain to be installed at the same time the slurry wall is installed. However, continued groundwater monitoring will help identify any potential impacts throughout the life of mine, and this information will be used to determine whether additional mitigation efforts are needed. In addition, the Applicant must apply for a well permit from DWR which will further evaluate potential impacts to surrounding wells.

The Division determined that 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 Rule 3.1.6.

Additionally, the Application addressed all requirements of Rule 6.4.7 (Exhibit G) regarding the identification and protection of hydrologic resources, and the applicable reclamation performance standards of Rule 3.1.

Non-Jurisdictional Issues

A. Concern regarding potential impacts to electric and gas service to adjacent property (Gochis)

The Act and Rules do not specifically address impacts on service lines. This issue is best discussed with electric and gas providers in the area. However, the Applicant has stated that the lines in question have been abandoned, and removal of them for the mining operation will not impact service to landowners near the site.

The Applicant has identified the type of structure and the owner for all significant, valuable, and permanent man-made structures contained on the area of affected land and within 200 feet of the affected land, as required by Rule 6.4.3(g). Additionally, per Rule 6.4.19, the Applicant has obtained all necessary structure agreements for structures located on or within 200 feet of the proposed affected land or provided an appropriate engineering evaluation that demonstrates such structure will not be damaged by activities occurring at the mining operation.

B. Concern that easements may be used for something different than the original intent (Kasten, Stroh, Currier)

Easements and their specified use are not regulated by the Division. However, the Applicant is required to provide documentation of their legal right to enter to conduct mining and reclamation for all Owners of Record of the surface and mineral rights of the affected land, as required by Rule 6.4.14. The Applicant has provided sufficient documentation of their legal right to enter the proposed affected lands.

After a reclamation permit is issued, per Rule 1.16(2), an operator is required to promptly notify the Division of any substantial changes that affect their right of legal entry upon the lands to be mined. This would include any change in use of an easement (located within the affected lands) that affects the Applicant's legal right to enter to conduct mining and reclamation.

C. Concern that the reservoir will be used for recreation or something different than water storage (Kasten, Stroh, Currier)

The Application proposes a post-mining land use of developed water resources (for a lined water storage reservoir).

Any changes to the approved post-mining land must be reviewed and approved by the Division through the permit amendment process. An amendment application would require the same notice procedures

that are required for a new application, and any interested parties would have the chance to provide comments on the proposed changes.

After the affected lands have been reclaimed in accordance with the approved post-mining land use and the permit is released from the Division's jurisdiction, any future changes in use of the land/reservoir would be within the purview of local governments and potentially DWR.

D. Concern that trucks will use the road on the west side of site and will cause problems with the landowner's farming operation (Kasten, Stroh, Currier)

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 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 the Town of Milliken, Weld County, and/or the Colorado Department of Transportation (CDOT) and should be addressed through their regulatory processes.

Pursuant to Rule 6.4.13, the Application states (in Exhibit M) that the Applicant will obtain the required Conditional Use Permit from the Town of Milliken.

In addition, the Applicant has stated that there is no intention to use the road on the west side of the site. The proposed access point is at the northeast corner of the site.

E. Concern that the proposed gravel pit infringes on the landowner's property on the west side (Kasten, Stroh, Currier)

The Applicant has used professional surveyors to accurately portray the property lines, and the proposed permit boundary is based on this survey. The operation will not extend into the parcel to the west. It appears that one reason for confusion is the fence line was not built on the actual parcel boundary, at least in some locations. The Applicant has offered to re-locate any portions of the fence that do not follow the property line. However, it is not clear whether the adjacent landowner has agreed to their offer.

The Applicant has provided sufficient demonstration of their legal right to enter the proposed affected lands as required by Rule 6.4.14.

Additionally, the boundaries of the affected area will be marked by monuments or other markers that are clearly visible and adequate to delineate such boundaries as required by Rule 3.1.12(2).

Furthermore, the Application proposes setbacks from the permit boundary, so the disturbed area will not extend to the actual property line.

Appendix A

Objections and Comments Received

The following tables list the commenting agencies and all objectors.

While five timely objection letters were received, two of the objection letters were sent by the same three individuals (Cheryl Kasten, Carlene Stroh, and Karen Currier), giving a total of six timely objectors to the Application.

List of Agency Commenters

Name	Status	Date of Filing
Colorado Division of Water Resources	Timely/Party	September 19, 2023
Colorado Parks and Wildlife	Timely/Party	September 21, 2023
History Colorado	Timely/Party	September 26, 2023

List of Objectors, Timely and Untimely

Name	Status	Date of Filing
Jim Gochis (Hidden Platte Ranch)	Timely/Party	November 8, 2023
Jerry Ladd (Little Platte Farm LLC)	Timely/Party	November 8, 2023
Michael Janeczko	Timely/Party	November 8, 2023
Cheryl Kasten, Carlene Stroh, and Karen Currier	Timely/Party	November 8, 2023
Doug York and Jeff Hemphill (Halflight Land and Minerals, LLC)	Untimely	November 9, 2023

Appendix B

Photograph of Posted Sign

The following photograph was taken by the Division during its pre-operation inspection conducted on November 9, 2023, confirming the Applicant posted a public notice sign at the location of the proposed mine site in accordance with Rule 1.6.2(1)(b).



Appendix C

Affidavit of Publication

The following affidavit of publication confirms the public notice required by Rule 1.6.2(1)(d) was published by the Applicant (in the Johnstown Breeze) four times, once a week for four consecutive weeks in accordance with Rule 1.6.5(1).

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AFFIDAVIT OF PUBLICATION

STATE OF COLORADO

THE JOHNSTOWN BREEZE

COUNTY OF WELD

) ss
)

I, Matt Lubich or Lesli Bangert, do solemnly swear that I am publisher of The Johnstown Breeze; that the same is a weekly newspaper printed, in whole or in part, and published in the County of Weld, State of Colorado, and has a general circulation therein; that said newspaper has been published continuously and uninterruptedly in said County of Weld for a period of more than fifty-two consecutive weeks prior to the first publication of the annexed legal notice or advertisement; that said newspaper has been admitted to the United States mails as a second-class matter under the provisions of the Act of March 3, 1879, or any amendments thereof, and that said newspaper is a weekly newspaper duly qualified for publishing legal notices and advertisements within the meaning of the laws of the State of Colorado.

That the annexed legal notice or advertisement was published in the regular and entire issue of every number of said weekly newspaper for the period of 4 consecutive insertions; and that the first publication of said notice was in the issue of said newspaper dated 9/28, A.D. 2023, and that the last publication of said notice was in the issue of the said newspaper dated 10/19, A.D. 2023.

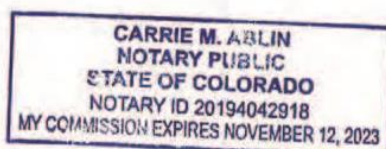
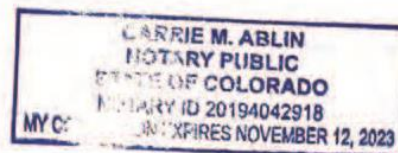
In witness whereof I have hereunto set my hand this 10th day of Nov., A.D. 2023.

Matt Lubich
Publisher

Subscribed and sworn to before me, a Notary Public in and for the County of Weld, State of Colorado, this day 10th of November, A.D. 2023.

Carrie M. Ablin
Notary Public

My commission expires 11/12/2023



**NOTICE OF HEARING
TOWN OF MILLIKEN**

NOTICE IS HEREBY GIVEN of a Public Hearing before the Planning Commission of the Town of Milliken, Colorado at 7:00 P.M. on the 18th Day of October, 2023, and before the Board of Trustees at 6:30 P.M. on the 25th Day of October, 2023 or as soon as time allows. The hearings will be held at 1201 Broad Street in the Town of Milliken's Meeting House. The purpose of the hearing is to consider an ordinance repealing and replacing the Town of Milliken's Floodplain Regulations.

For information on Electronic Participation procedures for quasi-judicial hearings and activities (such as attendance, testimony, and public participation) during emergency situations please contact the Town Clerk at 970-587-4331. Please note some procedures may require submission of materials to the Town Clerk at least five (5) business days prior to the hearing date.

A zoom link will be posted on the Town of Milliken's Website and Meeting Agenda at least 24 hours prior to the Public Hearing.

A copy of the application for the Site Plan and associated exhibits may be reviewed at the Town Hall, 1101 Broad St. between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday.

This notice given and published by order of the Town Board of the Town of Milliken, Colorado.

TOWN OF MILLIKEN, COUNTY OF WELD, COLORADO

By: Carse Rinebarger, Town Clerk

Published in *The Johnstown Breeze* September 28, 2023

PUBLIC NOTICE

IHC Scott, Inc.: 10303 East Dry Creek Road, #300, Englewood, CO 80112, 303-790-9100, has filed an application for a Regular (112) Construction Materials Operation Reclamation Permit with the Colorado Mined Land Reclamation Board under provisions of the Colorado Land Reclamation Act for the Extraction of Construction Materials. The proposed mine is known as the Bernhardt Sand and Gravel Pit, and is located at or near Section 24, Township 4 North, Range 67 West of the 6th Prime Meridian. The proposed date of commencement is January, 2024, and the proposed date of completion is December, 2035.

The proposed future use of the

land is developed water resources. Additional information and tentative decision date may be obtained from the Division of Reclamation, Mining, and Safety, 1313 Sherman Street, Room 215, Denver, Colorado 80203, (303) 866-3567, on the website (<https://drams.colorado.gov/information/permitting-actions-currently-under-review>), or by email at: drams_info@state.co.us or at the Weld County Clerk to the Board's office, 1150 O Street, Greeley, CO 80631, or the above-named applicant.

Comments must be submitted in writing via the electronic form at: https://dnriaserfiche.state.co.us/Forms/DRMS_Comment and must be received by the Division of Reclamation, Mining, and Safety by 4:00 p.m. on (November 8, 2023).

Please note that under the provisions of C.R.S. 34-32.5-101 et seq.

Comments related to noise, truck traffic, hours of operation, visual impacts, effects on property values and other social or economic concerns are issues not subject to this Office's jurisdiction. These subjects, and similar ones, are typically addressed by your local governments, rather than the Division of Reclamation, Mining, and Safety or the Mined Land Reclamation Board.

Published in *The Johnstown Breeze* September 28 & October 5, 12, & 19, 2023

NOTICE TO CREDITORS

The Estate of Walter James Greco, a/k/a Walter J. Greco, a/k/a Walter Greco, Deceased
Case Number: 2023PR228

All persons having claims against the above-named Estate are required to present them to Lee Ann Greco, Personal Representative, c/o Casey L. Williams, Esq., or to the District Court of Weld County, Colorado, on or before **January 28, 2024**, or the claims may be forever barred.

Dated September 22, 2023.
/s/ Casey L. Williams, #39117
Attorney for Lee Ann Greco, Personal Representative
Duly signed original on file
Casey L. Williams, #39117
Attorney for Lee Ann Greco, Personal Representative
203 Telluride Street, #400
Brighton, CO 80601

Published in *The Johnstown Breeze* September 28 & October 5 & 12, 2023

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UNTIL THEY BUCKLE UP.**



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to express your opinion.

Submit your letters to *The Breeze* at:
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Johnstown, CO 80534

or e-mail to: editor@johnstownbreeze.com

Your Opinion Counts

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 _____