



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

August 14, 2024

Ken Coulson
Coulson Excavating Company, Inc.
3609 North County Road 13
Loveland, CO 80538

**Re: Preliminary Adequacy Review, 112c Construction Materials Amendment Application (AM-1)
Kirtright Pit, Permit No. M-1986-123**

Mr. Coulson:

On June 14, 2024, the Division of Reclamation, Mining and Safety (Division) deemed the above referenced application complete for the purposes of filing. Pursuant to Rule 1.4 the 90-day decision date for the application was set for September 12, 2024.

The Division has received objections to the application and in accordance with Rule 1.4.9 will scheduled a hearing before the Mined Land Reclamation Board (MLRB or Board) during the October 16 and 17, 2024 MLRB meeting for consideration of the application. The Division will set a date for a pre-hearing conference sometime during the week of September 30, 2024. The details of the pre-hearing conference will be provided to you as soon as possible. The Division is required to issue a recommendation to approve, approve with conditions or to deny the application to the Board no later than September 12, 2024.

The following items will need to be addressed to the Division's satisfaction prior to the decision date. If you are unable to satisfactorily address any concerns identified in this review before the decision date, it will be your responsibility to request an extension of the review period. If there are outstanding issues that have not been adequately addressed prior to the end of the review period, and no extension has been requested, the Division may deny this application. In order to allow the Division sufficient time to review your responses to the adequacy issues, please submit your adequacy responses to the Division no later than two weeks prior to the decision date. Subsequent to receipt and review of the Applicant/Operator's response to these items the Division may identify additional adequacy items. Please respond to this Preliminary Adequacy Review with the requested additional/updated information on permit [replacement pages](#) and summarize each response in a cover letter titled "Preliminary Adequacy Response; M-1986-123".



EXHIBIT A – Legal Description (Rule 6.4.1):

1. The legal description does not appear to be accurate. The narrative states there are four parcels that make up the current and proposed permit area. Included in the narrative it is stated that Randy Kirtright owns the two eastern and one western parcels and The O'Brien Living Trust (O'Brien Trust) owns the middle parcel. A review of the Larimer County Assessor website it indicates that Randy Kirtright owns the western two parcels and the eastern most parcel, while the O'Brien Trust owns the middle parcel. Please clarify this discrepancy and provide an updated Exhibit A.
2. During the review Larimer County Assessor website it appears the current and proposed permit boundaries include land owned by CDOT in the northwest corner. Please provide a map that clearly depict the parcels of land that are included in the proposed and current permit boundaries.
3. Pursuant to Rule 6.4.1(2) the main entrance to the mine site shall be located based on a USGS topographic map showing latitude and longitude or Universal Transverse Mercator (UTM). The operator will need to specify coordinates of latitude and longitude in degrees, minutes and seconds or in decimal degrees to an accuracy of at least five (5) decimal places (e.g., latitude 37.12345 N, longitude 104.45678 W). For UTM, the operator will need to specify North American Datum (NAD) 1927, NAD 1983, or WGS 84, and the applicable zone, measured in meters. Please provide the coordinates of the main entrance to the mine in the updated Exhibit A.

EXHIBIT C – Pre-Mining and Mining Plan Map(s) of Affected Lands (Rule 6.4.3):

4. On the Pre-Mining Plan Map, C-1, please clearly show the permit boundary of the currently approved permit area encompassing 79.8 acres along with the proposed amendment permit boundary for 111.7 acres and the affected land boundary. In the legend or on the map clearly state the acreages associated with these features. Include a table that clearly identifies each individual corner of the proposed permit boundary and each corners coordinates in decimal degrees.
5. Map C-1 needs to be updated to include the existing floodway limit and 100-yr floodplain boundary. These items were included on a few of the maps originally submitted but removed during responses to the incomplete notices.
6. The Pond Backfill Borrow Area needs to be clearly marked on the map along with the approximate volume of material available for reclamation activities.
7. The currently approved Reclamation Plan Map (TR-1), as well as the most recent SWSP Figure 2 Map, shows there are five total ponds at the site; Pond 1, 2, 3, 4 and a Pre-1981-Pond. For consistency, please keep this naming convention for the major features at the site. If you desire to rename features at the site please update the Pre-Mining Plan Map with the new name of the feature along with former name of the feature.

8. Please provide an additional map overlaid on a recent (May 2023 or more recent) aerial image of the permit area. The currently proposed affected land boundary does not appear to include all of the land that was disturbed by the Applicant in 2023 and subject of the violation MV-2023-025. The signed Board Ordered corrective action states “submit an amendment application to encompass all of the affected land at the site.” In this case the affected land was the 4.7 acres outside the currently approved permit boundary. These 4.7 acres need to be part of the proposed affected land boundary so the Applicant can reclaim the disturbed lands correctly.
9. It appears the proposed affected area boundary along the northern side of the permit is following the 300 foot riparian habitat buffer discussed in Attachment A from Exhibit H – Wildlife Habitat (Rule 6.4.7). If this is the case it needs to be clearly depicted on the map as such along with the variance area. Otherwise provide an explanation for the affected land boundary being proposed as depicted.

EXHIBIT E – Reclamation Plan (Rule 6.4.5):

10. The narrative needs to be updated to be consistent with item #7 above.
11. The narrative needs to be updated to remove the Stroh Pit as a primary source of material for backfill and topsoil. Currently, mining activity at the Stroh Pit has not started and there is not foreseeable date for when activity may begin. Please provide an alternative source of backfill and topsoil material.
12. The 7-year time frame for completion of reclamation at the Kirtright Pit is not adequate. According to the Operator submitted annual reports and previous inspections, site mining activities last occurred at the site in either 2005 or 2008. The annual report filed in 2018 clearly indicated the site was in final reclamation. In 2015 the Division approved TR-1 which revised the Reclamation Plan Map to reflect current site conditions and proposed revegetation areas. Additionally, the Operator, in TR-1, stated they would file for permanent augmentation of the exposed groundwater at the site in March of 2015. Since 2018 the Operator has indicated they were waiting for approval of the permanent plan for augmentation for the site. Once that plan was approved the Kirtright Pit would be eligible for release.

Pursuant to Rule 3.1.3, all reclamation shall be carried to completion by the Operator with all reasonable diligence, and each phase of reclamation shall be completed within five (5) years from the date the Operator informs the Board or Office that such phase has commenced, or from the date the Office has evidence that mining or exploration has ceased, unless extended by the Board or Office.

Please propose an updated reclamation schedule and timeline in accordance with Rules 6.4.5(2)(c) and (e) and Rule 3.1.3.

13. Please provide a reclamation description of the road that is located along the northern border of the proposed permit boundary. If the road is to remain after final reclamation is complete a statement to that effects needs to be provided.
14. Please provide a reclamation description for the pre-1981 pond areas.
15. In the incompleteness response #1 the Applicant indicated the drainage swale has been removed since there are wildlife implications if they encroach within 300 feet of the Big Thompson River. The provided attachment, Attachment A, is dated from 2017 and the last paragraph indicates "If the proposed project has not commenced within one year, please contact the Colorado Field Office to request an extension." Since activities have not commenced has the field office been contacted for an update? Additionally, contained in the O'Brien objection packet, provided to the Applicant on August 5, 2024, there is a Floodplain Development Permit for the Stroh Pit (Exhibit F) that clearly indicates underdrains through the buffer area. Please provide a clarification of these conflicting items.
16. Please provide a description of how the ponds will be dewatered for backfilling. Where will the water be pumped and will a discharge permit be needed?

EXHIBIT F – Reclamation Plan Map (Rule 6.4.6):

17. Please update the map according to item #7 above.
18. The gravel haul road located north of Pond 1 and west of Pond 2 is still depicted. If this road is to remain it needs to be included in the narrative in Exhibit E and clearly shown to be remaining after reclamation on the map.

EXHIBIT G – Water Information (Rule 6.4.7):

19. Please provide a detailed description of the current status of the plan for permanent augmentation is and what future actions are planned.
20. If the Applicant needs to get a plan for permanent augmentation for Ponds at the site that needs to be clearly described here, as well as in Exhibit E, and clearly depicted on Exhibit F. A detailed description of the size of Ponds that will be covered and a timeline for approval. Additionally, please address the scenario of what will happen if the Applicant is unable to get permanent or partial augmentation.
21. The last approve Substitute Water Supply Plan (SWSP) the Division has on file expired on December 31, 2023. Please provide a copy of the currently approved SWSP or suitable documentation that the Applicant is compliant with DWR regulations for exposed groundwater.

EXHIBIT H – Wildlife Information (Rule 6.4.8):

22. As mentioned in item #15 above, Attachment A (Conservation Measures for Stroh Pit), is dated from 2017 and the last paragraph indicates of the USFW letter states “If the proposed project has not commenced within one year, please contact the Colorado Field Office to request an extension.” Since activities have not commenced has the field office been contacted for an update?
23. Considering the known presence of threatened species in the area has the Applicant contacted Colorado Parks and Wildlife (CPW) to get a description of the game and non-game resources on and in the vicinity of the application area?
24. It is noted in Attachment A that a variance area was given for certain locations. Please comment on getting a variance for the reclamation of areas that were affected by the Operator within the buffer zone.

EXHIBIT L – Reclamation Costs (Rule 6.4.12):

25. Please provide details of the pumps (size) and piping (length and diameter) needed for dewatering.
26. Please provide the details of the equipment that will be used for backfilling the ponds, including but not limited to, the average haul/push distances and types and sizes of equipment to be used.

EXHIBIT N – Source of Legal Right to Enter (Rule 6.4.14):

27. Please provide the details and appropriate documentation of the source of legal right to enter to conduct reclamation on the O’Brien property and CDOT property (see item #2). This may include a copy of a lease, deed, abstract of title, a current tax receipt, or a signed statement by the Landowner and acknowledged by a Notary Public stating that the Operator/Applicant has legal right to enter to conduct reclamation.

EXHIBIT S – Permanent Man-made Structures (Rule 6.4.19):

28. Please provide the completed structure agreements where the affected lands are within two hundred (200) feet of any significant, valuable and permanent man-made structures.

Objections:

29. The Division received 38 timely objections, in accordance with Rule 1.7.1(2)(a) and one comment letter from Larimer County. The objection and comment letters were sent to the Applicant in emails dated July 11th, 22nd, 26th, and on August 5th and 6th, 2024. Please inform the Division if the Applicant

does not have a copy of all the comment or objections and they will be resent. Please be prepared to respond to the objections.

Other:

30. Please provide proof of publication of the public notice in a newspaper of general circulation as required by Rule 1.6.5 and Rule 1.6.2(1)(d). Proof of publication may consist of either a copy of the last newspaper publication that includes the date published, or a notarized statement from the newspaper.
31. Pursuant to Rule 1.6.2(1)(e), please provide proof that all Owners of Record of all land surface within 200 feet of the boundary of the affected lands received a copy of the notice in Rule 1.6.2(1)(d) immediately after the first publication.
32. Pursuant to Rule 1.6.2(2), please demonstrate that the Applicant's response to these adequacy issues have been placed with the application materials previously placed with the County Clerk or Records Office, and made available for public review.

Please respond to these adequacy issues no later than two weeks before the decision deadline, to ensure ample time for the Division to complete its review prior to its decision deadline. **The decision deadline on this application is September 12, 2024.** If additional time is required to respond to these adequacy issues please submit a written request for extension of the review period. The Division reserves the right to further supplement this document with additional adequacy issues and details as necessary.

If you need additional information or have any questions, please contact me by email at patrick.lennberg@state.co.us.

Sincerely,



Patrick Lennberg
Environmental Protection Specialist

cc: Jared Ebert, DRMS

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