



October 4, 2024

RE: Ogilvy River Farm Pit, Permit No. M-2024-006
Recommendation to Approve a 112c Permit Application with Objections

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 Ogilvy River Farm Pit, File No. M-2024-006, submitted by Ogilvy River Farms, LLC. (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 October 4, 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 party and grouped them into the following nine categories:

- 1) Application Process
- 2) Mining Plan
- 3) Reclamation Plan
- 4) Geotechnical Stability
- 5) Hydrology
- 6) Impacts on Wildlife
- 7) Archeology
- 8) Structures list – Exhibit S
- 9) Right of Entry

The Division's Rationale provides a full and thorough analysis of the nine broad categorical issues (listed above) which were raised by the objecting party. 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 "M2024006" 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 Ogilvy River Farms Pit application.

The Formal Board Hearing is scheduled to occur during the November 13-14, 2024 Board meeting, beginning at 9:00 a.m. on November 13th, 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.

If you have any questions, you may contact me by telephone at 720-774-0040 or by email at brock.bowles@state.co.us.

Sincerely,



Brock Bowles
Environmental Protection Specialist

Encls: Rationale for Recommendation to Approve a 112c Permit Application with Objections, Ogilvy River Farm Pit Rationale, File No. M-2024-006, dated October 4, 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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October 4, 2024

Re: Ogilvy River Farm Pit, Permit No. M-2024-006
New Permit Application with Objections
Rationale for Recommendation to Approve a 112c Permit Application with Objections

Introduction

On October 4, 2024, the Division of Reclamation, Mining and Safety (Division/Office/ DRMS) issued its recommendation to approve the permit application for the Ogilvy River Farm Pit, File No. M-2024-006, over public objections. This rationale document is intended to explain the process by which the Division arrived at its recommendation for approval with conditions over public objection 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.¹

Summary of the Review Process for the Permit Application

The Ogilvy River Farm, LLC (Applicant) submitted a 112c permit application on March 5, 2024. The permit application was deemed complete for the purposes of filing and review on March 11, 2024.

The Applicant proposes to permit 71.91 acres for a new sand and gravel pit. The site is located in Weld County approximately 1.8 miles north of Kersey, CO. The Applicant intends to mine sand and gravel for road base and construction aggregate uses. The post mining land use for the site is developed water resource which will consist of one (1) pond. The mine plan proposes to dry mine the sand and gravel after a slurry wall has been installed. Groundwater will not be exposed prior to the slurry wall installation, obtaining a well permit and a Substitute Water Supply Plan (SWSP).

Pursuant to Section 34-32.5-112(9)(b), Rule 1.6.2(1)(d) and Rule 1.6.5, the Applicant published the required public notice for the permit application once a week for four consecutive weeks beginning on March 29, 2024, with the last date of publication on April 19, 2024. The public comment period closed on May 9, 2024. The public notices were published in the Greeley Tribune, a publication in

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. (the Act), and to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the Rules or Rule). Copy of the Act and Rules are available through the Division's web site at <https://drms.colorado.gov/>.



general circulation in the vicinity of the mine. During the public comment period, the Division received one (1) written objection through the DRMS website and two (2) comments from the agencies listed below. There were no untimely letters of objection or comment letters to the application.

Timely Letters of Objection:

Person or Entity	Date Objection Received
Roberta Smith	May 8, 2024

Timely Commenting Agency:

Agency	Date Comment Received
Division of Water Resources	March 15, 2024
Colorado Parks and Wildlife	March 28, 2024

The Division forwarded copies of the objections and comments to the Applicant and scheduled the amendment application for a hearing before the Colorado Mined Land Reclamation Board (Board) and a Pre-hearing Conference. The Division provided notice of the scheduled Board hearing and Pre-hearing Conference to all parties and interested persons. Due to the receipt of a timely objection, the Division cannot make a decision on the application, but rather issue a recommendation to the Board in accordance with Rule 1.4.9(1).

During the review period the Division generated two (2) adequacy letters. The Applicant addressed all adequacy issues to the Division's satisfaction. Therefore, on October 4, 2024, the Division determined that the permit application satisfied the requirements of C.R.S. § 34-32.5-115(4) and issued its recommendation to approve the permit application over objections.

Issues Raised by the Objecting Party

The timely objections received by the Division from Ms. Smith (Objector) have been categorized as issues pertaining to the application process, mining plan, reclamation plan, geotechnical stability, hydrology, wildlife, archeology, right-of-entry and non-jurisdictional issues. The issues raised by the Objector are represented in bold font below. The Division's response follows in standard font.

1. Application Process Issues

The Objector referred to a "200-foot restriction from any structure for this gravel pit."

The Rules do not restrict mining within 200' of a structure but rather outlines procedures the Applicant must address if the proposed affected area falls within 200' of a structure or an

adjacent landowner's property. The Applicant addressed the procedures outlined in the Rules in the following manner:

- 1) Rule 1.6.2(1)(e)- Personally serve a copy of the notice in Rule 1.6.2(1)(d) to all Owners of Record of all land surface within 200' of the boundary of the affected lands. *The Applicant mailed Ms. Smith a public notice by certified mail on March 27, 2024. Copies of the letter and the certified mail receipt are on file with DRMS.*
- 2) Rule 6.4.3(g)- Show the owner's name, type of structures, and location of all significant, valuable, and permanent man-made structures contained within two hundred feet of the affected land. *The Applicant identified Ms. Smith's house and outbuildings on Exhibit C-1 Pre-Mining Plan map and Exhibit S in the application.*
- 3) Rule 6.4.19(a)- Provide a notarized agreement between the Applicant and the Person(s) having an interest in the structure, that the Applicant is to provide compensation for any damage to the structure. *The Applicant mailed Ms. Smith a notarized structure agreement by certified mail on June 14, 2024. Copies of the notarized structure agreement and the certified mail receipt are on file with DRMS. The Division finds that the Applicant has met the requirements of Rule 6.4.19(a).*
- 4) Rule 6.4.19(b)- Where such an agreement cannot be reached, the Applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation. *Ms. Smith has not provided the Applicant or DRMS with a signed structure agreement. The Applicant provided a geotechnical stability analysis which looked at the stability of the pit wall along Ms. Smith's property line nearest to her structures. The stability analysis was modeled using site specific rock and soil properties determined by boring samples taken at the site. The results of the stability analysis demonstrated the minimum Factors of Safety (FOS) approved by the Board were met or exceeded in accordance with Table 1 - Recommended Minimum Factors of Safety for Slope Stability Analyses for Operations and Reclamation within Section 30.4 of the Policies of the Board, effective May 16, 2018. The results indicate the mining operations will not adversely affect the structures on Ms. Smith's property. The Division finds the Applicant provided the required information in accordance with Rule 6.4.19(b).*

2. Mining Plan

a. Potential adverse vibrations on propane tank

The Applicant has provided a structure agreement for the propane tank and all provided engineering analyses meet or exceeded the minimum requirements within Section 30.4 of the Policies of the Board, effective May 16, 2018. Additionally, the Applicant has offered to hire a propane company to check the propane tank prior to mining operations and to install a vibration monitoring system during the initial mining operation. The Applicant added the propane tank to the list of structure in Exhibit S and is committed to not using explosives for mining. The Division finds the proposed solution meets the requirements of Rule 6.4.19 and 6.5.

b. Topsoil management

The Applicant provided additional discussion about topsoil handling, management and replacement to address the questions raised by the objector. The Division finds that the topsoil management meets the requirements of the Rules 3.1.9 and 6.4.5(d).

c. Mining timetable

The Objector noted that the approximate timetable for the mining plan was inconsistent in several locations in the application. The Applicant updated the mining timeline to be consistent in the Exhibits and meets the requirements of Rule 3.1.3 and 6.4.4(e).

d. Map scale is too small

Maps are required to be no larger than 1":50' nor smaller than 1":600' as per Rule 6.2.1(2)(e). The maps submitted were within this scale range and are considered adequate.

e. Horizontal oil and gas lines under the proposed mining operation property

- i. The Operator has provided responses to the objection stating that locations of the gas well lines are substantially deeper than the proposed mining depths and will not be impacted by mining operations or by vibrations caused by mining activities. The Applicant has committed to not using explosives for mining.
- ii. PDC is the owner of the gas wells and lines located within 200 feet of the proposed mining permit area. The Applicant emailed PDC Energy a notarized structure agreement by email on June 14, 2024. Copies of the notarized structure agreement and the email are on file with DRMS. PDC has not provided the Applicant or DRMS with a signed structure agreement. The Applicant provided a geotechnical stability analysis for all the pits walls, has committed to following all surface use agreements with PDC and working with PDC to address the abandoned wells on the property. The Division finds that the Applicant has met the requirements of Rules 6.4.19(a-b) and 6.5(2).

3. Reclamation Plan

a. Seeding

The Objector asked if the Smith access road will be seeded as shown on Exhibit F sheet 2. The Applicant adequately updated the seeding map to show that the Smith's ROW Road will not be seeded. The Applicant's proposed revegetation and reseeding plan meets the requirements of Rules 6.4.5 and 6.4.6.

b. Access to the perimeter road around the water storage pond

The Objector had questions about who will have access to the perimeter road, what type of equipment would be allowed on the road and the expected frequency of using the road. The Applicant provided responses detailing that the perimeter road will be located on private property in which the landowner and operator will control the access to this road. The Applicant further explains the type of vehicles and frequency this road will be used in their June 21, 2024, response to the objector. The Division finds that the requirements of Rule 6.4.4 have been met.

c. Weed control

The Applicant supplied a weed control plan in Exhibit J of the permit application. Although, the exact herbicide utilized, and its application procedures, will not be known until the weed species is identified. The Applicant has committed to monitoring the mine site for noxious species as listed by the Colorado Department of Agriculture. The Division finds that the proposed weed management plan meets the requirements of Rule 3.1.10(6).

4. Geotechnical Stability

a. The effects of the pit wall on nearby farm equipment shed with estimated weight loads

The Applicant provided a geotechnical stability analysis as required by Section 6.5 of the Act and Rules. The stability analysis looked at the stability of the pit wall along the south section of the pit nearest to the equipment shed. The stability analysis was modeled using site specific rock and soil properties determined by boring samples taken at the site. Additionally, the geotechnical stability analysis takes into consideration estimated weight loads of up to 200,000 pounds for the shed and potential farm equipment. The results of the stability analysis demonstrated the minimum Factors of Safety (FOS) approved by the Board were met or exceeded in accordance with Table 1 - Recommended Minimum Factors of Safety for Slope Stability Analyses for Operations and Reclamation within Section 30.4 of the Policies of the Board, effective May 16, 2018. The results indicate the mining operations will not adversely affect the equipment shed with the estimated weight loads. The Division finds the Applicant provided the required information in accordance with Rule 6.5 and C.R.S. § 34-32.5-116(4)(i).

5. Hydrology

a. Slurry wall construction and effects on structures

- i. A groundwater model was submitted with the permit application showing the effects that the slurry wall will have on the groundwater level in the area of Ms. Smith's structures and house. The model predicts that the groundwater level will drop between 1 to 1.5 feet in the area of the structures. Monitoring well MW-3 is the closest monitoring well to the structures. It is approximately 700 feet southeast and 7 feet lower in elevation according to Exhibit C-1. The minimum depth to water recorded at MW-3 is 2.88 feet below the ground level. The Division has determined that the drop of groundwater of 1 – 1.5 feet in a pre-existing shallow groundwater situation will not have a negative effect on structures, including an engineered septic system.
- ii. The certification of the slurry wall construction is under the jurisdiction of the Division of Water Resources.

b. Impacts to Well #2-12254

Well #2-12254 is located on Ms. Smith's property according to Ms. Smith and historical DWR records provided by the Applicant. The well is not shown on the DWR website (<https://maps.dnrgis.state.co.us/dwr/Index.html?viewer=dwrwellpermit>) as a currently permitted well. In addition, the Applicant provided a letter from the District Court, Water

Division 1 showing that the well has been ordered and decreed abandoned in Case No. 11CW263, 30 January, 2013. Based on the information provided the Division concludes that Well #2-12254 has been legally abandoned and is not considered a structure as defined in Rule 1.1(52). Therefore, the well is not subject to the provisions of Rule 6.4.19 Exhibit S- Permanent Man-made Structures.

c. Drainage Ditches/ dewatering trenches

The Objector asked where the trenches will be located, how will they be managed and what are the adverse effects. The purpose of the dewatering ditches are to remove the water that is captured within the slurry wall structure. The trenches will be dug to an elevation below the level of the pit floor to allow excess water to drain to a collection pond. The water will then be pumped through a series of pipes back to the South Platte River. The location and dimensions of drainage ditches are shown on Exhibit C-2. They are further described in Exhibit D- Mining Plan. The Applicant has committed to obtaining a discharge permit through CDPHE as noted in Exhibit M. The Division finds the Applicant has met the requirements of Rules 3.1.6 and 6.4.7.

d. Sediment pond

The Objector noted that the location of the sediment pond was not on any map, how long the sediment pond will be used and what are the implications of it. The Applicant provided responses detailing that the sediment pond will be used as part of the wash plant product processing and will be located near the wash plant. The sediment pond will be located in the bottom of the pit and inside the slurry wall structure. All potential impacts will be contained within the pit/slurry wall structure. The exact location of the pond and wash plant will change within the approved permit boundary as the mining operation advances from west to east in the pit area.

e. River flow interference

The groundwater model shows that water may rise up to 4 feet above current levels on the north side of the slurry wall (Figure A-9 McGrane Groundwater Evaluation). However, no groundwater is being impounded or prevented from reaching the South Platte River. The groundwater that is captured inside the slurry wall structure and any surface water intercepted by the slurry wall will be pumped out and returned to the South Platte River. The Applicant has committed to obtaining a discharge permit through CDPHE as noted in Exhibit M. The Division has determined that there will be no significant change in water flowing back to the South Platte River.

f. Ogilvy Ditch Canal

i. The rising water level caused by the slurry wall could undermine the ditch.

The Applicant submitted depth to groundwater data for monitoring wells MN-1 and MN-2. These are the wells located along the Ogilvy ditch. The minimum depth to water in the data set is 21.19 feet. The groundwater modeling report submitted with the application shows that the expected mounding effect of the slurry wall will raise the groundwater level about 4 feet. The ditch and the proposed highest level of groundwater will be separated by 17 feet of soil. The Division has determined that

rising water levels caused by the slurry wall will not compromise the integrity of the Ogilvy Ditch Canal.

ii. **The groundwater modeling report ignored the presence of the New Cache La Poudre Ditch and the Ogilvy Ditch.**

The groundwater modeling report evaluated the potential changes to the groundwater caused by the slurry wall. The ditches potential mitigating impacts were ignored so a worst-case scenario could be evaluated (MWE Report, page 6).

g. **Water storage**

i. **A drop in elevation in the proposed location of the water storage facility is approximately 30 feet from north to south.**

The drop in elevation being referenced is the change in the existing land elevation. The proposed water storage structure is being constructed below the grade of the surrounding landscape and no impoundments are being proposed. The concern of an elevation drop in the landscape is not an issue that effects the structural integrity of the water storage pond.

ii. **There isn't a current water management plan for operating the water storage facility after reclamation.**

The design, installation, and operation of a water management system for a water storage facility after mining is complete is not under the jurisdiction the Division. The Applicant has committed to obtaining a SWSP, a well permit and an SEO slurry wall certification.

h. **Groundwater monitoring**

The Applicant has committed to collecting groundwater levels monthly and collecting groundwater analytical data quarterly for five quarters to establish a pre-mining baseline as well as during the operation of the mine. All data will be submitted to the Division on a quarterly basis.

i. **Groundwater exposure**

The operator has committed to obtaining all the permits and certifications required by the Division of Water Resources to expose groundwater, including a well permit, a SWSP and a slurry wall leak test.

6. **Wildlife**

The Applicant contracted a third-party consulting firm to conduct a wildlife and threatened and endangered screening report. The report is included in the permit application package. The Colorado Parks and Wildlife also submitted comments regarding: impacts to the South Platte River, high priority habitat, mule deer wintering areas, aquatic native species, Bald Eagle nesting sites, fencing criteria for wildlife, noxious weed plan, exits for wildlife, and pre-construction wildlife surveys. The Division has determined that the Applicant has adequately addressed the issues raised by both the wildlife screening report and CPW. The Division finds the Applicant has met the requirements of Rules 3.1.8 and 6.4.8.

7. **Archeology**

The Applicant contracted a third-party consulting firm to conduct a cultural survey of the proposed mining area. The report is included in the permit application package. The Applicant has committed to following all applicable laws and regulations if any cultural resources are found during the mining process. The Division has determined that the Applicant has adequately addressed this issue.

8. Updates to structures list and Exhibit S

Exhibit S has been updated to show additional structures identified by the objector. The Division finds the Applicant has met the requirements of Rules 6.4.19.

9. Right-of-Entry

The Special Warranty Deed included in Exhibit O and referenced in Exhibit N of the application package, shows that the Applicant is the owner of the land on which the proposed mining operation is located. The Division finds the Applicant has met the requirements of Rules 6.4.14 and 6.4.15.

10. Non-Jurisdictional Items

a. Right of Way / Driveway

The applicant had originally planned to use Ms. Smith's right-of-way driveway as the main haul road to access the mine from Hwy 53. The applicant has since negotiated with Weld County to move the haul road to the north side of the permit area and not use Ms. Smith's right-of-way driveway as the main haul road. The Division finds that this issue has been resolved.

b. Highway safety concerns

The Act and Rules do not specifically address public road access, use or design issues. Such issues are under the jurisdiction of Colorado Department of Transportation (CDOT) and the Weld County Department of Public Works. The Applicant has affirmatively stated in Exhibit M of the permit application that a Weld County Use By Special Review Permit will be obtained prior to operations.

c. Noise concerns

The Act and Rules do not specifically address noise issues. Such issues are under the jurisdiction of Weld County. The Applicant has affirmatively stated in Exhibit M of the permit application that a Weld County Special Use Permit will be obtained prior to operations.

d. Diesel emissions and spills

The Act and Rules do not specifically address diesel emission issues. Such issues are under the jurisdiction of the Colorado Division of Motor Vehicles (DMV) and the Colorado Department of Public Health and Environment (CDPHE). The Applicant has also committed to having a spill prevention, control and countermeasures plan.

e. Abandoned oil wells

The Act and Rules do not specifically address abandoned oil well issues. Such issues are under the jurisdiction of Colorado Energy & Carbon Management Commission. The Applicant has committed to complying with industry standards of plugging wells.

f. Air quality and dust

The Act and Rules do not specifically address air quality issues. Such issues are under the jurisdiction of Weld County and the Air Pollution Control Division (APCD) of the Colorado Department of Public Health and Environment (CDPHE). The Applicant has affirmatively stated in Exhibit M of the application that an Air Pollution Permit will be obtained prior to operations. However, the protection and preservation of stockpiled topsoil is addressed under the performance standards of Rule 3.1.9. Pursuant to Rule 3.1.9(1), where it is necessary to remove overburden in order to expose the mineable materials, topsoil shall be removed and segregated from other spoil. If such topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that the topsoil is protected from erosion, remains free of any contamination by toxic or acid-forming material, and is in a usable condition for reclamation. The Division has determined one year to be an appropriate time frame for the establishment of a protective vegetative cover for stockpiled topsoil, and requires the same for all mining operations throughout Colorado. The Applicant has committed to establish vegetation on the topsoil stockpiles and committed to taking appropriate erosion control measures to stabilize topsoil stockpiles and berms. The Applicant has indicated that water will be used for dust control at the site.

g. Land use

Land use and zoning issues are considered by the local county and municipal authorities.

h. Hours of operation

i. Hours of operation are considered by the local county and municipal authorities.

In these proceedings, the Division's jurisdiction is limited to enforcement of the specific requirements of the Act and Rules. The Division recognizes the importance of all timely submitted objections and comments in its review but can address only the issues that directly relate to the specific requirements of an application as stated in the Act and Rules.

Conclusion

After conducting a thorough technical review of the application, as outlined in part in the discussion above, on October 4, 2024, the Division determined the permit application satisfied the requirements of the Act and Rules, and specifically C.R.S. § 34-32.5-115(4), and issued its recommendation to approve the Construction Materials 112 permit application for the Ogilvy Farm Pit, File No. M-2024-006.



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