



January 27, 2025

Scott Cockroft
Four C Sons, Inc.
27906 WCT 388
Kersey, CO 80644

RE: Seeley Reservoir Stockpiles, File No. # M-2023-043, New 112c Application, Adequacy Review-1

Dear Scott Cockroft,

The Division of Reclamation, Mining and Safety (Division/DRMS) is in the process of reviewing the above referenced application to ensure that it adequately satisfies the requirements of the Colorado Mined Land Reclamation Act (§ § 34-32.5-101-34-32.5-125) (Act) and the associated Rules and Regulations for the Extraction of Construction Materials (Rules). During review of the material submitted, the Division determined that the following issues of concern shall be adequately addressed before the application can be considered for approval.

Exhibit B – Index Map

1. The outline on the map appears to correlate with the property boundary indicated on the Applicant's mining and reclamation plan maps.
 - Please update the Index Map to instead show the outline for the permit boundary.
 - Please also indicate on the index map the location of the entrance to the site.

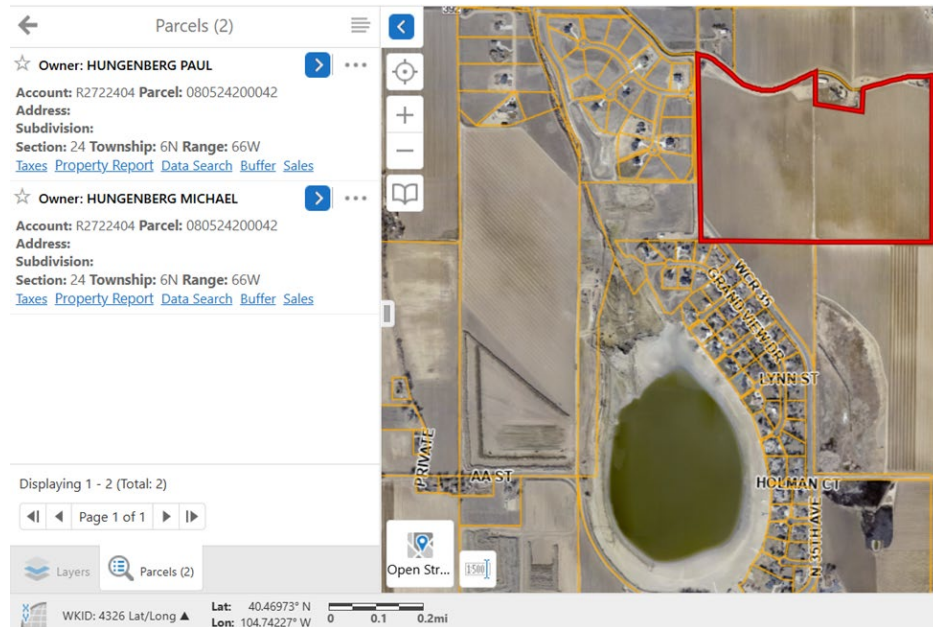
Exhibit C – Pre-mining and Mining Plan Map(s) of Affected Lands

2. Maps M-2 through M-6 have a boundary labeled as the “existing property line” and a boundary labeled as “affected area”.
 - Please clarify whether the Applicant is using affected area and permit boundary interchangeably. As the Division has two separate definitions for



these terms, please indicate on the maps the permit boundary, and if separate from the permit boundary, the affected land boundary.

3. The adjoining surface owners of record are shown on the maps, but due to the scale of the maps, the resolution of the text, and the other items included on the maps, the information is very difficult to read.
 - Please either include a separate map showing the adjoining surface owner information or use numbers corresponding to a separate legend to indicate the owners of each adjoining parcel.
4. The scale is too small. The scale equates to approximately 1 inch equals 666.67 feet. The minimum scale allowable per Rule 6.2.1(2)(e) is 1 inch equals 660 feet. However, with the amount of information provided on the map, a larger scaled map and/or multiple map sections would be appropriate.
 - Please include a scale bar that meets the requirements of Rule 6.2.1(2)(e) on all exhibit maps (except the Exhibit B: Index map). Please also increase the scale, and/or provide multiple map sections to provide clearer detail on all exhibit maps.
5. With the amount of information on the maps, the use of color to delineate the different boundaries, lines, dashed paths, etc. would make the information much clearer to interpret.
 - The Division suggests incorporating color on the maps to aid with clarity. Please consider adding this aspect to the maps.
6. Exhibit D and Exhibit G mention the construction and presence of a sediment basin.
 - Please indicate the location and orientation of the sediment basin on the Exhibit C Maps.
7. On the Pre-Mining M-1 map and the Mining Plan M-2 map, at least one property parcel (located northeast and adjacent to the Applicant's affected land) does not appear to indicate the property owner(s) (see screenshot below).
 - Please provide the names of all adjoining surface owners of record, pursuant to Rule 6.4.3(a).



8. Structures indicated by gray polygons, fences, wells, and additional utilities that appear to be within 200 feet of the affected land boundary have names near them but are not accompanied by descriptions. Many of the structures do not clearly identify the structure owner(s).
 - Per Rule 6.4.3(g), show the owner's name, type of structures, and location of all permanent man-made structures contained on the area of affected land and within two hundred (200) feet of the affected land.
9. Please include the following items on the maps, per Rule 6.2.1.
 - The name of the Applicant. (*Rule 6.2.1(a)*)
 - The signature of the map preparator (must be a registered land surveyor, professional engineer, or other qualified person). (*Rule 6.2.1(b)*)
 - The identification and outline of the area which corresponds with the application (see adequacy item #2 above). (*Rule 6.2.1(d)*)

Exhibit D – Mining Plan

10. Please update the mining plan narrative to reflect the current plan for the stockpiled material as stated during the Division's pre-operational inspection. The mining plan section *Timeframe* currently states "The excavated material will remain in the stockpile areas until it is dried and can be removed from the site either through disposal or be incorporated into agricultural uses. No commercially valuable use for

the material has been determined at this time. The materials must be allowed to dry and can then be removed from the site.” In the mining section, *Character of the Resources and Intended Uses*, the narrative states “likely uses for the material will be disposal to a landfill or land application to incorporate in topsoil”.

- Please address the formation of the permanent berms shown on Maps M-2 through M-6.
- Please clarify the current plans for all of the stockpiled materials, in each of the stockpiled areas, upon reclamation.

11. During the inspection, it was mentioned that the dredged material stockpiles have since had soil analyses performed on them to determine the quality of the stockpiled material.

- Because part of the reclamation plan includes incorporating some of the stockpiled material into the topsoil, please provide the soil analysis results as evidence to ensure that the native topsoil will not be degraded upon mixing.

12. In the mining plan, under *Roads*, the narrative states “Access to the northern stockpile areas is from a pre-existing approximate 25-foot field access road and is used for the transport of material to the stockpile site.”

- Is this via N 35th Ave?
- Please show/highlight this access road on the mining plan map.

13. In the mining plan, under *Roads*, the narrative states “The road was reopened to traffic upon completion of the dredging”.

- Is this in reference to AA street? Please clarify which road this is in reference to.

14. In the mining plan, under *Processing and Proposed Facilities*, the narrative states “A sediment basin for the southern parcel was engineered to prevent offsite flooding due to the stockpile and new road”.

- In addition to adding this to the mining plan map, please address in the narrative whether this basin will require routine maintenance until it is to be graded upon the removal of the remaining piles.

15. In the mining plan, under *Water Diversions*, the narrative states “there are no water diversions associated with the stockpile areas”.

- This conflicts with the sediment basin mentioned in the *Processing and Proposed Facilities* and *Water* sections of the mining plan exhibit. Please clarify this discrepancy in the narrative.

16. In the mining plan, under *Hydrology*, the narrative states “the stockpile area to the north is relatively flat with water flows expected to go east towards Seeley Reservoir”. There are two ‘northern’ stockpile areas.
- Please indicate the stormwater flow direction in all the affected areas on the mining and reclamation plan maps, and in the mining plan narrative.

Exhibit E – Reclamation Plan

17. In the Reclamation Plan narrative, the Applicant states “the overburden and waste material shall be placed according to Best Management Practices (BMP) to ensure adequate compaction when backfilling”. However, in the *Waste Handling* portion of the Mining Plan narrative, the Applicant states, “Waste materials are not expected to be found in the stockpile areas” and in the *Overburden and Site Preparation* section that “topsoil and overburden were not removed from the stockpile site as no excavation is proposed for those areas”.
- Where are the overburden and waste materials mentioned in the Reclamation Plan sourced from? What area is being backfilled? Please clarify. Conversely, if this was included in error, please remove it from the Reclamation Plan narrative.
18. In the Reclamation Plan narrative, the Applicant states that there will be two reclamation plan options with the following differences: “Option 1 allows the material to be removed from the site and graded in accordance with the plan for continued cropping. Option 2 is provided if the material is to remain on-site.”
- As discussed during the Division’s pre-op inspection, please provide further clarification as to the differences between the two options, if two options are to remain. Both options allow for permanent berms in some areas, and the removal of material in some areas, with the difference in the options being in the north-west stockpile area. Please explain these in detail within the narrative.
19. The Reclamation Plan narrative states that stockpiling of material “is taking place”.
- Please update the narrative to reflect the current conditions, as stockpiling has ceased for the duration of the proposed operation.
20. The Reclamation Plan states that “the agricultural fields will either have a crop planted, a cover crop may be required or be re-seeded using an approved seed mixture”.

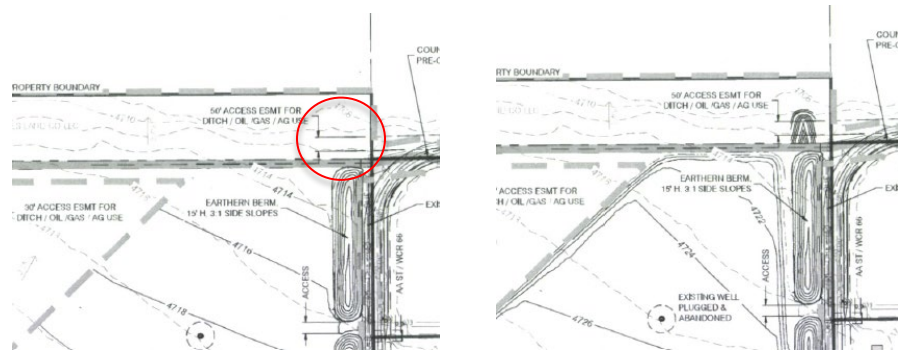
- Please commit and supply the cover crop seed mixture planned to be used in the case where a crop is not to be planted immediately.
21. The Reclamation Plan states that “final grading will be such that the topography is appropriate to the reclaimed use of the property, i.e., rangeland and crop land”. The pre-mining and post-reclamation Vegetation Maps (M-4 and M-5) indicate that the permanent berms will all be seeded with the same mixture, and the reclaimed areas in the north-west and south areas will have crops.
- Please clarify whether the Applicant intends to put cover crops in the north-west and southern stockpiled areas upon the removal of the stockpiled material, just in the north-west area, or none of the above.
 - Please clarify whether the native grasses shown on Map M-5 in the north-east stockpile area and along the west side of Seeley Lake have been planted by the Applicant.
 - If multiple seed mixes have been and will be used (Buffalo Brand Seed, Dryland Pasture Mix mentioned in the reclamation plan and cover crops), please clarify where different seed mixes will be planted.
22. The Reclamation Plan states “a one-time application of manure/ compost mix will be applied to the seeded area for stabilization and fertilization”.
- Is this for all of the seeded areas, including the permanent berms? Or is this just in the irrigated cropland and native grass/cropland areas indicated on maps M-4 and M-5. Please clarify.
23. The Reclamation Plan map M-3 indicates that the haul road will remain. Neither the Mining Plan nor the Reclamation Plan narratives address the final plans for the haul road.
- Per the Division’s pre-operation inspection, it is the Division’s understanding that the haul road is planned to remain. Please clarify the final plans for the haul road upon reclamation in the narrative.
24. Please clarify whether Option 2 will be removed from the plan. If so, please update the reclamation plan narratives and maps to accommodate the changes.
25. During the Division’s pre-operation inspection, the landowners that attended the inspection expressed concerns about the material remaining to the south of their property, along the west side of Seeley Lake. There is material remaining from the operation on the west side of the lake, at the east corner of AA St and WCR 66.

- This area is included in the affected area on the Applicant's Reclamation Plan map. Please address how this area will be reclaimed in the reclamation plan and reclamation cost exhibits.
26. Per Rule 6.4.5(1), the Applicant should be specific in terms of addressing such items as final grading (including drainage), seeding, fertilizing, revegetation (trees, shrubs, etc.), and topsoiling.
- Please address in the reclamation plan narrative how drainage ways will be restored upon reclamation in each of the affected areas.
 - Please address the flume structure noted in the landowner comments received on December 19, 2024 and on January 21, 2025 in the reclamation plan exhibit and water exhibits. Please provide the Division with the engineering plans and safety inspection reports.
27. Per Rule 6.4.5(2), the Applicant shall describe the types of reclamation proposed for the affected land, and the amount of acreage accorded to each type.
- In the Reclamation Plan narrative, please provide acreages for the amount of land to be reclaimed to cropland/agriculture/farmland and rangeland.
28. Per Rule 3.1.6 (1)(d) – Are there any temporary or large siltation structures in drainage ways.
- Describe how or if these features will be removed and how the area around it will be revegetated and stabilized prior to removal.
29. Per Rule 3.1.6 (2) – “Earth dams, if necessary to impound water, may be constructed if the formation of such impoundments will not damage adjoining property or conflict with water pollution laws, rules or regulations of the federal government, the state of Colorado or with any local government pollution ordinances.”
- Please explain how the earth dams shown in Reclamation Plan options 1 and 2 will not damage adjoining property or conflict with water pollution laws etc.

Exhibit F – Reclamation Plan Map

30. The scale is too small. The scale equates to approximately 1 inch equals 666.67 feet. The minimum scale allowable per Rule 6.2.1(2)(e) is 1 inch equals 660 feet. However, with the amount of information provided on the map, a larger scaled map and/or multiple map sections would be appropriate.
- Please include a scale bar that meets the requirements of Rule 6.2.1(2)(e) on all exhibit maps (except the Exhibit B: Index map). Please also increase the

31. Exhibit D and Exhibit G mention the construction and presence of a sediment basin.
 - Please indicate the location and orientation of the sediment basin on the Exhibit F Maps.
32. Following the Division's pre-operational inspection and subsequent comments from some of the landowners', the Division is under the impression that the small stockpile located to the west of the lake is planned to stay regardless of what reclamation option is chosen.
 - If the above statement is true, please add this stockpile to the Option 1 map in the area circled red in Figure 1 below. If not, please clarify the plan for this stockpile.



managed to protect against pollution of either surface or groundwater, after the operation.

35. Per Rule 6.4.7(3), please provide an estimate of the project water requirements including flow rates and annual volumes for the development, mining and reclamation phases of the project.

→ Will any water be needed for dust control, irrigation, etc.? If yes, please also include the requirements of Rule 6.4.7(4). Please specify in the narrative.

Exhibit J – Vegetation Information

36. Please provide the following information:

→ Per Rule 6.4.10(c), provide the estimates of average annual production for hay meadows and croplands, and carrying capacity for range lands on or in the vicinity of the affected land, if the choice of reclamation is for range or agriculture.

Exhibit M: Other Permits

37. The stormwater permit from CDPHE listed in the application (no. COR422165) is no longer listed as 'Effective' on the CDPHE database. Additionally, the permit included in the application states that it was valid through 3/31/2024.

→ Has this permit been extended? If not, will a new one need to be issued prior to the removal of the stockpiled material? Please clarify this in the Exhibit M narrative.

→ The COR422165 permit included in the application lists the 'Disturbed Acres' as 35 acres. The Reclamation Plan map for the mining and reclamation permit application has a note that says the disturbed area equals 97.36 acres. Please explain this discrepancy.

Exhibit N: Source of Legal Right to Enter

38. The right of entry forms provided with the Application do not satisfy the requirements of Rule 6.4.14 as they do not provide the Applicant listed on the application the right to enter, nor are the signed statements from the landowners notarized.

→ Please provide documentation of the legal right to enter to conduct mining and reclamation, for Owners of Record described in Rule 1.6.2(1)(e)(i). 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 mining and reclamation.

Exhibit O: Owner(s) of Record of Affected Land (Surface Area) and Owners of Substance to be Mined

39. During the Division's pre-operational inspection, it was determined that some of the affected land represented on the Applicant's map – just east of AA street – is located on Ogilvy's property.
- Please list this parcel and the property owner's information in the Exhibit O narrative.
 - Please provide legal right to enter forms for conducting reclamation on this property.

Exhibit S: Permanent and man-made structures

40. On the Mining Plan Map, fences, power poles, gas lines, wells, county roads, private drives, and unidentified structures appear to be within 200 feet of the proposed affected area.
- Pursuant to Rule 6.4.19, where the affected lands are within two hundred (200) feet of any significant, valuable, **and permanent man-made** structure, the Applicant shall:
 - “(a) provide notarized agreements 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; or
 - (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; or
 - (c) where such structure is a utility, the Applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have "no negative effect" on their utility.”
41. The structure agreements provided with the application list “Ogilvy Land & Irrigation Company.
- Per the requirements of Rule 6.4.19, please provide structure agreements that have the same Applicant listed on them as the Applicant listed on the mining and reclamation permit application.

42. Some of the structure lists provided on the structure agreements included in the application do not appear to encompass all the structures within the parcels. See the following aerial images of each parcel listed on the Exhibit S cover page included in the application. The red text addresses items of concern that the Applicant shall clarify.



Owner: KEIRNES JANE ANNE **Owner:** KEIRNES C BRADLEY

Account: R1339986 **Parcel:** 080523401003

And 080523401002

Structures listed on Structure Agreement: Fencing, residence, trees/landscaping



Owner: ALBERT SUSAN R

Account: R0030487 **Parcel:** 080526000075

Structures listed on Structure Agreement: Fencing and trees. *There appears to be additional structures not listed on the agreement that may be within 200' of the affected land boundary.*



Owner: *DEJAGER NATASHA AUGUSTE and PATEL MAHENDRA KANTI*

Account: R8955165 **Parcel:** 080523101019

Structures listed on Structure Agreement: *Fencing and residence*



Owner: *MATHIAS REBECCA D*

Account: R8940530 **Parcel:** 080526100001

Structures listed on Structure Agreement: *Fencing and trees. There appears to be additional structures not listed on the agreement that may be within 200' of the affected land boundary.*



Owner: MILLER KEVIN W
Account: R8956319 **Parcel:** 080523300033

No structures are listed on the agreement. Why is there a structure agreement if structures are outside of 200'? Or are there structures on this parcel within 200' of the affected land that were accidentally not listed?



Owner: SAYLOR PROPERTIES LLC
Account: R8959134 **Parcel:** 080526100010

***Structures listed on the agreement:** Accessory structure. Please be specific. What does the Applicant mean by 'accessory structure'? There appears that there may also be additional structures not listed on the agreement that may be within 200' of the affected land boundary.*



Owner: SHUPE GREGG R and SHUPE CYNTHIA ANN
Account: R1339786 **Parcel:** 080523401001

Structures listed on the agreement: Trees/landscaping and fencing. There appears to be additional structures not listed on the agreement that may be within 200' of the affected land boundary.



Owner: SULLIVAN GABRIELA A and SULLIVAN ANDREW LEVI
Account: R1341786 **Parcel:** 080524301001

Structures listed on the agreement: Fencing, residence, trees/landscaping, 1 accessory structure. Please be specific. What does the Applicant mean by 'accessory structure'?

43. A structure agreement was included for "Public Service Company of Colorado" for a fence and road.

→ Please identify where these structures are located, and provide the parcel number(s) for which they are located.

Publication Requirements

44. Pursuant to Rule 1.6.2(1)(e) the Applicant shall provide the Division with proof of notice to the Owners of Record of surface and mineral rights of the affected land, and to Owners of Record of all land surface within 200 feet of the boundary of the affected land.

→ Proof of receipt of notice for the following entities were not received by the Division. Please submit copies of the certified mail green cards for these notices, and/or an explanation of how these entities were contacted.

i. Parcel no. 080526000075 ALBERT SUSAN R

ii. Multiple parcels: CBKJR HOLDINGS LLC, EJK HOLDINGS LLC, GAK HOLDINGS LLC, SWK HOLDINGS LLC, KEIRNES LAND COMPANY LLC

45. Pursuant to Rule 1.6.2(1)(c):

→ Any changes or additions to the application on file in our office must also be reflected in the public review copy which was placed with the Huerfano County Clerk and Recorder.

i. Pursuant to Rule 6.4.18, you must provide our office with an affidavit or receipt indicating the date this was done.

Other

46. Attached are comments received by the Division from some of the landowners of the affected areas.

→ Please provide responses to the concerns raised in the comments for the Division's file and to ensure jurisdictional concerns have been addressed.

Please submit your responses to the above listed issues by February 27, 2025 in order to allow the Division sufficient time for review. The decision date for your application is scheduled for March 2, 2025. If more time is required to respond, please send an email request for an extension to the decision date.

The Division will continue to review your application and will contact you if additional information is needed. If you require additional information, or have questions or concerns, please feel free to contact me at amber.gibson@state.co.us or at 720-836-0967.

Sincerely,



Amber M. Gibson
Environmental Protection Specialist I

Ec: Tim Naylor, AGPROfessionals
Jared Ebert, Senior EPS, DRMS



STATE OF
COLORADO

Gibson - DNR, Amber <amber.gibson@state.co.us>

Comment submitted for Seeley Reservoir Stockpiles M-2023-043 Application

1 message

Gibson - DNR, Amber <amber.gibson@state.co.us>

Fri, Dec 20, 2024 at 3:39 PM

To: Tim Naylor <tnaylor@agpros.com>

Good afternoon,

Attached for your consideration are comments received by the Division from the landowners of Lots A, B, and D on Thursday December 19, 2024 in regard to your Seeley Reservoir Stockpiles, M-2023-043 permit application.

Thank you,

Amber M. Gibson
Environmental Protection Specialist I



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

P 720.836.0967 | F 303.832.8106 |
amber.gibson@state.co.us

Mailing: DRMS Room 215, 1001 E 62nd Ave, Denver, CO 80216

Physical: 1313 Sherman Street, Room 215, Denver, CO 80203

<https://drms.colorado.gov/>



Keirnes Comments forwarded to Applicant-- Permit M2023043_received 12.19.24_forwarded 12.20.24.pdf
2180K

Permitting Action Comment OR Objection



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

CONTACT INFORMATION

You are providing a comment or objection to the public record of a permitting action currently under review by the Division of Reclamation, Mining and Safety. This form is not intended for reporting of possible violations or illegal activity.

Please note that this form is processed through an automated workflow, and forms with incomplete or erroneous permit, permitting action, or county information may be rejected by the automated process.

Comments/objections should pertain to the Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials or Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal or Designated Mining Operations. Objections and Comments must pertain to issues within the Division's jurisdiction (not pertaining to dust, traffic, noise, hours of operation, affect on property values, local land use decisions, etc.).

Please refer to the Division's [Mining Activity Dashboards](#) to assist you in providing the information required on this form.

Date of Comment or Objection

12/19/2024

***** *Indicates a Required Field*

**This form is for comments or objections on permitting actions.
This form is not intended for requests to investigate compliance
issues with DRMS rules.**

Comment or Objection *

- ☐ Objection
- ☐ Support
- ☒ General Comment
- ☐ Agency Comment

Contact Type *

- ☐ Individual
- ☒ Group
- ☐ Agency
- ☐ Attorney

Please select the appropriate option above to identify who you represent.

Group Name *

Keirnes

Please specify how you would like to provide the list of names of the individuals you are representing.

I prefer *

- ☒ to type in the names.
- ☐ upload a PDF of the names.

List of persons represented

CBKJr Holdings, LLC, EJK Holdings, LLC, GAK Holdings, LLC, SWK Holdings, LLC, Keirnes Land Company, LLC, C. Bradley Keirnes and Jane Anne Keirnes.

Your First Name *

Charles

Your Last Name *

Keirnes

Your Address *

PO Box 7

Your Address 2**Your City ***

Eaton

Your State

CO

Your Zip Code *

Maximum of 10 digits. (Example) 80202

80615

Email Address *

Enter a valid email address in this field to receive a confirmation e-mail.

charles@keirnescompanies.com

Your Phone Number * (?)

Used only to follow up.

9705392204

Extension**Alternate Phone Number (?)**

Used only to follow up.

Alternate Phone Extension**Connection to Operation ***

Select all that apply

- ☒ Land Owner of affected land
- ☒ Mineral Owner
- ☒ Adjacent Land Owner
- ☐ Government Agency

- ☒ Structure Owner within 200' of affected land
- ☐ Nearby Resident
- ☐ Concerned Citizen
- ☐ Other

DESCRIPTION OF COMMENT OR OBJECTION

You are providing a comment or objection to the public record of a permitting action currently under review by the Division of Reclamation, Mining and Safety. This form is not intended for reporting of possible violations or illegal activity. Please be as specific as possible.

Comment/Objection Narrative *

See attached letter.

Permitting Action Comment/Objection is Regarding

- ☒ New Permit ☐ Change to Existing Permit

Permit Number * (?)

Enter a valid permit number

M2023043

County *

Colorado County where the proposed operation is located

Weld County

Enter one county only

Site Name

Seeley Reservoir Stockpiles

Permittee/Operator Name

Four C Sons, Inc.

ADDITIONAL INFORMATION**Are there supporting photos, maps, or documents you wish to upload? ***

☒ Yes ☐ No

Upload Supporting Documents

Maximum of 5 files can be uploaded and each file size must be 10mb and under. PDF, JPG, and PNG formats only.

Keirnes Comments -- Permit M2023043 12.19.24.pdf

746.99KB

By submitting this form electronically you agree to receive any/all follow up correspondence from the Division of Reclamation, Mining, and Safety at the email address you have provided.



Charles Keirnes
PO BOX 7
Eaton, CO, 80615
970-539-2204
Charles@keirnescompanies.com

December 19, 2024

Amber M. Gibson
Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203

RE: Seeley Reservoir Stockpiles, File No. M-2023-043

Amber,

On behalf of the landowners of Lots' A and B of REC EXEMPT RE-5061 and Lot D of REC EXEMPT RECX15-0012, below are our comments/questions/concerns related to Permit # M-2023043 in relation to our noted affected properties.

1. Ascertain why Ogilvy Irrigating and Land Company is not listed as the applicant? In meeting with DRMS representatives Nikie Gagon and Jared Ebert, it was clear Ogilvy would need to be the applicant given it was their project. As the landowners affected by the permit, that remains our position.
2. In regard to (6.4.5 Exhibit "E" Reclamation Plan in the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials) of the application.
 - a. The applicant has not met their stated 3:1 slopes and we have major ongoing safety concerns related to the detrimental impacts to our properties given the applicants noncompliance with the DMRS 3:1 slope requirements/standards.

(Below is a current image highlighting an example of current erosion and the applicant not meeting the 3:1 slopes)



(Below is an image of previous structure that failed and supports our ongoing safety and slope stability concerns)



- b. Concerned with the compliance of revegetation (specifically all disturbed areas on Lots' A, B and D) and slope stability (related to shorelines, which are already showing signs of erosion).
3. Ascertain whether the 2nd unapproved structure/damn trespassing on our land (shown on Pg.1 built in connection with this project) complies with *DMRS 3.1.6 Water - General Requirements* and all other applicable DMRS requirements and all state/federal laws? Does the new unapproved damn structure which created a new stagnant body of water and altered historical water flows, trigger noncompliance/concerns with the following referral agencies and are they aware of this new artificial structure?

Colorado Division of Water Resources
Division's Dam Safety Branch
Colorado Department of Health, Water Quality Control Division
U. S. Army Corps of Engineers
Weld County Planning Department (given its effects on the Weld County EVF
PUD PF-1090 detention pond discharge)

4. Concerned with the removal/reclamation of the remaining project debris located adjacent to the southern boundary of Lot B (located on Lot C REC EXEMPT RE-5061). That property needs to be part of this permit, to insure full reclamation of that area.

5. Note as referenced in our Right of Entry Forms:

The Landowners, referenced below of the below-described property, provides this letter in connection with Ogilvy Irrigating & Land Company's ("Ogilvy") application for a DRMS 112-C permit. CBKLC is willing to grant access to the Property to satisfy Ogilvy's obligations under the permit, if issued, on terms and conditions to be determined.

Landowners: CBKJr Holdings, LLC, a Colorado limited liability company EJK Holdings, LLC, a Colorado limited liability company GAK Holdings, LLC, a Colorado limited liability company SWK Holdings, LLC, a Colorado limited liability company Keirnes Land Company, LLC, a Colorado limited liability company fka C.B. Keirnes Land Company, LLC

Any grant of entry by the Landowners referenced above will not waive, limit, or release any obligations of Ogilvy under the Seeley Lake Maintenance Project Agreement dated March 4, 2024.

We appreciate your consideration of our above comments/questions/concerns related to the impacts this permit directly has on our subject properties. Please don't hesitate to reach out to me with any question, otherwise we look forward to further detailing our concerns during the Pre-Operation Inspection onsite meeting January 9th, 2025.

Sincerely,

A handwritten signature in cursive script that reads "Charles Keirnes".

Charles Keirnes



STATE OF
COLORADO

Gibson - DNR, Amber <amber.gibson@state.co.us>

Comments received by the Division for the Seeley Reservoir Stockpiles M-2023-043 Application

1 message

Gibson - DNR, Amber <amber.gibson@state.co.us>

Tue, Jan 21, 2025 at 1:10 PM

To: Tim Naylor <tnaylor@agpros.com>, Scott Cockroft <srccockroft@gmail.com>

Good afternoon,

Attached for your consideration are follow-up comments received by the Division from the landowners of Lots A, B, and D on Tuesday January 21, 2025 in regard to your Seeley Reservoir Stockpiles, M-2023-043 permit application.

Thank you,

Amber M. Gibson
Environmental Protection Specialist I



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

P 720.836.0967 | F 303.832.8106 |
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Keirnes Second Comments following Inspection.pdf
1783K



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January 21, 2024

Amber M. Gibson
Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203

RE: Seeley Reservoir Stockpiles, File No. M-2023-043 (Adequacy Review/Additional Application Comments)

Amber,

On behalf of the landowners of Lots' A and B of REC EXEMPT RE-5061 and Lot D of REC EXEMPT RECX15-0012, below are our additional comments /concerns related to Permit # M-2023043 in relation to our noted affected properties.

1. In response to, **Hydrologic Balance and Sediment Control: "Applicant will be required to provide the engineering specifications and justification as to why this structure and the side-slope configuration is and will be stable, as part of their responses to the Division's adequacy review."**

We continue to have great ongoing concerns in relation to various Regulatory Entities jurisdictional oversight noted in our first comments, impacts related to our EVF PUD Detention Pond Discharge and the overall soundness/integrity of the 2nd structure and the associated configuration trespassing/impacting our land. Please see Exhibit 1 with our third-party Engineers comments and associated construction images/context of the 2nd unapproved and retroactively engineered/salvaged structure. Need to confirm the structure as stated by the applicant, in fact been examined by a Dam Safety engineer, or related Regulatory entities and is the State Engineer aware of the contradictions between what was built compared to the retroactively engineered stamped plans dated 6.26.2024?

2. In response to, **Right of Entry: "Applicant that the legal right to enter forms submitted with the application do not satisfy the requirements of Rule 6.4.14"**

As a group, we are willing to grant access to the Property to satisfy Ogilvy's obligations under the permit only if issued on terms and conditions acceptable by our group and will not waive, limit, or release any obligations of Ogilvy under the Seeley Lake Maintenance Project Agreement dated March 4, 2024.

3. In response to, **Reclamation Success: Backfilling, Grading, and Revegetation: “The Applicant submitted two options for reclamation. Option 1 allows for the material in the perimeter berms around the northern properties to remain, whereas the material within the rest of the northern property and the material in the southern property will be removed upon the permit’s issuance (see the enclosed Reclamation Plan Map Option 1). After the inspection, the Division is under the impression that Option 2 may be removed upon adequacy, as Option 1 appeared to be the preferred option by all parties.”**

As a group, we are willing to grant access solely based on Option 1, as our sole intention as the owners of the stockpiled material is to fully remove the stockpile located on Lot D shown in Picture 6, “which is pictured on the right is the stockpile that will be removed via reclamation option”. As for **Photo 7**: “Looking east at a small stockpile located on the west side of Seeley Lake that will be removed via reclamation option 1 or will remain via reclamation option 2.” This small stockpile will in fact stay via option 1 and the option 1 reclamation plan needs to be corrected, showing that stockpile as a permanent berm.

4. In response to, **Reclamation Success: Backfilling, Grading, and Revegetation: “During the inspection, the landowners brought the inspectors and the Applicant to the location where they believed remaining materials needed to be reclaimed and included in the affected area of the permit boundary (Map 1; Figure 1; Photo 13). Photo 13: Looking southeast at the area mentioned in the landowner’s complaint. The survey sticks in the photo indicate the end of the landowner’s property. The remaining material (arrows) is located on Ogilvy’s property. The reclamation of this portion of the permit will need to be further addressed and accounted for in the Applicant’s adequacy responses.”**

We agree that this area needs to be addressed, our posture remains the same that the excess inorganic material/debris left over from the subject project, needs to be fully disposed of and that disturbed area needs to be fully reclaimed. Otherwise, the precedent being set here is (out of sight out of mind) and would allow for future applicants to place material on adjacent properties as a loophole.

We appreciate your ongoing efforts and further consideration of our comments, questions and concerns related to the impacts this permit directly has on our subject properties. Please don’t hesitate to reach out to me with any question.

Sincerely,

Charles Keirnes

Charles Keirnes

Exhibit 1

JKP Consulting LLC

1211 9th Street, Greeley, CO 80631 | 970.590.6061 | kris@jkpconsulting.co

October 23, 2024

Mr.
Skogg
Partner
Kutak Rock LLP – Denver

**RE: Review of the Ogilvy Ditch Company
Structure Keirnes Land Company, LLC/Eagle
View Farms, LLC Weld County, Colorado**

Mr. Skogg,

On behalf of the Keirnes, we met many times on-site to discuss several concerns raised in relation to the Ogilvy's new measuring device/sediment structure located on Keirnes' property. This is our reflection and summary of the issues as we understand. The ditch company installed a measuring device/flume which not only is physically outside of the recorded easement but causes several issues. From what has been conveyed and the information that we've reviewed, it appears that these are the primary issues.

1. Keirnes indicated there is a contract with the Ogilvy Ditch Company that requires the Keirnes' review and approval of any physical improvements the Ogilvy contemplates to their ditch through Keirnes' property. It appears Ogilvy installed this structure in violation of this contract. Stamped engineered plans were provided after the improvements were installed.

2. The installed flume is located physically outside of the recorded easement through Keirnes' property. This would appear to constitute trespass on their behalf.

3. We question why Ogilvy wants to place a measuring device in the ditch at this location. When asked the purpose of measuring the flow, the indication was they needed to measure the amount of water the Greeley No. 2 Canal conveyed to them. Given a substantial amount of groundwater enters the ditch downstream of Hwy 392, it seems more appropriate for this measuring device to be a couple thousand feet north of its current location or possibly north of Hwy 392.

4. If the Ogilvy Ditch Company needs a measuring flume in the general location as the new one on Keirnes' property, we offer the following considerations:

a. Simplify the design to measure the flow/capture sediment and lessen the overall magnitude/scale of the impacted area on Keirnes' property. This could be similar to the previously used and now submerged structure.

b. The flume should be centered in the easement and located approximately 100 to 200 feet north of its current location. The elevation of the flume should be placed at the historical flowline elevation (approximately 4 feet lower). Basically, it should be at the same elevation as the measuring flume that was previously installed in the historical flowline (and now submerged).

c. The current flume has several issues. We don't know if it was constructed properly and are aware of contradictions with the retroactively provided final stamped engineered plans. Are there compaction reports, concrete testing or other inspection reports from a qualified firm? The current flume impounds water 800 to 900 feet north of the structure potentially creating a public nuisance, for several reasons (e.g. creating a new stagnant body of water above the historical flowline). Does this create any kind of permittable condition, like a well permit or other regulatory permits? Will the impounded water create wetlands? Does this impoundment affect the performance and required discharge rates of the Eagle View Farms detention pond/outlet (which is already silting in)?

d. Current structure design/location is already showing signs of erosion to the detriment of Keirnes' property, as 3:1 slopes have not been achieved in the subject area and also required by the Division of Mining, Safety and Regulation (DMRS).

A new simplified overall design/structure is achievable per contract and would mitigate the above noted concerns. Let us know if you have any questions regarding our understanding and summary.

JKP Consulting LLC



Kris A. Pickett

Its: Manager

LandOne Engineering LLC



Daniel Hull, P.E.

Its: Manager

Sincerely,

Cc: Brad Keirnes

Charles Keirnes

Spencer Keirnes

Exhibit 1 (Continued) Images # 1 - 4

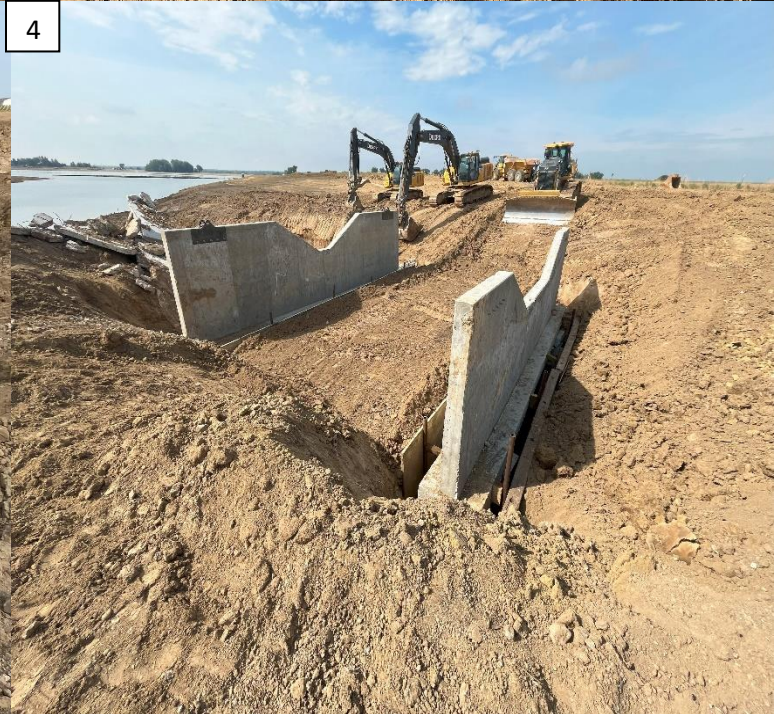


Exhibit 1 (Continued) Images # 5 - 8

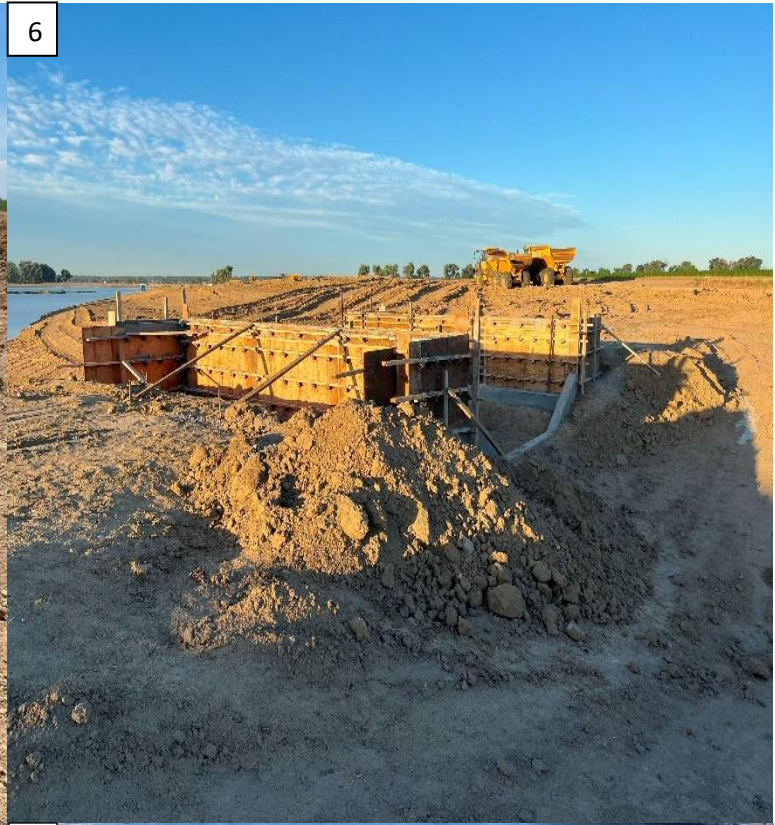


Exhibit 1 (Continued) Images # 1- 8 Context

- Image 1 - Shows the first unapproved failed structure and damages caused, due to the non-engineering (as stamped engineered plans were nonexistent). Our general observations contradict the claimed cause of failure and we believe it was due to head wall pressure by damming up the historical flow of water.
- Image 2 - Shows the 2nd structure utilizing the salvaged headwall set on crushed concrete, elevated 4ft +/- resting on concrete blocks (neither of these components are shown on engineered drawings), skewed/moved outside of the historical flowline.
- Image 3 – Shows formed footers via railroad ties on top of crushed concrete, with no horizontal rebar or vertical rebar ties connecting the salvaged headwall.
- Image 4 – Shows uncompacted back fill and no compaction test nor mechanical compaction were provided or verified.
- Image 5 – Shows the railroad tie forms left and backfilled in place and again no mechanical compaction were provided or verified.
- Image 6 – Shows skewed forming of unneeded height on top of headwall making the overall height of the structure 11 ½ ft top to bottom.
- Image 7 – Shows historical flowline altered and moved west during construction (see Image 8 for historical context). It shows the new detained/impounded body of water footprint (5ft deep x 50ft wide x 1000 ft long). The gross magnitude of the structure (7ft + above HWL) and the impounded body of water upstream of the Seeley Lake Reservoir is not justifiable per our third party engineer.
- Image 8 – Show the subject areas' historical positive flow of water down gradient to the Seeley Lake Reservoir, before creating the new detained body of water outside of the reservoirs original foot print shown in image 7.

*Images 1- 8 if fully taken into account by the reviewing regulatory entities and are compared to retroactively provided engineered plans and the Applicants pending required justification, will justify/reiterate our third party engineers' point, that the gross magnitude of the structure/contradicting engineered plans are unwarranted and justify our numerous ongoing concerns.