



April 11, 2025

RE: Notice of Pre-Hearing Conference and Formal Board Hearing for a 112c Reclamation Permit Amendment Application with Objections, Nissen Farm Resource, Permit No. M-2003-001

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (Division) appreciates you taking the time to participate in the review process of the above referenced permit application. The amendment application for the Nissen Farm Resource (Application) was filed with the Division on October 21, 2024, by BURNCO Colorado, LLC.

The Division received one timely objection letter on the Amendment signed by multiple parties. Therefore, pursuant to Rules 1.4.9(2)(a) and 1.7.4(2), the Division has scheduled the Application for consideration by the Colorado Mined Land Reclamation Board (Board).

The Division's authority is limited to enforcement of the Colorado Land Reclamation Act for the Extraction of Construction Materials, 34-32.5-101, *et seq.*, C.R.S. (Act) and the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Rules). Copy of the Act and Rules are available through the Division's website, specifically at <https://drms.colorado.gov/rules-and-regulations>.

Pre-Hearing Conference:

The Pre-Hearing Conference will be held to describe the Division's review process, to explain the rights and responsibilities of parties, to discuss and resolve issues to the extent possible, to describe the Board Hearing process, to propose a list of issues under the Board's jurisdiction, to simplify that list, and to identify parties. The Board has appointed Jason Musick to preside as the Pre-Hearing Conference Officer.

In preparation for the Pre-Hearing Conference, all parties are strongly recommended to review Rules 2.6 and 2.7. At the Pre-Hearing Conference, all parties must provide the Division with an electronic copy of potential witnesses and exhibits for the Board Hearing. Pursuant to Rule 2.6(2)(a), the list must include each witness name, current address, and phone number, area of expertise (if an expert witness), and the subject matter of the testimony.

Pursuant to Rule 2.6(2)(b)(i), for any materials not already in the Division's public files, all parties must provide complete copies of any exhibits for the Board Hearing.



Pursuant to Rule 2.6(2)(b)(ii), for any materials that are already in the Division's public files, all parties must provide copies of the list of materials to be used with sufficient specificity to describe the exhibit, including but not limited to, the specific title or description of each exhibit. The list must also specify where other parties may review and obtain a copy of each exhibit.

Pursuant to Rules 2.6(2)(b)(i) and (ii), each party to the hearing shall provide copies of all materials mentioned above to all other parties to the hearing. All witness and exhibit lists, exhibits, motions, and responses to motions for this Application shall be submitted via email to the Board Administrator, Camie Mojar at dnr_drms_mlrp-submittals@state.co.us. Please ensure that all materials submitted to the Board Administrator are in a PDF format. Materials provided through file sharing services will not be accepted.

The Pre-Hearing Conference will be held on April 29 at 10:00 a.m. at the Division's office at 1313 Sherman Street, Room 318, Denver, CO. Pursuant to Rule 2.7.3(4), any party who does not attend the Pre-Hearing Conference forfeits its party status and all associated rights and privileges, unless such party provides a fully executed proxy authorization form to the Pre-Hearing Conference Officer, and the party's authorized representative is present at the conference. An official proxy authorization form is available on the Division's website, specifically at: <https://drms.colorado.gov/forms/minerals-program-forms>, under the section titled Public Participation in the 112 Reclamation Permit Process.

If you are unable to attend the Pre-Hearing Conference in person, you may request a link to appear virtually (via Zoom). To do so, please submit an email to the Board Administrator, Camie Mojar at dnr_drms_mlrp-submittals@state.co.us no later than 5:00 p.m. on Friday, April 25, 2025. Prior to the Pre-Hearing Conference, you will receive an authorization code to attend the meeting.

Formal Board Hearing:

The Application will be considered by the Board during a formal hearing, scheduled for the May 14 and 15, 2025, Board meeting to be held at 1313 Sherman Street, Room 318, Denver, Colorado, beginning at 9:00 a.m. on May 14, or as soon thereafter as the matter can be considered. During the hearing, the Board will consider the Amendment Application with objections and may decide to approve, approve with conditions, or deny the Application. Pursuant to Rule 2.8.1(1), any party who does not attend the Board hearing forfeits its party status and all associated rights and privileges.

If you have good cause not to appear in person at the Board hearing, you must submit a request to the Board to appear virtually (via Zoom). To do so, please submit an email to the Board Administrator, Camie Mojar at dnr_drms_mlrp-submittals@state.co.us no later than 5:00 p.m. on May 2, 2025 for Board consideration. If approved, you will receive an authorization code to attend the meeting for this matter. Please note that only Parties and those who will be testifying may attend the Board Hearing (in person or via Zoom). All other interested persons

may view the Hearing via the Board's YouTube Channel:
<https://www.youtube.com/channel/UCDrrAO8bIPFIOWce-yH1fWA>.

If you have any questions, you may contact me by telephone at 720-527-1640 or by email at nikie.gagnon@state.co.us.

Sincerely,



Nikie Gagnon
Environmental Protection Specialist

Enclosure: Guide to Submitting Exhibits and Information to the MLRB

CC: Don and Mary Lee Foster
Ben Lobban
Steve Rosenquist
Bill and Judy Dunn
Kevin Brittner
Trevor and Brandy Allen
Stephanie and Sam Ellis

Ec: Joel Bolduc, BURNCO Colorado, LLC
Jared Ebert, DRMS
Jason Musick, DRMS
Russ Means, DRMS
Jeff Fugate, AGO
Scott Schultz, AGO
Charles Kooyman



MEMORANDUM

To: Whom it May Concern

From: Division of Reclamation, Mining and Safety (DRMS), Active Mines Program

Date: September 21, 2022

Re: **Pre-Hearing Conference Guidance for Submitting Witness Lists, and other Exhibits and Information to the Mine Land Reclamation Board (MLRB / Board)**

Dear Formal Public Meeting Participant,

Thank you for taking the time to participate in the Division of Reclamation Mining and Safety's (DRMS or Division) process of reviewing applications or amendments to existing permits. The purpose of this memorandum is to explain the requirements for submitting information to the Mined Land Reclamation Board (MLRB or Board) at a Pre-hearing Conference for use during a Formal Board Hearing. In order to effectively process and review materials submitted, the MLRB Rules require that all submissions conform to the requirements listed below. Any information presented or submitted that does not meet the requirements of Rules 2.6, 2.7 and 2.8 will be up to the discretion of the MLRB as to if it may be considered during a Formal Board Hearing.

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 MLRB(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>.

Party Status

In order to submit information and exhibits for use during a Board Hearing of a contested reclamation permit application or amendment the person or entity must have “Party” status. Pursuant to the Acts and Rules, a person may participate as a “Party” if they:

(1) Submit a timely written comment or objection to the Division. For a 110 permit application this is no more than 10 calendar days and for a 112 permit application this is no 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, email address, 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)]. Please note, the comment periods are set by Rule and the Division cannot accept untimely comments.

AND

(2) Attend the Pre-hearing Conference (PHC) 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. A Party waives their rights if they fail to attend the PHC.

AND

(3) Attend the Formal Board Hearing. A Party waives their rights if they fail to attend the Board Hearing.

General Requirements (Rule 2.6)

Only a Party may present evidence, call witnesses, and cross-examine witnesses during the Board Hearing on the application. See Party Status section above.

All motions, responses, replies, witness lists, and exhibit lists shall identify the names, address, email, and phone number of the submitting party, and the file number assigned to the application by Division. If a Party is represented by an attorney or other representative, the name, address, email, and phone number of the attorney or other representative shall be provided on all documents submitted to the Board.

All motions, exhibit and witness lists shall be filed with the MLRB and served on all Parties and the Division at the same time. All filings with the Board shall be through the Office of Mined Land Reclamation’s Administrator at the below email. Filings will be placed on the DRMS Website for the scheduled hearing within one working day of established deadlines for all Parties.

During a Formal Board Hearing a party may use a witness or other exhibits for testimony. The Party shall provide a written list of all potential witnesses and list of exhibits at the Pre-hearing Conference pursuant to Rule 2.6(2). Specific requirements for each type of testimony are listed below.

Witness list: A Party must provide the Pre-Hearing Conference Officer at the Pre-hearing Conference with a list of all potential witnesses. The list shall include each: witness' name, current address, email, and phone number, area of expertise, and the subject matter of the testimony. If a Party wishes to provide expert testimony themselves, they must provide the same required witness information and appear on the witness list. Note that a party is not obligated to use a witness if listed. However a party cannot introduce testimony from a witness that was not listed, without first obtaining express permission from the Board at the Formal Board Hearing.

Information/Exhibits already in the public file: Copies of materials already in the public file do not need to be provided. For any materials already in the public record a Party must only provide the other Parties and the Division with a list of the materials to be used. The list shall sufficiently describe the exhibit, including but not limited to, the specific title or description of each exhibit, such as maps, reports, adequacy responses, correspondence, agreements, data printouts, photographs, and drawings. The list must specify where the other Parties may review and obtain a copy of, or inspect, each exhibit.

New Information/Exhibits (not already in the public file): Any materials to be used as exhibits at the Formal Board Hearing shall be submitted during or before the Pre-hearing Conference. A copy of all materials to be used shall be provided to the Pre-Hearing Conference Officer and given to all other Parties and the Division. Where an item cannot practicably be reproduced, the exhibit must be made available to the Parties and the Division for inspection upon request.

Other-Motions: All motions, except those made during a hearing, or when the Board deems an oral motion to be appropriate, shall be in writing and shall state the grounds for the motion. Motions shall be received by the Board no later than two (2) Working Days following the pre-hearing conference. Any written response to a motion must be received by the Board no later than three (3) Working Days prior to the date of the Formal Board Hearing, Rule 2.6(1). Please note the Pre-hearing Officer has the authority to modify these dates if it is prudent to do so. Notice of any such changes shall be provided to all parties by the pre-hearing officer.

Summary:

- All witness and exhibit lists shall be submitted just prior to or at the Pre-Hearing Conference.
- Motions shall be filed no later than two working days after the Pre-Hearing Conference.
- Responses to Motions are due no later than 3 working days before the Hearing date.

Formatting/Submission Requirements: it is the responsibility of the filing Party to confirm all submittals conform to the requirements set forth below.

All documents and information related to the matter under consideration, including but not limited to witness/exhibit lists, motions, or responses, **shall be** submitted electronically to: dnr_drms_mlrbsubmittals@state.co.us, subject line of the email shall be: Permit/File, Revision/Application #, Party Name, Type of Submission. If multiple emails will be submitted please note #1 of #X, etc.

Example: M1776704, Amendment #3, John Hancock, Witness List, Email #1 of 3

- If a file size exceeds the email sending limits the Party shall coordinate with the Board's Administrator, Camie Mojar, to determine an alternative means of submitting information. Please call 303-866-3567 Ext 8136. Please Note: All submittal date requirements remain in place.

All documents and information must be submitted in PDF Format files only. No Dropbox, links or other file formats will be accepted. Incorrect formats will result in rejection of the materials.

All documents must be named and if voluminous, please provide a table of contents. Names should correlate to those items listed on the Exhibit list provided during the Pre-hearing Conference. Please use the following naming convention: Permit/File #, Party Name, Exhibit #, Document Name

- If multiple exhibits are being presented within one PDF, each exhibit shall be bookmarked and named accordingly.

Helpful Web links:

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>.

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://docs.google.com/document/d/1V7B0w9nLp8rUN2kj795Kvcfwt6X0z4PlIzcVgl-LizM/edit>

SIGNATURES MUST BE IN BLUE INK

**STATE OF COLORADO MINED LAND
RECLAMATION BOARD
PARTY STATUS WITHDRAWAL
FORM**

In the matter of File No. M-_____ - _____, Permit or Amendment Application.

Name of Operator/Applicant: _____

Site Name: _____

I hereby withdraw as a party to this matter.

I hereby withdraw as a party to this matter and, if the Board holds a hearing,
I wish to address the Board at the formal hearing, if held, as a non-party.

(Please note that if all objecting parties withdraw prior to the date set for the Board's consideration of the application, the application may be approved by the Office without the Board holding a hearing. In that event, there will be no opportunity to address the Board on any issues related to the application. Also, the Board is not obligated to consider any issues raised by a person or an entity that has withdrawn as a party.)

Regardless of a party status, the Division thoughtfully considers each issue submitted in writing to the Division and provides a response to those issues within its jurisdiction in the Division's "Rationale for Recommendation." The Rationale is available to any person by contacting the Division. For persons who do not wish to become a party or who withdraw as a party in this matter, please contact the Division for information on application status.

Printed Name

()
Home Phone #

Address

()
Work Phone #

City, State

Zip
Code

()
FAX #

E-Mail Address

Date

Signature

Title	First Name	Last Name	Address	City	State	ZIP
	Donn and Mary Lee	Foster	23989 CR 58	Greeley	CO	80631
	Ben	Lobban	23952 CR 58	Greeley	CO	80631
	Steve	Rosenquist	23985 CR 58	Greeley	CO	80631
	Bill and Judy	Dunn	24011 CR 58	Greeley	CO	80631
	Kevin	Brittner	23700 CR 58	Greeley	CO	80631
	Trevor and Brandy	Allen	23962 CR 58	Greeley	CO	80631
	Stephanie and Sam	Ellis	23752 CR 58	Greeley	CO	80631