



April 18, 2025

RE: Division's Recommendation to Approve a 112c Amendment Application (AM1) with Objections, Nissen Farm Resource, Permit No. M-2003-001

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (Division) hereby issues its recommendation to approve the 112c permit amendment application (AM1) for the Nissen Farm Resource, Permit No. M-2003-001, submitted by BURNCO Colorado, LLC (Applicant).

This recommendation is based on the Division's determination that the Applicant's amendment application (AM1) 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 April 18, 2025, the Division determined that BURNCO Colorado, LLC's permit amendment application satisfied the requirements of the Act and Rules, (specifically C.R.S. 34-32.5-115(4)) and issued its recommendation to the Board to approve the amendment application (AM1) for the Nissen Farm Resource, File No. M-2003-001, over objections.

The Division's rationale for approval (Rationale) identifies that the objections raised are all outside the jurisdiction of the Division and the Colorado Mined Land Reclamation Board (Board). 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 "M2003001" into the Permit No. field and hitting Enter.

The Division's recommendation to approve the amendment application is to the Colorado Mined Land Reclamation Board (Board). The Division received one timely written objection to AM1. Therefore, pursuant to Rules 1.4.9(2)(a) and 1.7.4(2), the Division has scheduled the amendment application for consideration by the Board. During the hearing, the Board will consider the permit amendment application with objections and may decide to approve, approve with conditions, or deny the application.

The Formal Board Hearing is scheduled to occur during 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. Pursuant to Rule 2.7.1(5), a Pre-hearing Conference will be held after the Office has issued its written recommendation and at least 10 calendar days prior to the Formal Board Hearing. The Pre-hearing Conference is scheduled for April 29, 2025, at 10:00 a.m. at the Division's office.

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

Encls: Rationale for Recommendation to Approve a 112c Permit Application with Objections,
Nissen Farm Resource Rationale, File No. M-2003-001, dated April 18, 2025

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



April 18, 2025

**Re: Division's Rationale for Recommendation for a Construction Materials 112
Amendment Application (AM1) with Objections, BURNCO Colorado, LLC., Nissen Farm
Resource, Permit No. M-2003-001**

Introduction

On April 18, 2025, the Division of Reclamation, Mining and Safety (Division or Office or DRMS) issued a recommendation to approve the Applicant's amendment application (AM1) for the Nissen Farm Resource, File No. M-2003-001, over public objections. The Division's rationale document is intended to explain the process by which the Division arrived at its recommendation for approval 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 Division's Review Process for the Operator's Amendment Application

BURNCO Colorado, LLC (Applicant or Operator) submitted a 112c amendment application (AM1) to the Division on October 3, 2024. The permit application was deemed complete by the Division for the purposes of filing and review on October 21, 2024.

Currently the site is permitted to affect 134.21 acres and the post mining land use is a 93.2-acre in-situ water storage reservoir operated by the Central Colorado Water Conservancy District. AM1 proposes to add 28 acres to the permit area to allow the operator to move an existing processing facility and stockpile area out of the mining pit to an adjacent parcel. AM1 will allow the operator to complete mining and reclamation of the reservoir. The anticipated timeline to complete mining and reclamation work is 3 to 5 years.

The existing mining pit is within the South Platte River floodplain. AM1 would move the processing facility and stockpiles to the south onto a terrace 15 feet above the floodplain. The

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/rules-and-regulations>.



current land use of the AM1 area is fallow agricultural, and the post mining land use proposed is by AM1 pastureland. Groundwater will not be exposed in the amendment area. The Division currently holds a \$906,500.00 reclamation bond for the existing permitted mining operation. An additional bond must be posted **before the operator** initiates any land disturbance in AM1. If AM2 is approved, the required reclamation bond amount for the mine and processing area will increase to \$1,097,117.00.

Pursuant to C.R.S. 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 AM1 once a week for four consecutive weeks beginning on October 23, 2024, with the last date of publication on November 13, 2024. The public comment period closed on December 3, 2024. The public notices were published in the Greeley Tribune, a publication in general circulation in the vicinity of the mine. During the public comment period, a single timely objection letter was received, signed by seven landowners who live along Weld County Road 58 (CR 58) on the south side of the proposed amendment area. Additionally, one day after the comment period closed, an untimely email comment was received from one of the signers of the group objection letter. No agency comments were received by the Division for AM1.

Timely Letters of Objection to AM1:

Person or Entity	Date Objection Received
Don and Mary Lee Foster	12/2/2024
Ben Lobban	12/2/2024 and 12/4/2024 (untimely)
Steve Rosenquist	12/2/2024
Bill and Judy Dunn	12/2/2024
Kevin Brittner	12/2/2024
Trevor and Brandy Allen	12/2/2024
Stephanie and Sam Ellis	12/2/2024

The Division forwarded copies of the objections to the Applicant and scheduled the amendment application for a Pre-hearing Conference and a hearing before the Colorado Mined Land Reclamation Board (Board). The Division provided notice of the scheduled Pre-hearing Conference and Board hearing to all parties and interested persons. As a result of the timely objections received, the Division cannot procedurally render any final decision on AM1 but rather makes a “recommendation” to the Board.

During the review period the Division generated two adequacy letters. The Applicant addressed all adequacy issues to the Division's satisfaction. Therefore, on April 18, 2025, the Division determined that the permit application satisfied the requirements of C.R.S. § 34-32.5-115(4) and issued its recommendation to the Board to approve the AM1 over objections.

Issues Raised by the Objecting Parties:

It is the Division's position that the objections raised are all outside of the jurisdiction of the Division and Board and therefore should not be categorized as jurisdictional items for consideration by the Board. The non-jurisdictional issues, as explained below, are more appropriately addressed by Weld County, Colorado Department of Transportation (CDOT), and Colorado Department of Public Health and Environment's Air Pollution Control Division (CDPHE). The issues raised by the objecting parties are represented by bold font. The Division's response follows in standard font.

Non-Jurisdictional Items Raised by the Objecting Parties:

In proceedings before the Board, jurisdiction is limited to the requirements of the Act and Rules. The Division recognizes the importance of all timely submitted objections and comments in its review of AM1 but can address only the issues that directly relate to the specific requirements of an Application as stated in the Act and Rules.

a. Concerns regarding aesthetic impact, and quality of life.

The Act and Rules do not address impacts to visually appealing landscapes, aesthetics, hours and/or days of operation, and quality of life. The Division and Board do not have jurisdiction over these issues, which are typically addressed at the local government level. These issues should instead be addressed with Weld County. The Applicant has affirmatively stated in Exhibit M of the permit application that the existing Weld County Use By Special Review Permit will be revised prior to initiating any land disturbance in the amendment area.

b. Concerns regarding dust and air pollution.

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 that the existing air permit for the mine is currently under revision to incorporate the revised AM1 permit boundary.

The Act and Rules do not authorize the Division to directly regulate dust or air pollution issues. However, the applicant committed to installing screening berms along the south and east boundaries of the amendment area to minimize dust, noise and visual impacts to the neighbors. These items are depicted on the Mining Plan Map in Exhibit C. Topsoil and screening berms will be covered with 6 inches of growth medium and seeded immediately after placement. The applicant has a plan to control dust by applying water to stockpiles and roads, in addition to establishing vegetation on piles and berms where appropriate. These practices should stabilize these areas from erosion. The Division conducts routine inspections of the site and will evaluate these issues pursuant to Rules 3.1.6(3), 6.4.4 and C.R.S. §34-32.5-116(4).

c. Concerns regarding the use of CR 58.

The Act and Rules which provide the jurisdiction of the Division and Board do not 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 amendment application that the Weld County Use By Special Review Permit will be revised prior to initiating any land disturbance in the amendment area.

d. Concerns regarding a property road (Foster properties).

Don and Mary Lee Foster own two properties adjacent to the mine: a house on 12 acres south of the mine with access from CR 58, and 35 acres of vacant land along the South Platte River, north of the affected area. The road used to access the Foster's home from CR 58 is outside of the permit and affected area. The mining operation will not preclude access to their 12-acre property. Over the years, the operator has allowed the Fosters to cross the proposed amendment area and the middle of the mine to access their 35-acre property along the river. However, it is the Division's understanding that no formal access agreement exists. The Act and Rules do not address access agreements or allow the Division or Board to adjudicate property rights. In the applicant's response to first adequacy review, BURNCO states they intend to continue allowing access through the mine site for the Fosters.

e. Concerns regarding a previously permitted concrete batch plant and expired Weld County Approval.

An adjacent landowner submitted an untimely comment email, reiterating the issues addressed above and commented on a previously permitted concrete batch plant approved by Weld County for the amendment area. The Division and the Board do not have jurisdiction over permits issued by other government agencies. In their response to

the first adequacy letter, BURNCO stated the permit for the plant is expired and submitted a Weld County Board of County Commissioners resolution vacating the Use by Special Review Permit #18-0044, effective February 26, 2025. Exhibit M of the application indicates a Weld County Use by Special Review permit will be revised. Prior to initiating operations on the proposed affected land, the operator must obtain any required approval from other applicable government agencies.

Conclusion:

After conducting a thorough technical review of the application, as outlined in part in the discussion above, on April 18, 2025, the Division has determined that BURNCO Colorado, LLC's permit amendment application satisfied the requirements of the Act and Rules, (specifically C.R.S. § 34-32.5-115(4)), and issues its recommendation to the Board to approve the Construction Materials 112 amendment application (AM1) for the Nissen Farm Resource, File No. M-2003-001, over objections.

Title	First Name	Last Name	Address	City	State	ZIP	Phone
	Donn and Mary Lee	Foster	23989 CR 58	Greeley	CO	80631	970-396-5481
	Ben	Lobban	23952 CR 58	Greeley	CO	80631	719-640-3587
	Steve	Rosenquist	23982 CR 58	Greeley	CO	80631	970-396-8765
	Bill and Judy	Dunn	24011 CR 58	Greeley	CO	80631	970-356-4161
	Kevin	Brittner	23700 CR 58	Greeley	CO	80631	970-539-8967
	Trevor and Brandy	Allen	23962 CR 58	Greeley	CO	80631	307-277-0047
	Stephanie and Sam	Ellis	23752 CR 58	Greeley	CO	80631	303-210-8288