



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

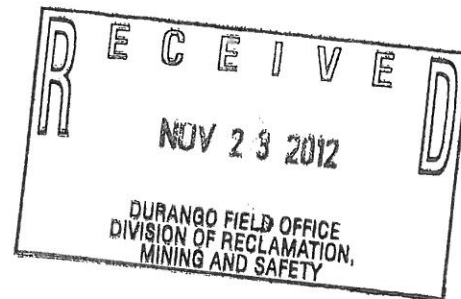
m-2012-032

CORPS OF ENGINEERS -
CORPS PERMIT COMMENTS

November 20, 2012

Regulatory Division SPK-2012-00953

Mr. Rory Williams
Silver Star Resources
1675 Larimer Street, Suite 820
Denver, Colorado 80202



Dear Mr. Williams:

We are writing in response to recent submittals requesting our approval for plans to reactivate the Revenue Mine. Specifically, these include a revised Wetland Delineation (dated October 19, 2012) and a permit notification dated November 6, 2012, both submitted by WestWater Engineering. This project site is located adjacent to Sneffels Creek approximately seven miles southwest of the City of Ouray, within Section 21, Township 43 North, Range 8 West, Ouray County, Colorado. We have reviewed your requests for a Preliminary Jurisdictional Determination (PJD) and Pre-Construction Notification (PCN) for Nationwide General Permit number (NWP) 44 - Mining Activities; however, we are unable to process these requests.

First, in order to confirm the PJD, a site inspection is required. We are unable to revisit this site at this time due to the current workload and approaching winter weather. While we understand your efforts to re-map the area after our feedback from our October PJD site inspection, we are unable to accommodate your new request until next spring. Additionally, we continue to interpret the Revenue Pond to be a jurisdictional water of the United States (WOUS). While we understand this pond was man-made and has a large inflow of water from the mine portal, it appears to be a jurisdictional WOUS for the following reasons:

1. The Revenue Pond is part of an abandoned mining operation;
2. The Revenue pond has demonstrated significant nexus to Sneffels Creek; and
3. Aerial photography and topographic maps indicate there are at least two visible drainages (Atlas drainage and an unnamed drainage at the south central portion of the pond) that appear to provide hydrology to the pond, in addition to potential ground water inflow.

These points were discussed during our October 1, 2012 site visit and are not refuted in the revised PJD. Furthermore, indications have been made that hydrology has been altered at this pond including diversion of the mine portal inflow and "maintenance to the pond berm has eliminated any possibility of flow entering the pond from the Atlas drainage" (pg. 63 of revised PJD). These activities need to be described further to identify the changes made. This description of hydrology changes shall include where mine portal water is outletting now and activities conducted along the pond berm. In order to conclusively determine the jurisdictional status of the Revenue Pond and all other WOUS mapped on this project site, a spring site visit by

our office is required. This visit will be coordinated closely with your wetland consultant to ensure the site is ready (i.e. field flagging is numbered and intact) for our field inspection.

Our confirmed jurisdictional determination is fundamental to moving forward with project plans as impacts to WOUS from a project dictate the type of Department of the Army permit to be applied for. Your PCN currently identifies 0.49 acre of impacts to WOUS and the threshold for the proposed NWP 44 is 0.5 acre. If any portion of Revenue Pond is determined to be a jurisdictional WOUS, you will not qualify for NWP 44 and will be required to submit an Individual Permit application (see Enclosure 1). Thus, the confirmation of WOUS on the project site is first needed.

Other important components of your mine reactivation plans are the potential impact to threatened and endangered species and cultural and historic properties. While your submittal does provide some helpful information on these issues (including a Cultural Resource Inventory dated October 2012 by J. Horn), we need to fully understand proposed project plans and impacts in order to begin coordination with both the U.S. Fish and Wildlife Service and the State Historic Preservation Officer (SHPO). For example, we understand from our site visit in October that at least two historic structures are proposed to be moved; yet, no details have been provided in your submittals indicating how or where structures will be altered. This information, and any other alterations to cultural resources, will be necessary in order for us to begin consultation with SHPO, regardless of the permit type processed.

We also wish to be notified of any other existing or currently pending approvals or certifications issued by the State of Colorado. While your PCN application identifies none in Box 15 (page 8 of 9), subsequent emails by consultant Greg Lewicki indicate that Ms. Lori Mulsof with the Colorado Department of Public Health and Environment will be issuing an approval of the mine water diversion from Revenue Pond. Additionally, we assume your mine reactivation plans involve approvals from the State Division of Minerals and Geology. Please understand, that this information is requested and important for our review (and possible State coordinations) of your project.

Project plans submitted are incomplete and lack details of how WOUS will be impacted and mitigated. For example, the PCN drawing entitled "Wetlands Disturbance Cross Sections" does not properly describe how WOUS will be filled. The drawing is undated, unnumbered, and illegible in parts. The four cross-sections do not allow us to differentiate between "baseline" and "pond" and are unreadable at the vertical scale provided. To assist you in ensuring a complete application (again, pending an approved JD), please ensure that all information submitted is in accordance with our mapping and drawing standards @ <http://www.spk.usace.army.mil/Media/RegulatoryPublicNotices/tabid/1035/Article/2969/final-map-and-drawing-standards-for-the-south-pacific-division-regulatory-progr.aspx>. This link is also provided in our Enclosure 1 and has also been printed and is included as Enclosure 2. We have also asked area consultants to assist us with their submittals. For file records and for reproduction purposes (such as agency coordinations), we ask that submittals remove all spiral binders, be double sided, have numbered pages, etc. This is not a requirement, but a suggestion that will assist us in handling your project, so we are passing it on as well (see email Enclosure 3).

Please review the enclosed information and coordinate with your consultants on the contents of this letter. As mentioned above, the first requirement is our spring verification of the PJD WOUS mapping effort. In the meantime, if there is any additional information to be shared regarding your interpretation of a non-jurisdictional status of Revenue Pond, please let us know. You will also need to provide additional information on project details, historic properties, mitigation, etc. as described above to have a complete application for us to evaluate your project.

Alternatively, if you insist we make a PJD at this time, we will do so based on our October site inspection and our findings described above. That is, we have made a preliminary determination that Revenue Pond is a jurisdictional water of the United States. As such, this project will not qualify for authorization under NWP 44 as the proposed project aquatic impacts exceed the 0.5 acre threshold. If you disagree with this PJD, you may require an approved jurisdictional determination, which may be appealed.

Either way, we are withdrawing the PCN permit application as submitted and request re-submittal (preferably once the PJD has been approved next spring). Once we have the necessary information, we will process your application. Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act consultations will be initiated after we receive a complete permit application.

Thank you for your cooperation and patience. Please contact us if you have questions, or would like to schedule a meeting to discuss this project in more detail. Ms. Carrie Sheata may be reached at our Colorado West Regulatory Branch, 400 Rood Avenue, Room 224, Grand Junction, Colorado 81501, email *Carrie.A.Sheata@usace.army.mil*, or telephone (970) 243-1199, extension 14. We have assigned identification number SPK-2012-00953 to your project and ask that you refer to this number in any future correspondence concerning this project.

Sincerely,

Original Signed

Susan Bachini Nall
Chief, Colorado West Regulatory Branch

Enclosures:

1. List of additional information required for complete individual permit application
2. Final Map & Drawing Standards for SPD Regulatory Program
3. Jan 9, 2012 email of Colorado West Regulatory Branch – Updates & Reminders

Copies furnished w/Enclosures:

Mr. Mike Klish, WestWater Engineering, 2516 Foresight Circle #1, Grand Junction, CO 81505

Mr. Greg Lewicki, Greg Lewicki & Associates, PLLC, 11541 Warrington Ct, Parker, CO 80138

✓ Mr. Robert Oswald, Colorado Department of Reclamation, Mining, and Safety, 691 CR 233,
Suite A-2, Durango, CO 81301

Mr. Mark Castrodale, Ouray County Land Use Department, 11 Mall Road, Ridgway, CO 81432