

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

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June 14, 2013

Zane Luttrell
Rocky Mountain Aggregate and Construction
23625 Uncompahgre Road
Montrose, CO 81401

Greg Lewicki
Greg Lewicki and Associates
11541 Warrington Court
Parker, CO 80138

John W. Hickenlooper
Governor

Mike King
Executive Director

Loretta E. Piñeda
Director

**RE: Adequacy Issues for an Amended 112c Application,
Uncompahgre Pit, File No. M-2013-007**

Dear Mr. Luttrell and Mr. Lewicki:

On April 22, 2013, the Division found the amended application for the Uncompahgre Pit complete for the purposes of filing. Pursuant to Rules 2.7.1(5) and 1.4.9(2)(c), as necessary to schedule a Pre-hearing Conference the Division shall render its recommendation on the application on or before July 19, 2013. Previously, you were informed the Division's decision date was set at July 21, 2013. Please be advised that on July 19, 2013, the application may be deemed inadequate and may be denied unless the following adequacy items are addressed to the Division's satisfaction. Subsequent to receipt and review of the Applicant's response to these items the Division may identify additional items.

Adequacy Issues for the Amended Application

1. Pursuant to Rule 1.6.2(2), please demonstrate that the Applicant's response to these adequacy issues have been placed with the application materials previously placed with the Montezuma County Clerk or Records Office, and made available for public review.
2. Pursuant to Rules 1.4.5(3), 1.6.2(1)(g) and 1.6.5(2), please submit proof of publication for the newspaper notice required under Rules 1.6.2(1)(d) and 1.6.5(1).
3. Pursuant to Rules 1.4.5(3) and 1.6.2(1)(g), please submit proof of service for the public notice to Owners of Record required under Rules 1.6.2(1)(e)(i) and (ii).

4. On page D-1 of Exhibit D, Mining Plan, the application discusses the new access road and its crossing of the Montrose West Canal. The application indicates the new bridge will be designed by an experienced professional engineer and the designs will be reviewed and approved by Montrose County Engineering. Please submit the engineering designs and hydrologic demonstrations for the new bridge construction proposed by the application and to be located within the boundaries of affected lands. If the bridge designs have been reviewed and approved by Montrose County please include copy of the approval document as well.
5. On pages D-4 and D-5 of Exhibit D the application indicates on-site storage of diesel fuel will include one 3,000 gallon tank located nearby the crusher and one 10,000 gallon tank located at the office/shop area. Both fuel tanks will have secondary containment with a capacity of 110% of the tank capacity. No additional descriptions of the secondary containment structures are provided. The 10,000 gallon tank is surrounded by irrigated pasturelands with irrigation ditches and Horsefly Creek located nearby. Pursuant to Rule 3.1.6, please describe the construction and maintenance of the two containment structures sufficient to demonstrate the structures will function as intended throughout the life of mine and be protective of surface and ground water resources.
6. On page D-5 of Exhibit D the application states the Division will be notified in case of any spill [of fuel]. Please revise the statement to clarify the Operator shall notify the Division of a spill of any toxic or hazardous substance, including spills of petroleum products, in accordance with the requirements of Rule 3.1.13.
7. On page D-7 of Exhibit D the Applicant commits to delineating the permit boundary with stakes, placed in accordance with site surveys. Pursuant to Rule 3.1.12(2)(b), all Operators of approved 112c mining operations are obligated to place markers sufficient to delineate the boundary of affected lands, not the permit boundary. The permit boundary encloses 253.25 acres and clarifies property ownership. The boundary of affected lands, located within the permit area, encloses 244.07 acres and represents the lands to be affected by the proposed operation and addressed by the Reclamation Plan, Performance Warranty and Financial Warranty. Please clarify that if the application is approved and the permit issued, the Operator will delineate the boundary of affected lands in accordance with the requirements of Rule 3.1.12(2)(b).
8. On page D-8 of Exhibit D the application describes two sediment basins to be located in a natural drainage channel in the Phase 1 area. The embankments for the two impoundments will be less than 10 feet high with 2.5H:1V slopes on the upstream and downstream faces. According to the Reclamation Plan these two ponds are intended as permanent structures and will not be removed during final reclamation. Please revise the pond designs to conform with the 3H:1V slope requirements of Rule 3.1.5(7).

9. On page D-8 of Exhibit D the application describes the construction of a new access road. Observations from Map C-2A indicate the new access road to be approximately 4,900 feet in length and appear to be composed of two portions. The first portion, extending from County Road T to the Montrose West Canal, will be constructed across irrigated pasturelands and will exhibit mild grades (approximately 1,900 lineal feet at 1.8% grade). The second portion, extending from the canal to the pit area, will be constructed within a natural drainage channel with steeper grades (approximately 3,000 lineal feet at 6.7% grade). The second portion of the proposed road crosses the drainage channel several times. The designs for the new access road include a culvert for the road crossing of the Ouray Ditch (24 inch CMP) and the bridge crossing of the Montrose West Canal, but no additional culverts are indicated for any other portion of the access road.
 - a. The new access road is intended to be a permanent structure, not removed during final reclamation, yet its long-term stability appears tenuous due to the absence of culverts, typically installed at crossings of low-lying areas. Please provide an engineering justification for the apparent absence of culverts at the crossings of low-lying areas and specifically addressing the 3,000 foot section located within the natural drainage channel.
 - b. Please provide a hydrologic demonstration for the 24 inch CMP proposed for the Ouray Ditch, demonstrating the culvert size as appropriate for the ditch capacity. If additional culverts are proposed for the new access road please provide similar hydrologic demonstrations for each culvert.
10. The design for the new access road indicates a road-side drainage ditch will be constructed for all road segments developed in cut. The segment of road-side ditch immediately upstream of the culvert crossing of the Ouray Ditch appears to have a grade of 5.4% for approximately 460 lineal feet. As such, the flows conveyed by the road-side ditch have potential for erosion.
 - a. Pursuant to Rule 3.1.5(3), please revise the road design to demonstrate how erosion of the road-side drainage ditch will be controlled.
 - b. The segment of road-side ditch discussed above outlets directly to the Ouray Ditch. Please address how such flows will be controlled to minimize the potential for adverse impact to the structure and function of the Ouray Ditch, per Rule 3.1.5(3).
 - c. Pursuant to Rules 3.1.5(3) and 3.1.6, please discuss how the proposed road design minimizes the potential for adverse impact to the structure and function of the Montrose West Canal, specifically from upland drainage which may be concentrated as a result of the new road construction.

11. On pages D-12 and D-13 of Exhibit D the application discusses importation of structural fill materials generated from off-site areas, and proposes a process different from the process outlined in Rule 3.1.5(9). Please revise the application to clarify any importation of structural fill materials will occur in accordance with the requirements of Rule 3.1.5(9).
12. Pursuant to Rule 6.4.5(2)(f)(iii), please specify if revegetation efforts will be assisted by the application of fertilizer. If so, please specify the types, mixtures, quantities and time of application.
13. Pursuant to Rule 6.4.7(2)(b), please identify all known ground water aquifers located within the boundaries of affected lands. Please specify depth to ground water for the higher portions of the proposed operation, where material extraction and processing will occur, as well as the lower portions of the proposed operation located nearby the office/shop area, if known.
14. Pursuant to Rule 6.4.7(5), please affirmatively state the Applicant has acquired (or has applied for) a National Pollutant Discharge Elimination System (NPDES) permit from the Water Quality Control Division at the Colorado Department of Public Health and Environment, if necessary.
15. Pursuant to Rule 6.4.19, where the mining operation will adversely affect the stability of any significant, valuable and permanent man-made structure located within 200 feet of the affected land, the Applicant may either:
 - (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; 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.

On page S-1 of Exhibit S, Permanent Man-Made Structures, the application identifies nine structures to be addressed under Rule 6.4.19. The application indicates the Applicant has elected to submit an engineering evaluation, intended to demonstrate such structures shall not be damaged by the proposed operation, *in lieu* of submitting a damage compensation agreement for each of the structures.

- a. Pursuant to Section 34-32.5-115(4)(e) C.R.S. and Rule 6.4.19(b), the Division is authorized to accept an engineering evaluation only after the Applicant has demonstrated that the damage compensation agreement has been attempted but

not attained. If the Applicant desires the Division to accept an engineering evaluation for any given structure please demonstrate that a damage compensation agreement has been attempted for that specific structure.

NOTE: The Division recommends the Applicant mail a damage compensation agreement, completed in accordance with Rule 6.4.19(a), to each structure owner by Certified Mail, return receipt requested. The Division will accept copy of the agreement with its associated Certified Mail return receipt (green card) as evidence that the Applicant has attempted to reach the agreement with the structure owner. If the structure is a utility, the Division will accept the "no negative effect" notarized letter, described under Rule 6.4.19(c), *in lieu* of the damage compensation agreement or the engineering evaluation.

- b. The engineering evaluation, provided under Exhibit U, addresses slope failure and applies to structures located within 200 feet of the affected land boundary and proximal to the pit area. The engineering evaluation appears to not apply to structures located within 200 feet of the affected land boundary and proximal to the new access road, where the mine related activities of concern are road construction and mine traffic. An acceptable engineering evaluation, intended to satisfy Rule 6.4.19(b), must appropriately address all structures not addressed by either the damage compensation agreement of Rule 6.4.19(a), or the "no negative effect" letter of Rule 6.4.19(c).

Please respond to these adequacy issues no later than July 12, 2013, to ensure ample time for the Division to complete its review prior to its recommendation deadline. If additional time is required to respond to these adequacy issues please submit a written request for extension of the review period. The Division reserves the right to further supplement this document with additional adequacy issues and details as necessary.

Please contact me at the Division's office in Durango at 691 County Road 233, Suite A-2, Durango, CO 81301, phone (970) 247-5469, if you have any questions.

Sincerely,



Wallace H. Erickson
Environmental Protection Specialist

cc: Greg Lewicki, Greg Lewicki and Associates
Russ Means, DRMS GJFO