

# STATE OF COLORADO

## DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

Phone: (303) 866-3567

FAX: (303) 832-8106



July 19, 2013

### Notice to Parties and Interested Persons

**RE: Recommendation to Approve a 112c Application with Objections,  
Rocky Mountain Aggregate and Construction, LLC,  
Uncompahgre Pit, File No. M-2013-007**

John W. Hickenlooper  
Governor

Mike King  
Executive Director

Loretta E. Piñeda  
Director

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (the Division) hereby issues its recommendation for approval of the 112c application for the Uncompahgre Pit, File No. M-2013-007, submitted by Rocky Mountain Aggregate and Construction, LLC.

This recommendation is based on the Division's determination that the application 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. A copy of the Division's rationale for its recommendation is enclosed for your review.

The Division's recommendation is to the Colorado Mined Land Reclamation Board (Board). The Division's recommendation and the application with objections will be considered by the Board during a formal hearing, scheduled to occur August 14-15, 2013, at 1313 Sherman Street, Room 318, Denver, Colorado, beginning at 9:00 a.m., or as soon thereafter as the issue may be considered. Pursuant to Rule 2.8.1(1) of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the Rules), any party who does not attend the Board hearing forfeits its party status and all associated rights and privileges.

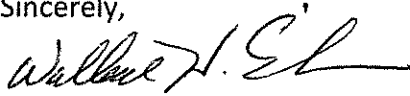
A live audio broadcast of the formal hearing can be found at the following link, [mms://165.127.23.236/DRMS\\_Stream](mms://165.127.23.236/DRMS_Stream). Audio stream service may be temporarily unavailable or limited, due to technical difficulties and bandwidth limitation, and could result in loss of audio signals or in the impairment of the quality of the transmission.

All parties and interested persons who intend to participate in the Board hearing are strongly encouraged to attend the Pre-hearing Conference. 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. The Pre-

hearing Conference is scheduled to occur July 25, 2013, in the Centennial Room at 433 South First Street, Montrose, Colorado, beginning at 1:00 p.m. and terminating at or before 3:00 p.m.

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

Sincerely,



Wallace H. Erickson  
Environmental Protection Specialist

Attachment: Certificate of Service

Enclosure: Rationale for Recommendation

ec w/enclosure: Zane Luttrell, Rocky Mountain Aggregate and Construction, LLC  
Greg Lewicki, Greg Lewicki and Associates  
Janice Wheeler, timely objector to the application  
Dr. Joseph J. and Mary A. Scuderi, timely objector to the application  
Gene and Carolyn Kliethermes, timely objector to the application  
Dennis Schultz, timely objector to the application  
Lester and Kathleen Stigall, timely objector to the application  
Leigh Robertson, timely objector to the application  
Margaret T. Zanin, timely objector to the application  
Pam East, timely objector to the application  
Karen Michaelis, timely objector to the application  
Jennifer Thurston, INFORM, timely objector to the application  
Lee R. Bartlett, timely objector to the application  
Steven G. Renner, Pre-hearing Conference Officer  
John Roberts, AGO for MLRB  
Jeff Fugate, AGO for DRMS  
Julie Murphy, AGO for DRMS  
Russ Means, DRMS GJFO

**Certificate of Service**

I, Wallace H. Erickson, hereby certify that on this 19<sup>th</sup> day of July, 2013, I deposited a true copy of the foregoing Notice to Parties and Interested Persons, RE: Recommendation to Approve a 112c Application with Objections, Rocky Mountain Aggregate and Construction, LLC, Uncompahgre Pit, File No. M-2013-007, with the Division's rationale for its recommendation, RE: Rational for Recommendation to Approve a 112c Application with Objections, Rocky Mountain Aggregate and Construction, LLC, Uncompahgre Pit, file No. M-2013-007, in the United States Mail, postage paid, addressed to the following:

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

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

Janice Wheeler  
67269 T Road  
Montrose, CO 81403

Dr. Joseph J. & Mary A. Scuderi  
68044 Tulare Road  
Montrose, CO 81403

Susan J. Hansen  
10990 5880 Road  
Montrose, CO 81403

Gene & Carolyn Kliethermes  
20462 Tulip Circle  
Montrose, CO 81403

Al & Vicki Becker  
66810 Solar Road  
Montrose, CO 81403

Robert G. & Joan D. Hooper  
20537 Tulip Circle  
Montrose, CO 81403

Dennis Schultz  
117 North 4<sup>th</sup> Street  
Montrose, CO 81401

Barbara Bernhardt  
20409 Solitude Road  
Montrose, CO 81403

Lester & Kathlean Stigall  
67751 Uintah Ct  
Montrose, CO 81403

Carter & Stacy Trask  
67920 Tulare Road  
Montrose, CO 81403

Stan & Kathy Borinski  
67737 Uintah Ct  
Montrose, CO 81403

Keith & Sharon Rasmussen  
20828 Solitude Road  
Montrose, CO 81403

Leigh Robertson  
596 Sabeta Drive, #D  
Ridgway, CO 81432

Margaret T. Zanin  
65010 Solar Road  
Montrose, CO 81401

Susan Berg  
67888 Tumbleweed Road  
Montrose, CO 81403

Craig B. Schaff  
21645 Government Springs Road  
Montrose, CO 81403

Karen Michaelis  
21115 Uncompahgre Road  
Montrose, CO 81403

Roger & Gail Noble  
General Delivery  
Ridgway, CO 81432

Jennifer Thurston  
INFORM  
P.O. Box 27  
Norwood, CO 81423

Pam East  
67680 Trout Road  
Montrose, CO 81403

Patrice Mosher  
Board of Supervisors  
Shavano Conservation District  
102 Par Pl, Suite 4  
Montrose, CO 81401

Colorado History  
Edward C. Nichols  
State Historic Preservation Officer  
1200 Broadway  
Denver, CO 80203

Jim & Paula Wyrick  
19488 6565 Road  
Montrose, CO 81403

Amanda Winston  
20798 Solitude Road  
Montrose, CO 81403

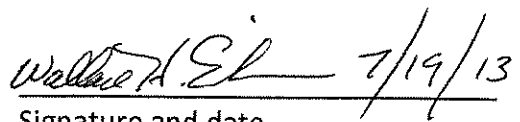
Richard Schulz  
21115 Uncompahgre Road  
Montrose, CO 81403

Laurie J. Brandt, P.G.  
Buckhorn Geotech  
222 South Park Avenue  
Montrose, CO 81401

Lee R. Bartlett  
23400 Horsefly Road  
Montrose, CO 81403

Colorado Parks & Wildlife  
Renzo DelPiccolo  
2300 South Townsend Avenue  
Montrose, CO 81401

Board of County Commissioners  
Montrose County  
161 South Townsend Avenue  
Montrose, CO 81401

  
Signature and date

# STATE OF COLORADO

## DIVISION OF RECLAMATION, MINING AND SAFETY

Department of Natural Resources

1313 Sherman St., Room 215

Denver, Colorado 80203

Phone: (303) 866-3567

FAX: (303) 832-8106



DATE: July 19, 2013

RE: Rationale for Recommendation to Approve a 112c Application with Objections, Rocky Mountain Aggregate and Construction, LLC, Uncompahgre Pit, File No. M-2013-007

John W. Hickenlooper  
Governor

Mike King  
Executive Director

Loretta E. Piñeda  
Director

### Introduction

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 <http://mining.state.co.us>.

On July 19, 2013, the Division of Reclamation, Mining and Safety (the Division or Office) issued its recommendation to approve the permit application for the Uncompahgre Pit, File No. M-2013-007, over public objections. This document is intended to explain the process by which the Division arrived at its recommendation to approve, over public objections, and respond to the issues raised by the objecting parties and commenting agencies. The Division reserves the right to further supplement, amend, modify, or clarify this document and recommendation with additional details as necessary.

### Summary of the Review Process

Rocky Mountain Aggregate and Construction, LLC (the Applicant) filed the application with the Division on February 26, 2013. The original application described a construction materials mining operation with on-site processing of mined materials to include crushing, screening, washing and production of concrete and asphalt products. The permit boundary included two non-contiguous areas identified as the extraction/processing area at 244.07 acres, and the office/shop area at 3.67 acres, totaling 247.76 acres. Of the 247.76 acres, the mining operation was anticipated to affect approximately 190.83 acres, leaving approximately 56.93 acres located within the permit boundary but not affected by the mine operation. Affected lands would be reclaimed to support rangeland, wildlife habitat and industrial/commercial post-mining land uses. Notice of the filing occurred in accordance with the general requirements of the Act and Rules. The public comment period closed on April 24, 2013. During the public comment period the Division received written comments from the following individuals and agencies:

Timely Letters of Objection:

1. Janice Wheeler, dated February 25, 2013, received March 6, 2013
2. Susan J. Hansen, dated March 27, 2013, received March 29, 2013
3. Dr. Joseph J. and Mary A. Scuderi, dated March 28, 2013, received March 29, 2013
4. Gene and Carolyn Kliethermes, dated March 30, 2013, received April 1, 2013
5. Robert G. & Joan D. Hooper, dated April 8, 2013, received April 9, 2013
6. Dennis Schultz, dated April 7, 2013, received April 10, 2013
7. Barbara Bernhardt, dated April 7, 2013, received April 10, 2013
8. Lester & Kathleen Stigall, dated April 8, 2013, received April 11, 2013
9. Carter & Stacy Trask, dated April 12, 2013, received April 15, 2013
10. Stan & Kathy Borinski, dated April 12, 2013, received April 17, 2013
11. Keith & Sharon Rasmussen, not dated, received April 17, 2013
12. Roger & Gail Noble, dated April 12, 2013, received April 17, 2013
13. Stan & Kathy Borinski, dated April 12, 2013, received April 17, 2013
14. Margaret T. Zanin, dated April 24, 2013, received April 17, 2013
15. Susan Berg, dated April 15, 2013, received April 18, 2013
16. Jim & Paula Wyrick, dated April 16, 2013, received April 18, 2013
17. Craig B. Schaff, dated April 19, 2013, received April 22, 2013
18. Amanda Winston, dated April 15, 2013, received April 22, 2013
19. Leigh Robertson, dated April 18, 2013, received April 22, 2013
20. Pam East, dated April 23, 2013, received April 23, 2013
21. Karen Michaelis, dated April 20, 2013, received April 24, 2013
22. Karen Michaelis, dated April 20, 2013, received April 24, 2013
23. Richard Schulz, dated April 20, 2013, received April 24, 2013
24. Richard Schulz, dated April 20, 2013, received April 24, 2013
25. Barbara Bernhardt, dated April 21, 2013, received April 24, 2013

Timely Letter of Support:

26. Al & Vicki Becker, dated April 2, 2013

Timely Commenting Agency:

27. History Colorado, SHPO, dated March 8, 2013, received March 12, 2013
28. Colorado Parks & Wildlife, dated April 9, 2013, received April 15, 2013

The Division forwarded copies of all comments to the Applicant and scheduled the application for a hearing before the Colorado Mined Land Reclamation Board (the Board) and a Pre-hearing Conference. The Division provided notice of the scheduled Board hearing and Pre-hearing Conference to all parties and interested persons. Due to the timely objections, on the decision date the Division would not make a decision on the application, but rather a recommendation to the Board.

An amendment to the application was filed with the Division on April 22, 2013. The application was amended to address concerns raised by Montrose County and the public regarding the

substandard condition of County Road T, existing structures in close proximity to County Road T, and potential for adverse impacts to County Road T and nearby structures resulting from mine traffic. In response, the Applicant agreed to construct a new mine access road located on private lands and adjacent to County Road T. The plans for the new access road increased the permit area to 253.25 acres, increased affected lands to approximately 244.07 acres, and joined all affected lands into one contiguous affected land boundary.

Notice of the amended application occurred in accordance with the general requirements of the Act and Rules. The amendment to the application re-opened the public comment period and extended the review period. The public comment period for the amended application closed on June 26, 2013. During this second public comment period the Division received written comments from the following individuals:

**Timely Letters of Objection:**

- 29. Dr. Joseph & Mary Scuderi, dated April 4, 2013, received April 26, 2013
- 30. Zoe D. Larkin, dated May 15, 2013, received May 17, 2013
- 31. Rodger & Gail Noble, dated June 14, 2013, received June 17, 2013
- 32. Buckhorn Geotech, dated June 20, 2013, received June 24, 2013
- 33. Barbara Bernhardt, dated May 23, 2013, received June 26, 2013
- 34. INFORM, dated June 26, 2013, received June 26, 2013
- 35. Lee R. Bartlett, dated June 23, 2013, received June 26, 2013
- 36. Janice Wheeler, dated June 23, 2013, received June 26, 2013

**Late Letter of Objection:**

- 37. Janice Wheeler, dated July 11, 2013, received July 15, 2013

The Division forwarded copies of all comments to the Applicant and provided notice to all parties and interested persons of the re-scheduled Board Hearing, Pre-hearing Conference and staff recommendation date.

During the review period the Division generated two adequacy letters. The Applicant addressed all adequacy issues to the Division's satisfaction. Therefore, on July 19, 2013, the Division determined the application to have satisfied the requirements of Section 34-32.5-115(4) C.R.S. and issued its recommendation to approve the application.

**Issues Raised by the Objecting Parties and Commenting Agencies**

The issues raised by the objecting parties and commenting agencies are represented by italic bold font. The last names of the objecting parties who raised the issue are listed after the issue. The Division's response follows in standard font.

- 1. Concerns regarding the mine operation being incompatible with historic, current, and future land uses. Concerns regarding the operation being in conflict with local zoning***

***and the Montrose County Master Plan. Concerns regarding adverse impacts to the visually appealing landscape. Concerns regarding adverse impacts to tourism and the local economy. Concerns for devaluation of nearby property. Concerns regarding hours of operation, noise pollution, sight pollution, and quality of life. (Bartlett, Berg, Bernhardt, Borinski, East, Hansen, Hooper, Kliethermes, Larkin, Michaelis, Noble, Rasmussen, Robertson, Schaff, Schultz, Schulz, Scuderi, Stigall, Thurston, Trask, Wheeler, Winston, Wyrick, Zanin)***

In these proceedings, the Division's jurisdiction is limited to enforcement of the specific requirements of the Act and Rules. The Division considers all timely submitted comments in its review, but can address only the issues that directly relate to the specific requirements of an application as stated in the Act and Rules.

The Act and Rules do not specifically address issues of zoning and land use, impacts to visually appealing landscapes, tourism and impacts to the local economy, hours and/or days of operation, noise and sight pollution, and quality of life. Such issues are typically addressed at the local government level and not at the State government level. These issues should be addressed through the Montrose County permitting process.

According to Section 34-32.5-115(4)(d) C.R.S., the Board or Office may deny an application if the proposed operation is contrary to the laws or regulations of Colorado or the United States, including but not limited to all federal, state, and local permits, licenses, and approvals, as applicable to the specific operation. On March 1, 2013, and April 22, 2013, the Division provided notice of the permit application to Montrose County. Montrose County has not indicated any conflict with local zoning, local regulations or the Master Plan for the proposed mine operation.

***2. Concerns regarding traffic and traffic safety. Requests for acceleration and deceleration lanes at the intersection of County Road T and Highway 550. Concerns regarding road impacts to County Road T and Highway 550. Requests for the Applicant to construct a new access road on private lands to relieve traffic and impacts on County Road T. (Bartlett, Berg, Borinski, East, Hansen, Hooper, Kliethermes, Larkin, Michaelis, Noble, Rasmussen, Robertson, Schultz, Schulz, Scuderi, Stigall, Thurston, Trask, Wheeler, Winston, Wyrick)***

The Act and Rules do not specifically address traffic, traffic safety and road impacts for roads located off-site of a mining operation. Such issues are under the jurisdiction of Montrose County and the Colorado Department of Transportation. These issues should be addressed through the permitting processes of Montrose County and Colorado Department of Transportation.

The Applicant has affirmatively stated that a Special Use Permit, through Montrose County, and an Access Permit, through the Colorado Department of Transportation, is being pursued.



As noted previously, in response to issues raised by Montrose County and the public regarding the substandard condition of County Road T, the Applicant amended the application to incorporate a new access road to be located on private lands, which will alleviate mine traffic and impact to County Road T.

**3. Concerns regarding the Division's permit being approved prior to the issuance of the access permit from the Colorado Department of Transportation. Concerns regarding conflicting descriptions provided to various agencies regarding the same operation. (Bartlett, Wheeler)**

According to Exhibit M of the application the Applicant must attain approval from the following agencies for the proposed operation:

- Montrose County Special Use Permit
- NPDES permit from the Water Quality Control Division (WQCD) of the Colorado Department of Public Health and Environment, addressing water quality issues resulting from discharge of process water and storm water to the environment
- APEN permit from the Air Pollution Control Division of the Colorado Department of Public Health and Environment, addressing air pollution issues
- Division of Water Resources of the Office of the State Engineer, regarding water rights issues
- Spill Prevention Control and Countermeasure Plan, required through WQCD
- Access Permit from the Colorado Department of Transportation for access to Highway 550 from County Road T

The Act and Rules do not require the attainment of all other permits prior to the approval of the Division's reclamation permit. Pursuant to Rules 1.4.9 and 1.4.13(1), the Office was mandated to render a recommendation on the application on July 19, 2013, and did so in accordance with the Act and Rules.

**4. Concerns regarding the concentration of mining operations and the cumulative impacts of multiple mine operations located in close proximity to one another. (Bartlett, East, Kliethermes, Noble, Rasmussen, Thurston, Schaff, Schultz, Schulz, Scuderi, Stigall, Wheeler, Winston)**

The Act and Rules do not prohibit the concentration of mining operations and their cumulative impacts. Conversely, the Act and Rules anticipate mining operations will locate where ever minable resources exist. The Act and Rules provide reclamation requirements to ensure affected lands are reclaimed to a beneficial use. The Act and Rules provide performance standards and environmental protection requirements, which apply throughout the life of mine. Pursuant to Rule 1.4.1(10), each application is reviewed, and ultimately approved or

denied, based on the Applicant's ability to demonstrate the application meets the requirements of the Act and Rules.

**5. Concerns regarding the size of the operation and extended life of mine. Concerns regarding the extent of disturbance generated over the life of mine will render the site not reclaimable. (Bartlett, Berg, Borinski, East, Kliethermes, Michaelis, Noble, Schultz, Schulz, Scuderi, Thurston, Wheeler)**

The application proposes a phased mine plan with contemporaneous reclamation whereby the un-reclaimed disturbance is limited to approximately 20 acres at any given time. The approximate 20-acre commitment is an enforceable condition of the permit. Pursuant to Rule 1.1(22), any permitted operation may continue indefinitely as long as minable reserves remain and the operation is in compliance with the permit conditions and the Act and Rules.

The Office is tasked with conducting routine periodic inspections of all permitted operations to ensure compliance with the permit conditions, the requirements of the Act and Rules, and to maintain the amount of financial warranty in accordance with current reclamation costs. The purpose of the financial warranty is to ensure the Office holds sufficient funds to reclaim the site in the event of permit revocation and forfeiture.

Based on the proposed mining and reclamation plans and the applicable requirements of the Act and Rules, the Office has calculated the initial cost of reclamation at \$99,409.04. The Applicant has agreed to provide financial warranty in the amount required by the Office.

**6. Concerns regarding the economic viability of the proposed operation. The Applicant has inappropriately used a 2006 geotechnical study, conducted to investigate the viability of the property for residential development, to substantiate an unproven gravel resource. The development of the State's natural resources must occur in a responsible manner. (Bartlett, Bernhardt, Brandt, East, Thurston, Wheeler)**

The Act and Rules do not require an Applicant to demonstrate the economic viability of a proposed operation. Rather, the Act and Rules require an Applicant to demonstrate how the proposed operation will satisfy the applicable performance standards, environmental protection requirements and reclamation requirements for the operation, and require sufficient financial and performance warranties to ensure affected lands are reclaimed to a beneficial use, in the event of default by the permit holder. The economic viability of the proposed operation is a risk accepted by the Applicant and not by the Division or the general public.

**7. Concerns regarding the consumption of water during drought conditions. Concerns regarding possible injury to water rights and compliance with water laws. (Bartlett, East, Larkin, Rasmussen, Thurston, Wheeler)**

Pursuant to Rule 3.1.6(1)(a), the application must demonstrate compliance with applicable Colorado water laws and regulations governing injury to existing water rights. Colorado water laws and regulations governing injury to existing water rights are enforced by the Division of Water Resources of the Office of the State Engineer. On March 1, 2013, and April 22, 2013, the Office provided notice of the permit application to the Division of Water Resources. The Division of Water Resources has not indicated any conflict with existing Colorado water laws for the proposed mine operation. On July 19, 2013, the Office determined the application satisfied the requirements of Rule 3.1.6(1)(a).

***8. Concerns regarding an error in the public notice posted on site. Concerns regarding the sign being posted in an unacceptable manner. Concerns regarding the time period between the filing of the application with the Division and the commencement of the newspaper publications informing the general public of the application. (Wheeler)***

The Applicant corrected the typographical error immediately upon being informed of the error. The Applicant provided the Division with an affidavit of the posting of the corrected sign, in accordance with Rule 1.6.2(1)(b). A correct sign was posted a second time with the filing of the amended application. The Division determined the Applicant had complied with the requirements of Rule 1.6.2(1)(b).

Pursuant to Rule 1.6.2(1)(d), within ten days of filing the application with the Division the Applicant is required to publish a notice in a newspaper of general circulation in the locality of the proposed operation. As noted previously, there were two filings for the application. The first filing occurred on February 26, 2013, and the associated newspaper publications commenced on March 13, 2013; on the 15<sup>th</sup> day after filing. The second filing, for the amended application, occurred on April 22, 2013, and the associated newspaper publications commenced on May 15, 2013; on the 23<sup>rd</sup> day after filing.

The delayed newspaper publications resulted in a public comment period longer than provided under Rules 1.6.2(1)(d), 1.6.5(1), and 1.7.1(2)(a). The public comment period for a typical 112c application is approximately 45 days. However, due to the second filing and the delayed newspaper publications, the public comment period for the Uncompahgre Pit remained open for 120 days. The Division determined the public was not harmed, but rather benefited, by the delayed commencement of the newspaper publications. The Division determined the Applicant had complied with the intent of the public notice requirements of the Act and Rules, although not in strict accordance with the chronological sequence provided therein.

***9. Concerns regarding dust and air pollution resulting from truck traffic, excavation activity, rock crushing, material stockpiling, and the production of asphalt and concrete products. Concerns for wind erosion and resulting dust from topsoil stockpiles, which may not have a protective vegetative cover for one year. (Bartlett, Berg, Borinski, East, Hansen, Hooper, Kliethermes, Noble, Rasmussen, Schaff, Scuderi, Schultz, Stigall, Thurston, Trask, Wheeler, Winston, Wyrick, Zanin)***

The Act and Rules do not specifically address air quality issues. Such issues are under the jurisdiction of Montrose County and the Air Pollution Control Division of the Colorado Department of Public Health and Environment. These issues should be addressed through the permitting process of Montrose County and the Air Pollution Control Division of the Colorado Department of Public Health and Environment.

The Applicant has affirmatively stated that an APEN permit from the Air Pollution Control Division of the Colorado Department of Public Health and Environment, addressing air pollution issues, is being pursued.

The Act and Rules do not authorize the Division to regulate dust or air pollution issues. However, the protection and preservation of stockpiled topsoil is addressed under the performance standards of Rule 3.1.9. Pursuant to Rule 3.1.9(1), where it is necessary to remove overburden in order to expose the mineable materials, topsoil shall be removed and segregated from other spoil. If such topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover of other means shall be employed so that the topsoil is protected from erosion, remains free of any contamination by toxic or acid-forming material, and is in a usable condition for reclamation.

The Division has determined one year to be an appropriate time frame for the establishment of a protective vegetative cover for stockpiled topsoil, and requires the same for all mining operations throughout Colorado.

***10. Concerns regarding discharge permits for process water and storm water. Concerns regarding the proposed sediment ponds leaking and contaminating the ground water aquifer. Concerns regarding water pollution and adverse impacts to the water quality of surface and ground water resources. (Bartlett, Kliethermes, Scuderi, Wheeler)***

Pursuant to Rule 3.1.6(1)(b), the application must demonstrate compliance with applicable federal and Colorado water quality laws and regulations, including statewide water quality standards and site-specific classifications and standards adopted by the Water Quality Control Commission.

The Applicant has affirmatively stated that an NPDES permit from the Water Quality Control Division of the Colorado Department of Public Health and Environment, addressing water quality issues resulting from discharge of process water and storm water, is being pursued. Therefore, the Office determined the application to have demonstrated compliance with the requirements of Rule 3.1.6(1)(b).

The application indicates depth to ground water for the office and shop area at 5.5 feet, and depth to ground water for the excavation and processing area at greater than 200 feet. The

ground water elevation data was procured from a 2006 geotechnical evaluation of the property, which included the installation and monitoring of 20 piezometers on the property.

A 10,000 gallon diesel fuel tank will be located at the shop area. The 10,000 gallon fuel tank will be located within a spill containment structure sized at 110% capacity of the fuel storage tank. The spill containment structure will be constructed from cemented concrete block and lined with a geosynthetic membrane to ensure containment. The design engineer has specified the geosynthetic membrane to be a 20 mil High Density Polyethylene (HDPE). HDPE is resistant to ultraviolet radiation, is able to withstand high hydraulic head, and is appropriate for the intended purpose. The Division determined the design to be appropriately protective of surface and ground water resources for the areas surrounding the fuel tank and demonstrated compliance with the performance standards of Rules 3.1.5(11) and 3.1.6.

A 3,000 gallon diesel fuel tank will be located at the excavation and processing area. The 3,000 gallon tank will be double-walled and will be located within a spill containment structure sized at 110% capacity of the fuel storage tank. The 3,000 gallon tank will be located within the pit area, which will exhibit internal drainage and ensure the containment of spilt fluids being otherwise transported off-site by surface run off. The Division determined the design to be appropriately protective of surface and ground water resources for the areas surrounding the fuel tank and demonstrated compliance with the performance standards of Rules 3.1.5(11) and 3.1.6.

- Rule 3.1.5(11), no unauthorized release of pollutants to ground water shall occur from any materials mined, handled or disposed of within the permit area
- Rule 3.1.6, disturbances to the prevailing hydrologic balance of the affected land and to the surrounding area and to the quantity or quality of water in surface and ground water systems both during and after the mining operation and during reclamation shall be minimized.

The Applicant has affirmatively stated a Spill Prevention Control and Countermeasure Plan will be posted at the mine office and the employees will be trained to take appropriate steps for inspections of facilities and rapid response in case of a spill. The Division determined the application demonstrated compliance with the performance standards of Rule 3.1.13, regarding protocol and procedures whereby spills of any toxic or hazardous substances, including spills of petroleum products, will be reported to the Office, as well as to any Division of the Colorado Department of Public Health and Environment, the National Response Center, the Colorado Emergency Planning Commission, local Emergency Planning Committee, or the State Oil Inspector.

***11. Concerns regarding potential impacts on wildlife, endangered species, including the Gunnison sage grouse. The Division should consult the US Fish and Wildlife Service. (Bartlett, Berg, Bernhardt, Borinski, Colorado Parks and Wildlife, East, Kliethermes, Larkin, Michaelis, Rasmussen, Robertson, Scuderi, Thurston, Trask, Wheeler, Winston, Zanin)***

On March 1, 2013, and on April 22, 2013, the Division provided notice of the application to the Colorado Parks and Wildlife. On April 22, 2013, the Division provided notice of the application to the US Fish and Wildlife Service.

The application materials include documents and comments from both agencies. Neither agency indicated the proposed operation was in conflict with any federal or state law. Many of the recommendations from the wildlife agency(s) have been incorporated into the application materials. The Office determined the application satisfied the requirements of Rules 3.1.8 and 6.4.8, regarding the protection of wildlife.

***12. Concerns regarding man-made structures located within 200 feet of the affected land boundary. (Wheeler)***

Pursuant to Section 34-32.5-115(4)(e) C.R.S., the Board or Office may deny an application if the proposed operation will adversely affect the stability of any significant, valuable, and permanent man-made structures located within 200 feet of the affected land; except that the permit shall not be denied on this basis where there is an agreement between the Operator and the persons having an interest in the structure that damage to the structure is to be compensated for by the Operator, or where such an agreement cannot be reached, the Applicant provides an appropriate engineering evaluation that demonstrates such structures shall not be damaged by the proposed operation.

The application identified numerous permanent and valuable man-made structures located within 200 feet of the affected land boundary. The application identified 13 structure owners. The Office required the Applicant to satisfy the requirements of Rule 6.4.19 for all structures located within 200 feet of the affected land.

Pursuant to Rule 6.4.19(a), the Applicant provided damage compensation agreements to all 13 structure owners. The proposed damage compensation agreements were accepted and executed by the Lazy K Bar Land & Cattle Company and the Ouray Ditch Company. The Applicant demonstrated that the damage compensation agreements had been attempted for all 13 structure owners but attained for only two. Pursuant to Rule 6.4.19(b), the Office was authorized to accept the engineering evaluation provided by the Applicant. The engineering evaluation was prepared and certified by a Colorado licensed professional engineer. The engineering evaluation demonstrated to the Office's satisfaction that no structure located within 200 feet of the affected lands would be damaged by the proposed operation.

**Conclusion**

Therefore, on July 19, 2013, the Office determined the application satisfied the requirements of Section 34-32.5-115(4) C.R.S., and issued its recommendation to approve the 112c application for the Uncompahgre Pit, File No. M-2013-007.