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February 4, 2021

Eric Scott  
Environmental Protection Specialist  
Colorado Division of Reclamation, Mining and Safety  
1313 Sherman Street, Room 215  
Denver, CO 80203

**Subj: Adequacy Response to Second Review of a 112c Construction Materials Reclamation Permit Application Package, Kilgore Companies, LLC dba Peak Materials - Peak Ranch Resource, Permit M2020-041**

Dear Mr. Scott:

This letter is in response to your letter of January 21, 2021.

**EXHIBIT D - Mining Plan (Rule 6.4.4):**

*The current mining plan states that all material excavated from the proposed Peak Ranch site will be allowed to drain, then be transported off-site to the existing Maryland Creek Ranch site for processing, use, and sale. No material washing or processing is proposed under the Peak Ranch application.*

*In recent discussions with Summit County representatives, DRMS was informed that Summit County will require Peak Materials to submit and gain approval of a new conditional use permit for the Maryland Creek Ranch site prior to importing any raw material to that site. In addition, if Peak Materials fails to obtain a new CUP for the Maryland Creek Ranch site, the existing Maryland Creek Ranch CUP will remain in effect until its current expiration date. How does the applicant intend to address this issue and how will the process impact proposed activity at the Peak Ranch site? Please also add the new Conditional Use Permit for Maryland Creek Ranch to Exhibit M.*

As with any construction materials operation in Colorado, Peak Ranch Resource requires several permits and approvals prior to operations. The 112 Reclamation Permit is only one of the required permits and it is one of the first being pursued by the applicant. Beginning with the 112 Reclamation Permit is the common industry practice and it is often preferred or even required by the local land use agencies (most commonly counties) who benefit from the efficiency of

considering the land use impacts of a fully-designed project that has been approved by the Division of Reclamation, Mining and Safety (the “Division”) and the Mined Land Reclamation Board (the “Board”).

In fact, the Summit County Development Code (the “Code”) requires this approach. The Code permits mining operations in the zoning district for Peak Ranch Resource with approval of a conditional use permit. *See* Code § 3812.03(C). The Code further states that it is not intended to conflict with the Colorado Land Reclamation Act for the Extraction of Construction Materials (the “Act”), *id.* § 3812.04, and to achieve this goal it requires that applicants for county mining permits first obtain approval of a state mining permit from the Division, *id.* § 3812.04(B)(1)(a). More specifically, the Code requires that:

*All applications for mining . . . permit shall **demonstrate compliance** with all State and Federal regulatory schemes applicable to the proposed operation . . . **Such compliance will include:**  
a. **Permit approval** from the Colorado Division of Reclamation, Mining and Safety; . . .*

*Id.* § 3812.04(B)(1)(a) (emphasis added).

This county framework is consistent with the Act. In order to respect the responsibility and authority of both the Division and Board, and the local Board of County Commissioners, and to accommodate for local land use approvals, Section 109 of the Act provides that:

*The office is responsible for the enforcement of reclamation permits only and has no authority or duty to enforce other local, state, or federal agency permits . . . ; [and]*

*The operator shall be responsible for assuring that the mining operation and the post mining land use comply with city, town, county, or city and county land use regulations . . .*

C.R.S. §§ 34-32.5-104 & -109(3) (emphasis added). The Board’s role as it relates to local land use matters is to provide notice of a mining permit application to the local county:

*Upon receipt of an application for a reclamation permit, the board shall provide notice of such application to all counties in which proposed mining operations are located . . .*

*Id.* § 34-32.5-109(4). The Board then issues the mining permit where it complies with the Act and is not contrary to a local ordinance:

*In the determination of whether the board . . . shall grant a permit to an operator, the applicant must comply with the requirements of this article . . . . The board . . . shall not deny a permit except on one or more of the following grounds: . . .*

*(c) Any part of the proposed mining operation, the reclamation program, or the proposed future use is contrary to the laws of this article.*

*(d) The proposed mining operation, the reclamation program, or the proposed future use is contrary to the laws and regulations of this state . . . including but not limited to all . . . local permits, licenses, and approvals . . .*

*Id.* § 34-32.5-115(4), (4)(c) & (4)(d). Here, no component of the proposed Peak Ranch Resource or Maryland Creek Ranch is contrary to the applicable laws or regulations of this state or the United States, or any federal, state or local permits, licenses or approvals, including the Summit County ordinance requiring a county mining permit or Conditional Use Permit for mining activities.

Peak Materials has committed to obtain a Conditional Use Permit (CUP) from Summit County for Peak Ranch Resource and to obtain an updated CUP for Maryland Creek Ranch to allow that site to accept and process the materials from Peak Ranch Resource. Peak Materials attended a pre-application meeting with Summit County about both CUP applications and, in that meeting, the Summit County staff indicated that they wanted Peak Materials to first obtain the 112 Reclamation Permit before submitting the CUP applications.

As required by the Code and requested by the County, the applicant will pursue a CUP for Peak Ranch Resource and a revised CUP for Maryland Creek Ranch following the approval of this 112 Reclamation Permit application. Consistent with its December 11, 2020 response to Summit County's comments, Peak Materials will demonstrate that both operations will be compatible with the Lower Blue Master Plan in their respective CUP applications. Peak Materials acknowledges that CUP approvals for both Peak Ranch Resource and Maryland Creek Ranch will be required before any operations at Peak Ranch Resource can begin.

*The existing Summit County Conditional Use Permit for Maryland Creek Ranch places restrictions on the types of material that are allowed to be imported to that site. Specify the materials that will be imported to the existing Maryland Creek Ranch permit and identify the uses of the materials?*

The existing Summit County Conditional Use Permit for Maryland Creek Ranch provides, in part, that: "No raw materials may be imported onto the site, with the exception of materials necessary for the production of concrete and asphalt and concrete and asphalt materials to be recycled. Inert fill material, as defined by the Colorado Department of Health in their policy statement dated October 20, 1993, may be brought on to the property provided it is used for the purpose of constructing finished lakeshore slopes and/or finished grades."

Peak Ranch Resource will send sand and gravel to Maryland Creek Ranch. This material will be used to produce a variety of construction material products including, but not limited to, concrete and asphalt, as well as pit run, crushed stone, washed stone, road base, sand, and binder.

*Please be aware the processing of material, whether at Maryland Creek Ranch or another location, will be subject to the requirements of a Reclamation Permit as well as any requirements imposed by the local jurisdiction.*

The applicant is aware of this requirement as it relates to the proposed Peak Ranch Resource and Maryland Creek Ranch projects. In addition to updating the CUP for Maryland Creek Ranch, Peak Materials will be submitting a Technical Revision application to the DRMS for the Maryland Creek Ranch 112 Reclamation Permit.

**EXHIBIT E - Reclamation Plan (Rule 6.4.5):**

*How does the operator intend to demonstrate at the end of mining that the internal slopes of the exposed groundwater lakes comply with the sloping requirements of the provided reclamation plan? Because the unlined lakes will be full during mining and when complete, a routine visual observation and verification of the internal slopes will not be possible.*

The mining cell slopes are installed at their final condition and location using clear staking of the slopes. This provides a target for the dragline operator to excavate to, as discussed in the previous adequacy response. Following mining and reclamation, the underwater slope can be confirmed using a simple depth finder to acoustically map the slope.

**EXHIBIT G - Water Information (Rule 6.4.7):**

*As previously discussed, the recent restoration of the Town of Breckenridge's drainage easement across the site to a functional state may have adverse impacts on the extent of the existing wetland area. Due to the depth to groundwater measured in the area, the existing wetlands are believed to be primary surface-water fed, with a minimal, if any, groundwater component. However, the restored drainage easement will allow surface runoff to return directly to the Blue River as intended, rather than being dispersed across the northeast area of the proposed permit as it has done for the past several years (at least).*

*DRMS requests that the applicant commit to monitoring groundwater levels in the six existing wetland piezometers along with monitoring wells GW2 and GW5 (or all on-site wells for simplicity and consistency) on a monthly basis, rather than quarterly, as soon as practically possible. This additional water level data may help to identify the impacts, if any, to the wetland area from restoring the required drainage easement vs the proposed mining activity.*

Monitoring of the groundwater level in the piezometers and monitoring wells will be conducted on a monthly basis as soon as is practically possible.

**EXHIBIT J - Vegetation Information (Rule 6.4.10):**

*The total extent of the wetland area on site has been noted to vary somewhat over time, as may be expected due to changes in site topography made by the previous owners, precipitation levels, and the amount of surface water seasonally feeding into/through them from the previously discussed drainage easement. DRMS will defer to the US Army Corps of Engineers for the final determination of the extent of jurisdictional wetlands present within the permit area, as well as any subsequent permitting that may be required for any disturbance within jurisdictional wetland areas.*

*What is the most recent status of the site with respect to the required US ACOE jurisdictional determination and any potentially required permitting?*

The US ACOE has assigned file number SPK-2020-00743 to the delineation request that we submitted. US ACOE is reviewing the delineation submittal and will field confirm it in the spring, when weather permits.

At the request of the US ACOE, Peak Materials provided the US ACOE with the wetland delineation under a different submittal type. Therefore, a revised Appendix J-1 has been provided to keep the DRMS application file up to date.

**EXHIBIT L - Reclamation Costs (Rule 6.4.12):**

*DRMS has calculated the required reclamation bond for the proposed operation based on information provided in the application, adequacy response, and DRMS's estimate of the maximum allowed disturbance for the operation as proposed. The DRMS bond estimate was calculated using the CIRCES software based on the following assumptions:*

- *Maximum allowed disturbance for the site will be considered to be at the end of Phase I mining, when up to 54 acres may require replacement of overburden and topsoil, final grading, and revegetation. The total area requiring this work will decrease as the size of the proposed unlined lakes increases during Phase II of mining (if approved).*
- *Topsoil and overburden volumes, average haul distances, and equipment (truck, loader, and dozer) as provided in the initial adequacy response have been utilized. A water truck for dust control has also been included for these earthmoving tasks.*
- *All internal slopes for Phase I mining will be mined at 3:1 or flatter.*
- *Revised seed mix/rates, mulching, and tree counts provided have been utilized, and an initial seeding failure rate of 25% has been assumed.*
- *A permanent augmentation plan will be approved by the State Engineer's Office Division of Water Resources prior to exposure of any groundwater on-site*
- *No processing or stockpiling of processed material will take place on site*
- *All on-site support equipment brought to the site during operation— toilets, fuel trailers, etc, will be portable, and be able to be removed from the site by the owner for the amount stated in the provided estimate.*

*The total bond required for the proposed permit utilizing the above assumptions is \$364,465.00. If the applicant wishes to implement a "phased bonding" approach, significantly more specific detail will need to be provided for concurrent mining and reclamation plans, as well as commitments to maximum disturbed acreage for each proposed phase of mining/reclamation. A summary of the cost estimate provided has been attached to this letter. Detailed breakdowns for each task listed can be provided upon request.*

Peak Materials accepts the Division's bond calculation of \$364,465.00.

**EXHIBIT M - Other Permits and Licenses (Rule 6.4.13):**

*Please include the new Summit County Conditional Use Permit for Maryland Creek Ranch that will be required for the importation of raw material as previously discussed.*

A revised Exhibit M is attached to this letter with the Maryland Creek Ranch CUP added to the list.

Thank you for your consideration. Please contact me if you have any further questions or concerns.

Sincerely,



Ben Langenfeld, P.E.  
Greg Lewicki and Associates