

Memorandum

TO: Board of County Commissioners

FROM: Sheryl Bower, AICP, Community Development Director

Wade Patton, Code Enforcement Officer

DATE: March 25, 2019

RE: Continuation of a Request to Schedule a Public Review Pursuant To Res.No.2009-97 for a

Parcel of Land owned By BLM and Mine Claims owned By Rocky Mountain Resources

(formerly Cal X Minerals, LLC).

I. BACKGROUND

At the December 10, 2018 Board of County Commissioners (BOCC) meeting in Silt, CO, Community Development Staff (Staff) presented the BOCC with a number of alleged complaints regarding the operations of Rocky Mountain Resources (RMR) and their current Special Use Permit.

Specifically, Staff requested guidance from the BOCC whether or not the BOCC wished to consider scheduling a "public review" of the operations to determine compliance with performance requirements of their Special Use Permit (formerly approved with CalX). A public review of the operations is an option provided to the BOCC at their discretion as stated as a condition of approval in Resolution No. 2009-97.At this meeting, the BOCC directed Community Development Staff to take the next 90 days to evaluate the claims and conduct its own investigation of the mining operations against the approvals and conditions of approval and report back to the BOCC.

II. GARFIELD COUNTY INVESTIGATION

Over the last three months, Garfield County Community Development Staff conducted investigation of alleged violations which includes Code Enforcement Officer, Wade Patton, who personally conducted four (4) site visits, participated in a guided tour and conducted document research. Additionally, staff has met with representatives from RMR to discuss their operations as well as the alleged violations.

It should be noted, Staff did receive complaints from citizens and also evaluated information from other sources that are addressed in this memorandum. Specifically, the complaints Staff has investigated focused on the following:

- 1. The size of the operation exceeds the approved acreage (16.3 acres).
- 2. The Operator is selling materials outside of the original approval.
- 3. The Operator has been crushing rock within the December 15 to April 15 operation restriction.
- 4. The Operator has failed to provide adequate dust control.
- 5. Maintenance of Transfer Trail and Issues with the maintenance agreement with Glenwood Caverns.
- 6. Changes to the operation has created unsafe conditions on Traver Trail.
- 7. That RMR operated outside of their permit when boring 15 exploratory dolomite holes.

The following is a discussion on each of the alleged violations and what staff has discovered through code enforcement review along with discussions with RMR.

1. The size of the operation exceeds the approved acreage (16.3 acres)

In 1982 (Res. No. 82-222) and in 1997 (Amended Res. No. 2009-97) the BOCC approved a 16.3 Acre site for the operation of a limestone quarry. The complaint lodged by Glenwood Citizen Alliance that the operation exceeds the approved size are based on representations made by Robert T. Wagner, VP, Mining Operations, in a letter dated December 29, 2017 to Amy Yeldell of the Colorado Division of Reclamation, Mining and Safety (Exhibit A). In this letter, Mr. Wagner indicated that they had prepared a survey of the property in 2017 and, "The calculated area of the total affected land to date is 20.8 acres." During the investigation period, Staff confirmed the size discrepancy with RMR. RMR indicated that they planned on requesting an amendment to their current SUP to better reflect the acreage on the ground and provide more consistency with other agency approvals.

Proposed Action -Amend the current SUP to reflect actual acreage or reclaim site back to originally approved boundaries.

2. The Operator is extracting for sale materials outside of their original approvals (operating a rock/gravel pit).

In both the original approval (Res # 82-222) and the amended approval (Res 97-2009) the applicant (then CalX) was very specific about the types of products that they intended to mine, specifically chemical grade limestone dust to serve the needs of area coal mines/coal-fired power plants. And while the current operation continues to produce chemical grade limestone, because of the changing nature of the industry, RMR has actively marketed and produced materials that are not limestone dust, including boulders, road base, screened rock, rip rap, etc., that appear to be primarily utilized in the construction industry (See attached sales sheet- Exhibit B). RMR confirmed that they do extract and sell these products.

In 1982 and then in 2009, the BOCC considered, based on representations made by the applicant, the impacts associated with the extraction and processing of limestone dust and products for the coal industry, expanding the operations to include the extraction of materials to be primarily utilized in the construction industry, i.e. road base, rip rap (and could potentially have different impacts) are a change to what was represented to the BOCC.

As is a customary condition of all land use approvals: All proposals of the applicant shall be considered conditions of approval unless otherwise stated by the Board.

Therefore in the absence of these other products being considered during the initial and subsequent review of the operations, it is staff's opinion that the operation is currently not in compliance with their current approvals.

Proposed Action - Cease operations outside of extraction of chemical grade limestone or seek approvals for the expanded operation.

3. The Operator has been crushing rock within the December 15 to April 15 operation restriction.

Condition #7 of Resolution 2009-97 reads:

The applicant shall maintain mining and processing hours, exclusive of truck hauling, from 7:00 a.m. to 5:00 p.m. Monday through Friday, and shall not mine or process on Saturday or Sunday; and the month of operation, exclusive of truck hauling, shall be from April 15th through December 15th of each year.

Code enforcement has observed rock being crushed outdoors during the investigation, and citizens have complained that this activity has been occurring during the December 15 to April 15 restriction period. RMR has been made aware of this issue and responded that winter restriction has been lifted by the BLM. Staff advised RMR that because it was a condition of Garfield County approval, that regardless if BLM has removed that restriction, RMR would still be subject to that restriction. RMR agreed to stop processing until the restriction was lifted.

Proposed Action - Cease operations until that time that the Special Use Permit is amended to remove the restriction or require RMR to adhere to the original County Conditions of Approval.

4. The Operator has failed to provide adequate dust control.

In the letter from Glenwood Citizens Alliance (GSA) dated 11/18/2019, the GSA stated:

The Special Use Permit notes that ..."the use of the tract of land shall comply with all general, extraction and processing regulations of the Garfield county Land use resolution of 2008, as amended". Several of the operator's current actions appear to have a potential impact on health and safety of Garfield County's Population. Dust is regularly observed billowing from the mine site during the extraction process. The dust is so significant that it can be observed for miles from the site as it reaches high above the mine."

GSA also submitted photos shot at a distance, showing dust billowing above the operation.

The Colorado Department Public Health and Environment (CDPHE) has standards and regulatory authority over air quality in mining operations. RMR has provided a copy of their air pollution permits. CDPHE has found the operation to be in compliance.

During the field investigation Wade Patton, Code Enforcement Officer did not observe any excessive dust. However, it should be noted that most of the investigation period occurred during the time period where extraction was prohibited.

Proposed Action - No County Action needed at this point.

5. Maintenance of Transfer Trail and Issues with the maintenance agreement with Glenwood Caverns.

Code Enforcement has driven up the road on a number of occasions and has reported not finding any issues with how the road is being maintained. The governing provision from the Special Use Permit regarding the road conduction is as follows:

Resolution 97-2009, Condition # 11. Prior to issuance of a Land Use Change Permit for the amendments to the Special Use Permit, the applicant shall submit a Road Maintenance Plan for Transfer Trail to the Building and Planning Department for review and comment.

This agreement was provided to and approved by County Staff as part of the Special Use Permit. Despite that the agreement is between two private parties, the spirit and intent of this Agreement was to provide a mechanism to keep the road in good condition specifically related to this use. Any failure in the road condition falls squarely on RMR.

[As a matter of background, we received an email from Steve Beckley, Owner, Glenwood Caverns Adventure Park, dated 1/18/2019, who indicated that there were some issues with RMR adhering to the Agreement. Mr. Beckley wrote that Bobby Wagner [RMR] stated that he would address what they can but several of the items cannot be fixed (i.e. back up alarms and enclosing crushing milling equipment.)]

Mr. Beckley sent a follow up email on March 15, 2019, summarizing his concerns and actions taken to remedy the violations of the road maintenance agreement:

- Section 2 of the Mid-Continent Quarry and Transfer Trail Operations Agreement requires RMR to minimize noise levels by enclosing all milling operations and by employing discriminating alarms on its rolling stock. Currently, there are active open aired milling operations that can be heard from the Adventure Park and there has not been any discriminating back up alarms installed on the equipment.
- 2. Section 3 of the Mid-Continent Quarry and Transfer Trail Operations Agreement requires RMR to implement radio communications on Transfer Trail between our buses and the quarry haul trucks. This issue has not been addressed.
- 3. Section 5 of the Mid-Continent Quarry and Transfer Trail Operations Agreement requires RMR to maintain Transfer Trail from the uppermost quarry entrance down to Traver Trail. RMR has made an effort to comply with this section. We won't be able to fully evaluate this until after the spring road work is completed.
- 4. Section 7 of the Mid-Continent Quarry and Transfer Trail Operations Agreement requires RMR to comply with provisions of the Garfield County resolution 2009-97 and 82-222. There are several non-compliance issues based upon these resolutions including:
 - a. Resolution 2009-97 item 7 Currently RMR continues to mine and process during restricted dates (between December 15 and April 15).
 - b. Resolution 2009-97 restricts RMR to 20 trucks per day of quarried materials. On some days RMR exceeds 20 trucks per day.

Because this agreement was considered as part of the approval for the mining operations, it must be adhered to. If there are parts of the agreement that are no longer valid or need to be changed, an amended agreement should be worked out with Glenwood Adventure Park and resubmitted for Staff's review.

Proposed Action – During the investigation Code Enforcement did not identify any issues with maintenance. However, because the Maintenance Agreement was a part of the approval process, RMR must adhere to it. If there are requirements of the agreement that are no longer valid, staff will need to see an updated agreement.

6. Changes to the operation has created unsafe conditions on Traver Trail. Operator using trucks larger than what was represented in approvals.

In their letter dated 11/16/2019 GSA, mentioned a number of issues with truck traffic on Traver Trail. This included trucks speeding, trucks taking up both lanes of traffic, and the original approval not anticipating 18 wheelers. Concerns over truck hauling were also brought up in the letter form Steve Beckley to Bobby Wagner dated November 12, 2018. Mr. Beckley indicated that "if haul truck numbers increase over the current maximum of 20 per day we will need to revisit this Section since the current requirements will not adequately provide safe access for our busses. In fact, we have several incidents where haul trucks have hit our vehicles even when the vehicles were completely stopped in the road. Additionally, we believe RMR has periodically operated more than 20 trucks a day which is in contravention of the county's permit."

During the review and approval of the Cal X operations, Cal X indicated that they would be using: "front-end dump trucks", "tractor trailer trucks" and "end dump trucks" to haul materials. These terms are used for a number of different types of trucks of varying sizes and would include a 3-axle tractor pulling a 2 axle trailer (18 wheels).

Generally truck behavior on roads is a matter of traffic enforcement. However, the purpose of providing the Commission with the ability to review the operation on request is in part to take a look at the unanticipated impacts associated with the operation. If the trucks currently being utilized for hauling cannot effectively navigate the road and/or if the size of the trucks create undo hazards for other users of the roadway, solutions to this problem should be sought.

Proposed Action - In the County's investigation, we did not observe an apparent violation. During the time Code Enforcement reviewed the operation he did not witness conflicts between haul trucks and buses nor did he witness issues with haul trucks navigating the road or the number of trucks exceeding 20 trips a day (however it should be noted that Code Enforcement did not spend any full day counting the number of trucks and because the Adventure Park is currently not open the likelihood of bus/haul truck conflicts is greatly minimized.)

If RMR requests changes to their operations that result in an increase in traffic volume and/or potential conflicts with other roadway users, they will be required to apply for an amendment to their Special Use Permit. Given that changes could impact the operation of Glenwood Adventure Park any changes to the mining operations that could result in more truck traffic should be coordinated with Glenwood Adventure Park and considered as a part of an updated agreement between the two entities.

7. That RMR operated outside of their permit when boring 15 exploratory dolomite holes.

As was noted in 2 above, Cal X was very specific about what activities were to take place during operations. Exploratory drilling for dolomite was not something that was anticipated. However, it is our understanding that this exploratory drilling has been completed and will not occur again.

Proposed Action - As long as the activity has ceased the issue has been corrected. However, if RMR plans on continuing to explore for additional minerals they should amend their approvals to include this activity so any additional impacts on surrounding properties can be analyzed.

III. SUMMARY AND POTENTIAL BOARD ACTION

After a review of the complaints filed it appears that RMR is not operating the mine consistent with the Special Use Permit. Specifically, the following appear to be violations:

- 1) The size of the site / disturbance of area;
- 2) The products they are mining,
- 3) Processing between December 15th and April 15th, and
- 4) Compliance issues with their maintenance agreement; and
- 5) Exploratory drilling.

It has been reported that RMR has ceased outside processing of mined materials. As for the other items RMR has indicated a willingness to request changes to their approvals to address the remaining concerns.

The purpose of todays' meeting is to determine if a public review is warranted. A public review is specifically provided for in Resolution 2009-97 as is set forth here:

The applicant's compliance with the conditions of this resolution and any Land Use Change Permit issued pursuant hereto shall be monitored through the Board's review. The Board may request a public review of the operation at its discretion. The purpose of such review shall be to determine compliance or noncompliance with any performance requirements associated with the granting of the Land Use Change Permit;

As it states, the purpose of the public review is "to determine compliance or noncompliance with any performance requirements associated with the granting of the Land Use Change Permit". If the BOCC agrees that a public review is needed a date/time (and location) should be decided upon.

POTENTIAL BOCC ACTION

Based on the information above, the BOCC may decide, at its discretion to hold a Public Review. If in that Public Review, the BOCC finds there to be violations of the SUP, it may:

- Direct RMR to fix those violations and operate as original approvals allowed; and/or
- 2) Direct RMR to submit a land use application to amend their SUP to address the violations. RMR may or may not be successful in their request to change conditions of approval as they seek. This is also a Major Impact Review that has a public notice and public comment component; or

3) Direct Staff to pursue the Code Enforcement track available to them in the land use code.

The BOCC can also determine that a Public Review is not necessary and provide direction at Today's meeting on any of the above options (1-3).







December 28, 2017

Amy Yeldell Colorado Division of Reclamation, Mining and Safety 1313 Sherman St., Room 215 Denver, CO 80203



DEC 29 2017

DIVISION OF RECLAMATION MINING AND SAFETY

RE: Mid-Continent LST, Permit No. M-1982-121, Quarry Boundary and Survey

Dear Ms. Yeldell,

In response to your letter, *RE: Mid-Continent LST, Permit No. M-1982-121, Commitment Until Amendment is Submitted (Included herein)*, sent January 17, 2017, Rocky Mountain Resources (RMR) would like to provide the following information, and propose a resolution to the AM-2 acreage issue.

RMR contracted SGM Engineering to survey the current quarry area at the Mid-Continent quarry in September of 2017. SGM surveyed the quarry on September 28, 2017, created a topographical map of the surveyed points, and delivered information on the area of disturbance and the size of the permit boundary we believed matched the CO DRMS permit boundary. The information was delivered to RMR in mid-December 2017.

After reviewing the data, and going back into our records to review documents relating to the approved AM-2 boundary, we realize there is a discrepancy between the currently approved AM-2 boundary and the boundary we thought was the approved CO DRMS boundary. You have commented on this apparent difference in your previous letters. The boundary RMR believed to be the approved CO DRMS AM-2 boundary appears to be a proposed revision that was not approved by the DRMS. As such, the current boundary is the AM-2 boundary depicted in the figures in the included letter (pg. 3 and pg. 5 in green), *RE: Mid-Continent LST, Permit No. M-1982-121, Approved Acreage and Map Boundaries*, sent May 2, 2016.

RMR has survey point information for the proposed revision boundary, but does not have survey point information for the approved AM-2 boundary currently. RMR was able to recreate the AM-2 boundary with good accuracy using the visual image provided in *RE: Mid-Continent LST, Permit No. M-1982-121, Approved Acreage and Map Boundaries (pg. 5)* and Google Earth. Figure 1 below shows the recreated AM-2 boundary in comparison to the proposed revision boundary. The currently disturbed mining area falls within the limits of both boundaries, except for the previously discussed surface disturbance (0.287 acres) on the eastern edge of the mining boundary. The calculated area of the AM-2 boundary is approximately 38 acres. The calculated area of the proposed revision boundary is 43 acres. The calculated area of the total affected land to date is 20.8 acres.



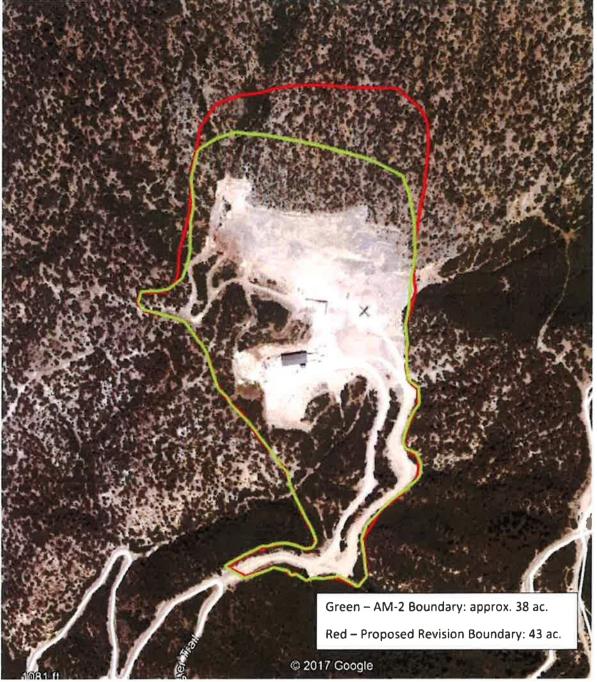


Figure 1: AM-2 boundary vs. previously proposed revision boundary





RMR proposes the following solution to the boundary issue.

- 1. Recreate the survey points for the approved AM-2 boundary using the perimeter shown in green in Figure 1 and in *RE: Mid-Continent LST, Permit No. M-1982-121, Approved Acreage and Map Boundaries* (pg. 3 and pg. 5 in green).
- 2. Adjust the recorded area of the AM-2 boundary to approximately 38 acres to match the area shown in the AM-2 boundary drawings mentioned in bullet point number 1.
- 3. Survey and install visible boundary markers, in the field, for AM-2 boundary.

RMR could quickly affect the above-mentioned items through the CO DRMS if they are deemed acceptable.

The surveyed images and topographical maps provided to RMR by SGM Engineering are included below. RMR has placed boundary markers on the proposed revision boundary in the field. Pictures of the boundary markers are included below. RMR realizes this boundary is not the currently approved AM-2 boundary, and would change the markers to match the approved AM-2 boundary once there is agreement on the location of the boundary between CO DRMS and RMR. RMR does not have a need to extend the boundary to the proposed revision boundary of 43 acres. We wish to resolve the boundary issue in the easiest way possible, and are open to ideas from the CO DRMS if they have more history or information available to reference.

Please feel free to contact me with any questions or concerns.

Sincerely,

Robert T. Wagner

VP, Mining Operations

Rocky Mountain Resources

720-660-3279

rwagner@rmrholdings.com





2018 Rocky Mountain Resources - Mid Continent Quarry Price Sheet

Class 6 Road B	ase	Rip Rap Type L *
Price/Ton	\$10.00	Price/Ton \$29.00
Class 1 Structu	ral Fill	Rip Rap Type M して
Price/Ton	\$7.75	Price/Ton \$33.50
3/8" Minus		Rip Rap Type H 18
Price/Ton	\$8.75	Price/Ton \$36.00
3/4" Screened Rock		Rip Rap Type VH 2
Price/Ton	\$13.50	Price/Ton \$45.00
1 1/2" Screened Rock		Boulder 2'
Price/Ton	\$16.50	Price/ton \$40.00
4" x 1" Screened Rock		Boulder 3'
Price/Ton	\$20.60	Price/ton \$45.00
3/4" Minus Roa	ad Base	Boulder 4'
Price/Ton	\$9.00	Price/ton \$50.00
8" x 4" Screene	d/Type VL	Boulder 5'+
Price/Ton	\$24.00	Price/ton \$55.00

Please contact for volume discounts

- In map form
 - Provide the Division with an updated location map, mining plan maps and reclamation plan maps
 - Maps must meet the requirements of Rule 6.2(2), 6.3.1 Rule 6.4.3 and Rule 6.4.6 respectively
 - o Depict permit boundary as 38 acres which includes the 0.287 acre area.
 - o Make the permit boundary line more visible on the satellite imagery maps.
- Notify the Division in writing when permit boundary markers have been place/moved to delineate the approved 38 acre boundary.

The above mentioned shall be received in the Division's Denver office by Friday, March 09, 2018.

These changes will be done under an administrative revision (AD-1) to the file. If the operator would like to make additional changes to the permit this will need to be done in the form of a Technical Revision or Amendment.

If you require additional information, or have questions or concerns, please feel free to contact me. Amy Yeldell at the Division of Reclamation, Mining and Safety, 1313 Sherman St., Room 215, Denver, CO 80203. Direct contact can be made by phone at 970-254-8511 or via email at amy.yeldell@ state.co.us

Sincerely,

Amy Yeldell

Amy Geldell

Environmental Protection Specialist Department of Natural Resources Division of Reclamation, Mining and Safety

Phone: (970) 254-8511

Ec: Russ Means, Senior EPS / Field Office Supervisor, Grand Junction DRMS Jessica Lopez Pearce, Colorado River Valley BLM Field Office Bobby Wagner, Rocky Mountain Resources