

SPK-2019-00889, Public Notice of Permit Application, Colorado Stone Quarries, Inc., Gunnison County, CO

REGULATORY DIVISION

Published Oct. 15, 2020

Expiration date: 11/16/2020 [This has been extended to December 16, 2020](#)

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Comment Period: October 15, 2020 – November 16, 2020

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District (Corps), is evaluating an after-the-fact permit application to maintain fill materials within the natural alignment of 1,600 linear feet of Yule Creek and within the relocated alignment of Yule Creek for the purpose of expanding an existing marble mining operation. This notice is to inform interested parties of the proposed activity and to solicit comments.

AUTHORITY: This application is being evaluated under Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States (WOTUS).

APPLICANT: Colorado Stone Quarries, Inc. (CSQ), Attn: Mr. Daniele Treves, 300 West Park Street, Marble, CO, 81623

LOCATION: The approximately 25-acre project site is located on Yule Creek at the Pride of America Mine, approximately 3 miles south of the Town of Marble, at Latitude 39.036826°, Longitude -107.168673°, Gunnison County, Colorado, and can be seen on the Marble USGS Topographic Quadrangle.

PROJECT DESCRIPTION:

Beginning on November 5, 2018, CSQ diverted approximately 1,600 linear feet of Yule Creek through a constructed channel that flows approximately 1,700 linear feet around the east side of a partially exposed marble formation known as the Franklin Ridge. After diverting the stream, the former channel was filled with approximately 97,000 cubic yards of native materials to create a permanent road access to the existing mining operation and to facilitate surface mining of the Franklin Ridge quarry site. Surface mining of the Franklin Ridge will occur on a seasonal basis due to the inability to conduct surface mining activities during freezing temperatures. It is estimated that the Franklin Ridge will require 10-20 years to extract the marble resources, after which the site will be reclaimed in accordance with the Colorado Division of Reclamation, Mining, and Safety (DRMS) requirements. Reclamation will include filling the site with native materials in a topographically stepped fashion and proposes to maintain the realigned segment of Yule Creek. The access road system also allows for the potential future expansion of mining activities at the Adams Gallery, located on the hill slope east of the Franklin Ridge.

CSQ conducted the Yule Creek realignment activities under the assumption that the work was exempt under the Clean Water Act (33 U.S.C. 1344(f)(1)(E)). After review of all available

information and conducting a site visit, the Corps determined that the work to divert and fill Yule Creek does not qualify for exemption under the Clean Water Act as it was and is being utilized for purposes other than moving mining equipment as required by the applicable exemption. In regards to this exemption, mining equipment is defined as equipment normally associated with the mining and processing of raw materials like excavators, draglines, drills, cranes, shovels, crushers, and sluices. Mining equipment does not include haul trucks transporting mined materials or other mining products. Additionally, the subject road is proposed to be retained following mining reclamation and is therefore not temporary, as required by the applicable exemption. The Corps notified CSQ that the work is in violation of the Clean Water Act on May 5, 2020.

CSQ is requesting an after-the-fact Corps permit to expand mining operations by permanently retaining the current realignment of Yule Creek around the east side of the Franklin Ridge. CSQ is also considering alternatives that include returning Yule Creek to an alignment west of the Franklin Ridge. All the alternatives being considered are summarized below in the Alternatives section.

ADDITIONAL INFORMATION:

Site History.

The mining of marble at this site began in 1895 with operations continuing until it closed in 1941. Marble mining operations began again in 1989 but several years of litigation and negotiations occurred between Gunnison County and the landowner of the Franklin Ridge resulting in a segmented (i.e., non-continuous) County right-of-way (ROW) near the mine. CSQ subsequently acquired the land that was subject to litigation (i.e., Franklin Ridge) and, in 2015, began discussions with the County to address issues related to the ROW and public access. As a result, the ROW was made whole when CSQ returned the needed portions of the ROW to the County to provide public access to view the historical site. Public access to areas within the active mine was closed in 2016 with a commitment by CSQ to develop a means to maintain public access to the historic site. Two years of discussions between CSQ, the County, and the United States Forest Service (USFS - adjacent landowner) failed to result in an agreement that allowed for alternative public access to the site.

In 2018, CSQ requested a Technical Revision from DRMS that would both allow for the expansion of mining activities at the Franklin Ridge and satisfy the County requirement to create alternative public access. The design of the technical revision included diverting and filling Yule Creek to create primary access to the mine, direct access to the Franklin Quarry, and allow historic public access using the former mine access road. Prior to beginning the work, CSQ provided the Corps with copies of technical revisions approved by the DRMS and conducted the work with the assumption that the construction of the road was exempt from Corps permitting requirements due to it being a temporary road used for moving mining equipment. No formal review or response was provided by the Corps.

The filling and diverting of Yule Creek began on November 5, 2018. Use of the new mine access road began immediately, and alternative public access was restored using the former mine access road. On October 16, 2019, approximately 5,500 gallons of diesel spilled from above-ground storage tanks located on the Franklin Ridge and in close proximity to the natural western alignment of Yule Creek. The ongoing remediation of the diesel spill is expected to take several years and is being directed by DRMS. Monitoring data indicates that remediation of the site has so far been successful. The Corps became aware of the diesel spill and Yule Creek realignment when the related DRMS spill report was provided to the Corps by CSQ on December 6, 2019. The Corps initiated an enforcement investigation on December 18, 2019.

Environmental Setting. The site is located at approximately 9,200 feet in elevation, within a steep mountain valley surrounded by subalpine habitats. Yule Creek is a perennial tributary to the Crystal River and flows north descending approximately 300 vertical feet within the project site. Yule Creek is described as having a step-pool morphology with chutes, debris flows, and waterfalls. As such, several natural, in-stream fish navigation barriers exist below, within, and above the project reach. The USFS owns and administers all directly adjacent lands surrounding the site, and USFS Raggeds Wilderness area is located directly upstream (i.e., south) from the project site. The area immediately surrounding and within the project site has been previously disturbed due to historic mining practices, including the creation of several underground marble mining portals within the hill slope directly west of Yule Creek.

The natural alignment of Yule Creek prior to the unauthorized activity was located directly west of the Franklin Ridge, measuring approximately 1,600 linear feet (0.60 acre). No wetlands are thought to have existed along this section of Yule Creek due to steep slopes and exposed bedrock surrounding the stream channel. The natural alignment of Yule Creek had been previously impacted by historic marble mining activities, mostly due to stabilizing steep slopes using large marble blocks and a no-longer-in-use practice of disposing of waste marble within the stream (i.e., dump). Fill materials placed within the natural western alignment of Yule Creek have been contaminated from the 2019 diesel spill, and remediation efforts are under way with specific monitoring to ensure that diesel is not making it into the downstream watershed.

The current alignment of Yule Creek travels around the east side of the Franklin Ridge, measuring approximately 1,700 linear feet (0.58 acre). Exposed bedrock formations within this alignment indicate that a stream channel was once present in the geologic past. Grading and seeding of adjacent slopes, especially to the east of the alignment, was conducted to prevent the slopes from eroding and contributing sediment to the channel, but additional restoration efforts are needed. Seven large, marble-block cross-vanes were constructed to stabilize the realigned channel. There are no plans to establish wetlands adjacent to this alignment as it is thought that they would not naturally occur given the slope and substrate of the site.

Alternatives. A number of project alternatives, including a no-action alternative and the applicant's preferred alternative to maintain the current alignment will be evaluated in accordance with NEPA (33 CFR Part 230) (USACE NEPA Regulations) and 33 CFR Part 325, Appendix B (NEPA Implementation Procedures for USACE Regulatory Projects). CSQ has provided the following alternatives that are currently being analyzed:

1. No-Action Alternative: The No-Action Alternative would expand mining to the Franklin Ridge without the need to place fill material into the Yule Creek. This alternative would return the historic alignment of Yule Creek and includes using the former access road (i.e., haul road) for general mine access and using the historic public access ROW adjacent to Yule Creek for public access. CSQ believes that this alternative is not possible because of the steep and unstable slope that exists below the former access road. CSQ also believes this alternative would vastly limit the volume of extractable marble resources within the Franklin Ridge due to its proximity to the public access ROW.
2. Off-site Access Alternative: This alternative would expand mining to the Franklin Ridge by constructing a crossing of Yule Creek at an off-site location and returning the historic alignment of Yule Creek. CSQ believes this alternative is not possible due to geographical access issues and lack of property ownership at potential off-site crossing locations.
3. Span Bridge Alternative: This alternative would expand mining to the Franklin Ridge using a span bridge over Yule Creek that does not require a Corps permit and maintaining the current public access ROW route. This alternative includes constructing access to the Franklin Ridge and the mine using a span bridge over Yule Creek and returning the historic alignment of Yule Creek. CSQ believes this alternative is not possible due to costs

associated with constructing a bridge designed to consistently handle extremely heavy loads (approximately 75-85 tons). Additionally, construction of the bridge would limit the volume of extractable marble resources within the Franklin Ridge.

4. Former Access Alternative: This alternative would expand mining to the Franklin Ridge by reopening the former access route to the mine and constructing a road crossing of Yule Creek near the southern end of the Franklin Ridge. This alternative would require altering the Gunnison County historic public access ROW route to be moved to a different location and returning the historic alignment of Yule Creek. CSQ believes that this alternative is not possible due to a lack of alternative, safe ROW routes in addition to logistical issues related to improving the former primary mine access route as access to the Franklin Ridge.
5. Partial Yule Creek Restoration (post Franklin Ridge) Alternative: This alternative would expand mining to the Franklin Ridge by leaving Yule Creek in the eastern alignment for an estimated 5 years and returning the channel to an alignment west of the Franklin Ridge once the Franklin Ridge is mined vertically down to a point that allows for the construction of road access. It is estimated that it will take at least 5 years to conduct adequate mining of the Franklin Ridge, acquire other approvals, and return the alignment of Yule Creek to the west side of the Franklin Ridge. This alternative seeks to return Yule Creek to its natural alignment, but several unnatural modifications would be included due to the spatial relationship between the natural channel alignment and areas contaminated during the 2019 diesel spill. Additional permanent impacts to Yule Creek include placing the western channel into culverts at three separate locations to create access. CSQ believes that this alternative is possible, but it is not their preferred alternative due to the potential to create additional impacts to aquatic resources. Details regarding the development and reclamation of Alternative 5 are included in the drawings provided.
6. Applicant Preferred Alternative: This alternative would expand mining to the Franklin Ridge by permanently maintaining the current realignment of Yule Creek to the east of the Franklin Ridge. Additional work to stabilize the slopes surrounding the eastern alignment are still needed. CSQ believes that this alternative results in a lesser amount of environmental impacts than other alternatives due to less overall work in the stream (i.e., no need to re-divert the channel) and the greater spatial distance between the stream and future mining activities (i.e., relocating the stream outside of the active mining operation). CSQ also acknowledges that this alternative may limit their ability to fully mine the Adams Gallery in the future. CSQ has identified this alternative as preferred due to their belief that it results in less environmental impacts when compared to other possible alternatives. Details regarding the development and reclamation of Alternative 6 are included in the drawings provided.
7. Partial Elevated Yule Creek Restoration Alternative: This alternative would expand mining to the Franklin Ridge by removing a portion of the fill materials currently in place within the western channel of Yule Creek. This alternative includes removing the top 5-10 feet of material to create a 10-15-foot-wide channel that is elevated and mostly within the natural western alignment. Similar to Alternative 5, several unnatural modifications would be included due to the spatial relationship between the natural channel alignment and areas contaminated during the 2019 diesel spill. Modifications would include placing the channel into culverts at two locations to create access. Additionally, approximately 60 linear feet of channel would be placed in a bottomless culvert to avoid the stream becoming subject to areas potentially contaminated by the 2019 oil spill. An armored reach of stream measuring approximately 350 linear feet would need to be constructed at the outlet of the bottomless culvert. CSQ believes that this alternative is possible, but it is not their preferred alternative due to the potential to create additional impacts to aquatic resources. Details regarding the development and reclamation of Alternative 7 are included in the Drawings provided.

Additional information concerning project alternatives are identified in the attached drawings and may be available from the applicant or their agent. Other alternatives may develop during the review

process for this permit application. All reasonable project alternatives, in particular those which may be less damaging to the aquatic environment, will be considered.

Mitigation. The Corps requires that applicants consider and use all reasonable and practical measures to avoid and minimize temporary and permanent impacts to aquatic resources. If the applicant is unable to avoid or minimize all impacts, the Corps may require compensatory mitigation. The applicant is currently considering various options to conduct compensatory mitigation, if needed. Compensatory mitigation plans have not been submitted as part of the proposal, but discussions thus far have included wetland enhancement and preservation near the confluence of Yule Creek and the Crystal River in effort to improve water quality within the watershed, among other options that seek to improve the ecological function of the Yule Creek watershed. CSQ is amenable to receiving information related to additional compensatory mitigation options.

OTHER GOVERNMENTAL AUTHORIZATIONS: Water quality certification or a waiver, as required under Section 401 of the Clean Water Act from the Colorado Department of Public Health and Environment (CDPHE) is required for this project. The applicant has been in coordination with the CDPHE regarding the need for water quality certification. CDPHE previously issued a discharge permit (COG500356) for the site on December 16, 2016, and also has an ongoing addendum request initiated September 19, 2019 (07GU0782/051-0049-008 and 07GU0782/051-0049-009).

The DRMS issued a technical revision to the CSQ 112c Mining Permit # M-1999-058 on September 16, 2018.

Gunnison County entered a Memorandum of Agreement with CSQ on March 26, 2019, regarding ROWs and other road- and bridge-related agreements.

HISTORIC PROPERTIES: The State Historic Preservation Officer provided concurrence for determination of effects related to the expansion of the mine on December 1, 2016, and concurred with a plan to mitigate these effects on December 1, 2016 (CHS #57066). The Corps will initiate consultation with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act as appropriate.

ENDANGERED SPECIES: The proposed activity may affect federally listed endangered or threatened species or their critical habitat, including Canada lynx. The Corps will initiate consultation with the U.S. Fish and Wildlife Service, pursuant to Section 7 of the Endangered Species Act, as appropriate.

ESSENTIAL FISH HABITAT: The proposed project would not adversely affect Essential Fish Habitat (EFH) as defined in the Magnuson-Stevens Fishery Conservation and Management Act.

The above determinations are based on information provided by the applicant and our preliminary review.

EVALUATION FACTORS: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline

erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, federal, state, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SUBMITTING COMMENTS: Written comments, referencing Public Notice SPK-2019-00889 must be submitted to the office listed below on or before **November 16, 2020**.

Ben Wilson, Project Manager
U.S. Army Corps of Engineers, Sacramento District
Colorado West Regulatory Section
400 Rood Avenue, Room 224
Grand Junction, Colorado 81501
Email: Benjamin.R.Wilson@usace.army.mil

The Corps is particularly interested in receiving comments related to the proposal's probable and realized impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant or the Corps' project manager Benjamin Wilson, (970) 243-1199 X 1012, Benjamin.R.Wilson@usace.army.mil.

Attachments: [33 drawings](#)