

to

BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

IN THE MATTER OF BRANNAN SAND AND GRAVEL COMPANY, PIT 29,  
PERMIT No. M-1980-183.

DIVISION OF RECLAMATION, MINING, AND SAFETY AND BRANNAN SAND  
AND GRAVEL COMPANY STIPULATED AGREEMENT TO ESTABLISH  
CORRECTIVE ACTION DEADLINES TO MITIGATE HYDROLOGIC BALANCE  
IMPACT AND OFFSITE DAMAGE

THIS STIPULATED AGREEMENT is made and entered into by and between the Colorado Division of Reclamation, Mining and Safety ("Division") and Brannan Sand and Gravel Company, LLP ("Brannan") (jointly as "Parties"). Undersigned counsels submit this agreement for consideration by the Mined Land Reclamation Board ("Board"). As grounds for this Agreement, the Division states the following:

Recitals

A. Brannan's Pit 29 is located in Adams County ¼ mile east of the South Platte River. It is construction materials permit No. M-1980-183 and is authorized to affect 176.24 acres of surface area. The approved post-mining land use is developed water resource/water storage.

B. On July 28, 2014 the Division received a citizen complaint from an adjacent property owner. The complainant explained that his pasture was flooded. The Division previously received a complaint from this property owner in 2012 for similar offsite damage.

C. On July 31, 2014 the Division conducted an inspection of Brannan's Pit 29 and the surrounding area. During the inspection the Division observed saturated conditions in the adjacent property.

D. The Division's inspection report of July 31, 2014 described normally dry land on the adjacent property that was inundated by groundwater which has resulted from groundwater mounding between the slurry walls of Pit 29 and the neighboring Stagecoach Pit. Brannan acknowledges the existence of the flooded conditions.

E. On August 4, 2014 the Division received a citizen complaint from residents around Zigan Lake, south of Pit 29. The complaint alleged increased lake levels and groundwater mounding against the slurry walls around Pit 29 and the Stagecoach pit. The Division previously received complaints from the residents around Zigan Lake.

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F. On August 22, 2014 the Division issued a reason to believe a violation exists (RTB) letter to Brannan for failure to minimize disturbance to the prevailing hydrologic balance in the surrounding area, and failure to protect areas outside the affected land from damage.

G. In an effort to resolve outstanding issues in this matter the Parties held a meeting on October 23, 2014. The Division and Brannan have discussed resolution of all matters, specifically abatement and mitigation of the ground water mounding issues observed by the Division. Based on the Parties' discussions, the Parties hereby agree to the following terms:

### **Agreement**

1. Without admitting any of the foregoing factual and legal determinations Brannan agrees to comply with all provisions of this stipulated agreement, including all requirements set forth below.

2. Brannan agrees that failure to comply with all requirements and timeframes specified in this stipulated agreement and order constitutes failure to comply with a Board order and is grounds for an immediate enforcement hearing for the finding of a violation of the Construction Materials Act and Rules, assessment of civil penalties, issuance of a cease and desist order, and a finding that the financial warranty is subject to forfeiture.

3. **Temporary Plan**— Brannan agrees to submit a Temporary Groundwater Mounding Mitigation Plan ("Temporary Plan") to the Division no later than November 7, 2014. The Temporary Plan shall be submitted in an approvable form, as a technical revision, and implementation of that temporary plan shall commence ("Temporary Plan Commencement") within 5 days of Division approval. The Temporary Plan shall be designed to eliminate flooded conditions on the adjacent Einspahr property within 60 days after Temporary Plan Commencement. The Temporary Plan shall include a survey of the ground elevation of Pit 29's existing monitoring well MW-04 and weekly monitoring and reporting to the Division of water table levels in that well from the time of Temporary Plan Commencement until implementation of the Permanent Groundwater Mounding Mitigation Plan (described in paragraph 4) is commenced. Weekly monitoring reports shall be submitted to the Division within one week of data collection. De-watering methods may be active (pumping) and/or passive.

4. **Permanent Plan**— Brannan agrees to submit a Permanent Groundwater Mounding Mitigation Plan ("Permanent Plan") to the Division no later than December 12, 2014. The Permanent Plan shall be submitted in an approvable form, as an Amendment, and implementation of that permanent plan shall commence ("Permanent Plan Commencement") within 30 days of Division approval. The Permanent Plan shall be designed to permanently eliminate groundwater mounding on the south and west sides of Pit 29 within 180 days after Permanent Plan Commencement. De-watering methods shall

be passive (no pumps). Unless otherwise approved by the Division through a delegation of authority from the Board, the plan shall include, but is not limited to, the following items:

- a) A detailed narrative description of the plan;
- b) A plan view drawing showing baseline land and water elevations on the Einspahr property as they exist prior to Temporary Plan Commencement;
- c) A plan view drawing showing all components of the plan;
- d) Two hydrogeologic cross-sections using existing subsurface data as described below:
  - a. One cross-section oriented north-south and one oriented east-west;
  - b. Cross-sections shall extend through the Einspahr property and a minimum of 200 feet into adjacent properties;
  - c. Cross-sections shall be drawn at a horizontal scale no smaller than 1 inch equals 200 feet and vertical scale no smaller than 1 inch equals 5 feet;
  - d. Cross-sections shall show:
    - i. Elevations,
    - ii. The land surface,
    - iii. Existing man-made structures,
    - iv. Bedrock beneath alluvium,
    - v. Alluvium,
    - vi. Soil,
    - vii. Groundwater levels before and after implementation of the plan, and
    - viii. Text labels of all features.
- e) A groundwater table monitoring plan for verifying success of the Permanent Plan, consisting of one or more wells, and that provides sampling and reporting to the Division on a weekly basis until less frequent sampling and reporting is approved in writing by the Division. Weekly monitoring reports shall be submitted to the Division within one week of data collection;
- f) All supporting calculations, with explanations, of groundwater flow rates through the Einspahr property before, during, and after plan implementation, with identification of data sources for assumed or measured hydraulic properties of rock and alluvium;
- g) Construction specifications (dimensions, materials, and capacities) for all components of the plan.

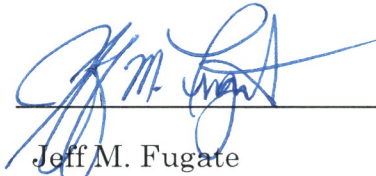
5. Brannan agrees not to challenge directly or collaterally, in any judicial or administrative proceeding initiated by the Board or Division, the requirements of this stipulated agreement and order. Brannan expressly reserves its rights to deny any of the Division's factual or legal determinations and to defend itself in any other third



party proceeding relating to the information identified in this stipulated agreement and order.

WHEREFORE, the Parties respectfully request that the Board approve this joint stipulation at its October 29, 2014 meeting.


Respectfully Submitted this 29<sup>th</sup> Day of October, 2014.



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Jeff M. Fugate  
First Assistant Attorney General

Attorney for the DRMS



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Eugene J. Riordan  
VRANESH AND RAISCH, LLP

Attorney for Brannan Sand and Gravel Company