

August 7, 2015

Kirk Eberl  
King Mountain Gravel, LLC  
7276 W. Mansfield Ave.  
Lakewood, CO 80235



**COLORADO**

**Division of Reclamation,  
Mining and Safety**

Department of Natural Resources

1313 Sherman Street, Room 215  
Denver, CO 80203

***RE: King Mountain Sand and Gravel Mine, Permit No. M-1978-314, Maintaining Right of Entry***

Dear Mr. Eberl:

According to records kept by the Division of Reclamation, Mining and Safety (Division), King Mountain Gravel, LLC is the permittee for the above mentioned site. In a conversation with Theresa Cain, a representative of Kirk Eberl, it was brought to the Divisions attention that the property was sold in October of 2014. As a result of the sale one or more permit violations have occurred.

Failure to submit Annual Report, Map and Fee. A Notice of Violation letter was sent on July 17, 2015 with a compliance date of **August 17, 2015**. A copy of the NOV letter is attached.

Failure to demonstrate Legal Right to Enter, *according to Construction Materials Rule 6.3.7*. The issue can be resolved one of two ways. The current permittee may provide the Division with documentation of an access lease or a signed and notarized statement by the property owner stating that the permittee has a legal right to enter. The second option is to file a 'Request for Transfer of Mineral Permit and Succession of Operators Application Packet'. Once approved by the Division the current permittee is relieved of their responsibilities and the successor operator assumes all responsibilities and liabilities of the permit. A copy of the packet is attached to this letter. Please note that a permit must be in good standing in order for the Mined Land Reclamation Board to approve the Succession of Operators. Demonstration of Legal Right to Enter must be resolved by **October 6, 2015**.

To avoid potential future enforcement actions for non-compliance with State Statutes, Rules and Regulations, and/or conditions specified in your permit for this site, you must submit compliance documentation with the corrective actions specified for each of the indicated problems on or before the dates listed above.

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**  
Environmental Protection Specialist



Department of Natural Resources  
Division of Reclamation, Mining and Safety  
Phone: (970) 254-8511  
Fax: (970) 241-1516

Cc:  
Frank Hewes-Current land owner  
P.O. Box 184  
Toponas, CO 80479

Ec:  
Russ Means, Senior EPS / Field Office Supervisor, Grand Junction DRMS  
Theresa Cain, Eberl's estate manager

Acy  
Gram  
AW



FR

## COLORADO

Division of Reclamation,  
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215  
Denver, CO 80203

✓ July 17, 2015

TO

Mr. Kirk J. Eberl  
7276 W. Mansfield Ave.  
Lakewood, CO 80235

30-day grace letter

RE: **KING MOUNTAIN SAND GRAVEL MNE, PERMIT #M-1978-314**  
**2014 ANNUAL FEE, REPORT, MAP COMPLIANCE**

Dear Mr. Ames:

Please be advised that according to our records, the Division of Reclamation, Mining and Safety has not received the following, which were due on November 22, 2014:

2014 Annual Fee of:	\$791.00
2014 Annual Report	completed, signed and dated
2014 Annual Map	(even if there has been no activity)

Even though the due date has passed 60 days, the Division is offering a one-time 30-day grace period, effective July 17, 2015 for you to submit the following:

- 2014 Annual Report (signed and dated), FORM, Map, and **\$791.00 FEE** (check or money order made payable to: **Division of Reclamation, Mining and Safety** – 1313 Sherman Street, Room 215, Denver, CO 80203).

These must be submitted no later than 5:00 p.m. on August 17, 2015, or a Notice of Violation, Cease and Desist Order from ALL mining related activities, Civil Penalties equal to the amount to the annual fees due, and Notice of Formal Public Hearing before the Mined Land Reclamation Board for consideration of a POSSIBLE PERMIT REVOCATION AND FINANCIAL WARRANTY FORFEITURE will be issued for this account.



If you have any questions, please contact me at either 303-866-3567 x8114 or [michelles.ramirez@state.co.us](mailto:michelles.ramirez@state.co.us), or Scottie Tate at 303-866-3567 x8166 or [scottie.tate@state.co.us](mailto:scottie.tate@state.co.us).

Sincerely,

A handwritten signature in black ink that reads "Michelle S. Ramirez". The signature is written in a cursive, flowing style.

Michelle S. Ramirez  
Program Assistant

CERTIFIED MAIL RECEIPT 7012 3460 0000 6385 0348  
Return Receipt Requested

enclosure: 2014 Annual Fee Invoice and Report Request

cc: Amy Yeldell, Environmental Protection Specialist  
Russ Means, GJFO  
Tony Waldron, DRMS

# 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



John W. Hickenlooper  
Governor

Mike King  
Executive Director

Virginia Brannon  
Director

October 1, 2014

Kirk J. Eberl  
King Mountain Gravel, LLC  
7276 W. Mansfield Ave.  
Lakewood, CO 80235

### King Mountain Sand & Gravel Mine, Permit M-1978-314, Annual Fee Invoice and Report Request

#### PLEASE READ CAREFULLY – ACTION REQUIRED

**Please attach your COMPLETED written Annual Report and Annual Report Map to this form**

Under the terms of your NOI or Reclamation Permit and Colorado Statutes, you must submit Annual Fees and Annual Reports (including a map). You must pay the Annual Fee and submit an Annual Report each year until reclamation responsibility release is granted. The Annual Fee is not a renewal fee. The Fee and Report are for LAST YEAR'S mining and reclamation season, and MUST be paid even if your operation was inactive.

The Annual Report and Fee requirement will be considered submitted when we have received the following components:

1. **APPROPRIATE ANNUAL FEE**
2. **COMPLETED ANNUAL REPORT**
3. **ASSOCIATED MAP as required by rule**

If you have requested reclamation responsibility release from the Division of Reclamation, Mining and Safety ("Division") but your permit is not released by the anniversary date listed below, the Annual Fee MUST be paid. If the permit is released before the anniversary date, then by Statute, it is not necessary to pay an Annual Fee or submit an Annual Report for that year.

Division records indicate the \$791.00 fee is due for the following:

Permit: M-1978-314  
Operation Name: King Mountain Sand & Gravel Mine  
Anniversary Date: November 22, 2014  
Total Fee Due: \$791.00 (Due on or before your Anniversary Date)

Return the enclosed Annual Report FORM, a MAP, and a CHECK or MONEY ORDER made payable to: Division of Reclamation, Mining and Safety, 1313 Sherman St., Room 215, Denver, CO 80203. If your records indicate these documents and fees have already been submitted, please notify the Division.

If you have additional comments and/or information that should be provided to the Division, please provide it below or attach it to this form along with your written report and map. Annual Report instructions are enclosed. If you have any questions, please feel free to contact Michelle Ramirez (303) 866-3567 ext 8114. Thank you for your cooperation in this matter.

IF THE ANNUAL FEE SUBMITTALS ARE NOT RECEIVED ON OR BEFORE YOUR ANNIVERSARY DATE, THE ENFORCEMENT PROCESS WILL AUTOMATICALLY BE INITIATED. ENFORCEMENT ACTIONS MAY RESULT IN CIVIL PENALTIES AND/OR REVOCATION OF YOUR PERMIT.

**112c Annual Report**

Permittee Name:	King Mountain Gravel, LLC	Permit Number:	M-1978-314
Operation Name:	King Mountain Sand & Gravel Mine	County:	Routt
Annual Fee Due:	\$791.00	Anniversary Date:	November 22, 2014
Permit Acreage:	341.00	Current Bond Amt:	\$231,300.00

According to C.R.S. 34-32.5-116 or 34-32-116, each year, on the anniversary date of the permit, an operator shall submit the Annual Fee, an Annual Report and Map showing the extent of current disturbances to affected land, required monitoring information, reclamation accomplished to date and during the preceding year, any new disturbance that is anticipated to occur during the upcoming year, any reclamation that will be performed during the upcoming year, the dates for the beginning of active operations, and the date active operations ceased for the year.

Information contained in this report will be reviewed by the Division upon receipt and prior to the next compliance inspection of the site. If, while completing this report, you learn that your site is not in compliance with the rules and the act, it is advisable that the issues be rectified promptly to avoid possible enforcement action.

1. Is the site identification sign posted in accordance with Rule 3.1.12(1). YES NO
2. Is the affected area boundary clearly marked in accordance with Rule 3.1.12(2). YES NO
3. Is the mine site in final reclamation (all material extraction and stockpile removal is complete)? YES NO  
If "YES," please note time limits related to completion of reclamation, Rule 3.1.3.
4. What was the date of last excavation, processing or hauling activity at the mine? \_\_\_\_\_
5. Does the mine operate more than 180 days per year? YES NO  
If "NO", please review Rule 1.13 to assure that your mine is in compliance.
6. Has this mine been granted: YES NO  
a) approval of TEMPORARY CESSATION Status? YES NO  
b) approval for INTERMITTENT OPERATION?
7. Number of acres currently affected (mining + incomplete and or unreleased reclamation). \_\_\_\_\_
8. Number of acres that were newly affected during the current report year. \_\_\_\_\_
9. Number of acres that were reclaimed during the current report year. \_\_\_\_\_
10. Estimated new acreage to be affected in the next report year. \_\_\_\_\_
11. Estimated acres to be reclaimed in the next report year. \_\_\_\_\_
12. **Total acres** in various stages of reclamation, since permitted mining activities began: \_\_\_\_\_

Total acres backfilled:		Total acres seeded w/ approved mix:		Total acres w/topsoil replaced:		Total acres mulched w/ approved mulch:	
Total acres graded:		Total acres fertilized w/ apvd fertilizer:		Topsoil replacement depth (in.):		Mulch application rate (tons/ac):	
Seed application method:		Fertilizer application method:		Mulch application method:			

13. Is weed control being conducted in accordance with an approved Weed Control Plan? YES NO N/A  
If "YES", indicate the weed species, control area, control type, application rate and treatment date on the report map.
14. Is adequate topsoil reserved for reclamation, based on your approved permit? YES NO N/A  
If "NO", please explain:
15. Is the reserved topsoil vegetated/stabilized in accordance with Rule 3.1.9(1)? YES NO N/A  
If "NO" please explain:
16. If mining has exposed groundwater, is the site in compliance with the approved mining plan and Office of the State Engineer (Well Permit, S.W.S.P., and/or Permanent Augmentation Plan)? YES NO N/A
17. Are all hazardous materials stored within approved spill containment structures? YES NO N/A
18. Is your financial warranty value sufficient to cover the cost to complete reclamation? YES NO N/A
19. Is your basis for legal right to enter still valid? YES NO
20. Does your permit require you to submit monitoring information annually? YES NO N/A  
If "Yes", please attach the required monitoring results to this Annual Report.
21. As required by Colorado Mined Land Reclamation Act and/or Colorado Land Reclamation Act for the Extraction of Construction Materials (C.R.S. 34-32-116 or 34-32.5-116), attach a map to this report that accurately depicts the permit boundary, current affected area boundary and location of the acreages specified in items 7- 12 and 14.  
UPDATED MAP ATTACHED: \_\_\_\_\_

Division records indicate the following permittee contact information. If this information is not current, please type or print **current** contact information:

Permittee Contact:	Kirk J. Eberl	
Permittee Company:	King Mountain Gravel, LLC	
Address:	7276 W. Mansfield Ave. Lakewood, CO 80235	
Phone Number:	(303) 988-6286	
Fax Number:	(303) 986-2771	
Email Address:	CF.PR.email	

I, the undersigned, hereby state that the information provided in this report is true and accurate, and that site operations are being conducted in accordance with the Division approved mining and reclamation plans.

Signature of Permittee, Corporate Officer, Owner, or Documented Designee

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



## REQUEST FOR TRANSFER OF MINERAL PERMIT AND SUCCESSION OF OPERATORS APPLICATION PACKET

*The Mined Land Reclamation Board ("Board") has approved this Transfer of a Mineral Permit and Succession of Operators Application Packet pursuant to the Mined Land Reclamation Act (C.R.S. § 34-32-101 et. seq.) ("Hard Rock Act") and associated Rules (2 C.C.R. 407-1) ("Hard Rock Rules") and the Land Reclamation Act for the Extraction of Construction Materials (C.R.S. § 34-32.5-101 et. seq.) ("Construction Materials Act") and associated Rules (2 C.C.R. 407-4) ("Construction Materials Rules"). This Application Packet cannot be altered without the consent of the Board.*

### Applicability

This Transfer of a Mineral Permit and Succession of Operators Application Packet applies to mining operations where the current permitted mine operator ("Permittee") wishes to transfer the Reclamation Permit ("Permit"), along with all associated reclamation responsibilities and liabilities, to a Successor Operator ("Successor"). This process is referred to as a Succession of Operators ("SO").

### Filing Requirements for SO Application

An SO Application is not complete until the Division of Reclamation, Mining and Safety ("Division") has received each of the six items listed below. The Board has authorized the Division to review SO Applications and to issue approvals and denials based on its review. The Division will not review incomplete Applications.

- 1) **Application Form:** An Application Form is included in this Application Packet. Please note that the Application Form must be fully completed, and must bear the original notarized signature of an authorized representative of BOTH the Permittee and the Prospective Successor.
- 2) **Application Fee:** If an Application concerns a Hard Rock or Designated Mining Operation, then a filing fee of \$115.00 must be submitted to the Division. *See* C.R.S. § 34-32-127(2)(a)(I)(L). If an Application concerns a Construction Materials operation, then a filing fee of \$144.00 must be submitted to the Division. *See* C.R.S. § 34-32.5-125(1)(a)(X). Make all checks payable to the "Colorado Division of Reclamation, Mining and Safety."



- 3) **Performance Warranty Form:** The party wishing to become Successor (“Prospective Successor”) must agree to assume all liability for the reclamation of affected land, and must provide a Performance Warranty covering the same. *See* C.R.S. §§ 34-32-119 and 34-32.5-119. A Performance Warranty Form is included in this Application Packet. The Performance Warranty Form must bear the original notarized signature of an authorized representative of the Prospective Successor.
- 4) **Financial Warranty:** The Prospective Successor must provide Financial Warranties sufficient to cover the cost of completing reclamation in compliance with the Permit, the applicable Act and Rules. *See* C.R.S. §§ 34-32-119 and 34-32.5-119. In order to ensure the adequacy of the Financial Warranties, the Division must recalculate the required Financial Warranty whenever it receives an SO Application. Depending upon the state of the operation and the outstanding reclamation work, the Successor may be required to post a higher (sometimes significantly) or lower Financial Warranty than the Permittee currently has in place.

The Division must act on all SO Applications within 30 days. *See* Hard Rock and Construction Materials Rule 1.12.1(2)(a). Since the Division cannot typically review the amount of the required Financial Warranty within this 30-day period, applicants have the following two options:

Applicants may waive their right to receive a decision within 30 days. If the applicants waive their right to a decision within 30 days, the Division will recalculate the required Financial Warranty *before* issuing its decision on the Application. As a result, the Prospective Successor will know, prior to becoming Successor, whether the current Financial Warranty is adequate to cover the reclamation liability, or if the Financial Warranty must be increased. In this case, the Prospective Successor must submit the full Financial Warranty as part of the Application.

Applicants may decide not to waive their right to a decision within 30 days. If the applicants choose not to waive their right to a 30-day review, the Division will review the Financial Warranty *after* issuing its decision on the Application. In this case, the Prospective Successor must submit a conditional replacement Financial Warranty in the amount of the Permittee’s current Financial Warranty as part of the Application.

If the Application is approved, the Division will conduct an inspection within 60 days to assess the amount of the reclamation liability. If the inspection reveals that the reclamation liability exceeds the amount of the conditional replacement Financial Warranty, the Successor must submit the difference within sixty days. Failure to meet this deadline may result in an enforcement action. If the inspection reveals that the reclamation liability is less than the conditional replacement Financial Warranty, the Successor may request a Financial Warranty reduction for release of the difference.

*It is the applicants' right to receive a decision on their complete Application within 30 days. The applicants are free to choose whichever option they decide is best. Permittee and Prospective Successor must designate their decision on the attached Application Form.*

- 5) **Demonstration of Legal Right to Enter:** All Permittees must provide a description of the basis for legal right of entry to the site and to conduct mining and reclamation. *See* Hard Rock and Construction Materials Rules 6.3.7 and 6.4.14. To comply with this requirement, the Prospective Successor must demonstrate that he/she/it has obtained a legal right of entry from any and all surface and mineral rights owners in the affected lands, independent of the current Permittee. *See* Hard Rock and Construction Materials Rules 6.3.7, 6.4.14, and 1.6.2(1)(e)(i). This may be a copy of an access lease, deed, abstract of title, current tax receipt, or a signed and notarized statement by the property owners stating that the Prospective Successor has a legal right to enter. *See* Hard Rock and Construction Materials Rule 6.3.7.
- 6) **Structure Agreements:** In many cases, operators must provide the Division copies of agreements to compensate the owners of any significant, valuable, and permanent man-made structures and utilities within 200 feet of the affected land ("Structure Agreements"). *See* Hard Rock Rules 6.3.12 and 6.4.20; Construction Materials Rules 6.3.12 and 6.4.19. If the Permittee was required to provide Structure Agreements, the Prospective Successor must obtain *new* Structure Agreements from each owner and provide copies of the same to the Division with the Application.

### **Application Review Process**

The Division will grant an Application if it finds that all required information has been submitted, that the Prospective Successor is capable of assuming all responsibility for original permit by virtue of acceptable performance and Financial Warranties, and that the Prospective Successor has no outstanding violations. *See* C.R.S. §§ 34-32-119 and 34-32.5-119. If the Division does not act within 30 days from the date that a complete Application has been filed, the Application will be considered automatically approved. *See* Hard Rock and Construction Materials Rule 1.12.1(2). If an Application is denied, the Division will notify the Permittee and Prospective Successor no later than 10 days from the date it renders its decision. Both the Permittee and Prospective Successor may appeal a denial of an Application to the Board by submitting a written request for an administrative appeal hearing to the Board within 30 days of final decision date. *See* Hard Rock and Construction Materials Rule 1.4.11.

### **Application Checklist**

- ☐ **Application Form:** Complete the form located on page 5.
- ☐ **Application Fee:** Include check payable to Colorado Division of Reclamation, Mining and Safety.
- ☐ **Performance Warranty:** Complete the form located on page 11.
- ☐ **Financial Warranty:** Submit the appropriate Financial Warranties or conditional replacement Financial Warranties using the forms posted on the Division's website (available online at <http://mining.state.co.us/Mineral%20Forms.htm>).
- ☐ **Demonstration of Legal Right to Enter:** Identify the owners of all surface and mineral rights, obtain the documentation described above, and submit to the Division.
- ☐ **Structure Agreements:** Obtain new Structure Agreements if Permittee had been required to do so.

# 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



## APPLICATION FORM FOR TRANSFER OF MINERAL PERMIT AND SUCCESSION OF OPERATORS

### ADMINISTRATIVE INFORMATION

#### Permit Information

Permit Number: \_\_\_\_\_

Operation Name: \_\_\_\_\_

#### Permittee Information

Contact Person: \_\_\_\_\_

Company Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (       ) \_\_\_\_\_

Email (optional): \_\_\_\_\_

#### Prospective Successor Information

Contact Person: \_\_\_\_\_

Company Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: (       ) \_\_\_\_\_

Email (optional): \_\_\_\_\_

Other Reclamation Permits held by Prospective Successor (if applicable):

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### **DESIGNATION OF REVIEW TIMELINE**

As explained above, the Permittee and Prospective Successor may waive their right to receive a decision on an Application within 30 days in order to allow the Division to calculate the required Financial Warranty before issuing its decision. Permittee and Prospective Successor must initial one of the following two options to designate their choice. If Permittee and Prospective Successor cannot agree, the Division will render its decision within 30 days.

	I have reviewed the information provided in this Application Packet, as well as the applicable Act and Rules. Having been fully informed, I wish to <u>WAIVE MY RIGHT TO A DECISION ON MY APPLICATION WITHIN 30 DAYS.</u>
Permittee	
Prospective Successor	

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	I have reviewed the information provided in this Application Packet, as well as the applicable Act and Rules. Having been fully informed, I wish to <u>MAINTAIN MY RIGHT TO A DECISION ON MY APPLICATION WITHIN 30 DAYS.</u>
Permittee	
Prospective Successor	

The Prospective Successor must provide an adequate Financial Warranty or *conditional* replacement Financial Warranty, consistent with the designation above. Hard Rock and Construction Materials Rule 4.3 describes the various acceptable types of Financial Warranties. Each Financial Warranty must be submitted on the Board's approved forms (available online at <http://mining.state.co.us/Mineral%20Forms.htm>).

## **DUE DILIGENCE CERTIFICATION**

The Board wishes to ensure that Prospective Successors are fully informed of their duties and obligations should they become Successor to the Permit. Accordingly, the Prospective Successor must carefully review the items below and must initial indicating its agreement and understanding.

\_\_\_\_\_ If the Application is approved, the Prospective Successor will assume all liability for the reclamation of the affected land, and for compliance with the Hard Rock Act and Rules or the Construction Materials Act and Rules, as applicable (available online at <http://mining.state.co.us/Rules%20and%20Regs.htm>). Successor will be liable for any pre-existing conditions or violations, whether known or unknown at the time of the SO. It is the Prospective Successor's sole responsibility to investigate the operation prior to filing an Application.

\_\_\_\_\_ If the Application is approved, the Successor will be solely responsible for maintaining the mining and reclamation operations in compliance with the Reclamation Permit. The Permit includes the original approved Application, along with any and all subsequent revisions, amendments, and conversions thereto. It is not uncommon for a Permit to include dozens of documents that span many years. It is the Successor's sole responsibility to obtain a full and complete copy of the Permit and to understand the extent of his/her/its obligations thereunder. Permit documents may be purchased from the Division of Reclamation, Mining and Safety (the "Division") upon request or viewed on the Division's website at <http://drmsweblink.state.co.us/drmsweblink/search.aspx?dbid=0>

\_\_\_\_\_ If the Application is approved, the Successor must submit Annual Fees and Annual Reports to the Division on the anniversary date of the Reclamation Permit. For hard rock and designated mining operations, consult C.R.S. § 34-32-127(2) for the amount of the Annual Fee. For construction materials operations, consult the C.R.S. § 34-32.5-125 for the amount of the Annual Fee. Required annual reporting information is described in Hard Rock and Construction Materials Rule 1.15 and in the Annual Report Form provided by the Division. Failure to submit Annual Fees or Annual Reports may result in enforcement action.

**APPLICANTS' AGREEMENT TO REQUEST TRANSFER  
OF MINERAL PERMIT AND SUCCESSION OF OPERATORS**

WHEREAS, on \_\_\_\_\_, \_\_\_\_\_ Permit Number \_\_\_\_\_ ("Permit") was granted to \_\_\_\_\_ ("Permittee"), pursuant to which Permit, Permittee has engaged in a mining operation located in \_\_\_\_\_ County, Colorado.

WHEREAS, The Permit includes and incorporates any and all subsequent Amendments, Technical Revisions and/or Conversions.

WHEREAS, Permittee wishes to assign the entire Permit, along with all associated rights and responsibilities to \_\_\_\_\_ ("Prospective Successor"), and Prospective Successor wishes to become Successor Permittee under the Permit.

WHEREAS, Prospective Successor has inspected the mining and reclamation operations and is fully aware of the conditions thereof.

WHEREAS, Prospective Successor understands that the Reclamation Plan (the "Plan") is an integral part of the Permit and is required by law. Prospective Successor has had an opportunity to thoroughly review the Plan, understands that the Plan has not been completed and that, if Prospective Successor becomes Successor, he/she/it will assume full responsibility for the completion of the Plan.

NOW THEREFORE, Permittee and Prospective Successor hereby agree, for their own benefit and for the benefit of the State, as follows:

Prospective Successor agrees to accept all of the conditions of the Permit, including the condition that the operation remains in compliance with all applicable laws and regulations, and to perform all of the obligations of the Permittee under the Permit.

Prospective Successor agrees to complete the Plan, and to assume all liability for the same, as to all areas presently disturbed, as well as to all areas hereafter disturbed.

Prospective Successor agrees to submit to the Division of Reclamation, Mining and Safety ("Division"), Performance and Financial Warranties, as required by applicable law and regulations, which will be substituted for the Performance and Financial Warranties previously filed by the Permittee, if and when the Division approves a Transfer of Mineral Permit and Succession of Operators ("SO") and releases the latter Warranties.

Prospective Successor represents to the State that, to the best of its knowledge, information and belief, it is not in violation of any of the provisions of the Mined Land Reclamation Act (C.R.S. § 34-32-101 *et. seq.*) ("Hard Rock Act") and associated Rules (2 C.C.R. 407-1) ("Hard Rock Rules") or the Land Reclamation Act for the Extraction of

Permittee and Prospective Successor hereby request that the Mined Land Reclamation Board ("Board") approves their SO Application, recognizes the Prospective Successor as Successor Operator under the Permit, accepts the Prospective Successor's Performance and Financial Warranties, and releases the current Permittee's Performance and Financial Warranties.

- 9 -



**NOTARY FOR PROSPECTIVE SUCCESSOR**

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_

**STATE APPROVAL**  
**[for completion by Division]**

- (a) The Board hereby approves the transfer of permit number \_\_\_\_\_ from  
\_\_\_\_\_ to \_\_\_\_\_.
- (b) The Board hereby recognizes \_\_\_\_\_ as Successor Operator under  
such Permit.
- (c) The Board hereby accepts the Performance and Financial Warranties submitted by Successor and hereby  
releases \_\_\_\_\_, as former Permittee from all obligations under  
its Performance and Financial Warranties. The Board further releases all affected financial warrantors from  
obligations under Financial Warranties associated with the former Permittee.

STATE OF COLORADO  
DEPARTMENT OF NATURAL RESOURCES  
MINED LAND RECLAMATION BOARD  
DIVISION OF RECLAMATION, MINING AND SAFETY

By: \_\_\_\_\_  
Division Director

Date Executed: \_\_\_\_\_

# 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



## PERFORMANCE WARRANTY

Operator: \_\_\_\_\_

Operation: \_\_\_\_\_

Permit Number: \_\_\_\_\_

*This form has been approved by the Mined Land Reclamation Board ("Board") pursuant to the Mined Land Reclamation Act (C.R.S. § 34-32-101 et. seq.) ("Hard Rock Act") and associated Rules (2 C.C.R. 407-1) ("Hard Rock Rules") and the Land Reclamation Act for the Extraction of Construction Materials (C.R.S. § 34-32.5-101 et. seq.) ("Construction Materials Act") and associated Rules (2 C.C.R. 407-4) ("Construction Materials Rules"). Any alteration or modification of this form, without approval by the Board shall result in the performance warranty being invalid and result in the voiding of any permit issued in conjunction with such invalid performance warranty and subject the operator to cease and desist orders and civil penalties for operating without a permit pursuant to sections 34-32-123, C.R.S. of the Hard Rock Act and 34-32.5-123, C.R.S. of Construction Materials Act.*

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the Colorado Mined Land Reclamation Act, C.R.S. § 34-32-101 et seq. (the "Hardrock Act"), as amended, and the Colorado Land Reclamation Act for the Extraction of Construction Materials, C.R.S. § 34-32.5-101 et seq. (the "Construction Materials Act"), as amended (collectively the "Acts"), provide that no permit may be issued until the Mined Land Reclamation Board (the "Board") receives a performance warranty consisting of the Operator's written promise to comply with the requirements of the Hardrock or Construction Materials Act, whichever is applicable.

WHEREAS, \_\_\_\_\_ (the "Operator"), has applied for a permit to conduct a mining operation known as \_\_\_\_\_ (the "Operation") on certain lands in \_\_\_\_\_ County, Colorado. These lands are described in the permit application, as amended and supplemented, and are referred to herein as the "Affected Lands."

WHEREAS, in its application for the permit, the Operator has agreed to be bound by all requirements of the Hardrock or Construction Materials Act and all applicable rules and regulations of the Board, as amended from time to time.

WHEREAS, the Operator hereby gives the Board this performance warranty pursuant to C.R.S. §§ 34-32-117(2) or 34-32.5-117(2), and herein promises the Board that it will comply with all applicable requirements of the Hardrock or Construction Materials Act.

NOW, THEREFORE, The Operator hereby promises the Board that it will comply with all applicable requirements of the Hard Rock or Construction Materials Act and applicable rules and regulations of the Board.

The Operator hereby promises the Board that it will comply with all of the terms of the application for a permit, as amended and supplemented, as well as any conditions attached to the permit by the Board.

The Operator promises the Board, pursuant to C.R.S. §§ 34-32-112(1)(d) or 34-32.5-112(1)(b)(IV), that it has the lawful authority to enter upon the Affected Lands to conduct mining operations, including, but not limited to, reclamation. The Operator further recognizes the right of the Board to enter to reclaim lands affected by the Operation.

The description of lands herein is for convenience of reference only, and no error in such description, revision of the permitted mining area, or disturbance by the Operator of lands outside of the permitted mining area shall alter or diminish the Operator's obligation hereunder, which shall extend to the reclamation of all such lands disturbed.

The obligation of the Operator hereunder is such that, if the Operator shall successfully comply with the requirements of the Hardrock or Construction Materials Act, applicable rules and regulations, and the permit, then the Board, upon a finding that the Operator has so complied, shall release this performance warranty, and the Operator from its obligation hereunder. The obligation of the Operator hereunder shall continue until released by the Board in accordance with applicable law.

The Operator promises to be responsible for the cost of reclamation up to the amount established by the Board and has attached hereto its financial warranty, in accordance with C.R.S. §§ 34-32-117(3) or 34-32.5-117(3). The Operator agrees that it will maintain a financial warranty (or warranties) covering the Board's estimated costs of reclamation in good standing for the entire life of the permit. If the Operator is a unit of County or Municipal government, or is a department or division of State government, the Operator is not required to submit or post any other instrument of financial responsibility but hereby promises to be responsible for the cost of reclamation up to the amount specified by the Board.

If the Board determines that the Operator is in default under this performance warranty and has failed to cure such default, although written notice of such default and ample time to cure such default have been given, the Operator's financial warranty shall be subject to forfeiture.

This performance warranty may be executed in multiple copies, each of which shall be treated as an original, but together they constitute only one agreement, the validity and interpretation of which shall be governed by the laws of the State of Colorado. The provisions hereof shall bind and inure to the benefit of the parties hereto and their successors and assigns.

SIGNED, SEALED AND DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Operator \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_

Title: \_\_\_\_\_

**NOTARIZATION OF OPERATOR'S ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_

STATE OF COLORADO  
DEPARTMENT OF NATURAL RESOURCES  
MINED LAND RECLAMATION BOARD  
DIVISION OF RECLAMATION, MINING AND SAFETY

By: \_\_\_\_\_  
Division Director

Date Executed: \_\_\_\_\_

Rev. 05/12