

December 7, 2015

Mr. Peter S. Hays
Colorado Division of Reclamation Mining and Safety
Via Email Only: Peter.Hays@state.co.us

Re: 112 Permit Application M-2015-33
Varra Companies, Inc.

Mr. Hays:

This firm represents Ritchie and Linda Pyeatt regarding M-2015-33, Varra Companies Inc.'s pending 112 permit application. My understanding is that the decision date has been postponed at the request of the applicant due to questions about oil and gas facilities on the property. I also gather that no hearing has been scheduled for the application, due to the fact that the Pyeatt's letter dated September 24 was not considered a "written objection, protest, or petition" pursuant to 1.7.1(2)(a) of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the "Rules").

The purpose of this letter is to urge you to reconsider the determination that the Pyeatt's letter does not constitute an objection warranting a hearing, and to provide information demonstrating that the mining plan as currently proposed violates § 34-32.5-115(4)(d) and (e), C.R.S. and cannot be approved as proposed.

The Pyeatt's letter of September 24, a copy of which I have enclosed for your convenience, was a timely objection to the application, and should have triggered a hearing. The letter clearly states significant concerns about the impact of dewatering on the sprinkler pond and well located on the Pyeatt property (e.g. "dewatering ... would adversely impact the water table and could make the well dry") as well as the intent that the application should not be approved without amendment or additional terms and conditions mitigating the impact of the dewatering activity. Both the well and the sprinkler pond are "structure[s], significant, valuable and permanent manmade" entitled to protection from damage. *See* §34-32.5-115(4)(e), C.R.S.

The letter, which was written without the benefit of legal counsel, should be interpreted as a whole with regard to its substance. The fact that the Pyeatts stated that they have “no objections to the mining of the Varra property” is most fairly interpreted to mean that they have no objection in principle, so long as their concerns about the impact of dewatering on their property rights are addressed. In other words, it is a statement that the application cannot be approved, absent additional terms and conditions.

Whether the matter is scheduled for a hearing under Rule 1.7.1(2)(a) or heard as an administrative appeal pursuant to 1.4.11, the Application cannot be approved because it is contrary to “the laws and regulations of this state” related to the operation of alluvial wells and would “adversely affect the stability of [a] significant, valuable, and permanent manmade structure within 200 feet of the affected land.” *See* § 34-32.5-115(4)(d) and (e), C.R.S.

I have enclosed for your review two items: 1) a letter report prepared by Leaf Engineering; and 2) an “Agreement” related to DMG 112 permit M-2001-046. These items are relevant because they arose out of a nearly identical application to dry mine a neighboring property. The Leaf Report demonstrates that dewatering in close proximity to the Pyeatt well would cause the well to go dry. The Agreement reflects that this issue was resolved in M-2001-046 when the Applicant agreed to wet mine the property. There was simply no way to dewater in such close proximity to the Pyeatt wells without causing significant damage.

I am aware of Awes, LLC’s letters to you dated October 27 and November 6. Though the Awes and Leaf letters are not in complete accord, the October 27 Awes letter unequivocally acknowledges that “dewatering from the Pit 122 operation will likely diminish” the pumping capacity of the Mayer Irrigation well, and that losses from the Mayer sprinkler pond “will increase as a result of mine dewatering.” Letter, page 3. The process proposed for addressing damages in the November 6 letter, which establishes a schedule of several weeks leading to a “written response” from the Applicant is woefully inadequate. Valuable crops can be lost in a matter of hours or days in the height of the irrigation season. At a minimum, the Leaf and Awes conclusions demonstrate a dispute of material fact that is ripe for hearing.

The Applicant has verbally expressed a desire to reach an agreement with the Pyeatts to compensate for the damages to be caused by dewatering pursuant to § 34-32.5-115(4)(e), but no written proposal has been provided. The Applicant’s representatives have stated an intent to provide water to the Pyeatts from the dewatering well, however, provision of water from this source would be unlawful in the absence of further water court and state engineer approval. No

Mr. Peter S. Hays
Colorado Division of Reclamation Mining and Safety
Re: 112 Permit Application M-2015-33; Varra Companies, Inc.
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Page 3

agreement, verbal or otherwise, exists between the Pyeatts and the Applicant at this point. If this issue cannot be addressed, the permit application should be denied.

Please feel free to contact me with comments or questions.

Sincerely,

Lawrence Jones Custer Grasmick LLP



Digitally signed by P. Andrew Jones
DN: cn=P. Andrew Jones, o=Lawrence,
Jones, Custer and Grasmick LLP, ou,
email=paj@ljcgllaw.com, c=US
Date: 2015.12.07 14:27:12 -07'00'

P. Andrew Jones

PAJ:mt

Enclosures (3)

cc: Varra Companies, Inc. (via U.S. Mail and Fax No. (970) 353-4047)
Ritchie and Linda Pyeatt (via email)
Eric Scott (via email)

September 24, 2015

Colorado Division of Reclamation, Mining and Safety
Attn: Peter S. Hays
1313 Sherman Street, Room 215
Denver, CO 80203

COPY

RE: Parcel 122- Resource Development Project, File No. M-2015-033

Dear Mr. Hays,

Mayer Family Farms LLC has an irrigation pond and irrigation well within the 200 feet boundary of the Varra Companies proposed 112 Permit. While we have no objections to the mining of the Varra property, we do have concerns regarding the protection of the pond and well.

The pond is an unlined pond, filled by surface water from The Lupton Meadows Ditch Company. It does not have a settling area. Once filled the pond water is pumped to the pivot for irrigation. Our concern is that when the dewatering from mining begins the pond will be within the cone of depression caused by the mining and will not hold water consistent enough to efficiently supply the pivot.

The irrigation well is next to the pond. It is Permit # 15750 and in the Well Augmentation Subdistrict of the Central Colorado Water Conservancy District under Contract # 72. While we are not able to pump the well at this time because of past pumping depletions, we intend to continue to pay Augmentation Assessments to protect the ability to pump in the future. Again, dewatering in the Varra Parcel 122 would adversely impact the water table and could make the well dry.

To another point, we have attached photos of the notification for the 112 Permit. We don't know if these notifications were placed on the property by your office or by the applicant but we feel that they are considerably lacking in professionalism. As you can see, the notice is an 8.5 x 11 inch piece of paper attached to a fencepost some distance from County Road 28. In our opinion, a better effort for notification needs to be put into place.

Concerning these issues, we would appreciate an opportunity to discuss ways to protect our well and pond. You or a representative from Varra can contact us at 970-396-0554.

Sincerely,

Mayer Family Farms, LLC


Ritchie E Pyeatt, Manager


Linda Pyeatt, Manager



Forrest Leaf, P.E.
13946 CR 56
Hillrose, CO 80733
(970) 396-8906
(970) 352-1982 FAX
ccwcdleaf@yahoo.com

LEAF ENGINEERING

Bobbie:
I am available on
7/19 & 7/20. F
P.M. on 7/18.

July 13, 2001

Mr. Gilbert Y. Marchand, Jr., Esq
2539 Spruce Street
Boulder, CO 80300

Re: Owens Brothers Gravel Pit - Well Injury Analysis

Dear Andy:

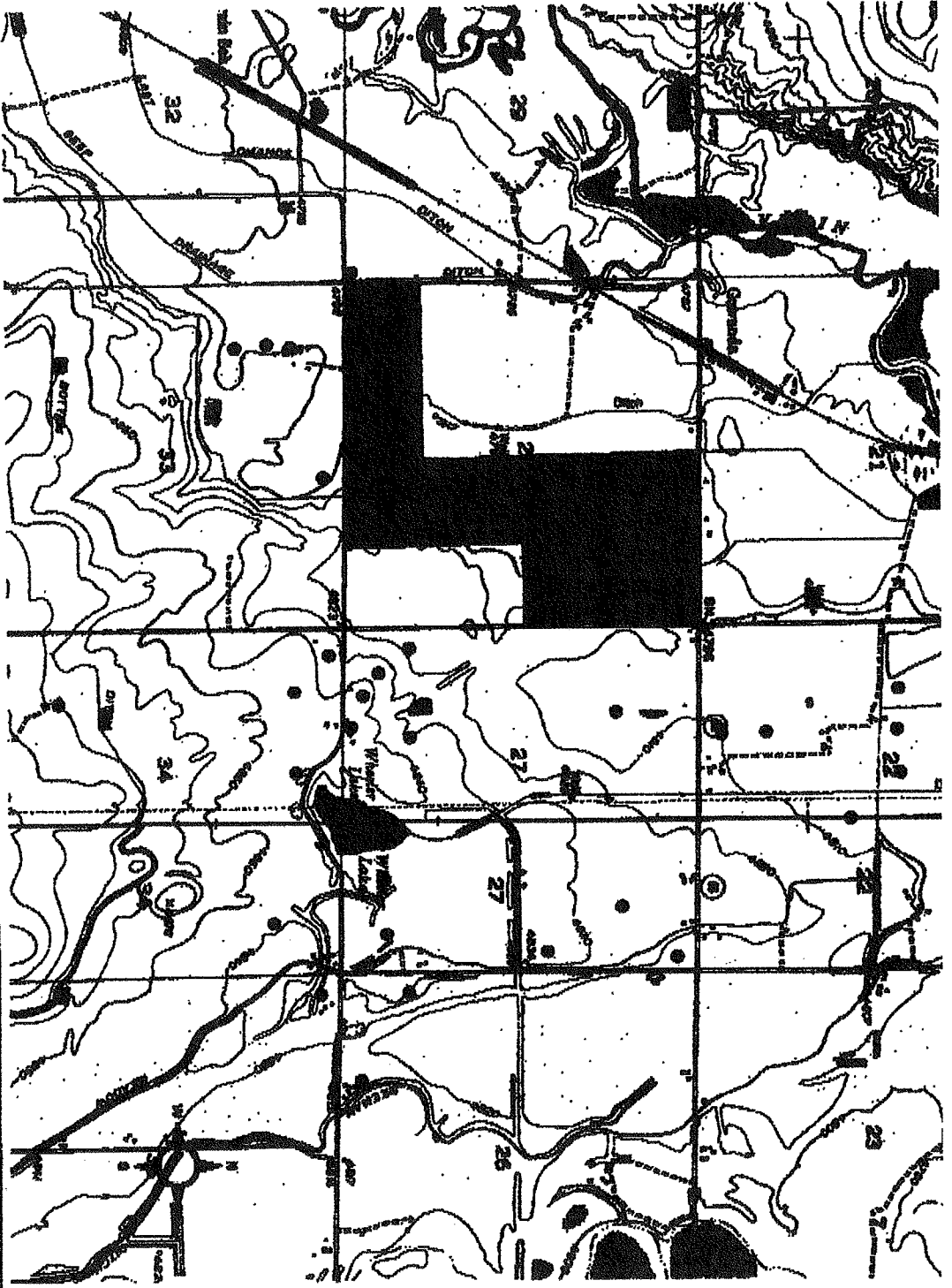
I have completed my preliminary analysis of potential injury to the wells owned by Wilson, Mayer, Fisher Yamaguchi, Berry, Sarchet, Coufal, Johnson, Sikich, Hemker, Flynn, Miller, Parker and Halsey. This letter report will summarize the aquifer conditions prior to the mining of the proposed gravel pit (historic conditions) and the aquifer conditions during dry-mining of the proposed gravel pit.

The Owens Brothers Concrete Company proposes to mine a sand and gravel pit in Section 28, 3N, 67W. The pit will consist of dry-mining 112 acres over the next 18 to 22 years. The dry-mining proposed by the applicant will result in a decrease in aquifer water levels and adversely impact irrigation and domestic wells in the area.

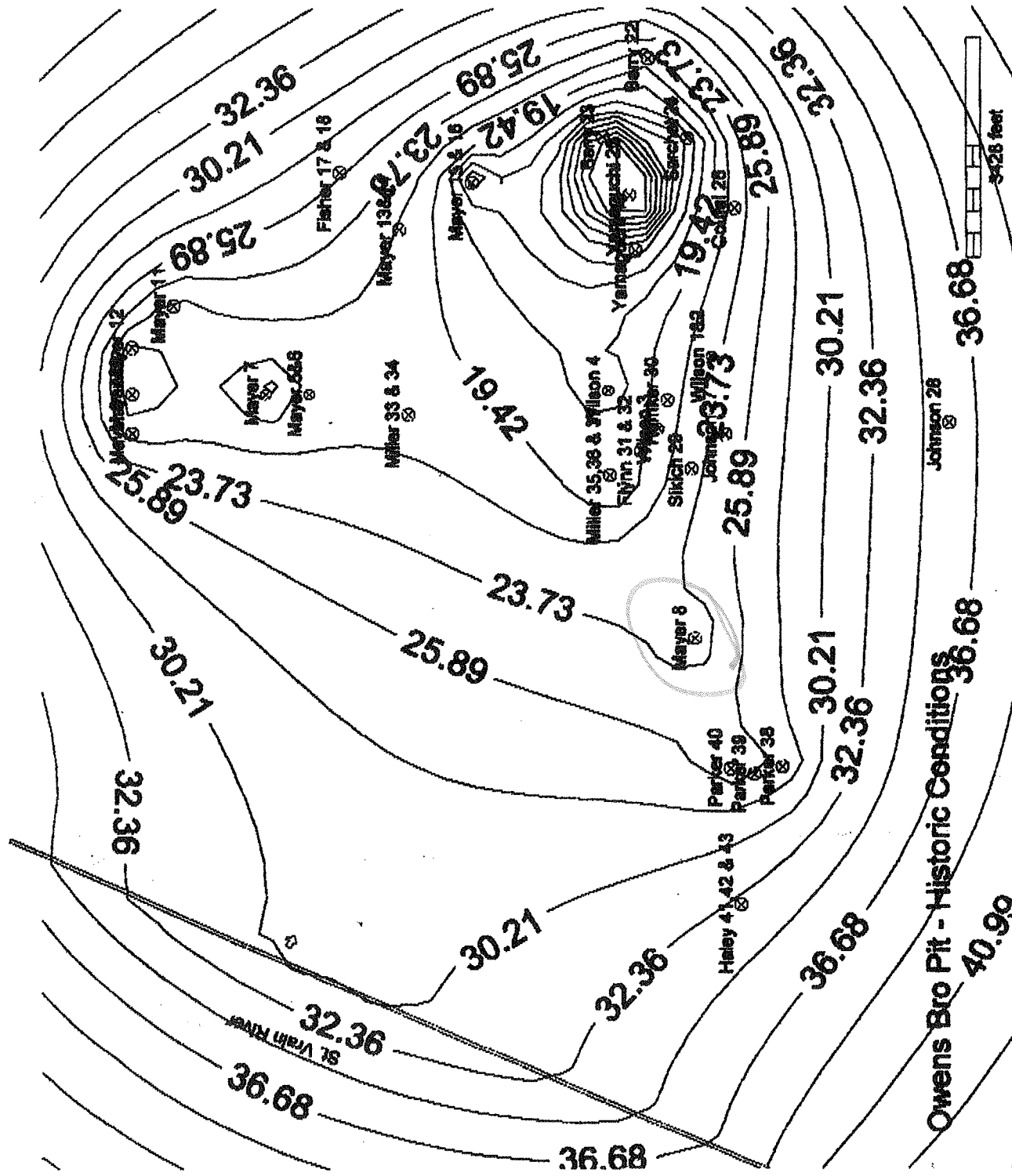
I estimated aquifer conditions using a two-dimensional steady-state groundwater flow model developed by Dr. Strack from the University of Minnesota. Aquifer properties were estimated from the USGS open file report "Hydrogeologic Characteristics of the Valley-Fill Aquifer in the Brighton Reach of the South Platte River Valley, Colorado" (T. Hurr & P. Schneider, 1972). Aquifer transmissivity was estimated at 150,000 gallons per day per foot and a saturated thickness ranging from 10 - 30 feet.

Historic conditions were simulated for 32 well clusters in the area as shown on Figure 1, enclosed. Pumping rates for irrigation wells were taken from well permits obtained from the State Engineer's well database. Pumping rates for domestic wells were assumed to be 15 gallons per minute. Historic pumping patterns was assumed to be continuous for all irrigation well clusters during July thru August. It was assumed that domestic wells pumped continuous for study period of January thru August. Wells were clustered based on each wells respective

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Hydrology * Hydraulics * Water Resources * Water Quality



| |
|---------------------------------|
| LEAF ENGINEERING |
| 13946 CR 56, Hillrose, CO 80733 |
| Figure 1 - Area Wells |
| July 2001 |



Owens Bro Pit - Historic Conditions 36.68

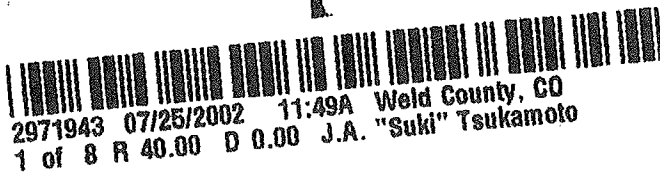
40.99

Johnson 28

36.68

0 25 feet

943



JUL 1

JUL 22 2002

AGREEMENT

THIS AGREEMENT is made this 19 day of ~~May~~ July 2002 between Owens Brothers Concrete Company ("Owens") and Mayer Family Farms, LLC ("Mayer").

RECITALS

- A. Owens proposes to mine sand and gravel on the property more specifically described on Exhibit "A" attached hereto, and has filed DMG 112 Permit Application Number M-2001-046 with the Colorado Division of Minerals and Geology and Use by Special Review Application 1343 in Weld County in furtherance of this objective. In these filings, Owens proposed to dewater and dry mine the property.
- B. Mayer owns the lands described on Exhibit "B" attached hereto. These lands are served by Wells bearing the permit Nos. R-15750-RF, 15398-R, 5503-F, 15399 (the "Wells"). Mayer was concerned that Owens' proposed dewatering activity would negatively affect the Wells, and for this and other reasons, filed objections to DMG 112 Permit Application No. M-2001-046 and USR Application 1343. Mayer remains an interested party in each of these proceedings.
- C. Mayer and Owens wish to resolve their differences with regard to M-2001-046 and USR 1343, and to agree upon terms and conditions under which the Owens property will be mined.

AGREEMENT

In consideration of the mutual promises and other valuable consideration exchanged herein, Owens and Mayer agree as follows:

- 1. All recitals are incorporated here.
- 2. Owens shall use the wet mining technique exclusively in its mining of the Owens property. No dewatering of any kind shall occur except to construct and float the wet mining barge in the various cells to be mined. Dewatering for barge construction or relocation shall not exceed a depth of six feet below the static water table in the pit, and shall occur solely during the months of October to March, inclusive. The area dewatered for the construction or relocation of each shall not exceed 1 acre in size. Owens shall amend Application M-2001-046 to be consistent with the terms of this Agreement.
- 3. For the life of Permit No. M-2001-046, if issued, Owens shall monitor the water levels in three monitoring wells located on the Mayer properties. The first monitoring well, which is already installed, is located in the Northwest ¼ of the Northeast ¼ of Section 33, Township



- 3 North, Range 67 West of the 6th P.M. The second monitoring well is installed in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 33, Township 3 North, Range 67 West of the 6th P.M. The third monitoring well is in the Southwest $\frac{1}{4}$ of Section 22, Township 3 North, Range 67 West of the 6th P.M. For the first year of active mining, Owens shall provide Mayer monthly reports of measured water levels. Thereafter, Owens shall provide reports no less than quarterly. Mayer grants Owens a license to access the monitoring wells, the term of which shall be commensurate with the life of Permit No. M-2001-046. Owens shall not construct any additional monitoring wells on the Mayer properties without the express permission of Mayer.
4. If, for any reason, Owens' mining activity on the Owens property injures the Mayer Wells, Owens shall reimburse Mayer all damages thereby caused. If such damage occurs during the irrigation season, Owens shall provide water or otherwise mitigate crop damages in a timely manner. In the event Owens and Mayer disagree as to whether Owens' activities have injured the wells, or disagree about the extent of the damages thereby caused, the parties shall select a neutral arbitrator to resolve the dispute. The decision of the arbitrator shall be final, and the party who substantially prevails shall be entitled to an award of attorneys and engineering fees.
 5. The term of this Agreement is the life of Permit No. M-2001-046, unless amended in writing by the parties.
 6. This Agreement is intended to be and is a covenant burdening the Owens property for the benefit of the Mayer property, shall run with the lands of Owens and Mayer, and shall be binding upon the heirs, successors and assigns of the parties.
 7. Owens agrees to pay Mayer's reasonable attorneys and engineers fees incurred in the assessment of the Owens proposal and the negotiation of this Agreement, not to exceed \$5,000.00.
 8. Mayer agrees to withdraw all objections to DMG 112 Permit Application M-2001-046 and to URS Application 1343, so long as the final mining and reclamation plan submitted to the Mined Land Reclamation Board and the Weld County Board of County Commissioners complies with the terms of this Agreement, and is identical in all substantial respects to the plan presented to Mayer at the April 30, 2002 meeting between the parties. Said plan is summarized, in part, by the correspondence attached hereto as Exhibit "C," and is further defined by reference to Owens' correspondence with the Colorado Division of Minerals and Geology and the Weld County Planning Department as of April 30, 2002. Mayer reserves the right to comment in the USR 1343 hearing before the Board of County Commissioners, provided that commentary offered is consistent with the terms of this Agreement.



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9. This Agreement represents the entire agreement between the parties and no oral modification shall be recognized. Any amendment to this Agreement shall be in writing signed by both parties.

MAYER FAMILY FARMS, LLC

OWENS BROTHERS CONCRETE COMPANY

By Dorothy Mayer

By W. M. O.

THE STATE OF COLORADO)
)
COUNTY OF Weld) ss.

Subscribed and sworn to before me by Dorothy Mayer, as Manager
of MAYER FAMILY FARMS this 19 day of July, 2002

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: 8-26-03



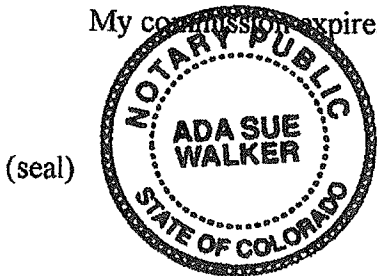
Christine E. Schoneman
Notary Public
5460 Ward Road, #360
Arvada, CO 80002

THE STATE OF COLORADO)
)
COUNTY OF Jefferson) ss.

Subscribed and sworn to before me by William M. Owens, as Assistant Treasurer
of OWENS BROTHERS CONCRETE COMPANY this 20 day of July, 2002

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: Nov. 19, 2004



Ada Sue Walker
Notary Public
5460 Ward Road, #360
Arvada, CO 80002



2971943 07/25/2002 11:49A Weld County, CO
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EXHIBIT A

Parcel One

The NW1/4 of the SE1/4 of Section 28, Township 3 North, Range 67 West of the 6th P.M.,
County of Weld, State of Colorado.



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EXHIBIT A

Parcel Two

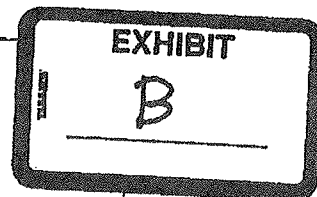
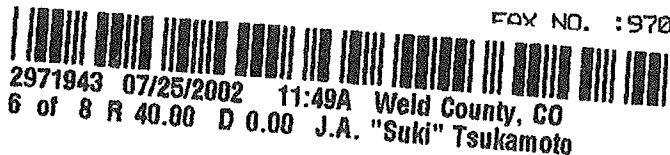
The SW1/4 of the SE1/4 and the S1/2 of the SW1/4 of Section 28, Township 3 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado,

EXCEPTING THEREFROM a parcel of land conveyed to The Department of Highways, State of Colorado by deed recorded December 5, 1957 in Book 1491 at Page 158, more particularly described as follows:
 The N1/2 of the NE1/4 of Section 28, Township 3 North, Range 67 West of the 6th P.M., in County of Weld, State of Colorado, said tract or parcel being more particularly described as follows:
 Beginning at a point on the East line of Section 28, Township 3 North, Range 67 West, from which point the Northeast corner of Section 28 bears North 0 degrees 32 minutes West, a distance of 90.0 feet;
 1. thence along the East line of Section 28, North 0 degrees 32 minutes West, a distance of 90.0 feet to the Northeast corner of Section 28;
 2. thence along the North line of Section 28, North 89 degrees 49 West, a distance of 2,590.0 feet to the Northwest corner of the NE1/4 of Section 28;
 3. thence along the West line of the NE1/4 of Section 28, South 0 degrees 24 minutes East, a distance of 40.0 feet;
 4. thence South 89 degrees 49 minutes East, a distance of 2,512.1 feet;
 5. thence South 45 degrees 10 minutes 30 seconds East, a distance of 71.2 feet to a point on the existing West County Road right of way;
 6. thence South 89 degrees 49 minutes East, a distance of 28.0 feet, more or less, to the point of beginning.

FROM

FOX NO. : 970-785-0455

Jun. 13 2002 09:21AM P3



2427550 B-1481 P-181 02/22/95 04:57P PG 2 OF 2

EXHIBIT "A"

The following real property located in the County of Weld, State of Colorado, to-wit:

Parcel 1

The Northeast Quarter (NE¼) of Section 33, Township 3 North, Range 67 West of the 6th P.M. in Weld County, Colorado, containing 159.248 acres, more or less, together with 140 shares of capital stock of The Lupton Meadows Ditch Company, an irrigation well pump and appurtenant equipment used in connection therewith.

Parcel 2

The Southwest Quarter (SW¼) of Section 22, Township 3 North, Range 67 West of the 6th P.M., Weld County, Colorado, together with all water and water rights, ditch and ditch rights appurtenant thereto, including, but not limited to, 10% shares of The Meadow Island Irrigation Company and 3 irrigation wells, pumps and motors;

excepting therefrom however, Lot A of Recorded Exemption No. 1209-22-3-RE396, recorded in Book 871 under Reception No. 1793360 of the Weld County records.

and subject to reservation of an undivided one-fourth interest in and to all oil, gas and mineral and all production royalties from existing oil and gas well as reserved by Harry T. Nishimoto and Mitsuoy Nishimoto; patent reservation of patent recorded in Book 51, Page 423; conveyance of 0.118 acres, more or less, to the State of Colorado in Deed recorded in Book 1490, Page 285; oil and gas reservation reserving to Joseph and Ida Margaret Webber recorded in Book 1306, Page 612; all in Weld County records;

Walter Mayer 2-16-95
Sue M. Mayer 2-16-95



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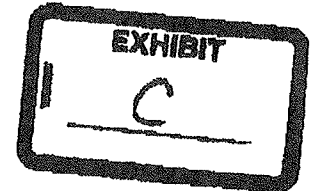
Banks and Gesso, LLC

720 Kipling St., Suite 117
Lakewood, Colorado 80215

(303) 274-4277
Fax (303) 274-8329
www.banksandgesso.com

April 23, 2002

Lind, Lawrence, & Ottenhoff, LLP
Attn: Andy Jones
1011 Eleventh Avenue
P.O. Box 326
Greeley, CO 80631



RE: Nix Sand and Gravel Mine - Owens Brothers Concrete Company

Andy:

Attached, please find Wright Water Engineer's (WWE) updated and combined Impact Analysis addressing both well and wetland concerns, as was requested of us by the DMG in their Adequacy Review letter of March 12, 2002. Also attached you will find our response to the rest of the DMG's concerns raised in that letter. I include this response to you because it discusses the mining and reclamation procedures and phasing in a little more depth than previously seen and may be helpful to your clients in addressing some of their other concerns regarding the entire project. The updated reclamation plan is included as well. Please note that as the monitoring data is included in WWE's report and the slope stability analysis (SSA) is not particularly relevant to your clients remaining issues, these two attachments to the DMG letter are not included.

You had also requested a written discussion relating to the proposed haul route for the mining operation. As you know, the County has indicated that they will not allow vehicles from the Owens operation to enter onto State Highway 66 unless the access is combined with the Varra entrance. Owens Brothers has contacted Varra about the possibility of combining access points. However, Owens is of the opinion that the requests made by Varra as conditions of the shared access proposal were unreasonable. With no other alternative, Owens Brothers is committing to locating their access point on Weld County Road 19, approximately one-half mile south of SH 66 and one-half mile north of Weld County Road 28. The haul route will utilize WCR 19 south to either WCR 24/SH 119 or WCR 14/SH 52 and then west to I-26. As we have discussed, there is some question as to whether the turning radius at the WCR 19 and WCR 24 intersection is sufficient for trucks. We are currently in discussions with the County as to which intersection Owens will be using. If the turning radius is sufficient at SH 119, the haul route will utilize this intersection. If the turning radius will not work, Owens is prepared to continue south on WCR 19 to SH 52. At any rate, there will be no east/west traffic on either SH 66 or WCR 28, which should address the concerns initially raised by your clients.

It is my hope that this correspondence sufficiently satisfies your and the Pyeatt's concerns regarding the Nix operation. If you have any other questions or concerns, please feel free to contact me at 303/274-4277.

Sincerely,

Tug Martin
Banks and Gesso, LLC

Attach: WWE Combined Study
Letter to DMG - dated April 18, 2002
Updated Reclamation Map

Cc: Project File: 20075-Correspondence, Neighbors
Bill Owens - Owens Brothers Concrete Company



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