



## COLORADO

Division of Reclamation,  
Mining and Safety

Department of Natural Resources  
1313 Sherman Street, Room 215  
Denver, Colorado 80203

September 29, 2016

Notice to Parties and Interested Persons

**Re: Recommendation to Approve a 112c Permit Application with Objections,  
Transit Mix Concrete Co., Hitch Rack Ranch Quarry, File No. M-2016-010**

Dear Party and/or Interested Person:

The Division of Reclamation, Mining and Safety (Division) hereby issues its recommendation for approval of the 112c permit application for the Hitch Rack Ranch Quarry, File No. M-2016-010, submitted by Transit Mix Concrete Co.

This recommendation is based on the Division's determination that the application satisfied the requirements of Section 34-32.5-115(4) of the Colorado Land Reclamation Act for the Extraction of Construction Materials, 34-32.5-101 *et seq.*, C.R.S. A copy of the Division's rationale for its recommendation is enclosed for your review.

The Division's recommendation is to the Colorado Mined Land Reclamation Board (Board). The Division's recommendation and the application with objections will be considered by the Board during a formal hearing, scheduled to occur **October 26-27, 2016**, at the Centennial Hall Auditorium at 200 South Cascade Avenue, Colorado Springs, Colorado, beginning at 9:00 a.m., or as soon thereafter as the issue may be considered. Pursuant to Rule 2.8.1(1) of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the Rules), any party who does not attend the Board hearing forfeits its party status and all associated rights and privileges.

A live audio broadcast of the formal Board hearing can be found at the following link, [mms://165.127.23.236/DRMS\\_Stream](mms://165.127.23.236/DRMS_Stream). Audio stream service may be temporarily unavailable or limited due to technical difficulties and bandwidth limitation, and could result in loss of audio signals or in the impairment of the quality of the transmission.

All parties and interested persons who intend to participate in the Board hearing are strongly encouraged to attend the Pre-hearing Conference. Pursuant to Rule 2.7.3(4), any party who does not attend the Pre-hearing Conference forfeits its party status and all associated rights and privileges, unless such party provides a fully executed proxy authorization form to the Pre-hearing Conference Officer and the party's authorized representative is present. The Pre-hearing Conference is scheduled to occur **October 5, 2016**, at the Centennial Hall Auditorium at 200 South Cascade Avenue, Colorado Springs, Colorado, beginning at 2:00 p.m., and terminating at or before 5:00 p.m. Mr. Jeff Graves will preside as the Pre-hearing Conference Officer.



If you have any questions, please contact me by telephone at 303-866-3567, ext. 8129, or by email at [amy.eschberger@state.co.us](mailto:amy.eschberger@state.co.us).

Sincerely,



Amy Eschberger  
Environmental Protection Specialist

Attachment: CERTIFICATE OF SERVICE

Enclosure: Rationale for Recommendation

cc w/enclosure: Paul Kos, Norwest Corporation  
Tony Waldron, DRMS  
Wally Erickson, DRMS  
Peter Hays, DRMS  
Tim Cazier, DRMS  
Jeff Graves, Pre-hearing Conference Officer  
Jeff Fugate, AGO for DRMS  
Scott Schultz, AGO for DRMS  
John Roberts, AGO for MLRB



### CERTIFICATE OF SERVICE

I, Amy Eschberger, hereby certify that on the 29<sup>th</sup> day of September, 2016, I deposited a true copy of the foregoing Notice to Parties and Interested Persons, dated September 29, 2016, RE: Recommendation to Approve a 112c Permit Application with Objections, Transit Mix Concrete Co., Hitch Rack Ranch Quarry, File No. M-2016-010, and the Division's rationale for its recommendation, dated September 29, 2016, in the US Mail, first class postage paid, addressed to the following:

Andre LaRoche  
Transit Mix Concrete Co.  
444 E. Costilla St.  
Colorado Springs, CO 80903

William & Marion Baker  
3375 Turkey Cañon Ranch Road  
Colorado Springs, CO 80926

Chelsea Luttrall  
2453 Gold Rush Drive, #4  
Colorado Springs, CO 80906

Robert A. Nathan  
Asthma & Allergy Associates, PC and Research  
Center  
2709 N. Tejon Street  
Colorado Springs, CO 80907

Sara Harper  
Red Rock Valley Estates Neighborhood  
Association  
11465 Calle Corvo  
Colorado Springs, CO 80926

Kathie Rawson  
Red Rock Valley Estates Neighborhood  
Association  
11795 Calle Corvo  
Colorado Springs, CO 80926

Chris Burnell  
Turkey Cañon Ranch Homeowners Association  
15575 Henry Ride Heights  
Colorado Springs, CO 80926

Mark McClurg  
Highlands of Turkey Cañon Ranch  
Homeowners Association  
15795 Phantom Canyon View  
Colorado Springs, CO 80926

James H. Enderson  
3215 Austin Drive  
Colorado Springs, CO 80909

Steve Firks  
The Piñons of Turkey Cañon Ranch  
Homeowners' Association  
15580 Cala Rojo Drive  
Colorado Springs, CO 80926

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Alane N. Sheaves  
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Phillip K. Heacock  
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Shannon Bell  
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Reece Eddy  
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1285 Glenrock Drive  
Colorado Springs, CO 80926

Kenneth R. Baird  
2335 Paseo Corta  
Colorado Springs, CO 80926

John and Kristan Rigdon  
1130 Glenrock Drive  
Colorado Springs, CO 80926

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Colorado Springs, CO 80926

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Colorado Springs, CO 80926

Wayne Diggs  
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Holly Sandler  
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Edyn Jessup  
The Nature Conservancy in Colorado  
2424 Spruce Street  
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Charles and Nancy Reed  
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Gerry Klein  
11580 Calle Corvo  
Colorado Springs, CO 80926

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Colorado Springs, CO 80926

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Tom Hight  
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Colorado Springs, CO 80926

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Colorado Springs, CO 80906

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Colorado Springs, CO 80926

Richard L. and Susan K. Larsen  
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Colorado Springs, CO 80923

Michael and Laura Harvey  
USAID Nigeria  
U.S. Embassy  
Abuja, Nigeria

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Colorado Springs, CO 80926

Debbie Gard  
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Board of Directors  
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Colorado Springs, CO 80926

Donald Larrabee  
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Colorado Springs, CO 80926

Rand Hassell  
3075 Little Turkey Creek Road  
Colorado Springs, CO 80926

Richard Welch  
11820 Calle Corvo  
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Hartmut Wright  
Southwestern Highway 115 Fire  
Protection District  
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Scott Samson  
11525 Calle Corvo  
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Doug Lee Wekamp  
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Colorado Springs, CO 80926



Brian and Betty Gardiner  
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Colorado Springs, CO 80926

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Colorado Springs, CO 80937

Michael Spoor  
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Colorado Springs, CO 80906

Barbara L. Hughes and Judy Kline  
3011 Springridge Drive  
Colorado Springs, CO 80906

Dan and Jodi Murphy  
3150 Slocum Rd.  
Peyton, CO 80831

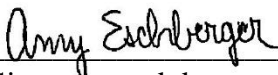
Lawrence Decker  
L.D. and D.L. Decker Trust  
2803 N. Chelton Road  
Colorado Springs, CO 80909

Benjamin Andrew Simmons and  
Stacy Simmons  
965 Boyfield Dr.  
Colorado Springs, CO 80906

El Paso County Board of Commissioners  
200 South Cascade Ave., Suite 100  
Colorado Springs, CO 80903

Turkey Creek Conservation District  
200 S. Santa Fe Ave., 4<sup>th</sup> Floor  
Pueblo, CO 81003

El Paso County Conservation District  
5610 Industrial Place, Suite 100  
Colorado Springs, CO 80916

 09/29/2016  
Signature and date







## COLORADO

Division of Reclamation,  
Mining and Safety

Department of Natural Resources  
1313 Sherman Street, Room 215  
Denver, Colorado 80203

Date: September 29, 2016

**RE: Rationale for Recommendation to Approve a 112c Permit Application with Objections,  
Transit Mix Concrete Co., Hitch Rack Ranch Quarry, File No. M-2016-010**

### Introduction

Herein, all references to the Act and Rules refer to the Colorado Land Reclamation Act for the Extraction of Construction Materials, 34-32.5-101 *et seq.*, C.R.S. (Act), and to the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the Rules or Rule). Copy of the Act and Rules are available through the Division's web site at <http://mining.state.co.us>.

On September 29, 2016, the Division of Reclamation, Mining and Safety (Division) issued its recommendation to approve the permit application for the Hitch Rack Ranch Quarry, File No. M-2016-010, over objections. This document is intended to explain the process by which the Division arrived at its recommendation to approve the Application over objections, and respond to the issues raised by the objecting parties and commenting agencies. The Division reserves the right to further supplement, amend, modify, or clarify this document and recommendation with additional details as necessary.

### Summary of the Review Process

Transit Mix Concrete Co. (Applicant) filed the application with the Division on March 8, 2016. The application describes a granite quarry operation with on-site processing of mined materials to include crushing, screening, washing, and production of aggregate products. The permit area includes 392.75 acres of affected lands. The quarry operation will develop three large excavation areas with highwalls maintained at a benched configuration. The quarry operation will advance through six mining phases with reclamation of affected lands occurring concurrently as the operation progresses, thereby minimizing the extent of the unreclaimed disturbance. Given the nature of the phased mining plan with contemporaneous reclamation, the Division would require financial warranty for the operation in the amount of \$3,857,842.00 to address the cost of reclamation through the development of mining phase three. The Applicant has proposed the affected lands will be reclaimed to support wildlife habitat for post-mining land use.

On March 9, 2016 (one day after the Application was filed), the Division deemed the application "complex", and extended the typical 90-day decision deadline by 60 days, from June 6, 2016, to August 5, 2016, pursuant to Rule 1.4.1(7). A technical review team composed of three Environmental Protection Specialists with the Division were assigned to conduct the review process of this complex application.

Notice of the filing occurred in accordance with the requirements of the Act and Rules. The public comment period closed on April 19, 2016. During the comment period, the Division received written comments from the following individuals and agencies:



Timely Letters of Objection:

- 1) On March 15, 2016, the Division received an objection from William and Marion Baker, dated March 10, 2016.
- 2) On March 18, 2016, the Division received an objection from Chelsea Luttrall, dated March 18, 2016.
- 3) On March 22, 2016, the Division received an objection from Robert A. Nathan of Asthma & Allergy Associates, PC and Research Center, dated March 15, 2016.
- 4) On March 25, 2016, the Division received an objection from Sara Harper and Kathie Rawson of Red Rock Valley Estates Neighborhood Association, dated March 15, 2016.
- 5) On March 25, 2016, the Division received an objection from Chris Burnell of Turkey Cañon Ranch Homeowners Association, dated March 21, 2016.
- 6) On March 25, 2016, the Division received an objection from Mark McClurg of Highlands of Turkey Cañon Ranch Homeowners Association, dated March 22, 2016.
- 7) On March 29, 2016, the Division received an objection from James H. Enderson, dated March 17, 2016.
- 8) On March 31, 2016, the Division received an objection from Steve Firks of The Piñons of Turkey Cañon Ranch Homeowners' Association, dated March 29, 2016.
- 9) On April 1, 2016, the Division received an objection from William and Marion Baker, dated March 28, 2016.
- 10) On April 4, 2016, the Division received an objection from William B. Sheaves, III, dated March 28, 2016.
- 11) On April 4, 2016, the Division received an objection from Alane N. Sheaves, dated March 28, 2016.
- 12) On April 4, 2016, the Division received an objection from Deidra Steen, dated March 29, 2016.
- 13) On April 4, 2016, the Division received an objection from Anita Sickels, dated March 31, 2016.
- 14) On April 4, 2016, the Division received an objection from Phillip K. Heacock, not dated.
- 15) On April 5, 2016, the Division received an objection from Lisa Pecoraro, dated March 29, 2016.
- 16) On April 7, 2016, the Division received an objection from Mike and Dee Yugovich, dated March 29, 2016.
- 17) On April 7, 2016, the Division received an objection from Sara Fentman, Jordan Townsend, and Shannon Bell, dated March 31, 2016.
- 18) On April 7, 2016, the Division received an objection from Bruce H. Chisnell, dated March 31, 2016.



- 19) On April 7, 2016, the Division received an objection from Reece Eddy, dated March 31, 2016.
- 20) On April 7, 2016, the Division received an objection from Kenneth R. Baird, dated April 2, 2016.
- 21) On April 7, 2016, the Division received an objection from Weldon W. Flaharty, dated April 4, 2016.
- 22) On April 8, 2016, the Division received an objection from John and Kristan Rigdon, dated March 31, 2016.
- 23) On April 8, 2016, the Division received an objection from Tracy Offutt, dated March 31, 2016.
- 24) On April 8, 2016, the Division received an objection from Sherry Diggs, dated April 2, 2016.
- 25) On April 8, 2016, the Division received an objection from Wayne Diggs, dated April 2, 2016.
- 26) On April 11, 2016, the Division received an objection from Lynn M. Steer, dated March 31, 2016.
- 27) On April 11, 2016, the Division received an objection from Ben Donahue of Rock Creek Park Association, dated March 31, 2016.
- 28) On April 11, 2016, the Division received an objection from Holly Sandler, dated March 31, 2016.
- 29) On April 11, 2016, the Division received an objection from Paul Reinsma, dated April 5, 2016.
- 30) On April 11, 2016, the Division received an objection from James H. Enderson, dated April 5, 2016.
- 31) On April 11, 2016, the Division received an objection from Edyn Jessup of The Nature Conservancy in Colorado, dated April 11, 2016.
- 32) On April 12, 2016, the Division received an objection from Dan Harrell, dated March 30, 2016.
- 33) On April 12, 2016, the Division received an objection from Brent and Lee Louzon, dated March 31, 2016.
- 34) On April 12, 2016, the Division received an objection from George and Christine Cousineau, dated March 31, 2016.
- 35) On April 12, 2016, the Division received an objection from Paul and Cindy Ragan, dated April 5, 2016.
- 36) On April 12, 2016, the Division received an objection from Sharon Reinsma, dated April 6, 2016.
- 37) On April 12, 2016, the Division received an objection from Weldon W. and Jennifer K. Flaharty, dated April 6, 2016.
- 38) On April 12, 2016, the Division received an objection from Kathie and Stan Rawson, dated April 9, 2016.
- 39) On April 12, 2016, the Division received an objection from Charles and Nancy Reed, dated April 11, 2016.



- 40) On April 12, 2016, the Division received an objection from Gerry Klein, dated April 12, 2016.
- 41) On April 13, 2016, the Division received an objection from Brett E. Powell, dated March 31, 2016.
- 42) On April 13, 2016, the Division received an objection from David and Linda Martin, dated March 31, 2016.
- 43) On April 13, 2016, the Division received an objection from Tom Hight, dated March 31, 2016.
- 44) On April 13, 2016, the Division received an objection from Nancy Reed, dated April 11, 2016.
- 45) On April 13, 2016, the Division received an objection from Tina Swonger of RE/MAX Properties, Inc., dated April 13, 2016.
- 46) On April 14, 2016, the Division received an objection from Charles A. and Patricia L. Watkins, dated March 31, 2016.
- 47) On April 14, 2016, the Division received an objection from Robert W. Pace, dated April 7, 2016.
- 48) On April 14, 2016, the Division received an objection from Charles H. and Denise A. Hancock, dated April 10, 2016.
- 49) On April 14, 2016, the Division received an objection from Richard L. and Susan K. Larsen, dated April 11, 2016.
- 50) On April 14, 2016, the Division received an objection from Michael and Laura Harvey, dated April 11, 2016.
- 51) On April 14, 2016, the Division received an objection from Gary K. McCowen, dated April 13, 2016.
- 52) On April 14, 2016, the Division received an objection from Jerry P. and Karen B. Moore, not dated.
- 53) On April 14, 2016, the Division received an objection from Mark A. Henslee, dated April 14, 2016.
- 54) On April 14, 2016, the Division received an objection from Stephen Sovaiko, dated April 14, 2016.
- 55) On April 14, 2016, the Division received an objection from Matthew D. Cook, dated April 14, 2016.
- 56) On April 14, 2016, the Division received an objection from Jagger Lawrence, dated April 11, 2016.
- 57) On April 15, 2016, the Division received an objection from Nancy Reed, dated April 15, 2016.
- 58) On April 15, 2016, the Division received an objection from Ray and Julie Whitehead, dated April 15, 2016.
- 59) On April 15, 2016, the Division received an objection from Jackie McFarlane, dated March 31, 2016.
- 60) On April 15, 2016, the Division received an objection from John Gard, dated April 10, 2016.



- 61) On April 15, 2016, the Division received an objection from Debbie Gard, dated April 10, 2016.
- 62) On April 16, 2016, the Division received an objection from Craig Engelage and Robert and Judith Cadigan, dated April 11, 2016.
- 63) On April 17, 2016, the Division received an objection from Troy L. Day, dated April 17, 2016.
- 64) On April 17, 2016, the Division received an objection from William B. Sheaves III, dated April 15, 2016.
- 65) On April 17, 2016, the Division received an objection from Ted D. Kerr of the Red Rock Valley Estates Water District, dated April 15, 2016.
- 66) On April 18, 2016, the Division received an objection from Charlton and Denise Brice, not dated.
- 67) On April 18, 2016, the Division received an objection from Sara and Marty Harper, dated March 15, 2016.
- 68) On April 18, 2016, the Division received an objection from Reece Eddy, Jr., dated March 31, 2016.
- 69) On April 18, 2016, the Division received an objection from Elizabeth W. Dean, dated April 10, 2016.
- 70) On April 18, 2016, the Division received an objection from Karen and Paul Blatchford, dated April 11, 2016.
- 71) On April 18, 2016, the Division received an objection from Gerry Klein and Richard W. Rudduck, dated April 12, 2016 and March 15, 2016, respectively.
- 72) On April 18, 2016, the Division received an objection from Warren H. Dean, dated April 13, 2016.
- 73) On April 18, 2016, the Division received an objection from Michael and Cynthia Heer, Jerry P. and Karen B. Moore, Joe and Suzie Koscove, Jack and MaryAnne Koscove, and Stephen Sovaiko, dated April 13, 2016, not dated, dated April 12, 2016, dated April 12, 2016, and dated April 14, 2016, respectively.
- 74) On April 18, 2016, the Division received an objection from Anne and Tom Fellows, dated April 14, 2016. Enclosed with the letter was the previously received objection from Edyn Jessup of The Nature Conservancy in Colorado, dated April 11, 2016.
- 75) On April 18, 2016, the Division received an objection from Cheryl L. Kimble, dated April 15, 2016.
- 76) On April 18, 2016, the Division received an objection from Carrie S. Bernstein of Alderman Bernstein LLC on behalf of Cheryl L. Kimble, dated April 18, 2016.
- 77) On April 18, 2016, the Division received an objection from Carol J. and David R. Lick, dated April 18, 2016.
- 78) On April 19, 2016, the Division received an objection from Lonnie T. Rogers, dated March 15, 2016.
- 79) On April 19, 2016, the Division received an objection from Jean A. Miller, dated March 15, 2016.



- 80) On April 19, 2016, the Division received an objection from Ken Troutt, dated March 15, 2016.
- 81) On April 19, 2016, the Division received an objection from Joseph Salazar, Jr., dated March 22, 2016.
- 82) On April 19, 2016, the Division received an objection from Mark Hodges, dated March 22, 2016.
- 83) On April 19, 2016, the Division received an objection from Mike and Dee Yugovich, dated March 29, 2016.
- 84) On April 19, 2016, the Division received an objection from Raven B. Rudduck, dated March 31, 2016.
- 85) On April 19, 2016, the Division received an objection from Eric Bransby, dated March 31, 2016.
- 86) On April 19, 2016, the Division received an objection from Sandra J. Boehr, dated March 31, 2016.
- 87) On April 19, 2016, the Division received an objection from Kay M. and C. Scott Kay, dated April 11, 2016.
- 88) On April 19, 2016, the Division received an objection from Sara LaVerne, dated April 11, 2016.
- 89) On April 19, 2016, the Division received an objection from Susan E. Pringle and Monte W. Junck, dated April 11, 2016.
- 90) On April 19, 2016, the Division received an objection from Richard C. Holden and Yvonne Bredee Holden, dated April 11, 2016.
- 91) On April 19, 2016, the Division received an objection from Ann Gerber, dated April 11, 2016.
- 92) On April 19, 2016, the Division received an objection from Cindy and Keith Newby, dated April 11, 2016.
- 93) On April 19, 2016, the Division received an objection from Ronald Blair, Donald Larrabee, and Rand Hassell, all dated April 12, 2016.
- 94) On April 19, 2016, the Division received an objection from Gary K. McCowen, dated April 13, 2016.
- 95) On April 19, 2016, the Division received an objection from Mike Yugovich, dated April 14, 2016.
- 96) On April 19, 2016, the Division received an objection from Richard Welch of the Red Rock Valley Estates Neighborhood Association, dated April 14, 2016.
- 97) On April 19, 2016, the Division received an objection from Hartmut Wright of the Southwestern Highway 115 Fire Protection District, dated April 14, 2016.
- 98) On April 19, 2016, the Division received an objection from Scott Samson, dated April 15, 2016.



- 99) On April 19, 2016, the Division received an objection from Victoria Spengler Wekamp, Douglas Lee Wekamp, and Brian and Betty Gardiner, dated April 18, 2016 and April 13, 2016, respectively.
- 100) On April 19, 2016, the Division received an objection from Steven K. Mulliken of Mulliken Weiner Berg & Jolivet P.C., dated April 18, 2016. Mr. Mulliken is Co-Trustee of the Amended and Restated Trust Agreement of the Harold C. Ingersoll Revocable Trust.
- 101) On April 19, 2016, the Division received an objection from Jennifer Divers Day, dated April 17, 2016.
- 102) On April 19, 2016, the Division received an objection from Thomas B. Melancon, dated April 19, 2016.
- 103) On April 14, 2016, the Division received an objection from Geri Sovaiko, dated March 22, 2016.
- 104) On April 18, 2016, the Division received an objection from Les Gruen of Urban Strategies, Inc., dated April 18, 2016.
- 105) On April 19, 2016, the Division received an objection from Michael Lihs and Bertha “Beege” Delgado, dated April 15, 2016.
- 106) On April 19, 2016, the Division received an objection from J. Michael and Karen A. Turley, dated April 15, 2016.

Timely Agency Comments:

- 107) On March 22, 2016, the Division received a comment from History Colorado, dated March 17, 2016.
- 108) On April 18, 2016, the Division received a comment from Colorado Parks and Wildlife, dated April 18, 2016.

Late Letters of Objection:

- 109) On April 20, 2016, the Division received a late objection from Lori S. (last name illegible), dated March 31, 2016.
- 110) On April 21, 2016, the Division received a late objection from Michael Spoor, dated April 11, 2016.
- 111) On April 25, 2016, the Division received a late objection from Beverly A. Hodges, dated April 18, 2016.

Late Agency Comment:

- 112) On April 21, 2016, the Division received a late comment from Colorado Division of Water Resources, dated April 21, 2016.



On June 14, 2016, pursuant to Rule 1.6.2(1)(f), the Division required the Applicant to provide additional notice to the property owners at Eagles Nest and Bauer Ranch, who must travel through portions of the affected lands to access their private property. A second public comment period was provided for the property owners at Eagles Nest and Bauer Ranch. The second public comment period was open for 20 days, and closed on July 8, 2016. During the second comment period, the Division received written comments from the following individuals:

Timely Letters of Objection:

- 113) On June 29, 2016, the Division received an objection from Michael Spoor, dated June 29, 2016.
- 114) On July 2, 2016, the Division received an objection from Nancy Reed, dated July 2, 2016.
- 115) On July 5, 2016, the Division received an objection from Barbara L. Hughes and Judy Kline, dated July 3, 2016.
- 116) On July 6, 2016, the Division received an objection from Jean A. Miller, not dated.
- 117) On July 6, 2016, the Division received an objection from Matthew D. Cook, dated June 23, 2016.
- 118) On July 6, 2016, the Division received an objection from Dan and Jodi Murphy, dated April 11, 2016.
- 119) On July 7, 2016, the Division received an objection from Lawrence Decker, Trustee of L.D. and D.L. Decker Trust, dated June 6, 2016.
- 120) On July 7, 2016, the Division received an objection from Cheryl L. Kimble, dated July 6, 2016.
- 121) On July 8, 2016, the Division received an objection from Benjamin Andrew Simmons and Stacy Simmons, dated July 1, 2016.

The Division forwarded copies of all comments to the Applicant, and scheduled a hearing before the Colorado Mined Land Reclamation Board (Board), and a Pre-hearing Conference. The Division provided notice of the scheduled Board hearing and Pre-hearing Conference to all parties and interested persons.

On June 30, 2016, the Division hosted an informal public meeting in Colorado Springs, during which the Division explained the application review process, issues under the Board's and Office's jurisdiction, party status, and Pre-hearing Conference and formal Board hearing processes. Parties and interested persons were informed of the informal public meeting by written notice, provided on June 9, 2016. The meeting was well attended by the public.

The recommendation deadline was extended by request from the Applicant, from August 5, 2016, to October 4, 2016. The Division rescheduled the Board hearing and Pre-hearing Conference accordingly, and provided timely notice of the new dates to all parties and interested persons in accordance with the requirements of the Act and Rules. Pursuant to Rule 1.4.9(2)(c), the Division's recommendation and rationale for its recommendation shall be sent to the applicant and to all objectors of record at least three





(3) working days prior to the Pre-hearing Conference. Therefore, the Division's recommendation deadline was moved up from October 4, 2016 to September 29, 2016.

During the review period, the Division generated five adequacy letters. The Applicant addressed all adequacy issues to the Division's satisfaction. Therefore, on September 29, 2016, the Division determined the application satisfied the requirements of C.R.S. 34-32.5-115(4) and issued its recommendation to approve the application.

### **Issues Raised by the Objecting Parties and Commenting Agencies**

The issues raised by the objecting parties and commenting agencies are represented by italic bold font. The first initial and last name of the objecting parties who raised the issue are listed after the issue (full first name if more than one party shared same first initial and last name). The Division's response follows in standard font.

#### ***1. Concerns regarding blasting, the blasting plan, and potential for adverse impact to the environment, man-made structures, and public safety resulting from the use of explosives. Concerns for access to private property being interrupted during blasting events.***

*(W. Baker, M. Baker, C. Luttrall, S. Harper, K. Rawson, M. McClurg, S. Firks, W. Sheaves, A. Sheaves, A. Sickels, L. Pecoraro, S. Fentman, J. Townsend, S. Bell, B. Chisnell, R. Eddy, K. Baird, J. Rigdon, K. Rigdon, T. Offutt, S. Diggs, W. Diggs, L. Steer, B. Donahue, H. Sandler, P. Reinsma, D. Harrell, B. Louzon, L. Louzon, G. Cousineau, C. Cousineau, P. Ragan, C. Ragan, W. Flaharty, J. Flaharty, S. Rawson, C. Reed, N. Reed, G. Klein, M. Heer, C. Heer, B. Powell, D. Martin, L. Martin, T. Hight, T. Swonger, C. Watkins, P. Watkins, C. Hancock, D. Hancock, G. McCowen, J. Moore, K. Moore, J. McFarlane, J. Gard, D. Gard, M. Harper, R. Eddy Jr., Richard Rudduck, W. Dean, Joe Koscove, S. Koscove, Jack Koscove, M. Koscove, S. Sovaiko, A. Fellows, T. Fellows, C. Kimble, C. Bernstein, C. Lick, D. Lick, L. Rogers, J. Miller, K. Troutt, J. Salazar Jr., M. Hodges, Raven Rudduck, E. Bransby, S. Boehr, A. Gerber, M. Yugovich, R. Welch, S. Samson, V. Wekamp, D. Wekamp, S. Mulliken, G. Sovaiko, M. Spoor, B. Hughes, J. Kline, R. Larsen, S. Larsen, M. Harvey, L. Harvey, M. Henslee, M. Cook, J. Lawrence, R. Cadigan, J. Cadigan, C. Engelage, K. Blatchford, P. Blatchford, K. Kay, C.S. Kay, S. LaVerne, S. Pringle, M. Junck, R. Holden, Y. Holden, C. Newby, K. Newby, B. Hughes, J. Kline, D. Murphy, J. Murphy, B. Simmons, S. Simmons)*

The application states that explosives will be used in conjunction with the mining operation, and all blasting will be conducted by trained, experienced, and competent persons who understand the hazards involved with a blasting operation. Explosives and primers/boosters will be stored off site and provided by a blasting contractor on the day of a blast. The application includes a blasting plan, prepared in accordance with *MSHA CFR 30 Part 56 Section 63: Control of blasting operations*, which details proposed blasting procedures, a flyrock control plan, documentation protocols, and a pre-blast survey plan.

According to the pre-blast survey plan provided in Exhibit D, the operation is obligated to offer pre-blast surveys to all landowners with structures located within three-quarters (3/4) of a mile from the proposed affected land boundary, north and west of the scale house. This distance exceeds the protocols established by the U.S. Department of the Interior, Office of Surface Mining, Reclamation, and Enforcement (OSMRE) by 50%. The surveys will include photographic and video documentation of the condition of existing structures. As part of the survey, groundwater wells will also be evaluated for water quality and flowrate. The Applicant will provide a copy of the final pre-blast survey report to the structure owners and to the Division.

The blasting plan, provided in Exhibit D, indicates that blasting will occur between the hours of 10:00 a.m. and 4:00 p.m., not to exceed a maximum of three blasts per week. Blasts will be primarily scheduled



for Monday through Friday. Blasting schedules will be maintained and made available to the public. The primary notification regarding planned dates and times for blasting will be signs posted at each entrance to the property. There will be a total of five signs, posted 24 hours before a blast, which will be updated as necessary if the blast is delayed. These signs will also communicate the blasting audible signal guide, including length of signal relating to the timeline before and after the blast.

Prior to a blast being initiated, access corridors will be secured for the length of time needed to successfully complete the blast. Blast guards will be posted at all entrances to the property to ensure the access corridors through the active mining area are secure during the blast process. Pre-blast procedures will include audible blast signals, originating from a vehicle mounted siren that will be utilized according to the following schedule: two minutes before the blast – 15 second audible siren; and 30 seconds before the blast – 30 second audible siren. Federal regulations [30 CFR 816.66(b)] require such signals be audible within a range of one-half (1/2) mile from the point of the blast. Blast guards will be in contact with the lead blaster via CB radio on a channel to be determined at the time the site begins construction. Blast guards will have the authority to stop the blast at any time, up to the time when the blast is initiated. In the case of an emergency, blast guards will notify the lead blaster and stop the blast until the emergency situation is resolved. A typical length of time for a blast is less than 30 minutes. At the completion of the blast, access corridors will be released for normal use. Once the blaster has checked the blast site and determined the area to be safe, an all-clear audible signal of three short siren blasts will be sounded. Afterward, blast guards will release their blocks, and the access corridors will be re-opened for travel.

Although misfires rarely occur, in the event of a misfire, the access corridors may be secured for longer than 30 minutes. If a misfire were to occur, the lead blaster, at his discretion, can choose to open Little Turkey Creek Road and allow traffic to proceed until the cause of the misfire has been identified. Thereafter, the lead blaster may secure the access road again for successful completion of the blast.

All blasts will be monitored. The blast monitoring procedures will include seismic monitoring to measure ground vibration and peak particle velocity. The proposed maximum peak particle velocity will be one-half (1/2) inch per second, measured at the seismic instrument set up nearest to the closest structure. Particle velocities will be maintained below the proposed maximum allowable limits. Microphones will be used to measure air over pressure (air blast) and noise. The proposed maximum decibel level for air blasts will be 130 decibels, measured at the seismic instrument set up nearest to the closest structure. The industry standard for air blast level is 133 decibels. Air blast levels will be maintained below the maximum allowable limits.

All blasts will be monitored with three separate monitoring units made up of a seismograph, a geophone (seismic unit), and a microphone. One stationary unit will be located at the western edge of the property near the western gate off of Little Turkey Creek Road. The second unit will be located on the eastern edge of the property, adjacent to the eastern gate along Little Turkey Creek Road, or on the quarry access road. The location of this unit will be determined based on the closest structure to the blast. The final unit will be placed perpendicular to each blast at or near the nearest property line.

All monitoring will be performed by a blasting consulting firm, and records for all blasts will be maintained on site. A third party blasting contractor will prepare a paper record of each blast completed at the quarry. Copies of each blast report will be kept on file in the scale house/office building for



reference. All records, including blast statistics and blast monitoring, will be kept on file for a minimum of three years.

Exhibit D includes a mitigation plan, describing how the operation will respond to complaints from surrounding structure and groundwater well owners regarding potential impacts from blasting activities. The mitigation plan details the measures to be implemented and their associated timeframes.

The Division has determined that the blasting plan submitted in Exhibit D, and the geotechnical assessment submitted in Exhibit 6.5, demonstrate that off-site areas will not be adversely affected by blasting, as required by Rule 6.5(4).

**2. Concerns regarding geotechnical stability of the site, and the geotechnical stability assessment provided in the application, specifically as follows:**

- **Rock catch berms, illustrated on Figure G-2, will catch only 99% of rock fall and are thereby inadequate to protect Little Turkey Creek Road**
- **Pit slope movement monitoring should be conducted**
- **Instrumented holes should be installed behind the highwalls and monitored for pore water pressure, a concern for highwall stability**
- **The stability assessment does not satisfy the requirements of Rule 6.5(1)**

*(N. Reed)*

As described in Exhibit S, and observed by Division staff during site inspections, the portion of Little Turkey Creek Road located within and/or nearby the affected lands is a two-track dirt road traversing the floor of a narrow canyon, and is exposed to seasonal flooding and natural rock fall. The robust stormwater control structures proposed in Exhibit G demonstrate how the mining activity will not exacerbate the flooding hazard for Little Turkey Creek Road or to downstream and off-site areas, in accordance with the requirements of Rule 6.5(1) and C.R.S. 34-32.5-116(4)(h), (i) and (j).

Given the presence of steep cliffs composed of jointed, fractured, and faulted bedrock, the application acknowledges the occurrence of natural rock fall. Rock fall is a clear and present geologic hazard at this site. The application proposes to mitigate the hazard by reclaiming all highwalls to stable configurations, as demonstrated by geotechnical and stability analyses with appropriate factors of safety incorporated into the analysis. As noted by the Objector, the application demonstrates 99% of rock fall will be retained on the reclaimed highwall bench. According to the blasting plan provided in Exhibit D, Little Turkey Creek Road will be secured during blasting to safeguard the public. Blasting operations will be monitored to ensure that damage to structures will not occur. The road, from each gate to the operation, will be inspected following each blast. Should a rock fall onto Little Turkey Creek Road, regardless of the cause, the Operator will immediately clear the rocks off the road. The application demonstrates how the mining and reclamation activities will not exacerbate the geologic hazard at the site, thereby demonstrating compliance with the applicable requirements of Rule 6.5(1).

The application includes engineering stability analyses for not only reclaimed slopes, but also for highwalls, waste piles, embankments, backfill areas, and stockpiles of topsoil and fines as they occur during the active mining phases, as required by Rule 6.5(2). Throughout the mining and reclamation process pit slopes will be monitored for movement with a robotic prism monitoring system, which will



send email notification if movement thresholds are exceeded. The stability evaluation for the highwalls demonstrates high factors of safety, and the recommendations suggest elevated pore water pressures are unlikely in a block rock mass. However, if groundwater is encountered at the highwall, the Operator will consult geotechnical, mining, and groundwater experts to determine the best course of action, including a determination regarding the installation of instrumented monitoring wells in the highwall. The application demonstrates, through geotechnical and stability analyses, off-site areas will be protected with appropriate factors of safety incorporated into the analysis, in accordance with the requirements of Rule 6.5(3) and C.R.S. 34-32.5-116(4)(i).

Pursuant to Rule 6.4.19(b), Exhibit S includes an engineering evaluation prepared and certified by a Colorado licensed professional engineer, that demonstrates to the Division's satisfaction that all structures located within two hundred feet of the affected land, including Little Turkey Creek Road, shall not be damaged by the proposed operation.

**3. Concerns regarding the portion of Little Turkey Creek Road located within and nearby the boundaries of affected lands, as follows:**

- **Mine traffic within the easement of Little Turkey Creek Road would constitute a violation of Colorado law**
- **Damage compensation agreements not attained with the easement holders for Little Turkey Creek Road**
- **Potential for adverse impact to Little Turkey Creek Road from mine traffic**
- **Safety of travelers on Little Turkey Creek Road from mine traffic**

*(W. Baker, M. Baker, C. Reed, N. Reed, C. Hancock, D. Hancock, R. Larsen, S. Larsen, M. Harvey, L. Harvey, J. Moore, K. Moore, M. Henslee, M. Cook, J. Lawrence, R. Cadigan, J. Cadigan, C. Engelage, K. Blatchford, P. Blatchford, C. Kimble, C. Bernstein, C. Lick, D. Lick, K. Kay, C. S. Kay, S. LaVerne, C. Cook, T. Day, S. Pringle, M. Junck, R. Holden, Y. Holden, C. Newby, K. Newby, G. McCowen, M. Spoor, D. Murphy, J. Murphy, B. Simmons, S. Simmons, B. Hughes, J. Kline)*

The Colorado Land Reclamation Act for the Extraction of Construction Materials, C.R.S. § 34-32.5-101 *et seq.*, provides the Division the statutory authority over quarry permit application such as M-2016-010. However, the Act does not provide the Division with sufficient jurisdictional authority to interpret specific conditions and rights of a private road easement contained within a District Court Decree. Unlike a State District Court, the Division does not have the jurisdictional authority to adjudicate private property rights.

More specifically, the Division does not have jurisdictional authority to determine whether Transit Mix Concrete Co.'s proposed application would violate the terms of the Little Turkey Creek Road easement contained within a 1968 El Paso County District Court Decree in Civil Action No. 54701. The Decree was the result of a legal proceeding between private parties. Issues regarding private property rights and interpretation of the 1968 El Paso County District Court Decree should be brought before a Court with proper adjudicative authority. In conclusion, without a Court's determination that the application is contrary to a local permit or license, the Division does not have the statutory authority to deny the Applicant's proposed mining operation. § 34-32.5-115(4) states that, "The Board or Office shall not deny a permit except on one or more of the following grounds: (d) The proposed mining operation, the reclamation program, or the proposed future use is contrary to the laws or regulations of this state or the United States, including but not limited to all federal, state, and local permits, licenses, and approvals, as applicable to the specific operation."



The following documents were submitted to the Division on this issue: 1) on April 18, 2016, Objection from Carrie Bernstein of Alderman Bernstein LLC on behalf of Cheryl L. Kimble; 2) on July 14, 2016, Exhibit N – Source of Legal Right to Enter from Cory M. Rutz of Otten Johnson PC on behalf of Transit Mix Concrete Co.; and 3) on September 1, 2016, Legal Analysis Regarding Impact on Little Turkey Creek Road Easement from Amanda A. Bradley of Alderman Bernstein LLC on behalf of Cheryl L. Kimble.

Pursuant to C.R.S. 34-32.5-115(4)(e), the Board or Office may deny a permit application if the proposed operation will adversely affect the stability of any significant, valuable, and permanent man-made structure located within 200 feet of the affected land; except the permit shall not be denied if there is an agreement between the operator and the persons having an interest in the structure that damage to the structure is to be compensated for by the operator or, where such an agreement cannot be reached, the Applicant provides an appropriate engineering evaluation which demonstrates such structure shall not be damaged by the proposed mining operation.

The application identified several permanent and valuable man-made structures located within 200 feet of the affected lands, owned by seven structure owners. Additionally, the application identified 43 easement owners for the portion of Little Turkey Creek Road which crosses the affected lands.

Pursuant to Rule 6.4.19(a), the Applicant provided damage compensation agreements to the seven structure owners and to the 43 easement owners for Little Turkey Creek Road. The proposed damage compensation agreements were accepted and executed by four of the seven structure owners, including: RMBC Group LLC; 2390 Paseo Corta Road LLC; Colorado Springs Utilities; and Black Hills Energy. The proposed damage compensation agreements were accepted and executed by four of the 43 easement owners for Little Turkey Creek Road, including: 2390 Paseo Corta Road LLC; Richard C. and Yvonne B. Holden; Dana R. and Jodi G. Murphy; and Charles S. and Kay M. Kay.

The damage compensation agreements have been attempted for all structure owners, but attained only for those listed above. Therefore, pursuant to Rule 6.4.19(b), the Division was authorized to accept the engineering evaluation provided in Exhibit S of the application. The engineering evaluation was prepared and certified by a Colorado licensed professional engineer. The engineering evaluation demonstrated to the Division's satisfaction that no structure located within the boundary of affected lands or within 200 feet of the affected lands would be damaged by the proposed operation. Therefore, the Division is not authorized to deny the permit application pursuant to C.R.S. 34-32.5-115(4)(e).

Additional measures of the proposed operation to protect the stability of Little Turkey Creek Road are included in the blasting plan, submitted in Exhibit D; the stormwater management plan, submitted in Exhibit G; and the geotechnical stability assessment, submitted in Exhibit 6.5.

The proposed mining plan commits to maintaining a 100 foot buffer from Little Turkey Creek and Deadman Creek, with the exception of three crossings proposed for mine traffic. With regard to the proposed crossings of Little Turkey Creek Road, the application demonstrates the intersections will be at-grade crossings equipped with stop signs for mine traffic. Traffic on Little Turkey Creek Road will not be required to stop. Establishing the intersection requires realigning Little Turkey Creek Road for approximately 400 feet to remove unnecessary curves. This improves the sight lines on the road, which makes the road safer and easier to travel. This road segment will be engineered and constructed following



Federal Highway Association guidelines. Thus, the intersections with mine roads will not adversely impact the safety of Little Turkey Creek Road.

The Applicant proposes constructing a separate access road off of Hwy 115 for use by the mine operation, so that no heavy equipment associated with the quarry will travel Little Turkey Creek Road. The application affirmatively stated that the mine operation will obtain a Hwy 115 access permit from CDOT. Mine traffic on Little Turkey Creek Road will be limited to light vehicles (i.e., one-ton or less pickup trucks), generally for the purpose of securing the road before blasting occurs and inspecting the road following each blast. There are a total of three crossings proposed; however, only two of these crossings might be encountered by traffic using Little Turkey Creek Road. Local traffic will have the right-of-way through these crossings (no stop sign), and mine traffic will be stopped via stop signs in both directions. Details on the proposed location and design of the crossings are provided in Exhibit G.

According to the Applicant's response to the Division's adequacy review item no. 47 (submitted on July 21, 2016), the Applicant does not intend to use, improve, or modify Little Turkey Creek Road other than at the two creek crossings where there will be an at-grade intersection. The Applicant may perform routine maintenance on Little Turkey Creek Road, as needed.

**4. Concerns regarding Exhibit B - all access roads should be shown on the Index Map, per Rule 6.4.2. Concerns regarding Exhibit C - Little Turkey Creek Road should be labeled on Exhibit C maps, as required by Rule 6.4.3(b).**

*(N. Reed)*

The Applicant submitted a revised Index Map in the adequacy review response that was submitted on August 19, 2016. Pursuant to Rule 6.4.2, the revised map shows the regional location of the affected land, in relation to nearby Colorado Springs. The map also shows the proposed mine access road from Hwy 115. Pursuant to Rule 6.4.2, a standard U.S. Geological Survey topographic quadrangle or equivalent is acceptable, and scale criteria need not be followed for this map. The Index Map was submitted in this acceptable format, and the Division determined that it satisfied the requirements of Rule 6.4.2.

The Applicant submitted revised Exhibit C figures in the adequacy review response that was submitted on August 19, 2016. Little Turkey Creek Road is labeled on the revised Figures C-1, C-4 through C-7a, C-8a, C-9a, and C-10. All other structures were labeled on the revised Figure C-2. The Division determined the figures submitted in Exhibit C satisfied the requirements of Rule 6.4.3.

**5. Concerns regarding Exhibit C - ownership map should show the Little Turkey Creek Road easement owned by Eagles Nest landowners, as required by Rule 6.4.3(g)**

*(N. Reed, W. Sheaves, C. Kimble)*

Pursuant to Rule 6.4.3(g), one or more maps may be necessary to legibly portray all the information required by this Rule, including the owner's name, type of structures, and location of all significant, valuable, and permanent man-made structures contained on the area of affected lands and within 200 feet of the affected lands.

The Applicant provided a revised Figure C-2, Property and Structure Ownership Map, in the adequacy review response submitted on August 19, 2016. This figure shows all of the required information. The



Applicant submitted a list of the 43 easement owners for Little Turkey Creek Road to accompany Figure C-2. The Division determined the revised Figure C-2 satisfied the requirements of Rule 6.4.3(g).

**6. Concerns regarding the control of stormwater and increased potential for flooding resulting from the mining activity. Concerns for adverse impacts to the prevailing hydrologic balance for surface water resources.**

*(W. Baker, M. Baker, S. Harper, K. Rawson, M. McClurg, B. Chisnell, C. Reed, N. Reed, G. Klein, C. Hancock, D. Hancock, R. Larsen, S. Larsen, M. Harvey, L. Harvey, G. McCowen, J. Moore, K. Moore, M. Henslee, M. Cook, J. Lawrence, R. Cadigan, J. Cadigan, C. Engelage, S. Rawson, K. Blatchford, P. Blatchford, W. Dean, M. Heer, C. Heer, C. Kimble, C. Bernstein, C. Lick, D. Lick, L. Rogers, J. Miller, K. Troutt, J. Salazar, Jr., M. Hodges, K. Kay, C.S. Kay, S. LaVerne, S. Pringle, M. Junck, R. Holden, Y. Holden, C. Newby, K. Newby, R. Welch, S. Samson, V. Wekamp, D. Wekamp, G. Sovaiko, M. Spoor, B. Hughes, J. Kline, D. Murphy, J. Murphy, B. Simmons, S. Simmons, T. Swonger, S. Sovaiko, J. Gard, D. Gard, C. Brice, D. Brice, M. Harper, Joe Koscove, S. Koscove, Jack Koscove, M. Koscove)*

In an effort to verify compliance with C.R.S. 34-32.5-116(4)(h) and Rule 3.1.6, the application includes a surface water monitoring plan. This plan includes the installment of four surface water monitoring stations, located hydrologically up-gradient and down-gradient from the proposed mine area in the Deadman Creek and Little Turkey Creek drainages. All monitoring stations will include collection of water samples for laboratory analysis, field parameters, and streamflow measurements.

Surface water quality analysis will include all required parameters from the CDPHE, WQCC – *Regulation No. 32 – Classifications and Numeric Standards for Arkansas River Basin – Appendix 32-1 – Stream Classifications and Water Quality Standards Tables – Effective 06/01/2016, Stream Section 14D (COARUA14D)*, except for Chlorophyll a, which the Division determined would not be required for this site.

The Applicant is required to collect surface water quality data during five successive calendar quarters prior to commencement of mining, in order to sufficiently characterize baseline conditions at the site. At the end of the 15-month monitoring period, the Applicant will submit a final report to the Division which summarizes monitoring results. After reviewing the final report, the Division will determine whether any aspect of the monitoring plan needs to be revised. Any revisions to the approved surface water monitoring plan will be submitted for Division review and approval through either the Technical Revision or Amendment process.

Additionally, the Applicant has developed a stormwater management plan which shows how runoff water from disturbed areas, stockpiled material, and operating surfaces will be managed to protect against pollution of both surface and groundwater, during and after the operation. The Division determined the stormwater management plan satisfied the requirements of Rule 6.4.7(2)(c) and the applicable performance standards of Rule 3.1.

The stormwater management plan submitted in Exhibit G includes a series of ditches, sediment ponds, and culverts designed to control runoff from a 100-year, 24-hour storm event. All structures are designed using the most conservative conditions, typically the greatest disturbance area. The system design follows guidelines established by El Paso County and the City of Colorado Springs, and are in compliance with the Division of Water Resources' (DWR's) requirements. The Division determined that the stormwater management plan satisfied the requirements of Rule 3.1.5(10) and (11), Rule 3.1.6, and Rule 6.4.7.



All surface water will be diverted around the operation, or routed through sediment ponds to minimize impacts to surface waters. Control of sediment and peak flows will be accomplished through the stormwater management control features. To control peak flows and sediment discharge, a series of sediment ponds and energy dissipation drop structures are included. These structures control the peak outflows and are designed for the 100-year, 24-hour storm event, for not only during active operations, but also during reclamation. As the quarry advances, the stormwater management plan will be periodically reviewed. Modifications to the stormwater management plan will be submitted for Division review and approval through either the Technical Revision or Amendment process prior to implementation.

The Applicant further addressed concerns regarding the proposed stormwater management plan in the adequacy response submitted on July 28, 2016. In the July 28<sup>th</sup> response, the Applicant stated that down drain ditches will discharge to sediment detention basins designed to contain runoff from the 100-year, 24-hour storm event, with all structures designed using the most conservative conditions, typically the greatest disturbance area. Also, a Spill Prevention, Control, and Countermeasure (SPCC) Plan to prevent impacts to water quality will be developed and submitted to the Colorado Department of Public Health and Environment (CDPHE) prior to construction. The engineering evaluation submitted in Exhibit S demonstrates that flooding on Little Turkey Creek Road will not increase due to quarry development. The stormwater management plan is designed to safely collect runoff from the 100-year, 24-hour storm event and convey it to sediment detention basins.

There will be multiple detention basins, and each one will discharge to the nearby stream over a period of 72 hours. The majority of the detention basins will be constructed in native granite. Due to the short detention time and strength of the granitic material, there is little potential for a failure.

In the July 28<sup>th</sup> adequacy review response, the Applicant confirmed climate data from Colorado Springs Airport was presented in Exhibit K because it is the most extensive climate data available for the region. These data were included to present long-term precipitation trends in the El Paso County area, and they were not used for design of stormwater management structures. Recurrence interval storm precipitation depths were calculated by the National Oceanic and Atmospheric Administration (NOAA), and the data for the proposed mine site were used for design of stormwater management structures.

The application includes a hazardous materials management plan, which was submitted in the adequacy review response on July 28, 2016. This plan describes facility operations, a list of typical hazardous materials to be used and/or stored on site, controlling authorities, containment structures, inspection procedures, spill reporting procedures, and emergency contact information.

The geotechnical stability report submitted in Exhibit 6.5 includes stability analyses of the topsoil and fines/overburden stockpiles which demonstrate how the stability of the stockpiles will be maintained to ensure Little Turkey Creek will not be impacted by stockpile failure and/or excessive sedimentation resulting from erosion of the affected lands.

The Division determined the application demonstrated surface water will not be adversely impacted by the proposed operation. Regardless, the proposed surface water monitoring plan will verify compliance with C.R.S. 34-32-116(4)(h) and Rules 3.1.5(10) and 3.1.6.





On March 11, 2016, the Division provided notice of the permit application to the DWR and the CDPHE, Water Quality Control Division (WQCD). The CDPHE WQCD did not provide any comments or recommendations for protection of surface water. On April 21, 2016, the Division received a comment from the DWR, outlining its conditions for approval of the permit application.

The Applicant submitted a response to the DWR's comment, which was included in the first adequacy review response submitted to the Division on July 14, 2016. In the July 14<sup>th</sup> response, the Applicant committed to contacting the DWR if exposure of groundwater occurs during the operation, to importing water legally obtained from a hydrant(s) operated by Colorado Springs Utilities (from which hydrant permits will be obtained), to not diverting or restricting flows in Little Turkey Creek or Deadman Creek, to consulting with the local Water Commissioner regarding any activity that might affect the flow of water to any stream system and/or ditch, and to complying with all applicable rules and regulations regarding water use.

Pursuant to Rule 6.4.7(5) and Rule 6.4.13, the application states that a National Pollutant Discharge Elimination System (NPDES) permit from the WQCD will be obtained (stormwater discharge permit) in order to conduct the proposed mining and reclamation operations.

***7. Concern regarding Exhibit G – how did the applicant calculate a maximum flow cap of 20.11 cfs for Little Turkey Creek? Is only three data points collected over a three month period sufficient for analyses? Maximum flow in recent floods far exceed 20.11 cfs - May 2015 floods overwhelmed culverts which have capacity of 70 cfs; Given only three data points were collected at station LTC-1, how can applicant say it is similar to historic flows at the USGS station 7099220? No data sources are available for the significant flood years of 1921, 1935, 1965, 1995, 1997, 2013, 2015? Are proposed water management structures undersized? What 24-hour rain amount was used for the maximum storm estimate? What damage is expected to Little Turkey Creek Road or property below the quarry if water management structures fail during a flood event? Will the operator compensate owners for damage due to the improperly sized capacity of water management structures to deal with flood events? Table G-2 shows 24-hour storm event data based on NOAA calculations – is this data based on rain figures for Colorado Springs airport? If so, why were no adjustments made to account for higher rain rates in Little Turkey Creek canyon compared to the airport?***

*(N. Reed, C. Kimble)*

The maximum calculated flow cap demonstrates the Applicant has taken the initiative to monitor flows in Little Turkey Creek by establishing the LTC-1 monitoring station prior to submitting the permit application. This was done to begin characterizing surface water conditions at the site. This value was not used for stormwater structure designs or peak flow determinations. This value was derived from the instantaneous streamflow measurements obtained from the LTC-1 surface water monitoring station established by Norwest Corporation on Little Turkey Creek in June 2015. A total of five sampling events have been conducted since LTC-1 was established, on June 26, 2015, August 26, 2015, November 16, 2015, April 12, 2016, and June 22, 2016. A rating curve for the station was developed using the instantaneous flow measurements and transducer readings. The rating curve was used to calculate flow using the 15-minute stream depth data. Due to the small data set of measured flow, maximum calculated flow was set at the maximum measured flow plus two standard deviations of the data set resulting in the maximum calculated flow cap of 16.53 cfs.



Precipitation data used for the design of stormwater structures were determined from the National Oceanographic and Atmospheric Administration (NOAA) annual maximum point frequency estimates for the site area. The NOAA values were generated for a point near the center of the proposed operation. The intensity-duration-frequency values for the 100 year storms were calculated using equations that consider the travel time/time of concentration duration. This equation was used in the peak flow determination spreadsheet to determine the precipitation intensities for each watershed based on the time of concentration values. A Natural Resources Conservation Service (NRCS) Type II rainfall distribution was applied to the 24-hour storm. The Type II distribution applies to mid-continent locations where there are intense localized storms. The 100-year, 24-hour storm event was modeled for the design of culverts and ditches, and for the design of all sediment ponds in accordance with state and county regulations.

**8. Concern regarding Exhibit G – the application states "sediment levels should be examined annually following highest runoff season and sediment removal should be undertaken in fall to prepare sediment pond for next rainy season" - will the operator commit to this plan instead of "should be"?**  
(N. Reed)

In the discussion of the sediment detention basins provided in Exhibit G, the application states that a key element of the stormwater management plan is maintaining a high available sediment capacity in the sediment detention basins. Norwest Corporation designed the basins to have capacities no less than the runoff volume from a 100-year, 24-hour design storm, plus 20% for sediment detention. The basins will require periodic maintenance to ensure adequate sediment storage volume is available as described below.

In discussion of Best Management Practices (BMPs) for sediment control, the application states that maintenance of sediment deposited in the existing ponds is another BMP. Sediment levels should be examined annually following the highest runoff season (i.e., summer), and sediment removal should be undertaken in the fall to prepare the sediment pond for the next rainy season. This is a critical element of the successful operation of the water management plan. For effective use of BMPs, regular inspection and maintenance of the structures must occur.

The above statements made in the application, upon approval of the permit, become enforceable permit conditions. During routine inspections of permitted sites, the Division inspects stormwater management structures to determine whether they are functioning as designed.

**9. Concern regarding Exhibit G – Sedcad 4 – Hitch Rack Ranch Quarry access road - 100-year, 24-hour event – why is this 100 year storm design included? Will culverts be designed for the 10-year storm event (as previously mentioned) or the 100-year event?**  
(N. Reed)

Portions of Exhibit G, including the section on culvert design and Table G-6 - Culvert Summary, were revised in the adequacy review response submitted on July 21, 2016. This section now clarifies that culverts have been designed to convey runoff from a 100-year, 24-hour storm event with various headwater to diameter (HW/D) ratios.

**10. Concern regarding Exhibit G – Sedcad 4 – TSI-CC-1 and LTC-CC-1 thru LTC-CC-5 are shown as 100 foot culverts - is that the planned length for these culverts?**  
(N. Reed)



Information on proposed culvert designs can be found in the revised Exhibit G. In Exhibit G, the Applicant states that the length of culverts to be installed will be minimized to reduce the area of the channel that will be affected. Figures G-16 and G-17 show the profile cross-section for the crossings of Little Turkey Creek and Deadman Creek.

**11. Concern regarding Exhibit G – Sedcad Streamstats Version 3 - states a warning disclaimer that “The selected watershed is partly in an area for which flow equations were not defined...” - has the operator confirmed that the estimates are applicable and appropriate for this site? Has the operator discussed rainfall estimates with DWR?**

*(N. Reed)*

The information provided in the StreamStats Version 3.0 Flow Statistics Ungaged Site Report was included in the initial application submittal. Through the adequacy review process, Exhibit G has been revised and the StreamStats Version 3.0 information is no longer utilized.

**12. Concerns that in this structural setting, one cannot say with certainty that existing drainages will be maintained such that existing precipitation and surface runoff paths will be maintained – surface water present in drainage ways may be intercepted**

*(J. Moore, K. Moore)*

In Exhibit G, the Applicant commits to maintaining segregation of the Little Turkey Creek and Deadman Creek drainages to prevent a trans-basin diversion. The mining plan was developed to delay any disturbances of the Deadman Creek watershed until there is sufficient space inside the pit to establish separate drainages for each watershed. Primarily, a berm will be constructed and maintained along the existing watershed divide. This will divert waters to separate ditch and sediment pond systems. The Little Turkey Creek water will flow through sediment ponds before being discharged into Little Turkey Creek, and the Deadman Creek water will flow through sediment ponds before being pumped to Deadman Creek for discharge. Disturbed areas in the Deadman Creek drainage will be backfilled to establish positive drainage into Deadman Creek for reclamation. Pumping will only be required during the operational period.

**13. Concerns regarding impacts to water rights within the Little Turkey Creek watershed (sediment ponds are impoundments of water that require water rights; additional wells may be installed; need water rights for water used for operation, diversion ditches, etc.; Hitch Rack Ranch owns some water rights associated with Little Turkey Creek, but have specific limits – Hitch Rack Ranch does not own all of Little Turkey Creek water rights; application says they will not divert water from Little Turkey Creek - however in 2015, contractor hired to drill test bores placed line into Little Turkey Creek and pumped water out of creek within proposed quarry area for months – if pump in future would impact water rights; will use maximum amount of water available for operations plant – thus diverting water from private use of those who live downstream); Exhibit G does not adequately address whether impoundment ponds will comply with Colorado water laws related to existing water rights as required by Rule 3.1.6(1)(a)**

*(C. Reed, N. Reed, R. Larsen, S. Larsen, M. Harvey, L. Harvey, M. Henslee, M. Cook, J. Lawrence, R. Cadigan, J. Cadigan, C. Engelage, K. Blatchford, P. Blatchford, A. Fellows, T. Fellows, K. Kay, C. S. Kay, S. LaVerne, S. Pringle, M. Junck, R. Holden, Y. Holden, C. Newby, K. Newby, V. Wekamp, D. Wekamp, D. Murphy, J. Murphy, C. Kimble, B. Simmons, S. Simmons)*



Pursuant to Rule 3.1.6(1)(a), the permit application must demonstrate compliance with the applicable Colorado water laws and regulations governing injury to existing water rights. Colorado water laws and regulations are enforced by the Division of Water Resources (DWR) of the Office of the State Engineer (SEO).

On March 11, 2016, the Division provided notice of the permit application to the DWR. On April 21, 2016, the Division received a comment from the DWR, outlining its conditions for approval of the permit application.

The Applicant submitted a response to the DWR's comment, which was included in the first adequacy review response submitted to the Division on July 14, 2016. In this response, the Applicant committed to contacting the DWR if exposure of groundwater occurs during the operation, to importing water legally obtained from a hydrant(s) operated by Colorado Springs Utilities (from which hydrant permits will be obtained), to not diverting or restricting flows in Little Turkey Creek or Deadman Creek, to consulting with the local Water Commissioner regarding any activity that might affect the flow of water to any stream system and/or ditch, and to complying with all applicable rules and regulations regarding water use.

The Applicant further addressed concerns regarding impacts to water rights in the July 28, 2016 adequacy review response. In the July 28<sup>th</sup> response, the Applicant confirmed they have no plans to develop groundwater resources; however, should a locally available water resource be identified, they will work with the DWR to obtain the necessary permits prior to developing the resource. Additionally, the Applicant addressed concerns regarding sediment detention basins, which are part of the proposed stormwater management plan submitted in Exhibit G. The stormwater detention basins will temporarily detain runoff waters to remove sediment and reduce peak flows before discharging to Little Turkey Creek or Deadman Creek. The basins were designed following guidelines established by El Paso County and the City of Colorado Springs and appropriate precipitation data. The detention basins will be excavated into native material and will not be within the jurisdiction of the DWR. Should conditions change, the Applicant committed to obtaining any necessary impoundment permits prior to constructing the facility.

Pursuant to Rule 6.4.13, the Applicant affirmatively states that a well permit will be obtained from DWR prior to installation of the required monitoring wells. The Division determined the permit application satisfied the requirements of Rule 3.1.6(1)(a).

***14. Concern regarding when the required discharge permit will be obtained. When will the stormwater management plan be available for review? Will the Colorado Water Commissioner review the plans for sediment ponds to assess impact on water rights of Little Turkey Creek watershed?***

*(N. Reed)*

Pursuant to Rule 6.4.13, the Applicant is required to make a statement identifying which permits, licenses, and approvals the Applicant holds or will be seeking in order to conduct the proposed mining and reclamation operations.

Pursuant to Rule 6.4.7(5) and Rule 6.4.13, the Applicant has affirmatively stated that a National Pollutant Discharge Elimination System (NPDES) permit from the CDPHE, WQCD will be obtained (stormwater



discharge permit) in order to conduct the proposed mining and reclamation operations. The Division determined the permit application satisfied the requirements of Rule 6.4.7(5) and Rule 6.4.13.

The proposed stormwater management plan, submitted in Exhibit G, has been available for public review since it was received by the Division on February 19, 2016. Through the adequacy review process, portions of Exhibit G have been revised. All adequacy reviews and corresponding responses from the Applicant were added to the public file and made available through the Division's website at: <http://mining.state.co.us>.

**15. Concerns regarding impacts to groundwater (well water levels; well water quality; the neighborhood depends strictly on well water - already a fragile system; wells depend on quality of recharging surface water and thus are highly susceptible to contamination; Eagles Nest wells obtain water from rock fractures – blasting may cause earth movement or quarrying may drain fractures and impact water availability); Red Rock Valley Estates Water District area is located just north of proposed quarry area – provides water to 83 property owners – therefore, have concerns over potential impacts to water quality and physical supply within the District's watershed; Exhibit G – BBA memo - Page 5 - states that no water supply wells are located in the southern half of Section 16, southeastern quarter of Section 17, or all of Sections 20 and 21 - but there is vacant land owned by people within Eagles Nest in Section 17 now - what happens if wells are drilled there in the future? Could they be impacted?**

(S. Harper, K. Rawson, M. McClurg, S. Firks, W. Baker, M. Baker, W. Sheaves, A. Sheaves, D. Steen, A. Sickels, P. Heacock, L. Pecoraro, M. Yugovich, D. Yugovich, S. Fentman, J. Townsend, S. Bell, B. Chisnell, R. Eddy, J. Rigdon, K. Rigdon, T. Offutt, S. Diggs, W. Diggs, L. Steer, B. Donahue, H. Sandler, P. Reinsma, D. Harrell, B. Louzon, L. Louzon, G. Cousineau, C. Cousineau, P. Ragan, C. Ragan, W. Flaharty, J. Flaharty, S. Rawson, C. Reed, N. Reed, G. Klein, B. Powell, D. Martin, L. Martin, T. Hight, T. Swonger, C. Watkins, P. Watkins, R. Pace, C. Hancock, D. Hancock, R. Larsen, S. Larsen, M. Harvey, L. Harvey, G. McCowen, J. Moore, K. Moore, M. Henslee, S. Sovaiko, M. Cook, J. Lawrence, J. McFarlane, J. Gard, D. Gard, R. Cadigan, J. Cadigan, C. Engelage, T. Day, T. Kerr, C. Brice, D. Brice, M. Harper, R. Eddy Jr., E. Dean, K. Blatchford, P. Blatchford, Richard Rudduck, W. Dean, M. Heer, C. Heer, Joe Koscove, S. Koscove, Jack Koscove, M. Koscove, A. Fellows, T. Fellows, C. Kimble, C. Lick, D. Lick, L. Rogers, J. Miller, K. Troutt, J. Salazar Jr., M. Hodges, Raven Rudduck, E. Bransby, S. Boehr, K. Kay, C. S. Kay, S. LaVerne, S. Pringle, M. Junck, R. Holden, Y. Holden, A. Gerber, C. Newby, K. Newby, R. Blair, D. Larrabee, R. Welch, S. Samson, V. Wekamp, D. Wekamp, Brian Gardiner, Betty Gardiner, S. Mulliken, G. Sovaiko, L. Gruen, M. Lihs, B. Delgado, J. M. Turley, K. Turley, M. Spoor, B. Hughes, J. Kline, D. Murphy, J. Murphy, B. Simmons, S. Simmons)

In an effort to verify compliance with C.R.S. 34-32.5-116(4)(h) and Rule 3.1.7, the application includes a groundwater monitoring plan sufficient for the Applicant to establish baseline conditions for groundwater. This plan includes installment of four groundwater monitoring stations, located hydrologically up-gradient and down-gradient from the proposed mine area in both Deadman Creek valley and Little Turkey Creek valley. The groundwater wells will be installed to target the alluvium and shallow bedrock formations. All monitoring stations will include collection of water samples for laboratory analysis, field parameters, and water level measurements.

Groundwater quality analysis will include all required parameters from the CDPHE, WQCD – *Regulation No. 41 – The Basic Standards of Groundwater – Tables 1-4 (table value standards)*, except for Asbestos, Chlorophenol, and Phenol, which the Division determined would not be required for this site.

The Applicant has committed to collecting groundwater quality data during five successive calendar quarters prior to commencement of mining, in order to sufficiently characterize baseline conditions at the site. At the end of the 15-month monitoring period, the Applicant will submit a final report to the Division which summarizes monitoring results. After reviewing the final report, the Division will determine whether any aspect of the monitoring plan needs to be revised. Any revisions to the approved groundwater



monitoring plan will be submitted for Division review and approval through either the Technical Revision or Amendment process.

According to the proposed mining plan, the operation will maintain pit floors at a minimum of ten vertical feet above the elevation of existing creeks. As groundwater levels are described as being at or below creek elevations, the ten-foot vertical buffer reduces the potential for groundwater interception by the operation.

The permit application includes a hazardous materials management plan, which was submitted in the adequacy review response on July 28, 2016. This plan describes facility operations, a list of typical hazardous materials to be used and/or stored on site, controlling authorities, containment structures, inspection procedures, spill reporting procedures, and emergency contact information.

The Division determined the application demonstrated that groundwater will not be adversely impacted by the proposed operation. Regardless, the proposed groundwater monitoring plan will verify compliance with C.R.S. 34-32-116(4)(h) and Rules 3.1.5(11) and 3.1.7.

**16. Concerns regarding air pollution (dust; other mining related irritants or chemicals; suffer from dust allergies; could cause silicosis, bronchitis, TB; mining plan calls for “dry” operation so how mitigate dust?; will processing plant be enclosed to control dust?; dust will settle in canyon and high winds will blow it down canyon; nothing in permit application concerning silica exposure for people who live near quarries or baseline air quality studies). Concerns regarding noise pollution (blasting, crushing, hauling, truck traffic; already enduring more aviation noise due to recent addition of helicopters at Fort Carson; decibel studies are incomplete and potential impacts are not addressed in application)**

(W. Baker, M. Baker, C. Luttrall, R. Nathan, S. Harper, K. Rawson, M. McClurg, J. Enderson, S. Firks, W. Sheaves, A. Sheaves, D. Steen, A. Sickels, L. Pecoraro, M. Yugovich, D. Yugovich, S. Fentman, J. Townsend, S. Bell, B. Chisnell, R. Eddy, K. Baird, J. Rigdon, K. Rigdon, T. Offutt, S. Diggs, W. Diggs, L. Steer, B. Donahue, H. Sandler, E. Jessup, D. Harrell, B. Louzon, L. Louzon, G. Cousineau, C. Cousineau, P. Ragan, C. Ragan, W. Flaharty, J. Flaharty, S. Rawson, C. Reed, N. Reed, G. Klein, B. Powell, D. Martin, L. Martin, T. Hight, T. Swonger, C. Watkins, P. Watkins, R. Pace, C. Hancock, D. Hancock, G. McCowen, J. Moore, K. Moore, S. Sovaiko, J. McFarlane, J. Gard, D. Gard, T. Day, C. Brice, D. Brice, M. Harper, R. Eddy Jr., E. Dean, Richard Rudduck, W. Dean, M. Heer, C. Heer, Joe Koscove, S. Koscove, Jack Koscove, M. Koscove, A. Fellows, T. Fellows, C. Lick, D. Lick, L. Rogers, J. Miller, K. Trout, J. Salazar Jr., M. Hodges, Raven Rudduck, E. Bransby, S. Boehr, A. Gerber, R. Blair, D. Larrabee, R. Hassell, R. Welch, S. Samson, V. Wekamp, D. Wekamp, Brian Gardiner, Betty Gardiner, S. Mulliken, J. Day, G. Sovaiko, M. Lihs, B. Delgado, L. Decker)

The Division’s jurisdictional authority is limited to enforcement of the specific requirements of the Act and Rules. The Division considers all timely submitted comments in its review, but can address only the issues that directly relate to the specific requirements of an application, as stated in the Act and Rules.

The Act and Rules do not specifically address air quality or noise pollution issues. Such issues are under the jurisdiction of El Paso County and the Air Pollution Control Division (APCD) of the CDPHE. These issues should be addressed through the permitting process of El Paso County and the CDPHE, APCD.

Pursuant to Rule 6.4.13, the application affirmatively states that the proposed mine operation will obtain a Special Use Permit and Construction Permits from El Paso County and the appropriate permits from the CDPHE, APCD prior to conducting the proposed mining and reclamation operations.



The Act and Rules do not authorize the Division to regulate dust or air pollution issues. However, the protection and preservation of stockpiled topsoil against erosion (wind) is addressed under the reclamation performance standards of Rule 3.1.9. Pursuant to Rule 3.1.9(1), if salvaged topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that the topsoil is protected from erosion, remains free of any contamination by toxic or acid-forming material, and is in a usable condition for reclamation.

**17. Concerns regarding disturbance of wildlife and wildlife habitat (Mexican spotted owl; turkeys; elk; more than 100 species of birds; mountain lions; black bear; mule deer; Canada lynx; bobcat; coyote; fox; leopard frogs do not last long in drought years when Little Turkey Creek dry; need independent and objective wildlife study; disruption of wildlife migratory paths; environmental study needs to be completed to confirm no endangered species; will cause wildlife movement away from area, loss of biodiversity; could be in violation of Federal and State Endangered Species Act; area marked on DOW maps as prime migration route for Fort Carson elk herd; negative impact on elk survivability if eastern migration to winter feeding grounds and western migration to summer calving grounds disrupted); Concerns that certain wildlife was not mentioned in the application (peregrines nest approximately two miles from property; prairie falcons have nested approximately one mile northeast and south from property; elk not limited to higher elevations; deer present year-round, Mexican Spotted Owl easily overlooked by ground survey especially outside of breeding period); Concerns regarding the purpose of the “pre-construction” raptor survey; what if Cooper Hawks and Flamulated Owls had been found on the nesting territory?**

(S. Fentman, J. Townsend, S. Bell, B. Chisnell, W. Baker, M. Baker, S. Harper, K. Rawson, C. Burnell, M. McClurg, J. Enderson, S. Firks, W. Sheaves, A. Sheaves, D. Steen, A. Sickels, L. Pecoraro, M. Yugovich, D. Yugovich, S. Fentman, J. Townsend, S. Bell, R. Eddy, W. Flaharty, J. Rigdon, K. Rigdon, T. Offutt, S. Diggs, W. Diggs, L. Steer, B. Donahue, H. Sandler, E. Jessup, D. Harrell, B. Louzon, L. Louzon, G. Cousineau, C. Cousineau, P. Ragan, C. Ragan, S. Reinsma, J. Flaharty, S. Rawson, C. Reed, N. Reed, G. Klein, B. Powell, D. Martin, L. Martin, T. Hight, T. Swonger, C. Watkins, P. Watkins, R. Pace, G. McCowen, J. Moore, K. Moore, S. Sovaiko, R. Whitehead, J. Whitehead, J. McFarlane, J. Gard, D. Gard, M. Harper, R. Eddy Jr., E. Dean, Richard Rudduck, W. Dean, M. Heer, C. Heer, Joe Koscove, S. Koscove, Jack Koscove, M. Koscove, A. Fellows, T. Fellows, C. Kimble, C. Lick, D. Lick, L. Rogers, J. Miller, K. Trout, J. Salazar Jr., M. Hodges, Raven Rudduck, E. Bransby, S. Boehr, A. Gerber, C. Newby, K. Newby, R. Blair, D. Larrabee, R. Hassell, R. Welch, S. Samson, V. Wekamp, D. Wekamp, S. Mulliken, G. Sovaiko, L. Gruen, M. Lihs, B. Delgado, M. Spoor, L. Decker)

Pursuant to Rule 6.4.8, the Applicant shall include a description of the game and non-game resources on and in the vicinity of the application area, including: a) a description of the significant wildlife resources on the affected land, b) seasonal use of the area, c) the presence and estimated population of threatened or endangered species from either federal or state lists, and d) a description of the general effect during and after the proposed operation on the existing wildlife of the area, including but not limited to temporary and permanent loss of food and habitat, interference with migratory routes, and the general effect on the wildlife from increased human activity, including noise.

The Applicant provided information in Exhibit H which meets the requirements of Rule 6.4.8, including a biological evaluation of the site conducted by BIO-Logic, Inc. during the summer and fall of 2015. The evaluation includes results of a Mexican spotted owl habitat assessment, mapped vegetation communities, and wildlife habitat potential for big game and special status species. The report indicates that a meeting of project planners was held with a U.S. Fish and Wildlife Service (USFWS) biologist and a Colorado Parks and Wildlife (CPW) District Wildlife Manager in December 2015, at which the agencies identified the species of concern and appropriate additional inquiries and studies to be conducted.



The Division received a comment on the application from the Area Wildlife Manager with CPW, dated April 18, 2016, confirming the Applicant met with CPW and USFWS to discuss the proposed mine operation. The letter states that CPW and USFWS instructed the Applicant to perform surveys for the federally and state threatened Mexican spotted owl since the area is a known habitat for the species. In their comment letter, CPW did not express significant concern over impacts to big game species and movement corridors. CPW did provide additional recommendations regarding wildlife safety and protection, and revegetation measures, which the Applicant has incorporated into the application.

In the adequacy review response submitted on July 14, 2016, the Applicant provided results of a second Mexican spotted owl survey, and a nesting raptor survey, which were conducted by BIO-Logic, Inc. during the summer of 2016. Results from the Mexican spotted owl surveys indicate spotted owl habitat exists in the proposed affected area. However, the area provides fair to poor quality nesting habitat. The surveys failed to locate any spotted owls. The nesting raptor survey covered the entire proposed affected land plus a half mile buffer. No active nests were found in this survey.

The Applicant further addressed concerns regarding wildlife in the adequacy review response submitted on July 28, 2016. The Division determined the permit application satisfied the requirements of Rules 6.4.8 and 3.1.8, regarding wildlife and wildlife habitat.

**18. Concerns regarding short length of public comment period (request extension of study period; only made aware of application in early March this year – have just 5 weeks to study 809 page application – not enough time to consult with experts, etc.; limited timeframe for review, research, and analysis)**

*(W. Baker, M. Baker, S. Firks, M. Yugovich, D. Yugovich, R. Eddy, J. Rigdon, K. Rigdon, T. Offutt, L. Steer, B. Donahue, H. Sandler, B. Louzon, L. Louzon, G. Cousineau, C. Cousineau, P. Ragan, C. Ragan, C. Reed, N. Reed, B. Powell, D. Martin, L. Martin, T. Hight, C. Watkins, P. Watkins, G. McCowen, S. Sovaiko, J. McFarlane, R. Eddy Jr., Raven Rudduck, E. Bransby, S. Boehr)*

Public notice procedures for a new 112c permit application are outlined in Rule 1.6.1, Rule 1.6.2, and Rule 1.6.5. Pursuant to Rule 1.6.2(1)(b), the Applicant provided a signed affidavit with the application that public notice signs had been posted at the proposed location of the mine site according to the provisions of this Rule. According to the affidavit, the signs were posted on February 19, 2016. The Division verified adequate public notice signs had been placed during the April 12, 2016 inspection of the site.

The filing date for the application was March 8, 2016. On March 9, 2016, the Applicant commenced the newspaper notice, required under Rule 1.6.2(1)(d). The newspaper publication ran for four weeks, terminating on March 30, 2016. The public comment period closed on the 20<sup>th</sup> day after the last newspaper publication, April 19, 2016.

Pursuant to Rule 1.6.2(1)(e), immediately after the first publication, the Applicant mailed or personally served a copy of the newspaper notice to all owners of record of the surface and mineral rights of the affected land and owners of record of all land surface within 200 feet of the boundary of the affected lands.

Pursuant to Rule 1.6.2(1)(f), the Division required the Applicant to mail a copy of the newspaper notice to all property owners in the Eagles Nest and Bauer Ranch subdivisions which utilize the portion of Little Turkey Creek Road that passes through the affected land to access their properties. A second public





comment period was opened for property owners in the Eagles Nest and Bauer Ranch subdivisions, commencing on the date of the Applicant's notice, June 16, 2016, and closing on July 08, 2016, a total of 22 days.

The Division determined the Applicant complied with the notice requirements of the Act and Rules. With the extensions to the application decision date and associated rescheduling of the formal Board hearing to the October 26-27, 2016 Board meeting, an individual who first learned of the application from the public notice signs will have had 250 days to review the application, consult with experts, and/or conduct research.

**19. Concerns regarding impacts to Hwy 115 / traffic and safety (windshield damage from rocks; increased wear and tear on road – will require additional taxes to maintain and repair; will add about 650 truck movements per day; dangerous haul truck traffic; not enough room on road; two-lane sections dangerous; already haul truck traffic from existing quarries; want a Hwy upgrade fee and Hwy use tax for quarries; safety hazards accessing site; detrimental to safety of bicyclists and motor bikers who frequently use Hwy 115; why should Colorado taxpayers pay for Chicago owners to make profits to repair road damage; trucks will have to travel over several older bridges that may not be capable of handling additional truck traffic)**

(C. Luttrall, S. Harper, K. Rawson, C. Burnell, M. McClurg, J. Enderson, S. Firks, W. Baker, M. Baker, W. Sheaves, A. Sheaves, A. Sickels, P. Heacock, L. Pecoraro, M. Yugovich, D. Yugovich, S. Fentman, J. Townsend, S. Bell, B. Chisnell, R. Eddy, J. Rigdon, K. Rigdon, T. Offutt, S. Diggs, W. Diggs, L. Steer, B. Donahue, H. Sandler, D. Harrell, B. Louzon, L. Louzon, G. Cousineau, C. Cousineau, P. Ragan, C. Ragan, S. Reinsma, W. Flaharty, J. Flaharty, S. Rawson, C. Reed, N. Reed, G. Klein, B. Powell, D. Martin, L. Martin, T. Hight, T. Swonger, C. Watkins, P. Watkins, R. Pace, J. Moore, K. Moore, S. Sovaiko, R. Whitehead, J. Whitehead, J. McFarlane, J. Gard, D. Gard, T. Day, C. Brice, D. Brice, M. Harper, R. Eddy Jr., Richard Rudduck, M. Heer, C. Heer, Joe Koscove, S. Koscove, Jack Koscove, M. Koscove, A. Fellows, T. Fellows, L. Rogers, J. Miller, K. Troutt, J. Salazar Jr., M. Hodges, Raven Rudduck, E. Bransby, S. Boehr, A. Gerber, D. Larrabee, R. Hassell, G. McCowen, R. Welch, H. Wright, S. Samson, V. Wekamp, D. Wekamp, Brian Gardiner, Betty Gardiner, S. Mulliken, J. Day, T. Melancon, G. Sovaiko, L. Gruen, M. Lihs, B. Delgado, M. Spoor, L. Decker)

The Act and Rules do not specifically address traffic or traffic safety for roads located off-site from a mining operation. Such issues are under the jurisdiction of El Paso County and the Colorado Department of Transportation (CDOT). These issues should be addressed through the permitting processes of El Paso County and CDOT.

Pursuant to Rule 6.4.13, the application affirmatively states that the proposed mine operation will obtain a Special Use Permit and Construction Permits from El Paso County and a Hwy 115 Access Permit from CDOT.

**20. Concerns regarding adverse impact to property values, quality of life, and destruction of visually appealing and natural landscape.**

(S. Harper, K. Rawson, C. Burnell, M. McClurg, J. Enderson, S. Firks, W. Baker, M. Baker, W. Sheaves, A. Sheaves, A. Sickels, P. Heacock, L. Pecoraro, S. Fentman, J. Townsend, S. Bell, B. Chisnell, R. Eddy, K. Baird, J. Rigdon, K. Rigdon, T. Offutt, S. Diggs, W. Diggs, L. Steer, B. Donahue, H. Sandler, D. Harrell, B. Louzon, L. Louzon, G. Cousineau, C. Cousineau, P. Ragan, C. Ragan, W. Flaharty, J. Flaharty, S. Rawson, C. Reed, N. Reed, G. Klein, B. Powell, D. Martin, L. Martin, T. Hight, T. Swonger, C. Watkins, P. Watkins, C. Hancock, D. Hancock, S. Sovaiko, J. McFarlane, J. Gard, D. Gard, T. Day, M. Harper, R. Eddy Jr., E. Dean, C. Newby, K. Newby, Richard Rudduck, W. Dean, M. Heer, C. Heer, Joe Koscove, S. Koscove, Jack Koscove, M. Koscove, A. Fellows, T. Fellows, C. Kimble, C. Lick, D. Lick, L. Rogers, J. Miller, K. Troutt, J. Salazar, Jr., M. Hodges, M. Yugovich, D. Yugovich, Raven Rudduck, E. Bransby, S. Boehr, R. Blair, D. Larrabee, R. Hassell, G. McCowen, R. Welch, S. Samson, Brian Gardiner, Betty Gardiner, S. Mulliken, G. Sovaiko, M. Lihs, B. Delgado, J. M. Turley, K. Turley, B. Hughes, J. Kline, L. Decker)



In these proceedings, the Division’s jurisdiction is limited to enforcement of the specific requirements of the Act and Rules. The Division considers all timely submitted comments in its review, but can address only the issues that directly relate to the specific requirements of an application, as stated in the Act and Rules. The Act and Rules do not address impacts to property values, quality of life, or maintenance of visually appealing landscapes. Such concerns relate to land use and zoning and should be directed to the El Paso County permitting process.

**21. Concerns regarding the concentration of mining operations in the area (already four existing quarries within five mile radius; three existing quarries within eight mile radius; existing quarries operating at half capacity, so should expand existing quarries rather than open new quarry; other local companies say they can match demand without need for additional quarries; Transit Mix could use existing train line to transport any needed materials from existing quarry into Canon City)**

(S. Harper, K. Rawson, C. Burnell, M. McClurg, S. Firks, W. Baker, M. Baker, W. Sheaves, A. Sheaves, A. Sickels, P. Heacock, L. Pecoraro, M. Yugovich, D. Yugovich, S. Fentman, J. Townsend, S. Bell, B. Chisnell, R. Eddy, W. Flaharty, J. Rigdon, K. Rigdon, T. Offutt, S. Diggs, W. Diggs, L. Steer, B. Donahue, H. Sandler, D. Harrell, B. Louzon, L. Louzon, G. Cousineau, C. Cousineau, P. Ragan, C. Ragan, S. Rawson, J. Flaharty, G. Klein, B. Powell, D. Martin, L. Martin, T. Hight, T. Swonger, C. Watkins, P. Watkins, C. Hancock, D. Hancock, G. McCowen, J. Moore, K. Moore, S. Sovaiko, R. Whitehead, J. Whitehead, J. McFarlane, J. Gard, D. Gard, T. Day, M. Harper, R. Eddy Jr., W. Dean, M. Heer, C. Heer, Joe Koscove, S. Koscove, Jack Koscove, M. Koscove, L. Rogers, J. Miller, K. Troutt, J. Salazar Jr., M. Hodges, Raven Rudduck, E. Bransby, S. Boehr, R. Blair, D. Larrabee, R. Hassell, R. Welch, S. Samson, V. Wekamp, D. Wekamp, Brian Gardiner, Betty Gardiner, J. Day, G. Sovaiko, M. Lihs, B. Delgado, M. Spoor)

The Act and Rules do not prohibit the concentration of mining operations and their cumulative impacts. Conversely, the Act and Rules anticipate mining operations will locate wherever mineable resources exist. The Act and Rules provide reclamation requirements to ensure affected lands are reclaimed to a beneficial use. The Act and Rules provide performance standards and environmental protection requirements, which apply throughout the life of mine. Pursuant to Rule 1.4.1(10), each application is reviewed, and ultimately approved or denied, based on the Applicant’s ability to demonstrate the application meets the minimum requirements of the Act and Rules.

This concerns relate to land use and zoning and should be directed to the El Paso County permitting process.

**22. Concerns regarding adequacy of proposed reclamation plan (revegetation plan not adequate; need weed management plan; leaving steep highwalls is dangerous; will not return site to pre-existing environment; orientation far outweighs effects of soil types in consideration of revegetation; pre-mining forest will not be available to wildlife in 50-80 years as application states – will take much longer; removing and replacing topsoil makes recovery time extremely long; how get seral stages when plant Douglas Fir trees directly after grasses; bare blasted highwalls not aesthetically pleasing – need to reclaim; reclamation plan may not be sufficient to protect and reclaim existing plant communities and conservation values on property; cannot return location to anything which resembles or functions as it does now in its natural state; will lose natural hillside slopes which hold soil, grasses and trees – to be replaced by highwall benches; while reclamation is goal – may not be possible to “put humpty dumpty back together again” after 50 years of abuse and depletion - and then what; successful re-cultivation of destroyed biome physically unlikely and economically infeasible; standard plan of replacing topsoil, “native” grasses, and mix of trees is not reclamation but a mutation of what was destroyed)**

(J. Enderson, E. Jessup, C. Reed, N. Reed, W. Dean, G. Klein, M. Heer, C. Heer, A. Fellows, T. Fellows, S. Mulliken)



The Division determined the proposed reclamation plan satisfied the requirements of Rule 6.4.5 and the applicable performance standards of Rule 3.1.

The proposed mine site is located within the boundaries of two Soil Conservation Districts, the El Paso County Soil Conservation District and the Turkey Creek Soil Conservation District. The Division sent notice of the permit application to both districts on March 11, 2016, and received no comments or recommendations for protection of existing vegetative species, or for the proposed reclamation plan.

CPW provided comment on the application, dated April 18, 2016, which included some general recommendations for protection of existing natural vegetation, control of noxious weeds, and revegetation of disturbed land. The Applicant has incorporated these recommendations into the permit application. CPW did not identify any particular existing vegetative species that require special protection.

The Applicant has significantly modified the proposed revegetation plan for the site to address public concerns regarding slope, aspect, and elevation of different portions of disturbed land to be revegetated. The proposed portions of species to plant or seed were based on the survey of existing vegetation conducted on site by BIO-Logic, Inc., and submitted in Exhibit J.

Pursuant to Rule 1.1(41), “reclamation” is defined as the employment during and after a mining operation of procedures reasonably designed to minimize as much as practicable the disruption from the mining operation and to provide for the establishment of plant cover, stabilization of soil, the protection of water resources, or other measures appropriate to the subsequent beneficial use of such affected lands. Reclamation shall be conducted in accordance with the performance standards of the Act. Therefore, the Applicant is obligated to reclaim affected lands to a beneficial use, but is not required to restore affected lands to their pre-mining conditions.

**23. Concerns regarding impacts to existing vegetation (existence of dry xeric tallgrass, mountain mahogany/needlegrass community, pinon pine/scribner needlegrass community, mesic oak thicket community; underestimate current biological richness; Little Turkey Creek pinyon-juniper area has trees that are more than 200 years old, some possibly more than 400 years old; will operation destroy the two giant White Fir trees that exist in Little Turkey Creek canyon?)**

(S. Firks, W. Baker, M. Baker, W. Sheaves, A. Sheaves, D. Steen, A. Sickels, L. Pecoraro, M. Yugovich, D. Yugovich, S. Fentman, J. Townsend, S. Bell, R. Eddy, J. Rigdon, K. Rigdon, T. Offutt, S. Diggs, W. Diggs, L. Steer, B. Donahue, H. Sandler, J. Enderson, E. Jessup, B. Louzon, L. Louzon, G. Cousineau, C. Cousineau, P. Ragan, C. Ragan, W. Flaharty, J. Flaharty, C. Reed, N. Reed, B. Powell, D. Martin, L. Martin, T. Hight, C. Watkins, P. Watkins, J. McFarlane, R. Eddy Jr., E. Dean, W. Dean, M. Heer, C. Heer, J. Moore, K. Moore, J. Miller, A. Fellows, T. Fellows, C. Kimble, C. Bernstein, C. Lick, D. Lick, Raven Rudduck, E. Bransby, S. Boehr, R. Blair, D. Larrabee, R. Hassell, G. McCowen, S. Mulliken, M. Lihs, B. Delgado)

The Division determined the application satisfied the requirements of Rule 6.4.10, and the applicable performance standards of Rule 3.1.

The Applicant has significantly modified the proposed revegetation plan for the site to address public concerns regarding slope, aspect, and elevation of different portions of disturbed land to be revegetated. The proposed portions of species to plant or seed were based on the survey of existing vegetation conducted on site by BIO-Logic, Inc., and submitted in Exhibit J.



According to the proposed mining plan, the operation will maintain a 100 foot setback from the existing creeks, except at the three crossing areas. No mining will take place within the 100 foot buffer zones. Therefore, vegetation that exists in Little Turkey Creek Canyon (e.g., White Fir trees) will not be “destroyed” by the operation if it exists within the 100 foot buffer zone.

**24. Concerns regarding Applicant's other mining operations and character of the Applicant**  
***(Pikeview – wonderful example of how not to conduct quarry operations, remediation may be impossible, how will ever reestablish vegetation, is a complete wreck, operator has not done credible reclamation in northern CO Springs; Queens Canyon – extremely long term recovery, tree establishment has failed, still an eye sore – particularly to those that live above it; 31<sup>st</sup> Block Pit –buried under park is remains of demolition material (located next to landfill); Castle Sand Plant – now junkyard and rightly so, buried under yard are contaminants and old equipment, one can only wonder what cost to El Paso County taxpayers for clean-up may have been had site been pawned off on city; Continental – pawned off and left to Co Springs to reckon with, turned into recycle plant and located across Hwy from Castle Sand Plant junkyard; Black Canyon Quarry – no mining for many years, only rarely see a truck entering/exiting quarry, seems as long as permit kept up to date eyes will continue to look other way rather than deal with issues; Daniel Sand – buried topsoil that was to be used for reclamation with mud from clarifier and recycled concrete waste; Castle Concrete has extreme history of not following through with their promises of reclamation, and when, if any, partial measures were taken, what methods were used to do so; Transit Mix has historically not been a good neighbor in areas of quarries it currently operates – have left horrendous scars on front range that will take 100’s of years to recover - have faced numerous lawsuits for refusal to adequately reclaim land)***

*(C. Burnell, J. Enderson, S. Reinsma, R. Pace, V. Wekamp, D. Wekamp, S. Mulliken)*

The Applicant, Transit Mix Concrete Co., currently holds no active mining permits in Colorado. One of the mine sites identified by the objectors, Castle Sand Pit, Permit No. M-1977-213, was previously permitted by Transit Mix Concrete Company and released in 1993. This permit was incorporated into Permit No. M-1973-007SG, Daniel Sand Pit 2, which is an active permit now held by Continental Materials Corporation.

There are no permits with the site names of 31<sup>st</sup> Block Pit or Black Canyon Quarry, which were mentioned in the objection letters. However, the Division believes that Black Canyon Quarry may refer to an active permit named the Snyder Quarry, Permit No. M-1977-210. The other mine sites identified in the objection letters were permitted by Continental Materials Corporation and have been released, with the exception of Pikeview Quarry, Permit No. M-1977-211, Daniel Sand Pit 2 (mentioned above), and the Snyder Quarry (mentioned above).

Although Transit Mix Concrete Co. is a subsidiary of Continental Materials Corporation, it is considered a different operator due to its separate business filing. Furthermore, there are no outstanding violations for any of the seven active permits held by Continental Materials Corporation.

Because the Applicant holds no active mining permits with the Division, and thus, does not have any outstanding violations, the permit application cannot be denied pursuant to C.R.S. 34-32.5-120.



**25. Concerns regarding conflict with the local development plan and/or Colorado easement law (El Paso County Southwestern Hwy 115 Comprehensive Plan – any resource extraction operation should be located minimum of two miles from any dissenting residents, etc.; Red Rock Valley Estates Water District is state-approved source water protection plan for PWS ID 121700; El Paso County Major Transportation Corridors Plan – Hwy 115, south of Fort Carson’s main gate, is classified as “congested” but there will be no improvements through 2040; the existing Regional Development Plan should be the basis upon which any development in the area is considered)**

(S. Harper, K. Rawson, M. McClurg, C. Burnell, S. Firks, W. Baker, M. Baker, W. Sheaves, A. Sheaves, A. Sickels, L. Pecoraro, M. Yugovich, D. Yugovich, S. Fentman, J. Townsend, S. Bell, B. Chisnell, R. Eddy, K. Baird, J. Rigdon, K. Rigdon, T. Offutt, S. Diggs, W. Diggs, L. Steer, B. Donahue, H. Sandler, D. Harrell, B. Louzon, L. Louzon, G. Cousineau, C. Cousineau, P. Ragan, C. Ragan, W. Flaharty, J. Flaharty, K. Rawson, S. Rawson, G. Klein, B. Powell, D. Martin, L. Martin, T. Hight, T. Swonger, C. Watkins, P. Watkins, G. McCowen, S. Sovaiko, N. Reed, J. McFarlane, J. Gard, D. Gard, S. Harper, M. Harper, R. Eddy Jr., M. Heer, C. Heer, Joe Koscove, S. Koscove, Jack Koscove, M. Koscove, L. Rogers, J. Miller, K. Troutt, J. Salazar Jr., M. Hodges, Raven Rudduck, E. Bransby, S. Boehr, R. Blair, D. Larrabee, S. Samson, S. Mulliken, G. Sovaiko, M. Spoor)

According to C.R.S. 34-32.5-115(4)(d), the Board or Office may deny a permit application if the proposed operation is contrary to the laws or regulations of this state or the United States, including but not limited to all federal, state, and local permits, licenses, and approvals, as applicable to the specific operation.

On March 11, 2016, the Division provided notice of the permit application to the Colorado Department of Public Health and Environment, El Paso County, History Colorado, Colorado State Land Board, Colorado Parks and Wildlife, Turkey Creek Soil Conservation District, El Paso County Soil Conservation District, U.S. Army Corps of Engineers, and the Colorado Division of Water Resources.

The Division received comments on the application from History Colorado, Colorado Parks and Wildlife, and Colorado Division of Water Resources. The agencies notified have not indicated any conflict of the proposed operation with laws or regulations of this state or the United States. El Paso County has not indicated any conflict with local zoning, local regulations, or the Master Plan for the proposed mine operation.

Pursuant to Rule 6.4.13, the application affirmatively states that the proposed mine operation will obtain a Special Use Permit and Construction Permits from El Paso County and a Hwy 115 Access Permit from CDOT.

**26. Concerns regarding impact to constitutional rights (protection of land, environment, and public health, safety, and well-being; we the people...with certain inalienable rights...to the pursuit of...life, liberty, happiness)**

(S. Harper, K. Rawson, M. McClurg, B. Chisnell, S. Rawson, G. Klein, S. Sovaiko, Joe Koscove, S. Koscove, Jack Koscove, M. Koscove, L. Rogers, J. Miller, K. Troutt, J. Salazar Jr., M. Hodges, S. Samson, G. Sovaiko, M. Lihs, B. Delgado, T. Swonger, J. Gard, D. Gard, M. Harper)

In these proceedings, the Division’s jurisdiction is limited to enforcement of the specific requirements of the Act and Rules. The Division considers all timely submitted comments in its review, but can address only the issues that directly relate to the specific requirements of an application, as stated in the Act and Rules.

**27. Concern that at least one groundwater well within Eagles Nest was omitted from the Exhibit G well location map (close to the northwest boundary); Concerns regarding Exhibit G – Figure 3 - well**



***water location map - not all Eagles Nest wells are included – including one that is probably closest to the proposed quarry area - what process was used to identify and select wells for this map?***

*(C. Reed, N. Reed, C. Hancock, D. Hancock)*

This specific issue was addressed by the Applicant's consultant, BBA Water Consultants in their memorandum, dated July 11, 2016, which was included with the adequacy review response submitted on July 14, 2016. The response states that the well inventory and well location map presented in their previous memorandum is comprehensive of all nearby wells that have valid well permits as presented in the DWR master well list. The inventory and location map do not include information for wells that have cancelled or expired permits, have been replaced or abandoned, or are inappropriately located.

Although the well permit no. is not given in the objection letter, BBA Water Consultants believes the comment references well permit no. 58506, which is located northwest of the property boundary. This well was included in the research and analysis, and the State's permit information indicates that the well permit has been cancelled. Based on the review of well permit information, it was concluded that there is not an existing well at that location of permit no. 58506, and if there is, it is not operating under a valid well permit. However, an updated well location map (Figure 1) is attached to the memorandum for reference.

It should be noted that, pursuant to Rule 6.4.3(g), the Applicant is required to show the location of all significant, valuable, and permanent man-made structures contained on the area of affected land and within two hundred feet of the affected land. All of the wells shown on Figure 1 in the BBA Water Consultants memorandum are located more than two hundred feet from the proposed affected land.

***28. Concerns regarding the presence of heavy metals (e.g., Lead) in mined rock could contaminate water down-gradient (Larsen well permit no. 185659 is not a potable source due to Lead, located 1800 feet from north ridge of pit; removal of 100 million tons of stone provides opportunity for Pyrite in waste rock to oxidize, mobilize Lead and enter surface water and groundwater - thus how can operator control Lead contamination down-gradient?); Concern that Exhibit G does not adequately demonstrate that disturbances to the prevailing hydrologic balance of affected land and of surrounding area will be minimized per 34-32.5-116(4)(h)***

*(C. Reed, N. Reed, J. Moore, K. Moore)*

In Exhibit G, the permit application states that the aggregate operation will be developed within a deposit of inert granitic rock and no acid-forming or toxic producing materials were identified during the exploratory drilling and sampling program. Therefore, no release of pollutants to groundwater is expected.

As described in Exhibit D, the target of the aggregate resource for the proposed mine operation is basement rock of Precambrian age comprised mostly of igneous and/or metamorphosed granodiorite and Pikes Peak granite. Available literature, surface mapping, and observation of drill core samples on the property did not indicate the presence of any mineralization that could potentially provide a mineral resource that would be in conflict with the objectives of developing a surface mine for aggregate stone. Based on the core drilling, no minerals of economic value were identified. The application states that no sulfides or any other water degradation minerals were identified on the property.



In Exhibit 6.5, the application describes the geotechnical investigations that have occurred on the proposed mine site. Norwest Corporation carried out a site investigation in 2015, where a total of seven boreholes were advanced to depths of 200 feet to 800 feet below existing grades. Six of the boreholes were advanced in the area north of Little Turkey Creek, and one borehole was advanced in the area south of Little Turkey Creek. All boreholes were logged in the field by a Norwest geologist, collecting both geological and geotechnical information. The logs of six additional boreholes, advanced by others during a previous site investigation were made available to Norwest Corporation to aid in the geotechnical review. These boreholes were advanced to shallower depths between 150 feet and 250 feet below existing grade, and limited geotechnical information was collected. The investigation found that granite and granite composites are more prevalent than any other major rock type within the proposed quarry and pit wall locations. Approximately 81% of the rock encountered has been classified as granite or granite composite. Detailed geophysical logs, drill hole lithology logs, and drill hole completion reports were included in Exhibit 6.5.

In the Exhibit 6.5 portion of the adequacy review response submitted on July 14, 2016, the response to item no. 19 confirms the Applicant recognizes that data is limited in the South Pit area. Information gathered while mining the North Pit area will be evaluated and used to develop supplemental geotechnical investigation for the South Pit.

As noted previously, the application includes a surface and groundwater monitoring plan sufficient to verify the protection of surface and groundwater resources. The Division determined the permit application satisfied the requirements of Rule 6.4.7, and the applicable performance standards of Rule 3.1.

**29. Concerns regarding the hazardous intersection of the proposed access road at Hwy 115 (too close to Little Turkey Creek Road entrance off of Hwy 115; blind corner exists; should move access road further south; is only a two-lane road here; proposed access point historically dangerous place)**

(S. Fentman, J. Townsend, S. Bell, R. Eddy, S. Firks, W. Sheaves, A. Sheaves, A. Sickels, W. Baker, M. Baker, L. Pecoraro, C. Reed, N. Reed, W. Flaharty, J. Flaharty, B. Powell, B. Donahue, H. Sandler, B. Louzon, L. Louzon, G. Cousineau, C. Cousineau, J. Rigdon, K. Rigdon, T. Offutt, S. Diggs, W. Diggs, L. Steer, P. Ragan, C. Ragan, D. Martin, L. Martin, T. Hight, A. Fellows, T. Fellows, H. Wright, V. Wekamp, D. Wekamp, E. Bransby, S. Boehr, M. Yugovich, C. Watkins, P. Watkins, J. McFarlane, R. Eddy Jr., M. Heer, C. Heer, Raven Rudduck)

The Act and Rules do not specifically address traffic safety. Such issues are under the jurisdiction of El Paso County and the Colorado Department of Transportation (CDOT). These issues should be addressed through the permitting processes of El Paso County and CDOT.

**30. Concerns regarding the Emergency Action Plan submitted - should commit to notifying the Division within 24 hours of a failure or imminent failure of an impoundment, embankment, stockpile, or slope, per Rule 8; Concerns that the mining operation will increase fire risk/danger - Emergency Action Plan should include response to wildfires**

(C. Reed, N. Reed) (S. Harper, K. Rawson, S. Rawson, G. Klein, M. McClurg, C. Reed, N. Reed, T. Day, B. Chisnell, T. Swonger, S. Sovaiko, J. Gard, D. Gard, M. Hodges, G. Sovaiko, J. Miller, J. Salazar Jr., S. Harper, M. Harper, Richard Rudduck, Joe Koscove, S. Koscove, Jack Koscove, M. Koscove, L. Rogers, S. Samson)

Rule 8 – Emergency Notification by Operators, and Emergency Response Authority of the Office, is not a required exhibit for a Construction Materials Permit application. This rule outlines emergency notification procedures which are enforceable requirements for all approved permits. The Emergency Action Plan submitted in Exhibit T is not a requirement for 112c permit applications.



The Applicant is preparing a Wildfire Management Plan that will be included in the El Paso County Special Use Permit application. Such issues are under the jurisdiction of El Paso County, and should be addressed through their permitting process.

**31. Concerns regarding an increased security risk to residents and property due to reduced access control on site (no locked gates on quarry road; currently access controlled by two security gates - quarry road would bypass 1<sup>st</sup> security gate – creating unfavorable security environment for residents)**  
(C. Reed, N. Reed, J. Moore, K. Moore)

The Act and Rules do not specifically address potential security issues. Such issues are under the jurisdiction of El Paso County. These issues should be addressed through the permitting process of El Paso County.

The quarry entrance will have a gate near the intersection with Highway 115, and this gate will be locked whenever the quarry is closed. During operational hours, access to the quarry will be limited to approved personnel. All personnel are required to sign in and sign out, as required by the U.S. Mine Safety and Health Administration (MSHA).

**32. Concerns that the Applicant’s bond estimate submitted in Exhibit L is not adequate (did they even appropriate an adequate escrow amount for reclamation? Why only bond through Mining Phase III? Cost estimate includes a “one mile, downhill haul distance”, but at least a portion of the distance from fines and topsoil piles to the quarry pits will need to be uphill to return material to terraces within mine pits); Concerns that the Division should require Transit Mix to post financial bonds to cover 1) costs associated with repairing any damage to Little Turkey Creek Road caused by flooding or landslides, 2) costs associated with repairing damage to nearby wells and providing water to residents until wells can be repaired; Concerns that the Applicant has not provided any concrete plans, commitments, or bond proposals to mitigate very likely detrimental events (impact to structures, creeks, groundwater, surface water, etc.); Concerns that Exhibit L does not include estimates for reclamation of ALL affected land**  
(C. Reed, N. Reed, S. Reinsma, M. Heer, C. Heer)

Pursuant to C.R.S. 34-32.5-117(4)(b), the purpose of the financial warranty is to ensure the State has sufficient funds to complete reclamation of the affected lands in the event of revocation of the permit and forfeiture of the financial warranty. The statute authorizes the Division to require financial warranty sufficient to complete reclamation for all lands previously affected and not yet fully reclaimed, and all lands anticipated to be affected within the next year. The Applicant has agreed to provide financial warranty sufficient to address the cost of reclamation through the first ten years of the operation (through mining phase three).

The statute does not authorize the Division to require financial warranty to address hypothetical situations whereby off-site damage might occur. The application demonstrates that off-site areas shall not be damaged by the mining and/or reclamation activities. If off-site areas are damaged by the mining and/or reclamation activities, the Division will pursue enforcement action against the Operator whereby the issue may be resolved in accordance with the applicable requirements of the Act and Rules.





The Division has reviewed Exhibit L and determined it satisfied the requirements of Rule 6.4.12. Based on the information provided in the application materials, the Division has calculated the cost of reclamation for the operation through the development of mining phase three, to be in the amount of \$3,857,842.00.

**33. Concerns that Exhibit C-2 map does not show all property owners in the vicinity (only a few from Eagles Nest and former Bauers Ranch subdivisions are shown)**  
(N. Reed)

The Applicant submitted the required information on Figure C-2, which was revised in the adequacy review response submitted on August 19, 2016. Figure C-2 shows a total of five adjoining surface owners of record, including: United State Government, 2390 Paseo Corta Road LLC, RMBC Group LLC, State of Colorado, and Dry Head Ranch LLC.

The Division determined that Figure C-2 satisfies the requirement of Rule 6.4.3(a) to show all adjoining surface owners of record. Figure C-2 exceeds the requirement of this rule by also showing surface owners of record that are not adjoining to the proposed affected land boundary.

**34. Concern regarding the maximum number of each piece of equipment anticipated at peak production for the mining operation**  
(N. Reed)

The Act and Rules do not specifically address the maximum number of equipment used by the mining operation. The Applicant is not required to provide this information in the permit application in order for the permit to be approved. Regardless, the application provides an equipment fleet list in Exhibit D.

**35. Concerns regarding Exhibit E – Applicant describes current land uses to include wildlife habitat and agricultural – but what about the residential properties to the north and west of the proposed quarry? Actually, land to the west is thinly residential and mainly residential and there is military training/aviation activity to the east; badly disturbed pasture exists on the site of the proposed access road**  
(N. Reed, J. Enderson)

Pursuant to Rule 6.4.5(2)(b), the reclamation plan shall include a comparison of the proposed post-mining land use to other land uses in the vicinity and to adopted state and local land use plans and programs.

In Exhibit E, the Applicant proposes a post-mining land use of wildlife habitat, and describes the surrounding land uses as wildlife habitat (National Forest) and agricultural to the east. The reclamation plan has been designed to encourage the diversity of wildlife species and to provide wildlife habitat.

The Division verified the primary present land use of the proposed affected land as wildlife habitat during the site inspections conducted on April 12, 2016 and June 7, 2016, and from the aerial inspection conducted on June 17, 2016. Although some residences are present to the north and west of the proposed affected land, the areas are zoned as agricultural, and the primary land use appears to be wildlife habitat. The Division determined that the permit application satisfied the requirements of Rule 6.4.5(2)(b).



**36. Concern regarding Exhibit E – what is the maximum time topsoil will be exposed? Will topsoil be seeded only after all is removed during a particular mining phase? How will the operation mitigate dust blowing from topsoil stockpiles along the access road? Since proposing phased reclamation, how often will topsoil and fines stockpiles be reseeded?**

(N. Reed)

Pursuant to Rule 3.1.9(1), if salvaged topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be employed so that the topsoil is protected from erosion, remains free of any contamination by toxic or acid-forming material, and is in a usable condition for reclamation.

In Exhibit E, the Applicant states that stockpiled topsoil will be seeded following initial removal with a temporary seed mixture that will establish quickly and prevent topsoil loss due to wind and water erosion. The seed mixture was provided by NRCS, and was revised per recommendation by the Division to replace Crested wheatgrass with Western wheatgrass. This revised seed mixture is included in Table E-2 in the adequacy review response submitted on August 19, 2016.

**37. Concern regarding Exhibit E – will woody vegetation be chipped and added to the topsoil pile per Rule 3.1.9?**

(N. Reed)

In Exhibit E, the Applicant confirms that, where practicable, woody vegetation at the site will be removed from or appropriately incorporated in the existing topsoil prior to excavation. If this is not practicable, the woody vegetation will be chipped to incorporate into subsoils, or used as brush windrows for the project storm water management plan. The Division determined that the permit application satisfies the requirements of Rule 3.1.9(2).

**38. Concern regarding Exhibit E – will the applicant add wildflowers to the proposed grass seed mixture (Table E-1) to improve aesthetics of revegetated areas?**

(N. Reed)

The Applicant addressed this concern in the adequacy review response submitted on July 21, 2016. The proposed reclamation grass seed mixture was revised (Table E-3 – Permanent Seed Mix) to include a wildflower species, Rocky Mountain Penstemon (*Penstemon strictus*), recommended by the NRCS.

**39. Concerns regarding Exhibit E - for Douglas Fir/Lodgepole Pine reclamation areas (current vegetation more diverse and no Lodgepole Pine exists – so why introduce into the canyon? Could Aspen be added to the revegetation plan to improve aesthetics? Application mentions Lodgepole Pine in association with Douglas Fir – but there is no Lodgepole Pine within many miles of the site; Blue Spruce is mentioned several times – but there apparently are none on site; White Fir/Pine is very common in all age groups – but not mentioned at all); Concern that there is no consideration of aspect apparent in the revegetation plan (Douglas Fir would have little use on south-facing slopes, Pinyon-Juniper woodland is fairly extensive – but not in the revegetation scheme?)**

(S. Fentman, J. Townsend, S. Bell, R. Eddy, J. Enderson, W. Baker, M. Baker, S. Firks, W. Sheaves, A. Sheaves, A. Sickels, L. Pecoraro, J. Rigdon, K. Rigdon, T. Offutt, S. Diggs, W. Diggs, L. Steer, B. Donahue, H. Sandler, B. Louzon, L. Louzon, G. Cousineau, C., N. Reed, Cousineau, P. Ragan, C. Ragan, W. Flaharty, J. Flaharty, B. Powell, D. Martin, L. Martin, T. Hight, C. Watkins, P. Watkins, J. McFarlane, R. Eddy Jr., M. Heer, C. Heer, Raven Rudduck, E. Bransby, S. Boehr, M. Yugovich)



The Applicant addressed concerns regarding the use of Lodgepole Pine trees in the adequacy review response submitted on July 28, 2016. The proposed mixed conifer revegetation plan has been revised to replace Lodgepole Pine trees with Ponderosa Pine trees. Douglas Fir trees remain part of the mixed conifer revegetation plan.

The Applicant has significantly modified the proposed revegetation plan for the site to address public concerns regarding slope, aspect, and elevation of different portions of disturbed land to be revegetated. The proposed portions of species to plant or seed were based on the survey of existing vegetation conducted on site by BIO-Logic, Inc., submitted in Exhibit J.

Concerning Blue Spruce trees, the vegetation information submitted in Exhibit J shows Blue Spruce to exist primarily on the lower slopes near the Little Turkey Creek riparian corridor. Therefore, this species is described in the Riparian Woodland community.

The Division determined the proposed reclamation plan satisfied the requirements of Rule 6.4.5, and the applicable performance standards of Rule 3.1.

**40. Concern regarding Exhibit E – the applicant discusses plantings along waterways – but the mining plan indicated there would be no disturbance within 100 feet of Little Turkey Creek or Deadman Creek – what waterways? Just at the crossings?**

*(N. Reed)*

Exhibit E and Exhibit F identify the three proposed areas to be reclaimed with the riparian revegetation plan. These areas include the three creek crossings, two on Little Turkey Creek, and one on Deadman Creek. Each of the creek crossing areas currently supports different communities based on elevation and other factors. Therefore, proportions of the riparian species will vary at each site. Given the planned change to topography adjacent to Little Turkey Creek within the mining area, it might be expected that species composition along that corridor will shift over time towards more sunlight and drought tolerant species. The predominant native cottonwood found on site is narrowleaf cottonwood (*Populus angustifolia*) and the most common willow is bluestem willow (*Salix irrorata*), with associated coyote willow (*Salix exigua*). These species will be used during reclamation in riparian areas because planting the species that are naturally found on site will generally yield the greatest reclamation success.

**41. Concern regarding Exhibit E – for Gambel Oak/Mountain Mahogany reclamation areas - Gambel Oak can be extreme fire hazard - many locals are currently removing or reducing these plants - can other plants be selected for fire resistance? Concerns that Gambel Oak planting on recently disturbed lands has been problematic – current oaks may have centuries-old root systems**

*(N. Reed, J. Enderson)*

The Division determined that the application satisfied the requirements of Rule 6.4.5, and the applicable performance standards of Rule 3.1.

CPW provided a comment on the application, dated April 18, 2016, which included some general recommendations for protection of existing natural vegetation, control of noxious weeds, and revegetation



of disturbed land. The Applicant has incorporated these recommendations into the permit application. CPW did not provide any comments or recommendations specific to Gambel Oak.

**42. Concern regarding Exhibit E – what other chemicals besides mycorrhizal solution or inoculant for bare root seedlings will be used for reclamation?**

(N. Reed)

Mycorrhizal solution is a bare root treatment with live beneficial mycorrhizal fungi to inoculate the roots of bare root plants before planting. It provides the best possible conditions for the roots to become as effective during and after planting. The results are better survival and growth rates and less watering for all transplants.

The Division has determined the permit application satisfied the requirements of Rule 6.4.5, and the applicable performance standards of Rule 3.1. The Applicant is not required to submit a list of chemicals to be used for reclamation. However, the permit application does include a hazardous materials management plan which was submitted in the adequacy review response on July 28, 2016. This plan provides a list of typical hazardous materials to be used and/or stored on site during construction and development.

**43. Concern regarding Exhibit G – BBA memo - Page 5 - what data needs to be collected to better determine whether groundwater would be encountered in southwest portions of mining area where data is not available? BBA memo - Page 6 – they recommend installation of two monitoring wells before mining begins to quantify and confirm groundwater changes are not occurring in the water supply wells west and east of the proposed mine - will the operator follow this recommendation?**

(N. Reed)

The Applicant addressed this concern in the adequacy review response submitted on July 14, 2016, particularly in response to the Division’s item no. 170. Per the Division’s requirements, the Applicant has submitted a groundwater monitoring plan that includes monitoring of water quality and groundwater levels at four monitoring wells to be installed hydrologically upgradient and downgradient from the proposed mine operation in Little Turkey Creek valley and Deadman Creek valley. Groundwater is not expected to be encountered outside of the fractured areas (valleys). Actual impacts of mining will be monitored with the proposed monitoring wells, and the well locations proposed by BBA Water Consultants for outside of the productive fractured areas is difficult to access. For these reasons, the Applicant is not currently pursuing the monitoring wells outside of the fractured areas and will rely on the proposed monitoring wells within those areas near the creeks to monitor groundwater impacts.

The Applicant further addressed this concern in the adequacy review response submitted on August 19, 2016, particularly in response to the Division’s item no. 16. The application states that although groundwater is not expected to be encountered by the mining operation, if groundwater is encountered, the Applicant will notify the Division and DWR. If groundwater is encountered, the DWR will require a well permit, and the operation must comply with DWR requirements. The operation must also comply with all requirements of the Division, including revising the mining permit through the Technical Revision or Amendment process to address the interception of groundwater, if such occurs.



In the adequacy review response submitted on August 19, 2016, the Applicant responded to the Division's item no. 17. This response states that the Applicant no longer intends to install groundwater monitoring wells in the southwestern portion of the mine area. With the installation of the four other groundwater monitoring wells in the productive fractured material, the planned wells will provide monitoring of actual water level changes in the same system and in the same vicinity as the neighboring wells. These wells will be better suited to identify impacts to the neighboring wells than any monitoring wells that might be installed in the southwestern portion of the mine site.

The Division determined the permit application satisfied the requirements of Rule 6.4.7, and the applicable performance standards of Rule 3.1.

**44. Concern regarding Exhibit G – BBA memo - states that the local aquifer and stream system will not be developed for water supply purposes – which contradicts earlier operator statement (on page G-16) that they may use Hitch Rack Ranch water or may drill wells - which is correct?**

*(N. Reed, J. Moore, K. Moore)*

The Applicant addressed this concern in the adequacy review response submitted on July 28, 2016. The Applicant states that quarry operations require a reliable water source, and the Applicant will import water legally obtained from a hydrant(s) operated by Colorado Springs Utilities. Downstream water rights holders have priority over Hitch Rack Ranch surface water rights, and the Applicant will not divert water from Little Turkey Creek. Similarly, available groundwater is limited, and there are no plans to develop groundwater resources. Should a locally available water resource be identified, the Applicant has committed to work with DWR to obtain the necessary permits prior to developing the resource.

**45. Concerns regarding Exhibit H - states that turkeys mostly use lower parts of Hitch Rack Ranch and are “not common in the mining area” (what research was used as the basis for this statement? locals frequently see turkeys in this area as they drive on Little Turkey Creek Road; turkey sightings almost daily; turkeys probably roost in cottonwoods and loiter in daytime in adjacent dense forest, turkeys are very intolerant of industrial operations such as mining)**

*(S. Fentman, J. Townsend, S. Bell, J. Enderson, S. Firks, W. Baker, M. Baker, W. Sheaves, A. Sheaves, A. Sickels, L. Pecoraro, N. Reed, W. Flaharty, J. Rigdon, K. Rigdon, T. Offutt, S. Diggs, W. Diggs, L. Steer, P. Ragan, C. Ragan, G. Cousineau, C. Cousineau, B. Louzon, L. Louzon, B. Powell, D. Martin, L. Martin, T. Hight, M. Yugovich, M. Heer, C. Heer, C. Kimble, S. Boehr, Raven Rudduck, E. Bransby)*

In Exhibit H, the permit application states that common small game species in the permit area include wild turkey, mourning dove, and cottontail rabbit. Turkeys are common on the lower part of the property year round, and the lower eastern part of the permit area is within turkey winter range, winter concentration area, and production area. Turkeys mostly use the lower parts of the ranch and are not common in the proposed mining area.

The Applicant further addressed this concern in the adequacy review response that was submitted on July 28, 2016. The Applicant acknowledges that the text in Exhibit H suggests that turkeys are more commonly present on the lower ranch, but the Applicant and its consultants recognize that turkeys are common on both the upper and lower parts of the property year round.

CPW did provided a comment on the application, dated April 18, 2016, which includes some general recommendations for protection of wildlife. The Applicant has incorporated these recommendations into



the permit application. However, CPW did not provide any comments or recommendations specific to protection of turkeys.

**46. Concerns regarding invasion of privacy - spoke with man drilling up there one day – he said he could see Chuck sitting on our deck drinking coffee every morning**

*(C. Hancock, D. Hancock, C. Kimble)*

The Act and Rules do not specifically address issues of invasion of privacy. Therefore, these concerns are not within the purview of the Division’s jurisdiction and are not a basis to deny the permit.

**47. Concerns that test coring used water based mud in a highly fractured zone, which makes statements about no water encountered a guess based on easily misinterpreted data**

*(J. Moore, K. Moore)*

The Applicant addressed this concern in the adequacy review response submitted on July 14, 2016, particularly in response to the Division’s item no. 170. Per the Division’s requirements, the Applicant has submitted a groundwater monitoring plan that includes monitoring of water quality and groundwater levels at four monitoring wells to be installed hydrologically upgradient and downgradient from the proposed mine operation in Little Turkey Creek valley and Deadman Creek valley. Groundwater is not expected to be encountered outside of the fractured areas (valleys).

The Applicant further addressed this concern in the adequacy review response submitted on August 19, 2016, particularly in response to the Division’s item no. 16. The Applicant states that although groundwater is not expected to be encountered by the mining operation, the Applicant commits to notifying the Division and DWR if groundwater is intercepted by the operations. If groundwater is encountered, the DWR will require a well permit, and the Applicant will comply with the DWR requirements. The Applicant also commits to comply with all requirements of the Division, including revising the mining permit through the Technical Revision or Amendment process to address the interception of groundwater, if such occurs.

**48. Concerns regarding C.R.S. 34-32.5-116(4)(e), that all refuse shall be disposed of in a manner that controls unsightliness or the deleterious effects of such refuse - but the plant fines stockpile will be stored within the quarry operation area and clearly visible from properties within Eagles Nest**

*(N. Reed)*

Following C.R.S. 34-32.5-116(4)(e), reclamation plans and their implementation are required on all affected lands, including that all refuse shall be disposed of in a manner that controls unsightliness or the deleterious effects of such refuse.

In Exhibit E, the application states that during mining, overburden and fines generated will be direct hauled and placed as backfill in the pit areas as soon as practicable, and as areas become available for reclamation. The subsoil material will be used as a plant growth medium on disturbed areas, including, on pit benches, pit floors, the F1 stockpile area, and the access road. At least one foot of fines/overburden will be placed over all disturbed areas for reclamation. Subsequently, a minimum of six inches of topsoil will be placed over the fines/overburden across disturbed areas. The F1 stockpile area, where fines/overburden will be stored during the mining operation, will be reclaimed to wildlife habitat. Any remaining fines/overburden



not used for reclamation of the site will be regraded to 3H:1V slopes, receive a minimum depth of six inches of topsoil, and be revegetated in accordance with the mixed conifer revegetation plan. The mixed conifer revegetation plan for this portion of the site (south of Little Turkey Creek) will include planting approximately 85% Douglas Fir trees and 15% Ponderosa Pine trees. Prior to tree planting, the area will be seeded with a grass seed mixture recommended by the NRCS.

The Division determined the proposed reclamation plan for the fines/overburden stockpile area satisfied the requirements of Rule 6.4.5, Rule 6.4.6, C.R.S. 34-32.5-116, and the applicable performance standards of Rule 3.1.

**49. *Concerns regarding Exhibit E - Reclamation Plan - does not adequately demonstrate proposed revegetation will be at least equal, with respect to extent of cover to natural vegetation of surrounding area and that it will be of adequate diversity to establish successful reclamation per 34-32.5-116(4)(f)***  
*(N. Reed, S. Mulliken)*

According to C.R.S. 34-32.5-116(4)(f), reclamation plans and their implementation are required on all affected lands, including that in those areas where revegetation is part of the reclamation plan, land shall be revegetated so that a diverse, effective, and long-lasting vegetative cover is established that is capable of self-regeneration and is at least equal, with respect to the extent of cover, to the natural vegetation of the surrounding area. Species chosen for revegetation shall be compatible for the proposed post-extraction land use and shall be of adequate diversity to establish successful reclamation.

In Exhibit J, the Applicant provided a narrative describing seven vegetation communities that presently exist on the Hitch Rack Ranch property. The proposed affected land is located within the property boundaries, but does not cover the entire property. The seven vegetation communities identified include, Mountain Shrubland (39% of property), Grassland (22% of property), Montane Mixed Conifer Forest (18% of property), Pinyon-Juniper Woodland (13% of property), Ponderosa Pine Woodland (6% of property), Riparian Woodland (1% of property), and Herbaceous Wetland (< 1% of property). In the proposed mining area, the primary vegetation communities present on land north of Little Turkey Creek include Montane Mixed Conifer Forest, Pinyon-Juniper Woodland, Mountain Shrubland, and Ponderosa Pine Woodland. The primary vegetation communities present south of Little Turkey Creek include, Montane Mixed Conifer Forest, Mountain Shrubland, Pinyon-Juniper Woodland, and Ponderosa Pine Woodland. The primary vegetation community present along Little Turkey Creek is Riparian Woodland. In the eastern, flatter portion of the property where the proposed access road would be located, the primary vegetation communities include Grassland, Mountain Shrubland, and some Ponderosa Pine Woodland.

The proposed revegetation plan provided in Exhibits E and F takes into consideration the variations in slope, aspect, and elevation in different portions of the proposed affected land. Proposed proportions of plant species are based on vegetation sampling conducted on site by BIO-Logic, Inc. during preparation of the Mexican Spotted Owl Habitat Assessment and survey for Exhibit J information. All disturbed areas will be revegetated with a native grass mixture provided by NRCS, for the project area to provide a seed mixture conducive with site conditions to achieve final post mining land use. The Applicant proposes planting a mountain shrubland mixture along the majority of the access road, and a slight variation mountain shrubland mixture on south-facing slopes to the north of Little Turkey Creek and Deadman Gulch. The mountain shrubland mixtures will be supplemented by other woody species at a rate of 200



stems per acre. The Applicant proposed planting a mixed conifer forest mixture within the majority of the quarry area, re-establishing a Douglas Fir and Ponderosa Pine forest. Areas located south of Little Turkey Creek will have a preponderance of Douglas Fir compared to Ponderosa Pine. Areas located north of Little Turkey Creek will have a preponderance of Ponderosa Pine compared to Douglas Fir. On the pit floors, Ponderosa Pine will be planted with some understory shrubs. The Applicant proposes planting a riparian mixture at the three creek crossing areas. The proportion of riparian species planted will vary at each crossing depending on its elevation and other factors. Riparian species will include varying proportions of Wood's Rose, Bluestem Willow, Narrowleaf Cottonwood, Ponderosa Pine, Douglas Fir, and Coyote Willow.

The proposed mine site is located within the boundaries of two Soil Conservation Districts, the El Paso County Soil Conservation District and the Turkey Creek Soil Conservation District. The Division sent notice of the permit application to both districts on March 11, 2016, and received no comments or recommendations for the proposed revegetation plan.

The Division determined that the permit application satisfied the requirements of C.R.S. 34-32.5-116(4)(f) and (p), Rule 6.4.5, and the performance standards of Rule 3.1.10.

**50. Concerns regarding Exhibit P - municipalities within two miles should include Colorado Springs Red Rock Valley Estates Water District, a quasi-municipal corporation and political subdivision of the State of Colorado, that operates under authority of the Special District Act, CRS 32-1-1-101, et. seq.; Concerns that Rock Valley Estates Water District was not notified of the application until the recent public notice (which closed on 4/19)**

*(C. Brice, D. Brice, S. Sovaiko)*

According to the Colorado Department of Local Affairs, Colorado Springs Red Rock Valley Estates Water District is not recognized as an active Colorado municipality. Therefore, the Applicant was not required to list this District in Exhibit P, and the Division did not provide notice of the application to the District in accordance with Rule 1.6.1(2)(c).

The Division determined the permit application satisfied the requirements of Rule 6.4.16.

**51. Concern regarding Cheryl Kimble's well (permit no. 167875) permitted use incorrectly stated in application as "household" – but in fact is "domestic" as listed in well search for DWR**

*(C. Kimble)*

The Table 1 - Summary of Nearby Wells, provided with the memorandum by BBA Water Consultants in Exhibit G of the original application submittal is not required information for a 112 Construction Materials permit application. However, the Applicant's submittal of this information was helpful in depicting groundwater usage in the region. According to the notes provided at the bottom of Table 1, the well summary was based on the DWR Master Well List. Well permit no. 167875 appears to have a well depth of 14 feet, a water level at 6 feet, and is a hand dug well completed in unconsolidated materials. The Division did not require the Applicant to revise Table 1 in order to change the use for well permit no. 167875.





The Division determined that information provided in Exhibit G satisfied the requirements of Rule 6.4.7, and the applicable performance standards of Rule 3.1.

**52. Concerns that proposed quarry could place significant strain on ability to adequately provide fire and emergency services to residents and visitors of our fire district - must be able to access all areas of our fire district to provide professional and reliable emergency services; Concerns regarding how emergency services will be provided when the only access (Little Turkey Creek Road) is blocked, given there is no helicopter service possible**

*(H. Wright, C. Kimble)*

In these proceedings, the Division's jurisdiction is limited to enforcement of the specific requirements of the Act and Rules. The Division considers all timely submitted comments in its review, but can address only the issues that directly relate to the specific requirements of an application, as stated in the Act and Rules.

The Act and Rules do not specifically address issues of fire district access. Therefore, these concerns are not within the purview of the Division's jurisdiction and are not a basis to deny the permit. These issues are typically addressed at the local government level and not at the State government level. Please direct such concerns to the El Paso County permitting process.

Pursuant to Rule 6.4.13, the Applicant has affirmatively stated that the proposed mine operation will obtain a Special Use Permit and Construction Permits from El Paso County prior to conducting the proposed mining and reclamation operations.

**53. Concerns regarding the purpose of the bewildering array of soil types shown in the tables? Would each soil type be returned to the original pattern instead of mixed by machinery?**

*(J. Enderson)*

Pursuant to Rule 6.4.9(1), in consultation with the SCD or other qualified person, the Applicant shall indicate on a map or by a statement, the general type, thickness and distribution of soil over the affected land. Such description will address suitability of topsoil (or other material) for establishment and maintenance of plant growth.

In Exhibit I, the Applicant provided information based on the U.S. Department of Agriculture's NRCS Service soil resources data, showing eight soil map units that have been mapped on the property. It is unlikely that soil can be returned exactly to its original pattern; however, all available growth medium will be utilized.

The Division determined the permit application satisfied the requirements of Rule 6.4.9.

**54. Concerns regarding cocktail of seeds given with so many grass species all to be sown on same newly spread topsoil, which assumes all have same requirements – exceedingly unlikely – does Big Bluestem even occur on site?**

*(J. Enderson)*



The Division determined that the permit application satisfied the requirements of Rule 6.4.5, Rule 6.4.10, and the applicable performance standards of Rule 3.1.

The Applicant has significantly modified the proposed revegetation plan for the site to address public concerns regarding slope, aspect, and elevation of different portions of disturbed land to be revegetated. The proposed portions of species to plant or seed were based on the survey of existing vegetation conducted on site by BIO-Logic, Inc., submitted in Exhibit J. The grass seed mixture was provided by NRCS, and was revised per recommendation by the Division to replace Crested wheatgrass with Western wheatgrass. This revised seed mixture is included in Table E-2 in the adequacy review response submitted on August 19, 2016.

The proposed mine site is located within the boundaries of two Soil Conservation Districts, the El Paso County Soil Conservation District and the Turkey Creek Soil Conservation District. The Division sent notice of the permit application to both districts on March 11, 2016, and received no comments or recommendations for the proposed revegetation plan.

CPW did provide a comment on the application, dated April 18, 2016, which includes some general recommendations for protection of existing natural vegetation, control of noxious weeds, and revegetation of disturbed land. The Applicant has incorporated these recommendations into the permit application.

***55. Concerns that present riparian habitat is small yet rich in plant species – has great plant structural diversity – reclamation plan map shows only a small section of the land reclaimed on Little Turkey Creek – However, a tract extending 50 meters on either side of Little Turkey Creek includes much of the most valuable habitat on the entire mine site in regard to flora and fauna – which could not be artificially reclaimed if removed and would require at least 200 years to return naturally***  
(J. Enderson)

The reclamation plan maps submitted in the application as Figures F-1 and F-2 show the revegetation plans for land proposed to be disturbed by the operation. The figures show three creek crossing areas, two on Little Turkey Creek and one on Deadman Creek, that will be revegetated using a riparian plant mixture. According to the proposed mining plan, the operation will maintain a 100 foot buffer from the existing creeks, except at three crossing areas. Therefore, only the crossing areas will require reclamation.

The proposed mine site is located within the boundaries of two Soil Conservation Districts, the El Paso County Soil Conservation District and the Turkey Creek Soil Conservation District. The Division sent notice of the permit application to both districts on March 11, 2016, and received no comments or recommendations for the proposed reclamation plan or for protection of existing vegetation.

CPW did provide a comment on the application, dated April 18, 2016, which includes some general recommendations for protection of existing natural vegetation, control of noxious weeds, and revegetation of disturbed land. The Applicant has incorporated these recommendations into the permit application, including committing to maintaining a 100 foot mining buffer from existing creeks.

The Division determined the permit application satisfied the requirements of Rule 6.4.5, Rule 6.4.10, and the applicable performance standards of Rule 3.1.



**56. Concern that once quarrying is over, the site will quickly be revegetated with invasive foreign colonizers such as woolly mullein and sweet clover**

*(J. Enderson)*

The Applicant submitted a weed management plan prepared by CORE Consultants, Inc. in revised Exhibit E, with the adequacy review response submitted on July 14, 2016. This plan provides methods to prevent and control the spread of noxious weeds at pre-construction, construction, and reclamation phases of the operation.

Additionally, CPW provided a comment on the application, dated April 18, 2016, which includes some general recommendations for protection of existing natural vegetation, control of noxious weeds, and revegetation of disturbed land. The Applicant has incorporated these recommendations into the permit application.

The Division determined the permit application satisfied the requirements of Rule 6.4.5 and Rule 3.1.10(6).

**57. Concerns that the proposed mining plan does not appear to provide an adequate buffer to protect the use of intermittent stream corridors by sensitive species (riparian areas should have setback from mining activities to minimize any impacts to these important wildlife corridors)**

*(J. Enderson, S. Firks, W. Baker, M. Baker, W. Sheaves, A. Sheaves, A. Sickels, L. Pecoraro, R. Eddy, W. Flaharty, D. Martin, L. Martin, T. Offutt, J. Rigdon, K. Rigdon, S. Diggs, W. Diggs, L. Steer, B. Donahue, E. Jessup, D. Harrell, H. Sandler, L. Louzon, B. Louzon, G. Cousineau, C. Cousineau, P. Ragan, C. Ragan, B. Powell, T. Hight, C. Watkins, P. Watkins, J. McFarlane, R. Eddy Jr., M. Heer, C. Heer, M. Yugovich, A. Fellows, T. Fellows, Raven Rudduck, E. Bransby, S. Boehr)*

CPW provided a comment on the application, dated April 18, 2016, which includes a recommendation that all wetland areas be buffered a minimum of 100 feet from Little Turkey Creek. CPW also recommends that any development, surface disturbance, and outbuildings be discouraged except where necessary for mining operations. Additionally, hydrological flows that support wetlands should remain undisturbed and not impeded. CPW does not identify any particular existing vegetative or wildlife species that require special protection.

The Applicant has incorporated all of CPW's recommendations into the permit application. Particularly, the operation commits to maintaining a 100 foot buffer from existing creeks, except at three crossing areas that will be reclaimed to riparian use after mining is completed.

The Division determined the permit application satisfied the requirements of Rule 6.4.4, Rule 6.4.5, Rule 6.4.6, Rule 6.4.8, and Rule 3.1.8 with regard to wildlife and wildlife habitat.

**58. Concerns that there are no discussions in the application of how requirements of the access permit from CDOT will be met**

*(A. Fellows, T. Fellows)*

Pursuant to Rule 6.4.13, the Applicant affirmatively stated that a Hwy 115 access permit will be obtained from CDOT. The Act and Rules do not require the Applicant to describe details of how particular permits will be obtained. Rule 6.4.13 only requires the Applicant to provide a statement identifying which permits,



licenses, and approvals the Applicant holds or will be seeking in order to conduct the proposed mining and reclamation operations. The Division determined the permit application satisfied the requirements of Rule 6.4.13.

**59. *Concerns that the Act clearly states the intent of the General Assembly to “...conserve natural resources, to aid in the protection of wildlife and aquatic resources, to establish agricultural, recreational, residential, and industrial sites, and to protect and promote the health, safety, and general welfare of the people of this state” – denying this application would be consistent with those goals and values***

*(W. Dean, S. Mulliken)*

This statement refers to the second half of the legislative declaration represented in C.R.S. 34-32.5-102(1). It should be noted that the first half of the legislative declaration reads as follows “The general assembly hereby declares that the extraction of construction materials for government and private enterprise and the reclamation of land affected by such extraction are necessary and proper activities that are compatible. It is the intent of the general assembly to foster and encourage the development of an economically sound and stable extraction materials industry and to encourage the orderly development of the state’s natural resources while requiring those persons involved in extraction operations to reclaim land affected so that it may be put to a use beneficial to the people of this state.”

The Act and Rules provide reclamation requirements to ensure affected lands are reclaimed to a beneficial use. The Act and Rules provide performance standards and environmental protection requirements, which apply throughout the life of mine. Pursuant to Rule 1.4.1(10), each application is reviewed, and ultimately approved or denied, based on the Applicant’s ability to demonstrate the application meets the minimum requirements of the Act and Rules.

After completion of a comprehensive adequacy review process, the Division determined the Applicant has sufficiently demonstrated the application meets the minimum requirements of the Act and Rules. Therefore, pursuant to C.R.S. 34-32.5-115(4), the Board or Office shall not deny the permit.

**60. *Concerns that it would be prudent to obtain a report from an independent and qualified biologist as to whether the proposed site is in fact special and should be preserved – we would be willing to provide more detailed information about the proposed land to be mined if you can provide us with lawful access to do so***

*(S. Mulliken)*

The Division is not authorized to provide lawful access to private property. Anyone wishing to obtain access to the Hitch Rack Ranch property should contact the landowner, RMBC Group LLC.

### **Division’s Recommendation**

On September 29, 2016, the Division determined the 112c permit application for the Hitch Rack Ranch Quarry, File No. M-2016-010, has satisfied the requirements of C.R.S. 34-32.5-115(4), and issues its recommendation to approve the application over objections. The Division has set the required financial warranty for the site at \$3,857,842.00.

