



COLORADO

Division of Reclamation,
Mining and Safety

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

October 21, 2016

Notice to Parties and Interested Persons

Re: Recommendation to Approve a 112c Permit Application with Objections; Pueblo County Aggregate Project; DRMS File No. M-2016-009

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 Pueblo County Aggregate Project, File No. M-2016-009, submitted by Fremont Paving & Redi-Mix Inc.

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 **November 16-17, 2016 Board meeting** at 1313 Sherman Street, Room 318, Denver, Colorado, beginning at 9:00 a.m. or as soon thereafter as the matter can 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. 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 **November 2, 2016**, in the Lucero Large Community Room at the Patrick A. Lucero Library at 1315 E 7th St, Pueblo, Colorado 81001, beginning at 10:30 a.m. and terminating at or before 12:30 p.m. Mr. James Stark will preside as the Pre-hearing Conference Officer.



October 21, 2016

Page 2 of 4

If you need additional information or have any questions, please contact me at Division of Reclamation, Mining and Safety, 1313 Sherman Street, Room 215, Denver, CO 80203, by telephone at **303-866-3567 x8132**, or by email at elliott.russell@state.co.us.

Sincerely,



Elliott R. Russell

Environmental Protection Specialist

Attachment: Certificate of Service

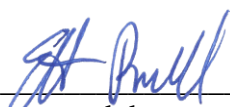
cc w/ enclosures: Tony Waldron, DRMS
Wally Erickson, DRMS
James Stark, Pre-hearing Officer
John Roberts, AGO for the MLRB
Scott Schultz, AGO for DRMS
Jeff Fugate, AGO for DRMS

Certificate of Service

I, Elliott Russell, hereby certify that on this 21st day of October, 2016, I deposited a true copy of the foregoing Notice to Parties and Interested Persons to the Pueblo County Aggregate Project, dated October 21, 2016, **Re: Recommendation to Approve a 112c Permit Application with Objections; Pueblo County Aggregate Project; DRMS File No. M-2016-009**, in the US Mail, addressed to the following:

John P. Ary Fremont Paving & Redi-Mix, Inc. 839 MacKenzie Avenue P.O. Box 841 Canon City, CO 81212	Angela Bellantoni Environmental Alternatives Inc. 1107 Main Street Cañon City, CO 81212
Karen R. Jones 4127 Calle Belleza Las Cruces, NM 88011	Hobbs Family Farm Attn: Daniel G. Hobbs P.O. Box 411 Avondale, CO 81022
Rusler Produce, Inc. Attn: Thomas S. Rusler, M. Lynn Rusler, Thomas W. Rusler, Nicholas S. Rusler P.O. Box 69 Avondale, CO 81022	Ryan Froman 1711 Martin Lane Boone, CO 81025
David Cockrell 225 Midnight Ave. Pueblo, CO 81005	Charlotte Tournay Sierra Club Sangre De Cristo Group P.O. Box 8821 Pueblo, CO 81008
Dan Henrichs 49707 East Hwy 50 Avondale, CO 81022	Kelly G. Bond 1820 Avondale Blvd. Avondale, CO 81022
Pisciotta Farms & Produce Marketing Attn: Joe P. Pisciotta 45388 Highway 50 East Avondale, CO 81022	Senator Larry W. Crowder State Capitol Denver, CO 80203

Dionisio Produce Attn: Russ Dionisio 38546 Old Hwy 50 East Pueblo, CO 81006	Rocky Mountain Farmers Union Attn: Ben Rainbolt 7900 E Union Ave, Suite 200 Denver, CO 80237
Pueblo Rural Fire Protection District Attn: Bret Marascola 29912 US Hwy 50 East Pueblo, CO 81006	Innovative Conservation Solutions, Inc. Attn: Scott A. Campbell 1518 Winfield Ave Colorado Springs, CO 80906
XCEL Energy Attn: James Craig 1800 Larimer Street Denver, CO 80202	Jose Munoz 47300 Olsen Rd. Avondale, CO 81022
Altman, Keilbach, Lytle, Parlapiano & Ware, P.C. 229 Colorado Avenue P.O. Box 333 Pueblo, CO 81002	James and Tina Potestio 41305 Olsen Rd Avondale, CO 81022
Fred Bregar 1530 Lime Road Pueblo, CO 81006	Michael and Velma Rinks 41901 Bush Rd. Avondale, CO 81022
Provost Family Attn: Vest and Melvin Provost, Marry and Tim Provost, Tom Provost 2227 41 ½ Lane Avondale, CO 81022	Larga Vista Ranch Attn: Doug and Kim Wiley 53505 Olsen Road Boone, CO 81025
Pueblo County Commissioners 215 W. 10th Street Pueblo, CO 81003	Pueblo County School District 70 Attn: Greg Keasling 301 28 th Lane Pueblo, CO 81001
Wendi Kern 39555 Fields Road Avondale, CO 81022	Colorado State Land Board Attn: Phillip Courtney 1127 Sherman St., Ste. 300 Denver, CO 80203


Signature and date

10/21/2016



COLORADO

Division of Reclamation,
Mining and Safety

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

Date: October 21, 2016

Re: Rationale for Recommendation to Approve a 112c Construction Materials Reclamation Permit Application with Objections; Fremont Paving & Redi-Mix Inc.; Pueblo County Aggregate Project; DRMS File No. M-2016-009

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 (Rule). Copy of the Act and Rules are available through the Division's web site at www.mining.state.co.us.

On October 21, 2016, the Division of Reclamation, Mining and Safety (Division or Office) issued its recommendation to approve the 112c Construction Materials Reclamation Permit Application for the Pueblo County Aggregate Project, File No. M-2016-009, over objections. This rationale document is intended to explain the process by which the Division arrived at its recommendation to approve, over objections, and respond to the issues raised by the objecting parties. 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

Fremont Paving & Redi-Mix Inc. (Applicant) filed a 112c permit application with the Division on February 26, 2016. The application describes construction materials mining operation with gravel as the primary commodity to be mined. The permit application encompasses 1,471 acres and proposes to extract gravel from discrete areas within the permit area referred to as the Cascajo Gravel Terraces. The application states that affected lands will be reclaimed to support rangeland post-mining land use. Notice of the filing occurred in accordance with the requirements of the Act and Rules. The public comment period closed on April 15, 2016. During the public comment period the Division received written comments from the following individuals and agencies:

Timely Letters of Objection:

- 1) Karen R. Jones, received March 29, 2016.
- 2) Hobbs Family Farm, letter dated April 13, 2016, received April 14, 2016, signed by Daniel G. Hobbs.
- 3) Rusler Produce, Inc., letter dated April 13, 2016, received April 14, 2016, signed by Thomas S. Rusler, M. Lynn Rusler, Thomas W. Rusler, and Nicholas S. Rusler.
- 4) Ryan Froman, letter dated April 13, 2016, received April 14, 2016.
- 5) David Cockrell, letter dated April 15, 2016, received April 15, 2016.



- 6) Sierra Club - Sangre De Cristo Group, received April 15, 2016, signed by Charlotte Tournay.
- 7) Dan Henrichs, received April 14, 2016, but withdrawn on June 18, 2016.
- 8) Kelly G. Bond, received April 15, 2016.
- 9) Pisciotta Farms and Produce Marketing, letter dated April 12, 2016, received April 15, 2016, signed by Joe P. Pisciotta.

Timely Agency comments:

- 1) Colorado Division of Water Resources, dated March 30, 2016, received March 31, 2016.
- 2) Colorado Parks and Wildlife, dated March 29, 2016, received April 6, 2016.

Late Agency comments:

- 1) Colorado Parks and Wildlife, dated May 17, 2016, received May 17, 2016.

On June 10, 2016, the Applicant filed an amendment to the existing application. The amendment to the application added the Southwest Haul Road from 36th Lane to the proposed site and the North Haul Road from Highway 50 to the proposed site. The amendment added an additional 46 affected acres, for a total of 1,517 acres. Notice of the filing occurred in accordance with the requirements of the Act and Rules. The public comment period closed on August 4, 2016. During the public comment period the Division received written comments from the following individuals and agencies:

Timely Letters of Objection:

- 10) State Senator Larry Crowder, letter dated July 17, 2016, received July 21, 2016, but withdrawn on August 25, 2016.
- 11) Hobbs Family Farm, letter dated July 31, 2016, received August 1, 2016, plus August 4, 2016 Addendum, received August 4, 2016, signed by Daniel G. Hobbs.
- 12) Dionisio Produce, letter dated July 27, 2016, received August 2, 2016, signed by Russ Dionisio.
- 13) Rocky Mountain Farmers Union, letter dated August 4, 2016, received August 2, 2016, signed by Ben Rainbolt.
- 14) Pueblo Rural Fire Protection District, letter dated July 28, 2016, received August 2, 2016, signed by Bret Marascola.
- 15) Innovative Conservation Solutions, Inc., letter date August 2, 2016, received August 2, 2016, signed by Scott A. Campbell.
- 16) XCEL Energy, letter dated July 27, 2016, received August 2, 2016, signed by James Craig, but withdrawn September 13, 2016.
- 17) Rusler Produce, Inc., letter dated July 31, 2016, received August 3, 2016, signed by Thomas S. Rusler, M. Lynn Rusler, Thomas W. Rusler, and Nicholas S. Rusler.
- 18) Jose Munoz, received August 3, 2016
- 19) Altman, Keilbach, Lytle, Parlapiano & Ware, P.C. on behalf of Bessemer Irrigating Ditch Company, letter dated August 3, 2016, received August 3, 2016, signed by John J. Keilbach.
- 20) Ryan Froman, letter dated July 31, 2016, received August 3, 2016.
- 21) Jason and Tina Potestio, received August 4, 2016.
- 22) Fred Bregar, letter dated August 1, 2016, received August 4, 2016.

- 23) Michael and Velma Rinks, letter dated July 31, 2016, received August 4, 2016.
- 24) Provost Family, letter dated July 31, 2016, received August 4, 2016, signed by Vesta and Melvin Provost, Mary and Tim Provost, and Tom Provost.
- 25) Larga Vista Ranch, letter dated August 4, 2016, email received August 4, 2016, letter received August 16, 2016, signed by Doug and Kim Wiley.

Timely Agency comments:

- 3) History Colorado, dated June 15, 2016, received June 28, 2016.

Timely Letters of Support:

- 1) Pueblo County School District 70, dated June 14, 2016, received June 16, 2016, signed by Greg Keasling.

Late Letters of Objection:

- 1) Arkansas Valley Audubon Society, received October 19, 2016, signed by Dr. Peg Rooney.

Late Agency comments:

- 2) Colorado State Land Board, dated October 11, 2016, received October 11, 2016.

The Division forwarded copies of all objections and comments to the Applicant and scheduled the application for 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. Due to the timely objections, on the decision date the Division would not make a decision on the application, but rather a recommendation to the Board.

During the review period the Division generated three adequacy letters. The Applicant addressed all adequacy issues to the Division's satisfaction. Therefore, on October 21, 2016, the Division determined the application to have satisfied the requirements of Section 34-32.5-115(4) C.R.S. and issued its recommendation to approve the application.

Issues Raised by the Objecting Parties

In these proceedings, the Division's jurisdiction over a 112c application is limited to enforcement of the specific requirements of the Act and Rules. The Division considered 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 issues raised by the objecting parties and commenting agencies are represented by italic bold font. The last names of the objecting parties who raised the issue are listed after the issue. The Division's response follows in standard font.

1. Concerns regarding the operation being in conflict with local zoning, local comprehensive plans, and local special use permit standards. Concerns regarding adverse impacts to the visually appealing landscape. Concerns regarding off-site truck traffic and off-site road infrastructure. Concerns for devaluation of nearby property. Concerns regarding economic impact on agriculture. Concerns regarding emergency vehicle access. Concerns regarding noise pollution, sight pollution, and quality of life.

(Jones; Hobbs Family Farm; Rusler Produce, Inc.; Froman; Cockrell; Sierra Club - Sangre De Cristo Group; Bond; Pisciotto Farms and Produce Marketing; Rocky Mountain Farmers Union; Pueblo Rural Fire Protection District; Innovative Conservation Solutions, Inc.; Bregar; Provost; Larga Vista Ranch)

The Act and Rules do not specifically address issues of zoning and land use, impacts to visually appealing landscapes, off-sight truck traffic, property values, economics, access for emergency vehicles, noise and sight pollution, and quality of life. Therefore, these concerns are not within the purview of the Division's jurisdiction and are not a basis to deny the permit. Such issues are typically addressed at the local government level and not at the State government level. These issues should be addressed through the Pueblo County permitting process.

According to Section 34-32.5-115(4)(d) C.R.S., the Board or Office may deny an application if the proposed operation is contrary to the laws or regulations of Colorado 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 February 26, 2016, and June 15, 2016, the Division provided notice to the Pueblo County Commissioners and the Pueblo County Department of Planning and Development of the application and the amendment to the application, respectively. Pueblo County has not indicated any conflict with local zoning or local regulations.

2. Concerns regarding dust and air pollution resulting from the operation.

(Jones; Froman; Cockrell; Sierra Club - Sangre De Cristo Group; Bond; Pisciotto Farms and Produce Marketing; Rocky Mountain Farmers Union; Potestio; Bregar; Rinks; Provost)

The Act and Rules do not specifically address air quality issues. Such issues are under the jurisdiction of Pueblo County and the Air Pollution Control Division of the Colorado Department of Public Health and Environment. These issues should be addressed through the permitting process of Pueblo County and the Air Pollution Control Division of the Colorado Department of Public Health and Environment.

The Applicant has indicated the appropriate permit from Pueblo County will be attained and stated that Special Review Use Permit CUP 2016-007 is pending submission. The Applicant has also indicated the appropriate permit from the Air Pollution Control Division will be attained and stated that a Fugitive Dust Permit and Plan was submitted on June 1, 2016.

On February 26, 2016, and June 15, 2016, the Division provided notice of the application and the amendment to the application, respectively, to the Pueblo County Commissioners, Pueblo County Department of Planning and Development, and to the Air Pollution Control Division of the Colorado Department of Public Health and Environment. The Division received no comment from Pueblo County. The Division received no comment from the Air Pollution Control Division.

3. Concerns regarding the operation being inappropriately located in a harsh semi-arid environment. Concerns regarding the difficulty to reclaim the affected lands.

(Jones; Hobbs Family Farm; Rusler Produce, Inc.; Froman; Sierra Club - Sangre De Cristo Group; Bond; Dionisio Produce; Rocky Mountain Farmers Union; Innovative Conservation Solutions, Inc.; Munoz)

The Act and Rules do not prohibit mining activities from semi-arid environments, except to the extent such areas are located on lands identified under C.R.S. 34-32.5-115(4)(f). The site of the proposed Pueblo County Aggregate Project is not a location prohibited by the Act and Rules.

The Applicant has committed to implementing the reclamation plan that was recommended by the Natural Resource Conservation Service (NRCS). The NRCS developed the site-specific and post-mining land use specific plan based on a site visit. As recommended by the NRCS, final slopes shall be no steeper than 3H:1V, subsoil shall be replaced at 18 inch depth and topsoil shall be replaced, overlying the subsoil, at a six inch depth. Should the replaced topsoil be over-compacted, the seedbed shall be adequately prepared by tilling, harrowing, and packing the soil. A soil test shall be performed to determine the proper fertilizer requirement. As recommended by the NRCS, the reclamation vegetative cover shall be established by planting a seed mix composed of species tolerant of the natural conditions and sufficient to provide adequate soil protection, as follows:

- Blue grama at 0.5 PLS/acre
- Sideoats grama at 4.1 PLS/acre
- Switchgrass at 0.7 PLS/acre
- Sand dropseed at 0.05 PLS/acre
- Little bluestem at 1.1 PLS/acre

The above seeding rates are recommended for application by grass drill. Immediately after seeding, mulch shall be applied at 4,000 pounds/acre and crimped into the soil to anchor the mulch. The mulch will benefit the revegetation effort by moderating soil temperatures, improve soil moisture absorption, and improve the soil holding capacity of moisture. The financial warranty required by the Division for the operation includes costs for implementing the NRCS recommendations and costs for additional revegetation efforts is based on an assumed 40% failure rate. The financial warranty required for reclaiming Phase I, the North Haul Road, and the Southwest Haul Road has been set at \$672,083.00, which includes \$269,979.00 for just revegetation efforts.

The application demonstrated compliance with the applicable performance standards of Rules 3.1.5(1), 3.1.9, 3.1.10 and C.R.S. 34-32.5-116(4)(a), (f), (g), (k), (n), (o) and (q)(I).

4. Concerns regarding storm water run-off and sediment impacting the Bessemer Ditch and roads.

(Hobbs Family Farm; Rusler Produce, Inc.; Bond; Dionisio Produce; Rocky Mountain Farmers Union; Pueblo Rural Fire Protection District; Munoz; Altman, Keilbach, Lytle, Parlapiano & Ware, P.C.; Potestio; Rinks; Larga Vista Ranch)

Pursuant to Rule 3.1.6(1)(b), the application must demonstrate compliance with applicable federal and Colorado water quality laws and regulations, including statewide water quality standards and site-specific classifications and standards adopted by the Water Quality Control Commission.

The Applicant has affirmatively stated a Storm Water Discharge Permit and Plan COR341772 from the Water Quality Control Division of the Colorado Department of Public Health and Environment, addressing water quality issues resulting from storm water, has been approved for the operation.

The application indicated that a series of Best Management Practices (including berms, swales and detention basins), as approved in the Storm Water Management Plan, would be constructed to control erosion and prevent sediment transport to undisturbed areas.

The application demonstrated compliance with the applicable performance standards of Rules 3.1.5(3), 3.1.6(1)(b), 3.1.6(3) and C.R.S. 34-32.5-116(4)(h), (i) and (j).

5. Concerns regarding possible damage to the Bessemer Ditch and other agricultural infrastructure. (Hobbs Family Farm; Rusler Produce, Inc.; Froman; Cockrell; Sierra Club - Sangre De Cristo Group; Pisciotto Farms and Produce Marketing; Altman, Keilbach, Lytle, Parlapiano & Ware, P.C.)

The application indicated the Bessemer Ditch is located within 200 feet of the boundary of affected lands and was thereby subject to the requirements of C.R.S 32-32.5-115(4)(e) and Rule 6.4.19.

Pursuant to Rule 6.4.19, where the mining operation will adversely affect the stability of any significant, valuable and permanent man-made structure located within 200 feet of the affected land, the Applicant may either:

- (a) Provide a notarized agreement between the Applicant and the person(s) having an interest in the structure, that the Applicant is to provide compensation for any damage to the structure; or
- (b) Where such an agreement cannot be reached, the Applicant shall provide an appropriate engineering evaluation which demonstrates such structure shall not be damaged by activities occurring at the mining operation; or
- (c) Where such structure is a utility, the Applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility stating the mining and reclamation activities, as proposed, will have “no negative effect” on their utility.

Pursuant to Rule 6.4.19(a), the Applicant provided an appropriately executed compensation agreement to the owners of the Bessemer Ditch by certified Mail, return receipt requested. Response from the structure owner was not forthcoming. Therefore, the Division was authorized to accept the engineering evaluation described in Rule 6.4.19(b). The Applicant provided an engineering evaluation, prepared and certified by a Colorado licensed professional engineer, which appropriately demonstrated to the Division’s satisfaction that the physical structure of the Bessemer Ditch would not be damaged by the mining and reclamation activities.

The application also indicated that multiple irrigation laterals are within 200 feet of the boundary of affected lands, which are also subject to the requirements of C.R.S 32-32.5-115(4)(e) and Rule 6.4.19. Pursuant to Rule 6.4.19(a), the Applicant has either provided appropriately executed compensation agreements with the owners or an engineering evaluation for the various irrigation laterals.

The application demonstrated compliance with the requirements of Rule 6.4.19 and C.R.S. 34-32.5-115(4)(e).

6. Concerns for raw materials, oil, diesel, and other contaminants leaking into the Bessemer Ditch. Concerns regarding the pollution of ground water. Concerns regarding mine water leaching into a shallow aquifer.

(Rusler Produce, Inc.; Cockrell; Potestio)

As indicated previously, the Applicant has affirmatively stated a Storm Water Discharge Permit and Plan COR341772 from the Water Quality Control Division of the Colorado Department of Public Health and Environment, addressing water quality issues resulting from storm water, has been approved.

The application indicates depth to ground water ranges from 20 to 35 feet. The ground water elevation data was procured from the Division of Water Resources well database for two wells located southwest of the mining Phase 1 area. Disturbances outside of the gravel terraces will be limited to a depth of three feet and will only occur when an area requires leveling for the processing equipment. The mining operation is not expected to encounter or expose groundwater. The mining operation is not expected to encounter or expose toxic or acid-forming materials whereby local groundwater resources could be adversely impacted. In the unlikely event toxic or acid-producing materials are encountered, the Applicant has committed to cease the mining activity until the matter is fully addressed.

Diesel fuel will be stored on-site in an above ground storage tank within an adequate secondary containment structure. The spill containment structure will be comprised of a bermed area covered by vinyl sheeting. The secondary contaminant structure will have adequate capacity to contain not only the full capacity of the diesel fuel storage tank, but also a significant precipitation event as described in the SPCC guidance. The Division determined the design to be appropriately protective of surface and groundwater resources for the areas surrounding the storage tank and demonstrated compliance with the performance standards of Rule 3.1.5(11) and 3.1.6.

- Rule 3.1.5(11), no unauthorized release of pollutants to ground water shall occur from any materials mined, handled or disposed of within the permit area.
- Rule 3.1.6, disturbances to the prevailing hydrologic balance of the affected land and to the surrounding area and to the quantity or quality of water in surface and ground water systems both during and after the mining operation and during reclamation shall be minimized.

The Applicant has affirmatively stated a Spill Prevention Control and Countermeasure Plan will be posted at the mine site and at the Applicant's corporate office. The Division determined the application demonstrated compliance with the performance standards of Rule 3.1.13, regarding protocol and procedures whereby spills of toxic or hazardous substances, including spills of petroleum products be reported to the Office, as well as to any Division of the Colorado Department of Public Health and Environment, the National Response Center, the Colorado Emergency Planning Commission, local Emergency Planning Committee, or the State Oil Inspector.

7. Concerns regarding impacts to the quantity of surface water and possible damage to senior water rights.

(Rusler Produce, Inc.; Dionisio Produce)

Pursuant to Rule 3.1.6(1)(a), the application must demonstrate compliance with applicable Colorado water laws and regulations governing injury to existing water rights. Colorado water laws and

regulations governing injury to existing water rights are enforced by the Division of Water Resources of the Office of the State Engineer. The application has been reviewed by the Division of Water Resources and the Division of Water Resources has submitted their conditions for approval. The conditions for approval include that if stormwater is contained on-site, it must infiltrate into the ground or be released to the natural stream system within 72 hours, or all work must cease until a substitute water supply plan, or argumentation plan approved by water court, is obtained. The Applicant has concurred with the conditions provided by the Division of Water Resources. Therefore, the application satisfies the requirements of Rule 3.1.6(1)(a) and C.R.S. 34-32.5-116(4)(h).

8. *Concerns regarding the usage of ground water.*

(Potestio)

The operation is not authorized to use groundwater. The Applicant has stated approximately 6,000 gallons of water will be consumed per day during peak production to be used for dust suppressant, as necessary to comply with Air Pollution Control Division fugitive dust limits; this water will be purchased from Stonewall Springs LLC.

The Applicant has affirmatively stated groundwater will not be exposed. The application has been reviewed by the Division of Water Resources and the Division of Water Resources has submitted their conditions for approval. These include that the proposed operation does not anticipate exposing ground water and therefore exposure of ground water must not occur during or after the mining operation. The Applicant has concurred with the conditions provided by the Division of Water Resources.

9. *Concerns for the loss of organic soil at the site.*

(Cockrell)

The Applicant has committed to salvaging the top six inches (6") of soil to replace as topsoil during reclamation with the exception of two areas. First, the Applicant has committed to salvaging the top twelve inches (12") on the agricultural lands located approximately 1,150' north of Olsen Road, to be later utilized to reclaim that portion of the North Haul Road. Second, the Applicant has committed to salvaging four to six inches (4"-6"), whichever is available, from the remaining areas proposed for the construction of the North Haul Road and Southwest Haul Road. This amount of salvaged topsoil will minimize any loss of organic components of the soils on the affected lands.

10. *Concerns that buildings will be left to deteriorate and cause scattered litter.*

(Bond)

The Applicant does not propose to have any permanent buildings on site. All processing facilities are mobile and will be removed from the site prior to final reclamation. The one permanent feature to remain is the new bridge proposed to be constructed across the Bessemer Ditch, which will replace the existing bridge at the same location. The landowner of the parcel where the crossing is located has requested the bridge to remain as a permanent feature of the reclamation, for his personal use.

11. Concerns that there will be seepage from the Bessemer Ditch into the pit.
(Hobbs Family Farm)

The proposed mining plan does not create a traditional pit because only the top of the gavel terraces will be mined. Topographic information submitted in the application verifies the ditch is significantly lower in elevation than the mining operation. The Applicant provided cross section figures which illustrate the spatial relationship of the Bessemer Ditch to the mining operation. The mining area is at least 1,000 feet from the Bessemer Ditch and at least 50 feet higher in elevation than the Bessemer Ditch. Thus, it appears unlikely water from the ditch will seep uphill into the mining area.

12. Concerns regarding the exposure of naturally occurring listeria and anthrax in the soil.
(Hobbs Family Farm)

The Division contacted the Colorado Department of Public Health and Environment regarding the environmental risk of potentially exposing listeria and anthrax in soils. It is the Division's understanding that listeria is a food borne bacterium. Produce providers must follow appropriate and approved food handling procedures to reduce the risk of a listeriosis illness outbreak. It is also the Division's understanding that the risk for exposing anthrax is extremely low and there are no known cases that link human anthrax to soil disruption activities, such as a sand and gravel operation. There are less than 100 cases of human anthrax that occur each year in the world. The most recent reported human case in the United States was in 2011. The 2014 Zoonotic Disease in Colorado Annual Report states that there were no anthrax cases reported between 2009 and 2014.

The Applicant has affirmatively stated that in the event a toxic substance is identified, all mining activities will immediately cease and the appropriate agencies would be contacted. The Applicant has committed to managing the substance as directed by the appropriate agency.

13. Concerns that mining activity and stockpiles should remain 1,000 feet away from the Bessemer Ditch.
(Altman, Keilbach, Lytle, Parlapiano & Ware, P.C.)

The Act and Rules do not mandate Operators to have setbacks from irrigation infrastructure. Therefore, this concern is not within the purview of the Division's jurisdiction and are not a basis to deny the permit. Such issue may be addressed at the local government level. However, if a structure is within 200 feet of the affected lands, Operators must demonstrate compliance with Rule 6.4.19. The Bessemer Ditch is within 200 feet of a portion of the North Haul Road, as well as the area of the haul road which crosses the Bessemer Ditch. The engineering evaluation, discussed in the Division's response to item 5, was prepared and certified by a Colorado licensed professional engineer and demonstrates the proposed mine operation would not result in adverse impacts to the physical structure of the Bessemer Ditch.

As clarified in the application, the mining area and stockpiles are greater than 1,000 feet from the Bessemer Ditch.

14. Concerns regarding the spread of weeds.
(Bregar)

Pursuant to Rule 3.1.10(6), the Operator is required to employ weed control methods for all prohibited noxious weed species. The Act and Rules require all Operators to employ weed control methods whenever invasion of a reclaimed area by other weed species threatens the continued development of the desired vegetation. The Applicant has provided an acceptable, site-specific Weed Management Plan that will be implemented throughout the life of mine and during reclamation. The application demonstrated compliance with the performance standards of Rule 3.1.10(6) and C.R.S. 34-32.5-116(4)(f).

15. Concerns that the land will not be restored to pre-mining topography.
(Potestio)

The Act and Rules do not address restoring the affected land to the approximate original topography. Pursuant to Rule 3.1.5, all grading shall be conducted so as to create a final topography appropriate to the final land use. Furthermore, maximum slopes and slope combinations shall be compatible with the configurations of surrounding conditions and selected land use.

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.

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

16. Concerns regarding the notices being posted at the powerlines.
(Rinks)

The Act and Rules mandate extensive public notice requirements for mine applications. Pursuant to Rule 1.6.2(1)(b), the Applicant was required to post notices (signs) at the location of the proposed mine site of sufficient size and number to clearly identify the site as the location of a proposed mining operation. The Applicant posted notices along 36th Lane, 40th Lane, Oslen Road, and Highway 50. During the September 22, 2016, pre-operational inspection, the Division observed the notice near the overhead transmission lines along 36th Lane, in the vicinity of the proposed permit boundary. This notice near the overhead transmission lines along 36th Lane, as well as the three other notices, were determined to satisfy the requirements of Rule 1.6.2(1)(b) by being sufficiently sized, providing the name, address, and phone number of the Applicant, stating that Fremont Paving & Redi-Mix Inc. has applied for a mining permit with the Colorado Mined Land Reclamation Board, and provided details for anyone wishing to comment on the Application.

Furthermore, the site notices are not the sole public notices regarding the application. Pursuant to Rules 1.6.2(1)(d) and (e), the Applicant is required to publish a public notice for the application in a local

newspaper for four consecutive weeks and personally serve or provide a copy of the public notice to adjacent surface owners of record within 200 feet of the affected lands. The Applicant provided proof that the public notice requirements were followed for the application and again for the amendment to the application.

Conclusion

Therefore, on October 21, 2016, the Office determined the application satisfied the requirements of Section 34-32.5-115(4) C.R.S., and issued its recommendation to approve the 112c Construction Materials Reclamation Permit Application for the Pueblo County Aggregate Project, File No. M-2016-009, over objections.