

November 28, 2016

John Kuijenhoven
21263 Hwy 550 South
Montrose, CO 80403



COLORADO
Division of Reclamation,
Mining and Safety
Department of Natural Resources

1313 Sherman Street, Room 215
Denver, CO 80203

RE: Colona Pit, Permit # M-1994-005, Complaint Response

Mr. Kuijenhoven:

The Division of Reclamation, Mining and Safety (Division) received two letters from you dated October 27, 2016. Please note that herein all references to the Act and Rules refer to the *Colorado Land Reclamation Act for the Extraction of Construction Materials* (Act) and the *Mineral Rules and Regulations of the Mined Land Reclamation Board for the Extraction of Construction Materials* (Rules).

Your first letter expresses concerns regarding the Operator's (Oldcastle SW Group Inc. dba United Companies) right to enter your property to conduct mining or reclamation activities. Pursuant to C.R.S. 34-32.5-112 (1)(c)(IV) the Operator provided the source of legal right to enter and initiate a mining operation on your property with the amendment application (AM-1) that was approved in January 1995. There is not a statute within the Act and Rules that addresses an Operator's obligation to maintain a legal right to enter a permitted property, particularly in cases such as this where landownership has changed subsequent to permit issuance. However, in order to continue mining or to complete reclamation on your property the Operator will need a source for legal right to enter the property. This issue though, falls outside the jurisdiction of the Division. Regarding the allegation that the Operator has falsely claimed in their annual reports that their source for legal right to enter the property is still valid, the Division has determined that the Operator has provided accurate information. As you know, the permitted area consists of two properties. The north portion is owned by the Operator, the south portion by Uncompahgre Holdings, LLC. Access to the pit from Highway 550 is located at the north end of the property owned by the Operator. Therefore, the Operator can legally enter the property. You have expressed intent to enter a lease agreement with the Operator for purposes that meet state reclamation requirements. The Division will do its part to ensure that the final reclamation plan for your property will meet the requirements of the Act and Rules.

Your second letter expresses concerns regarding multiple issues with the permit and reclamation plan. Please note that the Act and Rules require that affected lands be reclaimed so that they may be put to a beneficial use. Affected lands are reclaimed and are not restored to pre-mining conditions. The beneficial use that is currently approved for this site is wildlife habitat, which is considered by the Division to be an acceptable post-mining land use which meets the requirements of the Act and Rules. It is the Division's understanding that you do not intend to allow further mining of your property by the Operator. The currently approved reclamation plan for your property includes creation of a 17.7 acre lake. Because mining has ceased at the site, the Division understands that the existing reclamation plan is not feasible and that a revised reclamation plan is necessary. The existing pit floor on your property is at or near the water table level. The operator has proposed placing two feet of overburden material over the entire pit floor, which is a standard method accepted by the Division to ensure minimization of disturbance to the hydrologic balance pursuant



to 34-32.5-116(4)(h). The source and suitability of the backfill material will need to be reviewed and approved by the Division in accordance with Rule 3.1.5(9) prior to placement.

Because the lake was not created as anticipated, there is a shortage of topsoil at the site. This is an issue that the Operator will need to address when finalizing a reclamation plan for your property. Through the revision process the Division will review the adequacy of the financial warranty amount, as well as the source and suitability of the topsoil which will need to be approved by the Division prior to placement.

You have requested that an irrigation system be incorporated into the final reclamation of the site. Rule 3.1.10 (1) requires that land be revegetated in such a way as to establish a diverse, effective, and long lasting cover that is capable of self-regeneration without continued dependence on irrigation. The Division will not require the Operator to install irrigation at the site nor approve a seed mix that would require irrigation. The Division will review the seed mix proposed by the Operator to ensure it will meet the requirements of Rule 3.1.10 (1). Please note that the seed mix currently approved for the site was recommended by NRCS.

You have also requested that reclamation of your property be completed by October 1, 2017. Reclamation includes the establishment of sustainable vegetative cover which requires at least 2 full growing seasons. Please note that Rule 3.1.3 allows up to five years to complete reclamation. The Division cannot require that reclamation be completed by October 1, 2017.

If you require additional information, or have questions or concerns, please contact me at the Division's Grand Junction Field Office.

Sincerely,



Dustin Czapla

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