

BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

DRAFT PREHEARING ORDER

IN THE MATTER OF THE APPLICATION OF FREMONT PAVING & REDI-MIX,
INC. FOR A 112 CONSTRUCTION MATERIALS RECLAMATION PERMIT,
File No. M-2016-009

The Mined Land Reclamation Board (“Board”), through prehearing officer Jim Stark (“PHO Stark”), and pursuant to Rule 2.7 of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (“Rules”), conducted a prehearing conference on November 2, 2016 in Pueblo, Colorado. The Board, having considered this order, as proposed by PHO Stark, and having considered any subsequent objections or comments from the parties, hereby enters the following Prehearing Order for the captioned proceeding:

I. BACKGROUND

On February 26, 2016, Fremont Paving & Redi-Mix, Inc. (“Applicant”) filed an application with the Division for a 112c construction materials reclamation permit, file number M-2016-009 (“Application”). During the required period of notice of the Application filing, the Division received written comments and objections to the Application. On June 10, 2016, the Applicant filed an amendment to the Application. During the required period of notice of the amendment filing, the Division received written comments, letters of support, and objections. After issuing three adequacy review letters, the Division of Reclamation, Mining and Safety (“Division”) issued its rationale and recommendation to approve the Application.

II. FORMAL PUBLIC HEARING

The Formal Public Hearing on this matter (unless noticed otherwise) will occur during the Board’s regularly scheduled meeting on November 16, 2016.

The Formal Public Hearing in this matter concerns whether the Board should grant or deny Applicant’s reclamation permit application in accordance with the Colorado Land Reclamation Act for the Extraction of Construction Materials (Article 32.5 of Title 34, C.R.S.; the “Act”) and the Rules. The Board’s resolution of this matter, including findings of facts and conclusions of law, will be based on the Board’s review of the Application, testimony presented by the parties and Division at the hearing, and exhibits the Board admits into the record at this hearing.

In this matter, the Applicant bears the burden of proving that the Application meets the requirements set forth in the Act and Rules. If the Applicant meets this

burden, any denial by the Board must be based upon one of the grounds provided in section 34-32.5-115(4), C.R.S.

III. PARTIES

The list of parties who retain party status by appearing at the prehearing conference are as follows:

Applicant: Fremont Paving & Redi-Mix
Attn: John P. Ary

Objectors: Karen R. Jones
Daniel G. Hobbs (Hobbs Family Farm)
Thomas S. Rusler (Rusler Produce, Inc.)
Thomas W. Rusler (Rusler Produce, Inc.)
Nicholas S. Rusler (Rusler Produce, Inc.)
David Cockrell
Kelly G. Bond
Joe P. Pisciotta (Pisciotta Farms & Produce Marketing)
Jose Munoz
Jason Potestio
Tina Potestio
Michael Rinks
Velma Rinks
Doug Wiley (Larga Vista Ranch)
Kim Wiley (Larga Vista Ranch)

A number of objectors forfeited party status by failing to attend the prehearing conference in accordance with Rule 2.7.3, including:

Ryan Froman
Charlotte Tournay (Sierra Club Sangre De Cristo Group)
Russ Dionisio (Dionisio Produce)
Ben Rainbolt (Rocky Mountain Farmers Union)
Bret Marascola (Pueblo Rural Fire Protection District)
Scott A. Campbell (Innovative Conservation Solutions, Inc.)
John J. Keilbach (Altman, Leilbach, Lytle, Parlapiano & Ware, P.C.)
Fred Brega
Vesta Provost
Melvin Provost
Mary Provost
Tim Provost
Tom Provost

The remaining objectors are referred to herein as "Objectors."

The Division is advisory staff to the Board in this matter, not a party. As used herein, “party” or “parties” shall mean the Applicant, Objectors, or both, as the context indicates.

IV. ISSUES

Presentations to the Board by the parties and the Division shall be limited to the following issues:

1. Hydrologic Balance. Whether the Application adequately demonstrates that any disturbances to the prevailing hydrologic balance of the proposed affected land and surrounding area, including both surface water and groundwater, will be minimized.
 - a. Surface water issues include: stormwater management and sediment, and impacts on the quantity of surface water.
 - b. Groundwater issues include: potential pollution of groundwater; mine water leaching into a local aquifer; usage of groundwater by the mining operation; and seepage from Bessemer Ditch to the mining pit.
2. Operations. Whether the Application adequately addresses possible adverse impacts related to mining operations, including possible impacts on man-made structures (*i.e.*, wells, homes, and roads) with the proposed area of affected land and within two hundred feet (200') of the proposed permit boundary.
3. Reclamation Plan. Whether the reclamation plan in the Application is sufficient and compliant with the Act and Rules, specifically including issues concerning issues related to the operation's location; protection of organic soil; management of litter on-site; weed management; and restoration of the pre-mining topography.
4. Public Notice. Whether the Applicant provided adequate public notice, in compliance with the Act and Rules, regarding the proposed operation.

V. WITNESSES AND EXHIBITS

Pursuant to Rule 2.6(2), all parties and the Division must exchange witness and exhibits at the prehearing conference. During the prehearing conference, the Applicant, some Objectors, and the Division provided witness lists, exhibit lists, and exhibits that are not in the Division's file, as follows:

Witnesses

For Fremont Paving & Redi-Mix, Inc.:

- Tony Waldron, Director, DRMS Minerals Program
- Amy Eschberger, DRMS Minerals Program
- Tim Cazier, DRMS Minerals Program
- Richard Ranson, Ranson and Kane, P.C.
- Richard Rhoades, USDA Soil Conservation District
- Rick Romano, USDA Soil Conservation District
- Beth Fortman, USDA Soil Conservation District
- Beth Campbell, Turkey Creek Conservation District
- Bill Ault, Turkey Creek Conservation District
- Herb Pearson, All-Rite Paving & Redi-Mix, Inc.
- Andy Jesik, Jesik Consulting
- Chris Sanchez, Bishop-Brogden Associates, Inc.
- Bill Schenderlein, Blue Earth Solutions
- Beth Van Vurst, Fairfield and Woods, P.C.
- Daniel Gilham, Helton & Williamson, P.C.
- Nathan Phelps, Helton & Williamson, P.C.
- Dr. Keith Roehr, State Veterinarian, Colorado Department of Agriculture
- Roberta Smith, Colorado Department of Public Health and Environment, Occupational Health Program
- Mike Ausmus, Fremont Paving & Redi-Mix, Inc.
- John Valentine, Colorado State Land Board
- Phil Courtney, Colorado State Land Board
- Mike Hill, Bessemer Irrigating Ditch Co.
- Tom Pritekel, Pritekel Brothers Farm
- Joe Pritekel, Pritekel Brothers Farm
- Dan Henrichs, Henrichs Cattle Co.
- Jana Rapetti, Fremont County Weed Control Officer
- Mark McLean, Deere & Ault Consultants, Inc.

For Objectors Hobbs Family Farm; Rusler Produce, Inc.; Kelly G. Bond; Jason Potestio; Tina Potestio; Michael Rinks; and Velma Rinks collectively represented by David M. Shohet, Esq. of Monson, Cummins & Shohet, LLC:

- Tom Rusler, Rusler Produce, Inc.
- Dan Hobbs, Hobbs Family Farm
- Bill Beamon
- Bob Beamon
- Michael Rinks
- Jason Potestio
- Doug Wiley
- Wayne Harding, CEO, Huerfano-Cucharas Irrigation Ditch

- John Stulp, Policy Advisor to the Governor on Water
- Jay Winkler, Lower Arkansas Valley Water Conservancy District
- Jack Globe, P.E., Lower Arkansas Valley Water Conservancy District
- Mike Weber, Lower Arkansas Valley Water Conservancy District
- Bill Hancock, Lower Arkansas Valley Water Conservancy District
- Peter Nichols, Lower Arkansas Valley Water Conservancy District
- Nancy Fisher
- Dalton Fisher
- David Ruybal
- Mary Tinkcom
- Greg Gallegos
- Don Brown, Colorado Commissioner of Agriculture
- Nolan Doeskin, Colorado State Climatologist, Colorado Climate Center

For the Division:

- Tony Waldron, Minerals Program Supervisor
- Wally Erickson, Senior Environmental Protection Specialist
- Elliott Russell, Environmental Protection Specialist I

Exhibits

For Fremont Paving & Redi-Mix:

- CO DRMS 112 Permit Application and Exhibits for M-2016-009 including all correspondences and documents submitted to the Division and currently in the public record
- Pueblo County Department of Planning and Development December 5, 2012 Memorandum to Pueblo County Planning Commission recommending approval of the Special Use Permit No. 2012-012 for 44th Lane Project aka Pueblo County Aggregate Project

For Objectors Hobbs Family Farm; Rusler Produce, Inc.; Kelly G. Bond; Jason Potestio; Tina Potestio; Michael Rinks; and Velma Rinks, collectively represented by David M. Shohet, Esq. of Monson, Cummins & Shohet, LLC:

- CO DRMS 112 Permit Application and Exhibits for M-2016-009 including all correspondences and documents submitted to the Division and currently in the public record
- December 5, 2012 Memorandum from Joan Armstrong to Pueblo Planning Commission regarding Pueblo County Special Use Permit No. 2012-012 and all attachments and memorandum
- KOAA News article, Consistent Rain Poses Flooding Threat in Avondale, May 29, 2015, by Lena Howland
- Conservation Plan for the Western Arkansas Valley, April 2012
- KRDO News article, Avondale Homeowner Prepares for the Next Storm, May 18, 2015, by Michelle Miguel

- Aerial Vicinity Maps
- Photographs showing flooding in the Avondale area

For the Division:

- Public Record for Division File No. M-2016-009 available on Laserfiche at <http://mining.state.co.us>

All documents and other materials admitted into evidence by the Board at the Formal Public Hearing will become part of the administrative record. Upon request, a party may recover any evidence introduced by that party.

VI. PROCEDURE

The Division, parties and members of the public shall make presentations in the following order. The time limits set out below are maximum limits; however, the Board, in its discretion, may allow additional time. The Board has the authority to limit any duplicative or irrelevant testimony. Objectors may appoint a spokesperson to present their information, or Objectors may present individually. In either event, time limitations noted below apply to the Objectors as a group.

All parties will be afforded an opportunity to conduct cross-examination of any witnesses that testifies during each presentation. Time used for cross-examination of a witness shall count against the time limit of the cross-examining party or Division. Time used to respond to questions by members of the Board shall not count against the time limit of the responding party or Division.

PHO Stark solicited and considered input from the parties and the Division at the prehearing conference regarding the time requested to make presentations at the hearing, and recommends the following procedure for approval by the Board:

A. Board Consideration and Adoption of the Prehearing Order

The Board shall consider this draft Prehearing Order for adoption. The Board will hear any objections to the proposed Order at that time, and will make any necessary amendments prior to adopting the Order.

B. Introduction – Division

The Division shall have 15 minutes in which to present an overview of the Application.

C. Presentation – Applicant

The Applicant shall have 75 minutes in which to make a presentation to the Board.

D. Presentation – Objectors

The Objectors shall have 75 minutes in which to make a presentation to the Board.

E. Presentation – Division

The Division shall have 45 minutes in which to make a presentation to the Board.

F. Rebuttal Statement – Objectors

The Objectors shall have 30 minutes to make a rebuttal statement, and shall be limited to responding to issues addressed in the presentations of the Applicant and the Division.

G. Rebuttal Statement – Division

The Division shall have 30 minutes to make a rebuttal statement, and shall be limited to responding to issues addressed in the presentations of the Applicant and the Objectors.

H. Rebuttal Statement – Applicant

The Applicant shall have 30 minutes to make a rebuttal statement, and shall be limited to responding to issues addressed in the presentations of the Division and the Objectors.

I. Closings

The Objectors shall have 5 minutes to make a closing statement.

The Division shall have 5 minutes to make a closing statement.

The Applicant shall have 5 minutes to make a closing statement.

Dated this ____ day of November 2016.

BY: _____
_____, Chairperson
Mined Land Reclamation Board

CERTIFICATE OF SERVICE

I, James R. Stark, hereby certify that on this 9th
day of November, 2016, I deposited a true copy of the foregoing
Draft Prehearing Order in the United States Mail, postage paid, addressed to the
following:

Jose Munoz
47300 Olson Road
Avondale, CO 81022

And via e-mail to the following:

James Stark
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James R. Stark