



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

1313 Sherman Street, Room 215  
Denver, CO 80203

Date: December 22, 2016

**Re: Division's Rationale for Recommendation to Approve Brannan Sand and Gravel Company, L.L.C. 112c Application with an Objection; DRMS File No. M-2016-030; Valley's Edge Resource**

### Introduction

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

On December 22, 2016, the Division of Reclamation, Mining and Safety (Division/DRMS) issued its recommendation to approve Brannan Sand and Gravel Company, L.L.C. (Brannan) 112c Application for the Valley's Edge Resource, File No. M-2016-030. This rationale document is intended to explain the process by which the Division arrived at its recommendation to approve Brannan's 112c Application and to respond to the issues raised by the objecting party. 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

Brannan Sand and Gravel Company, L.L.C. (Applicant) filed its application with the Division on August 26, 2016. The proposed Valley's Edge Resource site is 189.66 total acres with four mining cells: Cell 1A, Cell 1B, Cell 1C and Cell 1D. A total of 107.85 acres will be disturbed by the Applicant's proposed mining activity in the mining cells. The Operator intends to conduct mining of secondary resources (fill dirt, compost and topsoil) in areas outside of the primary mining cells, but within the permitted area. All mining activities will occur on lands owned by the Applicant. Active mining will be conducted in one mining cell at a time. The Operator will utilize on-site and imported inert fill to achieve appropriate grades for the proposed industrial land use.



Notice of filing the Application occurred in accordance with the requirements of the Act and Rules. The public comment period closed on October 18, 2016. During the public comment period the Division received written comments from the following individual:

Letter of Objection:

1. Anadarko Petroleum Corporation; dated October 13, 2016; received October 13, 2016.

The Division forwarded a copy of objection letter to the Applicant and scheduled the Application for a Pre-hearing Conference and a formal hearing before the Colorado Mined Land Reclamation Board (Board). The Division provided notice of the scheduled Pre-hearing Conference and Board hearing to all parties and interested persons. As a result of the timely objection received by the Division, the Application must be considered by the Board at a formal hearing.

During the review period the Division generated two (2) adequacy letters. The Applicant addressed all adequacy issues to the Division's satisfaction. Therefore, on December 22, 2016, the Division determined Brannan's 112c Application satisfied the requirements of Section 34-32.5-115(4) C.R.S. and issued its recommendation to the Board to approve Brannan's 112c Application.

### **Issues Raised by the Objecting Parties**

The issue raised by the objecting party is represented by italic bold font. The Division's response follows in standard font.

1. ***Approval of the Valley's Edge application may significantly impact the prospective development of the minerals and oil and gas interests that underlie the Property. Anadarko objects to the approval of the application for development until agreements on surface use are reached between Anadarko and the Applicant for the Property.***

Anadarko owns all of the hard rock minerals, including coal, which underlies the site. The Property is underlain with Laramie Formation coal which is approximately 8.3 feet thick and is located a depth of approximately 728 feet, for an estimated 9.3 million tons of coal. Anadarko own all of the oil and gas which underlies the site and Kerr-McGee owns oil and gas lease interests for the site.

Colorado law recognizes the rights of mineral owners and lessees, acknowledges the mineral and surface owners interests are separate and distinct, and recognizes the owners of subsurface mineral interests and their lessees have the same rights and privileges as

surface owners. Colorado law states the mineral owners have the right to reasonable access to and use of the surface to extract minerals and the mineral and surface owners are to give due regard to the rights of the other and reasonably accommodate each other's rights.

Anadarko is concerned the approval of the application by the Division, the mining activity and the reclamation of the site may impair their ability to develop their minerals and oil and gas interests. Anadarko and Kerr-McGee have been in discussion with Brannan to reach a mutually acceptable surface agreement, however no agreement has been reached to date. Anadarko requested the Division make the approval of the application conditioned upon an agreement between Anadarko and the Applicant.

The Applicant responded to the Objectors comments in their "Response to Adequacy Review" letter dated November 8, 2016. In the letter, the Applicant states they have no objection to exploration and production of oil and gas resources on the property and they intend to address Anadarko's concerns by entering into a mutually acceptable surface use agreement. The Applicant's response to the coal resource as a basis for the objection was to state the limited feasibility of recovering the coal located over 700 feet below the ground surface, due to no operational coal mines in the vicinity and the declining statewide production of coal.

The proposed post mining land use for the site is industrial/commercial. The proposed Reclamation Plan states reclamation grading will establish buildable sites for industrial development at the approximate pre-mining elevation by backfilling the excavation with on-site and imported inert fill materials. The application demonstrates compliance with the applicable Act and Rules. Therefore, the Division recommends approval of the application by the Board.

### **Division's Recommendation**

Therefore, on December 22, 2016, the Division determined the application satisfied the requirements of Section 34-32.5-115(4) C.R.S., and issued its recommendation to approve the Construction Material 112 application for the Valley's Edge Resource site, DRMS File No. M-2016-030.