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**JUL 13 2007**

**ENVIRONMENT INC.**

BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

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IN THE MATTER OF THE REQUEST FOR A DECLARATORY ORDER BY THE  
ALBERT AND MARY JANE FREI IRREVOCABLE TRUST, NO FILE NUMBER

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THIS MATTER came before the Mined Land Reclamation Board ("Board") on June 13, 2007, in Denver, Colorado for a hearing to consider the request of the Albert and Mary Jane Frei Irrevocable Trust ("Petitioner") for a declaratory order exempting the Petitioner's proposed activity from the requirement of obtaining a reclamation permit. There is no file number in this matter. Ben Frei and Steve O'Brian appeared on behalf of the Petitioner. Carl Mount appeared on behalf of the Division of Reclamation, Mining and Safety ("Division").

The Board, having considered the parties' presentations and having been otherwise fully informed of the facts in this matter, hereby enters the following findings of fact, conclusions of law and order:

1. The Petitioner's 53-acre property is located in Section 35, Township 3 South, Range 72 West, 6th Prime Meridian, Gilpin County, Colorado.
2. The Board has jurisdiction over this matter pursuant to Sections 34-32.5-104 and 107 of the Colorado Land Reclamation Act for the Extraction of Construction Materials, Sections 34-32.5-101 *et seq.*, C.R.S. (2006) ("Act").
3. The Petitioner seeks a declaratory order pursuant to Construction Materials Rule 2.5 exempting the proposed activity from the requirement of obtaining a reclamation permit.

The Board has the authority to issue declaratory orders pursuant to its authority under

Section 24-4-105(4) of the Administrative Procedures Act, Sections 24-4-101 *et seq.* C.R.S. (2006).

4. The Petitioner asserts that because the proposed activity does not involve mining, it should be exempt from the requirement of obtaining a reclamation permit. The evidence presented included a memorandum from Gilpin County dated June 12, 2007 that describes the proposed operation as “fill activity only .... No mining shall be permitted.” The Gilpin County memo describes the terms and conditions of a Special Use Permit issued to the Petitioner, including provisions for a mandatory performance bond that guarantees funds for reclamation using the Division’s reclamation bond formula.
5. Because the evidence shows that the Petitioner’s proposed project does not involve mining activities, it is appropriate for the Board to issue a declaratory order exempting the proposed activities from the requirement of obtaining a reclamation permit. However, the declaratory order should be conditioned upon Division review and approval of Gilpin County engineering, operating and reclamation plans for the project.

#### **ORDER**

Based on the foregoing findings of fact and conclusions of law, the Board hereby approves the Petitioner’s request for a declaratory order exempting the Petitioner’s proposed activities from the requirement of obtaining a reclamation permit, provided the Gilpin County engineering, operating and reclamation plans first meet the approval of Division staff.

DATED this 11<sup>TH</sup> day of JULY, 2007.

FOR THE COLORADO MINED LAND RECLAMATION BOARD



Michael T. Nelligan, Chair, Mined Land  
Reclamation Board

CERTIFICATE OF SERVICE

I, Dorothy M. Kirby, hereby certify that on this 12<sup>th</sup>  
day of July, 2007, I deposited a true copy of the  
foregoing Findings Of Fact, Conclusions Of Law, And Order in the United States Mail,  
certified mail, return receipt requested, addressed to the following:

Ben Frei  
Albert Frei & Sons  
P.O. Box 700  
Henderson, CO 80640

Stevan L. O'Brian  
President  
Environment, Inc.  
7985 Vance Drive, Suite 205A  
Arvada, CO 80003

And by inter-office mail to:

Carl Mount, Division of Reclamation, Mining and Safety  
Elizabeth Shelton, Division of Reclamation, Mining and Safety