

January 17, 2017

Colorado Department of Natural Resources
Colorado Mined Land Reclamation Board
1313 Sherman Street, Room 215
Denver, CO 80203

Attn: Camille Major, Board Secretary

RE: Petition for Declaratory Order
AGPRO Project #1342-01

Name and Address of Petitioner:

Cargill Cattle Feeders, LLC
Joel Lemons, General Manager
12998 CR 42
Yuma, CO 80759
(970) 848-5331
joellemons@cargill.com

On behalf of Cargill Cattle Feeders, LLC (Cargill), we wish to petition the Board for a Declaratory Order to clarify that certain agricultural operations in Yuma County (property located in the SW Quarter of Section 23, Township 3 North, Range 47 West. Generally, 8.36 miles southeast of Eckley, Colorado) are not mining subject to the requirements of the Construction Materials Act and associated reclamation permit requirements.

This letter serves to request a declaratory order from the Colorado Mined Land Reclamation Board to allow Cargill to remove soils from rangeland property for use in repair and maintenance on its feed yard and other agricultural land. Both the borrow site and receiving site are owned by Cargill Cattle Feeders, LLC, with the operation briefly described as follows:

1. The borrow site will not exceed 10-acres in size. 19,200 tons of material is expected to be hauled each year for a duration of 20 years. Excavation depth will range up to approximately 25', and will not expose ground water.
2. The destination for borrow will generally be to a receiving site, a feedlot, also owned by the Applicant. The feed lot is located approximately 3 miles south of the borrow site. Transportation will be via personal farm equipment that will not exceed 20 total trip ends per week.
3. There will be no sales of material to outside buyers. Material will be used exclusively by the Applicant.
4. The Applicant restores vegetative cover and rangeland conditions to borrow areas as an integral component of its agricultural operations.

The Petitioner does not currently have a reclamation permit, but earlier in 2016 inquired to the Division of Reclamation, Mining and Safety about its proposed borrow operation. In response to that inquiry, the Division, in a letter sent by Wally Erickson on July 24, 2016, stated that, "The proposed operation appears to satisfy the conditions of the agricultural exemption with the sole exception of off-site transport using county roads." Having no other basis for determining its status under the reclamation statutes at the time, Cargill applied for a 110(c) reclamation permit (assigned File No. M-2016-040).

Given Cargill's experience in the intervening time, it has become evident that the fact that the proposed borrow on Cargill's property is integral to its agricultural operation has been lost in the technicalities of a permit application intended for commercial mining. With this declaratory order request, we seek to return to the premises of Cargill's initial inquiry. Namely, the operation proposed in what is now compiled as File No. M-2016-040 does not concern a mining operation regulated under the reclamation statutes.

The Applicant's grounds for seeking a Declaratory Order to this effect are as follows:

1. By definition, a mining operation produces material for use "in the production of nonmetallic construction products" (Rule 1.2.1). There is no commercial sale in this case, no value-added product. Land application and borrow of soil on an agricultural operation is not conventionally considered mining and does not involve any commercial aspect of mining as described in the Construction Materials Rules.
2. Cargill is using borrow material on its own land within the same agricultural operation. The use of county roads reflects the size of agricultural operations in the plains area of the state, it does not change the nature of on-site, agricultural use of borrow material.
3. The Construction Materials Rules provide no basis for distinguishing between an "exempt" agricultural operation and a "nonexempt" operation on the basis of the use of county roads. Many agricultural operations span between, across, and along section line roads, which roads exist primarily using prescriptive rights that overlay the fee interest in land held by agricultural operators.
4. No statutory purpose is served by requiring the Applicant to seek a reclamation permit. Where commercial mining may leave affected land devoid of beneficial post-mining use, the borrow area under M-2016-040 will be used by the Applicant or successive agricultural interests continuously – before, during and after borrow material is moved from one area of agricultural operations to another. This land is a beneficial resource to the agricultural operator at all times.
5. The requirements of a reclamation permit are inefficient from the standpoint of agricultural use and substantially impair the beneficial use of the Applicant's land. It is evident in the treatment of Cargill proposal as M-2016-040 that the Division will preempt day-to-day decisions regarding vegetative treatment, grading and drainage, and allocation of other resources (e.g., topsoil) until affected land is restored to a condition satisfactory to the Division. The Applicant is highly regulated in its own agricultural operations, including water quality, air emissions, and other environmental controls. Managing a

split of regulatory authorities is unnecessary and unlikely to benefit the land, the Applicant or any agency.

Thank you for your consideration of this request. Please let me know if I can provide additional information and to attend a hearing when scheduled.

Sincerely,

A handwritten signature in blue ink, appearing to read "Deanne Frederickson", with a stylized flourish at the end.

Deanne Frederickson, RLA
Senior Planner

Cargill Cattle Feeders, LLC

YUMA, CO

Extraction Site

Delivery Site

CR 42

CR N

