

CERTAIN OBJECTORS' PETITION TO RECONSIDER

IN THE MATTER OF FREMONT PAVING & REDI-MIX INC.'S PUEBLO COUNTY
AGGREGATE PROJECT APPLICATION (File No. M-2016-009)

Objectors, Kelly G. Bond, David Cockrell, Hobbs Family Farm, Larga Vista Ranch, Pisciotta Farms & Produce Marketing, Jason and Tina Potestio, Michael and Velma Rinks, and Rusler Produce, Inc., file this Petition to Reconsider pursuant to Rule 2.9 of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials. As grounds for this Petition, the Objectors state as follows:

I. Introduction

The Applicant is seeking a 112c permit to mine gravel at 44th Lane in Pueblo County, a location that is directly uphill and as close as 500 and 700 feet from the Bessemer Ditch, a privately owned farming and ranching irrigation ditch that empties into the Huerfano River, a tributary of the Arkansas River. On December 15, 2016, the Colorado Mined Land Reclamation Board ("Board") held a hearing regarding the 112c permit for Fremont Paving and Redi-Mix, Inc. (the "Applicant") under File No. M-2016-009. The Applicant, Staff for the Division of Reclamation Mining and Safety, as well as numerous opposers, including a number of the Objectors filing this Petition, provided testimony to the Board regarding the Applicant's requested permit. The Board voted to approve File No. M-2016-009.

Objectors file this Petition requesting that the Board reconsider its approval of File No. M-2016-009 because Staff and the Applicant provided the Board with misleading and incorrect information regarding stormwater permitting associated with the Applicant's mining operation. Contrary to what both Staff and the Applicant testified to at the hearing, the Colorado Department of Public Health and Environment (CDPHE) has not issued a stormwater permit to the Applicant for this mine site. Due to this clear misrepresentation to the Board, the Board should reverse its decision and deny the Applicant's permit.

II. Argument

Colorado Revised Statute and the Board's Rules mandate the minimization of all disturbances to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and groundwater systems, both during and after the mining operation and during

reclamation. C.R.S. § 34-32.5-116(4)(h); Rule 3.1.6(1)(a). During the December 15, 2016, hearing before the Board, the Objectors provided the Board with extensive testimony regarding their concerns with impacts to the prevailing hydrologic balance of the Applicant's mine site and the surrounding area and to the quality and quantity of water in surface and groundwater systems. Primarily, the Objectors raised concerns at the hearing that the Applicant will discharge its stormwater run-off from the mine site into the Bessemer Ditch. Both the Applicant and Staff testified that the Applicant has minimized the concerns raised by the Objectors as the Applicant has obtained a discharge permit from CDPHE. The Board's written order dated January 9, 2017, states definitively in paragraph 19 that "The Applicant has obtained Storm Water Discharge Permit COR341772 from the Water Quality Control Division of the Colorado Department of Public Health and Environment."

Objectors recognize the fact that the Applicant filed an application with the CDPHE requesting a stormwater permit for the mine site on August 19, 2016. The Application is attached as Exhibit 1. It is important to note that the Application contains many misleading and factually incorrect statements. For example, under "Immediate Receiving Water(s)"¹ for stormwater under "Section E. Receiving Waters," the Applicant stated "This is remotely located in the desert of eastern Pueblo County." Additionally, under "Ultimate Receiving Water(s)" for stormwater under "Section E. Receiving Waters," the Applicant stated "No surface pathways exist" from the site to the Arkansas River.

The Applicant, however, testified numerous times during the hearing that all stormwater would be discharged directly into the Bessemer Ditch.² This is contrary

¹ CDPHE defines "Receiving water" for the purposes of the CDPHE COR340000 application as including, "lakes, ponds, rivers and streams (perennial, intermittent or ephemeral), drainages, irrigation ditches, wetlands, etc...". The Bessemer Ditch would clearly be a "Receiving Water" under this definition.

² Each of the quotes below is a transcription from the audio recording of the December 15, 2016, Formal Public Hearing of File No. M-2016-009 of the Mined Land Reclamation Board.

"The site is located on a topographic high, so it's higher than the surrounding land so there's no significant run-on to the site, everything is run-off from the site. Everything is, well, as you can see, the Bessemer Ditch is anywhere from a couple hundred feet to maybe a thousand feet from the permit boundary here, and actually is on the west, north, and east side of the permit boundary where the mining activities take place. A topographic high on the south side of the permit boundary actually directs run-off again to the east and west and to the Bessemer Ditch. So, this, historically, is the stormwater runoff from this particular location and that is not proposed to be changed by the operation." – Testimony of Bill Schenderlein, Blue Earth Solutions, LLC, testimony beginning at 2:17.

"So associated with stormwater runoff you always have the potential for erosion, sedimentation, sediment transport, and that's always a big part of these operations is to control and minimize that, as part of a stormwater management plan that's regulated by the Colorado Department of Public Health and Environment." – Testimony of Bill Schenderlein, Blue Earth Solutions, LLC, beginning at 2:17.

to what it stated in the Applicant's permit application to CDPHE. Moreover, the Bessemer Ditch empties into the Huerfano River, a tributary of the Arkansas River that meets the Arkansas just south of the town of Boone. This means that any stormwater the Applicant discharges into the Bessemer would indeed find its way into the Arkansas River. The Objectors intend to notify CDPHE of the Applicant's discrepancies in its stormwater permit application and matters it testified to before this Board along with other clear factual misrepresentations.

More importantly, both Staff and the Applicant testified to at the hearing that CDPHE has issued a stormwater permit to the Applicant for this mine site. Based on this testimony, this Board's order is based on its specific finding that the Applicant has minimized any impact to the hydrological balance due to the Applicant obtaining a discharge permit from CDPHE. Personal conversations with Lori Mulsoff, contact at CDPHE for the Applicant's stormwater permit application, has confirmed, however, that the Applicant has not been issued a stormwater permit. Attached is the email correspondence dated January 13, 2017, confirming that CDPHE has not issued a permit to the Applicant.

Accordingly, both Staff and the Applicant provided false testimony to the Board. Moreover, the Applicant has not minimized the disturbances to the prevailing hydrologic balance of its mine site and of the surrounding area and to the quality

"Again, I guess I'd just like to emphasize that in terms of the surface water flow, there's, it's not proposed to change the direction, the quantity of surface water flow, that, comes off the site, during these stormwater events." – Testimony of Bill Schenderlein, Blue Earth Solutions, LLC, beginning at 2:17.

"First I want to reiterate some of the physical attributes of the proposed mining operation, the mine, the mined materials will only be materials that are located on topographic high areas. That's significant because there will not be interception of water that's running off of the property other than essentially the precipitation that falls within the mined areas themselves." – Testimony of Chris Sanchez, Bishop-Brogdon Associates, Inc., beginning at 2:23.

"The proximity of the Bessemer Ditch obviously is a focus of concern from some of the Objectors as we understand it but as, as I think the staff and Dr. Bellantoni have explained there's very little potential for impact to anything related to the Bessemer Ditch. The only potential impact that I can see to the Bessemer Ditch would be related to erosion or sediment deliveries down to the ditch system itself but as we explained there will be significant practices and plans in place that will limit any potential for the delivery of any sediment or material into the ditch." – Testimony of Chris Sanchez, Bishop-Brogdon Associates, Inc., beginning at 2:23.

"Again, this is the same slide that Mr. Schenderlein had presented, again, just reiterating the fact the only potential for interception of water would be precipitation run-off that would occur specifically on the tops of these hills." – Testimony of Chris Sanchez, Bishop-Brogdon Associates, Inc., beginning at 2:23.

and quantity of water in surface and groundwater systems, both during and after the mining operation as required by C.R.S. § 34-32.5-116(4)(h); Rule 3.1.6(1)(a).

III. Conclusion

The Applicant does not have a stormwater permit issued by CDPHE. Both the Applicant and Staff misrepresented this fact to the Board at the Formal Public Hearing, a fact that was not known by the Objectors at that time. This testimony was ostensibly fabricated because in the absence of a stormwater permit, the Applicant would have clearly failed to meet its burden of proof to show that “the prevailing hydrologic balance of the affected land and surrounding areas, and to the quality and quantity of water in surface water and groundwater systems, will be minimized” (C.R.S. § 34-32.5-116(4)(h); Rule 3.1.6(1)(a).

Furthermore, in the absence of a stormwater permit, as is stated to the contrary in Paragraph 32 of the Board’s Written Order, the Applicant has not sufficiently proven “in consideration of the Application, DWR’s evaluation of the proposed operation, information from the Applicant, and other information presented at the hearing, the proposed reclamation plan will minimize disturbances to the prevailing hydrologic balance of the affected land and surrounding areas, and to the quality and quantity of water in surface water and groundwater systems” and is not in compliance with section 34-32.5-116(4)(h), C.R.S. and Rule 3.1.6(1)(a). The Applicant has not met its “burden of demonstrating that the application meets the minimum requirements of the Act, Rules, and Regulations” as stated to the contrary in paragraphs 29 and 35 of the Board’s Written Order, and has failed to comply with the requirements of section 34-32.5-115(4) and section 24-4-105(7) C.R.S.

For these reasons, the Objectors urge the Board to reconsider and overturn its December 15, 2016, approval of the Applicant’s 112c permit application.

Kelly G. Bond

David Cockrell

Daniel Hobbs, Hobbs Family Farm

Joe P. Pisciotta
Pisciotta Farms & Produce Marketing

Jason and Tina Potestio

Doug and Kim Wiley
Larga Vista Ranch

Michael and Velma Rinks

Tom and Lynne Rusler
Rusler Produce, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have duly served the Petition to Reconsider to the parties herein this ____ day of January 2017, addressed as follows:

James Stark
jim.stark@state.co.us

John Paul Ary
jp@arycorp.com

Angela Bellantoni
eai@bresnan.net

Kelly G. Bond
jbond1820@msn.com

David Cockrell
davidcockrell@comcast.net

Hobbs Family Farm
c/o Daniel Hobbs
danghobbs@gmail.com

Karen R. Jones
c/o Thomas Rusler
tommy@ruslerproduce.com

Larga Vista Ranch
c/o Doug and Kim Wiley
info@largavistaranch.com

Jose Munoz
47300 Olson Road
Avondale, CO 81022

Pisciotta Farms & Produce Marketing
c/o Joe P. Pisciotta
pisciottafarms@msn.com

Jason and Tina Potestio
whinniefancy@yahoo.com

Michael and Velma Rinks
hbranch@earthlink.net

Rusler Produce, Inc.
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tommy@ruslerproduce.com

Elliott Russell
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wally.erickson@state.co.us

John J. Roberts
john.roberts@coag.gov

Scott Schultz
scott.schultz@coag.gov

and quantity of water in surface and groundwater systems, both during and after the mining operation as required by C.R.S. § 34-32.5-116(4)(h); Rule 3.1.6(1)(a).

III. Conclusion

The Applicant does not have a stormwater permit issued by CDPHE. Both the Applicant and Staff misrepresented this fact to the Board at the Formal Public Hearing, a fact that was not known by the Objectors at that time. This testimony was ostensibly fabricated because in the absence of a stormwater permit, the Applicant would have clearly failed to meet its burden of proof to show that "the prevailing hydrologic balance of the affected land and surrounding areas, and to the quality and quantity of water in surface water and groundwater systems, will be minimized" (C.R.S. § 34-32.5-116(4)(h); Rule 3.1.6(1)(a).

Furthermore, in the absence of a stormwater permit, as is stated to the contrary in Paragraph 32 of the Board's Written Order, the Applicant has not sufficiently proven "in consideration of the Application, DWR's evaluation of the proposed operation, information from the Applicant, and other information presented at the hearing, the proposed reclamation plan will minimize disturbances to the prevailing hydrologic balance of the affected land and surrounding areas, and to the quality and quantity of water in surface water and groundwater systems" and is not in compliance with section 34-32.5-116(4)(h), C.R.S. and Rule 3.1.6(1)(a). The Applicant has not met its "burden of demonstrating that the application meets the minimum requirements of the Act, Rules, and Regulations" as stated to the contrary in paragraphs 29 and 35 of the Board's Written Order, and has failed to comply with the requirements of section 34-32.5-115(4) and section 24-4-105(7) C.R.S.

For these reasons, the Objectors urge the Board to reconsider and overturn its December 15, 2016, approval of the Applicant's 112c permit application.



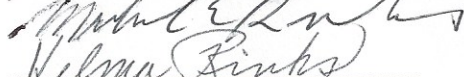
Kelly G. Bond



Daniel Hobbs, Hobbs Family Farm



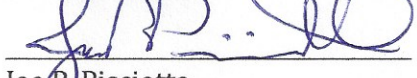
Jason and Tina Potestio



Michael and Velma Rinks

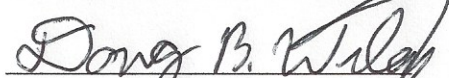


David Cockrell



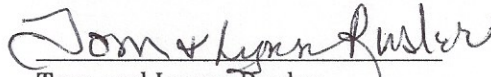
Joe P. Pisciotta

Pisciotta Farms & Produce Marketing



Doug and Kim Wiley

Larga Vista Ranch



Tom and Lynne Rusler

Rusler Produce, Inc.

STATE OF COLORADO

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
 Denver, Colorado 80246-1530
 Phone (303) 692-2000
 TDD Line (303) 691-7700
 Located in Glendale, Colorado
 http://www.cdph.state.co.us

Received

AUG 19 2016

Water Quality Control



Colorado Department
 of Public Health
 and Environment

For Agency Use Only

Permit Number Assigned

COR34- _____

 Date Received ____/____/____
 Month Day Year

APPLICATION for STORMWATER DISCHARGE ASSOCIATED WITH SAND & GRAVEL MINING AND PROCESSING (and other Nonmetallic Minerals, except fuel)

Please print or type. Original signatures are required.

PHOTO COPIES, FAXED COPIES OR PDF COPIES WILL NOT BE ACCEPTED.

This application must be considered complete by the Water Quality Control Division (the Division) before it will initiate permit processing. The Division will notify the applicant if additional information is needed to complete the application. If more space is required to answer any question, please attach additional sheets to the application form. Applications must be mailed or delivered to:

Colorado Department of Public Health and Environment
 Water Quality Control Division
 4300 Cherry Creek Drive South
 WQCD-P-B2
 Denver, Colorado 80246-1530

PERMIT INFORMATION
 Applicant is: ☐ Property Owner ☐ Contractor/Operator
IS THIS THE CORRECT APPLICATION FOR YOUR FACILITY?

This application is for use by all industrial stormwater-only dischargers engaged in sand and gravel production operations (and other nonmetallic minerals, except fuels). This application is for both active and inactive mining operations, and concrete and asphalt batch plants at the facility. It is suggested that all applicants contact the Division of Reclamation, Mining and Safety at the Colorado Department of Natural Resources, for information on their rules and regulations for Sand and Gravel mining and processing.

Are any of the following discharged from the sand and gravel production operation subject to this application?

- YES ☐ NO ☐ Product wash waters?
 YES ☐ NO ☐ Maintenance/Equipment wash waters?
 YES ☐ NO ☐ Transport waters (e.g. slurries)?
 YES ☐ NO ☐ Scrubber waters (Crushers or classifiers)?
 YES ☐ NO ☐ Mine dewatering (groundwater and/or runoff from the mine)?

If the answer is **YES** to any of these questions, **DO NOT** complete this application. Instead, complete the application for Discharges Associated with Sand and Gravel Mining and Processing (**COG500000**).

CONTACT INFORMATION**A. PERMITTEE (If more than one please add additional pages)****ORGANIZATION FORMAL NAME:** Fremont Paving and Redi-Mix Inc.

- 1) **PERMITTEE** the person **authorized to sign and certify** the permit application. This person receives all permit correspondences and is **legally responsible** for compliance with the permit.

Responsible Position (Title): PresidentCurrently Held By (Person): John P. AryTelephone No: 719-275-8951 email address jp@arycorp.comMailing Address: P.O. Box 841City: Canon City State: CO Zip: 81215This form must be signed by the Permittee to be considered complete.**Per Regulation 61 In all cases**, it shall be signed as follows:

- In the case of corporations, by a responsible corporate officer. For the purposes of this section, the responsible corporate officer is responsible for the overall operation of the facility from which the discharge described in the application originates.
- In the case of a partnership, by a general partner.
- In the case of a sole proprietorship, by the proprietor.
- In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official

APPLICATION for DISCHARGES ASSOCIATED WITH SAND & GRAVEL MINING AND PROCESSING

- 2) **DMR COGNIZANT OFFICIAL** (i.e. authorized agent) the person or position authorized to **sign and certify** reports required by permits including Discharge Monitoring Reports [DMR's], Annual Reports, Compliance Schedule submittals, and other information requested by the Division. The Division will transmit pre-printed reports (ie. DMR's) to this person. If more than one, please add additional pages.

☐ Same As 1) Permittee

Responsible Position (Title): Consultant
 Currently Held By (Person): Angela Bellantoni
 Telephone No: 719-275-8951
 email address angela@envalternatives.com
 Organization: Environmental Alternatives Inc.
 Mailing Address: 1107 Main Street
 City: Canon City State: CO Zip: 81212

Per Regulation 61 : All reports required by permits, and other information requested by the Division shall be signed by the permittee or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (i) The authorization is made in writing by the permittee
- (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a **named individual** or any individual occupying a **named position**)
- (iii) Written notification submitted to the Division

- 3) **SITE CONTACT** local contact for questions relating to the facility & discharge authorized by this permit for the facility.

☐ Same As 1) Permittee

Responsible Position (Title): CFO
 Currently Held By (Person): Steve Chisholm
 Telephone No: 719-275-1280
 email address steve.chisholm@arycorp.com
 Organization: Fremont Paving and Redi-Mix Inc.
 Mailing Address: P.O. Box 841
 City: Canon City State: CO Zip: 81215

- 4) **BILLING CONTACT** if different than the permittee

Responsible Position (Title): _____
 Currently Held By (Person): _____
 Telephone No: _____
 email address _____
 Organization: _____
 Mailing Address: _____
 City: _____ State: _____ Zip: _____

APPLICATION for DISCHARGES ASSOCIATED WITH SAND & GRAVEL MINING AND PROCESSING

5) OTHER CONTACT TYPES (check below) Add pages if necessary:

Responsible Position (Title): _____

Currently Held By (Person): _____

Telephone No: _____

email address _____

Organization: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

- | | | |
|--|--|---|
| <input type="checkbox"/> Pretreatment Coordinator | <input type="checkbox"/> Inspection Facility Contact | <input type="checkbox"/> Stormwater MS4 Responsible Person |
| <input type="checkbox"/> Environmental Contact | <input type="checkbox"/> Consultant | <input type="checkbox"/> Stormwater Authorized Representative |
| <input type="checkbox"/> Biosolids Responsible Party | <input type="checkbox"/> Compliance Contact | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Property Owner | | |

B. PERMITTED FACILITY INFORMATION

Name of Facility Pueblo County Aggregate Project

Location of Facility _____

Street Address (or cross streets): Olson Road and 44th Lane

City (if unincorporated, so indicate): unincorporated Zip Code: _____

County: Pueblo

Latitude and Longitude (approximate center of facility to nearest 15 seconds, using one of following formats and NAD 83 coord. system):

Latitude: 38/10/58.97 Longitude: 104/25/24.27 (e.g., 39°42'11", 104°55'57")
degrees /minutes/ seconds degrees/ minutes/ seconds

OR

Latitude: _____ Longitude: _____ (e.g., 39.703°, 104.933')
degrees (to 3 decimal places) degrees (to 3 decimal places)

C. STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE(S) FOR THIS FACILITY

(See Appendix A - include up to 4 in order of importance).

a. 212321 b. _____ c. _____ d. _____

D. DESCRIBE THE INDUSTRIAL ACTIVITIES WHICH TAKE PLACE ON THIS SITE

Sand and gravel mining to produce construction material.

E. RECEIVING WATERS

(If discharge is to a storm sewer system, ditch, or manmade conveyance, include the name of the ultimate receiving waters.)

Immediate Receiving Water(s): This is remotely located in the desert of eastern Pueblo CountyUltimate Receiving Water(s): Arkansas River is more than 5 miles north of the site. No surface flow pathways exist.**F. OTHER ENVIRONMENTAL PERMITS**

Does this facility currently have any environmental permits, or is it subject to regulation, under either of the following programs?

Permit Name	Yes	No	Application Date	Permit No.
a. Colorado Division of Reclamation, Mining and Safety—permit anniversary:	<input type="radio"/>	<input type="radio"/>	February 19, 2016	M-2016-009
b. Clean Water Act (CWA) Section 404 (Army Corps of Engineers)	<input type="radio"/>	<input checked="" type="radio"/>		
c. Colorado Discharge Permit System	<input type="radio"/>	<input type="radio"/>		
d. Colorado State Air Pollution Emission	<input checked="" type="radio"/>	<input type="radio"/>	May 26, 2016	16PB0707F
e. Other	<input type="radio"/>			

G. MAP (Provide as an attachment to the application)**Map:** Attach a map that indicates the site location and that CLEARLY shows the boundaries of the area subject to the application. Maps must be **no larger** than 11 x 17 inches.Map attached? ☒ YES

H. REQUIRED SIGNATURES (Both parts i. and ii. must be signed)

Signature of Applicant: The applicant must be either the owner and/or operator of the construction site. Refer to Part B of the instructions for additional information. The application must be signed by the applicant to be considered complete. In all cases, it shall be signed as follows: (Regulation 61.4 (1ei)

- In the case of corporations, by the responsible corporate officer is responsible for the overall operation of the facility from which the discharge described in the form originates
- In the case of a partnership, by a general partner.
- In the case of a sole proprietorship, by the proprietor.
- In the case of a municipal, state, or other public facility, by either a principal executive officer, ranking elected official, (a principal executive officer has responsibility for the overall operation of the facility from which the discharge originates).

STOP! A Stormwater Management Plan must be completed prior to signing the following certifications!

This item applies to all facilities. A Stormwater Management Plan (SWMP) shall be prepared prior to applying for coverage under the general permit, and the following certification signed. See the SWMP requirements in Appendix B.

i. Stormwater Management Plan Certification

"I certify under penalty of law that a complete Stormwater Management Plan, as described in Appendix B of this application, has been prepared for my activity. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the Stormwater Management Plan is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for falsely certifying the completion of said SWMP, including the possibility of fine and imprisonment for knowing violations."

Signature of Legally Responsible Person or Authorized Agent

John P. Ary

President

Name (printed)

Title

August 15, 2016

Date Signed

ii. Signature of Permit Legal Contact

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

Signature of Legally Responsible Person (submission must include original ink signature)

John P. Ary

President

Name (printed)

Title

August 15, 2016

Date Signed

NOTE: Please also submit a RENEWAL APPLICATION SUPPLEMENT with this application.

(<https://www.colorado.gov/pacific/sites/default/files/blank%20supplement%20form.pdf>)

The application supplement requires additional information regarding the industrial activities conducted at, and discharges from, the facility. The division will use this information in developing conditions for permit certifications issued under the renewal Sand and Gravel permit.

DO NOT INCLUDE A COPY OF THE STORMWATER MANAGEMENT PLAN

DO NOT INCLUDE PAYMENT AN INVOICE WILL BE SENT AFTER THE CERTIFICATION IS ISSUED.

RENEWAL APPLICATION SUPPLEMENT for COG500000 and COR340000

This form and Table 1 identify information that the permittee must verify and provide, respectively, for the facility. The permittee must complete, sign, and submit the form and Table 1 to the Water Quality Control Division (the Division) to ensure the Division can issue a renewal permit certification in a timely manner. All renewing permittees must comply with all permit requirements, terms and conditions to be eligible for renewal.

PERMITTEES MUST SUBMIT THIS FORM TO THE DIVISION TO HAVE A COMPLETE APPLICATION.

Colorado Department of Public Health and Environment
Water Quality Control Division
4300 Cherry Creek Drive South WQCD-P-B2
Denver, Colorado 80246-1530

INSTRUCTIONS: Division records show the permittee and facility information provided below for the facility. Please review this information and make changes, as applicable, **by crossing out any incorrect information and writing in current information.** Instructions for information requested in Table 1 follow the table.

Note: Permittees must provide facility and outfall latitude and longitudes in NAD83 format
PERMITTEE AND FACILITY

Permit Number _____

Organization: Fremont Paving and Redi-Mix Inc.

Responsible Position (Title): President

Currently Held By (Person): John P. Ary

Telephone No: 719-275-1280 email address: jp@arycorp.com

Mailing Address: P.O. Box 841
Canon City, CO 81215

Name of Facility: Pueblo County Aggregate Project

Facility Location: Olson Road and 44th Lane in eastern Pueblo County

Facility Latitude and Longitude: Latitude: 38/10/58.97 Longitude: 104/25/24.27

Facility SIC code: 212321

REQUIRED CERTIFICATION SIGNATURE [Reg 61.4(1)(h)]

"I certify under penalty of law that this document was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature of Responsible position

John P. Ary

Name (printed)

Date Signed


President

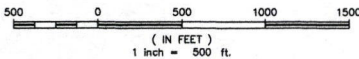
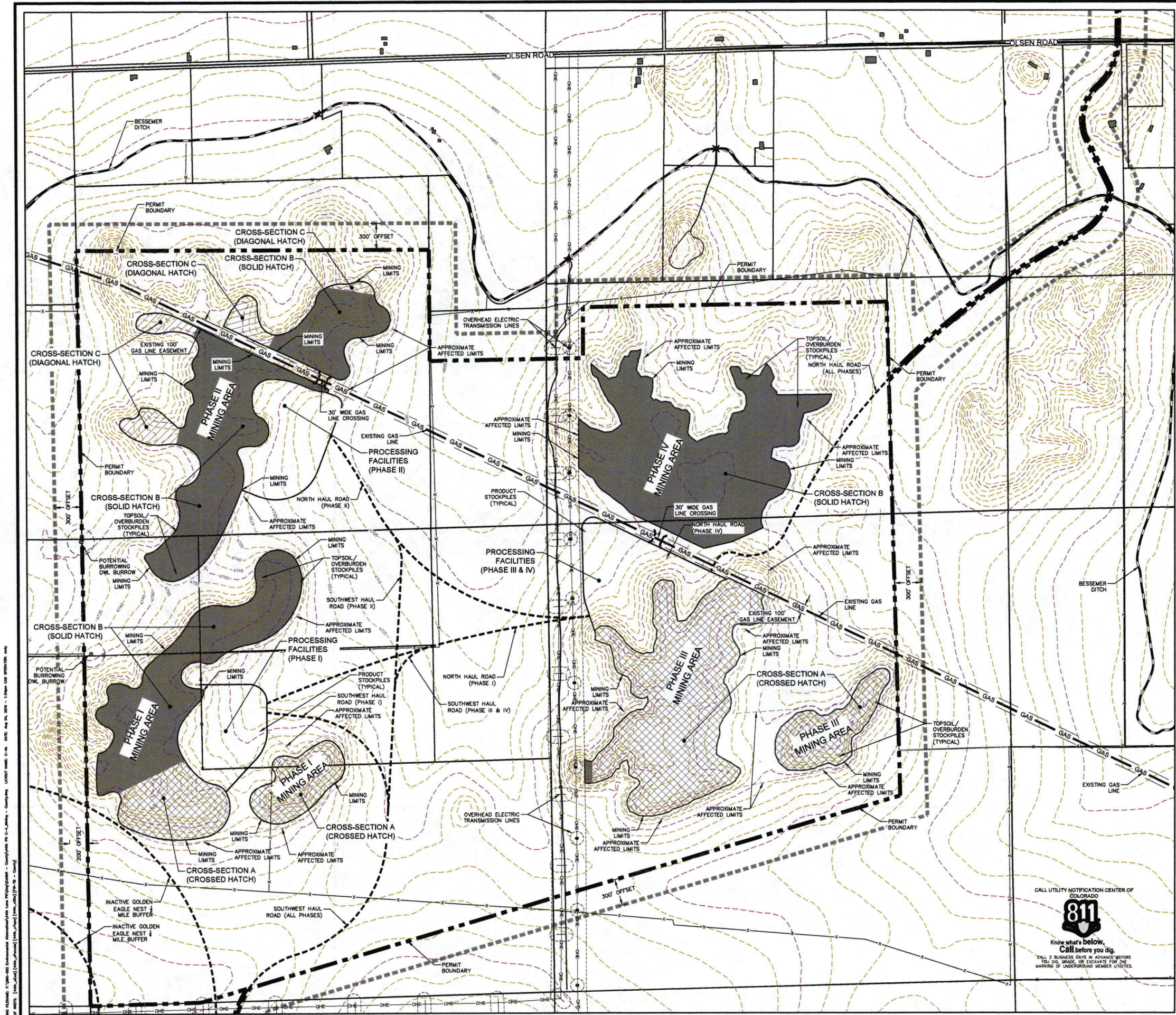
Title

Note: This form must be signed by the Permittee to be considered complete. Regulation 61 requires that, in all cases, it be signed as follows:

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- b) In the case of a partnership, by a general partner.
- c) In the case of a sole proprietorship, by the proprietor.
- d) In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official

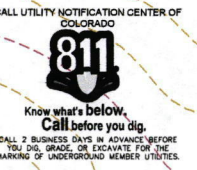
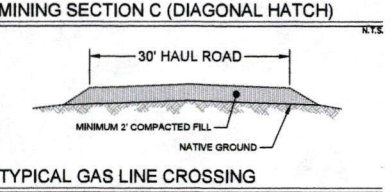
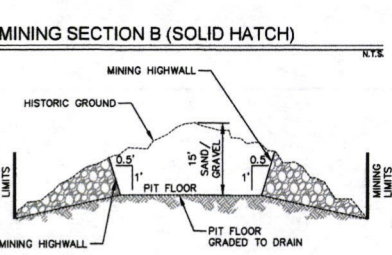
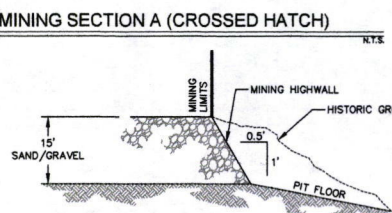
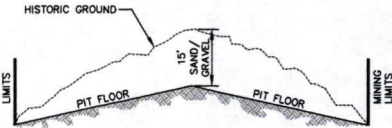
Permit Number _____ Table 1: RENEWAL APPLICATION SUPPLEMENT for COG500000 and COR340000

Outfall and Activity information					Discharge information				Receiving water information	
Outfall Number	Latitude Longitude ¹	Activity Description(s) ²	SIC Code ³	Process water or stormwater ⁴	Discharge type ⁵	Continuous or instantaneous flow measure ⁶	Flow rate in MGD ⁸	Chemicals ⁹	Distance from pit to surface water ¹⁰	Immediate ¹¹
						Specific flow method ⁷				Ultimate ¹²
001	NA	Gravel mining and sizing		SW	NA				5 miles plus	
										Arkansas River
002										
003										
004										
005										
006										
007										
008										



- LEGEND:**
- PERMIT BOUNDARY
 - PROPOSED HAUL ROAD
 - PROPOSED MINING LIMITS
 - EXISTING PARCELS
 - EXISTING DITCH
 - EXISTING GAS LINE
 - EXISTING OVERHEAD ELECTRIC
 - EXISTING EASEMENT
 - EXISTING 5 FOOT CONTOUR
 - EXISTING 25 FOOT CONTOUR

- NOTES:**
1. THE PROPOSED PERMIT BOUNDARY ENCOMPASSES APPROXIMATELY 1,494 ACRES WITH ONLY ABOUT 307 ACRES CURRENTLY PLANNED FOR MINING.
 2. PORTABLE PROCESSING FACILITIES TO INCLUDE MATERIAL SCREENS AND CRUSHERS, SCALE HOUSE/EMPLOYEE TRAILER, STORAGE/MAINTENANCE AREA, AND RAW MATERIAL AND PRODUCT STOCKPILES. THE PROCESSING FACILITY MAY BE MOVED CLOSER TO MINING ACTIVITIES FOR EACH PHASE OF MINING.
 3. SETBACKS FROM THE MINE PIT TOP OF SLOPE TO THE PROPOSED PERMIT BOUNDARY OR MAN-MADE STRUCTURES NOT OWNED BY THE APPLICANT WILL BE 25 FEET OR GREATER.
 4. THE MINIMUM MINING SETBACK TO ANY GAS LINE SHALL BE 50 FEET TO EITHER SIDE.
 5. THE MINIMUM MINING SETBACK TO ANY OVERHEAD POWER LINE POLE SHALL BE 100 FEET LONGITUDINALLY ALONG THE EASEMENT. MINING SLOPES OF 3H:1V OR FLATTER SHALL BE MAINTAINED FROM THE EDGE OF THE SETBACK. LOCATION OF POWER POLES ARE APPROXIMATE IN NATURE AND SHALL BE VERIFIED PRIOR TO DISTURBANCE.
 6. THE MINIMUM MINING SETBACK TO WESTERN MOST POWER LINE SHALL BE 225 FEET. THE MINIMUM SETBACK TO EASTERN MOST POWER LINE SHALL BE 100 FEET. MINING SLOPES OF 3H:1V OR FLATTER SHALL BE MAINTAINED FROM THE EDGE OF THE EASEMENT. LOCATION OF POWER POLES AND LINES ARE APPROXIMATE AND SHALL BE VERIFIED PRIOR TO DISTURBANCE.
 7. ITEMS OWNED BY THE APPLICANT OR PROPERTY OWNER LOCATED WITHIN THE PERMIT AREA SUCH AS UN-IMPROVED ROADS, FENCES, AND OTHER STRUCTURES MAY BE REMOVED OR RELOCATED DURING MINING AND RECLAMATION. FENCES TO BE REPLACED AND REPAIRED AS REQUIRED FOR MINING OPERATIONS.
 8. GROUNDWATER IS NOT EXPECTED TO BE ENCOUNTERED DURING MINING.
 9. BEST MANAGEMENT PRACTICES WILL BE USED TO LIMIT DISCHARGE OF STORMWATER AND SEDIMENT ONTO ADJACENT PROPERTIES AND WATERWAYS.



Revisions: No. By: Date:

blueearth solutions

PUEBLO COUNTY AGGREGATE PROJECT

PUEBLO COUNTY SPECIAL USE PERMIT

MINING & PROCESSING PLAN MAP

Date: AUGUST 2017
Job No: 590-002
Drawn: C. Snowdon
Design: B. SCHENDERLEIN
Checked: B. SCHENDERLEIN
Scale: 1" = 500'
Sheet: 2b of 4

Re: Concerns Related to Stormwater Permit COR341772

Mulsoff - CDPHE, Lori <lori.mulsoff@state.co.us>

Fri 1/13/2017 10:19 AM

To: DENA SUE POTESIO <denasue@vincentviktoria.com>;

Great!

And I can confirm that it is not issued.

Have a good weekend!

Lori

Lori Mulsoff

Environmental Protection Specialist II

Assessment-Based Permitting Unit

P 303.692.3549 | F 303.782.0390

4300 Cherry Creek Drive South, Denver, CO 80246

lori.mulsoff@state.co.us | www.colorado.gov/cdphe/wqcd

On Thu, Jan 12, 2017 at 4:11 PM, DENA SUE POTESIO <denasue@vincentviktoria.com> wrote:

...thanks, Lori! That sounds like a plan. I'll reach out again around that time.

For now, to be sure I haven't misunderstood, can you confirm for me that this permit is pending, and indeed has not (yet) been issued by CDPHE?

Many thanks again!

Dena.

Sent from my iPad

Philanthropy = Love

inspiring the world to give wholeheartedly

On Jan 12, 2017, at 12:45 PM, Mulsoff - CDPHE, Lori <lori.mulsoff@state.co.us> wrote:

Hi Dena!

Unfortunately, I have nothing new to tell you yet. I will know more by month's end. Perhaps we can have a conversation at that point.

Take care, and I appreciate your continued interest!

Sincerely,

Lori

Lori Mulsoff
Environmental Protection Specialist II
Assessment-Based Permitting Unit
P [303.692.3549](tel:303.692.3549) | F [303.782.0390](tel:303.782.0390)
[4300 Cherry Creek Drive South, Denver, CO 80246](https://www.colorado.gov/cdphe/wqcd)
lori.mulsoff@state.co.us <<mailto:heather.wilcox@state.co.us>> | www.colorado.gov/cdphe/wqcd <<http://www.colorado.gov/cdphe/wqcd>>

On Wed, Jan 11, 2017 at 1:14 PM, DENA SUE POTESIO <denasue@vincentviktor.com> <<mailto:denasue@vincentviktor.com>> wrote:

Lori, hello,

I'm wondering if you have some time today or later this week for a phone conversation regarding Stormwater Permit COR341772? I appreciate your time.

Please also find attached a letter from Dr. Joseph F. Koonce, professor emeritus at Case Western Reserve University. Mr. Koonce offers analysis on potential stormwater drainage from the Applicant's proposed gravel mining operation into the Bessemer Ditch, a privately-owned irrigation ditch serving nearly 900 shareholders in Pueblo County.

I'd also like to visit with you about two proposed haul routes for the proposed operation, to be constructed by the Applicant. One such proposed route will directly cross the Bessemer Ditch, with stormwater from a new bridge to be constructed to directly empty into the Ditch. A schematic is attached. Is the Applicant also required to apply for a stormwater permit(s) for these two proposed haul routes (and new bridge)?

Thank you. Look forward to talking with you again shortly.

Best,

DenaSue Potesio

DenaSue Potesio

[719-240-2233](tel:719.240.2233) <[tel:\(719\)%20240-2233](tel:719.240.2233)> (cell)
denasue@vincentviktor.com <<mailto:denasue@vincentviktor.com>>

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From: DENA SUE POTESTIO

Sent: Tuesday, January 3, 2017 7:22 PM

To: lori.mulsoff@state.co.us <<mailto:lori.mulsoff@state.co.us>>

Cc: danghobbs@gmail.com <<mailto:danghobbs@gmail.com>>; tommy@ruslerproduce.com <<mailto:tommy@ruslerproduce.com>>;

info@largavistaranch.com <<mailto:info@largavistaranch.com>>;

pisciottafarms@msn.com <<mailto:pisciottafarms@msn.com>>; whinniefancy@yahoo.com <<mailto:whinniefancy@yahoo.com>>;

hbranch@earthlink.net <<mailto:hbranch@earthlink.net>>; tom@ruslerproduce.com <<mailto:tom@ruslerproduce.com>>; Viki

Potestio; David Shohet; Annette Rice; wkern63@gmail.com <<mailto:wkern63@gmail.com>>; bao3220@yahoo.com <[mailto:](mailto:bao3220@yahoo.com)

bao3220@yahoo.com>

Subject: Re: Concerns Related to Stormwater Permit COR341772

Lori, hello,

I must add another important fact - my apologies for the disjointed email.

The Applicant does not have a right or permission from The Bessemer Irrigating Ditch Company to use the Bessemer Ditch as a conveyance for its gravel pit stormwater away from its mining operation.

Thanks too for considering this as you consider the permit application.

Sincerely,

DenaSue Potestio

DenaSue Potestio

[719-240-2233](tel:719202402233) <[tel:\(719\)%20240-2233](tel:719202402233)> (cell)

denasue@vincentviktoria.com <<mailto:denasue@vincentviktoria.com>>

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From: DENA SUE POTESTIO

Sent: Tuesday, January 3, 2017 6:42 PM

To: lori.mulsoff@state.co.us <<mailto:lori.mulsoff@state.co.us>>

Cc: danghobbs@gmail.com <<mailto:danghobbs@gmail.com>>; tommy@ruslerproduce.com <<mailto:tommy@ruslerproduce.com>>; info@largavistaranch.com <<mailto:info@largavistaranch.com>>; pisciottafarms@msn.com <<mailto:pisciottafarms@msn.com>>; whinniefancy@yahoo.com <<mailto:whinniefancy@yahoo.com>>; hlranch@earthlink.net <<mailto:hlranch@earthlink.net>>; tom@ruslerproduce.com <<mailto:tom@ruslerproduce.com>>; Viki Potestio; David Shohet; Annette Rice; wkern63@gmail.com <<mailto:wkern63@gmail.com>>; bao3220@yahoo.com <<mailto:bao3220@yahoo.com>>

Subject: Concerns Related to Stormwater Permit COR341772

Lori, hello, and Happy New Year to you,

We spoke for a few minutes on Friday about a pending stormwater permit application to CDPHE from Fremont Paving and Redi-Mix, Inc. (COR341772).

I wanted to take a few minutes to place my thoughts into writing as the Department considers this permit application and you visit with other members of the CDPHE team about it.

I'm very concerned by the Applicant's inclusion of what seems to me to be erroneous data, and what appears to me to be material omissions, regarding stormwater drainage from the Applicant's proposed gravel mining operation into the Bessemer Ditch, an irrigation ditch located in Pueblo County (<http://www.chieftain.com/news/3880224-120/ditch-pueblo-bessemer-chieftain>). I detail my concerns below. As we discussed, however, I'm not trained in these matters and therefore am grateful for your diligence in assessing Fremont's application for completeness, truthfulness, and accuracy.

1. I'm concerned that the Applicant failed to list the Bessemer Ditch as an "Immediate Receiving Water(s)" for stormwater under "Section E. Receiving Waters" of the application, instead erroneously reporting "This is remotely located in the desert of eastern Pueblo County."

2. I'm concerned that the Applicant erroneously reported under "Ultimate Receiving Water(s) for stormwater under "Section E. Receiving Waters" of the application that "No surface pathways exist" from the site to the Arkansas River, when in fact the

Bessemer Ditch empties into the Huerfano River, a tributary of the Arkansas River that meets the Arkansas just south of the town of Boone. In this section, I'm also concerned that the Applicant failed to properly classify the Bessemer Ditch as a surface flow pathway into the Arkansas River via the Huerfano River.

3. I'm concerned that the Applicant failed to note the "Discharge type" in "Table 1" of the application, such as "detained stormwater" or "stormwater sheet flow," noting instead, "NA."

4. I'm concerned that the Applicant failed to correctly notify CDPHE of the actual "Distance from the pit to surface water" in "Table 1" of the application, erroneously citing "5 plus miles," referring to the Arkansas River, when in fact the closest surface water body is the Bessemer Ditch. I've attached a photo from the Applicant's testimony to the CO Mined Land Reclamation Board on December 15, 2016, where they noted the Bessemer Ditch is as close as 500 and 700 feet from the perimeter of the proposed mining operation.

5. I noted that CDPHE defines "Receiving water" for the purposes of the CDPHE COR340000 application as including: "lakes, ponds, rivers and streams (perennial, intermittent or ephemeral), drainages, irrigation ditches, wetlands, etc." Furthermore, the application asks applicants to "Identify the immediate and ultimate receiving water of the discharges from all outfalls for the facility (immediate receiving waters are those that the facility discharges directly to; the ultimate receiving waters are those directly downgradient of the immediate waters)" (<https://www.colorado.gov/pacific/sites/default/files/blank%20supplement%20form.pdf>).

6. I also noted CDPHE defines surface water bodies (including dry water courses) for purpose of the CDPHE application as: "lakes, streams, springs, wetlands, detention ponds, roadside or irrigation ditches, etc." The definition continues, "These do not necessarily need to be within the facility, but may be adjacent to it or impacted by stormwater runoff. Also include any existing storm sewers" (https://www.colorado.gov/pacific/sites/default/files/WQ%20SAND%20AND%20GRAVEL%20APPENDIX%20B_0.pdf).

7. Finally, as CDPHE considers this stormwater application, I also respectfully ask that the Department consider food safety concerns. Stormwater flowing from the potential mining operation into the Bessemer Ditch will commingle with irrigation water and directly impact our food crops--both organically and non-organically grown.

Lori, I'm carbon copying some members of our community team on this note to keep them in the loop. You might also hear from them. Most of these individuals are also official parties opposing the Applicant's mining permit application before the CO Mined Land Reclamation Board.

I/We look forward to hearing from you. I'm also very interested in reviewing the Applicant's SWMP which I wasn't able to find in CDPHE's online data repository. I'm not sure if this is a public document?

With sincere thanks,

DenaSue Potestio

Photo taken by DS Potestio at 11:43 a.m. on 12/15/16, from the Applicant's testimony to the CO Mined Land Reclamation Board:

[cid:07119002-596e-4439-8a0e-9e900bf84c47]

DenaSue Potestio

[719-240-2233](tel:(719)20240-2233) <tel:(719)20240-2233> (cell)
denasue@vincentviktoria.com <<mailto:denasue@vincentviktoria.com>>

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Comments on Pueblo County Aggregate Project
January 9, 2017

Ms. Wendi Kern, Chair
Pueblo County Aggregate Project Opposition Committee
39555 Fields Road
Avondale, CO 81022

Dear Ms. Kern,

Annette Rice has requested my assistance in obtaining information and analysis of potential storm water drainage from a proposed gravel mining operation into the Bessemer Ditch, an irrigation ditch located in Pueblo County. She noted that application materials specify that there are no immediate or ultimate receiving waters for storm water discharge and that the application reports no storm water discharge permits from the U.S. Army Corps of Engineering (under Section 404 of the Clean Water Act) nor from the Colorado Discharge Permit System.

Figure 1 shows the boundary of the Pueblo County Aggregate Project (red polygon) as proposed in the map accompanying the application for discharges associated with sand and gravel mining and processing (Appendix 1). The project area overlaps two sub watersheds of the Arkansas River (HUC 110200021203, Sixmile Creek, and HUC 110200050301, Boone Creek-Arkansas River) with the Bessemer Ditch transecting both watersheds and channeling runoff to the Huerfano River. Figures 2 and 3 show that the project area is upslope of the Bessemer Ditch. Storm water runoff will enter the Bessemer Ditch both to the west and north-west via runoff into the Sixmile Creek watershed and to the north into the Boone-Creek-Arkansas River watershed. Furthermore, an intermittent creek (Reach Code: 11020005013496) drains the middle of the project area into Bessemer Ditch, creating a direct flow path of storm water runoff from the proposed processing facilities and overburden storage areas into the Bessemer Ditch.

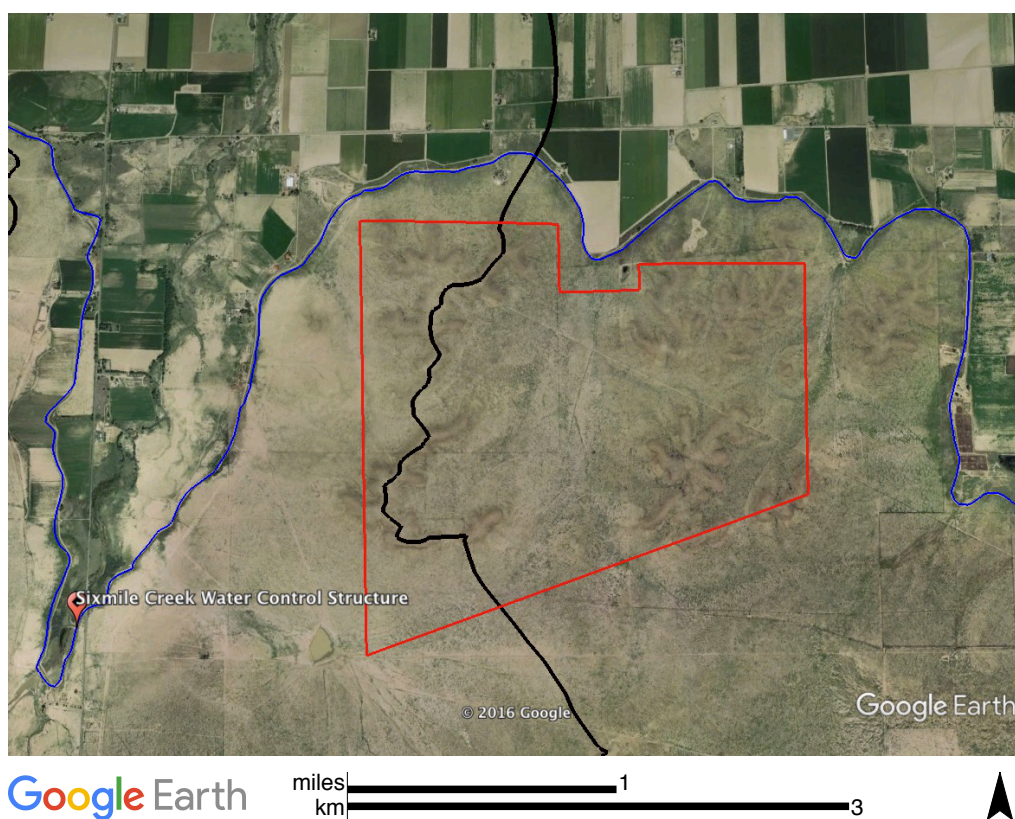


Figure 1. Google Earth view of the proposed Pueblo County Aggregate Project boundary (red polygon). Black line is the eastern edge of the Sixmile Creek watershed and the blue line is the location of the Bessemer Ditch. Location of the water diversion control structure between Bessemer Ditch and Sixmile Creek is marked.

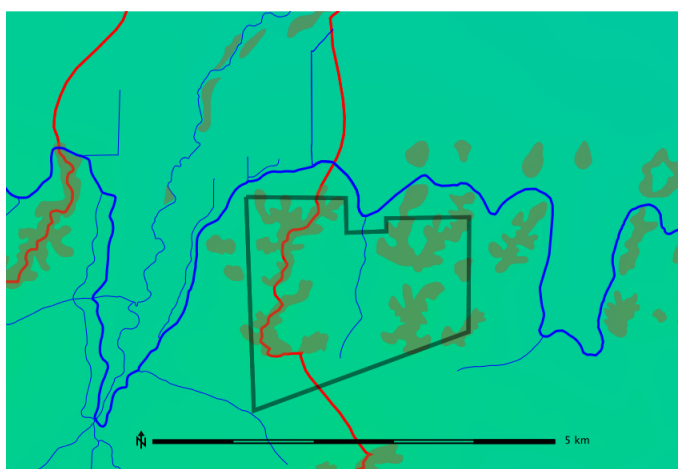


Figure 2. GIS derived map of the proposed Pueblo County Aggregate Project boundary (green line) showing a portion of the Sixmile Creek watershed (red line), location of Bessemer Ditch (thick blue line), and other tributaries (thin blue lines),

and locations of CaE soil type (Cascajo very gravelly sandy loam, 5 to 25% slopes) in light orange polygons.

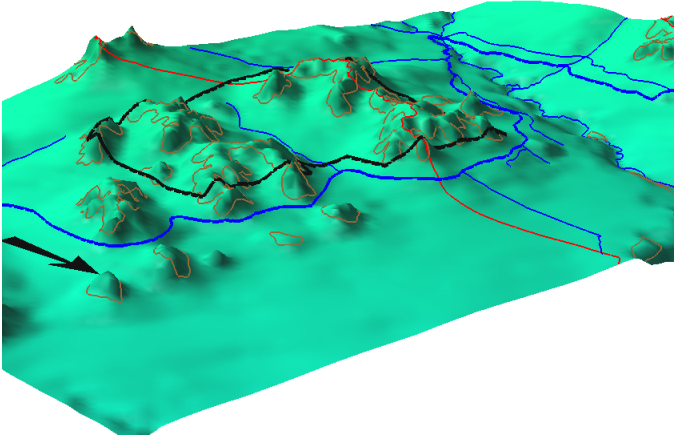


Figure 3. 3-D rendering of Figure 2. Arrow points north in the downslope direction.

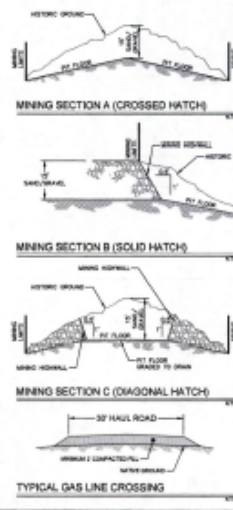
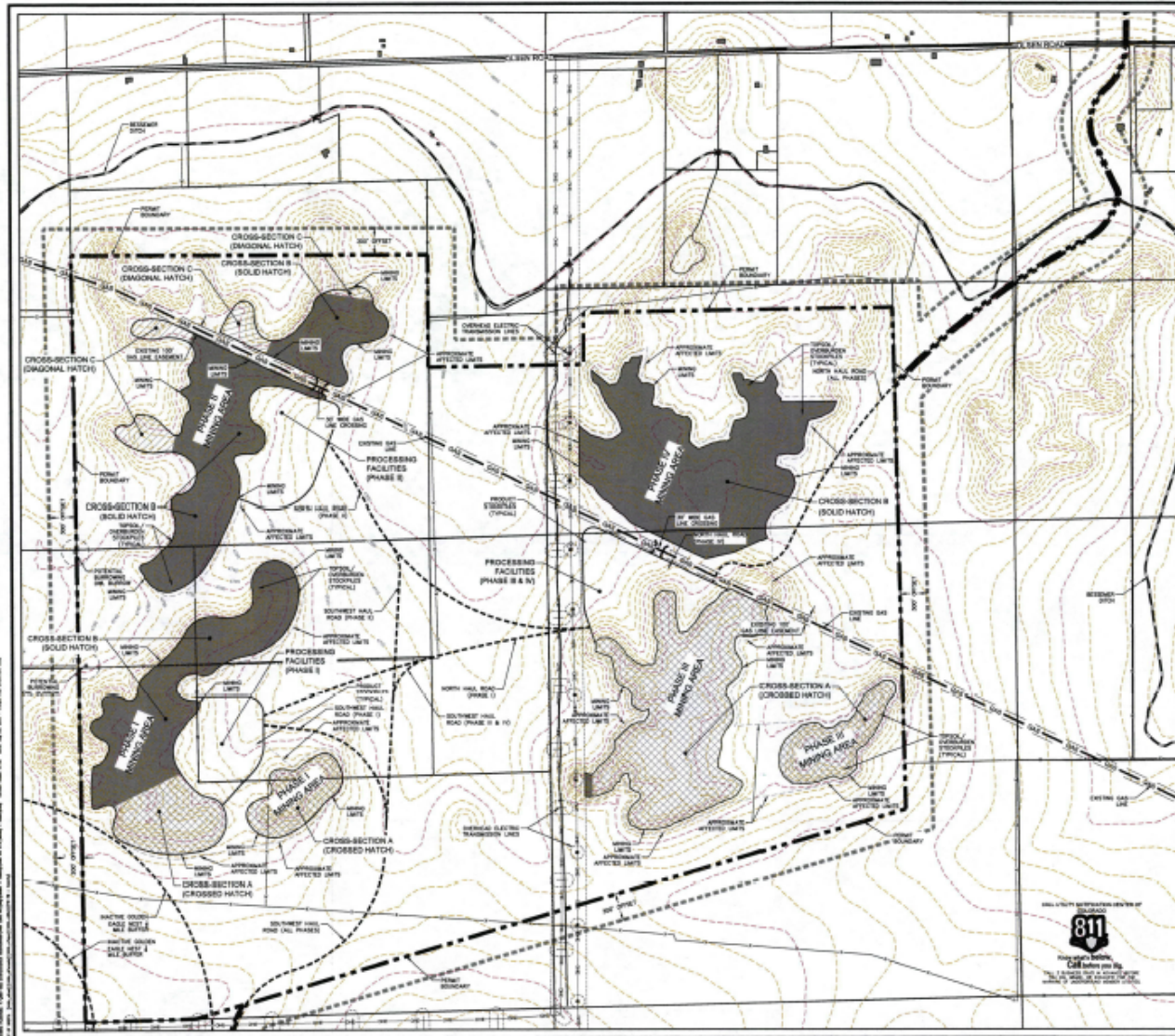
Given that the Bessemer Ditch is an immediate receiving water body for storm water discharge from the project site, I was surprised that the application permit did not include information on storm water quality controls. The mining operations, processing facility, and overburden storage will create elevated risk of erosion and sedimentation in the receiving waters, especially when exposed to intense rainfall events. One such event occurred in August 2013. Excess flows from intense thunderstorms forced diversion of flow from the Bessemer Ditch into Sixmile Creek (location of diversion structure is indicated in Figure 1) to prevent flooding and damage to the ditch. By August 23, 2013, significant damage occurred through bank erosion, flood damage to property, and damage to downstream bridges. Increasing sediment load in the Bessemer Ditch will lead to decreased flow volume and increased risk of ditch flooding. Without proper on-site storm water management, the project could pose a substantial risk to properties along Sixmile Creek and properties adjacent to the Bessemer Ditch.

Please contact me if you need additional analyses.

Respectfully submitted

Joseph F. Koonce
Professor Emeritus
Case Western Reserve University

Appendix 1. Map of Pueblo County Aggregate Project Layout



PUEBLO COUNTY SPECIAL USE PERMIT

MINING & PROCESSING PLAN MAP

blueearth SOLUTIONS

811

2b 4

Appendix II.

Data sources used in this analysis.

Parcel information: <http://maps.pueblo.org/>

Soil maps: <https://websoilsurvey.nrcs.usda.gov/app/>

Watershed maps: <https://nhd.usgs.gov/index.html>

Digital Elevation Map data: <https://nationalmap.gov/elevation.html>