

STATE OF COLORADO
MINED LAND RECLAMATION BOARD

RESPONSE TO PETITION TO RECONSIDER

IN RE: FREMONT PAVING & REDI-MIX, INC'S PUEBLO COUNTY AGGREGATE PROJECT APPLICATION
File No. M-2016-009

Fremont Paving & Redi-Mix, Inc, by and through its legal counsel of record, responds to Petition filed by Certain Objectors that the Board's approval of Permit M-2016-209 be reversed on the grounds Applicant made misrepresentations to the Board regarding the issuance of a discharge permit by CDPHE, as follows:


1. Applicant's representation as to the discharge permit in question is set forth in Exhibit M to its application. As stated therein Applicant represented it had "submitted" its' application for a discharge permit on June 1, 2016. At the time it filed its application for a discharge permit its application was assigned Permit number COR341772.
2. Objectors claim CDPHE should not issue a discharge permit certification to Applicant. That claim and the representations made in support thereof are not within the jurisdiction of MLRB to hear or rule upon, and as such there is no issue raised by Objectors that is within the jurisdiction of the Board to act on. The Board has no authority to issue, reject or revoke discharge permits.
3. Objectors claim, apparently, issuance of a discharge permit for storm water is an essential element of proof as to minimizing hydrological impact. The issue of hydrological impact was addressed by Applicant witnesses Bill Schenderlein and Chris Sanchez. The Board's Findings of Fact summarizes the testimony of the two expert witnesses at Paragraphs 8 & 9 of the Findings. The Division also stated that based on its review of the permit and responses to the adequacy review letters, there was minimal hydrological impact on the proposed mining site (Paragraph 18).
3. In practice, discharge permits are issued at such time as Applicant prepares to commence mining operations. In the current instance, and because Pueblo County amended its rules and regulations concerning sand and gravel operations to require a letter of completeness of application for 112 permit as a prerequisite to its consideration of Applicant's Special Use Permit, the process and procedure is different than usual, and to some, confusing. Applicant's request of Pueblo County includes alternative haul routes from the proposed mining operation. Depending on which of the two routes (or both routes) is approved, Applicant's storm water plan and discharge permit will necessarily contain different requirements and conditions. Until the SUP is issued by Pueblo County, Applicant cannot provide its storm water plan and a discharge permit. A discharge permit must issue in advance of commencement of mining operations as required by law, rule and regulation.

4. Applicant met its burden of proof by demonstrating with competent evidence its application met the requirements of the Act, Rules and Regulations. The Board found Applicant met its burden of proof, and specifically met the burden of proof as to minimizing hydrological impact of the affected land and surrounding areas.

For the reasons stated herein, as well as based on the credible evidence provided at hearing on this matter, Applicant requests Objectors Petition be denied.

Respectfully submitted this 10th day of February, 2017

RANSON & KANE, P.C.

A handwritten signature in black ink, appearing to read "R. P. Ranson", written over a horizontal line.

Richard P. Ranson, #2481,
Attorney for Applicant
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(719) 649-5740

CERTIFICATE OF SERVICE

I certify a true copy of Applicant's Response to Objectors Petition was served on the parties listed below by email (except as noted) as listed below this 10th day of February, 2017.

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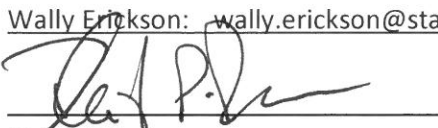
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Richard Ranson

Date January 30, 2017

RE: DRMS 112 application database file June 10, 2016 Amendment application for M-2016-009 PCAP

Exhibit M as submitted during Division review.



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2016-06-10_PERMIT FILE -
M2016009

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6.4.13 Exhibit M Other Permits and Licenses

Name			
Permit/License	Contact	Address	Status
Special Review Use Permit	Joan Armstrong	Pueblo County	Application will be submitted to Pueblo County for a Special Review Use Permit upon receipt of the completeness letter from the Division.
Fugitive Dust Permit and Plan		CDPHE APCD-S5-B1 4300 Cherry Creek Drive South Denver, Colorado 80222-1530	Submitted June 1, 2016
Storm Water Discharge Permit and Plan		CDPHE WQCD-PE-B2 4300 Cherry Creek Drive South Denver, Colorado 80222-1530	Submitted June 1, 2016
Ditch Crossing Permit for North Haul Road	Mike Hill	Bessemer Irrigating Ditch Company 503 N. Main Street, Suite 216 Pueblo, CO 81003	Presented project to Board March 10, 2016
Access Permit	Valerie Sword	CDOT Region 8 P.O. Box 536 Pueblo, CO 81002	Application submitted. Traffic study scheduled.

6.4.13 Exhibit M

Other Permits and Licenses

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