



COLORADO

Division of Water Resources

Department of Natural Resources

Office of the State Engineer

1313 Sherman St, Room 821

Denver, CO 80203

August 23, 2017

Ms. Lindsay M. Griffith, P.E.

Brown and Caldwell

1697 Cole Blvd., Suite 200

Golden, CO 80401

Sent via email: lgriffith@brwncald.com

**RE: Holcim Quarry Substitute Water Supply Plan
Division 2 Water Court Case No. 16CW3102
DRMS Permit No. M-1977-344
Secs. 8, 9, 16, 17, 21 Twp. 19S, Rng. 68W, Sixth P.M.
Water Division 2, Water District 12
SWSP ID 5022, WDID 1207805**

Approval Period: January 1, 2017 through December 31, 2017
Contact Phone Number for Ms. Griffith: 303-239-5400

Dear Ms. Griffith:

We have reviewed your letter dated November 30, 2016 in which you request approval of a substitute water supply plan ("SWSP") pursuant to § 37-92-308(5), C.R.S., on behalf of Holcim (US) Inc. ("Holcim" or "Applicant"). The Applicant has filed an application for approval of a plan for augmentation with the Division 2 Water Court in Case No. 16CW3102, to replace out-of-priority diversions resulting from evaporation of exposed groundwater and use of exposed water from dust suppression at the quarry pits; therefore, this SWSP has been evaluated and approved pursuant to § 37-92-308(4), C.R.S. Notice was sent to all parties who have subscribed to the SWSP notification list for Water Division 2, on November 30, 2016. Comments were received during the statutory 30-day comment period from the City of Florence and have been considered by this office. The statutory \$300 filing fee has been received under receipt no. 3678136A.

Pursuant to § 37-92-308(4)(b), C.R.S., "If an applicant requests a renewal of a plan that would extend the plan past three years from the initial date of approval, the applicant shall demonstrate to the state engineer that the delay in obtaining a water court decree is justifiable and that not being able to continue operating under a substitute water supply plan until a decree is entered will cause undue hardship to the applicant". Accordingly, the Applicant included such demonstration in the form of a letter dated August 10, 2017. **This is the fourth year of approval of this plan; therefore, the above-referenced demonstration to the State Engineer required by § 37-92-308(4)(b), C.R.S., must be included with any future request for renewal of this SWSP.**

SWSP OPERATION

Holcim's Portland Plant manufactures Portland cement, which involves quarrying of raw materials such as limestone and silica, grinding, pyro-processing, and storing and shipping activities. The Portland Plant uses raw materials obtained from the Holcim Quarry, which operates under the



Division of Reclamation, Mining and Safety (DRMS) Permit No. M-1977-344 and is the subject of this SWSP request. Depletions within the mining boundary consist of evaporation of water in the ponds and water pumped from the ponds for dust suppression.

In accordance with the letter dated April 30, 2010 from the Colorado Division of Reclamation, Mining, and Safety ("DRMS"), mining operators must comply with the requirements of the Colorado Reclamation Act and the Mineral Rules and Regulations for the protection of water resources. The April 30, 2010 letter from DRMS requires that you provide information to DRMS to demonstrate you can replace long term injurious stream depletions that result from mining related exposure of ground water. In accordance with approach nos. 1 and 3, a bond has been obtained for \$5,268,550.00 through the Division of Reclamation, Mining, and Safety ("DRMS") to assure that depletions from groundwater evaporation do not occur in the unforeseen event, or events, which would lead to the abandonment of the mining site.

DEPLETIONS

Depletions at the Holcim Quarry consist of evaporative losses from exposed water in the East Pond (WDID 1205768, Permit 76814-F), the North Pond (WDID 1205769, Permit 76814-F), and the Glory Hole (WDID 1205772, Permit 76814-F), and operational losses due to water pumped from these ponds for dust control purposes. The maximum surface area of exposed water at the quarry in the ponds has been estimated as 3.0 acres, as shown on the attached Figure 1. Net evaporation from the ponds has been estimated at 3.54 acre-feet per acre per year. The estimated amount of water that will be pumped for dust suppression purposes from the ponds on the site has been estimated at 58 acre-feet per year. Table 1 indicates the monthly evaporation and pumping amounts result in a total annual depletion amount of 68.62 acre-feet. Metered pumping stations are located at the East Pond, North Pond, and Duck Pond and these pumping stations are currently in compliance with the Amended Measurement Rules.

Prior SWSP approvals included depletions due to moisture loss in the mined product; however, the SWSP dated July 28, 2014 accepted the results of a ground water investigation that was performed that indicated the mined product lies above the water table. This SWSP will also accept the claim that the mined product lies above the water table; however, Section 6.3 of the Technical Memorandum dated December 31, 2013, indicates that the Codell Sandstone may include ground water, but such ground water may not be tributary to the Arkansas River. This claim that ground water in the Codell Sandstone may be nontributary was repeated in the December 31, 2013 Letter Report and appears to be based on an incorrect interpretation of nontributary that associates the depletion volume with the volume of stream flow of the Arkansas River. Nontributary ground water is defined in § 37-90-103(10.5), C.R.S., as ground water where the withdrawal will not, within 100 years of continuous withdrawal, deplete the flow of a natural stream at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal. Ground water in the Codell Sandstone has not been shown to meet this standard; therefore, it is presumed to be tributary to the Arkansas River.

The SWSP approved on July 28, 2014 did not discuss the timing of ground water depletions or the assertion that if ground water is exposed/intercepted, it does not discharge to the Arkansas River (i.e., it is nontributary). The SWSP request dated October 1, 2015 indicates the water intercepted and utilized at the quarry is from surface water sources and not ground water. The October 1, 2015 SWSP request also assumes that depletions at the quarry have an instantaneous depletion on the Arkansas River. These claims are in conflict with the statements from the December 31, 2013 Letter Report and the December 31, 2013 Technical Memorandum.

In order to quantitatively evaluate and decide if water in the East Pond, North Pond, and Glory Hole includes a mix of surface and ground water, the July 22, 2016 SWSP required that each of these ponds must be equipped with a staff gage by September 1, 2016 and daily readings of the each staff gage must be provided with the monthly accounting. Additionally, the applicant was required to install and maintain a rain gage located near the ponds and report daily rainfall that occurs at the mining site with the monthly accounting. The degree to which pond stage varies and can be correlated to precipitation should help provide a definitive basis for whether or not depletions are occurring to surface water inflows or through ground water exposure. This determination will also decide whether those depletions should be lagged to the Arkansas River or not. A summary of the data collected to date was provided by letter dated June 22, 2017. **The data described above must continue to be collected during the term of this SWSP and an updated summary of collected data must be provided with any renewal request for this SWSP.**

The Duck Pond (WDID 1205118, Permit 44376-F) is the subject of the decree granted in Case No. 92CW35, and is not included as part of this SWSP. The decree in Case No. 92CW35 allows for up to 8.3 acres of exposed groundwater and the associated evaporation depletions from the 8.3-acre pond are identified as 31.13 acre-feet per year. The decree in Case No. 92CW35 also allows up to 55 acre-feet per year to be pumped from the Duck Pond as an alternate point of diversion under the Porter Ditch priority for dust suppression purposes. The depletions due to evaporation and dust suppression uses associated with the Duck Pond shall be administered according to the decree in Case No. 92CW35 and are not included as part of this SWSP.

Prior SWSPs have requested that potential surplus water from Case No. 92CW35 that was not consumed by the operation of the Duck Pond be used to replace depletions from other ponds identified in this SWSP. This SWSP does not include this request; therefore, the water identified in Case No. 92CW35 is not part of this SWSP and will not be used for replacement under this SWSP.

REPLACEMENTS

The evaporation losses for the pond areas, plus the operational losses, are estimated to total 68.62 acre-feet per year (evaporation from up to three acres of pond water surface is estimated to be 10.62 acre-feet/year and water pumped for dust control is estimated to be 58 acre-feet/year). Replacement water will be furnished by the Pueblo Board of Water Works ("PBWW"), and a two-year lease has been provided, commencing January 1, 2015 and terminating December 31, 2016. The Applicant has provided a First Amendment to Water Lease Agreement dated May 2, 2016, which extended the term of the original lease an additional two years through December 31, 2018. The lease provides for 175 acre-feet of replacement water and Holcim has proposed to use the water to replace depletions from both the Holcim Quarry SWSP and the Holcim Wetlands SWSP, which will be delivered to the Arkansas River at the Portland stream gauge reach. Appropriate transit losses will be assigned under the direction of the Division Engineer and Water Commissioner.

CONDITIONS OF APPROVAL

I hereby approve the proposed SWSP in accordance with § 37-92-308(4), C.R.S., subject to the following conditions:

1. This SWSP shall be valid for the period of January 1, 2017 through December 31, 2017 unless otherwise revoked or superseded by decree. The initial date of approval for this SWSP pursuant to § 37-92-308, C.R.S., was January 1, 2014. Pursuant to § 37-92-308(4)(b), C.R.S., "If an applicant requests a renewal of a plan that would extend the plan past three years from the initial date of approval, the applicant shall demonstrate to the state engineer that

the delay in obtaining a water court decree is justifiable and that not being able to continue operating under a substitute water supply plan until a decree is entered will cause undue hardship to the applicant". **A SWSP will not be approved for 2018 unless the above-referenced demonstration is made.** Should an additional SWSP be requested, the provisions of § 37-92-308(4), C.R.S., shall apply. The statutory fee of \$300 will be required pursuant to § 37-92-308(8), C.R.S. **Any request for an additional SWSP must be submitted to this office by October 31, 2017. This is the fourth year of operation of this plan pursuant to § 37-92-308, C.R.S.**

2. When flows at the Portland Gage are below 155 cfs, replacement water must be provided upstream of this gage so as to not impact operation of the City of Florence's water rights as described in Case No. 10CW63.
3. The total surface area of the water exposed at the Holcim Quarry site must not exceed 3.0 acres during the approval period of this SWSP resulting in an estimated annual evaporative loss of 10.62 acre-feet. Documentation of pond size may be required by the Division Engineer in the form of an aerial photo evaluation or survey by a Professional Land Surveyor during the plan year or years covered by subsequent renewals of this SWSP.
4. The annual amount of water pumped from the Quarry Ponds (excluding the Duck Pond) and used in the mining operation shall not exceed 58.00 acre-feet for dust control. Operation of the Duck Pond is not included as part of this SWSP. The Duck Pond will operate under the decree in Case No. 92CW35, which allows for a maximum pumping amount of 55 acre-feet/year for dust control/operational purposes.
5. All water pumped from the ponds must be metered in a manner consistent with the Amended Measurement Rules in the Arkansas River Basin with meters verified for accuracy by a certified meter tester. All water pumped from the ponds, whether used in the mining operation or returned to the river, must be reported in the monthly accounting.
6. Additional structures and/or additional uses for the water that is the subject of this SWSP will be allowed only if a new SWSP is approved for those additional structures/uses.
7. In order to quantitatively evaluate and decide if water in the East Pond, North Pond, and Glory Hole includes a mix of surface and ground water, each of these ponds must be equipped with a staff gage and daily readings of the each staff gage must be provided with the monthly accounting. Additionally, the applicant must install and maintain a rain gage located near the ponds and report daily rainfall that occurs at the mining site with the monthly accounting. The degree to which pond stage varies and can be correlated to precipitation should help provide a definitive basis for whether or not depletions are occurring to surface water inflows or through ground water exposure. This determination will also decide whether those depletions should be lagged to the Arkansas River or not. **The data described above must continue to be collected during the term of this SWSP and an updated summary of collected data must be provided with any renewal request for this SWSP.**
8. The replacement water, which is the subject of this SWSP, cannot be sold or leased to any other entity. As a condition of subsequent renewals of this SWSP, the replacement water must be appurtenant to this site until a plan for augmentation is obtained. All replacement water must be concurrent with depletions in quantity, timing and locations. Appropriate transit losses will be assigned under the direction of the Division Engineer and Water

Commissioner.

9. Accounting of water in this plan, including pumping amounts, stream depletions, and replacement water deliveries, must be provided to the Districts 11 and 12 Water Commissioner (Brian.Sutton@state.co.us) and Division Engineer (Augmentation.Coordinator@state.co.us) on forms and at times acceptable to them. Said accounting must be received by the 10th of the month following the month being reported. The name, address, and phone number of a contact person who will be responsible for the operation and accounting of this SWSP must be provided with the accounting forms to the Division Engineer and Water Commissioner.
10. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water under this SWSP must cease immediately.
11. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other SWSPs or in any proposed renewal of this SWSP, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant. Any appeal of a decision made by the State Engineer concerning an SWSP pursuant to § 37-92-308(4), C.R.S., shall be to the Division 2 Water Judge within thirty days of the date of this decision and shall be consolidated with the application pending in case no. 16CW3102.

Please contact Caleb Foy in Denver at (303) 866-3581, or Charlie DiDomenico in Pueblo at (719) 542-3368, if you have any questions concerning this approval.

Sincerely,



Jeff Deatherage, P.E.
Chief of Water Supply

Attachments: Figure 1
 Table 1
 PBWW Water Lease Agreement

cc: Division 2 SWSP Staff (via email)
 Brian Sutton, Lead Water Commissioner, Districts 11 & 12 (Brian.Sutton@state.co.us)
 Parties to Case No. 16CW3102 (via Colorado Courts E-Filing)
 Colorado Division of Reclamation, Mining, and Safety (dnr_drmsminadmin@state.co.us)



**Brown AND
Caldwell**

Holcim

**Portland CO Plant
Water Rights**

Date: September 2016
Project: 14****

0 700 1,400
Feet



Notes:

1. Projection: UTM Zone 13, 1983 North American Datum (meters).
2. Aerial Imagery Date: September 9, 2015, Source: USGS

Figure 1

**Surface Water Areas
Holcim Portland Plant**

Table 1. Holcim (US) Inc. - Portland Plant 2017 Substitute Water Supply Plan Projection

Month	Dust Suppression		Evaporative Consumptive Use						Total Depletions
	Total Projected Usage ^a (Ac-Ft)	Water Pumped from Other Ponds ^b (Ac-Ft)	Total Open Pond Area ^c (Ac)	Percent of Annual Evap	Gross Evap ^d (in)	Precip ^e (in)	Net Evap (ft)	Net Evap (Ac-Ft)	(Ac-Ft)
Jan-16	3.50	2.50	3.00	5.5%	2.80	1.05	0.17	0.52	3.02
Feb-16	3.50	2.50	3.00	9.0%	4.59	1.38	0.30	0.91	3.41
Mar-16	4.50	3.50	3.00	12.0%	6.11	1.12	0.44	1.33	4.83
Apr-16	5.50	4.50	3.00	14.5%	7.39	0.81	0.57	1.71	6.21
May-16	6.00	5.00	3.00	15.0%	7.64	1.98	0.52	1.56	6.56
Jun-16	8.50	7.50	3.00	13.5%	6.88	1.71	0.47	1.42	8.92
Jul-16	8.50	7.50	3.00	10.0%	5.10	0.94	0.37	1.11	8.61
Aug-16	8.50	7.50	3.00	7.0%	3.57	0.84	0.25	0.74	8.24
Sep-16	7.00	6.00	3.00	4.0%	2.04	0.42	0.15	0.44	6.44
Oct-16	6.50	5.50	3.00	3.0%	1.53	0.63	0.09	0.27	5.77
Nov-16	5.50	4.50	3.00	3.0%	1.53	0.70	0.09	0.26	4.76
Dec-16	2.50	1.50	3.00	3.5%	1.78	0.51	0.12	0.36	1.86
Total	70.00	58.00	na	100.0%	50.95	12.10	3.54	10.62	68.62

^aWater pumped from the Duck Pond for dust suppression (estimated at approx 1 AF/month) is covered under water rights decreed in Case No. 92CW35, which allow up to 55 AF annually, which is not the subject of this SWSP.

^bThese diversions may result in out-of-priority depletions

^cOpen quarry pond areas estimated from aerial photo of Quarry in September 2015 (3.0 acres)

^dGross Annual Evaporation is taken from Table 3, NOAA Technical Report NWS 33

50.95 in of Annual Evaporation

^ePrecip is avg of 2000-2012 values at NOAA climate station, Canon City

WATER LEASE AGREEMENT

This AGREEMENT is made and entered into effective as of the 19th day of December 2014, by and between the Board of Water Works of Pueblo, Colorado (hereinafter called "Pueblo Water") and Holcim (US) Inc. (hereinafter called "Lessee");

RECITALS

WHEREAS, the water use that is the subject of the Agreement is of a type not normally within any regular rate schedule fixed by Pueblo Water; and the parties mutually agree that the terms for the lease of water for the purposes hereinafter set forth should be the subject of this special Agreement;

WHEREAS, Lessee desires to procure raw water from Pueblo Water to replace out-of-priority depletions to the Arkansas River related to a wetland and pond area, limestone quarry and cement plant in Fremont County, Colorado.

WHEREAS, Pueblo Water is willing to lease raw water to Lessee for its use for these purposes subject to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained and the payments to be made hereunder, the parties hereto agree as follows:

AGREEMENT

1. **Quantity.** Each Contract Year during the term of this Agreement, and in accordance with the terms hereof, Pueblo Water will make available for delivery to Lessee 175 acre-feet of water. One-hundred seventy-five acre-feet is both the minimum and maximum quantity of water to be paid for and made available for delivery under this Agreement for each Contract Year.
2. **Term of Agreement.** This Agreement will be in force for a period of 2 years commencing January 1, 2015 and terminating December 31, 2016. Lessee has the option to extend the term of the Agreement one additional year to December 31, 2017. Lessee must notify Pueblo Water in writing by July 1, 2016 if the Lessee wishes to extend the term for an additional year.
3. **Delivery of Raw Water.** The water to be delivered hereunder is raw water that has not been treated to make it suitable for any particular use. Any treatment of the water delivered hereunder to make it suitable for Lessee's use is the responsibility of Lessee.
4. **Delivery of Consumable Water.** Pueblo Water agrees to deliver to Lessee, at the Place of Delivery described in Paragraph 5, transmountain water or other water totally consumable under Colorado law, including but not limited to, reusable return flows from transmountain water or other fully consumable water. Once delivered to Lessee, all water not fully consumed by Lessee's use remains the property of Pueblo Water.

5. **Place of Delivery.** The Place of Delivery will be the reach of the Arkansas River at the Arkansas River at Portland stream gage.

6. **Choice of Water Source.** Pueblo Water may release the water from Pueblo Water's stored water at Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir; from direct flow transmountain water; or from any other reservoir or place from which Pueblo Water may legally deliver water from storage or by exchange, with the sources of such water to be at the option of Pueblo Water, however, Pueblo Water will deliver the lease water from a location appropriate to replace Lessee's out-of-priority depletions at the Place of Delivery described in paragraph 5. At the option of Pueblo Water, such sources may be changed from time to time to suit the operational convenience of Pueblo Water.

7. **Approval to Utilize Water.** Lessee will be responsible for compliance with all applicable laws. If Lessee requires approvals from administrative or judicial authorities to use the water to be delivered under this Agreement, then Pueblo Water will cooperate with Lessee to provide information regarding Pueblo Water's water rights that may be needed to obtain approval of Lessee's water use. However, all costs of any such approvals will be borne by Lessee. Lessee will not file an application with any administrative or judicial authorities that includes a change to any of Pueblo Water's water rights without the express written consent of Pueblo Water, which consent is in the sole discretion of Pueblo Water.

8. **Rate of Delivery.** Pueblo Water will not be required to deliver water at a rate higher than 25 c.f.s., but may do so in its discretion. Pueblo Water will upon written request deliver at rates lower than 5 c.f.s. subject, however, to the following:

8.1. Any such lower rate of delivery is subject to the approval of the Division Engineer, Water Division No. 2;

8.2. Any such delivery from Pueblo Water's supplies at Turquoise, Twin Lakes or other reservoir not controlled by Pueblo Water is subject to the approval of the agency which operates or controls discharges from said reservoir;

8.3. Pueblo Water is not required to make any physical alteration of any outlet gates or outlet measuring devices or incur any additional cost for the purpose of making such low rate deliveries.

9. **Transportation and Evaporation Losses.** The quantity of water to be delivered hereunder will be measured at the outlet of the reservoir from which it is released or from the point of discharge to the stream of direct flow transmountain water or reusable return flow. Lessee will bear all transportation and evaporation losses from the place of release or discharge to the Place of Delivery.

10. **Notice of Delivery.** Pueblo Water agrees to make available for delivery up to the quantity of water stated in paragraph 1 during the term of the Agreement at the request of Lessee. Lessee must notify Pueblo Water at least one business day in advance of when any requested

delivery of water needs to be released taking into account transit time from the point of release to the Place of Delivery. Such notice will include the desired rate of delivery and the date and time such delivery should begin and end. Once released or discharged to the stream, it is the Lessee's responsibility to ensure that the state water officials cause the water released by Pueblo Water to be delivered to the delivery point for Lessee's use. Pueblo Water will cooperate with Lessee and the state water officials to provide them with the necessary information concerning the source, location, rate, and duration of the release or discharge of the leased water.

11. **Charge.** In consideration of the water leased under this Agreement, Lessee agrees to pay Pueblo Water a charge of \$651.13 per acre-foot of water for the quantity of water identified in paragraph 1 above. The parties agree that the water leased hereunder is on a "take or pay" basis. Accordingly, Lessee must pay the charge for all leased water, whether or not said quantities of water are actually taken by Lessee or are required for use by Lessee. Likewise, Pueblo Water agrees to make the water available for delivery throughout the term of this Agreement subject to paragraphs 14 through 17 below. The failure of Lessee to take delivery of the full quantity of water contracted for and paid for does not entitle Lessee to a refund of any sums paid.

12. **Payments.**

12.1. On the effective date of this Agreement, Lessee must pay to Pueblo Water the first Contract Year payment of \$113,947.75.

12.2. Additional payments in an amount equal to the Contract Year quantity of water described in paragraph 1 multiplied by the applicable per-acre-foot charge as determined under paragraphs 11 and 13 are due from Lessee to Pueblo Water on the first day of each Contract Year thereafter for the term of this Agreement. Delinquent balances will be subject to a late payment charge of 1.5% per month on the unpaid balance. No water will be delivered under this Agreement if Lessee has an unpaid balance.

12.3. In addition, Lessee will pay to Pueblo Water upon execution of this Agreement a non-refundable fee of \$1,000 in consideration of legal and administrative costs incurred by Pueblo Water for this Agreement.

13. **Escalation.** The charge for water for the second and all subsequent Contract Years of this Agreement will be annually adjusted based upon the percentage increase, if any, over the previous calendar year in Pueblo Water's water rates for its general customers for treated water. For example, if the percentage increase for the second Contract Year is five percent, then the price for the second Contract Year will be \$683.69 per acre-foot, and if the percentage increase for the third Contract Year is also five percent, then the price per acre-foot for the third Contract Year will be \$717.87, a five percent increase over the second Contract Year price. Pueblo Water will give to Lessee written notice before the end of the Contract Year of any rate increase pursuant to this paragraph that will take effect in the next Contract Year.

14. **Pueblo City Charter Provision.** This Agreement involves the use of water outside the territorial limits of the City of Pueblo and is specifically limited by the provisions of the City Charter governing such use. The City Charter provides, among other things, that: "The Board of

Water Works shall have and exercise all powers which are granted to cities of the first class by the Constitution and Laws of the State of Colorado, except the power to levy and collect taxes directly or indirectly. Surplus water may be supplied to territories outside the City until same is needed by the inhabitants of the City.”

15. **Determination of Water Availability by Pueblo Water.** Pueblo Water has determined that the welfare of Pueblo and its inhabitants requires a stable water supply not only for its citizens but also for the other customers of Pueblo Water putting to beneficial use the water belonging to Pueblo Water. Therefore, the extent to which limitation of water delivery outside Pueblo may be necessary to enable Pueblo Water to provide adequately for users inside Pueblo is a fact to be determined by Pueblo Water in the exercise of its reasonable discretion from time to time as occasion may require.

16. **Interruption of Water Supply Beyond Pueblo Water’s Control.** While it is the purpose of Pueblo Water to maintain a water supply adequate to meet the needs of the metropolitan area logically dependent on Pueblo Water for water supply and for its temporary contract customers, there are many elements that make it uncertain whether the supply can always be adequate for all. Both parties to this Agreement recognize that the water supply for Pueblo Water and its water customers is dependent upon sources from which the supply is variable in quantity and beyond the control of Pueblo Water. No liability in tort or contract attaches to Pueblo Water hereunder on account of any failure to accurately anticipate availability of water supply or because of an actual failure to supply water due to inadequate runoff or inadequate storage arising from an occurrence beyond the reasonable control of Pueblo Water, including, but not limited to, act of God, strike, war, insurrection, or inability to serve arising out of the order of any court, or the lawful order of any governmental entity clothed with authority to regulate matters pertaining to water, public utilities, public health, or pollution control.

17. **Emergencies or Water Shortages.** The parties agree that from time to time emergency or shortage situations may arise where there is a necessity to limit the use of water for customers of Pueblo Water. The parties agree that the necessity for such limitation is a fact to be determined by Pueblo Water in the exercise of its reasonable discretion from time to time, as occasion may require. It is hereby agreed that Pueblo Water may adopt, in the situation of emergency or shortage, such reasonable restrictions on uses or priorities for curtailed use, as may be necessary to adapt to such emergency conditions or shortage. Lessee agrees that no liability in tort or contract attaches to Pueblo Water hereunder on the account of the necessity for adopting and implementing such policies to meet emergency conditions or shortage.

18. **Not a Permanent Supply.** The Parties understand and agree that this Agreement is not to be interpreted as any commitment on the part of Pueblo Water to furnish water to Lessee on a permanent basis, but rather to provide Lessee with water from Pueblo Water for the temporary period of the term of this Agreement.

19. **Sales Tax or Other Taxes.** In the event any sales tax or other tax is levied on the water leased under this Agreement, Lessee agrees to pay said tax. Lessee may, however, contest the imposition of any such tax at its own expense, and the requirement of such payment under this Agreement is without prejudice to Lessee’s right to contest any attempted imposition of tax.

20. **Assignability; Sublease.**

20.1 This Agreement may be assigned, in whole or part, by Lessee subject to prior written approval of said assignment by Pueblo Water, which approval is in the sole discretion of Pueblo Water.

20.2 Lessee may sublease the water obtained from Pueblo Water under this Agreement subject to prior written approval by Pueblo Water, which approval is in the sole discretion of Pueblo Water; however, Lessee will not sublease water to third parties at a higher price than it pays Pueblo Water for water under this Agreement. Sublease of the water under this paragraph does not include its delivery to Lessee's customers as part of Lessee's normal water supply operations.

21. **Prohibition of Use For Marijuana Enterprises.** Lessee will not use water provided under this Agreement for the augmentation of wells used for marijuana enterprises without written approval from Pueblo Water, which approval is in the sole discretion of Pueblo Water.

22. **Waiver.** Failure of either party hereto to exercise any right hereunder is not a waiver of such party's right and does not affect the right of said party to exercise at some future time said right or rights or any other right it may have hereunder. No waiver of any of the provisions of this Agreement will be deemed or constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver is binding unless executed in writing by the party making the waiver.

23. **No Exclusive Right or Privilege.** Nothing in this Agreement is to be construed as a grant by Pueblo Water of any exclusive right or privilege.

24. **Title to Water Rights.** Nothing herein is to be interpreted to give Lessee any legal or equitable title in or to any of Pueblo Water's water rights.

25. **Notices.** All notices to be given with respect to this Agreement must be in writing. Unless otherwise provide in this Agreement, each notice must be sent by first class mail, postage prepaid, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing. Every notice will be deemed to have been given at the time it is deposited in the United States mail in the manner prescribed herein. Nothing contained herein is to be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process. All notices required to be given to Pueblo Water hereunder must be delivered to:

Board of Water Works of Pueblo, Colorado
319 West 4th Street
Pueblo, CO 81003
Attn: Executive Director

or at such other address as Pueblo Water may direct by written notice. All notices required to be given to Lessee hereunder must be delivered to:

Holcim (US) Inc.
Portland Plant
3500 Highway 120
Florence, CO 81226

or at such other address as Lessee may direct by written notice.

26. **Remedies.** In the event that either party defaults in the performance of any of its obligations under this Agreement, in addition to any and all other remedies provided in this Agreement or by law or equity, each party will have the right of specific performance against the other. In the event of litigation, the prevailing party will be entitled to its litigation costs, including reasonable attorney's fees.

27. **Default, Right to Cure.** In the event that either party believes that the other is in default of any obligation under this Agreement, except as provided below in this paragraph, the non-defaulting party must give written notice of the default to the defaulting party. Such notice will be given by certified or registered mail, postage prepaid and return receipt requested. If a notice of default is provided, the party accused of the default must either cure it or provide a written statement explaining why it is not in default. If the alleged default is not cured or otherwise resolved within thirty (30) days, the parties may resort to their remedies. In the event of default for failure to pay any amount required to be paid by Lessee pursuant to the terms of this Agreement, Pueblo Water is not required to deliver water and notice of default is not required. Pueblo Water may, at its sole option, provide notice and a ten (10) day cure period. However, Pueblo Water will not be required to deliver water until the entire amount owed is paid by Lessee.

28. **Right to Enter Agreement.** Each party hereby warrants and represents that it has the full right and lawful authority to enter into this Agreement.

29. **Governing Law.** This Agreement will be governed by the laws of the State of Colorado in all respects.

30. **Entire Agreement, Modification.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter described in it and supersedes any and all prior contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement is binding unless executed in writing by all parties.

31. **Captions and Headings.** The captions and headings in this Agreement are for convenience of reference only, and will not be used to interpret, define, or limit its provisions.

32. **Construction Against the Drafter.** In the event of an ambiguity in this Agreement, the rule of construction that ambiguities will be construed against the drafter is inapplicable, and the parties hereto are to be treated as equals and no party will be treated with favor or disfavor

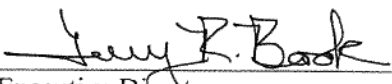
33. **Third Party Beneficiaries.** Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the parties, and not to any third party. Any services or benefits that third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

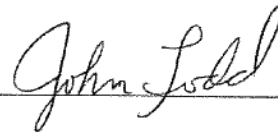
34. **Governmental Immunity.** No term or condition of this Agreement is to be construed or interpreted as a waiver, express or implied, by Pueblo Water of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as applicable now or hereafter amended.

IN WITNESS WHEREOF, Pueblo Water and Lessee have caused these presents to be executed in their respective behalf by their proper officers.

BOARD OF WATER WORKS OF PUEBLO,
COLORADO

HOLCIM (US) INC

By: 
Executive Director

By: 

FIRST AMENDMENT TO WATER LEASE AGREEMENT

This FIRST AMENDMENT TO WATER LEASE AGREEMENT ("First Amendment") is made and entered into effective as of the 2nd day of May, 2016 ("Effective Date"), by and between the Board of Water Works of Pueblo, Colorado ("Pueblo Water") and Holcim (US) Inc. ("Lessee");

RECITALS

WHEREAS, Pueblo Water and Lessee entered into a Water Lease Agreement for the lease of 175 acre-feet of raw water each Contract Year on December 19, 2014 ("Agreement").

WHEREAS, Lessee desires to add two years to the term of the Agreement.

WHEREAS, Pueblo Water is willing to extend the term of the Agreement by two years subject to the terms of this First Amendment and the Agreement.

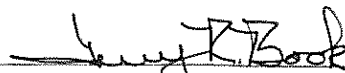
WHEREAS, Pueblo Water and Lessee desire to amend the Agreement in order to extend the term of the Agreement by two years.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained and the payments to be made hereunder, the parties hereto agree as follows:

1. Paragraph 2 of the Agreement is hereby amended and restated as follows:
 2. **Term of Agreement.** This Agreement will be in force for a period of 4 years commencing January 1, 2015 and terminating December 31, 2018. Lessee has the option to extend the term of the Agreement one additional year to December 31, 2019. Lessee must notify Pueblo Water in writing by July 1, 2018 if the Lessee wishes to extend the term for an additional year.
2. Lessee will pay to Pueblo Water upon execution of this First Amendment a non-refundable fee of \$500 in consideration of legal and administrative costs incurred by Pueblo Water for this First Amendment.
3. All other terms and conditions of the Agreement shall continue in full force and effect, except as necessary to give full effect to this First Amendment.

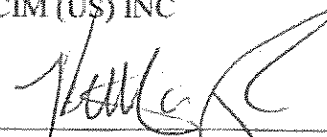
IN WITNESS WHEREOF, Pueblo Water and Lessee have caused these presents to be executed in their respective behalf by their proper officers.

BOARD OF WATER WORKS OF PUEBLO,
COLORADO

By: 
Terry R. Book, Executive Director

Date: 5-2-16

HOLCIM (US) INC

By: 
Keith Krugh - Plant Manager
Holcim (US) Inc. - Portland Plant

Date: April 21, 2016

**STATE OF
COLORADO**

Cazier - DNR, Tim <tim.cazier@state.co.us>

Holcim Portland Plant Mining Inspection (Permit #M-1977-344)

1 message

Derrick Dease <derrick.dease@lafargeholcim.com>
To: tim.cazier@state.co.us

Mon, Nov 13, 2017 at 2:26 PM

Mr. Cazier,

I'm the Environmental Manager at the Holcim Portland Plant in Florence. Back in April, you performed a mine inspection with Dominic Bellino, our quarry supervisor. In your inspection report, you noted a couple of items and our plant manager asked me to reach out to you for clarification.

First, you mention that the plant had no current SWSP for the quarry. The plant's SWSP for CY2017 was submitted in November 2016 but was not approved until August 2017 (see attached approval letter) and covers CY2017. This letter should satisfy the lack of a SWSP finding noted in your report.

Second, you noted that the plant lacks a utilities structure agreement with, Kinder Morgan, the owner of the natural gas pipeline. To date, we have been unsuccessful in securing a letter/agreement with Kinder Morgan. Assuming we are unable to get a notarized letter from them, what are the legal/regulatory implications of this with regards to the plant's mining plan? Is there anything that can be done to rectify this finding in lieu of a direct letter from Kinder Morgan, in case we're not able to get it by your deadline.

Regards,
Derrick Dease

Derrick Dease
Area Environmental & Public Affairs Manager
Holcim (US) Inc., a member of LafargeHolcim Ltd.
3500 State Highway 120
Florence, CO 81226

Office: 719.288.1423
Mobile: [719.285.5762](tel:719.285.5762)
Fax: [719.784.4815](tel:719.784.4815)
Email: derrick.dease@lafargeholcim.com
www.lafargeholcim.com

This email is confidential and intended only for the use of the above named addressee(s). If you have received this e-mail in error, please delete it and notify me by e-mail or telephone.



Holcim Quarry SWSP 2017 FINAL - Approved.pdf
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