



## COLORADO

Division of Water Resources

Department of Natural Resources

Office of the State Engineer  
1313 Sherman St., Room 821  
Denver, CO 80203

November 30, 2017

Mr. Peter Foster  
Wright Water Engineers, Inc.  
1666 N. Main Ave., Ste. C  
Durango, CO 81301

**RE: Bayfield Gravel Operation Substitute Water Supply Plan**  
**DRMS File No. M-1987-038**  
**Sec. 14U, Twp. 34N, Rng. 7W, N.M.P.M.**  
**Water Division 7, Water District 31**  
**SWSP ID 3331**

**Plan Period: April 20, 2017 through April 30, 2019**  
**Contact Phone Number: (970) 259-7411**

Dear Mr. Foster:

This letter is in response to your June 26, 2017 letter requesting a two year renewal of the substitute water supply plan ("SWSP") for a sand and gravel pit operated by Old Castle SW Group, Inc. dba Four Corners Materials ("Applicant") in accordance with Section 37-90-137(11), C.R.S. The required renewal fee of \$257.00 for the plan has been paid under receipt number 3680571.

### PLAN OF OPERATION

The Bayfield Gravel Operation has an approved plan for augmentation decreed in Case No. 03CW65; however, the Applicant requests to increase the evaporation rate of the exposed water surface area, change the method of calculating gravel washing depletions, and add delayed impacts to the accounting of return flows. Therefore, the Applicant requests to set aside the plan for augmentation and operate the site under this SWSP. Since the plan for augmentation will not operate during these approved plan years, the replacement water will be utilized in this SWSP.

This SWSP describes an existing gravel operation and consists of two partially constructed gravel pits located on property owned by the Applicant. The existing gravel pits, Bayfield Pit No. 1 and Bayfield Pit No. 2, have Well Permit No. 77713-F to operate in accordance with previously approved SWSPs. Permit no. 77713-F limits the use of the ground water to evaporation from 39.1 acres of water surface area, retention of water in mined product, dust control, and concrete batch production. The exposed water surface area of the gravel pits with dewatering trench currently totals approximately 26.6 acres based on September 2015 aerial imagery; however, the surface area may increase to the maximum surface area allowed under permit no. 77713-F and this SWSP, being 39.1 acres, which is anticipated to cover the planned full build-out conditions. The current operation, which consists of gravel mining and concrete production, was covered by an



augmentation plan decreed by the Division 7 Water Court in Case No. 03CW65. However, since the augmentation plan does not cover these changes, the augmentation plan will no longer be used and the entire operation will be covered by this SWSP. The changes to the operation include:

- A. An updated evaporation calculation and increased rate of evaporation from the exposed water surface due to mining operations.
- B. Addition of delayed depletions to the stream system from the operation of the gravel pits.
- C. The water used in the gravel washing operation under the augmentation plan was 100% consumed because the gravel washing return flows returned to the Pine River downstream of the Pine River Canal, the calling water right. For this SWSP, the gravel washing operations have been changed. The wash water will be added to Bayfield Pit No. 1 for settlement purposes before entering Bayfield Pit No. 2 for discharge to the Pine River upstream of the Pine River Canal. Since the return flows will be returned upstream of the calling water right, the gravel washing depletions are calculated as 4% by weight of mined product.
- D. An expansion of the mining operation may continue to occur over the next several years. For SWSP plan years 9 and 10 (April 20, 2017 - April 30, 2019), mining operations will continue to remove materials from below the natural ground water table (see Figure 2).

For operations during SWSP plan years nine and ten, except for the above-referenced changes, the operation will continue as described in the augmentation plan decreed in Case No. 03CW65. Therefore, there is neither conflict with the amount of augmentation water decreed nor the uses specified in the decree. At full build-out, however, the water surface area will exceed the decreed 28.39 acres; therefore, the operation will be covered under this SWSP and either the existing augmentation plan will be amended or a new augmentation plan will be filed to account for the full build-out exposed surface area.

In accordance with the letter dated April 30, 2010 from the Colorado Division of Reclamation, Mining, and Safety ("DRMS"), all sand and gravel 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. According to the renewal request, there is an existing plan for augmentation decreed by the Division 7 Water Court in Case No. 03CW65; however, the existing plan for augmentation covers evaporation off of 28.39 acres and the exposed surface area at full build-out is expected to be 39.1 acres. In order to replace long term injurious stream depletions resulting from the 10.71 acres of exposed ground water not covered under Case No. 03CW65, the Applicant has proposed to operate the pit in accordance with Case No. 07CW0104 and lower the ponds by the net evaporation rate. During the approval period of this SWSP, the Applicant is required to demonstrate to the satisfaction of the Division Engineer, when operated as outlined in the 07CW0104 augmentation plan, that the pond can retain and release sufficient water over the call period to serve as a reliable walk away provision. This may entail the installation of necessary measuring devices and administrative structures, as required by the Division Engineer.

## DEPLETIONS

The out-of-priority depletions for the facility during this approval period are expected to be 112.9 acre-feet/year of evaporation from a water surface area not to exceed 39.1 acres, 2.20 acre-feet/year of water lost in product, and 0.28 acre-feet/year for dust suppression (see Tables 2 & 4). Total consumptive use from the pit operation is expected to be 115.38 acre-feet/year. As described above, depletions due to gravel washing will be calculated as 4% by weight of the mined product. Lagged depletions were calculated using the Glover depletion factors decreed for the pit by the Division 7 Water Court in Case No. 07CW104 (see Table 3). At full build-out, after gravel operations have ceased and the de-watered areas are allowed to fill with water, it is anticipated that 39.1 acres of water will be exposed resulting in 112.9 acre-feet of depletions (see Table 1). The operation will be covered by this SWSP and not the decreed augmentation plan. Therefore, water sales will not be allowed under this SWSP.

## REPLACEMENT

The water supply currently decreed as an augmentation source for the Bayfield Facility is the Gosney Alternative Pump Station. The Applicant has a lease agreement, attached, with Gosney & Sons, Inc. that is effective so long as the Lessee owns the property or until the Lessee terminates the water lease, for an amount of 0.7 cfs. This pump station is decreed to supply up to 1 cfs for augmentation of water use at the Facility. A call is placed on the Pine River generally throughout the irrigation season from May 1 through October 30 by The Pine River Canal. The pump station is located on a tributary to the Pine River in an area that is considered to have water available for appropriation. The water will be delivered to the Bayfield gravel facility or directly into the Pine River Canal either by ditch or pipeline as directed by the Water Commissioner. Table 3 shows that all out of priority depletions are less than the 0.7 cfs replacement water available, therefore; the Applicant has shown that they have adequate replacement water to cover depletions through the period of this SWSP approval and at full build out with the existing lease.

## CONDITIONS OF APPROVAL

I hereby approve the proposed SWSP in accordance with Section 37-90-137(11), C.R.S., subject to the following conditions:

1. This SWSP shall be valid for the period of April 20, 2017 through April 30, 2019, unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, such renewal request must be submitted to this office with the statutory fee of \$257 no later than March 1, 2019.
2. The plan for augmentation decreed in Case No. 03CW65 is not proposed to be operated during the life of this SWSP plan, and the replacement water assigned to that plan for augmentation will be utilized under this SWSP.
3. In accordance with the letter dated April 30, 2010 from the DRMS the replacement of long term injurious stream depletions that result from the 10.71 acres of exposed ground water not covered under Division 7 Water Court Case No. 03CW65 must be covered in the unforeseen event, or events, that would lead to abandonment of the pit. In order to replace long term injurious stream depletions resulting from the 10.71 acres of exposed ground water not covered under Case No. 03CW65, the Applicant has proposed to operate the pit in accordance with Case No. 07CW0104 and lower the ponds by the net evaporation rate. During the approval period of this SWSP, the Applicant is required to demonstrate to the

satisfaction of the Division Engineer, when operated as outlined in the 07CW0104 augmentation plan, that the pond can retain and release sufficient water over the call period to serve as a reliable walk away provision. This may entail the installation of necessary measuring devices and administrative structures, as required by the Division Engineer.

4. The use of ground water under well permit no. 77713-F shall not exceed 112.9 acre-feet of evaporative loss, 0.28 acre-feet for dust control, and 2.2 acre-feet of water lost with the mined product. Should the use of ground water exceed those amounts allowed under permit no. 77713-F, as potentially allowed under this SWSP, the applicant must apply for, and obtain a new well permit issued pursuant to Sections 37-90-137(2) and (11), C.R.S.
5. The depletions to the Pine River associated with the gravel mining operations must not exceed a total of 115.38 acre-feet/year for plan years 9 and 10 (April 20, 2017 - April 30, 2019), including categories of consumptive use due to net evaporation from exposed groundwater, water lost in product, and dust suppression. Should the annual depletions exceed those amounts prior to the expiration date of this SWSP, a new SWSP must be obtained from this office.
6. Lagged depletions will extend beyond the expiration of this plan. A SWSP must remain in effect until such time as the existing augmentation plan is amended or a new augmentation plan is decreed by the Water Court.
7. Active mining of the site shall not exceed 39.1 acres of exposed ground water surface area unless a new SWSP is approved.
8. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of ground water must cease immediately.
9. Adequate accounting of depletions and replacements must be provided to the Water Commissioner and Division 7 Augmentation Coordinator (Div7Accounting@state.co.us) on a monthly basis or other interval acceptable to both of them. The accounting of depletions may be in a format similar to the attached form, together with a summary of monthly and cumulative data for the year to date. In any case, the accounting form(s) must show, at a minimum:
  - A. The categories of consumption shown on the attached form.
  - B. The out-of-priority monthly depletions, delayed and direct, to be replaced (monthly and cumulative year-to-date)
  - C. The accounting forms(s) shall be sufficient to demonstrate that the net effective replacement equaled or exceeded the total out-of-priority depletions on a monthly basis. All replacement water must be concurrent with depletion in quantity, timing and location, except to the extent the Division Engineer or the Water Commissioner approve aggregated releases of replacement water.
10. The approval of this SWSP does not relieve the applicant and/or the landowner of the requirement to obtain a Water Court decree approving a permanent plan for augmentation or mitigation to ensure the permanent replacement of all depletions, including long-term evaporation losses and lagged depletions after gravel mining operations have ceased. If reclamation of the mine site will produce a permanent water surface exposing groundwater to

evaporation, an application for a plan for augmentation must be filed with the Division 7 Water Court at least three (3) years prior to the completion of mining, to include, but not be limited to, long-term evaporation losses and lagged depletions.

11. The dewatering will produce delayed depletions to the stream system. The dewatering water flows into Bayfield Pit No. 1, which flows into Bayfield Pit No. 2, which has an overflow into the Pine River upstream of the Pine River Canal. The overflow structure keeps the ponds at a steady state; therefore the dewatering water is effectively immediately discharged to Pine River. However, before dewatering stops, a plan must be submitted that specifies how the post pumping dewatering depletions will be replaced, in time, place and amount.
12. 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.
13. In accordance with amendments to Section 25-8-202-(7), C.R.S. and "Senate Bill 89-181 Rules and Regulations" adopted on February 4, 1992, the State Engineer shall determine whether or not the substitute supply is of a quality to meet requirements of use to senior appropriators. As such, water quality data or analysis may be requested at any time to determine if the water quality is appropriate for downstream water users.
14. 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 the 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.

Should you have any questions, please contact Ivan Franco of this office or Robert Genualdi, Division Engineer, in Durango at (970) 247-1845.

Sincerely,



Jeff Deatherage, P.E.  
Chief of Water Supply

Attachments:        Tables 1-4  
                             Figure 2  
                             Gosney Lease Agreement

cc:     Robert Genualdi, Division 7 Engineer (via email)  
         David Hofmann, District 31 Water Commissioner (via email)  
         Brian Leavesley, Division 7 (via email)  
         Division of Reclamation, Mining and Safety

**Table 1**  
**Four Corners Materials - Bayfield Gravel Operation**  
**Site Specific Evaporation Calculations (elev. 6,750 ft)**  
**Years Nine and Ten**

Ground water exposed by mining\*: 26.60 acres  
 Gross Evaporation Value: 45 inches  
 Precipitation Value: 16.0 inches

Month	Monthly Evaporation Distribution	Gross Evaporation	Average Year Precipitation	Effective Precipitation	Net Unit Evaporation	Net Unit Evaporation	Total Evaporation
	(% of Annual)	(inches)	(inches)	(inches)	(inches)	(feet)	(acre-feet)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
January	1.0	0.45	1.48	1.04	0.00	0.00	0.00
February	3.0	1.35	1.12	0.78	0.57	0.05	1.26
March	6.0	2.70	1.30	0.91	1.79	0.15	3.96
April	9.0	4.05	1.04	0.73	3.32	0.28	7.36
May	12.5	5.63	1.03	0.72	4.91	0.41	10.87
June	15.5	6.98	0.61	0.42	6.55	0.55	14.52
July	16.0	7.20	1.61	1.13	6.07	0.51	13.46
August	13.0	5.85	1.93	1.35	4.50	0.37	9.97
September	11.0	4.95	1.62	1.14	3.81	0.32	8.46
October	7.5	3.38	1.71	1.20	2.18	0.18	4.82
November	4.0	1.80	1.21	0.85	0.95	0.08	2.11
December	1.5	0.68	1.34	0.94	0.00	0.00	0.00
<b>Annual</b>	<b>100</b>	<b>45.00</b>	<b>16.00</b>	<b>11.20</b>	<b>34.65</b>	<b>2.89</b>	<b>76.81</b>

**Column Notes**

- (1) From SEO's Guidelines (2/28/95) for sites with elevation above 6,500 ft.
- (2) Annual value from NOAA Technical Report NWS 33 (source Aquamap, <http://water.state.co.us/pubs/aquamap.asp>).
- (3) Contour of precipitation through study site (source Aquamap, <http://water.state.co.us/pubs/aquamap.asp>).
- (4) Equals Column 3 x 0.70.
- (5) Column 2 - Column 4.
- (6) Column 5 / 12 inches per foot.
- (7) Column 6 x number of exposed groundwater surface acres.

\*General Note: Values are calculated based on the formulas, numbers shown in this table are rounded to the nearest hundredth.

**Table 2**  
**Four Corners Materials - Bayfield Gravel Operation**  
**Water Depletions for Years Nine and Ten**

Month	Evaporation from Exposed Ground Water	Depletions from Dust Suppression	Depletions from Material Mined Below Groundwater Table	Depletions from Concrete Batch Plant	Depletions for Existing and Expanded Operations
	(acre-feet) (1)	(acre-feet) (2)	(acre-feet) (3)	(acre-feet) (4)	(acre-feet) (5)
January	0.00	0.00	0.18	0.00	0.18
February	1.26	0.00	0.18	0.00	1.44
March	3.96	0.00	0.18	0.00	4.15
April	7.36	0.09	0.18	0.00	7.64
May	10.87	0.10	0.18	0.00	11.15
June	14.52	0.09	0.18	0.00	14.80
July	13.46	0.00	0.18	0.00	13.65
August	9.97	0.00	0.18	0.00	10.16
September	8.46	0.00	0.18	0.00	8.64
October	4.82	0.00	0.18	0.00	5.01
November	2.11	0.00	0.18	0.00	2.30
December	0.00	0.00	0.18	0.00	0.18
<b>Annual</b>	<b>76.81</b>	<b>0.28</b>	<b>2.20</b>	<b>0.00</b>	<b>79.29</b>

**Column Notes**

- (1) From Table 1, Column 7.
- (2) Based on 1,000 gallons per day, three months per year. The distribution through the year may vary from the months shown and will be addressed in the accounting.
- (3) Equals 75,000 tons of gravel removed below groundwater table per year. Up to 75,000 tons may also be washed, which does not accrue any additional depletion. Depletions are determined using the following formula:  

$$(6,250 \text{ tons per month}) \times 4\% \times (2,000 \text{ lbs. / ton}) / (62.5 \text{ lbs. / ft}^3) / (43,560 \text{ ft}^2 / \text{AF}).$$
- (4) There will be no concrete batch plant at the Bayfield Facility for Years Nine and Ten.
- (5) Sum of Columns 1 through 4.

**Table 3**  
**Four Corners Materials - Bayfield Gravel Operation**  
**Lagged Depletions and Water Replacement Requirement for Years Nine and Ten**

Month	Total Depletions (acre-feet)	Total Lagged Depletions (acre-feet)	Potential Gosney Pump Requirements Due to Irrigation Season Depletions (cfs)	Decreased Glover Depletion Factor from 07CW104	
	(1)	(2)	(3)	Month Since Pumping Started (4)	(% of Pumping Returned) (5)
January	0.18	0.90	0.00	Month 1	78%
February	1.44	1.65	0.00	Month 2	18%
March	4.15	3.72	0.00	Month 3	4%
April	7.64	6.65	0.00	Month 4	0%
May	11.15	9.81	0.16	Month 5	0%
June	14.80	13.17	0.22	Month 6	0%
July	13.65	13.00	0.21	Month 7	0%
August	10.16	10.47	0.17	Month 8	0%
September	8.64	9.01	0.15	Month 9	0%
October	5.01	6.06	0.10	Month 10	0%
November	2.30	3.48	0.00	Month 11	0%
December	0.18	1.37	0.00	Month 12	0%
<b>Annual</b>	<b>79.29</b>	<b>79.29</b>		<b>Annual</b>	<b>100%</b>

**Column Notes**

- (1) Equals Table 2, Column 5.
- (2) Equals Column 1, lagged using the Glover Depletion Factor decreed in Case No. 07CW104 (see Columns 4 and 5)
- (3) Equals Column 2 / number of days per month / 1.983. Only irrigation season months are calculated.
- (4) Equals the month since the pumping started. Month 1 = the first month of pumping
- (5) Shows the decreed Glover Depletion Factor used to calculate the lagged depletions based on the months since pumping.



**Table 4**  
**Four Corners Materials - Bayfield Gravel Operation**  
**Site Specific Evaporation Calculations (elev. 6,750 ft)**  
**Full Build-Out**

Ground water exposed by mining\*: 39.10 acres  
 Gross Evaporation Value: 45 inches  
 Precipitation Value: 16.0 inches

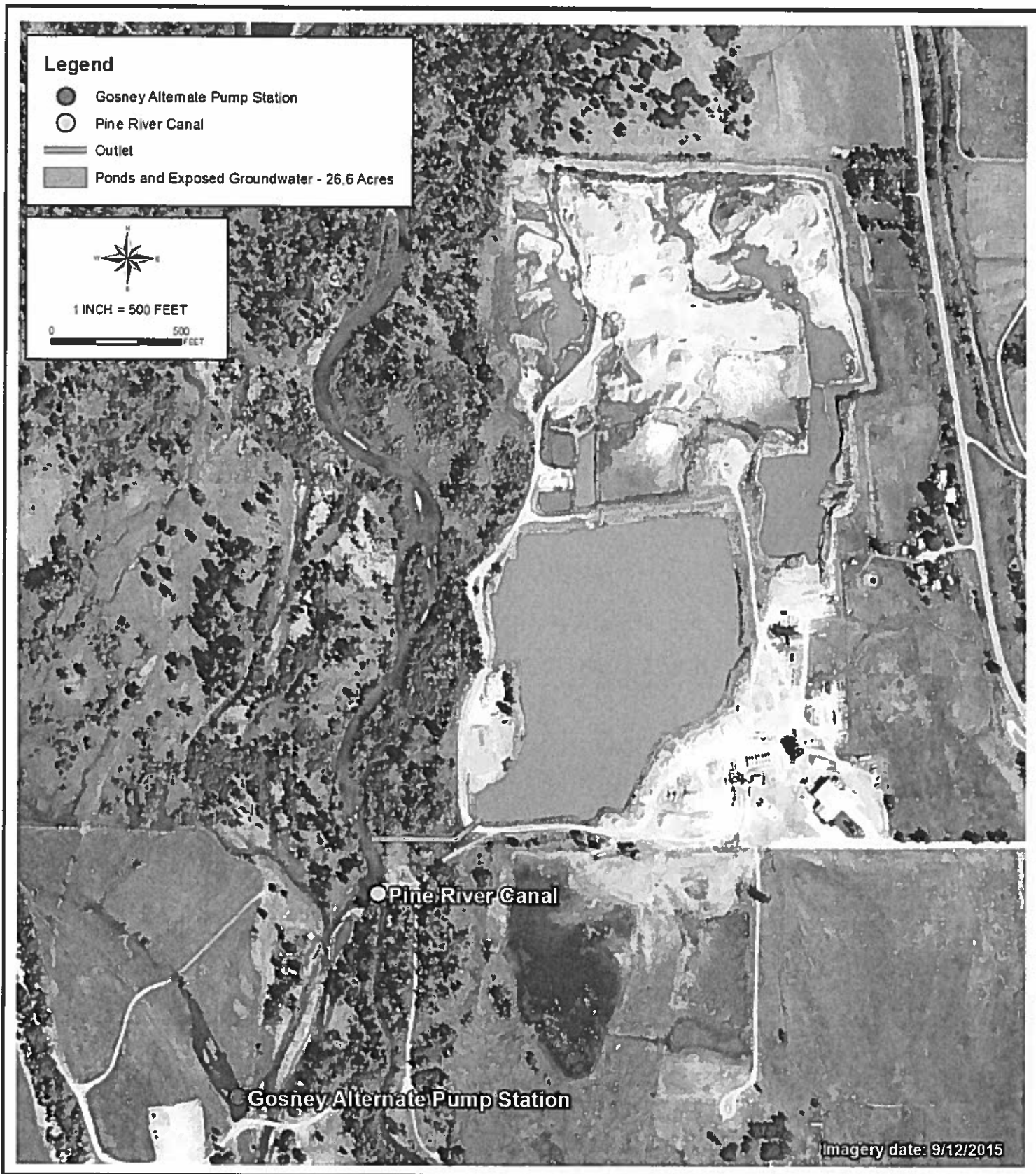
Month	Monthly Evaporation Distribution (% of Annual)	Gross Evaporation (inches)	Average Year Precipitation (inches)	Effective Precipitation (inches)	Net Unit Evaporation (inches)	Net Unit Evaporation (feet)	Total Evaporation (acre-feet)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
January	1.0	0.45	1.48	1.04	0.00	0.00	0.00
February	3.0	1.35	1.12	0.78	0.57	0.05	1.85
March	6.0	2.70	1.30	0.91	1.79	0.15	5.83
April	9.0	4.05	1.04	0.73	3.32	0.28	10.83
May	12.5	5.63	1.03	0.72	4.91	0.41	15.98
June	15.5	6.98	0.61	0.42	6.55	0.55	21.35
July	16.0	7.20	1.61	1.13	6.07	0.51	19.79
August	13.0	5.85	1.93	1.35	4.50	0.37	14.66
September	11.0	4.95	1.62	1.14	3.81	0.32	12.43
October	7.5	3.38	1.71	1.20	2.18	0.18	7.09
November	4.0	1.80	1.21	0.85	0.95	0.08	3.10
December	1.5	0.68	1.34	0.94	0.00	0.00	0.00
<b>Annual</b>	<b>100</b>	<b>45.00</b>	<b>16.00</b>	<b>11.20</b>	<b>34.65</b>	<b>2.89</b>	<b>112.90</b>

**Column Notes**

- (1) From SEO's Guidelines (2/28/95) for sites with elevation above 6,500 ft.
- (2) Annual value from NOAA Technical Report NWS 33 (source Aquamap, <http://water.state.co.us/pubs/aquamap.asp>).
- (3) Contour of precipitation through study site (source Aquamap, <http://water.state.co.us/pubs/aquamap.asp>).
- (4) Equals Column 3 x 0.70.
- (5) Column 2 - Column 4.
- (6) Column 5 / 12 inches per foot.
- (7) Column 6 x maximum number of exposed groundwater surface acres.

\*Equals the currently permitted surface area of 39.1 acres, permit no. 77713-F, which is greater than the current exposed groundwater area but has been used conservatively and is also the maximum build-out amount.

General Note: Values are calculated based on the formulas; numbers shown in this table are rounded to the nearest hundredth.



P:\031-007\100 - Pine River\Bayfield Facility\mapping\Bayfield Ponds\_2015 imagery.mxd

User: byonthaden

**WWE**

WRIGHT WATER ENGINEERS INC.  
1666 N. MAIN AVE, SUITE C  
DURANGO, CO 81301  
(970)-259-7411

LA PLATA COUNTY, COLORADO

**BAYFIELD FACILITY GRAVEL OPERATION  
EXPOSED GROUNDWATER SURFACE 9-10-2015**

FOUR CORNERS MATERIALS

PROJECT NO.  
031-007.100

FIGURE  
2

## FIRST AMENDMENT TO WATER LEASE AGREEMENT

THIS FIRST AMENDMENT TO WATER LEASE AGREEMENT (the "Amendment") is made as of this 8 day of April, 2009 by and between GOSNEY & SONS, INC. and DON L. GOSNEY (collectively, "Lessors") and OLDCASTLE SW GROUP, INC., doing business as FOUR CORNERS MATERIALS ("Lessee").

### RECITALS:

WHEREAS, Lessors and Lessee are parties to that certain Water Lease Agreement dated September 25, 2006 (the "Water Lease") whereby Lessors leased to Lessee certain water rights diverted at the Gosney Alternate Pump Station (referred to herein as the "Leased Water") for industrial, commercial and augmentation purposes on the "Owned Property" as defined therein; and

WHEREAS, Lessors and Lessee desire to amend the terms and conditions of the Water Lease as set forth herein. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Water Lease.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### AGREEMENT

1. Paragraph 1 of the Water Lease shall be deleted in its entirety and replaced by the following:

Lease and Use of Water Diverted at the Gosney Alternate Pump Station and Delivery System. Subject to the terms and conditions of this Agreement, Lessors hereby lease to Lessee sufficient water diverted at the Gosney Alternate Pump Station for Lessee's intended industrial, commercial and augmentation use on the Owned Property consistent with the Water Court Decrees. Commencing April 1, 2009, in addition to leasing Lessee the Leased Water, Lessors shall also lease to Lessee the delivery system associated with the Leased Water. The delivery system shall consist of the Gosney Alternate Pump Station pump, motor, water delivery pipeline, and all valves and devices appurtenant thereto which are collectively involved in diverting and delivering the Leased Water to the Owned Property (the "Delivery System"). During the term of this Agreement, no other use by Lessors or any third-party of water diverted under the Gosney Alternate Pump Station Water Right may occur to the extent that such use would result in insufficient water being available to satisfy the Lessee's requirements under

this Agreement. Commencing April 1, 2009, the amount of Leased Water shall not exceed 0.7 c.f.s.

2. Paragraph 2 of the Water Lease shall be deleted in its entirety and replaced by the following:

Term of Agreement. The term of the Water Lease shall be for so long as Lessee owns the Owned Property, or until Lessee terminates the Water Lease for cause or for convenience; or Lessor terminates the Water Lease for cause.

3. Paragraph 3 of the Water Lease shall be deleted in its entirety and replaced by the following:

Payment. Commencing April 1, 2009, as payment for the Leased Water and use of the Delivery System under the Agreement and this Amendment, Lessee shall pay Lessors an annual base payment of [REDACTED] due and payable on April 1 each year for the ensuing year (the "Base Rate"). Additionally, Lessee shall pay Lessors [REDACTED] per each acre foot of Leased Water diverted into the Delivery System at Gosney Alternate Pump Station (the "Lease Rate"). The Base Rate and the Lease Rate will increase each year by the percentage increase in the Consumer Price Index (All Urban Consumers, CPI-U, U.S. City Average - All Items) ("CPI") which occurred during the prior year. This adjustment shall be made automatically and annually on April 1<sup>st</sup> of each year based on the most recently published CPI available prior to the adjustment date. Lease Rate payments shall be made on a quarterly basis for the amount of water actually delivered during the prior quarter from the Gosney Alternate Pump Station to the Owned Property. The Parties shall cooperate to develop mutually acceptable means of establishing monthly delivery schedules to meet Lessee's water requirements; calculating the amount of water delivered to the Owned Property each month; and for billing and payment procedures.

3.1. Payments for Maintenance, Repair and Replacement. Commencing April 1, 2009, Lessee is responsible for all costs associated with the maintenance, repair, and replacement of the Delivery System. Whether the Delivery System requires maintenance, repair or replacement shall be in the sole discretion of Lessors. Such discretion shall be exercised to prevent losses of water in the Delivery System but shall not be unreasonably exercised.

3.2. Legal Protection of Leased Water Rights. In order to legally protect and preserve the Lessors' water rights in the Leased Water, Lessors will advise Lessee of any applications for water rights which, without inclusion of

adequate terms and conditions in any final decree, could potentially have an injurious effect on Lessors' water rights in the Leased Water. In the event Lessors determine that an application for water rights could potentially have an injurious effect on Lessors' water rights in the Leased Water, the parties shall confer in good faith to decide whether or not to file an objection thereto. If the parties decide an objection is warranted, Lessee will file the objection on behalf of Lessors at Lessee's sole expense. Lessee shall be entitled to have full and complete discretion to prosecute the objection as it sees fit, and may settle the objection on terms it deems reasonable, subject to final written approval by Lessor, which approval shall not be unreasonably withheld; provided however, that Lessors may prosecute, at Lessors' expense, any defense of its water rights in matters the Lessee has determined it will not defend.

3.3. Lessors to Pay for Natural Gas Fuel Supply. Lessors shall provide, and be responsible for all costs associated with, natural gas fuel supply to the extent available, to power the Gosney Alternative Pump Station pump motor. If Lessors are unable to deliver natural gas fuel supply, Lessee will make other reasonable fuel arrangements, such as propane, in which case Lessee will be given a credit against Lease Rate payments due hereunder, for the cost of such fuel consumed.

3.4. Default; Enforcement. In the event Lessee shall fail, within 30 days after written notice, to make any payment required hereunder or to remedy any other default, this Water Lease may, at the option of Lessor, be terminated and Lessee shall have no further rights hereunder. In the event suit is brought to enforce the terms of this Water Lease, the prevailing party shall be awarded reasonable attorney fees.

4. Ratification. Except as specifically provided herein, the provisions of the Water Lease shall remain in full force and effect and are hereby ratified and reaffirmed by the parties.

5. Multiple Originals. This Amendment may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which shall constitute one and the same Agreement.

6. Recording. The parties agree to execute a memorandum of this Amendment and to record the same in the real property records for La Plata County, Colorado, along with a memorandum of the Agreement to the extent such memorandum has not previously been recorded.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

## LESSORS:

GOSNEY &amp; SONS, INC.

By: Don L. Gosney  
Name: Don L. Gosney  
Title: President

Don L. Gosney  
Don L. Gosney, individually

## LESSEE:

OLDCASTLE SW GROUP, INC., doing business  
As Four Corners Materials

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_