



M-1974-015 Inspection Follow Up

1 message

Julie Mikulas <Julie.Mikulas@martinmarietta.com>

Fri, Feb 2, 2018 at 5:13 PM

To: "Amy Eschberger (amy.eschberger@state.co.us)" <amy.eschberger@state.co.us>

Please find attached our responses to your letter dated January 4th

Julie Mikulas

Land Manager | Rocky Mountain Division

Martin Marietta

1800 N Taft Hill Road, Fort Collins, CO 80521

c. 970.227.4041 o. 970.407.3631 f. 970.407.3900

julie.mikulas@martinmarietta.com

www.martinmarietta.com



DRMS Inspection followup 2018-02-02.pdf
1537K



Julie Mikulas
Land Manager

February 2, 2018

Ms. Amy Eschberger
Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203

RE: Lyons Pit M-1974-015, Follow-up to inspection dated March 22, 2017

Dear Ms. Eschberger:

Please accept this letter as our written response to the two items due 8/25/17.

CORRECTIVE ACTIONS: The operator shall show evidence the operator is taking measures to bring the site into compliance with the Office of the State Engineer (SEO), or backfill the pit to at least two feet above the groundwater surface.

RESPONSE: In 1977, one of our predecessors, Western Paving, executed an agreement with St. Vrain & Left Hand Water Conservancy District. They furnished all of their water rights to the district in exchange for augmentation water for future Ponds 1, 2, and 3. From Google photography prior to the flood, the ponds equaled 49.2 acres of exposed water surface and the reservoir represented 0 augmentation acres. The flood sediment fill to Ponds 1, 2, and 3 and our voluntary fill to Pond 1 reduced the exposure by 20.5 acres and the damage to the liner on Pond 4 has increased the exposure by 13.5 acres. This net change resulted in 42.2 acres exposed for augmentation which is below the original 49.2 acres. Copy of the agreement is attached as well as an aerial with acres as explained above.

As an update to the repairs of Lake 4 Reservoir, the lined reservoir is jointly owned by St. Vrain and Left Hand Water Conservancy District and Boulder County Open Space (BCPOS). Their Boulder County LISU application (LU-17-004) was approved July 25, 2017 for the liner repair of Lake 4. They have been working with FEMA and are wrapping up their environmental review process and then can apply for their Corp of Engineer permit. They are hoping to have all of their approvals this summer so they can bid out sediment removal and reservoir repair.

Please let me know if any additional information is needed for the Corrective Action. Our annual reports will show when the reservoir has been repaired and the SEO has approved the 90-day performance test on the liner.

Rocky Mountain Division – Northern Office
1800 N Taft Hill Road, Fort Collins, CO 80534
julie.mikulas@martinmarietta.com
www.martinmarietta.com

Ms. Amy Eshberger

February 2, 2018

Page 2

CORRECTIVE ACTIONS: The operator shall provide photo documentation to the Division demonstrating the pond bank erosion has been repaired and the slopes graded to the approved 3H:1V gradient, and the site has been reconstructed and stabilized to prevent erosion damage. The operator shall demonstrate that the current flood protection plan is adequate to protect the site from stream capture and associated flood damage in the future.

RESPONSE: Martin Marietta is requesting a 9 month extension to June 25, 2018. We have been dealing with some issues with Boulder County. The neighbors have questioned the validity of our Special Use permit with Boulder County. The Boulder County Land Use Director requested that we submit documentation showing that our permit has not experienced a five year lapse of inactivity. We submitted our documentation to the Director mid-July 2017. The Director still has not responded. Our email chain on this issue is attached. Once he makes a decision, either the neighbors or Martin Marietta will have 30 days to submit an appeal to the Board of Adjustments and then another 30 days for the Board to make a decision. Once that is completed, we will then schedule our Interim Review required by our Boulder County Resolution.

Our intent is to resume mining and remove sediment in Pond 2 and re-slope the banks noted in the pictures of your annual report. Prior to flooding, we had removed the dilapidated scale house, employee building and equipment and were ready to invest in installing buildings with running water and toilets and improving the crushing/screening plant. The septic permit application has been submitted and we were ready to submit building permits but it has all been put on hold since Boulder County will not issue us any permits until the above processes are completed.

We have briefly discussed reclamation of Lake 2 and 3 with BCPOS, the land owner. We wish to reclaim as previously approved by the DRMS and Boulder County Commissioners. Our current discussion with BCPOS is that they will fill in Lake 3 in the short term with material that is being removed from Lake 4 during their liner repairs and then we will re-screen and re-crush the Lake 3 material when we re-enter mining the site leaving more areas filled than previous reclamation plans to help provide some protection to Lake 4 during another flood. Banks of Lake 3 will then be re-sloped to meet the 3H:1V slopes. There is currently a lot of uncertainty about how to repair the banks of Lake 2. As you and I discussed during your inspection, BCPOS would like for us to leave the 1H:1V slopes on the banks due to the burrowing nesting birds currently using the bank. They would also like for us to leave a shelf for some of the birds that like walking out into the shallow water. Until we can determine the quantity and quality of the material, no definitive plan can be pulled together. This won't be done until the Interim Review discussed above. We understand that this is not acceptable reclamation from the DRMS view point and will work to create a revised plan that satisfies your requirements. Most of our discussion with BCPOS up to this point has been in regards to Lake 4 since they are pushing to get the water storage usable again. We would prefer to not re-work the banks now and then have to go back in and rework again once the reclamation configuration is determined.

Please let me know if anything additional is needed at this time.

Sincerely,



Julie Mikulas, Land Manager



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Page: 1 of 5
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AGREEMENT REGARDING SAND AND GRAVEL
SPECIAL USE PERMIT AND RESTRICTIVE
COVENANTS PERTAINING THERETO

THIS AGREEMENT is made this 15th day of August, 1977, between WESTERN PAVING CONSTRUCTION COMPANY, hereinafter termed the Owner, and the ST. VRAIN & LEFT HAND WATER CONSERVANCY DISTRICT, hereinafter termed the Conservancy District.

W I T N E S S E T H:

WHEREAS, the Owner owns land described as the South Half (S. 1/2) of the Southwest Quarter (SW. 1/4) and the West Half (W. 1/2) of the Southwest Quarter (SW. 1/4) of the Southeast Quarter (SE. 1/4), all in Section 22, Township 3 North, Range 70 West; and the North Half (N. 1/2) of the Northwest Quarter (NW. 1/4) and the West Half (W. 1/2) of the Northwest Quarter (NW. 1/4) of the Northeast Quarter (NE. 1/4) all in Section 27, Township 3 North, Range 70 West; containing 194.23 acres, more or less, and has presented staging and reclamation plans to Boulder County and the State of Colorado; and

The Owner has submitted to Boulder County mining and reclamation plans, such plans consisting of a W. W. Wheeler and Associates, Inc. report of February 7, 1977, and other documents maps, and plans as have been filed with Boulder County; and

The Owner is able to furnish augmentation water to compensate water users in Water Division No. 1 for anticipated evaporation losses and changes in water usage in the area covered by Exhibit A (specifically described as amendment to Boulder County Special Use Permit #17959) as a result of the mining and reclamation; and



Boulder County Clerk, CO AG

R 26.00

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Page: 2 of 5

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WHEREAS, the Conservancy District reviews all mining and reclamation within its boundaries in order to insure that existing water users will not be damaged by these projects:

NOW THEREFORE, it is mutually agreed as follows:

1. The Owner agrees as follows:

a. To conduct the mining operation in accordance with the requirements set forth in the mining plan presented to Boulder County and the State of Colorado;

b. To restore the premises to the condition set forth in said reclamation plan and the regulations of Boulder County and the State of Colorado;

2. The parties further agree as follows:

a. As long as it and its successors and assigns own or have an interest in the property described herein, they will maintain the restored structures, including ponds, ditches, channels and pumps in good and working order and will do nothing to said structures which would adversely affect the interests of the water users of the Conservancy District.

b. The Owner will not claim, as a result of mining and restoration of the property, that any water has been salvaged or developed through a phreatophyte eradication program. The Owner will, however, be entitled to off-set the historic consumptive use associated with the lands removed from irrigation in connection with the mining operations against the evaporation losses from the developed lakes. Any water to be used in the mining operations and restoration process will be considered tributary water to St. Vrain Creek and will be subject to the appropriation system and other existing laws of the State of Colorado, and will be waters that have historically irrigated this land.

c. The Owner and its successors and assigns will make available for use in the reclamation plan, and for the purpose of replacing depletions to St. Vrain Creek resulting from evaporation losses from the developed lakes as necessary to prevent injury to other water rights on St. Vrain Creek and its tributaries, the water rights shown on Exhibit A, to wit: Chapman & McCaslin Ditch - 2.0 c.f.s.; Palmerton Ditch - 2-1/2 shares; Baker and Weese Ditch - 2.8 c.f.s.; Weese Private Ditch - 3.96 c.f.s. The portion of said water rights required to be made available for such purpose shall be determined in the Water Court proceedings on the augmentation plan or change of water right application provided for in paragraph 2f. herein.



1692911
Page: 3 of 5
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Boulder County Clerk, CO AG

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d. The portion of the water rights listed in paragraph 2c. above determined in said Water Court proceeding to be necessary for the purpose described in said paragraph 2c. shall remain the property of the Owner and its successors and assigns as an appurtenance to the real estate and property described in paragraph 1 herein.

e. The Owner and its successors and assigns will continue to maintain the ditches and use the water as set forth in the reclamation and water augmentation plan in order to insure that said water rights are not lost through abandonment.

f. After all structures are completed, an appropriate application for change of use or a plan of augmentation shall, if requested by the Conservancy District, be submitted to the Division 1 Water Court for determination by and for the Owner.


3. Agreement to run with the land. This agreement shall be a covenant which runs with the land described on the attached map and every part or parcel thereof as an integrated plan of use marked "Exhibit A" and shall be binding on the parties, their heirs, successors, and assigns and shall be enforceable by the Conservancy District unless and until the Conservancy District shall waive the terms thereof.
4. Enforcement. This agreement may be enforceable by the Conservancy District.
5. Objections to Permit. In consideration of the covenants herein contained, the Conservancy District hereby accepts and has no objection to the reclamation plan as submitted by Western Paving Construction Co. and consents that the proper permit may be issued at the discretion of Boulder County and the Division of Mines of the Department of Natural Resources of the State of Colorado.

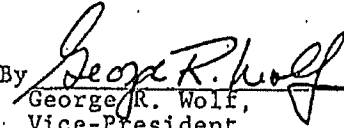
Dated the day and year first above written.

Witness our hands and official seals.

ATTEST:

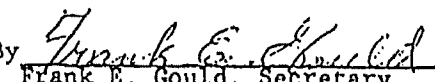
WESTERN PAVING CONSTRUCTION CO.

By 
L. Ahnstedt, Vice-President &
Assistant Secretary-Treasurer

By 
George R. Wolf,
Vice-President

ATTEST:

ST. VRAIN & LEFT HAND WATER
CONSERVANCY DISTRICT

By 
Frank E. Gould, Secretary

By 
Charles E. Klarich, President

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Boulder County Clerk, CO AG

R 28.00

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Page: 4 of 5

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STATE OF COLORADO }

COUNTY OF ADAMS }

ss.

The foregoing instrument was acknowledged before me
this 15th day of August, 1977, by George R. Wolf,
Vice-President, Western Paving Construction Co., and by L.
Ahnstedt, Vice-President and Asst. Secretary-Treasurer of
Western Paving Construction Company.

Witness my hand and official seal.

My commission expires: My Commission expires February 13, 1980

Orrie E. Halland
Notary Public

STATE OF COLORADO }

COUNTY OF BOULDER }

ss.

The foregoing instrument was acknowledged before me
this 15th day of August, 1977, by Charles E. Klarich,
as the President, and by Frank E. Gould, as the Secretary of
the St. Vrain & Left Hand Water Conservancy District.

Witness my hand and official seal.

My commission expires: My Commission Expires February 2, 1978

Clara G. Jelinek
Notary Public



Boulder County Clerk, CO AG

R 25.00

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Page: 5 of 5

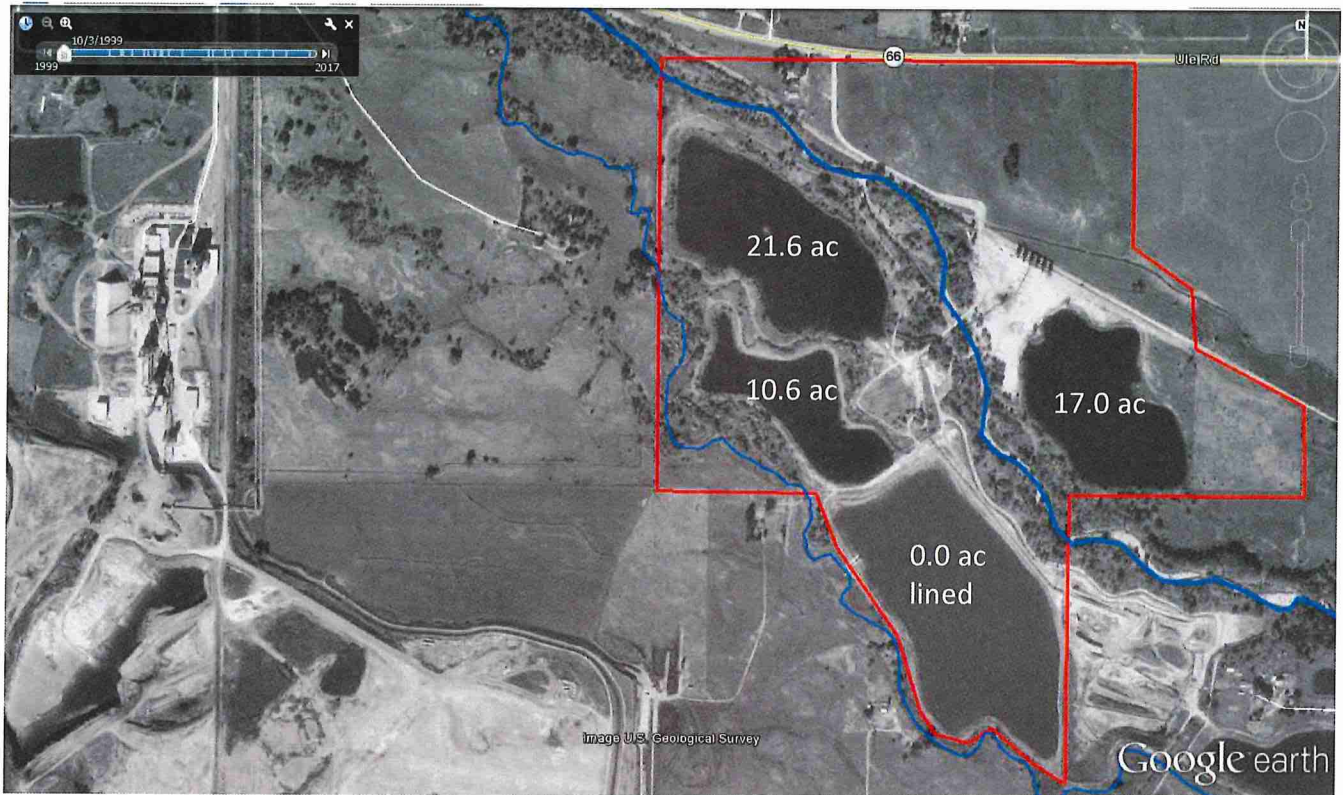
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(ATTACHMENT TO AGREEMENT OF 8/15/77 BETWEEN WESTERN
PAVING CONSTRUCTION CO. AND ST. VRAIN AND LEFT
HAND WATER CONSERVANCY DISTRICT)

Exhibit "A" consists of all of the plans submitted to Boulder
County under Boulder County Special Use Permit No. 17959
and approved by the said County August 18, 1977. The exhibit
also includes a letter from W. W. Wheeler dated February 7,
1977, evaluating the water resources belonging to Western
Paving Construction Co. in Section 22 and 27, Township 3
North, Range 70 West, Boulder County, Colorado.

1977 Augmentation Agreement = 49.2 acres



Current = 42.2 acres



Julie Mikulas

From: Case, Dale <dcase@bouldercounty.org>
Sent: Thursday, January 18, 2018 9:09 AM
To: Julie Mikulas
Cc: James Sharn; Smith, Michael P.; Mathews, Mark J.
Subject: RE: Lyons 5 year lapse

EXTERNAL MAIL

Hi Julie,

We had a bit of a hiccup getting some consulting help last fall. We met with the consultant last Friday and I expect to have his analysis today or tomorrow and then I should be able to turn around a determination by next week.

Let me know if you have any questions.

-----Original Message-----

From: Julie Mikulas [mailto:Julie.Mikulas@martinmarietta.com]
Sent: Tuesday, January 16, 2018 1:45 PM
To: Case, Dale
Cc: James Sharn; Smith, Michael P.; Mathews, Mark J.
Subject: Lyons 5 year lapse

Dale,

Can you give me an update on when you think you will have a determination?

-----Original Message-----

From: Case, Dale [mailto:dcase@bouldercounty.org]
Sent: Monday, September 11, 2017 9:07 AM
To: Julie Mikulas <Julie.Mikulas@martinmarietta.com>; Mathews, Mark J. <MMathews@BHFS.com>
Cc: James Sharn <james.sharn@martinmarietta.com>; Smith, Michael P. <MSmith@BHFS.com>
Subject: RE: Message from "DN-Copy22A"

EXTERNAL MAIL

Julie,

I'm contracting out with a consultant to help review the file and give advice as to this determination. There was a small contract snafu and I hope to have them on board by the end of the week to start. I expect we will have a determination in the next couple of weeks.

Thanks and let me know if you have any questions.

-----Original Message-----

From: Julie Mikulas [mailto:Julie.Mikulas@martinmarietta.com]
Sent: Tuesday, September 05, 2017 4:39 PM
To: Case, Dale; Mathews, Mark J.
Cc: James Sharn; Smith, Michael P.
Subject: RE: Message from "DN-Copy22A"

Dale, just following up. Do you have an estimate on when you think the determination will be made?

-----Original Message-----

From: Case, Dale [mailto:dcase@bouldercounty.org]

Sent: Tuesday, August 08, 2017 3:48 PM

To: Mathews, Mark J. <MMathews@BHFS.com>

Cc: Julie Mikulas <Julie.Mikulas@martinmarietta.com>; James Sharn <james.sharn@martinmarietta.com>; Smith,

Michael P. <MSmith@BHFS.com>

Subject: RE: Message from "DN-Copy22A"

EXTERNAL MAIL

Mark,

Following up on your submittal. Sorry it has taken us a while with vacations and such to dive into this. I expect I will be able to pull together our team for their input soon and expect some input from the community as this moves forward. I would expect to have further discussions and/or a determination in the coming month.

Please let me know if you have any questions.

-----Original Message-----

From: Case, Dale

Sent: Wednesday, July 12, 2017 1:54 PM

To: 'Mathews, Mark J.'

Cc: 'Julie Mikulas'; 'James Sharn'; Smith, Michael P.

Subject: RE: Message from "DN-Copy22A"

Mark,

Thanks for the information. We will review and be in touch.

Dale Case

-----Original Message-----

From: Mathews, Mark J. [mailto:MMathews@BHFS.com]

Sent: Wednesday, July 12, 2017 11:45 AM

To: Case, Dale

Cc: 'Julie Mikulas'; 'James Sharn'; Smith, Michael P.

Subject: FW: Message from "DN-Copy22A"

Mr. Case,

I am outside counsel to Martin Marietta Materials with respect to its Special Use Permit SU-96-18 (the "Permit"). I understand that you have had several recent discussions with Martin Marietta as to whether the Permit has lapsed.

I have attached a letter discussing why the Permit has not in fact lapsed. As you know, under the Boulder County Code, a permit may lapse if there is no activity on any portion of the special use permit for any five-year period. As the letter demonstrates, there has been a great deal of activity on the permit property on a continuous basis since at least 1998. These activities include mining, active reclamation, preparation and submission of numerous annual reports and fees,

conducting stormwater inspections and submitting applicable fees, performing water quality testing, conducting an irrigation ditch improvement feasibility study, perfecting water rights, and reseeding and weed control.

Please contact me after you have had a chance to review the attachment. Martin Marietta and I look forward to discussing this issue, and other issues related to the permit, with you.

Thank you very much.

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