

February 9, 2018

Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, CO 80203

Re: Permit No. M-1992-069 - 83rd Joint Venture - Annual Report



Ladies and Gentlemen:

With the exception of establishment of re-vegetated areas, all mining and reclamation activity at this site had been completed in accordance with the Exhibit F Reclamation Plan as approved by the Division under TR-07 on August 22, 2011. A copy of said map is attached to the electronic filing as the annual report map.

With regard to the electronic annual report responses, accurate information to respond to the level of detail required in the current reporting form is not available.

4. Has excavation, processing or hauling activity commenced at the site? Response: Yes. As noted in previous annual reports, the last excavation, processing and or hauling activity occurred in 2007. Exact date is not known; therefore, response to this item has been entered as December 31, 2007. As noted in TR-08 request of May 23, 2012, additional material may be excavated to use for backfilling on the site.

13. Total Acres in various states of reclamation:

Total acres backfilled: Response, 56.9, is based upon combined wetland mitigation acres and upland (site perimeters and future development areas) as shown on the annual report map.

Total acres graded: Same as above response.

Total acres seeded with approved mix: Same response as above; however, with regard to "approved seed mix", it has been some time since the site was seeded and information as to exact mix used is difficult to locate, so the "truth and accuracy" of this response is limited. This detail of reporting was not required at the time of seeding so also cannot be found in previously filed reports. The Division's report of its March 17, 2016 inspection indicated that vegetation along the east and west boundaries and the southwest corner of the site was establishing well but that the majority of the vegetation in the middle of the site has been destroyed by prairie dogs. Aggregate Industries (AI) is aware of the need to re-seed and will either use the originally approved seed mix or submit a revised mix.

Total acres fertilized: Reported "0" since this is an unknown (see above response regarding total acres seeded).

Topsoil replacement depth: Reported 6 inches as an estimate/assumption. As with prior notations above, exact information is not available.

Mulch (acres, application rate): Reported "0" since this is an unknown. As with prior notations above, exact information is not available.

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An Equal Opportunity Employer

19. Financial warranty: On June 18, 2012, the Division approved TR-08, which allowed the Division to recalculate the financial warranty to backfill the site to prevent the exposure of groundwater. As noted in AI's May 23, 2012 TR-08 request, there are legal issues with regard to the property owner of the site, 83rd Joint Venture (83rd JV). Subsequent to Division approval of TR-08 and recalculation of the financial warranty AI requested, and on September 24, 2012 the Division approved, TR-09 to extend the deadline for mitigating for exposed groundwater based upon State Engineer's Office (SEO) granting of a variance of compliance with requirements relative to long-term exposed groundwater to allow time to resolve legal issues resulting from 83rd JV's failure to provide a permanent source of water augmentation. The SEO variance provided that, as long as AI diligently works toward resolution of the various legal matters associated with dedication of a permanent source of water to replace depletions at the site, the SEO will continue to approve AI's substitute water supply plan for exposed groundwater. Upon that basis, the Division withdrew its security increase for backfilling the site.

While SEO has continued to approve AI's substitute water supply plans, the Division advised on October 24, 2017 that, due to lack of evidence of any substantial progress towards resolution of the issues related to this site, an increased financial warranty was required to address long-term water augmentation liability. The required financial warranty was submitted and on February 1, 2018 accepted by the Division.

AI would note that it has continued to work towards resolution of the various legal issues at the site, which include 83rd JV, City of Greeley (Greeley) and Boyd Irrigation Company (BIC). A Complaint for Declaratory and Equitable Relief was filed in District Court, Water Division No. 1, Weld County, Colorado on October 16, 2017, subsequently amended November 6, 2017, against these entities (Case No. 17CW3148). That case was dismissed in Water Court on December 28, 2017 based upon Defendants' motion that venue in Water Court was not proper. AI intends to refile in Civil Court.

Additional Information: As noted in the annual report for permit year ended January 26, 2014, regional flooding in September, 2013 resulted in a section of the Boyd Freeman ditch pipe on the west boundary of the site failing and water breaching the pit slope in that area. Additional flooding in May, 2014 further impacted the slope in this area. Greeley and BIC made repairs to the pipe in 2016. AI anticipates restoring the slope in 2018.

All wetland mitigation requirements and conditions at the site under Section 404 Permit No. 199280589 were deemed complete by the Corps of Engineers on July 16, 2012. A copy of the Corps release letter and supporting documents were submitted to the Division with the annual report for permit year ended January 26, 2013 (received by the Division January 25, 2013).

Please contact me if you have questions or would like to further discuss the manner in which responses for this and future reports should be addressed.

Very truly yours,

A handwritten signature in blue ink that reads "Connie N. Davis".

Connie N. Davis
Land Manager