



## DRMS RE: Lyon Pit M-1974-015, Martin Marietta VIOLATIONS & EXTENSION REQUEST

1 message

Amanda Dumenigo <amanda@horsense.net>

Tue, Feb 13, 2018 at 5:21 PM

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

Cc: Dale Case <dcase@bouldercounty.org>, Boulder County Board of Commissioners <commissioners@bouldercounty.org>, Elise Jones <ejones@bouldercounty.org>, John Barth <barthlawoffice@gmail.com>, William Berg <websan@wildblue.net>, Tom Knorr <tomknorr2@gmail.com>, Richard Cargill <rcargill@aol.com>, Varda Blum <Vblum@bouldercounty.org>, Peter Reinhardt <preinhardt@bouldercounty.org>, "Elane@bouldercounty.org" <Elane@bouldercounty.org>, Don Lutter <don@lutter.com>, Michael Robson <michael@michaelrobson.com>, Claudia Berg <cpberg@wildblue.net>

February 11, 2018

Amy Eschberger  
Environmental Protection Specialist  
Division of Reclamation, Mining & Safety  
1313 Sherman Street, Room 215  
Denver, CO 80203  
[amy.eschberger@state.co.us](mailto:amy.eschberger@state.co.us)

RE: Lyon Pit M-1974-015

Please File in Docket for M-1974-015 and SU 96-18

Dear Ms Eschberger,

It has come to our attention that Ms Julie Mikulas references our group, SOSVV, as "the neighbors" in her correspondence with you dated February 2nd, 2018. We realize that the Public Comment time for this permit has passed, but we greatly appreciate the opportunity to respond to Ms Mikulas' comments regarding SOSVV, "the neighbors".

I know that you have spoken to members of SOSVV Steering Committee and have a sense of the caliber and depth of our organization. I wanted to clarify that SOSVV is a non-profit with members throughout Boulder County and the Front Range—comprised of biologists, hydrologic engineers, farmers, ranchers, geologists, recreationists, attorneys, writers, researchers, businesspersons, sportspersons, parents, Native American leaders, conservationist, and activists.

It has come to our attention through your due diligence and site inspections in St Vrain Valley, specifically the project area pertaining to SU 96-18, that Martin Marietta Materials' has neglected to make repairs of the pond erosion and slope to the approved 3H:1V gradient. As per your letter dated January 4th, 2018, we are extremely concerned that Martin Marietta's site is not compliant with Office of State Engineer (SEO), and they do not have an adequate flood protection plan to protect the site from stream capture and associated flood damage in the immediate or foreseeable future. We request further explanation of these matter.

It is dully noted that DRMS granted extension on July 6th, 2017 and these problems were to be resolved on or before September 25th, 2017. Martin Marietta failed to resolve problems by the original and the extended deadlines. Furthermore, almost five months later, in a letter dated February 2nd, 2018 Ms Mikulas finally responds by requesting an additional nine month extension (including a five months retroactively, we deduce?) until June 25th, 2018 to resolve breaches.

As you noted, failure to address these issues places the residents in the area, wildlife, livestock and the properties at risk should there be another flood. Seasonally, Spring runoff is a major concern. However, as we learned in the Fall 2013 and in the history of this valley that is situated in the 100 year floodplain and classified as a Moderate Hazard Zone by Boulder County Land Use, floods happen anytime and are devastating acts of nature.

These continuous delays are unacceptable to the citizens, property and business owners in the area and pose serious safety issues. Each day that these reclamations are not done properly directly jeopardizes the safety and property investments of residents and business owners in the area.

Ms Mikulas' extension request justification— that Martin Marietta will address it when the company "resumes mining" presupposes that Martin Marietta will be mining in the area— and this is not a foregone conclusion or a legitimate excuse for neglecting to correct current problems, restoration / reclamation work on previously mined ponds damages.

Local agencies like BCPOS, Land Use, US Fish & Wildlife are working diligently on researching the many areas of concern, but we do not have a dependable timeline given the legal issues to justify delaying repairs on existing issues and past due restoration /reclamation corrective actions.

We have identified many areas of legitimate concern, including the potential default on the permit due to a five year lapse in mining activity— that is substantiated by the Director of BCPOS, the partial land owner in his June 2017 letter to US Fish and Wild Life (in attached letter). We are waiting for Dale Case, Director of Land Use to make a decision as there are many changes in Conditions and Information, historic 2013 floods, new biodiversity studies, permit ownership changes throughout the history of the permit, etc. Attached is SOSVV's official letter to the Land Use Dept. in response to Martin Marietta's Activity Log for your reference; it may be helpful in understanding some the "local issues" pertaining to this 20 year old mining permit and providing context for some of Ms Mikulas' references.

We look forward to working with you and DRMS to ensure that the safety of the citizens and properties in this area are not compromised *again* by inadequate reclamation of previously mined pits and ponds and avoidable flood damage.

We respectfully request that no further concessions or extensions be given by the State's Division of Reclamation Mining & Safety to Martin Marietta Materials that enables them to continue to put residents and properties at risk and regulatory authorities in potential liability in the event of a flood or other unforeseeable acts of nature. Given the significance of these safety breaches, we respectfully ask that DRMS prioritize protecting the citizens and properties in the St Vrain Valley when considering further action relating to Martin Marietta's state permitting.

Again, we request further explanations on all matters pertaining to Martin Marietta's state obligations and their flood plan. We would like to schedule a meeting with you at your convenience to discuss these issues further. Please let me know when you may be in the area again, or we can arrange to meet in Denver at your convenience?

Sincerely yours,

Amanda Dumenigo  
SOSVV Chairperson

[www.sosvv.wordpress.com](http://www.sosvv.wordpress.com)

cc:ed Dale Case, Boulder County Board of Commissioners, Elise Jones, John Barth, William Berg, Richard Cargill, Varda Blkum, Peter Reinhardt,  
[Elane@bouldercounty.org](mailto:Elane@bouldercounty.org), SOSVV Steering Committee



**FINAL Letter TO THE COUNTY MMM Mathews.pdf**  
178K

By email to: [dcase@bouldercounty.org](mailto:dcase@bouldercounty.org) and [rhaigh@bouldercounty.org](mailto:rhaigh@bouldercounty.org)

Dale Case and Robert Haigh  
Boulder County Land Use Department  
2045 13th Street, P.O. Box 471  
Boulder, CO 80306

August 12th, 2017

Re: Lapse of Martin Marietta gravel mining approvals, Ute Highway, Boulder County

Response to Mr. Mathews

Please include this letter in Docket SU 96-18.

\*This is an amended version of my letter submitted to you on July 26th, 2017 as noted on said letter. In consideration of new information obtained in CORA documents, there are some additions to my original draft, specifically sections # 5, 6, 7, & 8.

Dear Mr. Dale Case,

On behalf of Save Our St Vrain Valley (“SOSvv”) and the undersigned citizens, we submit this comment letter responding to Martin Marietta’s July 12, 2017 letter to Boulder County Land Use Department titled “SU-96-18-Activity on Parcels Prevented Lapsing” submitted by its attorney, Mark Mathews of Brownstein Hyatt Farber & Schreck.

First, we want to thank you for providing SOSvv with Martin Marietta Material’s response to Land Use Department’s February 2017 request to furnish proof of continuous approved use, more specifically, that there has not been any continuous five-year lapse in the approved use. However, it is disconcerting that Martin Marietta Materials took six months to respond, and we have less-than a two-week window to evaluate their position and to submit a response for your consideration. That seems disproportionate and at a detriment to our community.

**1. David Callahan’s previous representations do not amend the underlying written approvals.**

Martin Marietta Materials, states in paragraph two of its July 12th, 2017 letter to Dale Case, that the County has confirmed that this permit has not lapsed based on Mr. David Callahan’s October 17th, 2006 letter to Mr. Steven Browne. SOSvv members questioned Mr. Callahan's authority as Operational Planning Manager to

make changes to the Commissioner's Resolution 98-32 in a face-to-face meeting in February with Commissioner, Elise Jones. SOSvv members asked you and Commissioner Jones to please provide documentation substantiating that Mr. Callahan had the authority to unilaterally alter and modify the 1998 Commissioners' Resolution 98-32 without public notification or participation via public hearing. We have not received any such documentation from you or Commissioner Jones to date, and realize that may be because there's no supporting documentation. We therefore question the validity of Land Use Dept. staff Planner, Ms. Abby Shannon's conclusion as stated in her January 24th, 2017 letter to Mr. Summer Howard, that Mr. Callahan's letter "remains in effect". To the contrary, Mr. Callahan's October 17, 2006 letter had no legal affect in amending or altering the underlying County approvals for this project.

David Callahan was an Operational Planning Manager for Land Use Department, not the Director for Land Use Department. Based on our research, Land Use Code mandates that substantial changes to a Special Use permit be made by the Director of Land Use. **According to Article 4 of the Boulder County Land Use Code, 4-603 B states that "changes to express conditions or agreements" are considered substantial.** Furthermore, Callahan states in said letter that "(he) has discussed this matter with...senior management...(and) can approve it administratively". We disagree. Noticeably absent from his letter are any names or signatures of said senior management and the mention of or approval from the Director of Land Use at the time, Graham Billingsley.

In addition, the August 20th, 1998 Resolution 98-32 by the Board of County Commissioners, states in clause #35 that "No later than January of 2003, the Applicant shall establish a community advisory committee which shall meet twice annually for the purpose of providing recommendations and feedback to the applicant, staff and the Board...". In said letter, following the acquisition by Lafarge, **Mr. Callahan waives Western Mobile's violation / failure to establish an advisory committee** (condition #35). **Mr. Callahan also goes on to amend and cancel the condition in his letter: "The condition [#35] is henceforth meant to require that this committee must set up WITHIN a month prior to the commencement of mining"**—a major change from "twice annually, starting no later than January 2003". **The dramatic change in timeframe also undermines and cancels the very function of this condition** "...of providing recommendations and feedback to the applicant, staff and the Board..." Callahan's letter waives and cancels significant conditions of The Resolution 98-32 and the Development Agreement affecting SU 96-18 permit. He does so as Operational Planning Manager and evidently without any verifiable permission

from the Commissioners, the Director of Land Use, a public hearing, or public comment.

In consideration of said facts, the undersigned asks the Director specifically, to **uphold the 1998 Commissioner's Resolution and Land Use Code and not David Callahan's 2006 letter; Changes to the Resolution made by Mr. Callahan in his 2006 letter pertaining to SU 96-18 permit do not appear to be substantiated by his position and to exceed his jurisdiction in overriding the Commissioner's 1998 Resolution and the terms of the Development Agreement (as subsequently demonstrated). It was this same Resolution 98-32 executed by the County Commissioner's, that combined SU 69-476, SU 84-18 and SU 92-02 into SU 96-18. This Resolution must be upheld in it's entirety in order to uphold it's integrity.**

Mr. Mathews references the Development Agreement made on June 30th, 1999 between the Board of County Commissioners and Western Mobile, Inc ("The Developer"). The Development Agreement clearly states that "whereas, the Developer has submitted to the County a special use permit request to mine, process, and transport sand and gravel, which the County has approved in Land Use Docket SU-96-18 as set forth in County Resolution #98-32, adopted on August 20, 1998 which is attached to and incorporated into this agreement as Exhibit A...[and] whereas, the County and the Developer acknowledge and agree that the matter set forth herein are reasonable requirements for the County to impose as part of its approval of the Docket, and that such matters are \*necessary to protect and promote the public health, safety, and welfare... therefore in consideration of the mutual covenants herein contained and the County's approval of the Development as set forth in Exhibit A [Resolution 98-32] hereto, the Developer and the County agree as follows:...The Development shall comply and be consistent with the terms, CONDITIONS, and commitments of record for the Docket, AS SET FORTH in Exhibit A [Resolution # 98-32]...[AND under #5 Amendment / Waiver section of the Development Agreement it clearly states:] "...any CANCELLATION, AMENDMENT, or WAIVER that represents a MATERIAL MODIFICATION of the County's approval of the Development, as set forth in Exhibit A [Resolution #98-32] hereto, SHALL REQUIRE A PUBLIC HEARING AND approval according to applicable County Land Use Regulations. Hence waivers, cancellations and amendments, made by Mr. Callahan in his 2006 letter serving as a Land Use Dept. Operational Planning Manager should be viewed as a violation for reasons previously outlined under #5 Amendment / Waiver section of the

Development Agreement as there was **no public hearing or verifiable approval by the Director, Graham Billingsley or the County Commissioners.**

2. Martin Marietta has violated the terms of previous approvals. We also believe that the County approvals for this project are void due to a breach of the County approvals by Martin Marietta and/or its predecessors. As noted above, under the terms of the previous approvals, Martin Marietta or its predecessor(s) was mandated to create a community advisory committee and conduct regular meetings. Martin Marietta and its predecessor(s) violated this provision by failing to create and maintain the community advisory committee. As such, they have violated the express provisions of the approvals, which render them void. Also, The Commissioners' Resolution states in 7B that “**Special interim reviews will be conducted five years prior to the commencement of mining of Phase II and Phase III** to determine whether the terms and conditions of approval are sufficient or require amendments. In the course of these reviews, which shall be conducted as duly-noticed public hearings before the Planning Commission and the Board, new conditions of approval may be imposed and original conditions may be modified, reduced or waived to accommodate changing technology, knowledge of new health concerns, or other new information not available at the time of this approval”. **No interim reviews have been conducted to date. If the Director is to uphold the Commissioner’s mandate as stated in the Resolution 98-32 AND The Development Agreement of June 6th, 1999, that prevents Martin Marietta Materials from commencing mining Phase II until five years after the first interim review is conducted.**

3. The *Sierra Club* court decision has no precedential effect on the facts of this case. The question before the Director is whether the previous approvals have lapsed due to a five-year period of inactivity of the approved use. As such, this issue is largely a fact-based inquiry. The “approved use” in this case is “gravel mining”. Thus, the Director should limit his inquiry into whether there has been a five-year period of inactive gravel mining since issuance of the 1998 County approval(s). Thus, much of the “evidence” relied upon by Martin Marietta (i.e., filing annual reports, maintaining bond, paying annual fees) are immaterial to whether the “use” (gravel mining) has lapsed.

As an initial matter, we do not believe that Martin Marietta’s July 12, 2017 letter produces any actual evidence to support its claim that the approvals have not lapsed. Instead, the letter simply attaches a self-serving timeline as Appendix B. Martin Marietta fails to attach any supporting evidence for the summary timeline found in Appendix B. A proffer of evidence is not the same as the actual evidence

itself, which is necessary to support a factual finding. Without the actual supporting evidence proving the claims in Appendix B, it would be arbitrary and capricious for the Director to accept Martin Marietta's "proof of activity". Having failed to produce supporting evidence, the Director must find that the County's previous approvals have lapsed.

The July 12, 2017 letter also references as precedent the decision in *Sierra Club v. Billingsley* (CO App 2007) and states that it "supports...[Martin Marietta Material's] conclusion that the Permit [SU-96-18] has not lapsed due to inactivity." To be clear, the final decision in *Sierra Club vs. Billingsley* made by the **Courts of Appeals**, was upheld **because Land Use Code could not be enforced retroactively**, and **NOT** in any way excusing or overlooking a five year lapse in approved "use" activity for a Special Use permit. The ruling upholds and substantiates the significance of a five year lapse in activity, as is at issue in *this* case. Graham Billingsley, in his official capacity as Director of the Boulder County Land Use Department, **addressed whether Article 4-604 was intended to apply to permits** and gave the following testimony at the November 6, 2002 hearing before the BOA:

**"In 1996, the County passed amendments to the special use regulations of the Land Use Code providing for the lapse of special use permits. [T]his is a quote from the regulations: '[if there is] NO activity under \*ANY portion of the special use permit for a continuous period of five years or [Applying 4-604(C)]...it is \*inappropriate to retroactively apply a provision of the Land Use Code that was activated, or implemented, under a permit \*approved prior to the lapsed provision coming into effect'...**Since 4-604 does not state that it applies to permits prior to its enactment[;] this rule of construction in Article [1-900] requires that we cannot apply the lapsed provision, retroactively to Cemex..."

**\*Chronologically and logistically, the 1996 provision of the Land Use Code was promulgated before the 1998 SU 96-18 permit application. Hence, the 4-604 rule of construction in Article [1-900] does apply to all subsequent Special Use permits, and supports our conclusion that there has been a lapse in continuous activity and that there has been no approved "use" activity under portion(s) of SU 96-18. Preliminary analysis of the Activity Log submitted by Mr. Mathews' on behalf of Martin Marietta, appears to demonstrate well over five year lapse in continuous mining activity under the permit between 2002-2017.**

**In addition, the legal issue before the Director is whether Martin Marietta (or its predecessor(s)) failed to comply with ANY provision of the previous**

**approvals, thus resulting in a breach and rendering the previous approvals void. We ask that the Director to address this issue in its final determination.**

**In the event the Director allows Martin Marietta to produce the evidence supporting its claims in Appendix B, the undersigned ask that all such evidence be produced to SOSvv, and that we are allowed a minimum of 30 days to review and comment on the evidence.**

**4. Martin Marietta did not commence gravel mining under the 1998 County approvals within 5 years of issuance.**

The County issued its approval(s) for gravel mining to Martin Marietta's predecessor in 1998. In Appendix B of the July 12, 2017 letter, Martin Marietta claims, without producing any supporting evidence, that gravel mining was commenced under these approvals in 1998-2001 ("Mining Miller Pit. *This included extraction and sale of sand and gravel material allowed by Special Review permit.*"). Martin Marietta makes no claim of any other gravel mining during the five-year period beginning on 1998. We disagree that the mining conducted during this time period was "commenced" under the 1998 County approvals. Instead, it appears that mining the Miller pit commenced prior to 1998 and any mining occurring between 1998-2003, if any, was a continuation of a previously approved mining project. For example, the "permit" referenced in Appendix B next to the Miller pit "activity" is State of Colorado permit "DRMS-M-1982-034". This is clearly a state-issued permit that approved the gravel mining as far back as 1982. Thus, the gravel mining ("use") appears to have commenced well before 1998 and was simply a continuation of that activity after the County's 1998 approvals. The July 12, 2017 letter fails to point to any new gravel mining commenced within 5 years or at all after the County's approval(s).

**5. There has been a 16 year period of inactivity since at least 2001 that have lapsed the approvals.**

In addition to the initial 5-year commencement period, there has also been a 16 year period of inactivity of the "use" since 1998. For example, since 2001, Appendix B fails to claim that any "extraction and sale of sand and gravel" has occurred on any of the properties subject to the County's 1998 approval(s). This 16 year period of inactivity of the "use" clearly satisfies the requirements for lapse of all County approvals. In a recent letter dated June 27th, 2017 addressed to Mr. Drue DeBerry, Colorado and Nebraska Field Supervisor, U.S. Fish and Wildlife Service/ Ecological Services, Eric Lane, Director, Boulder County Parks and Open Space, affirms our position that this permit has lapsed due to more than five years of consecutive inactivity in the following statement: "Martin Marietta has initiated



a review of the Special Use Permit with the Boulder County Land Use Department as a step toward potentially mobilizing the mining operation since **none of the mining activity permitted in 1998 has yet to begin**” (attached). The Land Use Department invited BCPOS to participate in the permit review process earlier this year, and **BCPOS owns the surface ownership of this land** (to which Martin Marietta has acquired the subsurface ownership interests), hence BCPOS Director, Eric Lane’s statement that **none of the mining activity permitted in 1998 has begun confirms our position that Martin Marietta’s and/or its predecessor’s had NO activity under ANY portion of the special use permit for a continuous period of five years [Applying 4-604(C)]** and thus, the County’s approvals have also lapsed by Martin Marietta’s &/or it’s Predecessor’s continuous lapse(s) in activity. As such, the Director must conclude that the “approved use” did lapse for a period of 16 years (over 3 times the required length of inactivity) and thus all County approvals are void and of no legal effect.

**6. The approvals must be completely reassessed in light of the 2013 flood.** In September 2013, the St. Vrain River experienced the most devastating flood ever documented. A wall of water flowed down the mountains lifting houses off their foundations, destroying riparian habitat, causing above ground gasoline tanks to bob in the water, breaching man-made ponds, and contributing at least four fatalities. More than 1,600 people were evacuated, 1,200 homes destroyed and damaged, and 900 square miles impacted by flooding. This destruction was aggravated by the man-made changes to the watershed that preceded the flood event. For example, the watershed was dramatically altered by previous gravel and other mining activities immediately adjacent to the St. Vrain. The earlier gravel mines failed to reclaim the land and instead left behind numerous ponds that added to the floodwaters when they were breached by the mighty river, thus exacerbating the destruction. In its current webpage regarding flood resiliency, the Boulder County Commissioners offer the following statement:

“Local governments such as Boulder County have a responsibility to regulate development in the floodplain or else we may jeopardize the ability for everyone in our jurisdiction to obtain flood insurance. Boulder County is taking a thoughtful and cautious approach to rebuilding. We need to understand the long-term implications of decisions we make today and how they will impact and inform the outcome of the next disaster. The county is working diligently to assess the future hazards and make informed decisions that will provide the base for further activities in recovery. People’s lives have been turned upside-down by this event. Boulder County is working with the community to balance the need to rebuild with the need to plan wisely for the next natural disaster.”

When it comes to major construction projects in the watershed, the 2013 flood changes everything. Or at least it should. Unfortunately, we see little evidence that the County is “regulating [this] development in the floodplain”, “is taking a thoughtful and cautious approach to rebuilding”, or “understands the long-term implications of decisions we make today and how they will impact and inform the outcome of the next disaster.” Instead, the County appears to be proceeding as though the flood never happened by approving this project for mining on over 800 acres of agricultural land, all of which was in the 2013 floodplain. The 2013 flood restoration work isn’t even complete in the watershed and the County appears poised to approve a massive mining project similar to previous ones that exacerbated the destruction of the watershed—even causing flooding in areas in Longmont outside the floodplain.

Irrespective of how the County rules on the present “lapse” issue, the County should use its inherent public health, common sense, and safety powers to completely re-examine all approvals associated with this mining project. Simply put, it is not 1998 any more. Thus, the County may not rely on decades-old approvals as though the flood never occurred. The project proposes more ground disturbance, more ponded water, more impacts to riparian and wetland habitat—all of which would exacerbate future flooding events. There have been floods in this valley for thousands of years and there will be more. The County must scientifically assess how this project will impact future flood events and whether such a project should be allowed to proceed in light of the knowledge we now possess. We urge the County to use caution and common sense and to re-assess all approvals for this project in light of the 2013 flood. The lives of the citizens living in the St. Vrain Valley depend upon it.

The Boulder County Comprehensive Plan (BCCP) addresses various land use issues, and includes information relevant to this proposed mining project. Links to the numerous maps in the plan are also provided on the BCCP website. I’d like to remind the Director that **The BCCP Geologic Hazard and Constraint Areas Map designates the majority of the proposed mining area as a Moderate Hazard Area.** “Geologic Hazard Area,” with a “Moderate” risk of flooding. The Geology Element of the plan states, “Moderate Hazard Area shall mean that area, or those areas, as shown on the Geologic Hazards and Constraint Areas Map where geologic conditions are such that \*significant geotechnical problems exist and there is provisional risk related to intensive land uses” (Geology [GE] - Page 1). Notably, GE 1.02 states: “**The county shall discourage intensive uses in Moderate Hazard Areas.**”

7. In additions, we would like to address the issue of the Flood Restoration Projects.LU-17-0014 Boulder County Parks and Open Space- Lake 4 Repairs and **LU-17-0011 BCPOS St Vrain Creek Reach 3 Restoration for the record. On June 26th, 2017, we asked the County to answer questions regarding Martin Marietta Material's involvement in the proposed flood restoration plan. We received a response from Boulder County Staff Planner: Christian Martin (attached). Mr. Martin states in #4 that "Any approvals and/or permits for gravel mining / processing that Martin Marietta is seeking are separate from and independent of this recovery project....[and in #7] The relationship instead is coincidently with the permit owner, Martin Marietta owns property in the area and with permission can provide significant cost savings to Boulder County and the district:**

- BCPOS is seeking permission from Martin Marietta to use their access road from HYW 66 for construction and hauling access...

- BCPOS is also seeking permission from Martin Marietta to use an area north of Lake 3 for construction staging, refueling and storage...

BCPOS is seeking Martin Marietta's permission to place Excess Fill within the Lake 3 area...

...and [#10 If Martin Marietta agrees to allowing the Excess Fill to be placed in Lake 3 area, possibly saving the County and the District \$6,000,000, as described in answer #1..."

**There appears to be a direct conflict of interest: BCPOS and the District are seeking permission and favors from Martin Marietta; Land Use Director and County Commissioners are being asked by Martin Marietta to approve an extremely controversial permit, in a Moderate Hazard Area (that was hit by a historic natural disaster and is yet to be restored, four years later); and the community asks the Director and the Commissioners to rule impartially in order to protect their constituents by upholding ALL of the Conditions in the Commissioner's Resolution 98-35 and in The Development Agreement.**

**It seems improbable that Martin Marietta would altruistically grant such concessions to BCPOS without expecting reciprocity and special consideration in their concurrent SU 96-18 permit application and the contingency may be that they be allowed to mine the area. The County also appears to be convinced of the financial savings, \$6,000,000, before the open bid process has even begun. SOSvv urges the Director and BCPOS to consider the inherent implications while negotiating an agreement with Martin Marietta. While it is understandable that BCPOS is focusing on the immediate, possible cost saving by using Martin Marietta as the contractor to do the restoration, there are hidden costs for the County in using Martin Marietta, including compromising the Director's**

and the Commissioners' ability to be objective in evaluate the particulars of SU 96-18 permit.

8. Finally, **this mining operation threatens the Federally Protected, Endangered Preble's Mouse and its high density habitat on Martin Marietta's proposed mining area(s) and flood Restoration areas.** According to Tim Shaffer, Wild Life Biologist with BCPOS studying Preble's on County properties, in a September 19th, 2014 email (attached), "**Based on the habitat requirements and basic biology of this species, the entire reach of the St Vrain Creek on both the Western & Golden Fredstrom properties, as well as the entire reach of the South Branch ditch on the Western Mobile property, are considered occupied Preble's habitat.** Preble's were captured on each of these stream reaches both pre and post floods. Mr. Shaffer documents studies conducted following the US Fish & Wildlife Service survey protocol, on Golden-Fredstrom Property (M-2001-016) on July 14, 2014:

"Preble's were captured along St Vrain Creek, with evidence of breeding population (multiple age classes and reproductive females)". And in survey done trapping approximately 1,200 meters of riparian habitat, spanning almost the entire length pf the POS property, at the Western Mobile Property / Lyons Pit (M-1977-015), on June 23, 2014 in the St Vrain Creek and on July 21st, 2014 on the South Branch Ditch, "Preble's were captured on both the St Vrain Creek and the South Branch Ditch with evidence of breeding population (multiple age classes and reproductive females)". On December 2010, The Fish and Wildlife Service revised the critical habitat designation for the Preble's Meadow Jumping Mouse (PMJM) "designating approximately 411 miles of rivers and streams and 34,935 acres of streamside habitat in seven Colorado counties. This revision to the Service's previous critical habitat designation add[ed] an additional 177 miles of rivers and streams and 14,255 acres of adjacent habitat. **Areas designated as critical habitat for the Preble's Meadow Jumping Mouse in Boulder...**include riparian corridors along rivers and streams, adjacent uplands, and areas that provide connectivity between and within populations...\*The primary constituent elements for the Preble's include those habitat components essential for the biological needs of reproducing, rearing of young, foraging, sheltering, hibernation, dispersal, and genetic exchange. The PMJM is able to live and reproduce in and near riparian areas located within grassland, shrub land, forest, and mixed vegetation types where dense herbaceous or woody vegetation occurs near the ground level, where available open water exists during their active season, and where there are ample upland habitats of sufficient width and quality for foraging, hibernation, and refuge from catastrophic flooding events." according to

US Fish & Wildlife (<https://www.fws.gov/mountain-prairie/species/mammals/preble/CRITICAL%20HABITAT/CRITICALHABITATindex.htm>).

BCPOS Director, Mr. Eric Lane on his June 27th letter to US Fish & Wildlife, also affirms that “Of particular value and concern to...[BCPOS] is habitat of Preble’s Meadow Jumping Mouse present in the project area. **This project area contains invaluable habitat for the mouse**, and our trapping studies over the past three years have shown that its comparative importance in the broader landscape context is **highly significant**. We have documented 154 unique individual mice (PIT tagging methods) located in the area (St. Vrain corridor and the South Branch of the St. Vrain). In comparison, trapping within federally designated critical habitat for the mouse in Boulder County (South Boulder Creek) resulted in very few individuals, as well as \*no trapping success within the Rocky Flats Wildlife Refuge. We believe that **\*the population along the St. Vrain is of increasing importance in a population dynamic context**. While we are aware of, and have reviewed the 2001 Biological Opinion (ES/GJ-6-CO-01-F-045) associated with this project, some of the mitigation measures are difficult to interpret sixteen years later. We also feel that on the ground \*conditions have changed with the passage of time, implementation of some measures by the operator, changes in the ownership and the proposed mining footprint, and lasting effects of the 2013 flood such that a review of the 2001 Biological Opinion by USFWS as part of the overall permit review process is also warranted.” Eric Lane, Director, BCPOS.

In conclusion and in consideration of said facts, the undersigned asks the Director specifically to determine that there has been a breach as noted (#2 above), decades-long-lapse in activity of approved use “mining” (#5 above); and there have been significant changes in conditions since issuance of the 1998 County approval(s) (as noted in #6 & #7: namely the 2013 Floods, the proliferation of the Federally protected and Endangered Preble’s Meadow Jumping Mouse in the proposed mining areas and the threat to the high profile, Federally protected Hygiene bald eagles and its prairie dog colony also on the proposed mining area). A new permit application is clearly warranted and all approvals associated with this mining project need to be completely re-examined.

Respectfully,

Amanda Dumenigo, Chairperson, S.O.S.V.V.

Kirk Cunningham, Indian Peaks Group of Sierra Club, Don Lutter, Michael Robson, Wendy Kahn, Richard Cargill, Barbara Cargill, Ric Breese, William Berg, Claudia Berg, James Scherrer, Elaine Paul, Tom Knorr