

40586 Co. Rd. 21
Haxtun, CO 80731

November 23, 2018

Mr. Patrick Lennberg
Environmental Protection Specialist
Colorado Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203

Re: Follow-up Incompleteness Notice, 112c Construction Materials Amendment Application (AM-01)
Ensminger Pit #2, Permit No. M-2010-036

Dear Patrick:

We are in receipt of your follow-up letter on incompleteness dated October 22, 2018. We offer the following response which is highlighted in bold.

You wrote:

EXHIBIT N – Source of Legal Right to Enter (Rule 6.4.14):

1. The Applicant has stated that Rick and Barbara Ensminger are the surface owners of the affected land and Marion Warren and Rick and Barbara Ensminger are the subsurface owner of the affected lands. Exhibit N only included the deed of ownership for Rick and Barbara for the source of legal right to enter. In accordance with Rule 6.3.7, please provide the source of legal right to enter for the other subsurface owner OR demonstrate that Rick and Barbara Ensminger are the sole owner of the commodity being mined and no legal right to enter documentation is needed for the other owner. Your 112c AM-01 Application will not be considered submitted/filed until the information listed above is received and found sufficient to begin our review.

Rick and Barbara Ensminger are the surface owners of the N ½ of Section 31, T7N, R47W. That ownership gives them the legal right to enter the property. Mrs. Warren does retain half the mineral rights but that ownership does not preclude the Ensmingers from operation of the gravel pit. As an example, a farmer owns a half-section of land where others own some of the mineral rights. The farmer has every right to plant crops, build buildings, erect pivot sprinklers, build dams, etc. without any permission from the mineral rights owners. The mineral rights owners may have claim on producing minerals, but no control of actual use of the surface.

The Ensmingers have a warranty deed to the property in question. That deed is the source of their legal right to enter. Section 1.6.2 (1)(e) reads as follows:

“Except for 111 Special Operation Permit applications, the applicant shall mail or personally serve a copy of the notice in Rule 1.6.2(1)(d) immediately after the first publication to: (i) all Owners of Record of the surface and mineral rights of the affected land; and Page 27 Construction Materials Rule 1 (ii) the Owners of Record of all land surface within 200 feet of the boundary of the affected lands.”

Mrs. Warren is entitled to notice as explained in Rule 1.6.2 (1)(e)(i). For your information, Mr. Ensminger has contacted Mrs. Warren to come to terms on her interest in the production, but legal right to enter is not in question.

We hope this clarifies the question of legal right to enter. If you have additional questions, please contact me as soon as possible.

Sincerely,

A handwritten signature in blue ink that reads "Randy Schafer". The signature is written in a cursive style with a large, sweeping "S" and a long, trailing flourish at the end.

Randy Schafer
Consultant

cc: Mr. Rick Ensminger
Phillips County Clerk