



**COLORADO**  
Division of Water Resources  
Department of Natural Resources

May 3, 2019

Mr. Nathan D. Phelps, P.E.  
Deere & Ault  
600 S Airport Road, Building A, Suite 205  
Longmont, CO 80503

**Re: North River Pit Substitute Water Supply Plan**  
**DRMS File No. M-1999-005**  
**SE1/4 Section 36, T23S, R55W and NE1/4 Section 1, T24S, R55W, 6<sup>th</sup> P.M.**  
**Water Division 2, Water District 17**  
**SWSP ID 772, WDID 1707803**

**Approval Period: April 1, 2019 through March 31, 2020**  
*Contact Phone: 720-534-0642; [nathan.phelps@deereault.com](mailto:nathan.phelps@deereault.com)*

Dear Mr. Phelps:

We have reviewed your letter of February 25, 2019 requesting approval for a substitute water supply plan ("SWSP") for a sand and gravel pit to be operated by All Rite Paving and Redi Mix, Inc. ("All Rite" or "Applicant"), on leased property in accordance with § 37-90-137(11), C.R.S. The required review fee of \$257 for the SWSP has been received and given receipt no. 3690711. The original plan for the North River Pit was approved on July 28, 1999 for the period through June 30, 2001 and it was most recently renewed in a letter dated August 16, 2018 for the period April 1, 2018 through March 31, 2019.

#### **SWSP OPERATION**

The North River Pit is located in the SE ¼ of Section 36, Township 23 South, Range 55 West and in the NE ¼ of Section 1, Township 24 South, Range 55 West of the 6<sup>th</sup> P.M. This SWSP seeks to replace depletions resulting from the mining operations at the North River Pit. According to the information provided, no mining is planned during 2019, thus the only depletions at this site during this SWSP period is evaporation from exposed ground water. For this SWSP period, replacement water for the North River Pit's depletions will be provided by leased water from the Arkansas Groundwater Users Association ("AGUA"). The gravel pit is permitted under Well Permit No. 52701-F (WDID 1706491) and this permit remains valid for this site.

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 groundwater. The DRMS letter identified four approaches to satisfy this requirement. In accordance with approach nos. 1 and 3, you have indicated that a bond has been obtained for \$175,334 through the DRMS to assure that depletions from groundwater evaporation do not occur in the unforeseen event, or events, that would lead to the abandonment of the North River Pit.

## DEPLETIONS

Since no mining is planned during 2019, pond evaporation will be the only water demand at the site. During 2017, portions of the north pond were backfilled, reducing the total water surface area. The total water surface area for the two ponds at the site was measured from the 2017 aerial photograph and was found to be 7.68 acres. For the purposes of this SWSP, the evaporation from the 7.68 acres was calculated as 30.87 acre-feet/year, based on a net annual evaporation of 4.02 feet from the Lower Arkansas Water Management Association's ("LAWMA") decree in Case No. 02CW181. A Glover analysis was used to estimate the timing of stream depletions with the following parameters:

Transmissivity (T):	142,000 gpd/ft
Specific Yield (S):	0.2
Distance from centroid of cell to the river (X):	760 feet (northern cell) 370 feet (southern cell)
Aquifer Width (W):	5,455 feet

According to the Glover analysis, 95 percent of depletions were modeled to accrue to the stream within the first 8 months; therefore, an 8 month unit response function will be used to calculate lagged depletions for the purposes of this SWSP, as shown below:

### Unit Response Function

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8
Northern Cell	0.6185	0.2108	0.0569	0.0351	0.0276	0.0209	0.0170	0.0132
Southern Cell	0.8260	0.1183	0.0267	0.0163	0.0127			

Since 95% of the depletions occurred within the first eight months for the northern cell and the first 5 months for the southern cell, the last 5% of the lagging factors were wrapped. The lagged stream depletions are calculated as 29.89 acre-feet/year (column 10 of attached Table 1). The carry-over lagged depletion associated with the surface area during the previous plan year was calculated separately as 0.99 acre-feet and then added to the lagged depletions for the current plan year. The resulting total stream depletion associated with the gravel pit is estimated to total 30.87 acre-feet (column 12 of attached Table 1).

## REPLACEMENTS

All Rite leased fully consumable water from AGUA and will use this leased water as the source of replacement water through March 31, 2020. A copy of the perpetual lease was provided with a previous SWSP request and is attached to this letter.

## ACCOUNTING

The attached Table 2 is the monthly accounting form that will be used for determining water use and stream depletions. All Rite will submit the monthly pit area to AGUA, which will then submit the monthly water accounting to the Division Engineer.

## CONDITIONS OF APPROVAL

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

1. This SWSP is approved with the effective date of April 1, 2019 and shall be valid through March 31, 2020 unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, such renewal request must be submitted to this office and the Division 2 office (please copy Kathy Trask at [Kathy.Trask@state.co.us](mailto:Kathy.Trask@state.co.us) and [Bethany.Arnold@state.co.us](mailto:Bethany.Arnold@state.co.us)) with the statutory fee per gravel pit (currently \$257) by **February 15, 2020**.
2. The total surface area of the groundwater at the North River Pit site must not exceed 7.68 acres during the SWSP period, which will result in a net annual evaporative depletion of 30.87 acre-feet.
3. Total consumption at the North River Pit site must not exceed the aforementioned amounts unless a new SWSP application is made and approved for such.
4. No mining is proposed to occur at the site during the period of this SWSP. If Applicant proposes to resume mining, the Applicant must first submit an application and obtain approval for a new SWSP that adequately addresses all stream depletions that result from the proposed mining activities.
5. The replacement water that is the subject of this plan cannot be sold or leased to any other entity. As a condition of subsequent renewals of this SWSP, the replacement water must be appurtenant to this site until a plan for augmentation is obtained. All replacement water must be concurrent with depletions in quantity, timing and location, except that releases aggregated at the discretion of the Division Engineer or the Augmentation Coordinator may occur in a later month than the depletions. Releases of water by AGUA pursuant to this plan shall be coordinated with the Division Engineer and the Augmentation Coordinator. All releases of water by AGUA are subject to transit losses, which shall be assessed by the Water Commissioner and Division Engineer.

6. Adequate accounting of depletions and replacements must be provided to the Water Commissioner ([lonnie.spady@state.co.us](mailto:lonnie.spady@state.co.us)) and Division Engineer ([DNR.Div2groundwater@state.co.us](mailto:DNR.Div2groundwater@state.co.us)) on a monthly basis or other interval acceptable to both of them. The accounting of depletions should be in a format similar to that shown on Table 2. The accounting form(s) shall be sufficient to demonstrate that the net effective replacement equals or exceeds the total depletion on a monthly basis. The name, address and phone number of the contact person who will be responsible for the operation and accounting of this plan must be provided with the accounting form to the Division Engineer and Water Commissioner.
7. The accounting form submitted in the month of November each year (at the end of the administrative Water Year) shall be submitted together with a plan drawing or aerial photograph to document the surface area of ground water exposed within the pit.
8. The approval of this SWSP does not relieve the Applicant and/or 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 2 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. If a lined pond results after reclamation, replacement of lagged depletions shall continue until there is no longer an effect on stream flow. Granting of this plan does not imply approval by this office of any such court application(s).
9. 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 and the Applicant shall obtain and present to this office an alternate source of replacement water.
10. 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.
11. 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 this plan. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other plans, or in any proposed

renewal of this plan, 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 regarding this SWSP, please contact Lonnie Spady in La Junta at (719) 384-1000, or Kate Fuller of this office.

Sincerely,



Jeff Deatherage, P.E.  
Chief of Water Supply

Attachments:      Tables 1 & 2  
                         Figure 2  
                         AGUA Lease

cc:      Division 2 SWSP Staff  
         Lonnie Spady, District 17 Water Commissioner  
         Kevin Salter, Kansas Division of Water Resources  
         Dale E. Book, Spronk Water Engineers  
         Kevin Niles, Arkansas Groundwater User Association  
         Division of Reclamation, Mining and Safety

**Table 1**  
**Water Accounting Form**  
**All Rite Paving and Redi-Mix, Inc.**  
**North River Pit**  
**La Junta, Colorado**  
**Year: 2019**

Month (1)	Gravel Pit Evaporation		Mining Operation		Dust Suppression		Total Depletion (acre-feet) (9)	Plan-Year Lagged Depletion (acre-feet) (10)	2018 Carry-Over Lagged Depletion (acre-feet) (11)	Stream Depletion (acre-feet) (12)	Replacement Water (acre-feet) (13)
	(feet) (2)	(acre-feet) (3)	(product tons) (4)	(acre-feet) (5)	Meter (6)	(gallons) (7)					
March	0.22	1.69	0	0	0	0	1.69	1.08	0.48	1.57	1.57
April	0.36	2.76	0	0	0	0	2.76	2.11	0.21	2.32	2.32
May	0.45	3.46	0	0	0	0	3.46	2.86	0.13	2.99	2.99
June	0.59	4.53	0	0	0	0	4.53	3.80	0.08	3.88	3.88
July	0.59	4.53	0	0	0	0	4.53	4.14	0.05	4.18	4.18
August	0.55	4.22	0	0	0	0	4.22	4.08	0.03	4.11	4.11
September	0.41	3.15	0	0	0	0	3.15	3.43	0.01	3.44	3.44
October	0.29	2.23	0	0	0	0	2.23	2.68	0.00	2.68	2.68
November	0.16	1.23	0	0	0	0	1.23	1.83	0.00	1.83	1.83
December	0.13	1.00	0	0	0	0	1.00	1.41	0.00	1.41	1.41
January	0.12	0.92	0	0	0	0	0.92	1.21	0.00	1.21	1.21
February	0.15	1.15	0	0	0	0	1.15	1.25	0.00	1.25	1.25
<b>Total</b>	<b>4.02</b>	<b>30.87</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>30.87</b>	<b>29.89</b>	<b>0.99</b>	<b>30.87</b>	<b>30.87</b>

Water surface area of the gravel pit totals: 7.68 acres

**Replacement Source:** AGUA agreement dated March 19, 2018

- 1) Present month.
- 2) Net evaporation rate.
- 3) Col. 2 x water surface area of pit, in acres.
- 4) Weight of mined material hauled from site, in tons.
- 5) Four percent by weight of the product hauled from site.
- 6) The present month's meter reading.
- 7) The present month's meter reading - the previous month's meter reading.
- 8) Col. 7 converted to acre-feet.
- 9) Col. 3 + Col. 5 + Col. 8.
- 10) Total Depletion (Col. 9) lagged according to unit response function presented in SWSP.
- 11) Lagged depletion carried over from the previous year according to unit response function presented in SWSP.
- 12) Col. 10 + Col. 11.
- 13) Replacement water from AGUA.

Note: Monthly send copies to:  
 Bill Tyner  
 CDWR  
 310 E. Abriendo  
 Suite B  
 Pueblo, CO 81004

All Rite Paving & Redi-Mix  
 c/o A & S Construction Co.  
 PO Box 686  
 Canon City, CO 81215



**Table 2**  
**Water Accounting Form**  
**All Rite Paving and Redi-Mix, Inc.**  
**North River Pit**  
**La Junta, Colorado**  
**Year: 2019**

Month (1)	Gravel Pit Evaporation (feet) (2)		Mining Operation (product tons) (4)		Dust Suppression (gallons) (7)		Total Depletion (acre-feet) (9)	Plan-Year Lagged Depletion (acre-feet) (10)	2018 Carry-Over Lagged Depletion (acre-feet) (11)	Stream Depletion (acre-feet) (12)	Replacement Water (acre-feet) (13)
	(3)	(5)	(6)	(8)	(7)	(8)					
March									0.48		
April									0.21		
May									0.13		
June									0.08		
July									0.05		
August									0.03		
September									0.01		
October									0.00		
November									0.00		
December									0.00		
January									0.00		
February									0.00		
Total									0.99		

Water surface area of the gravel pit totals: \_\_\_\_\_ acres

Replacement Source: AGUA agreement dated March 19, 2018

- 1) Present month.
- 2) Net evaporation rate.
- 3) Col. 2 x water surface area of pit, in acres.
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 Suite B  
 Pueblo, CO 81004

All Rite Paving & Redi-Mix  
 c/o A & S Construction Co.  
 PO Box 566  
 Canon City, CO 81215





0 500 1,000 Feet

R55W R54W

DRMS File No. M-1999-005  
Permit Boundary

36

6.83 ac.

T23S

T24S

0.85 ac.

Pit Areas

1

6

DEERE & AULT  
CONSULTANTS, INC.

North River Pit - All Rite Paving & Redi-Mix, Inc.  
August 31, 2017 Aerial Photography

FIGURE NO.

2

JOB NO: 0183.026.00

SCALE: 1 inch = 500 feet



# Attachment 1

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WATER RESOURCES  
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## AGREEMENT

This Agreement is entered into this 19 day of MARCH, 2018 between Fremont Paving and Ready-Mix, Inc. ("Fremont"), whose address is 839 Mackenzie Ave, Canon City, CO 81212, and the Arkansas Groundwater Users Association ("AGUA"), whose address is P.O. Box 11446, Pueblo, CO 81001. Fremont and or AGUA are referred to collectively as the "Parties."

## RECITALS

WHEREAS, Fremont owns the certain water rights quantified and changed to allow diversion at the Plum Creek Pipe Line Ditch ("Plum Creek Pipeline Water Rights") by the decree in Case No. 14CW3049, dated October 2, 2017 ("Decree").

WHEREAS, Fremont owns the MacKenzie Well located in the SW ¼ SE ¼ Section 2, Township 19 South, Range 70 West of the 6<sup>th</sup> P.M., Fremont County, Colorado. Fremont also operates a gravel pit known as the Pueblo East Pit at Evans No. 2 Mine (a/k/a "Pueblo East Pit") located in the S ½ Section 35, Township 20 South, Range 63 West of the 6<sup>th</sup> P.M., Pueblo County, Colorado. Fremont also operates a gravel pit known as the North River Pit located in the NE 1/4 Section 1, Township 24 South, Range 55 West and the SE 1/4 Section 36, Township 23 South, Range 55 West of the 6<sup>th</sup> P.M., Otero County, Colorado.

WHEREAS, AGUA is a nonprofit association of well owners organized in part to develop water resources in order to provide augmentation and replacement water used to replace out-of-priority depletions caused by pumping of its members' wells, which AGUA accomplishes through plans for augmentation, substitute water supply plans, and administratively approved replacement plans pursuant to the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin, Colorado.

WHEREAS, Fremont is a member of AGUA, and AGUA provides augmentation water for depletions caused by the Pueblo East Pit and the North River Pit.

WHEREAS, the fully consumable "Excess Credits" as defined in paragraph 12 of the Decree are available for augmentation and replacement uses by AGUA directly or following release from Pueblo Reservoir.

WHEREAS, Fremont and AGUA desire to enter this Agreement to allow AGUA to use the Excess Credits, and to offset the amount of replacement water Fremont pays AGUA for annually by the amount of Excess Credits used by AGUA; and

WHEREAS, the Decree requires Fremont and AGUA enter a contract prior to Fremont diverting the Plum Creek Pipeline Water Rights and prior to AGUA using the Excess Credits for replacement and augmentation use. The Parties intend for this Agreement to comply with those Decree requirements.

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### **AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Fremont agrees to allow AGUA to use the Excess Credits from the Plum Creek Pipeline Water Rights for AGUA's purposes in compliance with the Decree, in return for the consideration described in paragraph 2.
2. AGUA shall credit Fremont for Excess Credits that AGUA uses to offset AGUA members' well depletions on a one for one basis, not including any amounts of Excess Credits lost to evaporation or transit. The credit will be provided to Fremont by offsetting Fremont's payments to AGUA for replacement water pursuant to its membership in AGUA on a one-for-one basis ("Fremont's Offset"). For example, if AGUA is able to use 40 acre feet of Excess Credits after evaporative and transit losses for replacement of AGUA members' well depletions, and AGUA provides to Fremont 60 acre feet of replacement water for the Pueblo East Pit and the North River Pit, then applying Fremont's Offset would result in Fremont paying AGUA for only 20 acre feet of replacement water that year. Fremont's Offset will be calculated annually for the period from April 1 through March 31, and credited to Fremont's account with AGUA after the period ends within 30 days (i.e. by April 30).
3. The Parties agree to annually meet and plan for AGUA's use of the Excess Credits as necessary and in good faith. Fremont shall provide AGUA with accounting and other information necessary for AGUA to make use of the Excess Credits.
4. This Agreement does not alter Fremont's AGUA membership, and, without limitation, does not obligate or require AGUA to: (1) augment or replace any depletions for the MacKenzie Well; (2) augment or replace any depletions for the Pueblo East Pit and the North River Pit other than AGUA's obligations to Fremont as a member of AGUA; (3) maintain a storage account in Pueblo Reservoir, or store or keep in storage in AGUA's storage account in Pueblo Reservoir any Depletion Credits or Excess Credits (although AGUA may, at its discretion, use its storage account to store Depletion Credits or Excess Credits), or (4) recharge in the Excelsior Ditch system any Depletion Credits or Excess Credits. AGUA retains sole discretion as to operations of AGUA's storage account and Excelsior Ditch recharge facilities, including the recharge ponds, and AGUA's storage, management, and use the Excess Credits. Fremont shall remain solely responsible for compliance with, and operations and accounting pursuant to, the Decree without limitation for the Plum Creek Pipeline and augmentation station, the Plum Creek Pipeline Water Rights and historical return flows, and the plan for augmentation for the MacKenzie Well, and for compliance with, and operations and accounting pursuant to, Fremont's replacement plans for the Pueblo East Pit and North River Pit replacement plans.

5. The term of this Agreement shall be perpetual until terminated. Either party may terminate this Agreement upon 60 days notice.

6. Whenever notice is required to be given hereunder, it shall be in writing and delivered or mailed to the registered agent on file with the Colorado Secretary of State of the party entitled to the notice, by registered or certified mail, return receipt requested. In addition, a courtesy copy shall also be sent to the other party by electronic mail on the same day. If delivered, said written notice shall be effective and complete upon delivery. If mailed, said notice shall be effective and complete upon mailing.

7. The Parties shall cooperate with one another in good faith to accomplish and fulfill the terms of this Agreement.

8. If the ability of a party to perform is interrupted or impaired in whole or in part due to failure of equipment or facilities, acts of God, action by governmental bodies and authorities, or other extraordinary circumstances, occurrences or conditions, then during the period of such interruption or impairment, any obligation described herein may be suspended proportionately.

9. This Agreement is for the sole benefit of the Parties, and AGUA does not have any duty or liability to third parties as a result of this Agreement.

10. This Agreement may be executed in counterparts, which when combined shall constitute the Agreement. Executed and electronically scanned signature pages shall be valid and binding and shall constitute original signature pages.

11. In the event of any litigation or arbitration arising out of this Agreement, the prevailing party shall be entitled to recover, and the court and/or arbitrator shall award to the prevailing party, all reasonable costs, including reasonable expert witness fees, and reasonable attorneys' fees.

12. Any dispute pursuant to this Agreement shall be governed by the laws of the State of Colorado and venue shall be in District Court of Pueblo County, Colorado.

13. Either party may assign this Agreement after obtaining the express written permission of the other party.

This Agreement is executed as of the day and year first written above.

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MAR 23 2018

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FREMONT PAVING AND READY-MIX, INC.

Jodi Schreiber  
By: Jodi Schreiber

STATE OF COLORADO )  
COUNTY OF Fremont ) ss.

The foregoing Agreement was acknowledged before me this 19 day of March, 2018, by Jodi Schreiber, as \_\_\_\_\_ of Fremont Paving and Red-Mix, Inc.

Witness my hand and official seal.

Rebecca Elliott  
Notary Public

My commission expires: Dec 14, 2019  
My License Number is : \_\_\_\_\_

[SEAL]

REBECCA ELLIOTT  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 19984002037  
MY COMMISSION EXPIRES DECEMBER 14, 2019

ARKANSAS GROUNDWATER  
USERS ASSOCIATION

Scott Brazil  
By: Scott Brazil, President

STATE OF COLORADO )  
COUNTY OF PUEBLO ) ss.

The foregoing Agreement was acknowledged before me this 23 day of March, 2018, by Scott Brazil, as President of the Arkansas Groundwater Users Association.

Witness my hand and official seal.

Rebecca L. Gonzales  
Notary Public

My commission expires: 09/09/2021  
My License Number is : 20014027884

[SEAL]

REBECCA L. GONZALES  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20014027884  
My Commission Expires 09-09-2021