



**COLORADO**

**Division of Reclamation,  
Mining and Safety**

Department of Natural Resources

1313 Sherman Street, Room 215  
Denver, CO 80203

April 11<sup>th</sup>, 2018

Parties to Application of Transit Mix Concrete Company, Permit No. M-2017-049

***RE: Draft Pre-hearing Order, File No. M-2017-049  
Application of Transit Mix Concrete Company for a 112 Construction Material  
Reclamation Permit.***

To Whom It May Concern:

The enclosed Draft Pre-hearing Order, prepared as a result of the Pre-hearing Conference held in this matter on April 9<sup>th</sup>, 2018, is being sent to you pursuant to Minerals Rule 2.7.1(3).

If you have any questions, concerns, or objections regarding the provisions of the enclosed document, please direct them to the Mined Land Reclamation Board at the final hearing to be held in this matter. The Formal Public Hearing on this matter (unless noticed otherwise) will occur during the Board's regularly scheduled meeting on April 25-26, 2018, which will occur at Hotel Eleganté Conference and Event Center, 2886 S. Circle Dr., Colorado Springs, CO 80906 (in the Summit Ballroom), beginning at 9:00 a.m. or as soon thereafter as the matter can be considered.

Sincerely,

Jeff T. Graves  
Pre-Hearing Conference Officer

Attachments

cc: Wallace H. Erickson, DRMS  
Amy Eschberger, DRMS  
Scott Schultz, OAG  
Charles Kooyman, OAG





BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

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**DRAFT PREHEARING ORDER**

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IN THE MATTER OF THE APPLICATION OF TRANSIT MIX CONCRETE  
COMPANY FOR A 112 CONSTRUCTION MATERIALS RECLAMATION PERMIT,  
File No. M-2017-049

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The Mined Land Reclamation Board (“Board”), through prehearing officer Jeff Graves (“PHO Graves”), and pursuant to Rule 2.7 of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (“Rules”), conducted a prehearing conference on April 9, 2018 in Colorado Springs, Colorado. The Board, having considered this order, as proposed by PHO Graves, and having considered any subsequent objections or comments from the parties, hereby enters the following Prehearing Order for the captioned proceeding:

**I. BACKGROUND**

On November 9<sup>th</sup>, 2017, Transit Mix Concrete Co. (“Applicant”) filed an application with the Division for a 112c construction materials reclamation permit, file number M-2017-049 (“Application”). During the required period of notice of the Application filing, the Division received 568 letters of objections and 155 letters of support for the Application. On April 3<sup>rd</sup>, 2018, after issuing ten adequacy reviews, the Division of Reclamation, Mining and Safety (“Division”) issued its rationale and recommendation to approve the Application.

**II. FORMAL PUBLIC HEARING**

The Formal Public Hearing on this matter (unless noticed otherwise) will occur during the Board’s regularly scheduled meeting on April 25-26, 2018, which will occur at Hotel Eleganté Conference and Event Center, 2886 S. Circle Dr., Colorado Springs, CO 80906 (in the Summit Ballroom), beginning at 9:00 a.m. or as soon thereafter as the matter can be considered.

The Formal Public Hearing in this matter concerns whether the Board should grant or deny Applicant’s reclamation permit application in accordance with the Colorado Land Reclamation Act for the Extraction of Construction Materials (Article 32.5 of Title 34, C.R.S.; the “Act”) and the Rules. The Board’s resolution of this matter, including findings of facts and conclusions of law, will be based on the Board’s review of the Application, testimony presented by the parties and Division at the hearing, and exhibits the Board admits into the record at this hearing.

In this matter, the Applicant bears the burden of proving that the Application meets the requirements set forth in the Act and Rules. If the Applicant meets this burden, any denial by the Board must be based upon one of the grounds provided in section 34-32.5-115(4), C.R.S.

### III. PARTIES

See the attached list of parties who retain party status by appearing at the prehearing conference, incorporated as if set forth fully herein. A number of objectors and supporters forfeited party status by failing to attend the prehearing conference in accordance with Rule 2.7.3.

The remaining objectors are referred to herein as “Objectors.”

### IV. ISSUES

Presentations to the Board by the parties and the Division shall be limited to the following issues:

1. Hydrologic Balance. Whether the Application adequately demonstrates that any disturbances to the prevailing hydrologic balance of the proposed affected land and surrounding area, including both surface water and groundwater, will be minimized.
2. Wildlife. Whether the Application adequately addresses possible adverse impacts on wildlife and natural resources in and around the Application area, including riparian resources.
3. Little Turkey Creek Road. Whether the Application adequately addresses concerns regarding protection of easement rights, right of entry, road access, and potential road impacts.
4. Reclamation Plan. Whether the Application adequately addresses reclamation.
5. Operations. Whether the Application adequately addresses possible adverse impacts related to mining operations, including the impacts of blasting, geotechnical slope stability of pit walls and stockpiles, and impacts to man-made structures (*i.e.*, wells, homes, and roads) within the proposed area of affected land and within two hundred feet (200') of the proposed permit boundary.
6. Application/Permitting Details. Whether the Application is consistent, complete, adequate, and accurate.

## V. WITNESSES AND EXHIBITS

Pursuant to Rule 2.6(2), all parties and the Division must exchange witness and exhibits at the prehearing conference. The Applicant, some Objectors, and the Division provided witness and exhibit lists during the prehearing conference as follows:

### Witnesses

For Transit Mix Concrete Company:

- Jerald Schnabel, President, Transit Mix;
- Paul Kos, Senior Geological Engineer, Norwest Corp.;
- Bandon Hesser, Aggregates Engineer/Production Manager, Transit Mix;
- Sean Ennis, Vice President, Mining, Norwest Corporation;
- Larry Mirabelli, Senior Manager, Explosives and Blasting Technologies, Buckley Powder Co.;
- Charles Johnson, Principal, Senior Project Manager, Ensight, LLC;
- Scot Anderson, Partner, Hogan Lovells;
- Cindi Almendinger, Property Owner;
- John Cook, Partner, Hogan Lovells;
- Elizabeth Titus, Counsel, Hogan Lovells;
- Phillip Courtney, Solid Minerals Leasing Manager, Colorado State Board of Land Commissioners (pending Board approval of motion to amend witness list).

For Objector Barbara Ingersoll Marital Trust as represented by and through attorneys Mulliken Winer Berg & Jolivet, PC:

- Samuel K. Wells, Co-Trustee of the Barbara Ingersoll Marital Trust;
- Chris Burnell, Turkey Canyon Ranch Estates;
- Reece Eddy, Sr., Ridgeway Estates Homeowners Association;
- Weldon W. Flaharty;
- Tom Fellows;
- Paul G. Anderson, Esq., Red Rock Valley Estates Water District;
- Cheryl Kimble;
- Mark McClurg, Highlands of Turkey Canon Ranch;
- Gary Kris McCowen, Highway 115 Citizens Advisory;
- Kathie Rawson, Vice President, Red Rock Valley Estates;
- Nancy Reed, PhD, Eagle's Nest Homeowners Association;
- Warren Dean;
- William J. Hybl, President of El Pomar Foundation;
- Thayer R. Tutt;
- Hartmut Wright, Fire Chief, Southwestern Highway 115 Fire Protection District;

- Jerry P. Moore;
- Charles Norris, P.G., Hydrogeologist, Geo-Hydro, Inc.;
- Jerald S. Fifield, Ph.D., Project Hydrologist, HydroDynamics Inc;
- Michael J. Ronayne, PhD, Assistant Professor, Dept. of Geosciences, Colorado State University;
- William E. Sanford, PhD, Hydrogeology Professor, Dept. of Geosciences, Colorado State University;
- Dennis McGrane;
- Brett Lewis, PE, PhD;
- John Sanderson, Ph.D., Director of Science, The Nature Conservancy of Colorado;
- Nancy Fishbein, Director of Land Protection, The Nature Conservancy of Colorado;
- Richard Alward, PhD, ESA Certified Senior Ecologist, ESA Certified UAS Remote Pilot, Aridlands, LLC;
- Allyn Kratz, President of Piles Peak Chapter of Trout Unlimited,
- Renee Rondeau, Ecologist, Colorado Natural Heritage Program, Colorado State University;
- Paul G. Anderson, Esq., Red Rock Valley Estates Water District;
- Harris D. Sherman, Harris Sherman & Associates;
- Steven K. Mulliken, Mulliken Weiner Berg & Jolivet P.C (added through submittal of Amended Witness List received April 11, 2018).

For Objector Cheryl Kimble as represented by Alderman Bernstein, LLC:

- Jerald Schnabel, President, Transit Mix Concrete Co.;
- Andre LaRoche, Permit Specialist, Transit Mix Concrete Co.;
- Paul Kos, P.E., Norwest Corporation;
- Nancy E. Reed, Ph.D.;
- Cheryl L. Kimble;
- Hartmut Wright, Fire Chief, Southwestern Highway 115 Fire Protection District;
- Any other party to this matter; any witness identified by any other party in this matter
- Steven K. Mulliken, Esq., Mulliken Weiner Berg & Jolivet, P.C. (added through submittal of Amended Witness List received April 11, 2018);
- Carrie S. Bernstein, Esq., and/or Amanda A. Bradley, Esq., Alderman Bernstein (added through submittal of Amended Witness List received April 11, 2018).

## Exhibits

For Transit Mix Concrete Company:

- “Punches thrown ahead of round two over proposed quarry south of Colorado Springs” Rachel Riley, Colorado Springs Gazette, March 10, 2018;
- Hitch Rack Ranch Quarry Report: Blasting Plan Review dated April 5, 2018;
- Final Designation of Critical Habitat for the Mexican Spotted Owl, 66 FR 8530-01 (Feb. 1, 2001);
- Demonstratives for Transit Mix testimony;
- Transit Mix PowerPoint presentation;
- Preliminary Adequacy Review for File No. M-2017-049 dated February 12, 2018, including all attachments and memoranda submitted with the adequacy review;
- Adequacy Review No. 2 for File No. M-2017-049 date March 16, 2018, including all attachments and memoranda submitted with the adequacy review;
- Adequacy Review No. 3 for File No. M-2017-049 date March 22, 2018;
- Hitch Rack Ranch Quarry Adequacy Review Response, received March 09, 2018, including response to comments attachments, figures and reports submitted with the response;
- Hitch Rack Ranch Quarry Adequacy Review Response received March 14, 2018, including response to comments and attachments, figures and reports submitted with the response;
- Hitch Rack Ranch Quarry Adequacy Review Response received March 20, 2018, including response to comments and attachments, figures and reports submitted with the response;
- Hitch Rack Ranch Quarry Adequacy Review Response received March 23, 2018, including response to comments and attachments, figures and reports submitted with the response;
- Hitch Rack Ranch Quarry Adequacy Review Response received March 26, 2018, including response to comments and attachments, figures and reports submitted with the response;
- Permit Application Submitted by Transit Mix to the Division of Mined Land Reclamation Board, received October 5, 2017 including all attachments, figure and reports submitted with the application;
- Division of Reclamation, Mining and Safety Recommendation to Approve 112 Construction Materials Reclamation Permit for File No. M-2017-049 dated April 3, 2018;
- Southwestern Highway 115 Fire Protection District Objection Letter dated December 18, 2017;
- Red Rocks Valley Estates Objection Letter date December 1, 2017;

- Pikes Peak Trout Unlimited Objection Letter dated December 17, 2017;
- Pamela P. Mazance Letter of Support received December 21, 2017;
- Office of Archaeology and Historic Preservation Letter received December 5, 2017;
- The Nature Conservancy Objection Letter dated December 20, 2017;
- Audubon Rockies Objection Letter dated December 20, 2017;
- Nancy Reed Objection Letters dated December 9, 2017, including all attachments;
- Jerry P. Moore Objection Letter received December 20, 2017;
- Gary Bradley Letter of Support dated December 13, 2017;
- Colorado state Land Board Letter of Support dated December 11, 2017;
- Joyce Rankin Letter of Support dated December 22, 2017;
- Colorado Division of Water Resources Response to Reclamation Permit Application Consideration dated January 4, 2018;
- Cheryl Kimble Objection Letter dated December 14, 2017;
- Alderman Bernstein Objection Letter dated December 20, 2017, including all attachments;
- Aiken Audubon Society Objection Letter dated December 19, 2017;
- All Motions and/or Responses to Motions Submitted By Transit Mix Concrete Co.

For Objectors:

- Alderman Bernstein, LLC identified and submitted the following exhibits on behalf of Cheryl Kimble:
  - 1968 El Paso County District Court Decree (Copy submitted);
  - October 5, 2017, Permit Application Package, Volumes I-IV and exhibits;
  - Objection letter submitted by Southwestern Highway 115 Protection District on April, 19, 2016;
  - Objection letter submitted by Southwestern Highway 115 Protection District on December 21, 2017;
  - Objection letter submitted by Steve Mulliken on behalf of the Barbara Ingersoll Marital Trust establish by Article 7 of Amended and Restated Trust Agreement of Harold C. Ingersoll Revocable Trust dated August 11, 2008, on December 21, 2017;
  - Objection letters submitted by Nancy Reed on December 9, 2017;



- Objection letter submitted by the undersigned on behalf of Cheryl L. Kimble, April 18, 2016;
  - Objection letters submitted by Cheryl L Kimble on April 18, 2016 and July 7, 2016;
  - Objection letters submitted by the undersigned on behalf of Cheryl L. Kimble on December 20, 2017;
  - Objection Letter submitted by Cheryl L. Kimble on December 20, 2017;
  - Division Adequacy Letters dated February 12, 2018, March 16, 2018, March 22, 2018, March 23, 2018;
  - Applicant's responses to Division Adequacy Letters dated March 9, 2018, March 20, 2018, March 23, 2018, March 26, 2018;
  - Photographs of Little Turkey Creek Road (copy submitted);
  - DRMS's Response to "DRMS Rule 2.6 Pre-Hearing Motion to Deny Application for Mining Permit" dated October 20, 2016;
  - Mined Land Reclamation Board Findings of Fact, Conclusions of Law and Order Dated December 22, 2016;
  - Objection letters submitted by any other party;
  - Any exhibit introduced by any other party and any exhibit required for rebuttal purposes.
- Mulliken Weiner Berg and Jolivet, P.C. identified and submitted the following exhibits on behalf of the Barbara Ingersoll Marital Trust:
    - Exhibit 1, Excerpt – Report of Joe Beidiemann RE: Aiken Canyon/Potato Mountain Area Bird Population;
    - Exhibit 2, Excerpt – El Paso County Planning Dept. – Southwestern Highway 115 Area Plan;
    - Exhibit 3, Excerpt – Mexican Spotted Owl Recovery Plan, First Revision, US Fish and Wildlife Service;
    - Exhibit 4, Excerpt - Survey of Critical Biological Resources, El Paso County, Colorado Natural Heritage Program;
    - Exhibit 5, Biological Assessment & Management Plan for the Mexican Spotted Owl on Fort Carson – Directorate of Environmental Compliance & Management;
    - Exhibit 6, Excerpt – Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Mexican Spotted Owl; Final Rule, US Fish and Wildlife Service;
    - Exhibit 7, Excerpt – El Paso County Parks Master Plan;
    - Exhibit 8, Cheyenne Mountain State Park Management Plan (Expert);
    - Exhibit 9, Extract from Integrated Natural Resources Management Plan for Fort Carson and the Pinon Canyon Maneuver Site;
    - Exhibit 10, Land Owner ship & Area Maps;

- Exhibit 11, Google Earth Images of Quarry Locations Along Highway 115 (with Mark Ups);
- Exhibit 12, That Nature Conservancy's Management Plan for Aiken Canyon Preserve;
- Exhibit 13, Memo from the Nature Conservancy RE: Science Evaluation of Impacts at Aiken Canyon of the Proposed Transit Mix Quarry;
- Exhibit 14, Adverse Impacts to Habitat & Wildlife from the Proposed Quarry at Hitch Rack Ranch – Power Point Report of John Sanderson, Ph.D;
- Exhibit 14A, Pg 228 from Wisdom et al. 2018 Elk responses to trail-based recreation on public forests;
- Exhibit 14B, Pages 51 & 73 from Noon et al. 2009 Multispecies Conservation Planning on U.S. Federal Lands;
- Exhibit 14C, Abstract and Conclusion from Cushman et al. 2010 Use of abundance of one species as a surrogate for abundance of others;
- Exhibit 15, Curriculum Vitae of John Sanderson, Ph.D., Director of Sciences at The Nature Conservancy of Colorado;
- Exhibit 16, Report of Charles Norris, PG;
- Exhibit 17, Curriculum Vitae of Charles Norris, PG;
- Exhibit 18, Hitch Rack Ranch Quarry Assessment – Power Point Report of Jerald S. Fifield, Ph. D;
- Exhibit 19, Report of Jerald Fifield, PhD;
- Exhibit 20, Reclamation Plan Review – Power Point Report of Richard Alward, Ph.D.;
- Exhibit 21, Curriculum Vitae of Richard Alward, PhD;
- Exhibit 22, Colorado Natural Heritage Program's Review of Hitch Rack Ranch Proposal – Power Point Report of Renee Rondeau;
- Exhibit 23, Curriculum Vitae of Renee Rondeau;
- Exhibit 24, Effects of Blasting on Water Wells – Power Point Report of Brett A. Lewis, PE, PhD;
- Exhibit 25, Curriculum Vitae of Brett A. Lewis, PE, PhD;
- Exhibit 26, Report of Dennis McGrane/McGrane Water Engineering, LLC;
- Exhibit 27, Curriculum Vitae of Dennis McGrane;
- Exhibit 28, Curriculum Vitae of William E. Sanford, Ph.D.;
- Exhibit 29, Curriculum Vitae of Nancy J. Fishbein;
- Exhibit 30, Gazette Article "Quarry dispute far from resolved";
- Exhibit 31, Newspaper Articles RE: Account of Impact of Construction of NORAD (to be supplemented upon availability);
- Exhibit 32, Information regarding other sources of aggregate;

- Exhibit 33, Power Point Report Nancy Reed;
- Exhibit 34, Email from Kris McCowen To Caleb Foy dated January 5, 2018 and response from Foy to McCowen dated January 10, 2018;
- Exhibit 35, Colorado Division of Water Resources Response to Reclamation Permit Application Consideration dated January 4, 2018;
- Exhibit 36, Findings of Fact, Conclusions of Law and Order of Permit Application M-2016-10;
- Exhibit 37, Information regarding other sources of aggregate;
- Exhibit 38, Report of William E. Sanford, PhD;
- Exhibit 39, Power Point Presentation of Jerry P Moore;
- Exhibit 40, Gazette Article “Neighbors gird for another round of battle over proposed quarry near Colorado Springs”;
- Document and exhibits submitted by other Objecting Parties;
- Any document or exhibit from first Application Hearing or in DRMS files for this mining site or the applicant.

All documents and other materials admitted into evidence by the Board at the Formal Public Hearing will become part of the administrative record. Upon request, a party may recover any evidence introduced by that party.

## **VI. PROCEDURE**

The Division, parties and members of the public shall make presentations in the following order for each issue identified in section IV. The time limits set out below are maximum limits; however, the Board, in its discretion, may allow additional time. The Board has the authority to limit any duplicative or irrelevant testimony. Objectors may appoint a spokesperson to present their information, or Objectors may present individually. In either event, time limitations noted below apply to the Objectors as a group.

All parties will be afforded an opportunity to conduct cross-examination of any witnesses that testifies during each presentation. Time used for cross-examination of a witness shall count against the time limit of the cross-examining party or Division. At the discretion of the Board, time used to respond to questions by members of the Board may not count against the time limit of the responding party or Division.

PHO Graves solicited and considered input from the parties and the Division at the prehearing conference regarding the time requested to make presentations at the hearing, and recommends the following procedure for approval by the Board:

### **A. Board Consideration and Adoption of the Prehearing Order**

The Board shall consider this draft Prehearing Order for adoption. The Board, in its discretion, will hear any objections to the proposed Prehearing Order at that time and make any necessary amendments prior to adopting the Prehearing Order.

**B. Introduction- Division:**

The Division shall have ten (10) minutes in which to present an overview of the Application.

**C. Presentation- Applicant – Transit Mix Concrete Co.:**

The Applicant shall have two (2) hours in which to make a presentation to the Board regarding all issues outlined above.

**D. Presentation – Objectors:**

The Objectors shall have two (2) hours and thirty (30) minutes in which to make a presentation to the Board regarding all issues outlined above.

**E. Division Presentation:**

The Division shall have one (1) hour in which to make a presentation to the Board regarding all issues outlined above.

**F. Party Comment Period:**

Parties not already having addressed the Board as part of the Presentation times shall have fifteen (15) minutes, three (3) minutes per person, in which to address the Board regarding all issues outlined above.

**G. Applicant Rebuttal Statement – Transit Mix Concrete Co.:**

The Applicant shall have one (1) hour and thirty (30) minutes to make a rebuttal statement, and shall be limited to responding to issues addressed in the presentations of the other parties or the Division.

**H. Objectors Rebuttal Statement:**

The Objectors shall have fifty (50) minutes to make a rebuttal statement, and shall be limited to responding to issues addressed in the presentation of the other parties or the Division.

**I. Division Rebuttal Statement:**

The Division shall have one (1) hour and fifteen (15) minutes to make a rebuttal statement, and shall be limited to responding to issues addressed in the presentations of the parties.

**J. Division Closing Statement:**

The Division shall have ten (10) minutes to make a closing statement.

**K. Objectors Closing Statement:**

The Objectors shall have twenty (20) minutes to make a closing statement.

**L. Applicant Closing Statement – Transit Mix Concrete Co.:**

The Applicant shall have ten (10) minutes to make a closing statement.

Dated this \_\_\_\_ day of April 2018.

BY: \_\_\_\_\_  
\_\_\_\_\_, Chairperson  
Mined Land Reclamation Board

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of April 2018, a true and correct copy of the foregoing was emailed or placed in the U.S. Mail, first-class postage prepaid and properly addressed, to the remaining parties listed on DRMS File No. M-2017-049, Revised Party List dated April 10<sup>th</sup>, 2018 for Hitch Rack Ranch Quarry.



Jeff T. Graves

Pre-Hearing Conference Officer