



## COLORADO

Division of Reclamation,  
Mining and Safety

Department of Natural Resources

March 5, 2020

Rudolf Fontanari  
3316 E ¾ Road  
Clifton, CO 81520

Re: Findings of Fact, Conclusions of Law, and Order, Rudolf Fontanari  
File No. M-1996-076, MV-2019-023

On March 2, 2020, the Mined Land Reclamation Board signed the enclosed Board Order for the above captioned operation. Because this document is the final order of the Board, it is legally binding on and affects the above-captioned operation, and we strongly advise that you read this document carefully.

Sincerely,

  
Camille Mojar  
Board Administrator

Enclosure(s)

Certified Mail  
7018 2290 0001 8923 1083

cc:  
Amy Yeldell  
Lucas West  
Travis Marshall  
Jeff Fugate  
Scott Schultz  
Charles Kooyman  
John Henderson



**BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO**

Violation No. MV-2019-023

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

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**IN THE MATTER OF RUDOLPH FONTANARI; File No. M-1999-176**

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THIS MATTER came before the Mined Land Reclamation Board ("Board") on January 22, 2019 in Denver, Colorado for a hearing to consider motions filed by Rudolph Fontanari ("Operator"), permit number M-1996-076, on September 19 and October 8, 2019 requesting various relief including reconsideration of the Board's decision imposing sanctions for Violation No. MV-2019-023, declaratory relief regarding water rights, and reopening of the hearing on the violation. Also before the Board was a motion to strike the Operator's motions filed by the Division of Reclamation, Mining and Safety ("Division") on November 4, 2019. Assistant Attorney General Scott Schultz appeared on behalf of the Division. John Henderson, Esq. appeared on behalf of Operator.

The Board, having considered the materials presented and having been otherwise fully informed of the facts in the matter, hereby enters the following:

**FINDINGS OF FACT**

1. Following a full hearing on alleged violations by Operator at the Board's August 21, 2019 meeting, the Board issued an order finding Operator in violation of various provisions of the Colorado Mined Land Reclamation Act for the Extraction of Construction Materials, Article 32.5 of Title 34, C.R.S. (2019) (the "Act"). In addition to finding Operator in violation of the Act, that order, effective September 26, 2019 (the "September Order"), imposed corrective actions, civil penalties, and a cease and desist order against Operator.
2. At the time of the August 21, 2019 Board meeting, no attorney had filed an entry of appearance on behalf Operator.
3. Operator did not request a continuance of the hearing at the August 21, 2019 Board meeting at any point during the proceeding, nor did Operator request a continuance to have counsel at the meeting.
4. The permit for the site is held by Rudolf Fontanari as a sole proprietor, doing business as "Western Slope Flagstone."

5. No request for transfer of permit and succession of operators has been filed or approved changing the operator from Rudolf Fontanari as a sole proprietorship.

6. On September 19, 2019, several days before the September Order became effective, Operator filed a motion seeking to reopen the hearing, titled "Motion/Petition to Re-Open Record for Presentation of Defense Case by Western Slope Flagstone, LLC-Rudy Fontanari, For Scheduling of Pre-Hearing Conference and for a Stay of Required Corrective Actions, Bond Increase and Assessment of Civil Penalties Due to Lack of Representation by Legal Counsel" (the "September 19, 2019 Motion"). The September 19, 2019 motion stated that it was filed on behalf of Western Flagstone, LLC and Rudy Fontanari, alleged to be the "holders of permit M-1996-076."

7. On October 8, 2019, the Board received a second motion filed by Operator requesting, among other relief, reconsideration of the Board's order, a stay of corrective actions and civil penalties, and a renewed request to reopen the hearing, titled "Motion/Petition for Re-Consideration of Board Order of August 21, 2019; For Stay of Corrective Enforcement Actions; For Stay of Civil Penalties; For Stay of Bond Increase and for Declaratory Judgment; and Renewed Request to Re-Open the Hearing Record and for Hearing on Bond Increase" (the "October 8, 2019 Motion").

8. The Division filed a response to Operator's motions on November 4, 2019, addressing Operator's arguments and requesting that the Board strike Operator's requests and motions to reopen the record on the grounds that no valid legal claim had been made for doing so.

9. Operator also filed a "Response to Motion to Strike all Motions" on November 12, 2019.

10. The various motions were set for a consideration at the Board's November 13, 2019 meeting and included on the publicly-posted agenda for that meeting.

11. At the November 13, 2019 Board meeting, the Division requested that the Board rule on the motions before it solely on the written submissions and without oral argument pursuant to Rule 2.9.3 of the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (the "Rules").

12. The Board voted to deny all the motions at the November 13, 2019 meeting.

13. On November 26, 2019, prior to the issuance of a Board order from November 13, 2019, Operator filed a motion requesting that the Board stay its decision denying the motions, reschedule oral argument, and for clarification as to

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the motions heard at the Board's November 13, 2019 meeting, titled "Motion/Petition to Stay Board Decision of November 13, 2019 and to Re-Schedule Oral Argument for December Board Meeting Due to Unavailability of Counsel, Lack of Notice; Request for Clarification as to Motions Heard on November 13, 2019" (the November 26, 2019 Motion").

14. Operator's November 26, 2019 Motion was set for consideration at the Board's December 11, 2019 meeting.

15. At the December 11, 2019 Board meeting, much of Operator's presentation focused on the underlying merits of the September 19, 2019 Motion and October 8, 2019 Motion as well as the November 26, 2019 Motion.

16. The Division, through counsel, pointed to discrepancies between Operator's representations in motions and the December 11, 2019 hearing and what had occurred during the August 21, 2019 hearing, addressing much of the substance of Operator's arguments in support of the September 19, 2019 and October 8, 2019 motions.

17. During the December 11, 2019 Board meeting, the Board voted to grant Operator's November 26, 2019 request for reconsideration of the denial of all previous motions and set the matter for consideration at the January 22, 2020 Board meeting.

### CONCLUSIONS OF LAW

18. The Board has jurisdiction over this matter pursuant to the Colorado Mined Land Reclamation Act for the Extraction of Construction Materials, Article 32.5 of Title 34, C.R.S. (2019).

19. Under Rule 2.9.1(1), "[a]ny party to a hearing may petition the Board to reconsider its decision." Western Slope Flagstone, LLC is not and has not been a party to these proceedings and is not a holder of the permit.

20. Petitions for reconsideration "must set forth a clear and thorough explanation of the grounds justifying reconsideration, including but not limited to new and relevant facts that were not known at the time of the hearing and the explanation why such facts were not known at the time of the hearing." Rule 2.9.1(2). Nothing in Operator's pleading set forth grounds that would justify reconsideration of the Board's September 26, 2019 Order. Operator has not identified any relevant facts warranting reconsideration that were not known at the time of the August 2019 hearing nor explained why any such fact was not known at the time of the hearing.

21. The Board may grant or deny a petition "based solely on the written submittal[s] in support of the petition or written in opposition thereto, or the Board may, in its discretion, grant the parties ... an opportunity to present oral

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argument.” Rule 2.9.3. The Board has been presented with Operator’s arguments through motions and through presentation made by counsel at the December 11, 2019 Board meeting and has sufficient facts on which to base its decision.

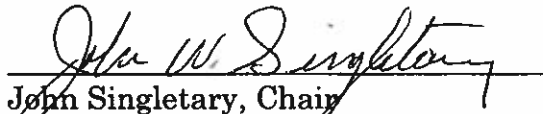
22. The proponent of an order has the burden of proof. Rule 2.8.1(1). Operator, as the proponent of the orders sought in his motions, bore the burden of proof. Operator has not met this burden.

### ORDER

Based on the foregoing findings of fact and conclusions of law, the Board hereby DENIES the Operator’s motions.

DONE AND ORDERED this 2<sup>nd</sup> day of March 2020.

FOR THE COLORADO MINED LAND  
RECLAMATION BOARD

  
John Singletary, Chair

### NOTICE OF APPEAL RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing a complaint with the district court within thirty-five (35) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2019) and the Colorado Rules of Civil Procedure. In the event that a complaint for judicial review is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at: 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Camie Mojar.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 5<sup>th</sup> day of March 2020 addressed as follows:

*By certified mail:*

7018 2290 0001 8923 1083

Rudolf Fontanari  
3316 E ¾ Road  
Clifton, CO 81520

*By electronic mail to:*

John Richard Henderson  
Law Office of John R. Henderson, P.C.  
308 E. Simpson Street, Suite 103  
Lafayette, CO 80026

*By electronic mail to:*

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Camille Mojar, Board Administrator

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