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**Direct Mail to Glenwood Springs*

March 23, 2020

Lucas West

Colorado Division of Reclamation, Mining & Safety

1313 Sherman Street, Room 215

Denver, CO 80203

Sent via email and US Mail

RECEIVED

MAR 23 2020

DIVISION OF RECLAMATION
MINING AND SAFETY

RE: Application M2020-008, Scott Contracting Rifle Gravel Pit #1

Dear Mr. West:

My firm represents Island Park LLC, the owner of property adjoining on the northwest side the land included in the Scott Contracting Inc. ("Scott") application referenced above. **Exhibit A.** Island Park has serious concerns about the adequacy of the application materials submitted by Scott and whether the mining plan meets the requirements of applicable statutes, DRMS regulations, and property law. These concerns range from impacts to water, wetlands, wildlife, and lack of necessary easement interests. These concerns are discussed further below.

- I. Scott lacks any easement or right to use the Island Park ditch lateral and therefore its dewatering plan is impractical.

An integral part of the Scott mining plan to dewater the proposed pit requires using the existing Island Park ditch lateral to convey water to the Colorado River. See, Application at 14, 15, 26, 27. This lateral ditch is not located at any point on the Scott property. Instead, it crosses exclusively property owned by Island Park and the neighboring Grant Bros Ranch Ltd. property. **Exhibit B.**

Scott does not have any ownership interest in the Island Park lateral ditch necessary for their project. Instead, this lateral ditch is used by the Last Chance Ditch Company¹ pursuant to an arrangement with the underlying property owners. The rights of the Last Chance Ditch Company to use the lateral are strictly for re-regulation of flows in the Last Chance Ditch (to send excess water to the river) and do not include the right to deposit effluent from de-watering activities. Use of the Island Park lateral by the Last Chance Ditch Company are permissive by the landowners and the Ditch Company lacks the ability to expand the uses. The Island Park ditch lateral is not allowed to carry drainage water from the Scott property. Scott has failed to provide any evidence of consent to use the Island Park lateral ditch from the underlying landowners. Scott is legally precluded from increasing the manner (including sedimentation), amount or timing of drainage

¹ The Last Chance Ditch Company (a/k/a the Loesch & Crann Ditch) is an incorporated ditch company with a functioning board of directors. **Exhibit C.**

water emanating from their property into the private ditch crossing the Island Park property. *Hankins v. Borland*, 431 P.3d 1007 (Colo. 1967). As such, Scott has failed to demonstrate that it has the capacity to dewater its proposed pit – a material pre-requisite for the approval it seeks.

The Island Park lateral ditch that Scott assumes it can use to transport its pit water bisects the Island Park property. Adding more water to the flow of the ditch will increase the burden to Island Park and the persons who use the property. Specifically, it will make it more difficult to cross the ditch (as described below the Island Park property is extensively used for hunting and fishing purposes). Further, adding water and sediment to the ditch will increase maintenance costs as well as the maintenance burden to the underlying property owners. Neither of these increased burdens is permitted by property law.

Figure 9 of the Application indicates that the “tailwater channel [of the Last Chance Ditch] to be re-routed around edge of property.” Scott has failed to provide evidence of their right to relocate this ditch segment. Pursuant to the Colorado Supreme Court decision in *Roaring Fork Club v. St. Jude’s Co.*, 36 P.3d 1229 (Colo. 2001), a ditch constitutes an easement right that can only be relocated with an agreement of the parties holding an interest in the ditch or a court order. Here, Scott has not provided information about which property owners own an interest in the ditch to be relocated. Nor has Scott provided a consent letter from the Last Chance Ditch Company. As such, to the extent that the mining plan requires relocation of this ditch segment, it cannot be approved until such consents are obtained.

II. The Scott gravel mining proposal will harm or destroy federally protected wetlands.

Several locations in the Scott application incorrectly state that the wetlands on the site were created by irrigation activities that are not regulated by the U.S. Corps of Engineers. See, Application at 7-8, 27. As figure 5 to the application discloses, a substantial portion of the site is “Herbaceous Emergent Wetlands.” As regulated wetlands, mitigation and approval from the U.S. Corps of Engineers should occur before a mining plan can be approved by DRMS.

The area of the Scott property proposed for mining lies within an area historically influenced by the channels of the Colorado River and Dry Hollow Creek. Prior to the construction of I-70 and the rerouting of drainage from these two water courses, the channels were prominently visible on and around the Scott property. The natural wetlands associated with these historic channels are not the product of irrigation and as such are federally protected. Attached as **Exhibit D** is a 1957 aerial photo of the PLSS Section where the Scott property is located showing the pre-construction of I-70 drainage natural drainage channels and associated wetlands on the Scott property.

III. The Scott gravel mining proposal fails to address off-site impacts to fish and wildlife.

As depicted on **Exhibit A**, the Island Park property consists of substantial natural areas that include wetlands, the Colorado River, and unique small game and waterfowl habitat. The members of Island Park LLC value and use the property primarily for hunting and fishing purposes.

As such, off site actions that harm the fish and wildlife attributes of the Island Park land are of particular concern.

Lowering the groundwater table on the Scott property will impact groundwater levels and wetlands on adjoining properties thereby harming fish and wildlife off-site. Consistent with the “natural” status of the wetlands on the Scott property, its mining plan recognizes that the groundwater table in the area is a shallow 3 to 8 feet deep. Application at 26. This vital groundwater resource maintains wetlands on the Island Park property as well as other surrounding properties. Allowing Scott to lower the groundwater table as proposed in the mining plan will inappropriately damage wetlands and waterfowl habitat on the Island Park property. DRMS must make certain that any permit issued by it will not result in harm to adjoining lands.

Comments from the Colorado Division of Water Resources (February 13, 2020) recognize that “the dewatering activity will lower the groundwater during Phase 1 . . .” Further, as noted by DWR, Scott has failed to undertake the necessary analysis of impacts on groundwater uses within 600 feet of the permit area. All DWR concerns must be addressed prior to consideration of the Scott application.

Finally, comments made by the Colorado Division of Parks and Wildlife (CPW) (February 24, 2020) stress that Scott’s proposed use of the Island Park ditch lateral to send its dewatering effluent to the Colorado River puts fish and wildlife at risk. Wildlife and waterfowl on the Island Park property use the lateral ditch for habitat purposes. Sedimentation of the ditch by Scott’s proposed uses will harm that habitat impacting the fish, wildlife, and waterfowl that rely on it. Even if Scott had the legal right to use the Island Park lateral ditch, Scott has failed to provide an adequate sediment management plan to allow DRMS to approve its application.

IV. Other matters that must be addressed prior to issuance of a permit.

Scott failed to give notice to owners within 200 feet of its property boundaries as required by Regulation 2 CCR 407-4, 1.6.2. The western boundary of the Scott property is within 200 feet of the Island Park property. **Exhibit A.** As such, sufficiency of notice does not allow the Scott application to proceed without being amended.

The comment letter from CPW notes that the Scott property has a high concentration of noxious weeds. DRMS must impose strict requirements for sterilizing soil of noxious weed seed and provisions for ensuring that soil storage mounds on the site will not allow for the spread of weeds onto the Island Park property.

Island Park reserves the right to supplement its comments in response to future information provided by the applicant or as additional information becomes available.

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V. Conclusion

In light of the material deficiencies in both the application materials and the legal rights possessed by Scott, granting a permit to Scott would be arbitrary, capricious and an abuse of discretion by DRMS. As such, DRMS must deny the permit application. Please notify me of the time and place of the hearing on this permit as my client will be represented.

Very truly yours,

KARP NEU HANLON, P.C.



Michael J. Sawyer

MJS:



200 Feet

Rifle Pit #1 Project Area

65-027

70

65-146

Rifle Pit

nd
Property Boundary
Buffer

v Path
veyed)
or Trench
Range



Colorado
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Summary

| Details | | | |
|----------------------------------|---|----------------|-----------------------|
| Name | LAST CHANCE DITCH COMPANY | | |
| Status | Good Standing | Formation date | 04/15/1872 |
| ID number | 19871000693 | Form | Nonprofit Corporation |
| Periodic report month | April | Jurisdiction | Colorado |
| Principal office street address | 1701 South Lafayette St., Denver, CO 80210, United States | | |
| Principal office mailing address | PO Box 119, Longmont, CO 80502-0119, United States | | |

| Registered Agent | |
|------------------|---|
| Name | Angie Rae Swanson |
| Street address | 1701 South Lafayette St., Denver, CO 80210, United States |
| Mailing address | PO Box 119, Longmont, CO 80502-0119, United States |

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