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March 30, 2020

Re: April Board Hearing – Amendment No. 4 (AM-04) Application for the
Pikeview Quarry, File No. M-1977-211

Sent via email:

Scot Anderson
scot.anderson@hoganlovells.com
Hogan Lovells US LLP
1601 Wewatta Street, Suite 900
Denver, CO 80202

Scot,

Thank you for the letter dated March 24 regarding the hearing for Amendment 4. Like CMC, the Division would like to avoid any further delay of the hearing before the Board. However, it is premature for the Board and Division to make any final determination regarding the April 22 hearing. Like all State agencies, the Division is assessing its available resources and technology to convene a “virtual” hearing on this matter, as well as other similarly situated matters. Additionally, the Division is working closely with members of the Board to evaluate their ability to conduct a virtual hearing that complies with open meetings and administrative procedure requirements.

The unprecedented circumstances and work from home requirements have resulted in reprioritizing the Division’s resources, and staff’s limited or restricted availability requires a thoughtful and considerate approach to holding contested public hearings. Not only must the Board and Division be cognizant of Open Meetings Law and due process requirements associated with a contested hearing, the Board and Division must also assess their technical ability to hold such an important and complex hearing virtually. This includes verifying that each member of the Board has the ability to fully participate in the hearing via zoom video conferencing, or other comparable video meeting platform.

Although the Division agrees it could work together with the parties on advance planning and coordination to minimize logistical hurdles raised by a video

conference hearing, such efforts are meaningless if members of the Board are not able to fully participate.

The Division appreciates your understanding and patience as it works on the most reasonable and prudent course forward for the hearing associated with Amendment 4. Over this coming week Division staff will be working closely with the Board to determine if a video conference hearing on April 22 is feasible.

Sincerely,

_____/s/ *Jeff M. Fugate*_____

JEFF M. FUGATE

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