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February 15, 2021

Colorado Department of Public Health and Environment
Attn: Al Stafford
WQCD-P-B2
4300 Cherry Creek Drive South
Denver, CO 80246-1530

RE: Facility Inspection / Compliance Advisory Response Letter
Swan River Resource
CDPS Permit Certification – COG501752

Dear Mr. Stafford,

Per your Facility Inspection/Compliance Advisory Inspection Report letter dated January 13, 2021, please accept this written response. The restoration goals and context (abandoned dredge mine) at the Swan River Resource site are unique, and it has been our experience that regulatory permitting is not always a linear, or straightforward process. For over a decade, we have greatly appreciated significant coordination and partnership amongst CDPHE, the Division of Reclamation, Mining and Safety (DRMS), the Army Corps of Engineers (USACE) and other regulatory partners to fit these restoration efforts into the applicable regulatory framework.

We appreciate the site visits and conversations with you, as well as other regulatory agency partners in 2020 to ensure ongoing compliance at the Swan River Resource site. We also appreciate your time on February 1, 2020 (web-meeting) to discuss the best approach for permitting offsite surface water discharges as work continues in 2021 (meeting minutes attached). Restoring an abandoned, mine-scarred landscape to an ecologically functional stream and floodplain system is a challenge that transcends design, construction, and of course, permitting. Summit County has worked hard to ensure regulatory compliance since acquiring the property nearly 15 years ago and throughout all phases of gravel removal and restoration. The mine reclamation plan the County inherited under the 112c permit for the Swan River Resource (Mine ID M-1993-035) required nothing more than scraping the site smooth and spreading some seed. However, the County purchased the Swan River Resource with the goal of restoring the site to an ecologically functional landscape. In 2016, the County and its partners restored over one mile of channel, as well as more than 30 acres of riparian corridor and uplands on the immediately downstream site. And with support from numerous partners, including the regulatory agencies, for the first time in over a century, aquatic and terrestrial life returned to this abandoned and degraded landscape.

Throughout restoration planning, design, and implementation, regulatory compliance has been of utmost importance. The County has maintained ongoing relationships with CDPHE, DRMS, USACE, and others to ensure the site remains in good standing. Please find our responses to the "Notes" in your January 13, 2021 letter herein.

Note 1 – Documentation Provided

As noted, all documentation requested by CDPHE on July 23, 2020 was provided on July 29, 2020. Additionally, reporting has been submitted to CDPHE annually since the initiation of Sand and Gravel Mining and Processing permitting for the Swan River Resource.

Note 2 – US Army Corps of Engineers (USACE) & CDPHE reporting and SWMP Compliance

USACE

As discussed with Mr. Stafford in advance of, and during the October 30, 2020 site visit, as well as during the December 1, 2021 web-meeting, Summit County has been in close coordination with Mr. Benjamin Wilson, Project Manager at the USACE Colorado West Regulatory Section leading up to planned implementation of restoration activities on the Swan River Resource site. On September 1, 2020, Summit County and its engineering & environmental consultant, Ecological Resource Consultants, Inc., (ERC) held a pre-submission meeting at the site to discuss the nature and timing of permitting required for future restoration activities. During this meeting, no regulatory concerns were expressed by Mr. Wilson and it was identified that the restoration project could be permitted under a Nationwide Permit 27 (NWP 27). This is the same USACE permitting approach used on the recently completed restoration activities immediately downstream. The NWP 27 permit for downstream restoration work (SPK-2015-00780) is entering its final monitoring year. To date, there have been no concerns expressed, or compliance issues recognized by USACE. Summit County anticipates submitting an application for an NWP 27 permit for restoration activities on the active site within next 30 days.

CDPHE

As discussed with Mr. Stafford, the aim of the operation at the Swan River Resource is to restore the site to a natural condition. As such, the gravel removal operations at the site aim to achieve a final grade conducive with restoring a natural channel and floodplain, requiring work to occur in the water. As also discussed, implementing this work in the presence of dredge gravels proves challenging, both in terms of permitting and construction. For much of the year, water flows subsurface rather than through the site. Though there are no direct surface water discharges from the site, evidence of subsurface water can be observed by turbidity downstream where flows “daylight” in the restored Swan River channel.

Due to the unique nature of the Swan River Resource (i.e., dredge gravels), during the October 30, 2020 site visit and recent web-meeting, Mr. Stafford acknowledged significant challenges in permitting the occasional ponded water under the General Permit COG500000 definitions for “discharge.”

As discussed with Mr. Stafford, Summit County and Town of Breckenridge intend to commence the final restoration phase for the project during summer 2021. This work includes creating a new channel within the disturbed site, which will connect with the existing downstream channel. The County and Town voluntarily incorporated this restoration work as a requirement of Summit County’s updated DRMS I12c mining permit reclamation plan. For several years, Summit County has worked closely with its DRMS permitting officer, Mr. Eric Scott, to ensure compliance with state mining permits throughout the restoration process. Mr. Scott was also made aware of concerns expressed to CDPHE, visited the site with Summit County, and has been involved with ongoing compliance coordination.

Annual Reporting and Storm Water Management Plan (SWMP)

As noted previously, Summit County will be advancing final restoration construction later this year and anticipates work will be substantially complete by the end of 2021. This shift in onsite operations will require a new approach to site management and discharge compliance under General Permit COG500000.

Based on discussion during the February 1, 2021 web-meeting, no new outfalls will be included in the SWMP. Though CDPS Permit Certification – COG501752 authorizes discharges from the site, due to the porous nature of the onsite dredge gravels, there are no direct offsite surface water discharges. However, per the guidance offered by Mr. Stafford, Summit County will maintain reference to Outfall 001 in its permit and SWMP in order to maintain authorization to discharge by CDPHE. We anticipate that offsite discharges may occur while onsite restoration activities are occurring.

Note 3: Best Management Practices and Effluent Limitations

Based on Mr. Stafford's feedback during the February 1, 2021 web-meeting, we understand that the site is in compliance with all effluent limitations and all control measures are functioning properly. There are no offsite surface water discharges from the Swan River Resource site. As discussed, the primary onsite best management practice is percolation of surface water directly into the dredge gravels. However, any working gravel operations will remain entirely surrounded by a berm. A sediment basin will be maintained at the downstream end of the project while practicable to prevent offsite discharges during periods of high groundwater. As site operations transition towards restoration construction later this year, the SWMP will be updated to reflect any modifications to onsite BMPs.

Note 4. Field Deficiencies

Based on Mr. Stafford's feedback during the February 1, 2021 web-meeting, we understand that there are no recognized field deficiencies at the site. Summit County will continue to coordinate with ERC and Schofield Excavation to update the SWMP in support of restoration construction anticipated to commence later this year. As a component of the SWMP update, Summit County will enhance the inspection documentation to specifically note the absence of surface water discharges as appropriate.

Note 4. Multiple Storm Water Outfalls

Based on guidance received from Mr. Stafford at the February 1, 2021 web-meeting, no new outfalls will be attributed to the site (i.e., areas of sheetflow that may infiltrate into the onsite cobbles). Though not currently discharging surface water offsite, Summit County will maintain inclusion of Outfall 001 in its CDPS Permit Certification – COG501752. In the event that Outfall 001 becomes active, the Storm Water Management Plan will be updated to reflect this change and a new monitoring plan implemented accordingly.

Conclusions

In response to the "Conclusions" contained in the July 14, 2021 inspection report:

1. Summit County will continue to coordinate with USACE to ensure complete compliance with all Clean Water Act requirements. As noted previously, coordination between the County and USACE has been ongoing for several years and it is our understanding from the current and previous USACE regulator (Mr. Matt Montgomery) that the site is in complete compliance with Clean Water Act requirements.
2. An updated, site-specific SWMP for final restoration activities at the site will establish and maintain quarterly visual assessment and inspection documentation protocols. No surface water discharges were occurring from the site during gravel removal operations, but may during construction of the new

channel later this year.

3. The Swan River Resource site is in a dynamic state. As noted, the project will begin implementing restoration construction later this year. Summit County looks forward to ongoing coordination with CDPHE as necessary to ensure ongoing permit compliance, including determining any new outfalls.

It is a primary goal of Summit County to maintain strict regulatory compliance as we and our partners work to restore the Swan River Resource site to a natural condition. We fully recognize, and it has been reiterated to us many times, that this site is unique for many reasons. Site conditions and the County's restoration goals do not always fit into a traditional regulatory framework, thus creating permitting challenges. We appreciate your support to ensure ongoing compliance with CDPHE regulatory requirements. If you have any questions or recommendations, please contact me at 970-485-9232.

Sincerely,

Brian Lorch

Brian Lorch, Director, Summit County Open Space and Trails

Cc: Scott Vargo, Summit County Manager
Eric Scott, Division of Reclamation, Mining and Safety
Benjamin Wilson, Colorado West Regulatory Section - U.S. Army Corps of Engineers

Encl: February 1, 2021 web-meeting minutes – COG501752

COG501752- Swan River Resource Sand Gravel Discharge Permit Meeting Minutes

8:30am, 02/01/2021

Follow up for Facility Inspection/Compliance Advisory Inspection letter dated January 13th, 2021 based on site inspection on October 30, 2020.

Attendees

Jordan Mead – Summit County Open Space
Jason Lederer – Summit County Open Space
Brian Lorch – Summit County Open Space
Anne Lowe – Town of Breckenridge Open Space
Jim Curnutte – Summit County Community Development
Troy Thompson – ERC
Levi Schofield – Schofield Excavating
Al Stafford – CDPHE

Al Stafford stated that this is a unique site different than other Sand and Gravel Discharge sites. CDPHE got a complaint on the site for turbid water in April 2020. No in person inspections at that time, inspection happened later due to COVID. Site inspection occurred in October 2020 with Jason and someone from Schofield. They visited a reference reach for what dredging looked like, followed by a visit to the active site. There were several places where Swan River was surfacing along the site and then a settling basin at the bottom where the water would settle. There was no water in the basin or evidence of surface discharge from the active site, as the water percolates. No concerns regarding storm water were noted during the inspection. Mr. Stafford was impressed by the restoration work that occurred in reach A. It was concluded that all water that falls on the sand and gravel piles percolates through the dredge rock and there is no surface run off. Mr. Stafford noted that he took the inspection report to his team and it was decided that only surface water runoff needs to be monitored. A goal of this meeting is to decide if there is surface water runoff and how we would monitor these areas if there is any runoff.

Brian Lorch said that Summit County has been working on this project for 15 years and has had some complaints but the County has always done everything in their power to manage the site responsibly. We have coordinated closely with agency partners including State and Federal permitting agencies. The County plans to be working directly in the stream during 2021 to implement the next phase of restoration. Avoiding restoration work in the stream is impossible given the “bed of marbles” present in this site. How do we ensure that we address all CDPHE permitting requirements while meeting the restoration goals by working in the stream?

Mr. Stafford said that this was not an enforcement letter and the situation will not go to enforcement. The main concerns with compliance and permitting are:

- 1) Does this need a Corps permit? Summit County has been and will continue to coordinate with the Corps to ensure all necessary permits remain in place. Mr. Stafford agrees that we are doing everything possible to keep the stream as clean as possible.
- 2) How should this be permitted with CDPHE moving forward, and where is storm water runoff monitored? If this is percolating, then the additional outfalls are not needed. Mr. Stafford recommended that a single outfall be maintained at the bottom of the site for permitting purposes.

- 3) Do we need a construction storm water permit? No, this work falls under reclamation of the sand and gravel operation. Future restoration work will not require an additional permit.

Mr. Lorch noted that things will be changing pretty quickly and we will be installing a bridge near where the settling pond is currently. What does CDPHE mean by “monitoring” and when will this be needed as there has never been evidence of storm water runoff when monitoring inspections have been carried out.

Mr. Stafford stated that monitoring will only need to occur when surface discharge of storm water is running off into the Swan River. All visual inspection reports state that there has been no evidence that surface water runoff is occurring when inspections have been carried out.

Mr. Stafford suggested talking about this in specific pieces.

1) Compliance. In SWMP, keep stating that there is no surface water runoff going in the Swan River. Keep stronger documentation on SWMP and make this more comprehensive. What is your management plan for storm water? This is simple as all storm water percolates into the substrate. Make sure there is spill response for equipment. Quarterly inspections are required for the active site, CDPHE may have templates for sand and gravel inspections. The SWMP document will give guidelines for inspections moving forward. How do we complete quarterly inspection when half of the year is snow on snow? Just note this. Reach A had a construction discharge permit. Do we need this for the Reach B, or can we move forward with the Sand and Gravel Discharge permit? We can use the Sand and Gravel discharge permit while restoring the site. DRMS reclamation permit is in place and we are good with DRMS.

Troy Thompson – Question – Is CDPHE looking to see that there is no surface runoff into the site? No, only that the runoff is not negatively impacting water quality. We have worked with the Corps on Reach A and for Reach B a similar dredge and fill permit will cover the work in the stream. We are working with the Corps on this permit.

2) Permitting.

Mr. Stafford stated that anything that occurs within the Swan River corridor is under an Army Corps permit and added that Summit County does not need to add an outfall because there is no storm water surface run off at the sites identified in the compliance letter. Summit County should maintain the current outfall so if we ever need let out water from the sediment pond, there is a designated outfall. There will not be need to be monitoring because the water in the pond is the Swan River, not storm water.

Mr. Stafford apologized for the tone of the letter and the impression that there were major changes that needed to occur. Summit County does not need to alter or modify the permit but should keep visually monitoring and noting that there is no surface run off.

Brian Lorch asked how we move forward with objectors who may expect there will be no turbid water coming from the site. There will still be some turbidity when channel restoration is occurring.

Mr. Stafford will follow up with the objectors and let them know that Summit County is good from a storm water perspective and that we are working with DRMS and the Army Corps for the construction phase. This communication will be essential because there is more to this than what comes out in the paperwork. Having clear communication from regulatory agencies that Summit County is in compliance

and doing all we can to mitigate impacts while we complete the restoration work will go a long way with our stakeholders.

3) Mr Stafford recommended the following responses to the inspection report letter.

a) Narrative that we have a SWMP and that we have an outfall designated but it is not active. There is no need for water quality monitoring at the designated outfall.

b) A narrative of how we will update the documentation and how we record the visual inspections. No need for additional outfalls due to the percolation on site and lack of surface runoff.

c) Narrative of coordination with the Army Corps and the timeline for that permit application.