

MBSS

MAYNES, BRADFORD, SHIPPS & SHEFTEL LLP
ATTORNEYS AT LAW

THOMAS H. SHIPPS
SAM W. MAYNES
ADAM T. REEVES
ELISABETH TAKEUCHI
CHARLES C. SPENCE+
SHAY L. DENNING++

*Also Admitted in Arizona and Navajo Nation
+Also Admitted in New Mexico, Idaho, Utah and Wyoming
++Also Admitted in New Mexico

SPECIAL COUNSEL:
SHERRI D. WAY
DAVID C. CRIPE

ASSOCIATES:
DANIEL F. MCCARL

OF COUNSEL:
PATRICIA A. HALL*

JANICE C. SHEFTEL - RETIRED
JOHN BARLOW SPEAR - RETIRED
BYRON V. BRADFORD (1907-1985)
FRANK E. (SAM) MAYNES (1933-2004)

TRANSMITTED by Regular Mail and E-mail

February 10, 2021

Crossfire Aggregate Services, LLC
ATTN: Perry Neil
565 Goddard Ave., Suite B
Ignacio, Colorado 81137
E-mail: perry.neil@casgravel.com

WASTELINE, Inc.
ATTN: Nathan A. Barton
P.O. Box 88
Cortez, Colorado 81321
E-mail: Wasteline.84532@gmail.com

Cynthia M. Toner
2000 Taylor Lane
Pagosa Springs, Colorado 81147

Dear Mr. Neil, Mr. Barton and Ms. Toner:

We are writing on behalf of our clients, RMR Real Estate Limited Partnership LLLP and Raymond and Robin Ball, in regard to the gravel pit project proposed on Ms. Toner's property in Hinsdale County. As we believe you know, our clients own the property directly south of Ms. Toner's property. Our clients' irrigation ditch - the first of the three ditches identified in Exhibit B of the pit application - conveys water across the Toner property, from north to south, to our clients' property. Our clients own water rights in the ditch, and the ditch has served their property for fifty years.

It is clear from our review of the gravel pit application documents that Crossfire lacks the requisite property rights to construct the project as planned. In particular, Crossfire's plan to construct a 25-foot-wide gravel access road across our clients' irrigation ditch is categorically prohibited as a matter of Colorado law. It well-established in Colorado that a landowner may not unilaterally alter an irrigation ditch on its property - for example, by constructing a road over or culverting or piping the ditch - in the absence of either: (1) a judicial declaration that the proposed alteration would not infringe on the rights of easement holders in the ditch, including their rights to access, operate, maintain, repair and improve the ditch, as well as their

WEST BUILDING
835 EAST SECOND AVENUE, SUITE 123
DURANGO, COLORADO 81301
(970) 247-1755 / (970) 247-8827 - FACSIMILE

GUARANTY BANK BUILDING
1331 SEVENTEENTH STREET, SUITE 410
DENVER, COLORADO 80202
(720) 345-0300 / (720) 345-0301 - FACSIMILE

rights to receive water of the same quantity, quality and timing as historically delivered by the ditch; or (2) an express agreement under which all ditch owners consent to the ditch alteration. Colorado law strictly prohibits a landowner from unilaterally altering a ditch in the absence of such a decree or agreement. *See, e.g., Roaring Fork Club, L.P. v. St. Jude's Co.*, 36 P.3d 1229 (Colo. 2001).

Moreover, these basic rules of Colorado property law are reinforced in the rules, regulations and statutes that govern the Mined Land Reclamation Board's and Hinsdale County's review of Crossfire's permit applications. *See, e.g.,* § 34-32.5-115(4)(e), C.R.S. (2020) (providing for denial of permit application based on absence of an agreement with "persons having an interest" in irrigation ditches within 200 feet of affected area), Mined Land Reclamation Board Regulations for Extraction of Construction Materials, Rule 6.3.2(b) (requiring identification of owners of irrigation ditches within 200 feet of the affected area); § 34-32.5-115(4)(d), C.R.S. (providing for denial of permit application for operations contrary to Colorado law); Hinsdale County Zoning & Development Regulations, Rule 8.10-9.H (prohibiting special uses that "cause water pollution" or other "objectionable influences beyond the boundaries of the property on which such use is located" including, presumably, objectionable hydrologic effects); Rule 2.5-2.A(1)(a) (requiring that historical agricultural operations be protected within the Piedra District of Hinsdale County). Contrary to MLRB Rule 6.3.2(b), Crossfire's application incorrectly identifies Ms. Toner as the only owner of the "various irrigation ditches within 200 feet of the permit boundary." *See* Crossfire's "110c App Toner Ranch Pit" Application at pp. 16-18; Exhibit A, ¶ 1(d), Exhibit B, Exhibit E. This is not true, as our clients are owners of the irrigation ditch that the gravel access road would intersect.

Please take notice that our clients hold an easement in the subject irrigation ditch; that Crossfire does not have our clients' consent to alter the ditch; and that Crossfire's plans to alter the ditch would impermissibly interfere with our clients' rights as dominant estate holders in the ditch. In order for Crossfire to execute its mining plans without committing trespass, it must obtain our clients' express, written consent to alter the ditch or obtain an appropriate judgment from a Colorado court. Crossfire may not unilaterally construct a road over and culvert the ditch in the absence of such an agreement or judgment.

Thank you for your attention to this letter. Please feel free to reach out to me to discuss this matter further if necessary.

Sincerely,

MAYNES, BRADFORD, SHIPPS & SHEFTEL, LLP

Durango Office



Daniel F. McCarl
Adam T. Reeves

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CC:

Michael P. O'Loughlin
County Attorney, Hinsdale County
Schumacher & O'Laughlin, LLC
232 W. Tomichi Ave., Suite 204
Gunnison, Colorado 81230
E-mail mike@gunnisonlaw.net

Stephanie Mitchell
Division of Reclamation, Mining and Safety
101 S. 3rd St. Suite 301
Grand Junction, Colorado 81501
E-mail: stephanie.mitchell@state.co.us