

April 9, 2021

Colorado Division of Reclamation, Mining and Safety

1313 Sherman St.

Denver, CO 80203

RE: Application by Peak Ranch Resource (File No. M2020041)

Party Objector: Paul Lippe

Dear DRMS:

We live at 876 County Road 1425, mile 111.7 on Highway 9. We have owned the property since 1999 and are I believe only the third title owners on this property since Colorado's admission as a State. Various family members have lived here year-round since 2011. We can see the Peak Ranch site from our home.

Because of our unique access, I am one of the very few people who ever kayaks (or canoes) past the Peak Site.

I was formerly Chairman of the Colorado Air Quality Control Commission appointed by Governor Roy Romer, so have dealt with issues of this kind as both a citizen and regulator, as well as an advisor to the Governor.

Perhaps of greater relevance, in 1977 I rode the then BikeCentennial (now TransAmerica) bike trail from Virginia to Oregon, which travels along Route 9. The BikeCentennial Trail was created from 1974-1976 as part of the 1976 Bicentennial Celebration to celebrate the 200<sup>th</sup> Anniversary of the signing of the Declaration of Independence. Coming not long after the opening of the Eisenhower Tunnel, the Trans Am route was (and is) a significant boost to the overall tourism and real estate basis of the Summit County economy.

This was my first time in the Blue River Valley and I resolved to and obviously did return.

In 2017 two of our kids did the TransAm race along the same route (along with hundreds of other riders, many riding thru the night), and every year we host some TransAm riders. In 2020 two of our kids were also the "first" to bike across Colorado in one day, travelling from the Wyoming border to the New Mexico border traversing Highway 9 in 23 hours.

**Highway 9 between Silverthorne and Kremmling is one of the most heavily traveled bike corridors in the country.** It is the route of both the TransAmerica

trail from Oregon to Virginia and the Tour de Divide Route from Canada to Mexico.

To get a sense of the importance of the Trans Am trail, I would urge you to watch the movie *Inspired to Ride* [https://www.amazon.com/Inspired-Ride-Jesse-Stauffer/dp/B017YCZ2YU/ref=sr\\_1\\_1?dchild=1&keywords=inspired+to+ride&qid=1618008360&s=instant-video&sr=1-1](https://www.amazon.com/Inspired-Ride-Jesse-Stauffer/dp/B017YCZ2YU/ref=sr_1_1?dchild=1&keywords=inspired+to+ride&qid=1618008360&s=instant-video&sr=1-1); to understand the risk of bike accidents and fatalities, please read about the death of Mike Hall, the Trans Am winner, in a subsequent race. <https://www.theguardian.com/australia-news/2019/feb/28/road-death-british-cyclist-mike-hall-australia-avoidable-coroner>

In addition to local bikers and visitors to Summit Country, in a typical (non-COVID) summer there are a dozen or more thru bikers on Highway 9 every day. So for the bulk of those riders, they don't have familiarity with the road, and won't have any expectation of heavy truck traffic or gravel debris. You are well aware of the heavy traffic and frequently aggressive passing that already occurs on Highway 9 for drivers just getting off I-70 and rushing to (or back from) Kremmling or Steamboat, and those dangerous conditions will certainly get worse with more truck traffic.

What's more, having driven down Highway 9 countless times, I can tell you from experience that the gravel trucks do shed gravel perhaps one out of every 20 trips, and of course there are many examples of broken windshields, etc.

When that gravel (or the gravel truck) **hits a cyclist**, it's not just a matter of a broken windshield; **there is a high probability of a fatality or severe accident**. This is simply unfair to visitors and would be an irresponsible action by you to permit this, knowing the inevitable outcome.

It is a well-settled principal of mining law in Colorado and elsewhere that a mine has strict liability for injuries to non-miners from mining operations. Given that the transportation of aggregate from Peak to Maryland Creek would become an integral part of the mining operation, it seems certain that any injury on Highway 9 would result in strict liability. You can look it up, but typical damages for wrongful death for this type of injury is in the \$10-25MM range/death, and often much higher where the death is (as it would be here) quite foreseeable.

FWIW, I also have previous experience doing legal work for a Denver-based mining company and am very aware as you are that *traffic within a mine is the leading source of serious injuries and fatalities*. Mine safety procedures focus

heavily on safeguarding interactions between mining trucks and humans, safeguards which could not possibly be effectively applied on Highway 9.

In addition to the obvious concerns about wildlife, environment, negative impact to tourism revenues, air quality, water quality, etc., I have a specific legal concern that both you need to address. At a minimum, I believe you are compelled by your own rules to get a legal opinion from the Attorney General on this question as part of your considerations.

**By effectively designating Highway 9 as a mining road between the two sites, by approving the permit you would be turning Highway 9 into part of the mine,** which would not only likely create strict liability for Peak Materials, but has foreseeable consequences in terms of fatalities to locals and unsuspecting visitors, and may obviate sovereign immunity for your Board and the Summit County Commission.

I urge your attention to the events of 1987 and the relevant precedent when Governor Romer took responsibility for an accident caused by state worker action. <https://www.latimes.com/archives/la-xpm-1987-08-11-mn-842-story.html>

So not only is Peak Ranch Resource (i) a bad idea and a bad trade-off for the community and environment, (ii) it knowingly puts at risk visitors to our area and (iii) may well lead to tax increases to pay for foreseeable injuries that would be recoverable by those visitors (and locals).

Once the first fatality occurs, you will face

- a. Intense public pressure;
- b. The obvious insufficiency of the reclamation bond; and
- c. Possible liability for the State of Colorado

So that it is likely that you will be compelled to revoke the permit after it is issued.

As chairman of the Air Quality Control Commission, we regularly (even right here in Kremmling) faced issues where we were asked under federal or state law to (i) restrict an ongoing economic activity that benefited specific individuals, (ii) in order to safeguard environmental and health interests that were more diffuse.

In this case you are being asked (i) to *impose* an economic activity of low value in an area where (ii) property and recreational interests are of high value and (iii)

where there will be severe adverse health effects that are quite focused and foreseeable.

I attended the pre-hearing conference and was struck by the degree of defensiveness shown by the staff. Again, having been in your shoes I appreciate the desire for the Commission to be supportive of and aligned with staff. That said, **staff does occasionally “get it wrong” and this is clearly such an instance.** To support staff in the short run in a case that will clearly unravel and be embarrassing in the medium- and long-run is not doing anyone a favor and will undermine the long-term authority of the Commission.

I am respectful of and sympathetic toward the arguments about the benefits of both gravel and jobs, but I am certain that when you consider the total harm that would be caused by this project it far outweighs the economic benefits, and that you cannot properly discharge your obligations as a Commission if you approve this permit and such a ridiculously low bond.

Sincerely,

Paul Lippe

876 Country Road 1425  
Silverthorne, CO 80498

Number of people in your household 14