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TRANSMITTED E-mail

April 18, 2021

Lucas West
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Via email: lucas.west@state.co.us

RECEIVED

APR 18 2021

**DIVISION OF RECLAMATION
MINING AND SAFETY**

Comments, Objection and Request for Hearing Re: **Toner Ranch Pit, File No. M-2021-011**

Dear Mr. West:

On behalf of, RMR Real Estate Limited Partnership LLLP ("RMR") and pursuant to Rule 1.17, please consider the following Comments, Objection and Request for a Hearing. RMR owns the property directly south of the proposed pit location in this matter. RMR's irrigation ditch - the first of the three ditches identified in Exhibit B of the pit application - conveys water across the Toner property where the pit is to be located, from north to south, to RMR's property. RMR owns water rights in the ditch, and the ditch has served their property for fifty years. Although the Parties have been diligently working to finalize a structure agreement pursuant to Rule 6.4.19 to allow this project to proceed without injury to RMR, such agreement has not yet been finalized and this Objection and Request for Hearing is filed in an abundance of caution.

It is clear from our review of the pending 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 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 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

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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,; § 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).

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

/s/ Adam T. Reeves