



April 20, 2021

Perry Neil
Crossfire Aggregate Services, LLC
565 Goddard Ave.
Suite B
Ignacio, CO 81137

Re: Toner Ranch Pit, File No. M-2021-011, Construction Materials Limited Impact (110) Operation Permit Application, Comments Received

Dear Mr. Neil,

To date the Division of Reclamation, Mining and Safety (Division) has received two timely objections to the above listed permit applications. The objections are enclosed with this letter for your reference. The public comment period closed on Sunday April 18, 2021. The submitting parties with timely comments and objections are;

1. History of Colorado Comment, received April 2, 2021
2. San Juan Conservation District Objection, received April 15, 2021
3. Adam Reeves, MBSS LLP (on behalf of RMR Real Estate LLLP) Objection, received April 18, 2021

The jurisdictional items contained in these objections will be incorporated into the Division's Adequacy Review. If the applicant chooses to further address any of the enclosed letters of objection please respond to the Division as a separate correspondence. If you have any questions, comments or concerns, please feel free to contact me at the Division's Grand Junction Field Office, by phone at 303-866-3567 Ext. 8187 or by email at lucas.west@state.co.us.

Sincerely,

Lucas West
Environmental Protection Specialist
Division of Reclamation, Mining and Safety

Cc: Travis Marshall, Senior Environmental Protection Specialist

Ec: Perry Neil, Crossfire Aggregate Services, LLC
Nathan Barton, Wasteline Inc.

Encl. Comments and Objections received





Lucas West
Colorado Division of Reclamation,
Mining and Safety
Department of Natural Resources
1313 Sherman St., Room 215
Denver, CO 80203

Re: Toner Ranch Pit (M-2021-011) (HC # 79560)

Dear Mr. West,

This letter is provided in response to your correspondence dated and received on April 1, 2021 requesting consultation with our office for the above mentioned subject action pursuant to the Colorado State Register Act – Colorado Revised Statute (CRS) 24-80.1.

A review of our records shows that no previously identified cultural resources sit in or adjacent to the area of proposed action. Based on the documentation provided, we find that the subject action will not adversely affect properties listed on or nominated for the SRHP. Please note that our comments should not be interpreted as concurrence under the National Historic Preservation Act or any other environmental law or regulation. If human remains are discovered during ground disturbing activities, the requirements under CRS 24-80 part 13 apply and must be followed. Should the current subject action change, please contact our office for continued consultation under CRS 24-80.1.

In the event that there is federal agency involvement, please note that it is the responsibility of the federal agency to meet the requirements of Section 106 as set forth in 36 CFR Part 800 titled “Protection of Historic Properties”. This includes not only reasonable and good faith identification efforts of any historic properties located within the area of potential effects, but determining whether the undertaking will have an effect upon such properties. The State Historic Preservation Office, Native American tribes, representatives of local governments, and applicants for federal permits are entitled to consultative roles in this process.

We thank you for the opportunity to comment. If we may be of further assistance, please contact Matthew Marques, Section 106 Compliance Manager, at (303) 866-4678 or matthew.marques@state.co.us.

Sincerely,

Steve Turner, AIA
State Historic Preservation Officer

We are now accepting electronic consultation through our secure file transfer system, MoveIT. Directions for digital submission and registration for MoveIT are available at <https://www.historycolorado.org/submitting-your-data-preservation-programs>.



505A County Road 600 – Pagosa Springs, CO 81147
Phone (970)731-3615

April 15, 2021

Lucas J. West
Division of Reclamation
Mining and Safety
1313 Sherman Street, Room 215
Denver, Colorado 80203

RECEIVED

APR 15 2021

**DIVISION OF RECLAMATION
MINING AND SAFETY**

Subject: Toner Ranch Pit, File No. M-2021-011

Dear Mr. West,

The San Juan Conservation District supports the protection of irrigation water resources. We implore you to consider the argument presented by RMR Real Estate Limited Partnership LLLP to ensure its access and delivery of irrigation water remain unhampered.

Please contact me should you need further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Barsanti", is written over a light blue horizontal line.

Ron Barsanti
President
San Juan Conservation District

MBSS

MAYNES, BRADFORD, SHIPPS & SHEFTEL LLP
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BYRON V. BRADFORD (1907-1985)
FRANK E. (SAM) MAYNES (1933-2004)

TRANSMITTED E-mail

April 18, 2021

Lucas West
Division of Reclamation, Mining and Safety
101 S. 3rd St. Suite 301
Grand Junction, Colorado 81501
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