



STATE OF  
COLORADO

West - DNR, Lucas <lucas.west@state.co.us>

---

## M-2021-011 Notice of Withdrawal of Objection and Request for Hearing

---

**Adam Reeves** <areeves@mbsslpl.com>

Thu, Apr 22, 2021 at 4:57 PM

To: "lucas.west@state.co.us" <lucas.west@state.co.us>

Cc: Duke Eggleston <deggleston@e-klaw.com>, "perry.neil@casgravel.com" <perry.neil@casgravel.com>, "wasteline.84532@gmail.com" <wasteline.84532@gmail.com>, "mike@gunnisonlaw.net" <mike@gunnisonlaw.net>

Dear Mr. West

Please find attached a Notice of Withdrawal of Objection and Request for Hearing filed on behalf of RMR Real Estate Limited Partnership LLLP in the above captioned matter.

**Adam T. Reeves**

Maynes, Bradford, Shipps & Sheftel LLP  
835 E. Second Ave., Suite 123  
Durango, CO 81302  
970-247-1755  
970-247-8827 (fax)

This electronic message transmission contains information from the law firm of Maynes, Bradford, Shipps & Sheftel, LLP, which may be confidential or protected by the attorney-client privilege and/or the work product doctrine. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this communication in error, please notify us immediately by email and delete the original message.

---

### 3 attachments



**Notice of Withdrawal of Objection and Request for Hearing m-2021-011.pdf**  
67K



**final structure and settlement agreement.pdf**  
251K



**exhibit A.pdf**  
329K

# 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 E-mail*

April 22, 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

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

Dear Mr. West:

On April 18, 2021, on behalf of RMR Real Estate Limited Partnership LLLP ("RMR") our office filed Comments, Objection and Request for Hearing in the above referenced matter. Previously, on February 10, 2021 our office filed comments on behalf of RMR and Robin and Raymond Ball which were deemed untimely. In its April 18 filing RMR noted that the parties were diligently pursuing a structure agreement that would resolve the outstanding issues between them.

On April 21, 2021, the parties finalized the attached Structure and Settlement Agreement. Accordingly, RMR hereby withdraws its Objection and Request for Hearing in this matter.

Sincerely,



Adam Reeves

**MAYNES, BRADFORD, SHIPPS & SHEFTEL, LLP**  
*Durango Office*

CC via email:

Crossfire Aggregate Services, LLC ATTN: Perry Neil  
E-mail: [perry.neil@casgravel.com](mailto:perry.neil@casgravel.com)

WASTELINE, Inc.  
ATTN: Nathan A. Barton  
E-mail: [Wasteline.84532@gmail.com](mailto:Wasteline.84532@gmail.com)

Michael P. O'Loughlin  
County Attorney, Hinsdale County  
E-mail [mike@gunnisonlaw.net](mailto:mike@gunnisonlaw.net)

Duke Eggleston  
Eggleston Kosnik, LLC  
[deggleston@e-klaw.com](mailto:deggleston@e-klaw.com)

## STRUCTURE AND SETTLEMENT AGREEMENT

This Structure and Settlement Agreement ("Settlement Agreement") is entered into by and between Crossfire Aggregate Services, LLC ("Crossfire"); Cynthia Toner ("Toner"), and RMR Real Estate Limited Partnership, LLLP ("RMR") and is effective this 21 day of April, 2021.

### RECITALS

WHEREAS, Crossfire Aggregate Services, LLC ("Crossfire") has applied for a surface mining and reclamation permit, with the Colorado Division of Reclamation Mining and Safety for the Toner Ranch Pit, Permit File No. M-2021-011 (the "Pit").

WHEREAS, Toner owns the land on which the Pit is proposed to be located.

WHEREAS, RMR owns irrigated land to the south of the proposed Pit location.

WHEREAS, Rule 6.4.19 of the Rules of the Colorado Division of Reclamation Mining and Safety provides that where mining facilities are within two hundred feet of any significant, valuable and permanent man-made structure, the applicant shall: (a) provide a notarized agreement between the applicant and the person(s) having an interest in the structure, that the applicant is to provide compensation for any damage to the structure.

WHEREAS, RMR holds an interest in the an irrigation water conveyance structure and associated water rights known as the Bess Girl Ditch which delivers irrigation water to RMR property down gradient from the proposed Pit which it asserts will be impacted by the Pit construction.

WHEREAS, The Parties disagree as to the impact of the Pit but desire to resolve the issues between them in a manner that provides for delivery of water to the RMR property and allows the construction of the Pit to proceed by meeting the requirements of Rule 6.4.19, and including satisfying the requirements of *Roaring Fork Club, L.P. v. St Jude's Co.*, 36 P.3d 1229 (Colo. 2001).

### AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, RMR, Crossfire and Toner agree as follows:

1. Toner agrees to cause a measuring device to be installed on up gradient property owned by Rod Toner and secure any necessary rights to accomplish same.
2. Toner agrees to a grant of an easement to RMR to establish a new delivery lateral from the Bess Girl Ditch together with the right to operate and maintain same. Such lateral shall divert from the Bess Girl Ditch on the RMR property or as far

south as reasonably practicable in a location that is effective for RMR while being the least disruptive to Toner, as confirmed by the Natural Resources Conservation Service and shall be staked by RMR, but in no event further north than as depicted on Exhibit A. If the new lateral begins on Toner Property, the easement grant shall contain a provision reserving Toner the right to require a future measuring device to be installed by RMR in the new lateral, at RMR's expense.

3. RMR agrees to construct at its own expense an appropriate new delivery lateral as described above along with an appropriate splitter to deliver Bess Girl ditch water to its property to be served by the new delivery lateral.
4. RMR agrees that 100% of its allocated water will be delivered from the "east ditch," including the new delivery lateral in Section 2 above. In the event RMR requests delivery of its water from a different ditch, as has occurred historically, such amounts will be reasonably estimated and taken into account in determining whether RMR has received its full allocation. In order to insure that the RMR property is delivered its full allocation of water (measured by percentage; this is not a guarantee of any specific CFS amount), Toner agrees to limit and curtail her own water use in order to ensure that delivery of water to RMR is not affected by the construction or operation of the Pit. Toner agrees to curtail her use of Bess Girl Ditch water such that 65% of the water split at the new measuring device on the Rod Toner property is delivered at the existing measurement structure and new splitter identified in Exhibit A, subject to allowable measured loss pursuant to Section 6 below. In the alternative Toner may cause the ditch to be piped to ensure delivery of the foregoing described water.
5. Toner agrees to cause to be installed by Crossfire a 36" culvert in the location at which Crossfire will access the Pit as identified on Exhibit A.
6. Each party reserves the right to test the accuracy of and to re-calibrate if possible the measuring devices, and further agrees, in order to estimate for natural loss and inconsistencies in the measuring devices, to measure the amounts recorded in each box prior to irrigating this season. The parties further agree that deliveries within 3% of the amount measured at the new measuring device on the Rod Toner property will be deemed to be in compliance with the terms of this agreement. Toner recognizes the existing right of RMR to operate and maintain existing structures located on the Toner property. In the event of a disagreement over whether all of RMR's allocated water is being received, the parties agree to reasonably calculate and account for all Bess Girl water received by RMR.
7. RMR agrees, on behalf of itself and all partners, to waive its rights to challenge the issuance of any permit for operation of the Pit to be issued by the Colorado Division of Reclamation Mining and Safety, Hinsdale County or a Substitute Water Supply Plan issued by the Colorado Division of Water Resources so long as the provision of this Settlement Agreement are met. The individual partners of

RMR consent to this provision in their individual capacity by executing this Agreement below.

8. This Agreement and the terms, conditions, and provisions hereof may be enforced by any Party, its successors, and assigns, in the District Court of Hinsdale County, Colorado and in no other forum. The Parties agree that all remedies under law and equity shall be available to enforce the terms and obligations set forth in this Agreement. In the event legal action is brought against any Party, its successors, or assigns for the purpose of such enforcement, the prevailing party or parties shall recover from the nonprevailing party or parties all costs associated therewith, including, but not limited to, reasonable attorney's fees, costs of investigation, settlement, expert witness fees, and court costs.
9. By signing below, the Parties agree to defend, indemnify, and hold harmless the other, their successors and assigns, from and against any claim, loss, damage or injury of any kind, including attorney's fees and court costs incurred arising from our its own acts and omissions.
10. Each Party warrants that it holds title to that Party's land and is authorized to confirm the access rights of the other Parties as set forth herein.
11. This Agreement contains the entire agreement between the Parties. Any prior representations, stipulations, warranties, agreements, and understandings with respect to the subject matter of this instrument, except those expressly confirmed above, are herewith merged.
12. Each Party acknowledges that this document has important legal consequences and that they had the opportunity to consult with legal or other counsel before signing this instrument.
13. This Agreement is deemed to have been drafted jointly by the Parties, and any uncertainty or ambiguity shall not be construed for or against either Party as an attribution of drafting to either Party.
14. This instrument may be executed by electronically imaged and transmitted signatures which shall have the same force and effect as original signatures.
15. Except as set forth herein, this Agreement is contingent upon approval of the Pit project and shall be rescinded and deemed null and void in the event the Pit project is not approved on conditions acceptable to Toner and Crossfire in their absolute discretion. In such an event, all parties shall be relieved of all obligations hereunder, except that Toner will, if requested by RMR, agree to grant an easement for a new lateral as set forth in Section 2 above. The Toner and RMR parties further agree to equitably split the costs of installation of the new upper box.

EXECUTED on April \_\_\_, 2021.

**For Crossfire**

Penny Neil

**For RMR**

By its Partners:

Robert M. Case

Margaret A. Case

Robin M. Ball

**For Toner**

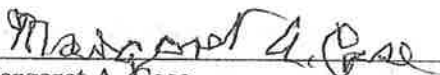
Cynthia Toner

**For Crossfire**

**For RMR**


By its Partners:

  
Robert M. Case

  
Margaret A. Case

  
Robin M. Ball

**For Toner**

  
Cynthia Toner



**For Crossfire**

---

**For RMR**

By its Partners:

---

Robert M. Case

---

Margaret A. Case

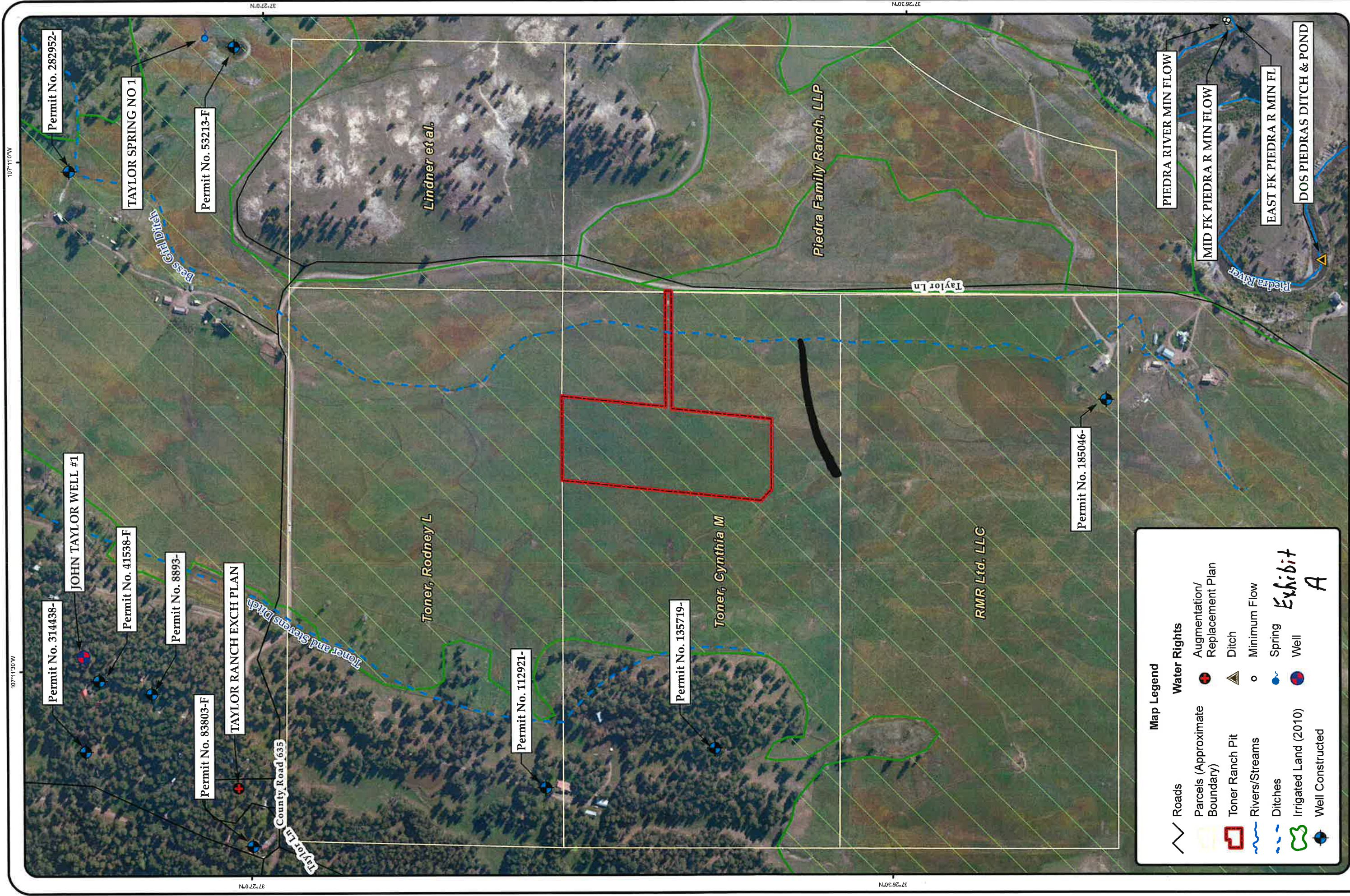
---

Robin M. Ball

**For Toner**

*Cynthia Toner*  
Cynthia Toner 4/21/21





**Map Legend**

**Roads**  
Parcels (Approximate Boundary)  
Toner Ranch Pit  
Rivers/Streams  
Ditches  
Irrigated Land (2010)  
Well Constructed

**Water Rights**  
Augmentation/ Replacement Plan  
Ditch  
Minimum Flow  
Spring  
Well

Exhibit  
A