

STATE OF
COLORADO

Eschberger - DNR, Amy <amy.eschberger@state.co.us>

SWSP Approval for the Lyons Quarry (WDID 0502536, Plan ID 3666)

Brucker - DNR, Sarah <sarah.brucker@state.co.us>

Mon, May 17, 2021 at 11:09 AM

To: Jared Dains <JaredDains@applegategroup.com>

Cc: Michael Hein <michael.hein@state.co.us>, Shera Sumerford - DNR <shera.sumerford@state.co.us>, Louis Flink <louis.flink@state.co.us>, Amy Eschberger - DNR <amy.eschberger@state.co.us>

Please find attached the Substitute Water Supply Plan Approval for the Lyons Quarry (DRMS Permit No. M-1977-141, WDID 0502536, Plan ID 3666). Please note that in order for lagged depletions associated with the quarry not to extend beyond five years, the groundwater pond on site will need to be fully backfilled by mid-August. Should you have any questions, please contact me at this office.

Sarah Brucker
Water Resources Engineer



COLORADO
Division of Water Resources
Department of Natural Resources

P 303.866.3581 x 8249

1313 Sherman St., Suite 821 Denver CO 80203

sarah.brucker@state.co.us | <https://dwr.colorado.gov>

Approval 3666.pdf
5252K



COLORADO
Division of Water Resources
Department of Natural Resources

May 17, 2021

Mr. Jared Dains, P.E.
Applegate Group, Inc.
1490 W. 121st Avenue, Suite 202
Denver, Colorado 80234

Re: Lyons Quarry Substitute Water Supply Plan (WDID 0502536, Plan ID 3666)
Lyons Quarry, DRMS Permit No. M-1977-141 (WDID 0505622)
NW¼ of Section 25 and NE¼ of Section 26, T3N, R71W, 6th P.M.
Water Division 1, Water District 5, Boulder County

Approval Period: April 1, 2021 through September 21, 2021

Contact Information for Mr. Dains: 303-452-6611; jareddains@applegategroup.com

Dear Mr. Dains:

We have reviewed your letter dated March 29, 2021 requesting a substitute water supply plan ("SWSP") pursuant to section 37-92-308(5), C.R.S., on behalf of Aggregate Industries - WCR, Inc. ("Aggregate" or "Applicant"). This SWSP is requested to replace out-of-priority evaporative depletions associated with an unlined pond at the Lyons Quarry, Division of Reclamation Mining and Safety Permit No. M-1977-141. A copy of the SWSP request was sent to all parties who have subscribed to the Division 1 SWSP Notification List on March 29, 2021. No comments were received during the statutory 35-day comment period. The required \$300 filing fee (receipt no. 10010827) has been received.

An application for a plan for augmentation has not been filed with the water court and the depletions associated with the proposed water use will not exceed five years, therefore this request has been submitted pursuant to section 37-92-308(5), C.R.S. In accordance with section 37-92-308(5), C.R.S., SWSPs may be approved for new water use plans involving out-of-priority diversions or a change of water right, if no application for approval of a plan for augmentation or a change of water right has been filed with a water court and the depletions associated with such water use plan or change will be for a limited duration not to exceed five years. The initial date of approval of this SWSP pursuant to section 37-92-308(5), C.R.S., was September 22, 2016 for operations beginning September 22, 2016. This SWSP approval will therefore only extend through September 21, 2021 and will constitute the fifth and final year of operation that may be approved pursuant to section 37-92-308(5), C.R.S. Aggregate plans to complete the backfilling of the pond before the end of this plan period. **In order to ensure that lagged depletions resulting from operations under this plan do not extend beyond five years, the pond must be fully backfilled no later than mid-August of 2021.** Otherwise, the Applicant will need to obtain approval of a SWSP pursuant to section 37-92-308(4), C.R.S., which will require filing an application with the water court for a permanent plan for augmentation, in order to replace the lagged depletions extending beyond September 21, 2021. This should only be done if the Applicant intends to diligently pursue their application to obtain a plan for augmentation for the pond.



SWSP Operation

The Lyons Quarry is located in portions of the NW¼ of Section 25 and NE¼ of Section 26, both in Township 3 North, Range 71 West of the 6th P.M. During an inspection of the site on March 2, 2016, the Division of Reclamation Mining and Safety noted the presence of a small pond in the northeast portion of the site (see attached Figure 1). It is not known whether the source of the water in the pond is groundwater or surface water runoff. Aggregate has conservatively assumed that the pond is filled with groundwater. This SWSP will replace depletions associated with evaporation and the use of water from the pond for dust control purposes at the site. Replacement water will be provided via a lease of fully consumable water from the City of Longmont.

Depletions

The exposed surface area of the pond was estimated at 0.3 acres. As mentioned above, for the purposes of this SWSP, it was assumed that all water exposed in the pond is groundwater. Net evaporation was calculated using a gross annual evaporation of 37 inches from the exposed water surface, with a credit of 11.9 inches for effective precipitation. Net evaporation at the site was estimated to total 0.46 acre-feet for this plan period, distributed monthly as shown in column H of the attached Table 1. This amount includes evaporation from 0.3 acres of exposed groundwater through September of 2021; however, as stated above, the pond must be fully backfilled no later than mid-August of 2021, or the Applicant must obtain approval of a subsequent SWSP pursuant to section 37-92-308(4), C.R.S., to replace the resulting lagged depletions which will extend beyond September 21, 2021. The estimated amount of water to be pumped from the pond for dust suppression purposes during this plan period is 0.25 acre-feet, distributed monthly as shown in column I of Table 1. The total consumption of groundwater at the site during this plan period is estimated as 0.71 acre-feet.

A Glover analysis was used to determine the lagged depletions to South St. Vrain Creek. The following parameters were used in the model: transmissivity (T) = 2,000 gallons per day per foot; distance (X) from the centroid of the surface of the exposed groundwater to the river = 200 feet; distance (W) from the aquifer boundary through the exposed groundwater to the river channel = 400 feet; and specific yield (SY) = 0.2. The point of depletion is assumed to be on South St. Vrain Creek perpendicular to the pond. Lagged depletions from past and projected evaporation and operational losses at the site were calculated to total 0.82 acre-feet for this plan period, as shown in Table 1, column K.

Replacements

Replacement water will be made available from a lease of 1.0 acre-foot of fully consumable water obtained from the City of Longmont ("Longmont"). A copy of the water lease agreement, dated April 26, 2021, is attached to this letter. The entire 1.0 acre-foot of water is proposed to be released during the month of August 2021, and will be shown in Longmont's accounting. Longmont has confirmed that the replacement water will be released from Button Rock Reservoir (WDID 0504010) to North St. Vrain Creek in the NW¼ of the NE¼ of Section 20, Township 3 North, Range 71 West of the 6th P.M. A transit loss will be applied for approximately 9 miles from the point of release to the confluence of North St. Vrain Creek with South St. Vrain Creek, which is approximately 2 miles below the point of depletion for the Lyons Quarry. Historically, no calls have been administered on

the reach of North St. Vrain Creek from below Button Rock Reservoir to the confluence with South St. Vrain Creek, or on South St. Vrain Creek from the confluence up to the point of depletion. However, in the event that there is a continuous call within either of these reaches during the month of August 2021, the Applicant will be required to truck replacement water to above the calling right.

Conditions of Approval

This SWSP is hereby approved pursuant to section 37-92-308(5), C.R.S., subject to the following conditions:

1. This SWSP shall be valid for the period of April 1, 2021 through September 21, 2021, unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, the request must be submitted pursuant to section 37-92-308(4), C.R.S. The statutory fee of \$300 will be required pursuant to section 37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than June 21, 2021.
2. **To ensure compliance with the requirements of section 37-92-308(5), C.R.S., that lagged depletions associated with the proposed water use will not exceed five years, the pond must be fully backfilled no later than mid-August of 2021 unless the Applicant intends to obtain a permanent plan for augmentation.**
3. Well permit 80404-F has been obtained for the current use and exposed pond surface area at the Lyons Quarry in accordance with sections 37-90-137(2) and (11), C.R.S. **Once backfilling of the exposed groundwater surface area has been completed, a Well Abandonment Report (GWS-09) must be submitted to this office.**
4. The total surface area of groundwater exposed at the Lyons Quarry must not exceed 0.3 acres.
5. The amount of water pumped from the pond for dust control purposes during this plan period shall not exceed 0.25 acre-feet. All pumping for dust control purposes shall be measured in a manner acceptable to the division engineer.
6. Approval of this plan is for the purposes as stated herein. This office must first approve any additional uses for the water.
7. All releases of replacement water must be sufficient to cover all out-of-priority depletions in time, place, and amount and must be made under the direction and/or the approval of the water commissioner. The release of replacement water may be aggregated to maximize beneficial use. The water commissioner and/or the division engineer shall determine the rate and timing of an aggregated release.
8. The name, address, and phone number of the contact person who will be responsible for the operation and accounting of this SWSP must be provided with the accounting forms to the division engineer and water commissioner.
9. Adequate accounting of depletions and replacements must be provided to the division engineer in Greeley (DNR_Div1Accounting@state.co.us) and water commissioner, Shera Sumerford (Shera.Sumerford@state.co.us), on a monthly basis. Submitted accounting shall conform to the attached *Administrative Protocol - Augmentation Plan Accounting*.

In addition, **the Applicant** shall verify that the entity making replacements has included the Applicant on their accounting and submitted their accounting to the division office and the water commissioner. For this SWSP, that entity is the City of Longmont.

10. The replacement water that is the subject of this plan cannot be sold or leased to any other entity.
11. Conveyance loss for delivery of augmentation water is subject to assessment and modification as determined by the water commissioner or division engineer.
12. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this supply plan expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of groundwater must cease immediately.
13. The decision of the state engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the state engineer to act in a similar manner in any other applications involving other SWSPs or in any proposed renewal of this SWSP, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant. Any appeal of a decision made by the state engineer concerning an SWSP pursuant to section 37-92-308(5), C.R.S., shall be to the Division 1 water judge within thirty days of the date of this decision.

Should you have any questions regarding this plan, please contact Michael Hein, Lead Assistant Division Engineer, in Greeley at (970) 352-8712 or Sarah Brucker in Denver at (303) 866-3581.

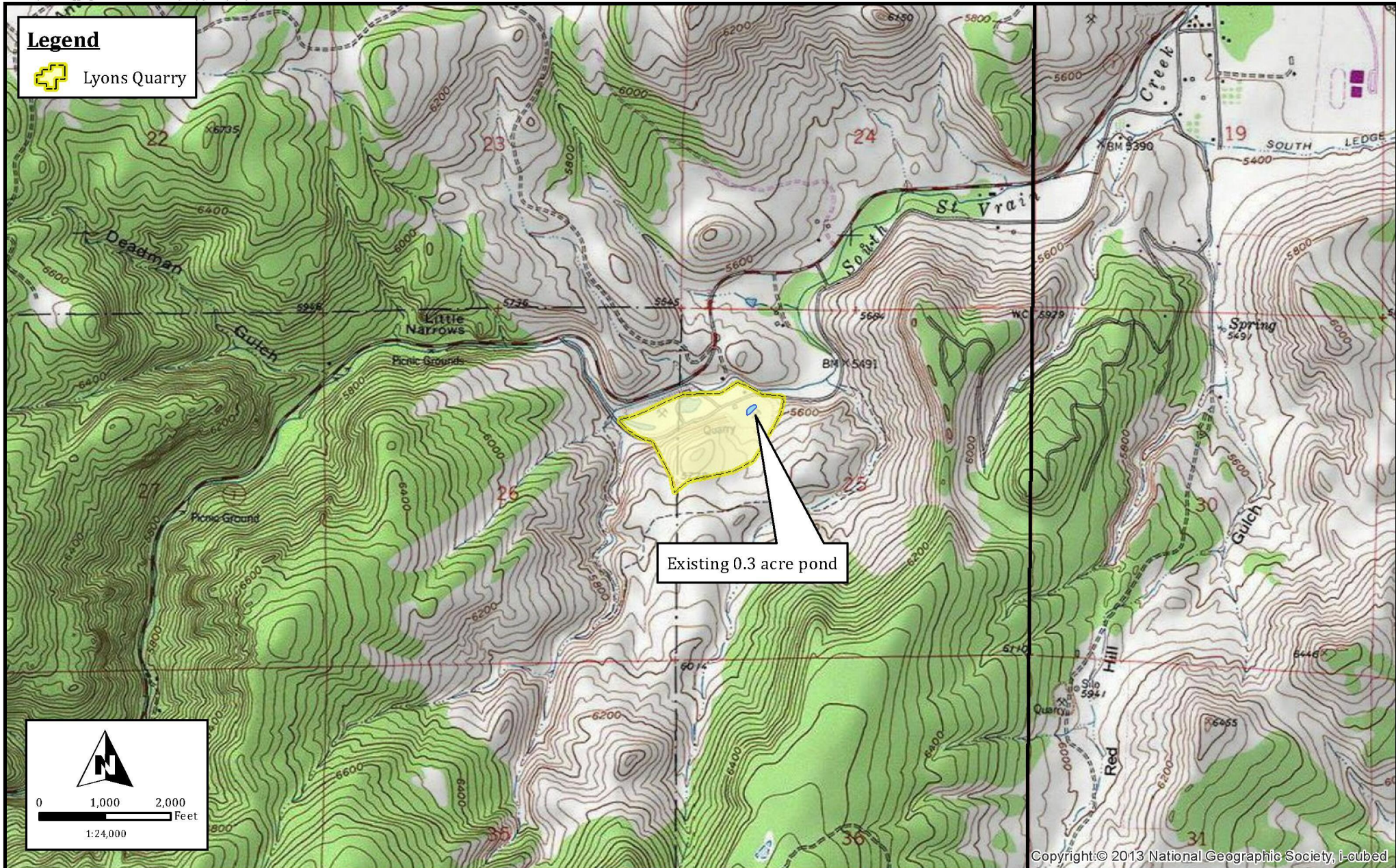
Sincerely,



for Jeff Deatherage, P.E.
Chief of Water Supply

Attachments: Figure 1
Table 1
City of Longmont Lease
Administrative Protocol - Augmentation Plan Accounting

Cc: Michael Hein, Lead Assistant Division Engineer, Division 1, Michael.Hein@state.co.us
Shera Sumerford, Water Commissioner, Water District 5, Shera.Sumerford@state.co.us
Louis Flink, Tabulation/Diversion Records Coordinator, Louis.Flink@state.co.us
Amy Eschberger, Division of Reclamation Mining and Safety, Amy.Eschberger@state.co.us



Water Resource Advisors for the West
1490 West 121st Ave., Ste 100 Phone: (303) 452-6611
Denver, CO 80234-2728 Fax: (303) 452-2759
www.ApplegateGroup.com e-mail: info@applegategroup.com

LYONS QUARRY SWSP (M-1977-141)

Overview Map

Date: 10 May 2016

Job #: 06-103

Drawn By: JMD

Figure:

1

Of:

1

Table 1
2021 Water Balance
Lyons Quarry Substitute Water Supply Plan

Date Revised: 3/29/2021

AG Job #: 06-103

All values in ac-ft unless noted

Month	Depletions											Replacements		Water Balance (N)
	Percent of Annual Evaporation (A)	Gross Evaporation Rate [in] (B)	Average Precipitation [in] (C)	Effective Precipitation [in] (D)	Net Evaporation Rate [in] (E)	Average Air Temperature [°F] (F)	Expected Evaporation Rate [in] (G)	Evaporative Loss [ac-ft] (H)	Dust Control Use [ac-ft] (I)	Total Consumptive Use (J)	Lagged Depletions (K)	City of Longmont Lease Volume (L)	Volume of Water after Transit Losses (M)	
Apr-21	9%	3.33	2.51	1.76	1.57	47	1.57	0.04	0.00	0.04	0.06	0.00	0.00	-0.06
May-21	12%	4.44	3.46	2.42	2.02	55	2.02	0.05	0.05	0.10	0.07	0.00	0.00	-0.07
Jun-21	15%	5.37	1.45	1.01	4.35	67	4.35	0.11	0.05	0.16	0.10	0.00	0.00	-0.10
Jul-21	15%	5.55	1.87	1.31	4.24	71	4.24	0.11	0.05	0.16	0.13	0.00	0.00	-0.13
Aug-21	14%	5.00	1.28	0.89	4.10	70	4.10	0.10	0.05	0.15	0.14	0.00	0.00	-0.14
Sep-21	10%	3.70	2.43	1.70	2.00	62	2.00	0.05	0.05	0.10	0.32	1.00	0.97	0.66
Oct-21	7%	2.59	1.34	0.93	1.66	48	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Nov-21	4%	1.48	0.70	0.49	0.99	37	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Dec-21	3%	1.11	0.34	0.23	0.88	27	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Jan-22	3%	1.11	0.25	0.17	0.94	29	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Feb-22	4%	1.30	0.55	0.39	0.91	31	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Mar-22	6%	2.04	0.83	0.58	1.45	41	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total	100%	37.00	17.00	11.90	25.10	-	18.28	0.46	0.25	0.71	0.82	1.00	0.97	0.16

Gross Annual Evaporation =	37	inches per NOAA Technical Report NWS 33
Effective Precipitation Credit Rate =	70%	
Freezing Point of Water =	32	°F
Exposed Area =	0.3	acres
Transit Loss =	0.03	ac-ft

Notes:

- (A) Percent of annual evaporation for elevations below 6,500 feet
- (B) = (Gross Annual Evaporation) * (A)
- (C) Average precipitation at NCWCD's Longmont West station, adjusted to Lyons Quarry location
- (D) = (Effective Precipitation Credit Rate) * (C)
- (E) = (B) - (D)
- (F) Average air temperature at NCWCD's Longmont West station, adjusted to Lyons Quarry elevation
- (G) = (E). Zero evaporation if (F) is less than the freezing point of water
- (H) = (Exposed Area) * (G)/12
- (I) Expected dust control use
- (J) = (H) + (I)
- (K) Steady-state lagged depletions
- (L) City of Longmont Lease Volume
- (M) = (L - Transit Losses)
- (N) = (M) - (K)

WATER SUPPLY AGREEMENT

This WATER SUPPLY AGREEMENT ("Agreement") is made and entered into this 26th day of April, 2021, by and between the City of Longmont, a municipal corporation organized under the laws of the State of Colorado, and acting by and through its Water Utility Enterprise ("Longmont"), whose address is 1100 South Sherman Street, Longmont, Colorado 80501, and Aggregate Industries-WCR, Inc., whose mailing address is 1687 Cole Blvd., Suite 300, Golden, Colorado 80401 ("Customer"). Longmont and Customer may sometimes be referred to herein individually as a "Party" or collectively as "Parties."

RECITALS

A. Longmont, a home rule municipality in Boulder County, Colorado, duly organized and existing under Article XX of the State Constitution, acting on behalf of its water utility enterprise, is authorized, pursuant to Sections 1.2, 1.3, and 11.1 of Longmont's Home Rule Charter and Section 31-15-101, et seq., C.R.S., as amended, to acquire, hold, lease, and dispose of real and personal property, including water and water rights.

B. Longmont owns water, water rights, or water credits in the St. Vrain Creek basin that are fully consumable.

C. Longmont and Customer desire to enter into this Agreement to provide water to be supplied by Longmont to Customer.

D. Pursuant to section 14.09.030 of the Longmont Municipal Code, Longmont's General Manager of Public Works and Natural Resources, or the General Manager's designee, is authorized to enter into and execute water rights leases or raw water supply agreements, at the then-current rental market rates for agricultural and other uses, or exchange agreements by which Longmont obtains water of equal or greater value, of one (1) year or less.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals, and mutual covenants and agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Supply. Longmont hereby agrees to provide to Customer 1.0 acre-foot of fully consumable water (the "Subject Water"). The Subject Water may be selected and delivered by Longmont, in its discretion, from various sources including reusable effluent, water stored in Union Reservoir, other fully consumable water controlled by Longmont, or water from any other source, provided the Subject Water shall be usable by Customer for its stated purpose.

2. Deliveries.

2.1. Point of delivery. Longmont shall, at its sole discretion, deliver the Subject Water at either (hereinafter the "Delivery Point"): (1) the outfall of Longmont's municipal

wastewater treatment plant, presently located in the SE¼ NW¼ of Section 11, T2N, R69W of the 6th P.M., Boulder County, Colorado; or (2) the confluence of Spring Gulch and the Saint Vrain Creek, presently located in the SE¼ of Section 7, T2N, R68W of the 6th P.M., Weld County, Colorado. Customer shall bear any losses associated with conveyance of the Subject Water from the Delivery Point to any location where Customer may use the Subject Water. Longmont shall be responsible for all losses and/or return obligations associated with delivery of the Subject Water to the Delivery Point.

2.2. Timing of deliveries. The Subject Water shall be delivered based upon the following schedule: August 2021 - 1.0 Acre-Foot

2.3. Accounting. Longmont shall maintain an accounting of all deliveries of the Subject Water to Customer, and shall provide monthly copies of such accounting to Customer upon request.

3. Use of Subject Water. Customer shall use the Subject Water for the Lyons Quarry Substitute Water Supply Plan at the Lyons Quarry (the "Property"). No change of Longmont's water rights shall be applied for or reviewed as part of such use. Customer shall be responsible for obtaining all necessary authorizations, approvals, decrees, and/or permits from any and all private entities, and local, state, and federal agencies, as may be required to effectuate use of the Subject Water by Customer pursuant to this Agreement. If requested, Customer shall provide copies of any such authorizations, approvals, and permits to Longmont.

4. Rate. Customer agrees to pay Longmont \$641.00 (six-hundred and forty-one dollars and 00/100 cents) per acre-foot. The total price for the 1.0 acre-foot of Subject Water is \$641.00 (six hundred and forty-one dollars and 00/100 cents). Payment to Longmont is due upon execution of this Agreement; such payment shall be nonrefundable and not contingent upon whether the Subject Water is actually diverted or used by Customer, so long as Longmont delivered the Subject Water based upon the schedule in paragraph 2 above.

5. Term. The term of this Agreement shall begin at time of execution of this Agreement and payment to Longmont of the Rate as outlined in Paragraph 4, and shall end on December 31, 2021.

6. Untreated water. The water delivered to Customer under this Agreement is untreated or non-potable water of whatever quality that is now or in the future available from the sources specified herein. Delivery of non-potable water under this Agreement will be on an "as is" basis only, and Longmont does not warrant the quality of the Subject Water or the suitability of the Subject Water for any particular purpose. Customer shall not make any claim against Longmont arising from the quality of water delivered, and Longmont shall have no treatment responsibility for the Subject Water made available under this Agreement.

7. Indemnification. Customer shall bear all responsibility for its use of the Subject Water provided under this Agreement, together with the costs associated therewith. To the extent allowed by law, Customer shall defend, indemnify, and hold harmless Longmont from and against any and all damages, claims, losses, obligations, other costs, and other liabilities arising out of

Customer's use of the Subject Water provided under this Agreement.

8. Transfer and assignment. This Agreement, and the right to use the Subject Water, may not be transferred, assigned, subleased, or otherwise conveyed by Customer for use at locations other than the Property without the prior written consent of Longmont.

9. Use Restrictions and Accounting. Customer shall not use any water provided by Longmont under this Agreement for any oil and gas operation, nor suffer such water to be put to such use by anyone to whom Customer conveys the water, or their ultimate successors or assigns. Customer shall not provide this water to any subject political entity or for any use within an urbanized area, as those terms are defined in Chapter 14.09 of the Longmont Municipal Code, as amended, nor suffer the water to be transferred to such entities or used in such areas by anyone to whom Customer conveys the water, or their ultimate successors or assigns. Water used solely at the Property to satisfy the Customer's substitute water supply plan obligations complies with these restrictions. Customer shall account for, and make record of, all uses, deliveries, and transfers of the water provided by Longmont under this Agreement; shall include such information in the monthly State accounting form required to be submitted to the State Engineer's Office, Division One Engineer; and shall provide Longmont a copy of such form when it is submitted thereto or required to be submitted thereto, whichever is sooner. Satisfaction of Customer's substitute water supply plan obligations shall qualify as a final use of the water.

10. Water conservation. Customer agrees to implement or continue reasonable Best Management Practices ("BMP") for water conservation during the term of this Agreement. This paragraph shall not be construed to require any specific BMP but shall broadly be held to encourage reasonable, cost effective efforts to conserve water used by Customer both under this Agreement and for base water supplies used by Customer. Procedures and application processes for this paragraph shall be as outlined in the City's annual Water Supply and Drought Management Plan.

11. Integration. This instrument embodies the whole agreement of the Parties with respect to the subject matter contained herein. This Agreement shall supersede all previous communications, representations, or agreements, whether verbal or written, between the Parties hereto. There shall be no modification of this Agreement nor waiver of any of its provisions, except upon mutual agreement of the Parties expressed in writing, executed with the same formalities as this instrument.

12. Default; Remedies. A default shall be deemed to have occurred if either Party breaches its obligations hereunder and fails to cure such breach within thirty (30) days of written notice from the non-breaching Party specifying the breach. Waiver or failure to give notice of a particular default or defaults shall not be construed as condoning or acquiescing to any continuing or subsequent default. In addition to other legal remedies available to it, including specific performance and damages, the non-breaching Party shall also have the right to cancel this Agreement for noncompliance with any provision hereunder by giving written notice of cancellation; provided that such Party has previously given the other Party written notice of such noncompliance and the other Party has not cured such noncompliance.

13. Notices and payments. All notices, payments, and other communications under this Agreement shall be in writing, except as otherwise provided for in this Agreement. All such notices and communications and all payments shall be deemed to have been duly given on the date of service, if delivered and served personally, or served via facsimile (with respect to notices and communications only) on the person to whom notice is given; on the next business day after deposit for overnight delivery by a courier service such as Federal Express; or on the third day after mailing, if mailed to the Party to whom payment and notice is to be given by first class mail, postage prepaid, and properly addressed as follows:

Longmont: City of Longmont
 Deputy City Manager
 1100 South Sherman Street
 Longmont, Colorado 80501
 Facsimile (303) 651-8812

With a Copy to: City of Longmont
 City Attorney
 408 Third Avenue
 Longmont, Colorado 80501

Customer: Aggregate Industries-WCR (US) Inc.
 1687 Cole Blvd., Suite 300
 Golden, Colorado 80401

Persons and addresses to which notices are to be sent may be changed by the same method.

14. No beneficiaries. This Agreement is for the sole benefit of and binds the Parties, their successors and assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any person besides Longmont or Customer receiving services or benefits under this Agreement is only an incidental beneficiary.

15. Governmental immunity. Nothing in this Agreement shall be construed to waive Longmont's protection from liability or the limitations on its liability due to its sovereign immunity under the Colorado Governmental Immunity Act, as amended, or otherwise.

16. Governing law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. In the event of litigation over this Agreement, jurisdiction and venue shall be proper and exclusive in the District Court in and for Boulder County, State of Colorado.

17. Force majeure. Customer acknowledges that the availability of the Subject Water provided for hereunder is dependent upon natural water resources that are variable in quantity of supply, and which can be affected by causes beyond Longmont's control. Moreover, Longmont shall not be liable for any delay or failure to perform its obligations under this Agreement caused by an event or condition beyond the reasonable control of, and without the fault of Longmont, including, without limitation, failure of facilities, flood, earthquake, storm, lightning, fire,

epidemic, contamination, war, terrorist act, riot, civil disturbance, labor disturbance, accidents, sabotage, or restraint by court or restrictions by other public authority which delays or prevents performance (including, but not limited to, the adoption or change in any rule, policy, or regulation or environmental constraints imposed by federal, state, or local governments), which Longmont could not reasonably have avoided by exercise of due diligence and foresight. Upon the occurrence of such an event or condition, the obligations of Longmont under this Agreement shall be excused and suspended without penalty or damages, provided that Longmont shall give Customer written notice describing the particulars of the occurrence or condition, the suspension of performance is of no greater scope and of no longer duration than is required by the event or condition, and Longmont proceeds with reasonable diligence to remedy its inability to perform and provides progress reports to Customer describing the actions taken to remedy the consequences of the event or condition.

18. Independent contractors. Both Parties shall perform all services under this Agreement as independent contractors and not as an agent or employee of the other Party. No official or employee of Longmont shall supervise Customer. No official or employee of Customer shall supervise Longmont. Neither Party shall represent that it is an employee or agent of the other Party in any capacity. Neither Party has any right to workers' compensation benefits from the other Party or its insurance carriers or funds. Customer shall pay any federal and state income tax on money earned under this Agreement.

19. No continuing duty to supply water. Longmont shall have no obligation to supply water to Customer after this Agreement expires or is otherwise terminated. By agreeing to deliver water to Customer under this Agreement, Longmont does not intend to represent itself as a public utility to Customer or others in such regard nor shall it be deemed to operate as a public utility. Customer shall not assert that Longmont is a public utility by reason of delivering water pursuant to this Agreement nor that it is subject to regulation as a public utility or subject to regulation by the Colorado Public Utilities Commission or to rate regulation by any other public entity.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement. Facsimile signatures shall be acceptable and binding upon all Parties.

21. Headings. All paragraph headings used herein are for the convenience of the Parties and shall have no meaning in the interpretation or effect of this Agreement.

22. Negotiated provisions. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both Longmont and Customer have contributed substantially and materially to the preparation of this Agreement.

23. Authority. The Parties warrant that they have taken all actions necessary or required by their own procedures, bylaws, or applicable law to authorize their respective signatories to sign this Agreement for them and bind them to its terms.
Executed as of the date first set forth above.

CITY OF LONGMONT, acting by and through its Water Utility Enterprise:

Ken S. Huson
Water Resources Manager

APPROVED AS TO FORM

[Signature]
Assistant City Attorney

04/22/2021
Date

CA File: 21-001169

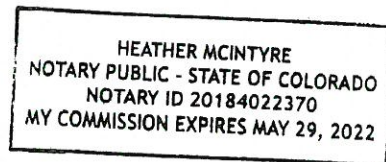
State of Colorado)
) ss:
County of Boulder)

The foregoing instrument was acknowledged before me by Ken S. Huson of the City of Longmont, this 26th day of April, 2021.

Witness my hand and official Seal.

Heather N. McIntyre
Notary Public

My Commission expires 05/29/2022.



CUSTOMER:
AGGREGATE INDUSTRIES-WCR (US) INC.

By: [Signature]
Title: Regional General Manager

State of Colorado)
) ss:
County of Jefferson)

The foregoing instrument was acknowledged before me by W. Chance Allen
(Name of Party Signing)

as Regional General Manager of Aggregate Industries,
(Title of Party Signing) (Name of Corporation)

a Colorado corporation, on behalf of the corporation, this
(State of incorporation)

29 day of April, 2021.

Witness my hand and official Seal.

My Commission expires 2/21/2025.

[Signature]
Notary Public

ADMINISTRATION PROTOCOL

Augmentation Plan Accounting

Division One – South Platte River

This protocol establishes the accounting and reporting process required to enable the division engineer's office to confirm that depletions from all out-of-priority diversions are being replaced so as to prevent injury to vested water rights. The accounting must comport with established "cradle to grave" accounting standards, which allow an audit of the information to track exactly how the data is manipulated as it is translated from raw input data to the resultant impact on the river. While this protocol is subordinate to any decreed language addressing specific accounting requirements, it generally addresses the minimum requirements of such accounting.

The accounting must use the standard convention where a depletion is "negative" and an accretion or other replacement source is "positive". The sum of the impacts will then result in either a "negative" or "positive" impact on the stream.

Wells in plans that have a negative stream impact must provide additional replacement water, curtail pumping or both until the impact is no longer negative. Plans with a negative stream impact that fail to curtail pumping will be ordered to stop pumping until such time as the projected impact of the wells is no longer negative.

1. Accounting must be submitted electronically to the water commissioner ([call 970-352-8712 to obtain email address](tel:970-352-8712)) and division engineer at Div1Accounting@state.co.us within 30 days of the end of the month for which the accounting is being submitted.
2. The accounting must provide the **contact information** including name and address for:
 - a. the owner(s) of each well
 - b. the person responsible for submitting the accounting
 - c. the plan administrator and/or the plan attorney.
3. All **input data** must be in one location, such as an "Input" worksheet, etc. The accounting must show all pumping. Input data includes the information listed below.
 - a. The required input data for each **well** is:
 - i. the monthly meter reading for wells that use a **presumptive depletion factor** (PDF) to determine the associated consumptive use (CU); or
 - ii. the monthly CU in acre-feet (AF) for wells that have a decree or approved SWSP that allows the wells to use a **water balance methodology** to determine the CU of the well. The analysis used to determine the CU must be included with the accounting.
 - iii. Wells that are decreed as an **alternate point of diversion** (APOD) to a surface water right must report pumping on a daily basis if any of the diversion during the month is claimed as being "in priority". (See *Administration Protocol – APOD Wells* for more details.)

- iv. The well meter serial readings for each meter shall be included if there is more than one meter on a well.
- b. Each **recharge site** must comply with the *Administration Protocol - Recharge* and must report the:
 - i. daily volume in AF diverted into the site;
 - ii. monthly volume in AF released from the site;
 - iii. monthly net evaporative loss in AF;
 - iv. volume of water in AF remaining at the end of the month.
- c. The accounting must identify each source of **fully consumable replacement water** actually delivered to the location impacted by the depletions. To demonstrate the water was actually delivered to the required location will require the following information:
 - i. the originating source of the water, date released and volume of water released;
 - ii. transportation losses to point of diversion or use, if any, using stream loss factors approved by the water commissioner;
 - iii. the volume of water actually delivered on a daily basis past any surface water diversion that was sweeping the river as corroborated by the water commissioner.

(See *Administration Protocol – Delivery of Water* for more details on delivering water.)
- d. For each source of **replacement water that has been “changed”** for use as a source of augmentation, such as changed reservoir shares, ditch bypass credits or credits from dry-up, etc., the following input information must be reported:
 - i. the basis and volume of the return flow obligation;
 - ii. the location the changed water was historically used; this will be the location used to determine the timing of the return flow impact on the river.
- 4. The accounting must include a monthly **projection** of the plan’s operation at least through March 31 of the next calendar year.
- 5. The accounting must include all input and output files associated with **modeling the delayed impact** of diversions. The output from the modeling must report to a summary table that shows, by month, the ongoing depletions associated with pumping, return flow obligations, etc. and accretions from recharge operations.
- 6. A **net impact** summary must show the out-of-priority depletions, accretions from each recharge site, volume of replacement water actually delivered to the location of the depletions and the resultant net impact on **a daily basis**. If necessary, the net impact must be done by river reach.

While **modeling** may use a **monthly step function** to determine the depletions from pumping and accretions from recharge, the monthly result must then be **divided by the number of days in the month** in order to **simulate a daily impact**, as water rights are administered on a daily and not monthly basis.

Replacement water must be provided such that the **daily net impact** (using the simulated daily numbers from the modeling) **is not negative**. If a well is out-of-priority for 15 days during a month, replacement must be made only for the 15 days the well is out-of-priority. The replacement must be made, however, on a daily basis as opposed to, for instance, making an aggregated release equal to the volume of the out-of-priority depletions. Likewise, the simulated daily accretion will only count toward replacing the depletion on the days the well is out-of-priority. The accretions that report to the river when the well is in priority cannot be used to replace the out-of-priority depletions.

The **accretions that impact the river when the well is in priority** are not considered “excess” unless the cumulative net impact of the well is not negative for the entire irrigation year to date. (The irrigation year for this purpose is April 1 thru the following March 31.) Until such time as the cumulative net impact is not negative, the accretions must simply be released to the river and cannot be leased to other plans or recaptured. Plans that show a positive cumulative net impact are still required to make replacements on a daily basis; the cumulative analysis only effects whether or not accretions reporting to the river when the well is in priority are considered “excess” and are, therefore, able to be recaptured.

7. The basis for determining that the depletions are **out-of-priority** must be clearly established and all steps in the calculation included in the accounting. The analysis may be done, unless otherwise limited by decree, for each well or groups of wells, provided the most junior water right associated with the group of wells is used as the reference water right for the group’s out-of-priority status.
8. Accounting must include **actual information** for the irrigation year through the month for which the accounting is being submitted **AND projections** of the plan operation through March 31 of the next calendar year.
9. The following **naming convention** must be used for all files submitted pursuant to item 1:

“Plan**WDID**_YYMMDD”

where: PlanWDID is the WDID assigned by the division engineer’s office
YYMMDD corresponds to the date the accounting is submitted.

As an example, the assigned WDID for the former GASP plan was 0103333. If accounting using Excel® was submitted for that plan on May 15, 2004, the file name would be:

“0103333_040515.xls”

The name of the file must be in the subject line of the email.

10. All accounting must be reported using the **WDID** for the structure, at a minimum. Other information such as well name, permit number, etc. may also be included as desired. All wells must be decreed by the water court, permitted by the state engineer or included in a decreed plan for augmentation. Unregistered and undeclared wells cannot, in the opinion of the division engineer, be effectively administered because of the need to know the location, allowable diversion rate and use of the well - information that is only available from the decree or permitting process.

11. If a well is covered in multiple SWSP's or augmentation plans, the monthly meter readings must be the same in the accounting for each plan covering the subject well. The accounting for every plan covering the well shall state the proportionate pumping amount covered by each plan to assure all out-of-priority depletions are replaced.
12. The following additional accounting is required for sources of replacement water used for more than one plan. The water right owner of the replacement water is responsible for accounting for the total replacement amount and how much each plan is using of that total amount. The accounting for portions of the replacement water by other users must match the accounting of the water right owner. The amount of replacement water used by the water right owner and other users together shall not exceed the total replacement amount available.

(See *Administration Protocol – Use Of Unnamed Sources For Replacement* for additional requirements concerning required notice and approval of sources of replacement not specifically described in a SWSP or augmentation plan)