



May 28, 2021

Eric Scott
Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80202
by electronic mail to eric.scott@state.co.us

**Re: Commencement of Slurry Wall Installation, Clarification of Reclamation Bond Timing
Nix Sand and Gravel Mine, M-2001-046**

Mr. Scott:

Thank you for your work on the recent application (AM01) related to the Nix Sand and Gravel Mine.

While Brannan/Ready Mixed Concrete expects to soon have prepared a response to the Division's Adequacy Letter of May 6 in that matter, I am writing separately to address an issue that has come up since your inspection of the Nix site on May 14. Specifically, I write to clarify that construction of slurry wall in the northeast, unaffected quarter-section of the permitted property is slated to commence on June 7, and with that the reasons we do not perceive any need to adjust the construction schedule despite the Division's ongoing review of AM01.

Clarification appears to be in order because your most recent correspondence (an email sent to Josh Oliver at Brannan/Ready Mixed Concrete on May 17) emphasizes that the Division will evaluate bond costs to include "the northern slurry wall." This involves bond costs for the slurry wall on as-yet unaffected land. As stated in your May 14 Inspection Report, attached to the May 17 email, "Although installation of this slurry wall in the unaffected area of the permit has already been approved by TR01, because this slurry wall is now part of the mining and reclamation plan as submitted in AM01, the operator will be required to submit the bond for the installation of this slurry wall prior to its installation."

We do not disagree that it may be appropriate to evaluate and incorporate bond costs for the northern slurry wall, but the exact timing of bond submittal and the potential for this evaluation process to interrupt long-planned construction warrant immediate resolution. We do not, in this case, with an imminent June 7 start date, concur that a reclamation bond for the slurry wall can necessarily be submitted prior to its installation.

TR01 was submitted for the specific and singular purpose of authorizing construction of the northern slurry wall in advance of mining. In the October 14, 2019, transmittal of TR01, we explained that our tenant water storage provider “intends to construct the slurry wall” as a present-tense action. We went on to explain, “At some point in the future, RMCC intends to submit a plan to DRMS that includes installation of slurry walls throughout the site that will allow for ‘dry’ mining. In the interim, construction of this slurry wall will allow RMCC’s partner, Dixie Water, to utilize the property for water storage.”

The northern slurry wall will be part of the mining and reclamation plan when AM01 is approved. Until that time, we are unaware of a legal mechanism by which DRMS could administer a financial warranty for features outside the affected area. Statute provides that financial warranties are limited to the affected area (see C.R.S. § 34-32.5-117(4)(b)(I)). On October 21, 2019, the Division’s approval letter described the subject of TR01 as approval to “install slurry wall and in-situ water storage in un-affected area.”

I wrote a background letter, also dated October 14, 2019, and submitted with TR01, that addressed the bonding issue. It has been our expectation from that time, considering the admittedly unusual but also well-documented fact that the land for the northern slurry wall is not yet incorporated into the mining operation, “that the current slurry wall project has little to no effect on the status or bonding of the M-2001-046 permit.” The fact that AM01 is now under consideration does not alter the fact that under TR01 the northern slurry wall could have been constructed one month, ten months or a year-and-a-half ago, and nothing has changed to prevent its legal construction today.

Given the present unaffected status of land in which the northern slurry wall will reside, we believe it appropriate to clarify for the record that, based on materials to be submitted in the adequacy process and as may be updated during the construction process, a bond for the northern slurry wall will be due in accordance with standard procedure at the time AM01 is approved.

I have confirmed all of the referenced materials in the DRMS Weblink record, but please let me know if new copies of any of the TR01 correspondence would be of assistance. Your concurrence or other feedback is welcome, and I am happy to address any questions at aschatz@brannan1.com or my direct phone 303-853-5161.

Sincerely,

READY MIXED CONCRETE COMPANY, LLC



Alex Schatz