

BEFORE THE MINED LAND RECLAMATION BOARD  
STATE OF COLORADO

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IN THE MATTER OF WESTERN SLOPE FLAGSTONE QUARRY NO. 2, Permit No.  
M-1996-076

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**STIPULATED SETTLEMENT AGREEMENT BETWEEN THE COLORADO MINED  
LAND RECLAMATION BOARD; COLORADO DIVISION OF RECLAMATION,  
MINING, AND SAFETY; AND RUDOLPH FONTANARI, WESTERN SLOPE  
FLAGSTONE, and WESTERN SLOPE FLAGSTONE, LLC**

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THIS STIPULATED SETTLEMENT AGREEMENT (“Agreement”) is made and entered into by and between the Colorado Mined Land Reclamation Board (“Board”); Colorado Division of Reclamation, Mining and Safety (“Division”); and Rudolph Fontanari (“Operator”), Western Slope Flagstone, Western Slope Flagstone LLC (“Fontanari Entities”), (together jointly as “Parties”).

**Background Facts**

1. The Western Slope Flagstone Quarry No. 2 is located approximately 5 miles east of Palisade, Mesa County, Colorado.
2. Fontanari is the Operator of the Western Slope Flagstone Quarry No. 2 and holder of Reclamation Permit No. M-1996-076 (“Permit”).
3. The Board held two separate hearings regarding the Permit, first on August 20, 2019 and again on August 19, 2020, and issued Orders following each hearing (MV-2019-023; the “2019 Order” and the MV-2020-023; “2020 Order”, collectively the “Board Orders”).
4. The Board Orders are the subject of two separate judicial review actions, Court of Appeals case 2021CA941, regarding Denver District Court Case No. 2019CV34768, and Denver District Court Case No. 2020CV034098.

**Agreement**

5. The Parties have reached an agreement to settle both judicial review matters involving Court of Appeals case 2021CA941, regarding Denver District Court Case No. 2019CV34768, and Denver District Court Case No. 2020CV034098,

if ***all*** of the following conditions (paragraphs 6 – 9) are met by Mr. Fontanari and the Fontanari Entities:

6. Mr. Fontanari agrees to file an amendment to Permit No. 1996-076 to explicitly prevent irrigation within Permit No. M-1996-076, including any necessary changes to the Permit's mining and reclamation plans.

- a. The Parties acknowledge that piped and un-piped portions of the decreed Martin Crawford Ditch will cross a small portion of the Permit, but that the Permit amendment will explicitly state that though water will move through the portions of the Martin Crawford Ditch within the Permit boundaries, it will not be used to irrigate within the permit area.

7. Within 90 days of the date of this signed agreement, Mr. Fontanari shall:

- a. Complete reclamation of all highwalls located in the northern mining area (either backfilled or graded to a minimum of a 3H:1V) to the satisfaction of the Division; and
- b. Remove all irrigation pipeline and equipment from the permit area and the pipeline ditch to the satisfaction of the Division; and
- c. Re-grade and re-seed the pipeline ditch and irrigation furrows within the Permit area to the satisfaction of the Division. The Parties acknowledge that additional, future seeding may be required if current weather conditions persist.

8. Mr. Fontanari shall increase the financial surety/bond by \$75,000 to alleviate some of the current bond deficiency in Permit No. M-1996-076, within 7 days of execution of this agreement; and

9. Within 7 days of Fontanari's posting of the \$75,000 bond, the Parties agree to allow the Operator (Mr. Fontanari) to sell currently stockpiled materials from the site under a modified Cease and Desist Order; and

10. Upon successful and timely completion of ALL of the above conditions, the Parties to this Stipulated Agreement (Division, Board, Mr. Fontanari and the Fontanari Entities) agree to dismiss the Denver District Court Case No. 2020CV034098 and Colorado Court of Appeals Case No. 2021CA941 with prejudice. The parties agree to jointly seek stays or extensions in both actions, pending

dismissal as necessary to allow completion of the actions to be taken in paragraphs 6 through 9 of this Stipulated Agreement; and

11. Upon successful and timely completion of ALL of the above conditions, Board agrees to set aside the civil penalties from the 2019 Order and the suspended civil penalties of the 2020 Order.

12. The Parties agree that there is no dispute over the \$10,000 penalty paid involving the 2020 Order.

13. Consideration: The Parties enter into this Agreement based on the valuable consideration and mutual promises described herein, the receipt and adequacy of which is specifically acknowledged by each Party.

14. Agreement Freely Executed; Opportunity to Seek Advice: Each Party acknowledges and represents (1) that it has fully and carefully read and considered this Agreement prior to signing it; (2) that it has had the opportunity to make whatever investigation or inquiry it deems necessary or appropriate in connection with the subject matter and consequences of this Agreement; (3) that it has had the opportunity to seek legal, financial, and other types of advice that may bear on its decision to enter into this Agreement, as seems appropriate to it; and (4) that it is signing this Agreement voluntarily and free from any undue influence, coercion, duress, or fraud of any kind.

15. Interpretation and Construction: This Agreement is based on the Parties' evaluation of the litigation risks unique to the litigation referenced above in Paragraph 4. Nothing in this Agreement shall be construed as a generally applicable policy statement by the Department or the Board.

16. Execution; Authority to Execute: This Agreement is effective upon execution by the Parties. Each signatory expressly represents and warrants that he or she has full authority to execute this Agreement on behalf of the Party designated.

17. Counterparts; Electronic Signature: This Agreement may be executed in one or more counterparts, each counterpart to be considered an original portion of this Agreement, and all of which together constitute a single instrument. An electronic signature shall be valid as if it were a physical signature.

18. Successors and Assigns: This Agreement and any amendments to it shall be binding on the Parties, their successors, their heirs, and their assigns.

19. Severability: If any provision of this Agreement is determined to be invalid or unenforceable (in whole or in part) for any reason, the remaining

provisions of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

20. Choice of Law: This Agreement and any claims arising under it shall be governed by, and construed and enforced in accordance with, the laws of the State of Colorado irrespective of any choice of law principles that may otherwise apply.

21. Costs: The Parties shall each bear their own costs, expenses, and attorney's fees incurred in connection with the litigation referenced in Paragraph 4 and with the negotiation and drafting of this Agreement. In the event of subsequent litigation regarding this Agreement, costs, expenses, and attorney's fees shall be awarded as provided by Colorado law.

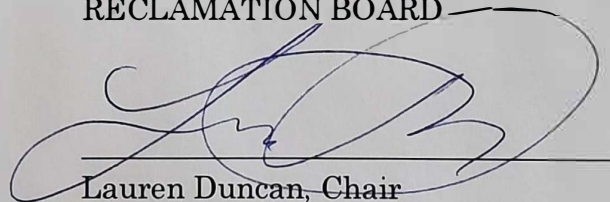
Signed by the Parties' duly authorized agent this 14<sup>th</sup> day of October, 2021.

COLORADO DIVISION OF RECLAMATION  
MINING AND SAFETY

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Virginia Brannon  
Minerals Program Director,  
Division of Reclamation, Mining and Safety

FOR THE COLORADO MINED LAND  
RECLAMATION BOARD



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Lauren Duncan, Chair

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Signed by the Parties' duly authorized agent this \_\_\_\_ day of October, 2021.

COLORADO DIVISION OF RECLAMATION  
MINING AND SAFETY



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Virginia Brannon  
Minerals Program Director,  
Division of Reclamation, Mining and Safety

FOR THE COLORADO MINED LAND  
RECLAMATION BOARD

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Lauren Duncan, Chair

RUDOLPH FONTANARI

By Rudolph Fontanari Jr.

Rudolph Fontanari Jr. (owner)  
Print Signatory Name and Title

Western Slope Flagstone, a sole proprietorship

By Rudolph Fontanari Jr.

Rudolph Fontanari Jr. (owner)  
Print Signatory Name and Title

Western Slope Flagstone LLC

By Rudolph Fontanari Jr. (owner)

Rudolph Fontanari Jr. (owner)  
Print Signatory Name and Title