



STATE OF
COLORADO

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Motion - Tucson South

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Aggregate final ES.pdf

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Before The Mined Land Reclamation Board, State Of Colorado ("MLRB")

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**Sherie Gould, B. Michl Lloyd and Dr Wayne Muhler ("Objectors")
Motions to Include Objector Witnesses and Exhibits,
to Exclude Aggregate Industries Witnesses and Exhibits and
to Deny the Application for Amendment**

**In the Matter of the 112c Permit Application Amendment with
Objections, Tucson South Pit, File M-2004-044 Amendment 2 (AM-02)**

The Objectors hereby submit their Motions to Include Objectors' Witnesses and Exhibits and to exclude Aggregate Industries Witnesses and Exhibits during the Mined Land Reclamation Board's ("Board") formal hearing scheduled for January 19 and 20, 2022 as follows:

INTRODUCTION

We, the Objectors, individually are each property owners and residents of Adams County Colorado. Each of us is an active or retired professional with considerable educational background although none of us is an attorney and we neither individually nor as a group have hired an attorney to represent us in this matter. Accordingly, as individuals with standing we want to exercise our rights to present evidence as listed subsequent to the pre-hearing. We did not offer those exhibits merely as background because we can assure you that each of us fully understands that the matter before you is limited in scope to amending acreage for the route the conveyor system will follow **PERIOD**. We each understand that the Amendment does not involve reconsideration of the existing MLRB Permit or have anything to do with the Conditional Use Permit issued by Adams County for this mine. AI's attorney has stated the conclusion that the primary focus of our witness and exhibit lists related to items that are outside the scope of the hearing and will constitute irrelevant, confusing and prejudicial testimony before the Board. Her conclusion is erroneous!!! First of all she does not know what we or any of our witnesses will provide as testimony nor does she know the purpose of any of the exhibits. Our individual testimony and exhibits will be specifically related to the matter before the board and therefore should be allowed.

MOTIONS

1. The following witnesses should be allowed to testify at the hearing

AI's attorney has stated that we primarily named witnesses whose stated areas of testimony are irrelevant or regard matters outside the jurisdiction of the Board. Again

– not true. The process for naming witnesses was very confusing to each of us and none of us had been through this process before. It was not until the pre-hearing that we knew that not only did we have to name witnesses but also had to list areas they would discuss and provide that information that same day. We did know that testimony would be provided by AI and our witnesses and therefore had to make the discussion topics general in order to be able to rebut any presentation or any testimony we deemed necessary at the hearing including bringing in “history” as it was relevant to changing the acreage for the conveyor. Past and current status of the property in the amendment and adjacent property needs to be considered. Contrary to AI's Attorney's statement we do NOT wish to re-litigate history of the existing permit or AI's performance and we certainly are not attempting to prejudice the hearing.

Cris Muhler

Not allowing the witness testimony of Cris Muhler would prejudice the hearing because AI has told the Board and staff that they have secured all necessary permissions to install the conveyor along the revised route. NOT TRUE – Cris Muhler is President of Mountain View Water Users Association whose water line will have to be relocated to install the conveyor as presented under 168th Ave. Cris will testify to the fact that AI has no agreement with Mountain View. So not allowing Cris Muhler's testimony would prejudice the hearing and prohibit the Board from knowing all of the facts.

Jim Hood

Jim Hood owns property immediately adjacent to the ground proposed to be added to M2004-44. AI has not presented any ground water data in any form to support the conveyor's subsurface crossing at East 168th Avenue. Mr. Hood can testify to the current and historic ground water conditions and to the effects of prior geo-technical events on the ground water and the ground to be added to the permit. Not allowing Jim Hood's testimony would prejudice the hearing and prohibit to Board from knowing all of the facts.

AI's attorney made reference to our intent to discuss the Adams County Conditional Use Permit (“CUP”) issued in connection with this mine. Please be advised that none of us as Objectors or any of our witnesses plan on discussing the CUP as it is not relevant to the Board's consideration of the issue at hand.

Outreach as referred to by AI is not a relevant topic given the issue at hand.

2. **The following Witness Testimony should not be limited (other than by the overall time limit allocated to Objectors)**

Objectors as Witnesses. Each of the Objectors listed the other Objectors as witnesses in case some testimony was needed to supplement, authenticate, confirm or

verify a matter raised in the hearing. Contrary to AI's attorney's conclusion, such testimony will not lengthen the hearing because the time Objectors have before the Board is limited.

Dr. Wayne Muhler

Dr. Muhler's testimony as it relates to history will point out that AI's engineering and studies relating to putting a conveyor on the proposed ground was based on data prior to 2004 and therefore was obsolete and did not reflect current conditions and current barriers to ground water. No attempt will be made to prejudice the hearing but only to clearly inform the Board of obsolete data used in the application. With all of the activity in the area since 2004, use of more current data would likely result in different conclusions.

Dr. Muhler is responding as a party in interest with status and considerable knowledge in the areas to be considered. Dr Muhler is not putting himself forward as an expert mining engineer, civil engineer or hydrologist; however his testimony will be based on his extensive experience in the mining industry. Accordingly we ask that Dr. Muhler's testimony on this matter not be limited.

Sherie Gould and Mike Lloyd

There is no plan for Sherie Gould or Mike Lloyd to provide testimony about anything other than matters related to the amendment.

3. The following evidence should be allowed

Photos sent by Dr Muhler are relevant because the lack of signage shows AI's disregard for the Division's rules and regulations because they were cited in several prior inspections and chose not to comply.

Furthermore, these pictures show mining activities when no record in the DRMS online files related to this permit show a reinstatement of the required bond amount. A March 26, 2007 DRMS letter to Mike Refer approves a technical revision to Permit 2004-044 Revision TR-1 that reduced the required bond from \$1,054,203.00 to \$11,000.00 with conditions. The conditions required AI to post a full financial warranty within 60 days of any mining activity other than cottonwood tree removal or haul road construction. In the past several years AI has removed buildings and currently has begun construction of slurry walls and drainage systems in direct violation of TR-1.

If the bond has not been reinstated, we move for immediate suspension of all mining

activities until AI has obtained all required bonding. In any case AI should be appropriately fined by DRMS.

Evidence Related to Existing Permit

Objectors move to allow evidence related to the current permit in objection to the current amendment. AI cites prior engineering in their request for amendment to be used from the first permit application. The Objectors contend that the data used is incomplete, obsolete and in some cases supports to Objectors contentions. Not having this will be prejudicial and provide the Board with incomplete data on which to make a decision.

4. "Evidence Submitted after the Board's Deadline" Should Be Allowed at the Hearing.

No evidence was submitted after the deadline proposed in the Pre-Hearing Conference. All materials were in the Division's possession prior to the 5 pm MST proposed by Mr. Cunningham. Distribution of materials was confusing and the words used by Mr. Cunningham in the Pre-Hearing Conference were for materials to be in "our hands" (meaning the Division) by close of business. The evidence and witness list was in AI's possession at 5:21 PM MST. AI operating hours at the permitted site are 7am to 7 pm and verification of delivery was clearly verified by AI's motion to dismiss this filing.

Rule 2.6 does not specify close of business for providing either the Applicant or the Objectors with evidence or witness identification. The rule also excludes evidence already in the office public files from notification. Therefore AI's objection should be moot and not waste the public or Board's time.

5. Motion to Exclude AI Witnesses

The Objectors move to exclude all of the witnesses for AI including:

Chance Allen

- failed to state why he is a witness or explain what qualifies him as an expert
- discussion of Adams County CUP is not part of this hearing
- Outreach is not part of this hearing

Gary Linden

- Outreach is not part of this hearing
- AI requested DRMS M2004-044 prior history be stricken for the Objectors. AI should have to same restriction. If not, Objectors want

history of permit allowed.

Roger Wingate

- No notification of expertise or education.
- Pre-mining activities are not part of this hearing
- Other required permits are not part of this hearing
- Outreach is not part of this hearing as AI wants to limit all of the attendees at an outreach session they held on the mine site

Neil Whitmer

- No notification of expertise
- discussion of Adams County CUP is not part of this hearing
- Outreach is not part of this hearing

Trey Poulson

- Operations are not part of the Amendment
- Mining Operations not being allowed in amendment permitted area
- Outreach not applicable

Trulane Vanatta

- No indication of qualifications as an expert
- No design detail provided (ie size, speed, section lengths, heights, transfer points, model number or design limits of conveyor) so testimony would be a waste of the Board's time
- This Amendment is to add land to M2004-044 and operations other than it relates to the conveyor system is not relevant as AI stated at a very recent outreach meeting which included two of the Objectors.

Any other witnesses needed for rebuttal or authentication – Objectors should be provided with expert status of any such witnesses prior to the hearing.

Based on the above, the topics for testimony are irrelevant or the qualifications of the individuals is not established. Accordingly testimony by the above individuals would be a waste of the Board's time and irrelevant to the topic being considered they should therefore be excluded as witnesses.

6. **Objectors move to strike letters of support as identified by AI because they are not relevant to the DRMS rules and statutes.**
7. **Objectors move to allow physical and photographic evidence to support amendment denial which was not available prior to the Pre-Hearing Conference but relevant at the time of the Board meeting. This is limited to safety concerns and data used for stability analysis.**

8. Move to strike the Stability Analysis Document Submitted by Gary Linden and Move to Deny AM-02

Objectors move to strike the Stability Analysis document by Gary Linden, Senior Engineering Geologist, presented in an August 12, 2021 letter to AI. The analysis does not consider the slurry wall for the former Tucson North pit (now a Thornton water exchange reservoir) that is filled to capacity and lowered to near empty on a regular basis. The Challenger Reservoir is the first leg of the proposed amendment land. The model is at the tallest section of the Challenger wall on the east side of the structure. The model is based on assumptions of the geologist, not on actual data. The physical qualities of the materials composing the walls are assumed, not laboratory measured, as stated on page 3 "Material Properties." Engineering judgment and soil samples not identified, or lab tested were used for the calculations. Sample locations on the proposed conveyor route on the top of Challenger's perimeter were not identified. The data was entered into a software program to calculate stability of the ground below the conveyor which is on the retention wall of the reservoir. This analysis is valid only if the entered data is correct. The author used old geological mapping, present mining plans (none of which adjoin or are planned other than Tucson South) and bore hole data by others. The date of the bore hole data is not identified nor is the location of the bore holes. The source of the data is not reported. This reservoir is currently illegally filling with ground water, is under a state order to be repaired and is failing at an increasing rate. The reservoir must not have been completed to design specifications or the original soil reports and engineering were not correct. The water flow through the conduit formed by the Tucson North slurry wall to the east and the Challenger Reservoir to the west is not known. Soil saturation is not known. Ground water level around the Challenger Reservoir is not known. Velocity of ground water flow is not known. Sheer strength of wall fill material is not known. Miles of new slurry walls have been installed adjacent to the Challenger Reservoir since the data used for this study was completed. The failure to account for the increasing leakage of the Challenger Reservoir is not mentioned in the report. The author of the study states "should the mining or conveyor plans change, or subsurface conditions vary from those portrayed in this letter, we should be contacted to re-evaluate the potential effects on man-made structures" (the Challenger Reservoir). This report does not identify the potential surface loading of the soil by the conveyor, or even the design weight and point loading of the conveyor. Vibration from operation of the conveyor was not a consideration and should have been. No hydrology data was collected for the underground section crossing below 168th Avenue. Even the static ground water levels were not measured. If any of the areas of concern detailed above are not accurately known, and the 168th Avenue crossing structure design is not correct a failure of the Challenger Reservoir is a possibility, and if the ground water levels are raised by any component of the conveyor crossing, property damage is assured. CRS 24-4-105(7) states that agencies are authorized to exclude "incompetent" evidence. Pursuant to CRE 403 the Board may exclude even relevant evidence "If it's probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the (Board) or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence". With this standard we contend that the report is misleading, confusing issues, and should be excluded.

The Objectors believe that the use of obsolete prior permit data, and questionable assumptions is valid reason for objection to the Stability Analysis and we request that the permit amendment (AM-02) be denied.

Respectfully submitted on January 13, 2022.

Sherie Gould

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Objector

B. Michl Lloyd

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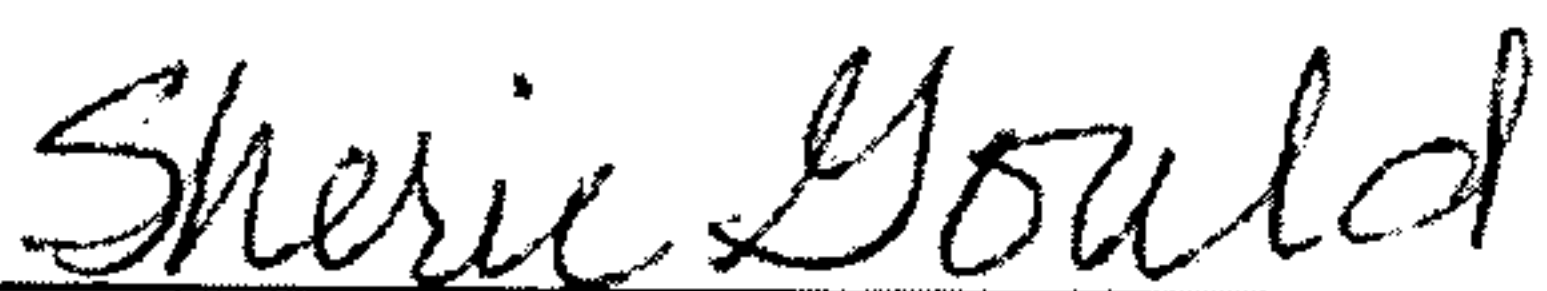
Wayne Muhler


Dr. Wayne Muhler
Objector

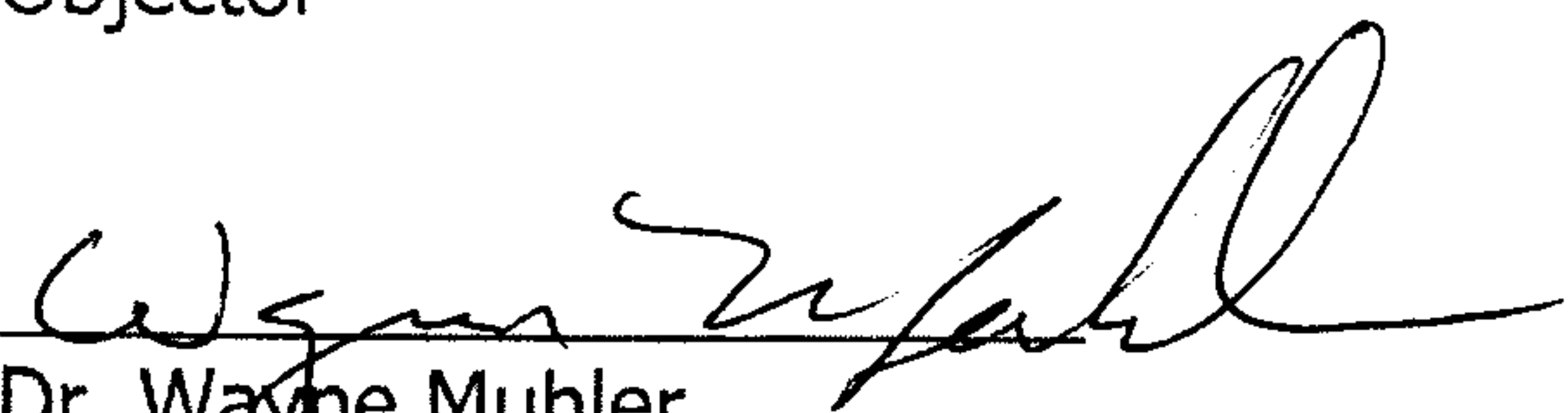
ELECTRONIC SIGNATURES

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