

February 3, 2022

Karl Nyquist
Prowers Aggregate Operators, LLC
7991 Shaffer Parkway, Suite 200
Littleton, CO 80127

J.C. Marvel, Jr.
Brannan Sand and Gravel Company, L.L.C.
2500 E. Brannan Way
Denver, CO 80229

RE: West Farm Pit, Permit No. M-2008-078, Notice of Receipt of Complete Application for Transfer of Permit and Succession of Operators (Revision No. SO-04)

Dear Mr. Nyquist and Mr. Marvel:

On February 3, 2022, the Division of Reclamation, Mining and Safety (Division) called your Application Form for Transfer of Mineral Permit and Succession of Operators from Prowers Aggregate Operators, LLC to Brannan Sand and Gravel Company, L.L.C. (SO-04) for the West Farm Pit complete for review.

Because Option No. 1 was selected in the application to waive your right to a decision in 30 days, the Division will inspect the site within 60 days, after which, the required financial warranty amount will be provided to both parties. The Prospective Successor will have 60 days from the date of notice to post the required financial warranty for SO-04 approval.

While the SO-04 application was deemed complete for review purposes, the Division would like to provide clarification on the following items mentioned in the completeness response:

- 1) For the Succession of Operators process, if the current Permittee was required to provide structure agreements, the Prospective Successor must obtain new structure agreements from each owner and provide copies of the same to the Division with the application. In this case, there are numerous structures located within 200 feet of the affected lands, for which, the current Permittee was required to obtain structure agreements in accordance with Rule 6.4.19. Because the current Permittee was unable to reach an agreement with all structure owners, per Rule 6.4.19(b), the Division accepted an engineering evaluation (submitted in Amendment No. 2; AM-02) that demonstrated such structures will not be damaged by activities occurring at the mining operation. The Prospective Successor provided a copy of this engineering evaluation with SO-04. However, the Prospective Successor has not yet provided sufficient demonstration that structure agreements have been attempted for all applicable structures; i.e., that a new notarized agreement from the Prospective Successor has been sent to the owner of each structure located within 200 feet of the affected lands. Such demonstration shall be in the form of a copy of the structure agreement (signed and notarized by the Prospective Successor; see enclosed structure



agreement form) that was sent to each structure owner, and a Certified Mail Receipt demonstrating the letter was delivered. For SO-04, the Prospective Successor has thus far provided only photographs of letters that appear to have been sent via Certified Mail, but do not include an address for the recipients. In reviewing the names provided on the envelopes, it would appear all structure owners identified in AM-02 were included, except Prowers County. For SO-04 approval, the Prospective Successor will need to provide copies of the notarized structure agreement forms that were mailed to each structure owner and the Certified Mail Receipts demonstrating the letters were delivered. Additionally, the structure agreement for Southeast Colorado Power Association must include similar language as the agreement obtained by the current Permittee, acknowledging the power lines owned by this entity will be relocated during the mining operation.

- 2) The Prospective Successor states in SO-04 “all structure agreements in place on November 18, 2022, were assigned by the Permittee to Brannan as Brannan simultaneously assumed these contracts” and that “Brannan’s initial SO-04 submittal contained the transactional documents demonstrating this transfer of responsibilities to the Prospective Operator”. While the Division does accept the “transactional documents” provided with SO-04 as sufficient demonstration of the Prospective Successor’s legal right to enter the affected lands to conduct mining and reclamation, these documents do not fulfill the requirements of Rule 6.4.19. Please see Item No. 1 above for a description of what is required for SO-04 approval with regard to structures.
- 3) The Prospective Successor states in SO-04 “the statute on succession of operators specifies that, when one operator succeeds another at an uncompleted operation, the board shall release the first operator from all liability as to that operation and shall release all applicable performance and financial warranties as to such operation if the successor operator assumes all liability for the reclamation of the affected land and such obligation is covered by appropriate performance and financial warranties”. Please be advised, the warranties held by the current Permittee will not be released until the Prospective Successor has fulfilled all applicable requirements of the Succession of Operators process (including posting the required financial warranty) and SO-04 is approved.
- 4) The Prospective Successor states in SO-04 “the determination of a Financial Warranty of a greater or lesser amount than the existing Financial Warranty is part of the succession of operator process”, that “construction of the new slurry wall was underway for Phases 2, 3, and 8 on November 18, 2021” and “based on the then-anticipated completion of work by the end of 2021, we deemed it relevant that a likely reduction in the actual site reclamation obligation is pending”. Please be advised, the financial warranty amount cannot be reduced through the Succession of Operators process. This can only be done through the Division’s review and approval of a Surety Reduction request (which cannot be reviewed at the same time a Succession of Operators application is under review). Through the Succession of Operators process, the financial warranty amount can remain the same or be increased. In this case, the required financial warranty amount was recently assessed through AM-02, issued on December 29, 2021. Therefore, the Division does not expect the required financial warranty amount for this operation to increase for SO-04 approval. This is why the Division recommended in its January 4, 2022 letter that Option 2 be selected to help expedite the review process for SO-04. Since Option 1 was again selected in the revised application, the Division will inspect the site within 60 days in accordance with internal policy. However, the Prospective Successor should be aware, the existing financial warranty amount of \$8,310,769.00 must be posted by the Prospective Successor in order for SO-04 to be approved. Once the permit transfer process has been finalized through SO-04 approval, the new

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Permittee may then submit a Surety Reduction request to account for any reclamation work completed. (To receive a reduction in costs held for slurry wall installation, the Permittee must first provide sufficient demonstration the Office of the State Engineer has approved the lined enclosure.)

If you have any questions, you may contact me by telephone at 303-866-3567, ext. 8129 (office), 303-945-9014 (mobile), or by email at amy.eschberger@state.co.us.

Sincerely,

A handwritten signature in blue ink that reads "Amy Eschberger". The signature is written in a cursive, flowing style.

Amy Eschberger
Environmental Protection Specialist

Encl: Structure agreement form

Cc: Joshua Oliver, Brannan Sand and Gravel Company, L.L.C.
Sara Stevenson-Benn, DRMS
Michael Cunningham, DRMS

An example Structure Agreement which meets the requirements of the Statutes is shown below.

Structure Agreement

This letter has been provided to you as the owner of a structure on or within two hundred (200) feet of a proposed mine site. The State of Colorado, Division of Reclamation, Mining and Safety (“Division”) requires that where a mining operation will adversely affect the stability of any significant, valuable and permanent man-made structure located within two hundred (200) feet of the affected land, the Applicant shall either:

- 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; or
- b) Where such an agreement cannot be reached, the Applicant shall provide an appropriate engineering evaluation that demonstrates that such structure shall not be damaged by activities occurring at the mining operation; or
- c) Where such structure is a utility, the Applicant may supply a notarized letter, on utility letterhead, from the owner(s) of the utility that the mining and reclamation activities, as proposed, will have “no negative effect” on their utility. (*Construction Materials Rule 6.3.12 and Rule 6.4.19 & Hard Rock/Metal Mining Rule 6.3.12 and Rule 6.4.20*)

The Colorado Mined Land Reclamation Board (“Board”) has determined that this form, if properly executed, represents an agreement that complies with Construction Materials Rule 6.3.12(a), Rule 6.4.19(a), and C.R.S. § 34-32.5-115(4)(e) and with Hard Rock/Metal Mining Rule 6.3.12(a), Rule 6.4.20(a), and C.R.S. § 34-32-115(4)(d). This form is for the sole purpose of ensuring compliance with the Rules and Regulations and shall not make the Board or Division a necessary party to any private civil lawsuit to enforce the terms of the agreement or create any enforcement obligations in the Board or the Division.

The following structures are located on or within 200 feet of the proposed affected area:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

(Please list additional structures on a separate page)

CERTIFICATION

The Applicant, _____ (print applicant/company name),
by _____ (print representative's name), as _____ (print
representative's title), does hereby certify that _____ (structure owner) shall
be compensated for any damage from the proposed mining operation to the above listed structure(s)
located on or within 200 feet of the proposed affected area described within Exhibit A, of the Reclamation
Permit Application for _____ (operation name),
File Number M-____-_____.

***This form has been approved by the Colorado Mined Land Reclamation Board pursuant to its
authority under the Colorado Land Reclamation Act for the Extraction of Construction Materials and
the Colorado Mined Land Reclamation Act for Hard Rock, Metal, and Designated Mining Operations.
Any alteration or modification to this form shall result in voiding this form.***

NOTARY FOR PERMIT APPLICANT

ACKNOWLEDGED BY:

Applicant _____ Representative Name _____

Date _____ Title _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing was acknowledged before me this ____ day of _____, 20____, by
_____ as _____ of _____.

Notary Public My Commission Expires: _____

NOTARY FOR STRUCTURE OWNER

ACKNOWLEDGED BY:

Structure Owner _____ Name _____

Date _____ Title _____

STATE OF _____)
) ss.

COUNTY OF _____)

The foregoing was acknowledged before me this ____ day of _____, 20____, by _____ as _____ of _____.

Notary Public

My Commission Expires:_____