

STATE OF  
COLORADO

Eschberger - DNR, Amy &lt;amy.eschberger@state.co.us&gt;

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**SO-04 Complete / West Farm Pit / M-2008-078**

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**Alex Schatz** <aschatz@brannan1.com>

Mon, Feb 14, 2022 at 8:03 AM

To: "Cunningham - DNR, Michael" &lt;michaela.cunningham@state.co.us&gt;

Cc: "Eschberger - DNR, Amy" &lt;amy.eschberger@state.co.us&gt;, Joshua Oliver &lt;joliver@brannan1.com&gt;, Karl Nyquist &lt;Karl@cacompanies.com&gt;, Sara Stevenson-Benn - DNR &lt;sara.stevenson-benn@state.co.us&gt;

Amy, Michael, Sara –

Following up on the email below, we have transmitted a revised Designation of Review Timeline and a replacement financial warranty for West Farm Pit (M-2008-078). Original was sent by FedEx on Friday, February 11, as scanned on attached.

Alex

Alex Schatz

Brannan Sand and Gravel Company, LLC

2500 Brannan Way

Denver, Colorado 80229

[aschatz@brannan1.com](mailto:aschatz@brannan1.com)

desk: 303-853-5161

cell: 720-323-4609



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**From:** Cunningham - DNR, Michael <michaela.cunningham@state.co.us>**Sent:** Tuesday, February 08, 2022 2:00 PM**To:** Alex Schatz <aschatz@brannan1.com>**Cc:** Eschberger - DNR, Amy <amy.eschberger@state.co.us>; Joshua Oliver <joliver@brannan1.com>; Karl Nyquist

<Karl@cacompanies.com>; Sara Stevenson-Benn - DNR <sara.stevenson-benn@state.co.us>

**Subject:** Re: [EXTERNAL] SO-04 Complete / West Farm Pit / M-2008-078

Alex,

It was nice speaking with you this morning and I'm glad we were able to clear up any confusion on the SO process. As we discussed, in order to expedite the transfer of the permit, you may elect to maintain your right to a decision within 30 days. If you choose to maintain your right to a decision, then both parties will need to initial this option on the Designation of Review Timeline (pg 6) section of the SO application form. Upon receipt of a revised Designation of Review Timeline, the Division will establish a new decision date, to be set 30 days from the date we receive the revised form. Provided all of the correct documentation was included in your response, the only thing we'll need to approve the SO application is the financial warranty in the amount of \$8,310,769.00. Please note the financial warranty must be accompanied by an Affidavit of Authority and the appropriate financial warranty form. If you have any questions about the financial warranty forms, please contact Sara Stevenson-Benn (copied on this email), the Division's Financial Assurance Specialist.

Thanks,

Michael Cunningham

Senior Environmental Protection Specialist



**COLORADO**  
Division of Reclamation,  
Mining and Safety  
Department of Natural Resources

[Quoted text hidden]

[Quoted text hidden]



**WestFarm\_SO-021122.pdf**  
813K



February 11, 2022

Amy Eschberger  
Division of Reclamation, Mining and Safety  
DRMS Room 215, 1001 E. 62<sup>nd</sup> Avenue  
Denver, CO 80216

**Re: West Farm Pit (M-2008-078), Succession of Operators, SO-04**

Ms. Eschberger:

Please find the enclosed materials for your review and/or redirection to the appropriate person within the Division.

As a result of our most recent submittal on the referenced SO-04 and Michael Cunningham's responsive email on February 8, 2022, Brannan (as Prospective Successor) and Powers Aggregate Operators (as Permittee) have determined to modify the Designation of Review Timeline. Accordingly, please find the enclosed original form initialed by both the Permittee and Prospective Operator.

Also enclosed is the replacement Financial Warranty for the M-2008-078 permit. This is an original, executed corporate surety on Division forms, in the amount of the current bond and as specified in Mr. Cunningham's email and prior correspondence.

Please review these at your convenience and let us know if there are any questions or additional needs. I am available at 303-853-5161 or [aschatz@brannan1.com](mailto:aschatz@brannan1.com).

Sincerely,

BRANNAN SAND AND GRAVEL COMPANY, LLC

A handwritten signature in blue ink, appearing to read 'AS' followed by a stylized flourish.

Alex Schatz

encl: Revised Designation of Review Timeline (Changing to "Option 2")  
Financial Warranty – Corporate Surety, for M-2008-078 in the amount of \$8,310,769.00

Other Reclamation Permits held by Prospective Successor (if applicable):

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### **DESIGNATION OF REVIEW TIMELINE**

As explained above, the Permittee and Prospective Successor may waive their right to receive a decision on an Application within 30 days in order to allow the Division to calculate the required Financial Warranty before issuing its decision. Permittee and Prospective Successor must initial one of the following two options to designate their choice. If Permittee and Prospective Successor cannot agree, the Division will render its decision within 30 days.

\_\_\_\_\_  
Permittee

\_\_\_\_\_  
Prospective Successor

I have reviewed the information provided in this Application Packet, as well as the applicable Act and Rules. Having been fully informed, I wish to WAIVE MY RIGHT TO A DECISION ON MY APPLICATION WITHIN 30 DAYS.

KN  
\_\_\_\_\_  
Permittee

[Signature]  
\_\_\_\_\_  
Prospective Successor

I have reviewed the information provided in this Application Packet, as well as the applicable Act and Rules. Having been fully informed, I wish to MAINTAIN MY RIGHT TO A DECISION ON MY APPLICATION WITHIN 30 DAYS.

The Prospective Successor must provide an adequate Financial Warranty or *conditional* replacement Financial Warranty, consistent with the designation above. Hard Rock and Construction Materials Rule 4.3 describes the various acceptable types of Financial Warranties. Each Financial Warranty must be submitted on the Board's approved forms (available online at <http://mining.state.co.us/Mineral%20Forms.htm>).



## COLORADO

Division of Reclamation,  
Mining and Safety

Department of Natural Resources

1313 Sherman Street, Room 215  
Denver, CO 80203

### FINANCIAL WARRANTY

### CORPORATE SURETY

Operator: Brannan Sand & Gravel Company, LLC

Operation: West Farm Pit

Permit No.: M-2008-078 Bond No.: [REDACTED]

Warrantor: Western Surety Company

Street: 151 N. Franklin Street

City: Chicago

State: IL Zip Code: 60606

Area Code: 312 Telephone: 822-5000

*This form has been approved by the Mined Land Reclamation Board pursuant to sections 34-32-117, C.R.S., of the Mined Land Reclamation Act and 34-32.5-117, C.R.S., of the Colorado Land Reclamation Act for the Extraction of Construction Materials. Any alteration or modification of this form, without approval by the Board shall result in the financial warranty being invalid and result in the voiding of any permit issued in conjunction with such invalid financial warranty and subject the operator to cease and desist orders and civil penalties for operating without a permit pursuant to sections 34-32-123, C.R.S., of the Mined Land Reclamation Act and 34-32.5-123, C.R.S., of the Colorado Land Reclamation Act for the Extraction of Construction Materials.*

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the Colorado Mined Land Reclamation Act, C.R.S. 1973, 34-32-101 et seq. (the "Act"), as amended, provides that no permit may be issued under the Act until the Mined Land Reclamation Board (the "Board") receives a Financial Warranty (or Warranties) as described in the Act.

WHEREAS, Brannan Sand & Gravel Company, LLC (the "Operator"), a CO corporation, has applied for a permit to conduct a mining operation known as West Farm Pit (the "Operation"), on certain lands in Prowers County, Colorado. These lands are described in the permit application, as amended and supplemented, and are referred to herein as the "Affected Lands".



WHEREAS, in the application for the permit, the Operator has agreed to be bound by all requirements of the Act and all applicable rules and regulations of the Board, as amended from time to time.

WHEREAS, in the application for the permit, the Operator has agreed with the Board to provide for reclamation of the Affected Lands that are now, or may become, subject to the permit, as required by law.

WHEREAS, the Operator and Western Surety Company (the "Warrantor"), a corporation organized and existing under the laws of the State of SD and duly authorized to transact a bonding and surety business in the State of Colorado are hereby and firmly bound unto the State in the sum of Eight Million Three Hundred Ten Thousand Seven Hundred Sixty Nine Dollars and 00/100 Dollars (\$ 8,310,769.00 ) for the life of mine or until such time as replacement is received, for the payment of which sum, well and truly made, we hereby bind ourselves and our personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Board has determined, in accordance with the Act, that the estimated costs of reclamation of the Affected Lands are those amounts for the stated periods of time as set forth herein. Said amount may be amended from time to time to reflect revised estimates of said costs of reclamation.

WHEREAS, the Operator and the Warrantor, in accordance with the Act, has promised and hereby promises the Board that it will be responsible for all the estimated costs of reclamation with regard to the Affected Lands.

WHEREAS, the Board has determined that this Financial Warranty by the Warrantor equals the estimated costs of reclamation, as approved by the Board, with regard to the Affected Lands.

NOW, THEREFORE, the Operator and the Warrantor are held hereby firmly unto the State of Colorado in the amount of those sums for those periods of time as set forth herein, until this Financial Warranty is amended or released in accordance with applicable law.

The Board may, for good cause shown, increase or decrease the amount and duration of this Financial Warranty. The Operator shall have sixty (60) days after the date of notice of any such adjustment to increase the surety amount, but no such increase shall bind the Warrantor unless and until it shall have consented thereto in writing by the issuance of an additional Financial Warranty or by an endorsement to this Financial Warranty.

The Operator and the Warrantor shall notify the Board immediately of any event which may impair this Financial Warranty. If the Board receives such notice, or otherwise has reason to believe that this Financial Warranty has been materially impaired, it may convene a hearing in accordance with the Act for the purpose of determining whether impairment has occurred.

The obligation of the Operator and the Warrantor shall continue until the Board has released this Financial Warranty or has ordered it forfeited in accordance with applicable provisions of the Act. It is understood that periods of years may necessarily be required before determination can be made that reclamation of the Affected Lands has been satisfactorily completed. It is also recognized that, as reclamation is accomplished, the amount of this Financial Warranty may be reduced with the approval of the Board so that it reflects the then current estimated cost of the remaining reclamation of the Affected Lands. No revision, extension, or renewal of the permit, or of the time allowed to complete reclamation, shall diminish the Operator's or Warrantor's obligation under this Financial Warranty. No misrepresentation by the Operator which may have induced the Warrantor to execute this Financial Warranty shall be any defense to demand by the State under this agreement.

In any single year during the life of the permit, the amount of the Financial Warranty shall not exceed the estimated cost of fully reclaiming all lands to be affected in said year, plus all lands affected in previous permit years and not yet fully reclaimed. Reclamation costs shall be computed with reference to current reclamation costs.

The amount of this Financial Warranty is based upon estimates as to the cost of reclamation, and does not operate to liquidate, limit, enlarge or restrict the Operator's obligations to complete reclamation and to comply in all respects with the permit and with applicable laws and regulations governing reclamation, even though the actual cost thereof may substantially exceed the amount of this Financial Warranty.

The Mined Land Reclamation Board or the Office of Mined Land Reclamation may recover the necessary costs, including attorney's fees or fees incurred in foreclosing on or realizing the collateral used in the event this Financial Warranty is forfeited. The face amount of this Financial Warranty shall be increased by five hundred dollars (\$500.00) to cover these costs.

The Warrantor shall not be liable under this Financial Warranty for an amount greater than the sum designated herein, unless increased by a later amendment to this Financial Warranty. This Financial Warranty shall be reviewed by the Board from time to time, and the Board may require an increase in the principal sum of this Financial Warranty (and a corresponding increase in the surety amount) to cover increases in the estimated costs of reclamation, but no such increase shall bind the Warrantor unless and until it shall have consented thereto in writing by the issuance of an additional Financial Warranty or by an endorsement to this Financial Warranty.

The Warrantor reserves the right to cancel this Financial Warranty, effective only upon an anniversary date, and only by giving written notice to that effect, mailed by Certified Mail, at least ninety (90) days prior to such anniversary date, addressed to both the Operator at its address herein stated, and to the Board at the address herein stated. In the event of such cancellation, this Financial Warranty shall nevertheless remain in full force and effect as respects the reclamation of all areas disturbed prior to the effective date of such cancellation, unless and until the Operator shall file a substitute Financial Warranty which: (1) assumes liability for all reclamation obligations which shall have arisen at any time while this Financial Warranty is in force; and (2) is accepted in writing by the Board.

In the event of such cancellation, if the Financial Warranty is not fully released, the amount of the continuing Financial Warranty available for the reclamation of areas disturbed and unreclaimed at the date of cancellation shall be fixed by the Board at the amount it determines necessary to complete such reclamation (which amount may not exceed the sum designated herein) and the Board shall concurrently identify such areas in writing, and notify the Warrantor and the Operator thereof. Thereafter, the obligation of the Warrantor shall be limited to reclamation of the areas so identified.

The consideration for the Warrantor's execution of this agreement is the promise of the Operator to pay the premiums, but failure by the Operator to pay such premiums shall not invalidate or diminish the Warrantor's obligation hereunder.

The Board may make demand upon the Warrantor for payment hereunder if the Board determines that reclamation which ought to have been performed by the Operator, or its successors or assigns, remains unperformed, and if Financial Warranty forfeiture procedures required by law have been initiated. No other condition precedent need be fulfilled to entitle the State to receive the amount so demanded. However, if, upon completion of reclamation by the State, the amounts expended for reclamation shall be less than the amount received from the Warrantor, the excess shall be promptly refunded to the Warrantor.

If demand is made upon the Warrantor for payment of an amount due to the Board hereunder, and if the Warrantor fails to make payment of such amount within ninety (90) days after the date of receipt of such demand, or if it should thereafter be determined, by agreement of the Warrantor or by final judgment of court, that the amount demanded was properly payable, the Warrantor agrees to pay to the Board, in addition to the amount demanded, interest at the



current published Wall Street Journal Prime Rate for the period commencing at the end of such ninety-day period and ending on the date of actual payment.

If the Board shall notify the Warrantor that the Operator is in default, and if the Board shall initiate any Financial Warranty forfeiture procedures required by law or regulation, the Warrantor may, in lieu of making payment to the Board of the amount due hereunder, cause the reclamation to be timely performed in accordance with all requirements of the Act and all applicable rules and regulations. In such event, when and if the reclamation has been timely performed to the satisfaction of the Board or Division, this Financial Warranty shall be released. If the reclamation shall not be so performed to the satisfaction of the Board or Division, this Financial Warranty shall remain in full force and effect.

This Financial Warranty shall be subject to forfeiture whenever the Board determines that any one or more of the following circumstances exist:

1. A Cease and Desist Order entered pursuant to Section 34-32-124 of the Act has been violated, and the corrective action proposed in such Order has not been completed, although ample time to have done so has elapsed; or
2. The Operator is in default under its Performance Warranty, and such default has not been cured, although written notice and ample time to cure such default has been given; or
3. The Operator and/or the Warrantor has failed to maintain its Financial Warranty in good standing as required by the Act; or
4. The Warrantor no longer has the financial ability to carry out its obligations in accordance with the Act.

The description of lands herein is for convenience of reference only, and no error in such description, nor any revision of the permitted mining area, nor the disturbance by the Operator of lands outside of the permitted mining area shall alter or diminish the obligations of the Operator and/or Warrantor hereunder, which shall extend to the reclamation of all such lands disturbed.

If this Financial Warranty applies to National Forest System lands, and if this Financial Warranty is accepted by the United States Forest Service ("U.S.F.S.") as the bond required under 36 C.F.R. 228.13, then the Operator, having requested that the Board and the U.S.F.S. accept this single Financial Warranty in lieu of the separate bonds which would otherwise be required by applicable law, hereby agrees that, notwithstanding any other provision hereof, or of law, this Financial Warranty shall remain in full force and effect until U.S.F.S. has advised the Board by written notice that the Operator's obligations to U.S.F.S., for which this Warranty is executed, have been satisfied, and until the financial warranty has been released by the Board.

If this Financial Warranty applies to lands under the jurisdiction of the State Board of Land Commissioners ("Land Board"), and if this Financial Warranty, in whole or in part, is accepted by the Land Board as the bond required under its applicable law and procedures, then the Operator, having requested that the State accept this Financial Warranty in lieu of the separate bonds which would otherwise be required by the Colorado Mined Land Reclamation Board or Division of Reclamation, Mining and Safety and by the Land Board, hereby agrees that, notwithstanding any other provision hereof, or of law, this Financial Warranty shall remain in full force and effect until the Board is notified in writing by the Land Board that the Operator's obligations to the Land Board, for which this Warranty is executed, have been satisfied, and until the financial warranty has been released by the Board.

If all or any part of the Affected Lands are under the jurisdiction of the Bureau of Land Management, United States Department of the Interior (the "BLM"), and if, at the request of the Operator on this Financial Warranty, the BLM has, pursuant to 43 C.F.R. 3809.1-9, accepted this Financial Warranty in lieu of requiring a separate reclamation bond



payable to the United States, then, notwithstanding any other provision of this Financial Warranty, or of law, the Operator and Warrantor hereby agree that this Financial Warranty shall not be released until the Board is advised in writing by the BLM that the Operator's obligations to the BLM, for which this Warranty is executed, have been satisfied, and until the financial warranty has been released by the Board.

This Financial Warranty may be executed in multiple copies, each of which shall be treated as an original, but together they constitute only one agreement, the validity and interpretation of which shall be governed by the laws of the State of Colorado.

The provisions hereof shall bind and inure to the benefit of the parties hereto and their successors and assigns.

SIGNED, SEALED AND DATED this 10th day of February, 2022.

Western Surety Company (SEAL)

Warrantor

By: 

Elizabeth Ostblom, Attorney-in-Fact

Brannan Sand & Gravel Company, LLC (SEAL)

Operator

By: 

CFO/Sec

#### NOTARIZATION OF WARRANTOR'S ACKNOWLEDGEMENT

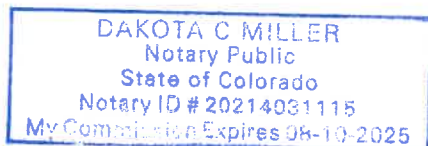
STATE OF CO )  
 ) ss.  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me this 10th day of February, 2022,

by Elizabeth Ostblom as Attorney-in-Fact of Western Surety Company.

  
NOTARY PUBLIC Dakota C. Miller

My Commission expires: August 10, 2025



NOTARIZATION OF OPERATOR'S ACKNOWLEDGEMENT

STATE OF CO )  
COUNTY OF Wams ) ss.

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of February 2022

by Ann Van Postleit as CFO/Secretary of Brannan Sand & Gravel Company, LLC.



Melinda A Catlin  
NOTARY PUBLIC

My Commission expires: 01/06/2024

APPROVED:

State of Colorado  
Mined Land Reclamation Board  
Division of Reclamation, Mining and Safety

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Division Director

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Elizabeth Ostblom, Individually**

of, Denver, CO, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

Surety Bond No.: [REDACTED]

Principal: Brannan Sand & Gravel Company, LLC

Obligee: State of Colorado, Division of Reclamation, Mining and Safety

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 16th day of June, 2021.



WESTERN SURETY COMPANY

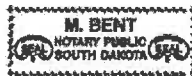
Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 16th day of June, 2021, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

March 2, 2026



M. Bent, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 10th day of February, 2022.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Form F4280-7-2012

Go to [www.cnasurety.com](http://www.cnasurety.com) > Owner / Obligee Services > Validate Bond Coverage, If you want to verify bond authenticity.

#### **Authorizing By-Law**

#### **ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY**

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.