



DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
400 ROOD AVENUE, ROOM 224
GRAND JUNCTION, CO 81501-2520

DEPARTMENT OF THE ARMY PERMIT

Permittee: Colorado Stone Quarries, Incorporated (CSQ)
Attn: Jean St-Onge, General Manager
1734 Highway 50
Delta, Colorado 81416
jean@csqmarble.com

Permit Number: **SPK-2019-00889**

Issuing Office: U.S. Army Engineer District, Albuquerque
Corps of Engineers
4101 Jefferson Plaza NE
Albuquerque, NM 87109-3435

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

This permit authorizes the work activities that were conducted in November 2018, along with aquatic resource compensatory mitigation activities that are required by this permit. All future activities must be performed in accordance with the terms and conditions specified below. A notice of appeal options is enclosed.

Project Description:

The Marble Mine Expansion project work activities involved diverting 1,748 linear feet (0.60 acre) of Yule Creek into a constructed channel that travels 1,689 linear feet (0.58 acre) around the eastern side of a large marble outcropping known as the Franklin Ridge. A 5-foot-wide corrugated metal culvert was placed at the point of diversion to create access to the east side of the constructed (eastern) channel. CSQ then used explosive charges on the western hillside to fill the former western channel with 97,000 cubic yards of native fill materials. Additional materials were placed atop the western alignment of Yule Creek to create the primary access to the existing mining operation. A metal panel was also placed in the constructed channel, directly above the culvert, to facilitate understanding of stream flows.

Additional mitigation activities that are being required by special condition of this permit includes ecological enhancement of the constructed Yule Creek channel, replacement of the 5-foot-wide corrugated culvert with a 31-foot-wide span road crossing over Yule

Creek, removal of the metal panel within Yule Creek, and enhancement of Mud Gulch and adjacent wetlands at the Country Road 3c crossing.

Project Location:

The approximately 13-acre project site is located on Yule Creek at the Pride of America Mine, approximately 3 miles south of the Town of Marble, centered at Latitude 39.036826°, Longitude -107.168673°, Gunnison County, Colorado, and can be seen on the Marble USGS Topographic Quadrangle.

Permit Conditions:

General Conditions:

1. This permit is dated **February 24, 2022**. The time limit for completing the work activities required by this permit expires on **February 24, 2024**. However, permit requirements have more specific time limits. Mitigation activities may extend beyond the required timeframes, if approved by the Corps. If you find that you need more time to complete the mitigation activities, submit your request for a time extension to this office for consideration prior to permit expiration.
2. You must maintain the work activities and mitigation activities authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activities, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activities, or should you desire to abandon them without a good-faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activities authorized by this permit, you must immediately notify this office of what you have found. We will initiate the federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is enclosed if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activities at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

Special Condition 1: You shall comply with all terms and conditions of the enclosed, January 21, 2021, *Section 401 Water Quality Certification*.

Special Condition 2: You shall implement the enclosed *Memorandum of Agreement Between the United States Army Corps of Engineers and the Colorado State Historic Preservation Office and Colorado Stone Quarries, Inc. Yule Creek Relocation Project* (MOA), executed on January 25, 2022, and signed by the Colorado Stone Quarries, the Colorado State Historic Preservation Officer, and the Corps. The Corps has been designated the lead federal agency responsible for implementing and enforcing the MOA as signed. If you fail to comply with the implementation and associated enforcement of the MOA, the Corps may determine that you are out of compliance with the conditions of your permit and suspend the permit. Suspension may result in modification or revocation of the authorized work.

Special Condition 3: You shall implement mitigation activities within the eastern channel as described in the March 22, 2021, Technical Memorandum: Yule Creek Functional Assessment and March 22, 2021, Yule Creek Mitigation Plans design drawings. To minimize impacts to aquatic resources during construction, you shall complete all mitigation activities within the active channel of Yule Creek between August 1 and September 15 and within 1 year following the date of this permit decision. You shall notify the Corps within 7 days following initiation of these mitigation activities and then again within 7 days following completion of these activities.

Special Condition 4: To ensure success of the mitigation activities required in Special Condition 3, you shall monitor the eastern channel for a minimum of 5 years or until the performance standards described in the March 22, 2021, Yule Creek Monitoring Plan are met, whichever is greater. This period shall commence upon completion of the construction of the required mitigation activities. You shall demonstrate continued success of the mitigation activities, without human intervention, for 3 consecutive years after the final performance standards have been met, which may run concurrent with the minimum 5-year monitoring period. If the mitigation activities are not meeting the required performance standards at any time, the permittee shall propose corrective or remedial action for Corps approval. The Corps may also determine that the mitigation activities are not in compliance and require remedial action, including the identification of additional compensatory mitigation.

Special Condition 5: To ensure successful enhancement of the eastern channel in accordance with 33 CFR 332.3(n), you shall establish a financial assurance in the form of the Colorado State held Financial Warranty with the Colorado Division of Reclamation, Mining, and Safety. The type, language, and amount of the financial assurance must be approved, in writing, by the Corps. You shall submit proof of the establishment of the financial assurance to this office for Corps review and approval prior to initiation of construction activities in waters of the United States authorized by this permit.

Special Condition 6: To compensate for the loss of aquatic resource impacts sustained during the diverting and filling of Yule Creek and the temporal impacts that have and will continue to occur until the eastern channel is enhanced, you shall conduct your compensatory mitigation activities as described in the September 17, 2021, Proposed Improvements to the Mud Gulch and County Road 3c, Marble, Colorado. The specific design details have not been finalized due to the need for approvals by both the U.S. Forest Service (USFS) and Gunnison County, but the newly aligned Mud Gulch channel must offer at least a 12-foot-wide, unimpeded flow path under County Road 3c and all temporarily disturbed areas shall be restored. Further, willow species shall be planted within all potential wetland areas adjacent to the new channel. Once the USFS and county approvals are acquired, you shall submit the final design plan to the Corps for approval prior to implementing the project. You shall gain the necessary approvals and conduct the mitigation activities associated with Mud Gulch within 1 year following the date of this permit decision. You shall notify the Corps within 7 days following initiation of these mitigation activities and then again within 7 days following completion of these activities.

Special Condition 7: To ensure success of the compensatory mitigation activities located at Mud Gulch and required in Special Condition 6, you shall provide the Corps with an as-built survey of the project within 30 days following completion of construction. You shall also monitor the project area for a minimum of 5 years by documenting the stability and function of the related structures to ensure that they are functioning as designed. This period shall commence upon completion of the construction activities at the Mud Gulch project area. If the compensatory mitigation site is not functioning as designed, the permittee shall propose corrective or remedial action(s) for Corps approval. The Corps may determine that the compensatory mitigation activities are not in compliance and require remedial action, including the identification of alternative compensatory mitigation.

Special Condition 8: You shall submit annual monitoring reports to the Corps by October 1st for each year of the 5-year monitoring period for both the eastern Yule Creek channel enhancement and compensatory mitigation required in Special Conditions 3 (Yule Creek) and 6 (Mud Gulch), respectively. Submittal of monitoring reports shall continue until the performance standards have been met as according to

Special Conditions 4 and 7, respectively.

Special Condition 9: To further compensate for the loss of aquatic resource impacts sustained during the diverting and filling of Yule Creek and the temporal impacts that have and will continue to occur until the eastern channel is enhanced, you shall establish a preserved area, where no future anthropogenic disturbance will occur, as shown on the Response to Request for Additional Information (June 17, 2021) dated July 19, 2021 and addendum dated August 8, 2021. The preserved area shall be established as part of your permit with the Colorado Division of Reclamation, Mining, and Safety. You shall submit proof of the establishment of the preserved area to this office for Corps review and approval prior to initiation of construction activities in waters of the United States authorized by this permit.

Special Condition 10: Your responsibility to complete the required enhancement and compensatory mitigation activities as set forth in Special Conditions 3 - 9 will not be considered fulfilled until you have demonstrated all mitigation success and have received written verification from this Corps office.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization:

a. This permit does not obviate the need to obtain other federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed federal projects.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant.

Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the work activities and mitigation activities authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activities or a

reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.



Jean St-Onge, General Manager
Colorado Stone Quarries, Incorporated

03/03/2022
Date

This permit becomes effective when the federal official, designated to act for the Secretary of the Army, has signed below

Kara Hellige
Chief, SW Colorado Branch

Date

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

Name _____
Title _____
Transferee

Date