

STATE OF
COLORADO

Ebert - DNR, Jared <jared.ebert@state.co.us>

Baurer and Wattenberg - Re: Wattenberg Permit Questions

Ebert - DNR, Jared <jared.ebert@state.co.us>

Thu, May 12, 2022 at 10:37 AM

To: chance.allen@lafargeholcim.com, Neil Whitmer <neil.whitmer@lafargeholcim.com>

Cc: Peter Hays <peter.hays@state.co.us>

Good morning Chance and Neil,

Please see the email below from Sherie Gould. She is raising allegations that we would like some clarity on, can you please provide a response to these allegations?

Thank you,

Jared

----- Forwarded message -----

From: <mcsfh157@aol.com>

Date: Wed, May 11, 2022 at 3:22 PM

Subject: Re: Baurer and Wattenberg - Re: Wattenberg Permit Questions

To: jared.ebert@state.co.us <jared.ebert@state.co.us>

Cc: peter.hays@state.co.us <peter.hays@state.co.us>

Hello Jared,

Regarding your last email, . . . I have been chewing on the subject of AI's "omission" act for some time. If I had a seller who signed a listing agreement representing that he/she/they were the sole owner of a property, (and unlike the DRMS, our state approved contract does NOT have anything emphasizing that the *"statements ... are being made under penalty of perjury and that false statements made herein are punishable as a Class 1 misdemeanor"* - like your permit application does - no less right above the signature), and then after the fact the seller admitted they had a spouse, family member, partner, etc. who also had ownership rights, . . . the gravity or illegality of that initial act would NOT go away or be excused merely because they now wanted to, OR were required to, add them to make things correct/right/legal.

In our contracts there is endless small print and LOTS of blanks - so there could be (in all fairness) a blank that could get missed and therefore the information is accidentally omitted. However, in the DRMS application, it is not that AI omitted the ownership (Exhibit O) page, (pretty much BLANK/empty page where the only requirement is to state the owners), they didn't omit that at all - AI just stated that they (and Westminster) were the only owners - not a minor detail or insignificant thing - and not something that could be deemed a misunderstood question.

When I originally heard about all this I tried to find rationale or an excuse, thinking that perhaps Chance Allen was either clueless or extremely careless. AI's deed to their land is (to put it nicely) a bit subpar (meaning generally deeds are written more concisely to specify what all is being transferred and to also reflect what the title is subject to - (so I thought perhaps Chance didn't know that there was shared ownership rights). However, when I was finally able to reach Carl Eiberger, I was VERY SPECIFIC in my questions to him about all of this -- the deeds, the history, timing of actual knowledge (both with AI and Blue Earth), etc., and there was definitely NO lack of knowledge from Chance/AI and Blue Earth about the ownership. Furthermore, it would really be reaching to attempt to define this as carelessness.

Whatever Carl Eiberger's stance is on AI's mining, . . . should that affect or matter in how an operator, making a false statement under penalty of perjury, is treated - or their behavior is excused? The City of Aurora (per Rich Vidmar) didn't take issue with AI's mining out of bounds - but that didn't seem to matter in how this standard/rule was treated/handled by the DRMS.

In case the DRMS does not have them, I am attaching the deeds and easements/agreements that I have come across that show the joint ownership (of a number of things) between AI and Carl Eiberger - including water and minerals.

In regards to my comments before on the Stillwater Ski Lake and roads, etc., (Baurer Permit), according to the Code of Colorado Regulations there appears to be an actual definition of structure:

"**Structure**; Significant, Valuable and Permanent Man-made " means a non-portable improvement to real property which has defined, current and recognizable value of an economic nature; generally including but not limited to: buildings, houses, barns, fences, above or below ground utilities, irrigation ditches, maintained or public roads, bridges, railroad tracks, cemeteries, communication antennas, pipelines, water wells, water storage structures, discharge and conveyance structures, etc. 115(4)(d)"

Maybe I missed it but the lake wasn't even a listed structure by AI in the Baurer application (maybe I missed it?) - not to mention there is a 50% shared ownership of the structure (on AI's land) and no structure agreement on it. Is there a rule that waives this if the applicant has partial ownership? And if so, is there a percentage of ownership they need to have to have that requirement waived? And what about the ditches not being listed? (I think there was three?)

Also, any progress/update/findings on my last "complaint" (sorry that word makes me laugh) re: AI's mining activities outside of the Wattenberg Permit (on the south side)?

Thank you so much for your time in all of this!

Sherie

Sherie Gould, GRI

Broker Associate

Sterling Real Estate Group, Inc

303.919.1703 Cell

-----Original Message-----

From: Ebert - DNR, Jared <jared.ebert@state.co.us>

To: SHERIE GOULD <mcsfh157@aol.com>

Cc: peter.hays@state.co.us <peter.hays@state.co.us>

Sent: Wed, Apr 20, 2022 3:27 pm

Subject: Re: Baurer and Wattenberg - Re: Wattenberg Permit Questions

Hi Sherie,

We cited AI with a problem in our inspection report regarding your first complaint pertaining to their markers. They surveyed the area in question and remarked the boundary. That is the standard enforcement action we take when it comes to markers, we typically do not hold a hearing on this issue unless the operator refuses to survey and re-mark the boundary. The information you provide regarding the ownership is interesting to say the least. At the time of our review we found the documentation they submitted to comply with our right of entry requirements, if Mr. Eiberger did not believe AI had legal right to enter I would have assumed that he would have objected to the application. Daniel Cunningham with DRMS cited the omission of Mr. Eiberger as an owner in his initial review of the application and AI revised their submittal accordingly.

Roads upgraded or improved for the mining operation need to be within the approved permit and affected land area, otherwise we do not have any specific regulations that govern access/entrance roads. If the roads are part of the mining operation, we ask them to define for us if the road will remain after reclamation or if the road area will be reclaimed. We have no jurisdiction over who is entitled to travel or use roads. Roads within the mining area move and shift frequently to accommodate mining and we allow for that.

Thanks,

Jared

On Tue, Apr 19, 2022 at 10:45 AM <mcsfh157@aol.com> wrote:

Hi Jared,

My question about the violation that AI was charged with (re: the activity on Aurora's land - December letter) was relative to the requirement of "Signs and Markers" - meaning an operator could comply (have the required markers) but intentionally spill over to adjacent or out of boundary land, or, . . . perhaps they might operate WITHOUT the required markers and therefore be unable to discern if they were in or out of boundaries. It is my understanding that there were no markers and that it was Aurora's survey that provided markers and illuminated the problem - so I was just wondering why the lack of markers wasn't part of that violation. I apologize as perhaps they were in the violation and I missed it?

Regarding the records (I was able to review) on the ownership of what is termed as "Stillwater Ranch" (180 acres in total that encompasses both AI and Eiberger land), there is joint ownership of a variety of things. While the Baurers (previous owners of AI land) did convey their particular ownership/interest to AI, you cannot convey more than you rightfully own - and per the recorded documents that I could find, there was a specific "Stipulation and Cross-conveyance" that gave each party only 50% ownership rights in all minerals (even defining minerals to ADDITIONALLY include dirt, topsoil, structural fill) and 50% ownership in the water, the water rights, wells, etc. - across the entire 180 acres - and these documents do not differentiate between surface and subsurface ownership. Additionally, there is another agreement "Joint Ownership and Easement Agreement" that further addresses joint ownership and the intent to operate both parcels (AI's and Eiberger's) as one unit (Stillwater Ranch) - shared operation, expenses/income, access, etc. (even references roads, fences, plantings), and highlights the specific feature of the Ranch (the water-ski lake) and the intent of it for the use and enjoyment of owners and guest. Perhaps there have been some new agreements, or agreements not recorded, but I have looked and aside from some gas and oil rights being sold, have not found any.

When AI filed the Baurer permit, they specifically left Eiberger off as having any mineral ownership (little alone 50%) and additionally he was not included in any "notice" that was required to be sent out. I had reached out to Daniel(?) at the DRMS (the individual handling Baurer at the time) and discussed my concerns with him (on a couple of occasions) (last time he said he couldn't comment relative to what I recalled him saying was pending litigation) and I never did get a clear understanding as to how the DRMS was viewing what all had transpired. Additionally, when I looked Stillwater Lake up at the DWR, it is listed as a structure - but AI (even if they are claiming it as 100% theirs) didn't even list it as one while they did list roads, fences, gates, culverts, wells, etc.

Regarding my last question on access, I didn't know if there was any set rules at the DRMS that governed access/entrance roads (to a mining operation) AND who all is entitled to travel on them/use them, or how much these are allowed to move/shift. The original Wattenberg mining map (south border) indicated a fence that appeared to separate the roads and ditches, (at least one ditch is listed at the DWR). The north road appeared to provide access to Aurora's property to the east as well as access to some gas and oil interests and utilities/gas line - or any other easement holder. The south road appeared to be a private entrance to the Stillwater Ranch (where it appears they've moved mining traffic to) and there looks to be a home back there. I was aware that AI mined through what was intended to be Westminster's access road (this was supposed to be one of the things they are working through) and looking at all of it from a real estate perspective (i.e. situations I've encountered relative to problems with underwriting and insurers because of access issues), and I just wondered if there was any rules or requirements from the DRMS side that would affect who or how someone could access these roads or that area - or for that matter function on or over a pressurized gas line? I am sure in an emergency an ambulance, fire/police would use whatever route was available, but wondered how legal, open, or available that would be. Hope that helps explain?

Thank you for your time in all this!

Sherie

Sherie Gould, GRI

Broker Associate

Sterling Real Estate Group, Inc

303.919.1703 Cell

-----Original Message-----

From: Ebert - DNR, Jared <jared.ebert@state.co.us>

To: SHERIE GOULD <mcsfh157@aol.com>

Cc: peter.hays@state.co.us <peter.hays@state.co.us>

Sent: Mon, Apr 18, 2022 9:05 am

Subject: Re: Wattenberg Permit Questions

Hi Sherie,

My understanding is Peter has been in verbal communication with AI regarding your recent complaint and has been working on coordinating an inspection after the survey was completed. He did cite the boundary markers as a problem in the inspection report for the violation and AI surveyed the area in question and replaced the markers, however that survey focused in on the area of concern I believe. My understanding is after your most recent

complaint, we contacted AI and we wanted to ensure the boundaries were accurately marked for the area in question.

Regarding the Baurer Pit and the Still Water Ski Lake, there are provisions in place to protect the hydrologic balance and mining is offset from the lake. Also, AI is the surface owner of the lake area within 200 feet of the affected land and the lake is labeled on the Exhibit C Map. We do not require an operator to get a structure agreement with themselves. Eiberger's interests in the lake pertain to the water rights I believe, which AI is obligated to protect. There is a water level monitoring plan in place.

You raise a serious accusation. I was aware of a disagreement or dispute between Mr. Eiberger and AI, though I do not recall the details, but we were presented with documentation of AI's legal right to enter. Mr. Eiberger was fully aware of the application and I know he had multiple conversations with DRMS staff but in the end he did not object to the application or otherwise present evidence that AI did not have the right to conduct mining on the property that I am aware of.

I am not sure I understand your last question, could you clarify?

Jared

On Fri, Apr 15, 2022 at 12:15 PM <mcsfh157@aol.com> wrote:

Hi Jared,

I truly understand how busy everyone is. Given Peter's immediate response to AI I had just figured that there would have been communication on the subject (or something) that would have occurred and been posted by now.

So goofy question, . . . since an operator is required to have clearly visible markers for their boundaries, and because AI did not, the out of bounds activity occurred on Aurora's land (and it was Aurora's survey that clearly illuminated the problem and provided for AI what they should have provided themselves), then why wasn't that rule/requirement also part of the violation that AI was charged with?

Regarding the Baurer Pit, when I compared the permit mining maps, I noted that the Stillwater Ski Lake was not even listed as a structure within 200' (though it is listed at the state level) - nor does it reflect the 50% ownership of Carl Eiberger in that lake (among other things). How come that was accepted or allowed?

Back in 2020 when the Baurer Pit was initially applied for, there was some very interesting hearsay going around about the application and about AI trying to circumvent a land owner/mineral owner (and not accidentally), and that they had committed perjury in their application. Not believing it, I did a lot of digging and made a lot of phone calls and it turns out that the land owner referred to was Carl Eiberger and that there was no way that Blue Earth or AI were unaware of the ownership or rights in multiple facets (not just mineral) of that property (easements/rights, deeds, and other history/paperwork - old and recent history confirm it) and there is no way those entities could be so sloppy as to miss such a significant detail (in multiple ways). I know real estate is a different ball game, but that kind of thing would never be tolerated or excused in our industry.

On a different note, in your investigation, will it be determined what legal entry AI, Aurora, Westminster, Xcel energy, Stillwater Ranch, fire/safety, other easement holders, etc. will have use of for access or entry?

Thank you! I appreciate your time!

Sherie

Sherie Gould, GRI

Broker Associate

Sterling Real Estate Group, Inc

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-----Original Message-----

From: Ebert - DNR, Jared <jared.ebert@state.co.us>

To: SHERIE GOULD <mcsfh157@aol.com>

Cc: peter.hays@state.co.us <peter.hays@state.co.us>

Sent: Fri, Apr 15, 2022 6:35 am

Subject: Re: Wattenberg Permit Questions

Good morning Sherie,

As long as the conveyor does not increase the acreage of the affected land and does not have a significant impact on the approved mining or reclamation plan, an amendment would not be required.

My staff, including Peter, have been very busy and I would ask for your patience as we manage the many projects we have going including your complaint. We make every effort to address concerns as timely as possible. Since your complaint, we have reviewed the mining plan maps and recent aerial imagery, and it seems some land may have been affected outside of the Wattenberg Lakes boundary slightly. We have asked that the property be surveyed which I was told was completed this week so that a more accurate idea of the amount of land possibly affected outside the permit boundary can be determined. Now that the survey is complete, Peter will inspect the site next week. The land possibly affected is owned by Aggregate Industries. AI has submitted the Financial and Performance Warranty for the adjacent Baurer Pit (M-2020-058) and we expect to be issuing that permit today or early next week. In which case the land possibly affected would be within that permit area. The investigation is ongoing.

Thank you for reaching out, should you have any more questions please feel free to contact Peter or myself.

Jared

On Thu, Apr 14, 2022 at 4:07 PM <mcsfh157@aol.com> wrote:

Hello Peter,

Regarding the Wattenberg permit, could you clarify if any amendment to the permit would be required if AI chose to run two conveyors in the permit area - either on the ground or across the Platte River?

Also, it has been four weeks and I hadn't seen any findings or inspection posted on my query (complaint?) about the southern boundary spillover and what was ultimately discovered. Any determination or update there?

Thank you!

Sherie

Sherie Gould, GRI

Broker Associate

Sterling Real Estate Group, Inc

303.919.1703 Cell

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Jared Ebert

Senior Environmental Protection Specialist

***I am working remotely, please feel free to call my cell at (720) 413-6466**

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P 303.866.3567 ext. 8120 | F 303.832.8106 |

Physical: 1313 Sherman Street, Room 215, Denver, CO 80203

Mailing: DRMS Room 215, 1001 E 62nd Ave, Denver, CO 80216

jared.ebert@state.co.us | <https://drms.colorado.gov/>

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4 attachments



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2533914-1 Cross Stipulation Baurer Eiberger.pdf
341K



EasementStillwater3432612-1.pdf
323K



Decree for the Stillwater Lake Structure.pdf
1383K