



**COLORADO**  
Division of Water Resources  
Department of Natural Resources

November 17, 2022

Jeffrey A. Clark/David M. Heintz, P.E.  
BBA Water Consultants, Inc.  
333 West Hampden Ave., Suite 1050  
Englewood, CO 80110

**Re: Parkdale Project Substitute Water Supply Plan  
DRMS File No. M-97-054  
Sec. 12, Twp. 18S, Rng. 72W, 6th P.M.  
Water Division 2, Water District 12  
SWSP ID 2654, WDID 1207022**

**Approval Period: October 1, 2022 through September 30, 2023**  
*Contact Information: 303-806-8952; jclark@bbawater.com*

Dear Mr. Clark and Mr. Heintz,

We have received your August 1, 2022 and September 14, 2022 letters requesting the renewal of a substitute water supply plan ("SWSP") pursuant to §37-90-137(11), C.R.S., for a sand, gravel, and granite mine known as the Parkdale Project, and operated by Martin Marietta Materials ("Applicant"). The most recent SWSP was approved January 13, 2022 for the period October 1, 2021 through September 30, 2022. The mine is permitted with the Division of Reclamation, Mining, and Safety under file no. M-97-054. The \$257 renewal fee has been received and given receipt no. 10023636.

## **SWSP OPERATION**

The Parkdale Project is located approximately 12 miles west of Cañon City on the north bank of the Arkansas River, as shown on the attached Figure 1. The DRMS permit for this mining operation allows for production of sand, gravel, and granite. For the term of this SWSP, depletions are reported to occur from evaporation from the groundwater exposed as a result of previous sand and gravel mining operations, dust control, material washing, and water retained in product hauled off site. All source materials mined in this project are crushed and used for asphalt, concrete, railroad ballast, and other construction-related products.

In accordance with the letter dated April 30, 2010 from the Colorado Division of Reclamation, Mining, and Safety ("DRMS"), mining operators must comply with the requirements of the Colorado Reclamation Act and the Mineral Rules and Regulations for the protection of water resources. The April 30, 2010 letter from DRMS requires that you provide information to DRMS to demonstrate you can replace long term injurious stream depletions that result from mining-related exposure of groundwater.



In accordance with approach nos. 1 and 3, you have indicated that a bond has been obtained for \$1,145,736 through DRMS to assure that depletions from groundwater evaporation do not occur in the unforeseen event, or events, which would lead to the abandonment of the Pit. In addition, Martin Marietta Materials owns and has dedicated five shares of Twin Lakes Reservoir and Canal Company to cover these potential long-term depletions. Martin Marietta Materials must continue to commit those shares to this plan until such time as the State Engineer authorizes the release of this commitment.

## DEPLETIONS

The depletions that result from the mining operation over the period of this SWSP include dewatering, evaporation, and mining operational losses (including water retained in product hauled off site). Evaporation losses will result from the exposure of groundwater in the settling ponds, an aggregate washing pond, and dewatering trenches. The maximum exposed water surface area during this SWSP period is 5.0 acres, and will be maintained at 5 acres by pairing backfilling operations for reclamation with dewatering operations. During the actual operations under this approval period, the Applicant will note the actual exposed surface water in monthly accounting submittals and calculate lagged depletions and replacements accordingly.

Gross annual evaporation at the mining operation is estimated to be 46.0 inches per year and the monthly distribution is as depicted on the attached Table 1. Net evaporation is defined as gross evaporation less the consumptive use of water by vegetation that naturally occurred at the site prior to construction of the pit. The historical consumptive use was assumed to be equal to the effective precipitation, which was estimated as 70% of the 12.51 inches of average annual precipitation based on data from the Cañon City weather station over the period 1893 through 2016. The net evaporation volume for the exposed water surface is 15.51 acre-feet per year with a monthly distribution as shown on the attached Table 1.

Table 1 shows a monthly breakdown of the depletions under this SWSP on the attached Table 2, which includes 15.51 acre-feet of net evaporative loss, 6.32 acre-feet of water lost in product (based on an estimated 429,500 tons of washed aggregate and 226,400 tons of unwashed aggregate), and 25.25 acre-feet for on-site dust control, for a total consumptive use of 47.08 acre-feet. The total lagged depletions are 45.90 acre-feet.

The IDS Alluvial Water Accounting System (“AWAS”) stream depletion model was used to determine the lagged depletions from dewatering, evaporation and operational losses to the Arkansas River. The aquifer characteristics used in the model are: transmissivity (T) = 55,000 gallons per day per foot and specific yield (SY) = 0.2, the distance of the exposed ground water to the stream = 1,400 feet (measured from the centroid of the exposed ground water surface), and the location of the parallel impermeable boundary was estimated to be 2,650 feet from the stream.

The Applicant has also requested the ability to pump directly from the Arkansas River for dust suppression and material washing purposes. Depletions associated with pumping directly from the river will be considered instantaneous depletions and will be accounted for accordingly.

## SITE DEWATERING

The Applicant began dewatering the Parkdale Pit in 2012 to assist in the mining of material below the groundwater table. The water is removed from the ground and placed into a series of dewatering trenches. This water will be eventually piped and then discharged on the north side of the property boundary into Currant Creek which is a tributary to the Arkansas River. All water pumped from the pit reaches the Arkansas River within the same month it is pumped. The Applicant will monitor the dewatering operations and include the data in their monthly accounting submittals to the State Engineer's Office.

## REPLACEMENTS

The proposed sources of replacement water for this pit include a three-year lease of up to 50 acre-feet per year of fully consumable water from the Board of Water Works of Pueblo ("PBWW"), valid April 1, 2021 through March 31, 2024 (attached), and the applicant's ownership of 5 shares of Twin Lakes Reservoir and Canal Company stock, which are estimated to yield up to 3.5 acre-feet/year of credit generated by the transmountain portion of Twin Lakes Reservoir. The PBWW water will be provided at the City of Pueblo wastewater treatment plant located east of Pueblo when adequate exchange potential exists to make that replacement water available at the Parkdale Project site. When there is insufficient exchange potential to utilize reusable effluent, the PBWW will release water from upstream storage at Twin Lakes Reservoir. Upstream reservoir releases will be subject to a 0.07 percent per mile river transit loss, which equates to approximately 6.55 percent from Twin Lakes to Parkdale.

The SWSP request indicates that Martin Marietta Materials has an additional backup supply for this project from a 50 acre-foot lease with Cañon City Water Department. In an email dated November 17, 2022, BBA indicated that Martin Marietta Materials will not be using the Cañon City lease during this SWSP approval period, so this source of water is not approved by this SWSP. If a lease of water from Cañon City will be used in a future SWSP, a new lease should be submitted for this water, with an explanation of the source of the water, and proof that the water is available for use as augmentation water.

## CONDITIONS OF APPROVAL

I hereby approve the proposed SWSP in accordance with §37-90-137(11), C.R.S., subject to the following conditions:

1. This SWSP shall be valid for the period of October 1, 2022 through September 30, 2023, unless otherwise revoked or superseded by decree. If this SWSP will not be made absolute by a water court action by the plan's expiration date, a renewal request must be submitted to this office and the Division 2 Office (please copy Bethany Arnold at [Bethany.Arnold@state.co.us](mailto:Bethany.Arnold@state.co.us)) with the statutory fee by **August 1, 2023**. If a renewal request is received after the expiration date of this SWSP, it may be considered a request for a new SWSP, in which case a \$1,593 filing fee will apply.
2. Well permit no. 78822-F was obtained for the current use and exposed pond surface area of the gravel pit in accordance with §37-90-137(2) and (11), C.R.S. WDID 1205065 is assigned to the gravel pit structure and should be included in all reporting.

3. The total surface area of the groundwater exposed at the Parkdale Project site must not exceed 5.0 acres during this SWSP period, which will result in a net annual evaporative loss of 15.51 acre-feet.
4. The annual amount of water used at the operation shall not exceed 25.25 acre-feet for dust control and 6.32 acre-feet for water lost in the mined product. The washed mined product will be charged a depletion of 2 percent by weight of the material, and the unwashed product (mined above the water table) will be charged a depletion of 0 percent by weight of the material.
5. Total consumption at the Parkdale Project site must not exceed the aforementioned amounts unless the Applicant obtains a new SWSP for such additional amounts. The Applicant must replace all out-of-priority depletions resulting from operation under this SWSP, including those lagged depletions that occur to the stream after the expiration date of this SWSP.
6. Approval of this SWSP is for the purposes as stated herein. Any additional uses of groundwater must first be included in a new SWSP approved by this office.
7. Any water used for aggregate washing ponds that does not infiltrate within 24 hours may require submittal of a new SWSP to include additional areas of exposed water surface subject to evaporation, and to include additional replacement supplies. Field visits by the Water Commissioner may be made to confirm that the maximum surface area of exposed ground water allowed by this plan (5.0 acres) is not exceeded.
8. All pumping for product washing and dust control shall be measured in compliance with the Amended Rules Governing the Measurement of Tributary Ground Water Diversions Located in the Arkansas River Basin.
9. The Applicant shall provide adequate accounting (including, but not limited to diversions, depletions, and river calls) on a monthly basis. The accounting must be submitted to the Division Engineer via the online submittal tool. Please contact Kassidy Davis at [Kassidy.Davis@state.co.us](mailto:Kassidy.Davis@state.co.us) to set up an account with the subject line "Parkdale Gravel Pit SWSP". Accounting must be submitted within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification.
10. Approval of this SWSP does not relieve the Applicant and/or the landowner of the requirement to obtain a Water Court decree approving a permanent plan for augmentation or mitigation to ensure the permanent replacement of all depletions, including long-term evaporation losses and lagged depletions after mining operations have ceased. If reclamation of the mine site will produce a permanent water surface exposing groundwater to evaporation, an application for a plan for augmentation must be filed with the Division 2 Water Court at least three (3) years prior to the completion of mining, to include, but not be limited to, long-term evaporation losses and lagged depletions. If a lined pond results after reclamation, replacement of lagged depletions from mining and dewatering shall continue until there is no longer an effect on stream flow.

11. Dewatering at this site will produce delayed depletions to the stream system. As long as the pit is continuously dewatered, the water returned to the stream system should be adequate to offset the depletions. However, once dewatering at the site ceases, the delayed depletions must be addressed. At least three years prior to completion of dewatering at the Parkdale Pit, a plan must be submitted that specifies how the post pumping dewatering depletions (including refilling of the pit) will be replaced, in time, place and amount.
12. In accordance with the letter dated April 30, 2010 from the Colorado Division of Reclamation, Mining, and Safety ("DRMS"), mining operators must comply with the requirements of the Colorado Reclamation Act and the Mineral Rules and Regulations for the protection of water resources. The April 30, 2010 letter from DRMS requires that you provide information to DRMS to demonstrate you can replace long term injurious stream depletions that result from mining-related exposure of groundwater.

In accordance with approach nos. 1 and 3, you have indicated that a bond has been obtained for \$1,145,736 through DRMS to assure that depletions from groundwater evaporation do not occur in the unforeseen event, or events, which would lead to the abandonment of the Pit. In addition, Martin Marietta Materials owns and has dedicated five shares of Twin Lakes Reservoir and Canal Company to cover these potential long-term depletions. Martin Marietta Materials must continue to commit those shares to this plan until such time as the State Engineer authorizes the release of this commitment.

13. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water under this SWSP must cease immediately and the Applicant shall obtain and present to this office an alternate source of replacement water.
14. In accordance with amendments to Section 25-8-202-(7), C.R.S. and "Senate Bill 89-181 Rules and Regulations" adopted on February 4, 1992, the State Engineer shall determine whether or not the substitute supply is of a quality to meet requirements of use to senior appropriators. As such, water quality data or analysis may be requested at any time to determine if the water quality is appropriate for downstream water users.
15. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning this SWSP. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other SWSPs, or in any proposed renewal of this SWSP, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant.

Should you have any questions, please contact Melissa van der Poel of this office or Dan Henrichs, Water Commissioner, in our Division 2 office in Pueblo at (719) 269-2800.

Sincerely,

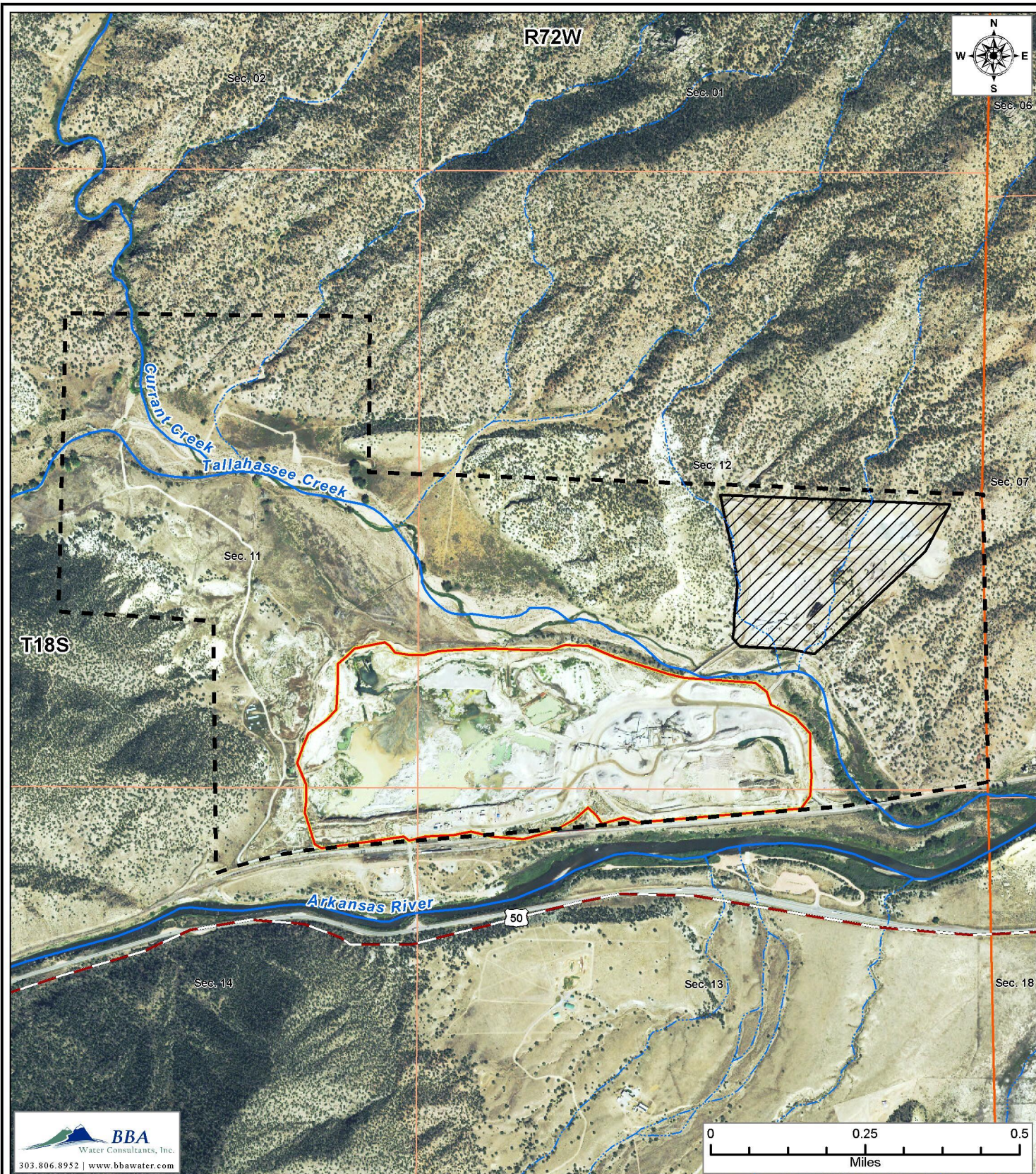
A handwritten signature in blue ink that reads "Jeff Deatherage". The signature is fluid and cursive, with a long horizontal flourish extending from the end.

Jeff Deatherage, P.E.  
Chief of Water Supply

Attachments:           Figure 1  
                              Tables 1 - 2  
                              PBWW Lease Agreement

ec:     Division 2 SWSP Staff  
          Dan Henrichs, District 12 Water Commissioner  
          Division of Reclamation, Mining, and Safety





**Figure 1**  
**Martin Marietta Materials**  
**Parkdale Pit Vicinity Map**

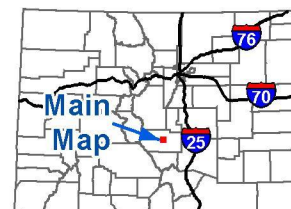
Date: 7/28/2022 | Job No. 1204.16

**Legend**

- Current Alluvial Aggregate Source-
- Current Granite Aggregate Source-
- Property Boundary

Data Source: CDOT, CDSS, USGS, BLM  
 Aerial Photo Date: 9/13/2019 NAIP USDA

**Colorado**





**Table 1**  
**Martin Marietta**  
**Parkdale Pit - Permit No. M-97-054**  
**2022-2023 SWSP Projected Total Depletions**

Month	[1]	[2]	[3]	[4]	[5]	[6]	[7a]	[7b]	[8]	[9]	[10]	[11]	[12]
	Evaporative Depletions						Production Depletions						
	Exposed Area (ac)	Gross Evaporation (ft)	Avg. Total Precipitation (ft)	Effective Precipitation (ft)	Net Evaporation (ft)	Net Evaporation Volume (ac-ft)	Aggregate Production (tons)		Aggregate Production Consumption (ac-ft)	Dust Suppression (ac-ft)	Total Production Depletions (ac-ft)	Total Depletions (ac-ft)	Total Lagged Depletions (ac-ft)
							Crushed (Not Washed)	Washed					
Oct-22	5	0.27	0.07	0.05	0.22	1.11	9,600	35,700	0.53	2.25	2.78	3.88	4.74
Nov-22	5	0.15	0.05	0.04	0.12	0.59	21,600	34,300	0.50	1.25	1.75	2.35	4.14
Dec-22	5	0.11	0.04	0.03	0.09	0.43	0	21,500	0.32	0.75	1.07	1.50	3.36
Jan-23	5	0.11	0.03	0.02	0.09	0.45	7,000	15,000	0.22	0.50	0.72	1.18	2.67
Feb-23	5	0.13	0.04	0.03	0.10	0.52	14,300	20,200	0.30	0.75	1.05	1.57	2.25
Mar-23	5	0.21	0.07	0.05	0.16	0.80	20,500	38,500	0.57	1.75	2.32	3.12	2.31
Apr-23	5	0.34	0.12	0.08	0.26	1.32	23,000	36,600	0.54	2.50	3.04	4.35	2.85
May-23	5	0.46	0.13	0.09	0.37	1.83	34,100	42,900	0.63	2.75	3.38	5.21	3.53
Jun-23	5	0.56	0.09	0.07	0.49	2.45	26,100	37,700	0.55	3.25	3.80	6.25	4.28
Jul-23	5	0.57	0.15	0.11	0.47	2.35	39,700	49,900	0.73	3.25	3.98	6.33	4.97
Aug-23	5	0.52	0.16	0.11	0.41	2.04	23,700	53,600	0.79	3.25	4.04	6.08	5.37
Sep-23	5	0.38	0.08	0.06	0.32	1.62	6,800	43,600	0.64	3.00	3.64	5.26	5.44
Total	-	3.83	1.04	0.73	3.10	15.51	226,400	429,500	6.32	25.25	31.57	47.08	45.90

Notes:

- [1] Equal to the exposed groundwater surface area. The maximum exposed surface area at the site is 5.0 acres and the actual exposed area may vary.
- [2] Total gross evaporation (3.83 feet) is based upon NOAA Technical Report NWS 33 and distributed according to SEO Senate Bill 89-120 criteria for gravel pits below 6,500 feet.
- [3] Equal to the average monthly precipitation at the Cañon City, CO (ID#051294) Western Regional Climate Center weather station for the time period 1893-2016.
- [4] Equal to [3] x 70%.
- [5] Equal to [2] - [4].
- [6] Equal to [1] x [5].
- [7] Aggregate production from mining is based upon information from Martin Marietta (MM).
- [8] All mining during the SWSP period is expected to occur above the groundwater table. Therefore, no water is removed with crushed mined aggregate (not washed) and water removed with washed mined aggregate is equals 4.8 gallons/ton (2% of total mined volume) as specified in the SEO's Gravel Pit SWSP Guidelines. Therefore, [8] is equal to the projected crushed and washed aggregate production (in tons), multiplied by 0 gallons/ton or 4.8 gallons/ton respectively, divided by 325,851 to convert gallons to acre-feet.
- [9] Dust suppression water from the Parkdale Site based upon information from MM.
- [10] Equal to [8] + [9].
- [11] Equal to [6] + [10].
- [12] Depletions are lagged using the Glover methodology in the IDS AWAS model using the following parameters:  
 Transmissivity: 55,000 gallons/day/foot  
 Specific Yield: 0.2  
 Aquifer Width: 2,650 feet  
 Distance from center of pit to river: 1,400 feet  
 \*URFs remain the same as in previous SWSP renewals for the site to maintain consistency.



**Table 2**  
**Martin Marietta**  
**Parkdale Pit - Permit No. M-97-054**  
**2022-2023 Projected Total Lagged Depletions and Replacements**

Month	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	[10]	[11]
	Lagged Depletions			Replacement Sources							Net Effect to the River (ac-ft)
				PBWW			Cañon City	Twin Lakes Shares	Total Replacements (ac-ft)		
	Total Lagged Depletions	Percent of Month Free River (%)	Lagged Depletions Requiring Replacement (ac-ft)	PBWW Lease Water (ac-ft)	Water Delivered from Twin Lakes Reservoir (ac-ft)	Transit Loss (ac-ft)	Total Replacement from Twin Lakes Reservoir (ac-ft)	Total Replacement from Cañon City Water Department (ac-ft)		Twin Lakes Shares HCU Credit (ac-ft)	
Oct-22	4.74	0%	4.74	4.74	0.00	0.00	0.00	0.00		0.00	
Nov-22	4.14	0%	4.14	4.14	0.00	0.00	0.00	0.00	0.00	4.14	0.00
Dec-22	3.36	0%	3.36	3.36	0.00	0.00	0.00	0.00	0.00	3.36	0.00
Jan-23	2.67	0%	2.67	2.67	0.00	0.00	0.00	0.00	0.00	2.67	0.00
Feb-23	2.25	0%	2.25	2.25	0.00	0.00	0.00	0.00	0.00	2.25	0.00
Mar-23	2.31	0%	2.31	2.31	0.00	0.00	0.00	0.00	0.00	2.31	0.00
Apr-23	2.85	0%	2.85	2.85	0.00	0.00	0.00	0.00	0.00	2.85	0.00
May-23	3.53	0%	3.53	3.53	0.00	0.00	0.00	0.00	0.00	3.53	0.00
Jun-23	4.28	0%	4.28	4.28	0.00	0.00	0.00	0.00	0.00	4.28	0.00
Jul-23	4.97	0%	4.97	4.97	0.00	0.00	0.00	0.00	0.00	4.97	0.00
Aug-23	5.37	0%	5.37	5.37	0.00	0.00	0.00	0.00	0.00	5.37	0.00
Sep-23	5.44	0%	5.44	5.44	0.00	0.00	0.00	0.00	0.00	5.44	0.00
Total	45.90	-	45.90	45.90	0.00	0.00	0.00	0.00	0.00	45.90	0.00

**Notes:**

- [1] Equal to [12] in Table 1.
- [2] Equal to the percent of the month under Free River conditions.
- [3] Equal to [1] - ([1]\*[2])
- [4] Total replacement water delivered to the Arkansas River from under PBWW lease agreement to replace depletions at Parkdale Pit. This value does not include replacements made from PBWW's Twin Lakes storage.
- [5] Total replacement water delivered to the Arkansas River from Twin Lakes Reservoir to replace depletions at Parkdale Pit under PBWW lease agreement.
- [6] Total transit loss associated with deliveries from [7]. Based upon 0.07% transit loss per mile and a total distance to the point of depletion of 93.5 miles.
- [7] Equal to [5] - [6].
- [8] Total replacement water delivered to the Arkansas River from Cañon City to replace depletions at Parkdale Pit.
- [9] HCU from Twin Lakes Shares owned by MM used to replace depletions from the Parkdale Pit.
- [10] Equal to [4] + [7] + [8] + [9].
- [11] Equal to [3] - [10].

## WATER LEASE AGREEMENT

This AGREEMENT is made and entered into effective as of the 22<sup>nd</sup> day of January, 2021 (hereinafter called "Effective Date"), by and between Pueblo, a municipal corporation, acting by and through the Board of Water Works of Pueblo, Colorado (hereinafter called "Pueblo Water") and Front Range Aggregates, LLC, (hereinafter called "Lessee") by its sole member Martin Marietta Materials, Inc.

### RECITALS

WHEREAS, the water use that is the subject of the Agreement is of a type not normally within any regular rate schedule fixed by Pueblo Water; and the parties mutually agree that the terms for the lease of water for the purpose hereinafter set forth should be the subject of this special Agreement; and,

WHEREAS, Lessee desires to procure raw water from Pueblo Water for replacement of depletions resulting from its mining operation in Fremont County, Colorado; and,

WHEREAS, Pueblo Water desires to supply raw water to Lessee for its use for this purpose; and,

WHEREAS, Lessee and Pueblo Water are parties to a Water Lease Agreement dated February 18, 2016, the term of which ends March 31, 2021.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained and the payments to be made hereunder, the parties hereto agree as follows:

### AGREEMENT

1. **Term of Agreement.** This Agreement will be in force for a period of 3 years commencing April 1, 2021 and terminating March 31, 2024. Each twelve month period, beginning with the commencement date stated above in this paragraph, is treated as a Contract Year under the terms of this Agreement.
2. **Quantity.** In accordance with the terms hereof, Pueblo Water will make available for delivery to Lessee 50 acre-feet of water during each Contract Year. This is the quantity of water to be paid for and made available for delivery under this Agreement for each Contract Year.
3. **Delivery of Raw Water.** The water to be delivered hereunder is raw water that has not been treated to make it suitable for any particular use. Any treatment of the water delivered hereunder to make it suitable for Lessee's use is the responsibility of Lessee.
4. **Delivery of Consumable Water.** Pueblo Water agrees to deliver to Lessee transmountain water or other water that is considered totally consumable or suitable for augmentation and replacement purposes under Colorado law, including but not limited to,

reusable return flows from transmountain water or other fully consumable water. Once delivered to Lessee, all water not fully consumed by Lessee's use remains the property of Pueblo Water.

5. **Place of Delivery and Choice of Water Source.** The Place of Delivery will be the location where water is released from any of Pueblo Water's sources, including but not limited to stored water at Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir; or from direct flow transmountain water rights; with the sources of such water to be at the option of Pueblo Water, but such sources do not include Fryingpan-Arkansas Project Water. At the option of Pueblo Water, such sources may be changed from time to time to suit the operational convenience of Pueblo Water. Lessee bears responsibility for any exchanges necessary to get the leased water from the Place of Delivery to Lessee's place of use.

6. **Approval to Utilize Water.** Lessee will use the water to be delivered pursuant to the terms of this Agreement for replacement of depletions resulting from its mining operations in Fremont County, Colorado. Lessee will be responsible for compliance with all applicable laws and regulations. If Lessee requires approvals from administrative or judicial authorities to use the water to be delivered under this Agreement, then Pueblo Water will cooperate with Lessee to provide information regarding Pueblo Water's water rights that may be needed to obtain approval of Lessee's water use. However, all costs of any such approvals will be borne by Lessee. Lessee will not file an application with any administrative or judicial authorities that includes a change to any of Pueblo Water's water rights without the express written consent of Pueblo Water, which consent is in the sole discretion of Pueblo Water.

7. **Rate of Delivery.** Pueblo Water will not be required to deliver water at a rate higher than 25 c.f.s., but may do so in its discretion. Pueblo Water will upon written request deliver at rates lower than 5 c.f.s. subject, however, to the following:

7.1. Any such lower rate of delivery is subject to the approval of the Division Engineer, Water Division No. 2;

7.2. Any such delivery from Pueblo Water's supplies at Pueblo, Turquoise, Twin Lakes or other reservoir not controlled by Pueblo Water is subject to the approval of the agency which operates or controls discharges from said reservoir;

7.3. Pueblo Water is not required to make any physical alteration of any outlet gates or outlet measuring devices or incur any additional cost for the purpose of making such low rate deliveries.

8. **Transportation and Evaporation Losses.** The quantity of water to be delivered hereunder will be measured at the Place of Delivery. Lessee will bear all transportation and evaporation losses from the Place of Delivery to Lessee's place of use. Pueblo Water will, in its sole discretion, deliver water from the location closest to the Lessee's place of use when reasonably possible in order to minimize transit losses.

9. **Notice of Delivery.** Pueblo Water agrees in accordance with the terms of this Agreement, to make available for delivery up to the quantities of water stated in paragraph 2



during the term of the Agreement at the request of Lessee. Lessee must notify Pueblo Water's Water Resources Division by an exchange of emails or some other form of written communication by the parties at least two business days in advance of when any requested delivery of water needs to be released. Such notice will include the desired rate of delivery and the date and time such delivery should begin and end. Once released by Pueblo Water, it is the Lessee's responsibility to ensure that the state water officials cause the water released to be delivered to the Lessee's place of use. Pueblo Water will cooperate with Lessee and the state water officials to provide them with the necessary information concerning the source, location, rate, and duration of the release of the leased water.

10. **Charge.** In consideration of the water leased under this Agreement Lessee agrees to pay Pueblo Water a charge of \$775.51 per acre-foot of water for the quantities of water identified in paragraph 2 above. The parties agree that the water leased hereunder is on a "take or pay" basis. Accordingly, Lessee must pay the charge for all leased water, whether or not said quantities of water are actually taken by Lessee or are required for use by Lessee. Likewise, Pueblo Water agrees to make the water available for delivery throughout the term of this Agreement subject to paragraphs 13 through 16 below. Except as provided in paragraph 11.5, the failure of Lessee to take delivery of the full quantity of water contracted for and paid for in any given Contract Year does not entitle Lessee to a refund of any sums paid or to receive any portion of such unused water in a subsequent Contract Year.

11. **Payments.**

11.1. On the Effective Date of this Agreement, Lessee must pay to Pueblo Water the First Contract Year payment of \$38,775.50.

11.2. Upon the Effective Date of this Agreement, Lessee will also pay to Pueblo Water a non-refundable fee of \$1,000 in consideration of legal and administrative costs incurred by Pueblo Water for this Agreement.

11.3. An additional payment in an amount equal to the Contract Year quantity of water described in paragraph 2 multiplied by the applicable per acre-foot charge as determined under paragraphs 10 and 12 is due from Lessee to Pueblo Water on the first day of the second Contract Year and each Contract Year thereafter.

11.4. Delinquent balances by either party will be subject to a late payment charge of 1.5% per month on the unpaid balance. No water will be delivered under this Agreement if Lessee has an unpaid balance.

11.5 If Pueblo Water does not make available for delivery the full quantity of water as provided in paragraph 2 during any Contract Year pursuant to paragraphs 13 through 16, Pueblo Water will notify Lessee of the quantity of water available for the Contract Year. Said notice will include reimbursement to Lessee of the amount paid by Lessee, per acre-foot, for the difference between the quantity of water provided in paragraph 2 and the quantity of water specified as available for delivery in said notice.

12. **Escalation.** The charge for water for the second Contract Year of this Agreement will be adjusted based upon the percentage increase, if any, over the previous calendar year in Pueblo Water's water rates for its general customers for treated water. For example, if the percentage increase for the second Contract Year is five percent, then the price for the second Contract Year will be \$814.29 per acre-foot. Pueblo Water will give Lessee written notice of any rate increase pursuant to this paragraph that will take effect in the next Contract Year.

13. **Pueblo City Charter Provision.** This Agreement involves the use of water outside the territorial limits of the City of Pueblo and is specifically limited by the provisions of the City Charter governing such use. The City Charter provides, among other things, that: "The Board of Water Works shall have and exercise all powers which are granted to cities of the first class by the Constitution and Laws of the State of Colorado, except the power to levy and collect taxes directly or indirectly. Surplus water may be supplied to territories outside the City until same is needed by the inhabitants of the City."

14. **Determination of Water Availability by Pueblo Water.** Pueblo Water has determined that the welfare of Pueblo and its inhabitants requires a stable water supply not only for its citizens but also for the other customers of Pueblo Water putting to beneficial use the water belonging to Pueblo Water. Therefore, the extent to which limitation of water delivery outside Pueblo may be necessary to enable Pueblo Water to provide adequately for users inside Pueblo is a fact to be determined by Pueblo Water in the exercise of its reasonable discretion from time to time as occasion may require.

15. **Interruption of Water Supply Beyond Pueblo Water's Control.** While it is the purpose of Pueblo Water to maintain a water supply adequate to meet the needs of the metropolitan area logically dependent on Pueblo Water for water supply and for its temporary contract customers, there are many elements that make it uncertain whether the supply can always be adequate for all. Both parties to this Agreement recognize that the water supply for Pueblo Water and its water customers is dependent upon sources from which the supply is variable in quantity and beyond the control of Pueblo Water. No liability in tort or contract attaches to Pueblo Water hereunder on account of any failure to accurately anticipate availability of water supply, or because of an actual failure to supply water due to inadequate runoff or inadequate storage, arising from an occurrence beyond the reasonable control of Pueblo Water, including, but not limited to, act of God, strike, war, insurrection, or inability to serve arising out of the order of any court, or the lawful order of any governmental entity clothed with authority to regulate matters pertaining to water, public utilities, public health, or pollution control.

16. **Emergencies or Water Shortages.** The parties agree that from time to time emergency or shortage situations may arise where there is a necessity to limit the use of water for customers of Pueblo Water. The parties agree that the necessity for such limitation is a fact to be determined by Pueblo Water in the exercise of its reasonable discretion from time to time, as occasion may require. It is hereby agreed that Pueblo Water may adopt, in the situation of emergency or shortage, such reasonable restrictions on uses or priorities for curtailed use, as may be necessary to adapt to such emergency conditions or shortage. Lessee agrees that no liability in tort or contract attaches to Pueblo Water hereunder on the account of the necessity for adopting and implementing such policies to meet emergency conditions or shortage.

17. **Not a Permanent Supply.** The Parties understand and agree that this Agreement is not to be interpreted as any commitment on the part of Pueblo Water to furnish water to Lessee on a permanent basis, but rather to provide Lessee with water from Pueblo Water for the temporary period of the term of this Agreement.

18. **Sales Tax or Other Taxes.** In the event any sales tax or other tax is levied on the water leased under this Agreement, Lessee agrees to pay said tax. Lessee may, however, contest the imposition of any such tax at its own expense, and the requirement of such payment under this Agreement is without prejudice to Lessee's right to contest any attempted imposition of tax.

19. **Assignability; Sublease.**

19.1 This Agreement may be assigned, in whole or part, by Lessee subject to prior written approval of said assignment by Pueblo Water, which approval is in the sole discretion of Pueblo Water.

19.2 Lessee may sublease the water obtained from Pueblo Water under this Agreement subject to prior written approval by Pueblo Water, which approval is in the sole discretion of Pueblo Water; however, Lessee will not sublease water to third parties at a higher price than it pays Pueblo Water for water under this Agreement.

20. **Prohibition of Use For Marijuana Enterprises.** Lessee will not use water provided under this Agreement for marijuana enterprises.

21. **Waiver.** Failure of either party hereto to exercise any right hereunder is not a waiver of such party's right and does not affect the right of said party to exercise at some future time said right or rights or any other right it may have hereunder. No waiver of any of the provisions of this Agreement will be deemed or constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver is binding unless executed in writing by the party making the waiver.

22. **No Exclusive Right or Privilege.** Nothing in this Agreement is to be construed as a grant by Pueblo Water of any exclusive right or privilege.

23. **Title to Water Rights.** Nothing herein is to be interpreted to give Lessee any legal or equitable title in or to any of Pueblo Water's water rights.

24. **Notices.** All notices to be given with respect to this Agreement must be in writing. Unless otherwise provided in this Agreement, each notice must be sent by first class mail, postage prepaid, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing. Every notice will be deemed to have been given at the time it is deposited in the United States mail in the manner prescribed herein. Nothing contained herein is to be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process. All notices, except for



delivery requests pursuant to paragraph 9 above, required to be given to Pueblo Water hereunder must be delivered to:

Board of Water Works of Pueblo, Colorado	
Attn: Executive Director	
Mail:	Hand Delivery:
P.O. Box 400	319 West 4 <sup>th</sup> Street
Pueblo, CO 81002-0400	Pueblo, CO 81003

or at such other address as Pueblo Water may direct by written notice. All notices required to be given to Lessee hereunder must be delivered to:

David Bieber  
Martin Marietta Materials  
10170 Church Ranch Way, Suite 201  
Westminster, CO 80021

or at such other address as Lessee may direct by written notice.

25. **Remedies.** In the event that either party defaults in the performance of any of its obligations under this Agreement, in addition to any and all other remedies provided in this Agreement or by law or equity, each party will have the right of specific performance against the other. Any suit, action or proceeding arising out of or relating to this Agreement will only be instituted in the County of Pueblo, State of Colorado.

26. **Default, Right to Cure.** In the event that either party believes that the other is in default of any obligation under this Agreement, except as provided below in this paragraph, the non-defaulting party must give written notice of the default to the defaulting party. Such notice will be given by certified or registered mail, postage prepaid and return receipt requested. If a notice of default is provided, the party accused of the default must either cure it or provide a written statement explaining why it is not in default. If the alleged default is not cured or otherwise resolved within thirty (30) days, the parties may resort to their remedies. In the event of default for failure to pay any amount required to be paid by Lessee pursuant to the terms of this Agreement, Pueblo Water is not required to deliver water and notice of default is not required. Pueblo Water may, at its sole option, provide notice and a ten (10) day cure period. However, Pueblo Water will not be required to deliver water until the entire amount owed is paid by Lessee.

27. **Right to Enter Agreement.** Each party hereby warrants and represents that it has the full right and lawful authority to enter into this Agreement.

28. **Governing Law.** This Agreement will be governed by the laws of the State of Colorado in all respects.

29. **Entire Agreement, Modification.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter described in it and supersedes any and all prior

contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement is binding unless executed in writing by all parties.

30. **Captions and Headings.** The captions and headings in this Agreement are for convenience of reference only, and will not be used to interpret, define, or limit its provisions.

31. **Construction Against the Drafter.** In the event of an ambiguity in this Agreement, the rule of construction that ambiguities will be construed against the drafter is inapplicable, and the parties hereto are to be treated as equals and no party will be treated with favor or disfavor

32. **Third Party Beneficiaries.** Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the parties, and not to any third party. Any services or benefits that third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

33. **Governmental Immunity.** No term or condition of this Agreement is to be construed or interpreted as a waiver, express or implied, by Pueblo Water of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as applicable now or hereafter amended.

34. **Offer.** This Agreement will not be effective and Pueblo Water withdraws its offer to enter into this Agreement unless Lessee executes and delivers this Agreement to Pueblo Water, along with the initial payments required under paragraphs 11.1 and 11.2 above, within sixty (60) days following approval of this Agreement by Pueblo Water's elected Board which occurred on January 19, 2021.

IN WITNESS WHEREOF, Pueblo Water and Lessee have caused these presents to be executed in their respective behalf by their proper officers.

Pueblo, a municipal corporation, acting by and through the  
BOARD OF WATER WORKS OF PUEBLO, COLORADO

By: \_\_\_\_\_

Seth J. Clayton, Executive Director

FRONT RANGE AGGREGATES, LLC BY ITS SOLE  
MEMBER, MARTIN MARIETTA MATERIALS, INC.

By: \_\_\_\_\_

ABBOTT LAWRENCE PRESIDENT WEST DIVISION