

4/11/23

STATEMENT BY PETITIONER

Section 2 CCR 407-4-2.5 - DECLARATORY ORDERS (Section 24-4-105, C.R.S.)

2.5.1 Cause for Seeking a Declaratory Order

Pursuant to Section 2 Section 2 CCR 407-4-2.5 Declaratory Orders, and Subsection 24-4-105, C.R.S., comes now Petitioner Elk Creek Sand & Gravel LLC, Juliet Moores for Petitioner, seeking Declaratory Order as provided in statute, which states, in part,

any person who is or may be directly and adversely affected or aggrieved and whose interests are entitled to legal protection under the Act may petition the Board for declaratory order to terminate controversies or to remove uncertainties as to the applicability to the Petitioner of any statutory provision of or any rule or order of the Board made pursuant to the Colorado Land Reclamation Act For The Extraction Of Construction Materials (Section 34-32.5-101, C.R.S. et seq.).

Petitioner seeks to have declaratory order considered at the Board Hearing scheduled on or around APRIL 21, 2023, or thereabouts, at which she seeks to have the Board make an administrative declaratory order to terminate controversies for which she is materially and directly aggrieved, and without which immediate relief, she is denied equitable relief, due process and her interests and those of persons similarly situated will be permanently and irreparably harmed.

Petitioner avers that she has satisfied the petitioned requirements pursuant to Section 24-4-105, C.R.S. **2.5.2 (1) (a) petition submission**, in that the petitioner is seeking the Declaratory Order has submitted the petitioned more than seven (7) days prior to the Board meeting of +/- 9/18/22, at which it is to be considered, and that pursuant to 2.5.2 (2) the petition filed pursuant to this rule sets for the:

- (a) The name and address of the Petitioner and whether the Petitioner is a Permittee pursuant to the Colorado Mined Land Reclamation Act;
- (b) The statute, rule or order to which the petition relates;
- (c) A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the Petitioner

Respectfully submitted

Elk Creek Sand & Gravel LLC
MLRB Permit 1978-208
Juliet Moores Managing Partner Elk Creek for the Petitioner

CAUSE FOR SEEKING DECLARATORY ORDER

Date 4/11/23

Board Hearing at which Petition is requested to be heard on or around 4/21/23

a) Petitioner : Juliet Moores for Petitioner Elk Creek Sand & Gravel LLC
Permittee MLRB 1978-208 (110(c)) Construction Aggregates Permit Pursuant to the Colorado Mined Land Reclamation Act C.R.S 32-34.5 STATUS Permit revoked and Bond Forfeited pursuant to MLRB Board enforcement order (4/22/20) (Order not provided to Operator until August 2021)

Petitioner seeks declaratory order by Board to terminate the following controversies:

1. Conflicting interest in Petition #1: ACTION (PERFORMANCE) REQUIRED AS A RESULT OF AGENCY INACTION ARISING FROM Enforcement Order MV2019-022
 - b) The statute, rule or order to which the petition relates Section 2 CCR 407-2-3.04.1 and APA regulatory enforcement compliance of agency in enforcement order issued
 - c) The regulatory board issued enforcement order MV2019-022 issued 6/24/19.

Please vacate the following controversy:

- a. Agency forfeited Petitioners reclamation bond on 4/22/20 in Hearing that they refused to allow Petitioner to attend. By forfeiting the reclamation bond, Agency assumes the liability in completing the reclamation itself. To date Agency has declined to indicate when it intends to do so. Petitioner is suffering immediate, permanent (irreparable) and ongoing injuries as a result of Agency inaction for which Petitioner urgently requests relief in the form of the Agency completing all reclamation as required under original Permit Approval (2006). Failing this Petitioner requests that Agency immediately issue written notification that the reclamation is complete to the public record
- b. Agency issued enforcement order on or around 6/24/19 MV 2019-022 in which it stipulated that in order to vacate this enforcement order Petitioner was required to complete and submit a 112(c) permit conversion application. On page 6 of the Application under section entitled 'CERTIFICATION' language indicates that Petitioner as Operator / Applicant must certify 'under penalty of law...that there are ***no enforcement actions on the lands to be permitted...***' (Emph. Added) obviously this is a conflict and at odds with the facts in the matter, given the enforcement order issued by the Agency which compelled the certification, and thus an impossibility, since there was an enforcement order issued by the same Agency on or around 6/24/19. Petitioner is thus frustrated in her efforts to comply reasonably, since certification as part of compliance would mean that she was endorsing perjury. Petitioner requested that the Agency issue an Administrative waiver waiving the liability associated with introducing the obvious material defect

into the successful permit. Petitioner argued that an Administrative Waiver would allow her to successfully vacate the enforcement order without perjuring herself, however, staff declined to provide such waiver, nor any other form of administrative relief. Please elaborate, with specificity, just exactly how Petitioner was and is supposed to reconcile this controversy and vacate the enforcement order. To date staff have refused to address this matter allowing it to remain unresolved, and continuing to damage the Petitioner

RELIEF REQUESTED

Petitioner requests immediate relief, pointing out that this matter has remained unresolved for over three (3) years, amounting to unreasonable delays and excessive punishment against Petitioners interests.

Please issue a DECLARATORY ORDER and NOTICE IMMEDIATELY which terminates these controversies as part of the Public Record. Please either pursue the reclamation work in accordance with the statute, issuing a Notice that all Reclamation is complete, or return the forfeit bond and mining permit to the permittee/petitioner immediately

Failure to do so is an unreasonable delay and egregious arbitrary and capricious delay of termination of regulatory enforcement agency action, and amounts to failure to prosecute, **is sanctionable**, amounts to excessively punitive sanctions or levy's and other violations for which Petitioner seeks relief within twenty one days (21) from date of request, pursuant to Administrative procedure rules. Petitioner avers that it has sustained, excessively punitive, unreasonable, ongoing and irreparable harms as a result of Agency inaction and actions by Agency amount to an abuse of authority, abuse of process, are frivolous, meritless and excessively punitive administrative actions

2.5.6 Effect of a Declaratory Order

Any declaratory order or other order disposing of a petition pursuant to this Rule shall constitute agency action subject to judicial review pursuant to Section 24-4-106, C.R.S.

2 CCR 407-4-2.5

42 CR 12, June 25, 2019, effective 7/15/2019



Juliet Moores

Elk Creek Sand & Gravel LLC