



Garfield County

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November 14, 2023

David McConaughy, Esq.
Garfield & Hecht, P.C.

RE: RMI Garfield County SUP Amendment

Sent via email to: dmcconaughey@garfieldhecht.com

Dear David,

The purpose of this letter is to follow up on our letter of May 24, 2023. As you are aware, the state litigation has ended and Judge Norrdin's ruling that the County's Special Use Permit was not preempted by federal or state law was upheld.

The County believes that RMI is working with the U.S. Mine Safety and Health Administration ("MSHA"). We know MSHA issued a 103(k) Control Order that required RMI to cease mining activities on the production bench but was allowed to continue processing material staged on the mill bench. We have not received any information regarding whether this Control Order is still in place.

Further, the County is aware that RMI has been responding to the notices of noncompliance by the Bureau of Land Management ("BLM"). The County has reviewed the Geotechnical Report provided to the BLM as part of its modified Plan of Operations submissions in response to the Noncompliance Order. It appears the BLM may have asked for more detailed information based on their initial review of the Geotechnical Report.

We understand the Colorado Division of Reclamation, Mining, and Safety ("DRMS") has entered into a Stipulated Agreement ("Stipulated Agreement") on April 19, 2023 regarding RMI's failure to protect the permit area from slides or erosion. It appears from the Stipulated Agreement that RMI agrees that it needs a Technical Revision to its DRMS permit to address site stability issues and propose a suitable plan moving forward to minimize future stability issues and potential off-site impacts. The Stipulated Agreement also indicates that RMI agreed that it will submit an Amendment Application to its DRMS permit, if there are any contemplated disturbances outside the DRMS Permit area and RMI will need to gain "all other jurisdictional approvals prior to submission to ensure the Operator's legal right of entry is clearly defined." It

appears the timeframe required for submitted of the Technical Revision Application is within 60 days of the completion of the engineering technical analysis and final report. The Geotechnical Report was provided on August 31, 2023. It appears from information on the DRMS website that an extension was provided to RMI to provide the required Technical Revision by November 29, 2023. Pursuant to C.R.S. § 34-32-115(4)(c) DRMS may not grant a permit if the operation "is or may be contrary to the laws or regulations of this state...including local permits, licenses, and approvals."

The litigation referenced above included specific violations that RMI's operation exceeded its approved acreage, was operating during the seasonally restricted winter months, and was in violation of its Road Maintenance Agreement.

Specifically, the approved acreage is 16.30 acres and RMI's current operation includes 20.8 disturbed acres (as noted in the Court's January 31, 2021, Order this fact was not disputed by RMI). Further, the seasonal restriction begins on December 15, 2023.

The DRMS requires mining operators to comply with "other applicable statutes and rules and regulations." C.R.S. § 34-32-109(1), (5)(a). The operation is "subject to zoning and land use authority and regulation by political subdivisions" such as the County "as provided by law." C.R.S. § 34-32-109(6). Therefore, it remains the County's position that RMI is required to submit an application to amend its current County Permit to bring it into compliance with its current operating/disturbed area of 20.8 acres as RMI is still not compliant with its current permit as stated by the NOV issued on March 25, 2019. The first step is for you and your client to reach out to the Community Development Department for a pre-application conference.

I am aware Mr. Wagner had preliminary conversations with Sheryl Bower at Community Development back in June 2023; however, no pre-application conference has been scheduled and no application to amend the SUP has been submitted. We look forward to working with you through this process. Please let me know if you have any questions.

Sincerely,



Heather Beattie
Garfield County Attorney

CC: Larry Sandoval, Jr., Field Manager, Colorado River Valley Office, BLM
Amy Yeldell, Colorado Division of Reclamation, Mining and Safety
Gary Polson, U.S. Mine Safety and Health Administration
Glenn Hartman, Community Development Department Director