



COLORADO
Division of Water Resources
Department of Natural Resources

August 5, 2024

Ayrton Hendrix
Hendrix Wai Engineering, Inc.
PO Box 4487
Parker, CO 80134

RE: KICT, LLC Substitute Water Supply Plan
Colorado Gravel Pit, DRMS Permit No. M-2022-053
SE ¼ Section 36, T22S, R44W, 6th PM
Water Division 2, Water District 67, Prowers County
SWSP ID 9561, WDID 6707877

Approval Period: August 5, 2024 through July 31, 2025

Contact Information for Mr. Hendrix: 720-930-4360; ayrton@hendrix-wai.com

Dear Mr. Hendrix;

We have reviewed your letter dated August 25, 2023 requesting a substitute water supply plan ("SWSP") for a sand and gravel pit on land owned by KICT, LLC ("KICT" or "Applicant") in accordance with section 37-90-137(11), C.R.S. The mine is permitted with the Division of Reclamation, Mining, and Safety under Permit No. M-2022-053. The permitted operator is Colorado Gravel, LLC. The Applicant shall be responsible for compliance with this SWSP, but the State Engineer's Office may also pursue the permittee and/or subsequent landowner for eventual compliance. The required fee of \$1,593 for a new SWSP has been submitted (receipt no. 10031287).

SWSP OPERATION

This SWSP seeks to replace depletions resulting from mining operations at the Colorado Gravel Pit, located in Prowers County in the W ½ of the SE ¼ and the NE ¼ of the SE ¼ of Section 36, Township 22 South, Range 44 West of the 6th P.M. Depletions from the mining operations covered under this SWSP will consist of evaporative losses from the dewatering trench and settling pond, as well as moisture content retained in the mined aggregate. Water for dust control and gravel washing will be provided by the well with permit no. 18252-R (WDID 6705513), which is included in the Lower Arkansas Water Management Association ("LAWMA") augmentation plan decreed in Case No. 02CW181. Since the well will be augmented under Case No. 02CW181, depletions resulting from water used for dust control and gravel washing are not included in this SWSP and this SWSP does not authorize the use of groundwater for those purposes.

DEPLETIONS

A slurry wall is not proposed to be constructed at the site. Instead, a dewatering trench will collect groundwater that is pumped back to the river. The maximum surface area has been claimed to be 10



acres. Eventually the pit will be included in LAWMA's augmentation plan which was decreed in Case No. 02CW181.

The total surface area of groundwater exposed at the site in the dewatering trench and settling ponds will not exceed 10.0 acres for the term of this SWSP. The maximum area of the exposed groundwater surfaces has been used to calculate the evaporative losses for this plan. The location of the pit in said Section 36 is in an area where the NOAA Technical Report NWS 33 indicates that the gross annual evaporation rate is approximately 62 inches (5.17 feet). Average annual precipitation is estimated at 12 inches and net annual evaporation is estimated at 51.67 inches (62 inches gross evaporation less effective precipitation of 8.4 inches [70% of 12 inches of precipitation]). Although the SWSP request estimated evaporation using the rates decreed for the LAWMA Case No. 02CW181, since this pit is not yet under the plan decreed in that case, the more conservative approach based on the values determined by this office must be used. Assuming a groundwater surface area of 10 acres, annual evaporation will equal approximately 44.7 acre-feet per year.

The mine will operate in a dewatered state until backfill is in place, and will be operated in 10-acre phases. No "first fill" depletions are expected.

The amount of water lost with the mined material has been estimated to equal 8.83 acre-feet, based on a projected 300,000 tons of mined material and a 4% moisture content, consistent with Exhibit R to Case No. 02CW181.

Depletions were lagged to the Arkansas River using the Integrated Decision Support Group's (IDS) Alluvial Water Accounting System ("AWAS") model and the following aquifer parameters:

- Transmissivity = 150,000 gallons per day per foot
- Specific Yield = 0.2
- Distance to river = 1,085 feet
- Distance to alluvial boundary = 13,050 feet

Depletions resulting from evaporation and water removed with the mined material during this plan period will total 53.53 acre-feet. It is estimated that 41.55 acre-feet of depletions will impact the stream during this plan period, with the remaining 11.98 acre-feet of depletions impacting the stream system after this plan period.

DEWATERING

Dewatering at the Colorado Gravel Pit is expected to continue for the duration of the term of this SWSP. As long as the site is continuously dewatered at approximately the same rate, the water returned to the stream system should be adequate to offset the depletions attributable to dewatering operations. Totalizing flow meters must be installed at each discharge location and meter readings must be reported on the submitted accounting. The meter readings will be used in calculating the post-pumping depletions that must be replaced if dewatering rates are reduced or if dewatering ceases altogether at the site.

REPLACEMENTS

The proposed source of replacement water is KICT's ownership of 62 preferred shares in the Lower Arkansas Water Management Association ("LAWMA"). The allocation for a LAWMA preferred share is 1 acre-foot, therefore the subject shares would provide 62 acre-feet of replacement water per year. Accounting will be provided by KICT to LAWMA, which will make replacement deliveries to the Arkansas River using fully consumable water.

LONG-TERM DEPLETIONS

All sand and gravel mining operators must comply with the requirements of the Colorado Land Reclamation Act for the Extraction of Construction Materials and the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials for the protection of water resources. DRMS requires that the mine operator provide information to demonstrate they can replace long term injurious stream depletions that result from mining operations. The final reclamation of the site will consist of an unlined pond with a surface area no greater than 10 acres. The operator has filed a financial warranty with the DRMS for \$1,199,298 to cover the cost of lining or backfilling of the site to assure that depletions from groundwater evaporation do not occur in the unforeseen event, or events, that would lead to the abandonment of the Colorado Gravel Pit.

CONDITIONS OF APPROVAL

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

1. This SWSP shall be valid for the period of August 5, 2024 through July 31, 2025, unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, such renewal request must be submitted to this office and the Division 2 office (please copy Bethany Arnold at Bethany.Arnold@state.co.us) with the statutory renewal fee (currently \$257) by **May 1, 2025**. If a renewal request is received after the expiration date of this plan, it may be considered a request for a new SWSP, in which case a \$1,593 filing fee will apply.
2. **A well permit must be obtained for the gravel pit in accordance with sections 37-90-137(2) and (11), C.R.S., prior to the exposure of groundwater at the site.** A gravel pit well permit application has been received and is currently pending evaluation under receipt no. 10037545. The provisions of 37-90-137(2), C.R.S. prohibit the issuance of a permit for a well to be located within 600 feet of any existing well, unless the state engineer finds that circumstances so warrant after a hearing held in accordance with the procedural rules in 2CCR402-5. This hearing may be waived if you are able to obtain statements from the owners of all wells within 600 feet, verifying that they have no objection to your use of the proposed well. Should a well permit be denied for reasons of 600 foot spacing, or any other legitimate reason, approval of this SWSP may be canceled.

3. No more than 10.0 acres of groundwater may be exposed at the Colorado Gravel Pit during this plan period without first obtaining a new SWSP. The above acreage totals include any surface areas in ponds to which dewatering water is delivered. Documentation of pond sizes may be required by the Division Engineer in the form of an aerial photo evaluation or survey by a Professional Land Surveyor during the plan year. Any increases in depletions will require a new SWSP request to be submitted and approved. Water delivered to the Arkansas River from the dewatering trenches and settling pond may not be commingled with irrigation supplies being delivered to the remaining portions of the farm and must be delivered in a manner that ensures that no additional surface evaporation occurs beyond what is approved under this plan.
4. The total amount of product mined at the Colorado Gravel Pit shall not exceed 300,000 tons during this plan period, which results in 8.83 acre-feet of water lost with the mined product.
5. Subject to approval by the Division Engineer, the Applicant may lease or purchase additional replacement water from the sources approved in this SWSP. In addition, the Applicant must also provide a copy of a lease/purchase agreement to the State Engineer's Office and the Division Engineer for use of such additional replacement water.
6. Approval of this SWSP is for the purposes stated herein. Additional uses will be allowed only if a new SWSP is obtained for those additional uses.
7. Dewatering at this site will produce delayed depletions to the stream system. As long as the pit is continuously dewatered at a relatively constant rate, the water returned to the stream system should be adequate to offset the depletions attributable to the dewatering operation. Dewatering operations must be measured by totalizing flow meters that can accurately show the monthly volume of dewatered water that is pumped and returns to the stream. If dewatering at the site ceases, or is significantly reduced, the monthly meter readings will be used to determine post pumping depletions that must be replaced. At least three years prior to completion of dewatering, 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. Should it be determined by the water commissioner or division engineer that dewatering water is being diverted for any purpose by the operator and accounting is not adequate to show that 100 percent of the dewatering water is returned back to the Arkansas River, the Applicant will need to account for any lagged dewatering depletions at the site. In addition, if it is determined by the water commissioner or division engineer that the pit is not continuously dewatered at a relatively constant rate, the Applicant must track depletions and dewatering return flows in their accounting and replace any dewatering depletions that are not offset by dewatering return flows.
8. All releases of replacement water are to be supplied by the Applicant's shares in LAWMA and will be delivered according to the schedule included in this SWSP. The replacement water must be sufficient to cover all out-of-priority depletions in time, place, and amount and must be made under the direction and/or the approval of the Water Commissioner.

9. The replacement water that is the subject of this SWSP cannot be sold or leased to any other entity during the term of this approval without prior approval of the Division Engineer. As a condition of subsequent renewals of this SWSP, the replacement water must be appurtenant to this site until a plan for augmentation is obtained. All replacement water must be concurrent with depletions in quantity, timing, and locations.
10. 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.
11. The Applicant must 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 Cassidy Davis at kassidy.davis@state.co.us to set up an account with the subject line "KICT 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 by the Division Engineer. **NOTE:** Monthly accounting, even during the winter non-irrigation season, is required.
12. 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.
13. The approval of this SWSP does not relieve the Applicant and/or 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 gravel mining operations have ceased. If reclamation of the mine site produces 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. If a lined pond results after reclamation, replacement of lagged depletions shall continue until there is no longer an effect on stream flow. Granting of this SWSP does not imply approval by this office of any such court application(s).
14. In accordance with amendments to section 25-8-202(7), C.R.S., and "Senate Bill 181 Rules" adopted on February 4, 1992, the State Engineer shall determine whether the substitute supply is of a quality to meet the requirements of use to which the senior appropriation receiving the substitute supply has normally been put. As such, water quality data or analysis may be requested at any time to assure the requirements of use of the senior appropriator are met.
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.

Please contact Melissa A. van der Poel in Denver at (303) 866-3581 or Kassidy Davis in the Division 2 office in Pueblo at (719) 565-8686, if you have any questions concerning this approval.

Sincerely,



Sarah Brucker, P.E.
Deputy State Engineer

cc: Div 2 SWSP Review Team
Brandy Cole, Water Commissioner District 67
Division of Reclamation Mining and Safety
John B. Draper, Montgomery & Andrews
Dale E. Book, Spronk Water Engineers
Kevin Salter, Kansas Division of Water Resources
Rachel Duran, Kansas Division of Water Resources