



COLORADO
Division of Water Resources
Department of Natural Resources

November 25, 2024

Chris Newton, Hydrogeologist
Dinatale Water Consultants
5777 Central Avenue, Suite 228
Boulder, CO 80301

Re: Nix Gravel Pit Substitute Water Supply Plan (WDID 0502540)
DRMS File No. M-2001-046 (WDID 0505632)
E1/2 and S1/2 of the SW1/4 of Section 28, T3N, R67W of the 6th P.M.
Water Division 1, Water Districts 2 and 5, Weld County
SWSP ID: 9339

Approval Period: July 1, 2024 through June 30, 2025

Contact information for Chris Newton: 303-709-7044 and chris@dinatalewater.com

Dear Chris Newton:

This letter is in response to your application received on June 6, 2024 and the additional information from October 16, 2024 requesting a substitute water supply plan ("SWSP") for a sand and gravel pit in accordance with § 37-90-137(11), C.R.S., for the Nix Gravel Pit, Division of Reclamation Mining and Safety ("DRMS") File No. M-2001-046, operated by Ready Mixed Concrete Company ("RMCC" or "Applicant") and leased to Dixie Water, LLC ("Dixie"). The Applicant shall be responsible for compliance with this SWSP, but the State Engineer's Office may also pursue the landowner for eventual compliance. The required fee of \$257 for the SWSP renewal has been paid (receipt no. 10036494).

SWSP Operations



The Nix Gravel Pit is located in the E ½ and the S ½ of the SW ¼ of Section 28, Township 3 North, Range 67 West in the 6th P.M. The total permitted area is 307.2 acres and is anticipated to include up to five mining cells (known as Cells 2-6), an overflow pond, and a freshwater pond (Cell 1A). RMCC anticipates mining an average of approximately 1 to 1.5 million tons of aggregate per year. It is anticipated that mining will continue for approximately 11 ½ to 16 years and will occur in five stages. Stage 1 is expected to take approximately one to one and a half years and mining will occur within Cell 1A. During stage 1 groundwater will be exposed within the overflow and freshwater ponds, which will remain in operation for the duration of the mining operation of all stages. Once the overflow and freshwater ponds are unable to contain the full infiltration volume, a recharge pond will also be constructed. Stage 2 is expected to take approximately five to seven years and mining will begin in the summer of 2024 within Cells 2 and 3. Stage 3 is expected to take approximately four to five years and mining will begin within Cells 4 and 5. Stage 4 is expected to take approximately one year and mining will begin within Cell 1B, once Cells 4 and 5 have been mined to completion. Stage 5 is expected to take approximately one to two years and mining will begin within Cell 6. The mining plan is shown on attached **Figure 2.**

Prior to mining, slurry walls will be constructed around Cells 2-6 which will be reclaimed as lined storage facilities. The slurry wall around Cell 3 was constructed in the summer of 2023. Replacements for water consumption for the slurry wall construction was made by Dixie Water, LLC under a separate SWSP that was approved on May 22, 2024 and will expire on April 30, 2025. A slurry wall around Cells 4-6 is anticipated to be constructed in approximately 5-10 years. The depletions associated with this SWSP include evaporation from exposed groundwater, water lost with the mined product, and dust control.

In accordance with the letter dated April 30, 2010 (copy attached) from the Colorado Division of Reclamation, Mining, and Safety (“DRMS”), all sand and gravel 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. The DRMS letter identifies four approaches to satisfy this requirement.

In accordance with approach nos. 1 and 3, you have indicated that a bond has been obtained for \$6,964,000.00 through the DRMS for lining or backfilling of this 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 Pit.

Depletions

The projected depletions for the period of this SWSP consist of water removed in the mined product, dust suppression, concrete and asphalt batching, first fill and net evaporation from exposed groundwater surface area, incidental to such uses. This SWSP anticipates that a maximum of 12 acres of water surface will be exposed at the site in the overflow and freshwater ponds during the period of this SWSP.

The Applicant proposed to replace evaporation from exposed ground water at the site based upon evaporation atlases in NOAA Technical Report NWS 33 and the SEO monthly distribution factors for sites below 6,500 feet. Gross annual evaporation at the gravel pit location is estimated to be 42.00 inches per year. 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 based on the data from Northern Colorado Water Conservancy District's weather station at Gilcrest (record 1994-2004). The net evaporation from the exposed water surface is 16.84 acre-feet for the SWSP period (**Table 1**).

While the projected evaporation depletion amount assumes no ice cover throughout the year, the evaporation in the accounting will be set to zero for periods where the

exposed groundwater is completely covered by ice during actual operations. Computation of the net evaporation during any time that the pit is not completely covered by ice shall be determined as the pro-rata amount of the monthly gross evaporation rate distribution amount identified in the State Engineer's *General Guidelines for Substitute Supply Plans for Sand and Gravel Pits*, subtracting the pro-rata amount of the effective precipitation for that period.

In addition, water is lost with the mined product removed from the mine site. The Applicant projected that they will produce 655,800 tons of gravel during the SWSP period and 1.7 million tons/year in subsequent years. Material mined above the groundwater table will be charged with zero percent consumption if the material is not washed and 2 percent if the material is washed. No mined material is anticipated to be mined above the groundwater table during this SWSP, therefore the material mined below the groundwater table will be charged 4 percent by weight whether washed or not. The total consumption of water removed with the product during the approval period is estimated to be 19.28 acre-feet (**Table 2**).

The estimated water used for dust suppression during the period of this SWSP total 16.08 acre-feet based on an estimated use of 7.5 gallons/ton of production during the summer months and 4.5 gallons/ton during the winter months. For months with no projected production, 0.5 acre-feet of water use was estimated for dust control (**Table 2**). Water withdrawn from the freshwater pond will be used for concrete and asphalt batching in the future once mining of the slurry lined area begins, but not during this approval period.

The Applicant has indicated that Cell 1A (consisting of the unlined freshwater and overflow ponds) will be continuously dewatered at an estimated rate of 1,000 gpm during this approval period. The overflow pond was completed and filled with water in July 2023 and the freshwater pond is currently being mined, with groundwater exposure/filling now anticipated to occur later this year. Both the freshwater and overflow ponds will be dry mined. Water pumped to dewater the freshwater pond will

be discharged to the overflow pond area. The Applicant anticipates discharging as much water as possible to the freshwater and overflow ponds to minimize net depletions.

Because the freshwater and overflow ponds will be dry mined, the first fill will occur once the ponds are fully excavated and dewatering of the ponds ceases. According to the *“General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits”*, water consumption by the mining operation will also include water removed from the tributary stream system by the “first fill” of the gravel pit. The “first fill” is the water that fills the gravel pit and occupies the volume previously occupied by the removed sand and gravel. For the Nix Pit, the “first fill” was estimated based on a total of 50,000 tons of material removed from the overflow pond below the water table and 300,000 tons of material removed from the freshwater pond below the water table during the period of this SWSP multiplied by the percentage gravel matrix (70% assuming a porosity of 30% and a density of the material of 1.5 tons/cubic-yard) and then subtracting the volume of water lost with the mined product. Based on the above, the water removed by the “first fill” was determined to be 12.99 acre-feet for the overflow pond and 83.39 acre-feet for the freshwater pond, for a total first fill volume of 96.38 acre-feet during the period of this SWSP (**Table 2**).

The IDS AWAS stream depletion model was used to determine the lagged depletions from evaporation and operational losses to St. Vrain Creek. The aquifer characteristics used in the model are: harmonic transmissivity (T) = 47,518 gallons per day per foot, specific yield (SY) = 0.2, the distance from the centroid of the exposed ground water to the stream $X=4,000$ feet and the location of the parallel impermeable boundary $W=8,775$ feet from the stream.

In addition, as mentioned above the amount of water discharged to the overflow/freshwater ponds and to the recharge area will be tracked separately and lagged back to the stream. Water discharged to the overflow/freshwater ponds will be lagged using the unit response function (URF) shown in **Table 4** (attached). Water

discharged to the recharge area will utilize a URF (**Table 5 attached**) developed using the following aquifer parameters: harmonic transmissivity (T) = 54,974 gallons per day per foot, specific yield (SY) = 0.2, the distance from the centroid of the exposed ground water to the stream X=5,377 feet and the location of the parallel impermeable boundary W=8,660 feet from the stream.

For the purpose of this SWSP, the final 1 percent of the impact to the stream was wrapped into the first 99% and re-normalized (**Table 5**). The total water use during the renewal period, including water pumped for dewatering operations is estimated to be 1,764.08 acre-feet as shown in **Tables 1 and 2**. Based on a total water use estimate of 1,764.08 acre-feet, the total lagged depletions to St. Vrain Creek during this renewal period are estimated to be 374.63 acre-feet. Of these total depletions, 356.65 acre-feet are expected to be offset by lagged accretions from dewatering discharge for a net depletion to the stream of 17.98 acre-feet through the end of the renewal period (**Table 6**).

Replacements

Out-of-priority depletions associated with the evaporation from the exposed groundwater within the mining operations area excavation will be replaced using fully consumable water leased from United Water and Sanitation District (“United”). A copy of the lease with United was provided to this office on October 16, 2024 and is attached to this letter. The lease will provide RMCC with 18.0 acre-feet of augmentation water to be replaced to the South Platte River above the location of the calling water right in effect at the confluence of St. Vrain Creek with the South Platte River. United will use recharge accretions from the Haren Recharge Facility (WDID 0202100) under the decree in case nos. 87CW304 and 05CW331 or water recharge under those water rights that have been stored in the 70 Ranch Reservoir (WDID 0203388); and, or water stored in Milliken Reservoir (WDID 0103028). **The United lease also identified water stored in 70 Ranch Reservoir and Milliken Reservoir under free river conditions. At the end of September, the balances in**

“other” Milliken and 70 Ranch accounts were 491 acre-feet and 2,249 acre-feet respectively. A portion of the water in each of those accounts is also comprised of stored excess recharge credits from the Haren facility. The Division Engineer recently approved free river water storage accounts in both the 70 Ranch Reservoir and Milliken Reservoir

The only intervening right between the point of depletion and the point of accretion for the Haren Facility and the Milliken Reservoir releases is the Goosequill Pump Station, which has never placed a call. There are additional rights between the depletion point and the 70 Ranch Reservoir releases, so releases from 70 Ranch could only be used if the controlling call is downstream of 70 Ranch. All replacement sources are downstream of the point of depletion; therefore, no transit losses will need to be assessed. The locations of each facility and the points of replacement to the South Platte River are shown in **Figure 4**. Also, the UTM coordinate values for the location of the point of depletion for the Nix Pit identified in Figure 4 are: 507737E, and 4450050N.

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 is approved with the effective date of **July 1, 2024 and shall be valid through June 30, 2025** unless otherwise revoked. If this plan is not decreed in water court by the SWSP expiration date, a renewal request must be submitted to this office with the statutory fee of \$257 no later than **May 1, 2025**.
2. Well permit no. 87336-F was issued for the gravel pit site in accordance with Section § 37-90-137(2) and (11), C.R.S. and this permit remains valid.

3. The total surface area of the groundwater exposed at the Nix Gravel Pit site must not exceed 12.0 acres during the period of this SWSP, which results in a maximum evaporative annual loss of 16.84 acre-feet.
4. The total product mined at the Nix Gravel Pit site during the period of this SWSP shall not exceed 655,000 tons, which results in 19.28 acre-feet of water lost with the mined aggregate and the annual water used for dust control at the site shall not exceed 16.08 acre-feet. In addition, the amount of water removed by the “first fill” shall not exceed 96.38 acre-feet.
5. Total consumption at the Nix Gravel Pit site must not exceed these aforementioned amounts unless an amendment is made to this SWSP.
6. 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.
7. The Applicant should consider the effects of groundwater mounding and the need for interceptor drains due to construction of the liners around the pits.
8. As part of any renewal of this SWSP the Applicant must specify the proposed replacement source that will be used to replace all lagged depletions that result from operation under this SWSP, including those that extend beyond the approval period of the SWSP. If the intent is to obtain a short-term lease for such future replacement water an executed lease for depletions that extend beyond the SWSP approval period is not required, however the Applicant must demonstrate that there is a reasonable likelihood that such a lease could be obtained.
9. Approval of this SWSP is for the purposes as stated herein. This office must first approve any additional uses for the water. Any future additional historical consumptive use credit given (e.g., agricultural water transfer) for this site must consider all previous credits given.

10. The replacement water that is the subject of this SWSP cannot be sold or leased to any other entity. 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.

11. The Applicant shall provide daily accounting (including, but not limited to diversions, depletions, replacement sources, and river calls) on a monthly basis. The accounting must be uploaded to the CDSS Online Reporting Tool within 30 days of the end of the month for which the accounting applies (<https://dwr.state.co.us/Tools/reporting>). Instructions for using the tool are available on the Division of Water Resources website on the “Services” → “Data & Information” page under the heading of “Online Data Submittal”. Accounting and reporting procedures are subject to approval and modification by the division engineer. Accounting forms need to identify the WDID number for each structure operating under this SWSP. **NOTE:** Monthly accounting, even during the winter non-irrigation season, is required.

In addition, the Applicant shall verify that the entity making replacements has included the Applicant on their accounting and submitted their accounting to the division office and the water commissioner; for this SWSP, that entity is the United Water and Sanitation District.

12. Conveyance loss for delivery of augmentation water to the point of depletion on Saint Vrain Creek is subject to assessment and modification as determined by the division engineer.

13. In order to prevent injury to other water rights, the Division Engineer and Water Commissioner must be able to administer Applicants’ replacement water past headgates on the river at times when those headgates would otherwise be legally entitled to divert all available flow in or “sweep” the South Platte River or its

tributaries. Applicant shall not receive credit for replacement of depletions to the South Platte River below such diversion structures unless bypass and measurement structures are in place to allow the Division Engineer and Water Commissioner to confirm that Applicant's replacement water is delivered past the headgates. In the event that delivery past dry-up points requires the use of a structure for which a carriage or use agreement with a third party is required, Applicant shall be responsible for securing such agreement. Until such time as the Applicant provides a copy of the carriage or use agreement to the Division Engineer and Water Commissioner, no credit will be allowed for replacement of depletions to the South Platte River below such diversion structure.

14. The Division of Water Resources will not be responsible for any enforcement or administration of third-party agreements that are not included in a decree of the water court.
15. The name, mailing address, and phone number of the contact person who will be responsible for operation and accounting of this plan must be provided on the accounting forms to the division engineer and water commissioner.
16. In accordance with the letter dated April 30, 2010 (copy attached) from the Colorado Division of Reclamation, Mining, and Safety ("DRMS"), all sand and gravel 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. The DRMS letter identifies four approaches to satisfy this requirement.

In accordance with approach nos. 1 and 3, you have indicated that a bond has been obtained for \$6,964,000.00 through the DRMS for lining or backfilling of this

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 Pit.

17. Dewatering operations at this site (freshwater and overflow ponds) must be separately measured by totalizing flow meters that can accurately show the monthly volume of dewatered water that is pumped from the freshwater pond and discharge to the overflow pond and from the overflow pond and discharged to the freshwater pond. In addition, the quantity of water discharged to the recharge pond must be measured by totalizing flow meter and be tracked separately from the water discharged to the freshwater and overflow ponds and lagged back to the stream. The Applicant shall account for the lagged depletions from dewatering and the accretions from the recharge to determine the actual depletions or accretions to the stream from dewatering, and replace any unreplaced depletions. The total amount pumped monthly for dewatering purposes and from the recharge must be reported on the submitted monthly accounting.
18. Should it be determined by the water commissioner or division engineer that water within the recharge pond is being diverted for any purpose by the operator and accounting is not adequate to show the recharge of dewatering is occurring the Applicant will need to account for any lagged dewatering depletions at the site.
19. The Applicant indicated that the dewatering of the site is discontinued once the freshwater and overflow ponds are completed, therefore those ponds would fill creating additional depletions to the stream system due to increased evaporation. To assure that additional depletions to the river do not occur, the SWSP accounts for the first fill of these ponds and replacing the 204.37 acre-feet of first fill depletions to the stream system.
20. All releases of replacement water must be sufficient to cover all out of priority depletions in time, location, and amount, and must be made under the direction

and/or approval of the water commissioner (including the proposed aggregated replacement for winter depletions).

21. 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 will produce a permanent water surface exposing groundwater to evaporation, an application for a plan for augmentation must be filed with the Division 1 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 shall continue until there is no longer an effect on stream flow.
22. 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 excavation of the product from below the water table, and all other use of water at the pit, must cease immediately.
23. 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 if this substitute water supply plan is of a quality to meet requirements of use to which the senior appropriation receiving the substitute supply has normally been put. As such, water quality data or analyses may be requested at any time to determine if the requirement of use of the senior appropriator is met.

24. 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 water court case or any other legal action that may be initiated concerning the 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.

If you have any questions concerning this approval, please contact Ioana Comaniciu in Denver at (303) 866-3581 x8241 or Aliyah Santistevan and Michael Hein in Greeley at (970) 352-8712.

Sincerely,



for Joanna Williams, P.E.,
Water Supply Chief

Attachments: Figures 1, 2, 3, and 4
 Tables 1, 2, 4, 5, and 6
 United Lease
 Letter from DRMS dated April 30, 2010

Ec: Corey DeAngelis, Division Engineer, Corey.Deangelis@state.co.us
 Liam Cummins, Water Resource Engineer, Liam.Cummins@state.co.us
 Aliyah Santistevan, Assistant Division Engineer, Aliyah.Santistevan@state.co.us
 Shera Sumerford, Water Commissioner District 5, Shera.Sumerford@state.co.us
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Louis Flink, Tabulation/Diversions Record Coordinator Louis.Flink@state.co.us
Division of Reclamation Mining and Safety, dnr_drmsminadmin@state.co.us

JMW/idc: Nix Gravel Pit SWSP Renewal 24-25.doc

4. FIGURES

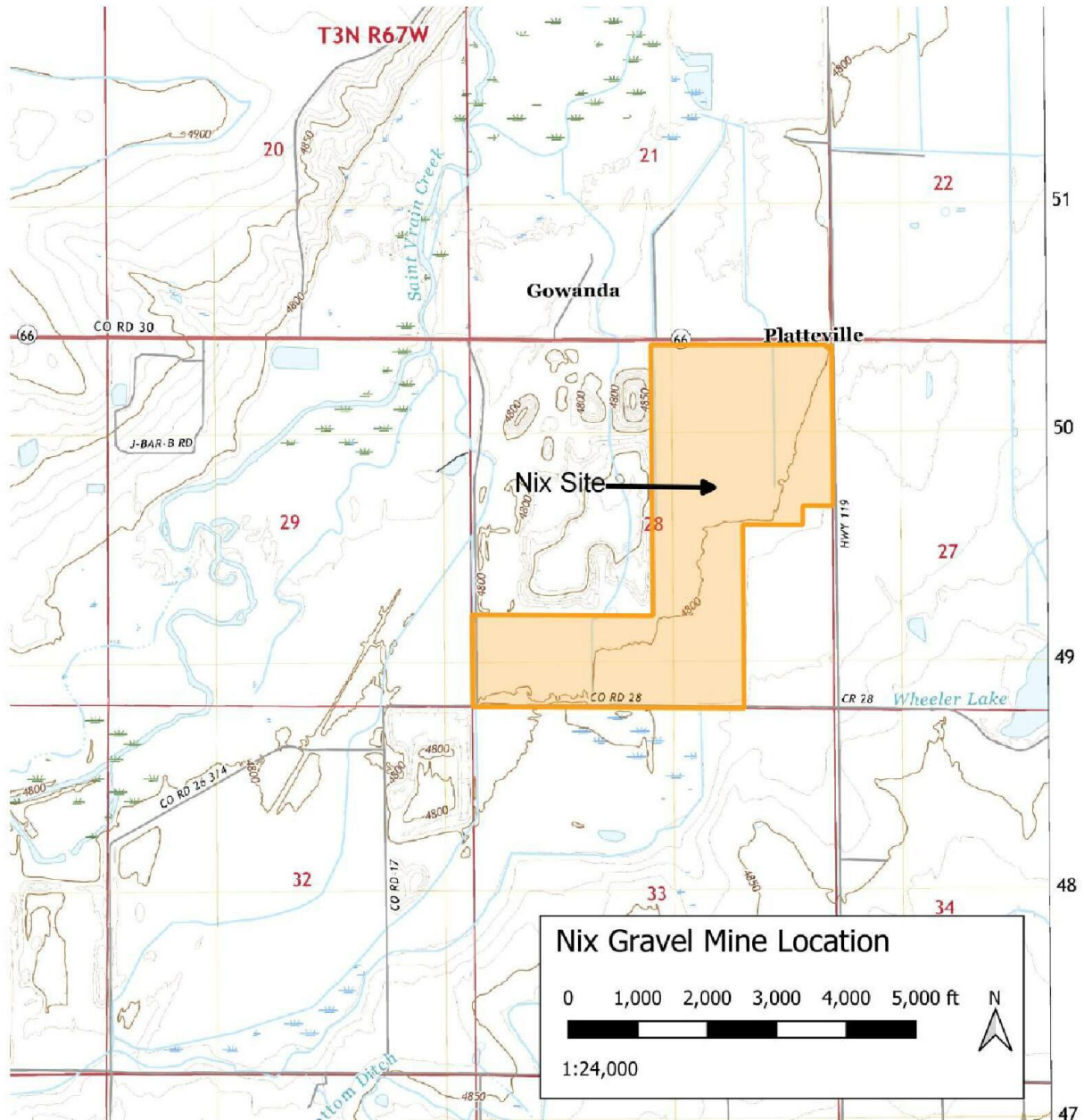


Figure 1. Nix Site index location map

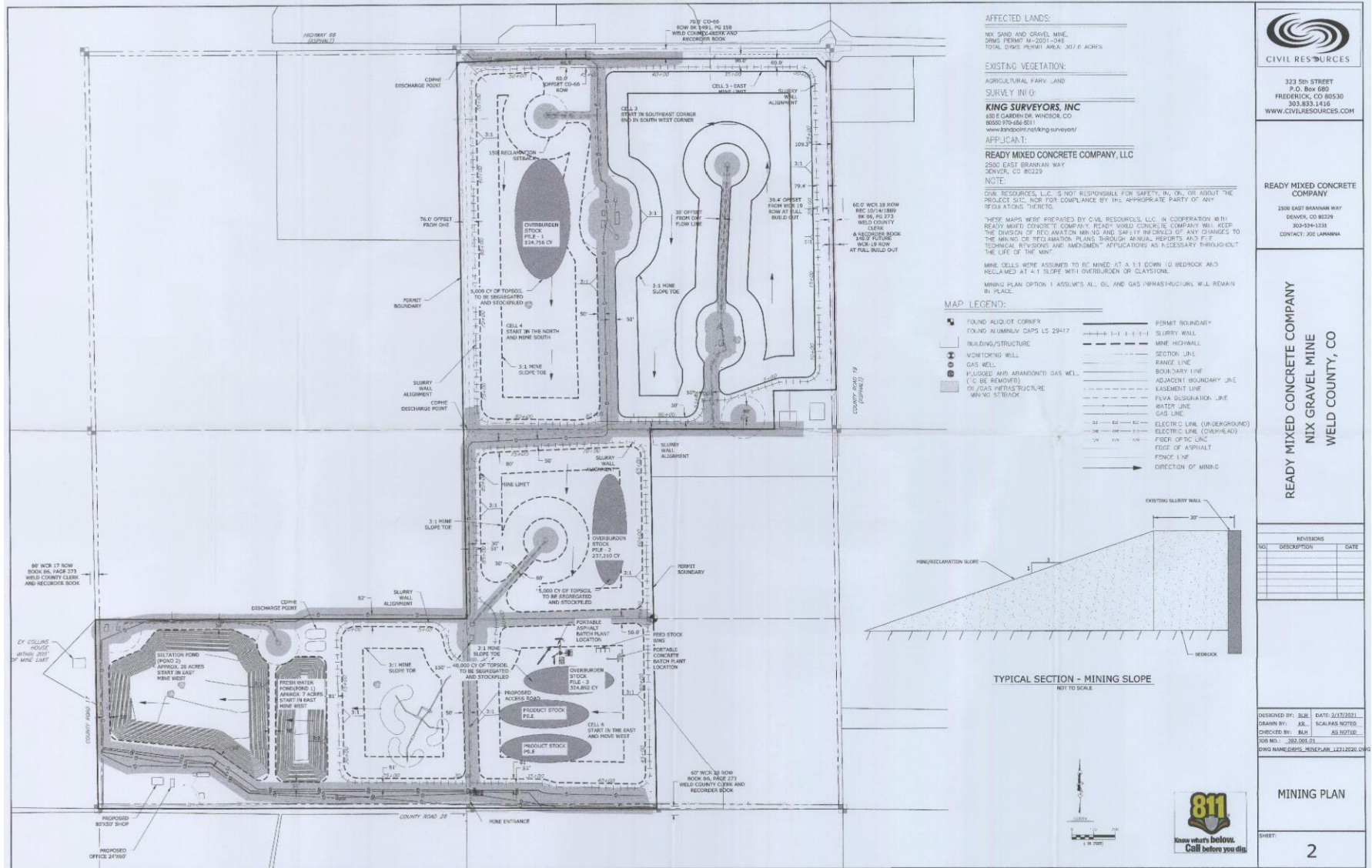


Figure 2. Mining plan for Nix Site from DRMS permit revision

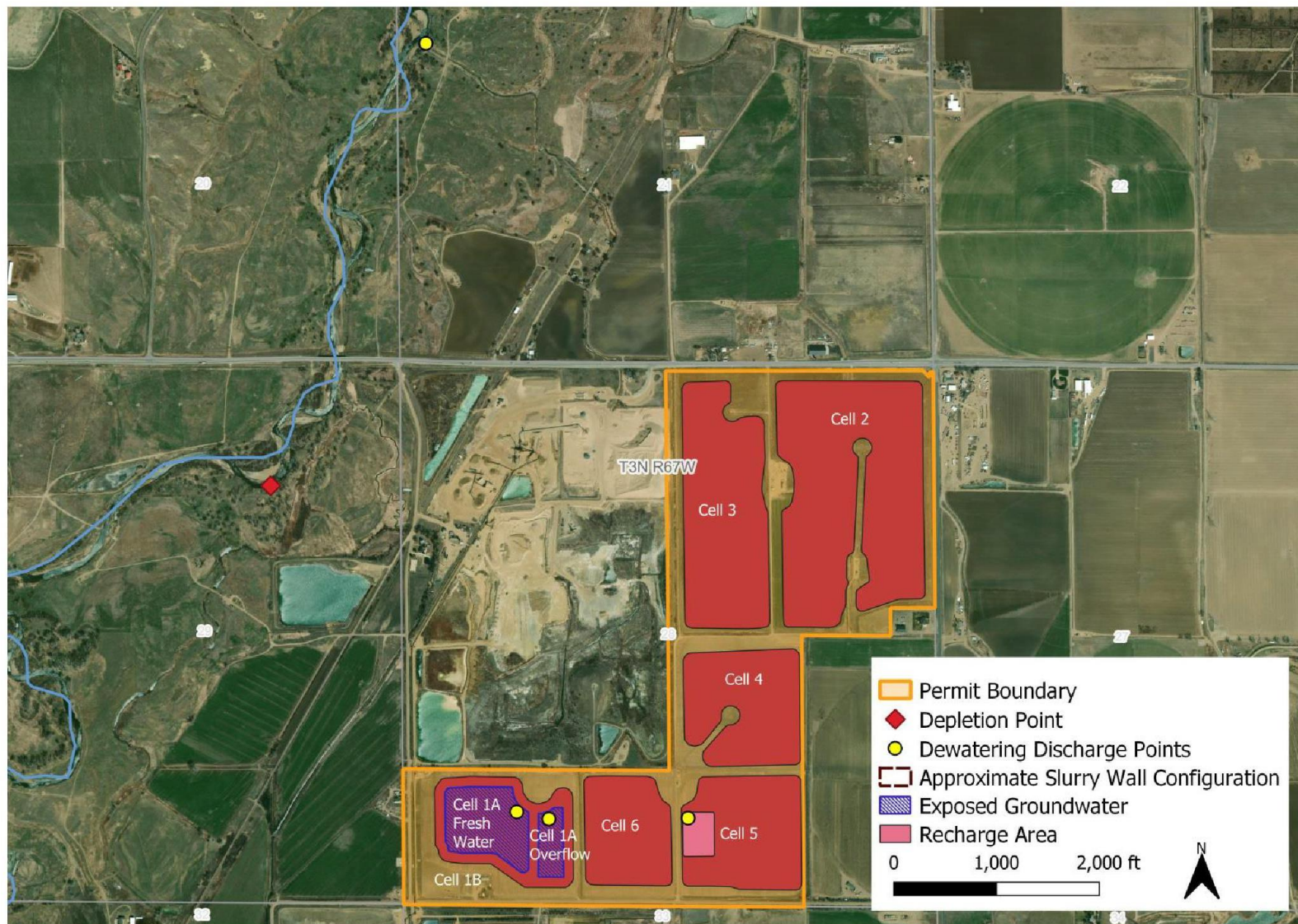


Figure 3. Site configuration and depletion point map

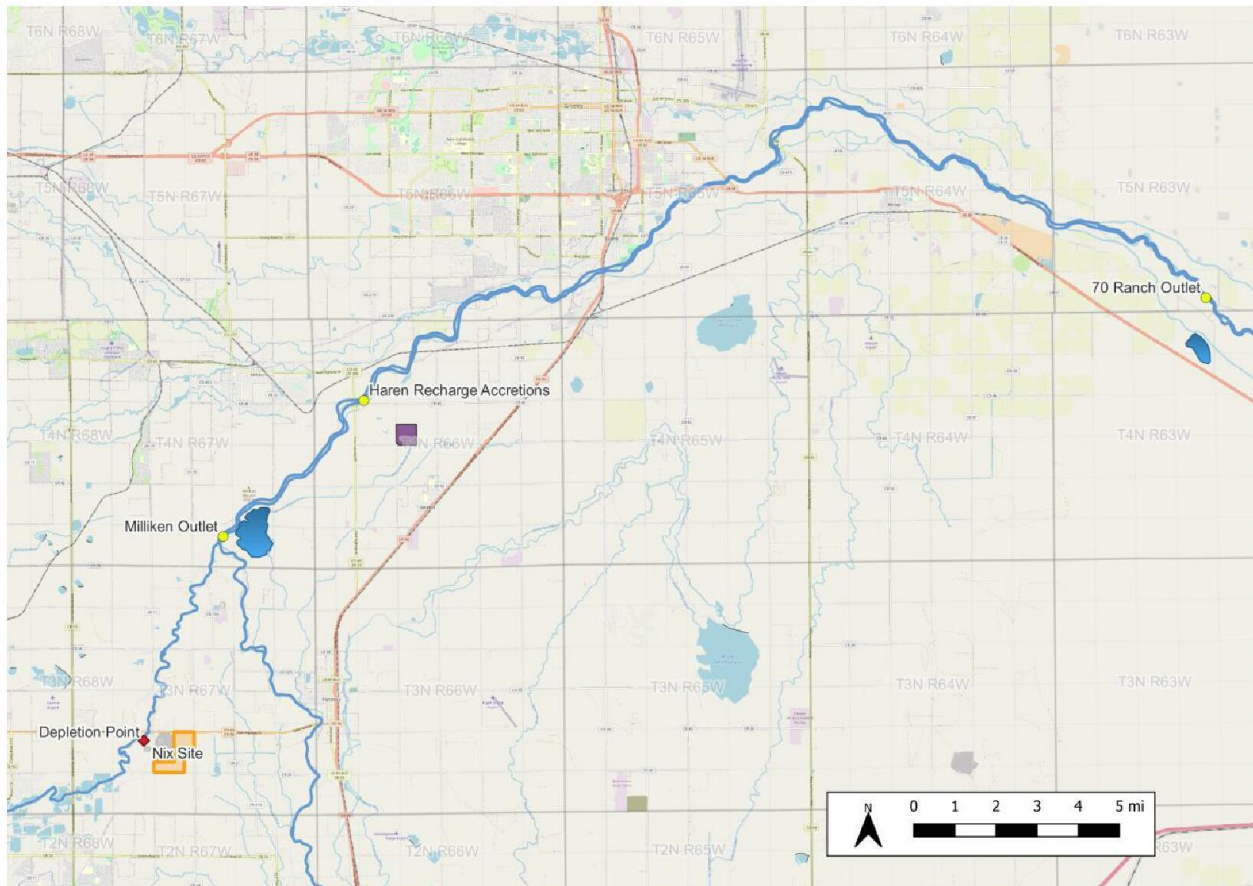


Figure 4. Locations of depletions and replacement sources for Nix Site

5. TABLES

Table 1. Estimated water consumption from evaporation of exposed groundwater during renewal period

Month	Evaporation Water Consumption						
	Monthly Gross Evaporation Distribution (%)	Gross Evaporation (in)	Average Precipitation (in)	Effective Precipitation (in)	Net Evaporation (in)	Total Area of Exposed Groundwater (ac)	Total Net Evaporation (AF)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Jul 2024	15.0%	6.30	1.43	1.00	5.30	2.50	1.10
Aug 2024	13.5%	5.67	1.39	0.97	4.70	2.50	0.98
Sep 2024	10.0%	4.20	1.36	0.95	3.25	2.50	0.68
Oct 2024	7.0%	2.94	0.58	0.41	2.53	3.23	0.68
Nov 2024	4.0%	1.68	0.16	0.12	1.56	3.95	0.52
Dec 2024	3.0%	1.26	0.05	0.04	1.22	4.68	0.48
Jan 2025	3.0%	1.26	0.07	0.05	1.21	5.47	0.55
Feb 2025	3.5%	1.47	0.05	0.04	1.43	6.27	0.75
Mar 2025	5.5%	2.31	0.43	0.30	2.01	7.14	1.20
Apr 2025	9.0%	3.78	1.36	0.95	2.83	8.16	1.92
May 2025	12.0%	5.04	2.02	1.41	3.63	9.61	2.90
Jun 2025	14.5%	6.09	1.44	1.01	5.08	12.00	5.08
Annual Total	100.0%	42.00	10.35	7.25	34.75		16.84

Notes:

- (1)- Annual distribution of gross evaporation for sites under 6,500 ft msl per DWR guidelines
- (2)- Annual gross free water evaporation per NOAA TR NWS 33 multiplied by distribution in (1)
- (3)- Average precipitation at NCWCD Gilcrest station from 1994-2020
- (4)- Precipitation assumed to be previously consumed by vegetation: (3)*0.7
- (5)- Gross evaporation minus effective precipitation: (2)-(4)
- (6)- Estimated area of exposed groundwater
- (7)- Volume of water consumed due to evaporation of exposed groundwater: (5)/12*(6)

Table 2. Estimated water consumption from mining operations during renewal period

Operational Water Consumption														
		Monthly Aggregate Production Above Groundwater	Percentage of Product Washed	Water Removed with Product Mined Above Groundwater Table (AF)	Monthly Aggregate Production Below Groundwater Table (tons)	Water Removed with Product Mined Below Groundwater Table (AF)	Water Used for Dust Control (AF)	Concrete Batching Production (CY)	Water Used for Concrete Production (AF)	Asphalt Batching Production (CY)	Water Used for Asphalt Production (AF)	First-fill Water (AF)	Total Operational Water Consumption (AF)	Dewatering Volume (AF)
Month	(%)	(tons)	(%)	(AF)	(tons)	(AF)	(AF)	(CY)	(AF)	(CY)	(AF)	(AF)	(AF)	(AF)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Jul 2024	7.6%	0	100%	0.00	50,000	1.47	1.15	0	0.00	0	0.00	12.99	2.62	137.21
Aug 2024	0.0%	0	100%	0.00	0	0.00	0.50	0	0.00	0	0.00	0.00	0.50	137.21
Sep 2024	0.0%	0	100%	0.00	0	0.00	0.50	0	0.00	0	0.00	0.00	0.50	132.78
Oct 2024	7.6%	0	100%	0.00	50,000	1.47	1.15	0	0.00	0	0.00	0.00	2.62	137.21
Nov 2024	7.6%	0	100%	0.00	50,000	1.47	1.15	0	0.00	0	0.00	0.00	2.62	132.78
Dec 2024	7.6%	0	100%	0.00	50,000	1.47	1.15	0	0.00	0	0.00	0.00	2.62	137.21
Jan 2025	8.4%	0	100%	0.00	55,000	1.62	1.27	0	0.00	0	0.00	0.00	2.88	137.21
Feb 2025	8.4%	0	100%	0.00	55,000	1.62	1.27	0	0.00	0	0.00	0.00	2.88	123.93
Mar 2025	9.2%	0	100%	0.00	60,000	1.77	1.38	0	0.00	0	0.00	0.00	3.15	137.21
Apr 2025	10.7%	0	100%	0.00	70,000	2.06	1.61	0	0.00	0	0.00	0.00	3.67	132.78
May 2025	15.3%	0	100%	0.00	100,000	2.94	2.30	0	0.00	0	0.00	0.00	5.24	137.21
Jun 2025	17.6%	0	100%	0.00	115,000	3.38	2.65	0	0.00	0	0.00	83.39	6.03	132.78
Annual Total	100.0%	0		0.00	655,000	19.28	16.08	0	0.00	0	0.00	96.38	35.35	1615.51

Notes:

- (1)- Estimated monthly production schedule as a percentage of annual production
- (2)- Estimated monthly production mined above the groundwater table in tons
- (3)- Portion of production that is washed
- (4)- Volume of water consumed by removal of product above the groundwater table: $((2)*(3))*2000(\text{lb/ton})/62.4(\text{lb/cu ft})/43560(\text{sq ft/ac})*0.02$
- (5)- Estimated monthly production mined below the groundwater table in tons
- (6)- Volume of water consumed by removal of product above the groundwater table: $(5)*2000/62.4/43560*0.04$
- (7)- Water used for dust control, estimated by production volume.
- (8)- Estimated concrete production
- (9)- Volume of water used for concrete production, estimated at 40 gal/CY
- (10)- Estimated asphalt production
- (11)- Volume of water used for concrete production, estimated at 10 gal/CY
- (12)- Volume of water replacing removed material: $((5)/\text{density of mined material})*(1-\text{porosity})/1613.33(\text{CY/AF})-(6)$, assumes total of 50,000 tons from Overflow Pond and 300,000 tons from Freshwater Pond below groundwater table
- (13)- Total water consumption from mining operations: $(4)+(6)+(7)+(9)+(11)$
- (14)- Total volume of water withdrawn for dewatering assuming a rate of 3,000 GPM

Table 4. Unit response function for depletions from the Nix Site

Month No.	Impact on Stream	Month No.	Impact on Stream	Month No.	Impact on Stream	Month No.	Impact on Stream
1	0.06%	41	0.76%	81	0.22%	121	0.06%
2	1.97%	42	0.73%	82	0.21%	122	0.06%
3	4.92%	43	0.71%	83	0.21%	123	0.06%
4	5.54%	44	0.69%	84	0.20%	124	0.06%
5	5.14%	45	0.67%	85	0.19%	125	0.06%
6	4.54%	46	0.65%	86	0.19%	126	0.05%
7	3.97%	47	0.63%	87	0.18%	127	0.05%
8	3.50%	48	0.61%	88	0.18%	128	0.05%
9	3.11%	49	0.59%	89	0.17%	129	0.05%
10	2.79%	50	0.57%	90	0.17%	130	0.05%
11	2.53%	51	0.56%	91	0.16%	131	0.05%
12	2.33%	52	0.54%	92	0.16%	132	0.05%
13	2.16%	53	0.52%	93	0.15%	133	0.04%
14	2.02%	54	0.51%	94	0.15%	134	0.04%
15	1.90%	55	0.49%	95	0.14%	135	0.04%
16	1.80%	56	0.48%	96	0.14%	136	0.04%
17	1.71%	57	0.46%	97	0.13%	137	0.04%
18	1.63%	58	0.45%	98	0.13%	138	0.04%
19	1.56%	59	0.43%	99	0.13%	139	0.04%
20	1.50%	60	0.42%	100	0.12%	140	0.04%
21	1.45%	61	0.41%	101	0.12%	141	0.03%
22	1.39%	62	0.40%	102	0.11%	142	0.03%
23	1.34%	63	0.38%	103	0.11%	143	0.03%
24	1.30%	64	0.37%	104	0.11%	144	0.03%
25	1.26%	65	0.36%	105	0.10%		
26	1.21%	66	0.35%	106	0.10%		
27	1.18%	67	0.34%	107	0.10%		
28	1.14%	68	0.33%	108	0.10%		
29	1.10%	69	0.32%	109	0.09%		
30	1.07%	70	0.31%	110	0.09%		
31	1.03%	71	0.30%	111	0.09%		
32	1.00%	72	0.29%	112	0.08%		
33	0.97%	73	0.28%	113	0.08%		
34	0.94%	74	0.27%	114	0.08%		
35	0.91%	75	0.26%	115	0.08%		
36	0.88%	76	0.26%	116	0.07%		
37	0.86%	77	0.25%	117	0.07%		
38	0.83%	78	0.24%	118	0.07%		
39	0.81%	79	0.23%	119	0.07%		
40	0.78%	80	0.23%	120	0.07%		

Table 5. Unit response function for accretions from recharge area.

Month No.	Impact on Stream	Month No.	Impact on Stream	Month No.	Impact on Stream	Month No.	Impact on Stream
1	0.00%	41	0.90%	81	0.21%	121	0.05%
2	0.41%	42	0.87%	82	0.20%	122	0.05%
3	1.95%	43	0.84%	83	0.19%	123	0.04%
4	3.16%	44	0.81%	84	0.18%	124	0.04%
5	3.58%	45	0.78%	85	0.18%	125	0.04%
6	3.59%	46	0.75%	86	0.17%	126	0.04%
7	3.46%	47	0.72%	87	0.17%	127	0.03%
8	3.29%	48	0.69%	88	0.16%	128	0.07%
9	3.12%	49	0.67%	89	0.15%	129	0.07%
10	2.96%	50	0.65%	90	0.15%	130	0.06%
11	2.82%	51	0.62%	91	0.14%	131	0.06%
12	2.69%	52	0.60%	92	0.14%	132	0.06%
13	2.58%	53	0.58%	93	0.13%	133	0.06%
14	2.47%	54	0.56%	94	0.13%	134	0.06%
15	2.37%	55	0.54%	95	0.12%	135	0.06%
16	2.28%	56	0.52%	96	0.12%	136	0.05%
17	2.19%	57	0.50%	97	0.12%	137	0.05%
18	2.11%	58	0.48%	98	0.11%	138	0.05%
19	2.03%	59	0.46%	99	0.11%	139	0.05%
20	1.95%	60	0.45%	100	0.10%	140	0.05%
21	1.88%	61	0.43%	101	0.10%	141	0.05%
22	1.81%	62	0.42%	102	0.10%	142	0.05%
23	1.75%	63	0.40%	103	0.09%	143	0.04%
24	1.68%	64	0.39%	104	0.09%	144	0.04%
25	1.62%	65	0.37%	105	0.09%	145	0.04%
26	1.56%	66	0.36%	106	0.08%	146	0.04%
27	1.51%	67	0.35%	107	0.08%	147	0.04%
28	1.45%	68	0.33%	108	0.08%	148	0.04%
29	1.40%	69	0.32%	109	0.07%	149	0.04%
30	1.35%	70	0.31%	110	0.07%	150	0.04%
31	1.30%	71	0.30%	111	0.07%	151	0.03%
32	1.25%	72	0.29%	112	0.07%	152	0.03%
33	1.21%	73	0.28%	113	0.06%	153	0.03%
34	1.16%	74	0.27%	114	0.06%	154	0.03%
35	1.12%	75	0.26%	115	0.06%	155	0.03%
36	1.08%	76	0.25%	116	0.06%		
37	1.04%	77	0.24%	117	0.05%		
38	1.00%	78	0.23%	118	0.05%		
39	0.97%	79	0.22%	119	0.05%		
40	0.93%	80	0.21%	120	0.05%		

Table 6. Total water consumed and lagged depletions over the renewal period

Month	Total Water Use (AF)	Total Depletion to St. Vrain Creek (AF)	Lagged Returns from Dewatering Infiltration (AF)	Net Impact on Stream (AF)
	(1)	(2)	(3)	(4)
Jul 2024	153.93	-0.63	0.09	-0.54
Aug 2024	138.69	-3.69	2.80	-0.90
Sep 2024	133.96	-10.94	9.55	-1.39
Oct 2024	140.51	-18.58	17.07	-1.52
Nov 2024	135.92	-25.49	23.98	-1.51
Dec 2024	140.31	-31.63	30.10	-1.53
Jan 2025	140.64	-37.00	35.44	-1.56
Feb 2025	127.56	-41.83	40.23	-1.61
Mar 2025	141.55	-45.94	44.28	-1.66
Apr 2025	138.37	-49.50	47.76	-1.75
May 2025	145.36	-52.98	51.11	-1.87
Jun 2025	227.29	-56.40	54.26	-2.15
Total	1764.08	-374.63	356.65	-17.98

Notes:

- (1)- Total amount of water consumed including evaporation and operational use
- (2)- Lagged depletion to St. Vrain Creek based on total consumption in (1)
- (3)- Lagged accretions from infiltrated dewatering discharge, assumes 100% is discharged to overflow and freshwater ponds
- (2)+(3), negative number when water is owed to the
- (4)- stream

**AUGMENTATION WATER LEASE AGREEMENT
BETWEEN
THE UNITED WATER AND SANITATION DISTRICT
and
READY MIXED CONCRETE COMPANY**

THIS LEASE AGREEMENT, entered into on this 31 day of August, 2024, with an effective date of July 1, 2024 (the "Effective Date"), is between the UNITED WATER AND SANITATION DISTRICT ("United"), and READY MIXED CONCRETE COMPANY ("RMCC"). United and RMCC will be collectively referred to herein as the "Parties."

RECITALS

A. United is a Water and Sanitation District organized, existing and operating pursuant to the Special District's Act, C.R.S. 32-1-101, *et seq.*

B. RMCC a trade name of Brannan Sand and Gravel Company, L.L.C., registered with Colorado Secretary of State, Business Division.

C. United is a Lessee of augmentation water in the form of recharge accretions from the Haren Recharge Facility, water stored in the 70 Ranch Reservoir, or water stored in Milliken reservoir. The locations of each facility and the points of replacement to the South Platte River are depicted in **Exhibit 1**.

E. RMCC requires water to augment stream depletions to St. Vrain Creek from mining operations at the Nix Gravel Mine.

F. This Lease will provide RMCC with up to 18.0 acre-feet of augmentation water replaced to the South Platte River above the location of the calling water right in effect at the confluence of St. Vrain Creek with the South Platte River.

LEASE AGREEMENT

NOW THEREFORE, for and in consideration of the following covenants, terms and conditions, and in full consideration of other conditions as hereinafter set forth, it is hereby agreed by and between United and RMCC as follows:

1. Leased Amount and Sources: United agrees to lease to RMCC up to a total of eighteen (18.0) acre-feet of water for augmentation of stream depletions due to gravel mining and operations at the Nix Gravel Mine. Augmentation water may be made available from the following sources.

- i. Water recharged in the Haren Recharge facility under the decrees in Case Nos. 87CW304 and 05CW311 or water recharged under free river conditions.
 - ii. Water stored in the 70 Ranch Reservoir under free river.
 - iii. Water stored in Milliken Reservoir under free river.
2. Lease Period: This Lease shall begin on the Effective Date and shall expire on June 30, 2025.
3. Replacement Schedule: United shall make augmentation water available to RMCC based on the following monthly schedule.

Month	Replacement Requirement (AF)
Jul 2024	0.5
Aug 2024	0.9
Sep 2024	1.4
Oct 2024	1.5
Nov 2024	1.5
Dec 2024	1.5
Jan 2025	1.6
Feb 2025	1.6
Mar 2025	1.7
Apr 2025	1.7
May 2025	1.9
Jun 2025	2.1
Total	18.0

4. Operation, Maintenance and Repair. RMCC shall be responsible for its pro rata share of all costs related to the operation, utilities, monitoring, maintenance, and repair of those portions of the 70 Ranch Reservoir and Milliken Reservoir utilized by RMCC for storage.
5. Unneeded Water: RMCC's water requirements are based on future projections and will heavily depend on actual operations of the Nix facility. Should RMCC's actual depletions in any month be less than the volume noted in the Replacement Schedule, United may, at its discretion, use or retain any portion of water not needed to replace RMCC's actual depletions and invoice RMCC for only the volumes of water used by RMCC and not retained or used by United.
6. Monthly Payment: Each month United shall issue RMCC an invoice payable not fewer than 30 days after the invoice date. RMCC shall pay United consideration in the amount of

\$250 per acre-foot as detailed by the Replacement Schedule less any amount retained or used by United.

7. Limitation of Obligations: United shall have no obligations with respect to the sources of water as listed in Paragraph 1 provided that the point of replacement is above the calling water right in effect at the confluence of St. Vrain Creek with the South Platte River.

8. Assignment: The right to use augmentation water as provided for in this Lease shall not be separately assigned by RMCC to any other person, firm, or organization unless agreed to in writing by United.

9. Accounting: The Parties shall mutually implement and utilize such accounting procedures to effectuate this Lease as may reasonably be required by the Division Engineer.

10. Governmental Immunity: Notwithstanding any other provision of this Lease to the contrary, none of the Lease's terms or conditions shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits, or protections provided to United or their respective officials, employees, contractors, or agents, or any other person acting on their behalf, under the Colorado Governmental Immunities Act, 24-10-101, *et seq.* C.R.S., as amended or as it may be amended (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted).

11. Default: If either Party defaults in the performance of any of its obligations under this Lease, then (a) the non-defaulting party will give the defaulting party written notice of the default; and (b) the defaulting party will have thirty (30) days thereafter to cure the default unless cure of the default will reasonably require more than thirty (30) days, in which case defaulting party will have thirty (30) days to undertake substantial action to cure the default and thereafter diligently complete the curative actions. If the defaulting party fails to cure the default, then the non-defaulting party, in addition to any other remedies that may be available at law or in equity, will have the right to terminate this Lease by written notice to the defaulting party.

12. Dispute Resolution: The Parties shall endeavor to resolve claims, disputes, and other matters in question between them by mediation. Any claim, dispute or other matter in question arising out of or related to this Lease shall be subject to mediation as a condition precedent to arbitration. Requests for mediation shall be filed in writing with the Party in controversy. Mediation shall proceed in advance of arbitration which shall be stayed pending mediation. All mediated settlement conferences shall take place in the City and County of Denver or Arapahoe County, Colorado within sixty (60) days of the date of a Party's notice to mediate. The Parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

All claims, disputes controversies, and other matters in question arising out of or relating to this Lease or the breach, termination, interpretation, or validity thereof that are not resolved by mediation shall be decided by binding arbitration, which, unless the Parties mutually agree otherwise, shall be in accordance with the expedited arbitration procedures attached herein as

Exhibit 2. A demand for arbitration shall be made in writing within thirty (30) days of the mediator declaring an impasse or within sixty (60) days of the last mediation session, whichever occurs first. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations. The Parties shall share the arbitrator's fee and any filing fees equally. The Parties shall be responsible for payment of their own attorney fees. The demand for arbitration shall be filed in writing with the other party to this Lease and with the Judicial Arbiter Group. Issues of arbitrability shall be decided by the arbitrator. The arbitrator may not award lost profits, incidental, indirect, consequential, or punitive damages. The arbitrator shall issue a reasoned decision in writing which shall be based on Colorado law relying on the language of the contract documents supported by established principles of contract interpretation. The arbitration shall be conducted by a single arbitrator using the expedited arbitration procedures provided in **Exhibit 2**. The parties shall select the arbitrator from the Judicial Arbiter Group (JAG) or, in the event JAG is no longer in operation, an equivalent entity that provides former or retired Colorado judges as arbitrators. Arbitration hearings shall take place in the City and County of Denver or Arapahoe County, Colorado.

13. Force Majeure: If at any time, United is unable to provide augmentation water pursuant to this Lease, by reason of an act of God or other forces beyond its control, state law, rule or order, then for the period of time storage cannot be provided, this Lease shall be held in abeyance and be of no force or effect.

14. Sources not a Public Water System: The Parties agree that by providing RMCC augmentation water, the Parties are neither operating nor including the sources in a "public water system," a "community water system," or a "non-community water system" as those terms are defined in the Safe Drinking Water Act, 42 U.S.C. §§ 300f – 300j-26, that the Parties are not providers of drinking water within the meaning of the Safe Water Drinking Act, and that neither Party has any responsibility to the other Party or other water users under the Safe Water Drinking Act. The Parties further agree that they have no obligations under the Colorado Drinking Water Quality Statute, C.R.S. § 25-1-107(x), or under the Colorado Primary Drinking Water Regulations, 5 CCR 1003-1.

15. Authority: Each Party hereby warrants and represents that it has the full right and lawful authority to enter into this Lease and has taken all actions required to make this Lease binding on the Party.

16. Notices: Any notice, demand, or election under this Lease must be in writing and must be given in person or mailed by registered or certified mail, addressed as follows:

If to United:

Drew Damiano, VP Operations
United Water and Sanitation District
8301 East Prentice Ave., Suite 100
Greenwood Village, Colorado 80111

If to RMCC:

Alex Schatz
Brannan Sand and Gravel Company, LLC
2500 Brannan Way
Denver, Colorado 80229

17. Modification: This Lease may be modified as necessary by mutual consent of both Parties as set forth in a signed and dated written amendment. Each party assumes all risks, liabilities, and consequences of performing work outside the specified scope of this Lease without a prior approved amendment. This Lease represents the entire agreement between the Parties and supersedes all prior agreements and understandings, written or oral, with respect to the subject matter of this Lease. No representations, warranties, or agreements have been made by United or RMCC to one another with respect to this Lease except those contained herein.

18. No Third Party Beneficiaries: It is expressly understood and agreed that enforcement of the terms and conditions of this Lease, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Lease shall give or allow any such claim or right of action by any other third party on such Lease. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Lease shall be deemed to be an incidental beneficiary only.

19. Strict Observation of Terms: The failure of a Party to insist in one or more cases upon the strict observation of any of the terms of this Lease shall not be considered as a waiver or relinquishment in any future case of any of the terms of this Lease.

20. Binding Effect: On the Lease Execution Date, this Lease shall inure to and be binding on the legal representatives, heirs, executors, administrators, successors and assigns of the Parties hereto.

21. Unenforceable Provisions: If any provision of this Lease is determined to be unenforceable or invalid, then such provision shall be unenforceable and invalid, and the remainder of this Lease shall remain in full force and effect to the extent practicable unless both Parties agree otherwise.

22. Captions: The captions of this Lease are for convenience of reference only, are not part of this Lease, and do not define or limit any of the terms of this Lease. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa.

23. Governing Law: This Lease, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Lease, is governed by the laws of the State of Colorado in all respects including matters of validity, construction, performance, and enforcement, without giving effect to any choice of law or conflict of laws rules or provisions (whether of the State of Colorado or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Colorado. Exclusive jurisdiction and venue for any

action arising out of this Lease is proper only in the District Court of Weld County, State of Colorado.

24. Counterpart Execution. This Lease may be executed in one or more counterparts, each of which when executed shall be deemed an original, all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by electronic delivery and, upon receipt, shall be deemed originals and binding upon the Parties.

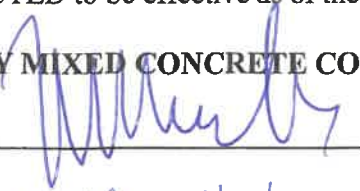
25. Electronic Signatures. The Parties consent to the use of electronic signatures pursuant to the Uniform Electronic Transactions Act, Sections 24-71.3-101, *et seq.*, Colorado Revised Statutes, as may be amended from time to time. The Lease, and any other documents requiring a signature hereunder, may be signed electronically by the parties in a manner acceptable to RMCC. The parties agree not to deny the legal effect or enforceability of the Lease solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Lease in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

26. Rules of Construction. For purposes of this Lease, except as otherwise expressly provided or unless the context clearly requires otherwise (i) the terms defined herein include the plural as well as the singular and include any words based upon the root of such defined terms; (ii) the words "include," "includes," and "including" mean inclusion without limitation; (iii) the word "or" is not exclusive; and (iv) the words "herein," "hereof," and "hereunder," and other words of similar import, refer to this Lease as a whole and not to any particular Section or other subdivision. Unless the context otherwise requires, reference herein to: (A) an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (B) a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulation promulgated thereunder. This Lease shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

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EXECUTED to be effective as of the date set forth above.

READY MIXED CONCRETE COMPANY

By: 

Name: JC Morrell Jr.

Title: President/CEO

UNITED WATER AND SANITATION DISTRICT

By: 

Name: Robert A. Lembke

Title: President

Exhibit 1
Approximate Locations of Replacement Sources

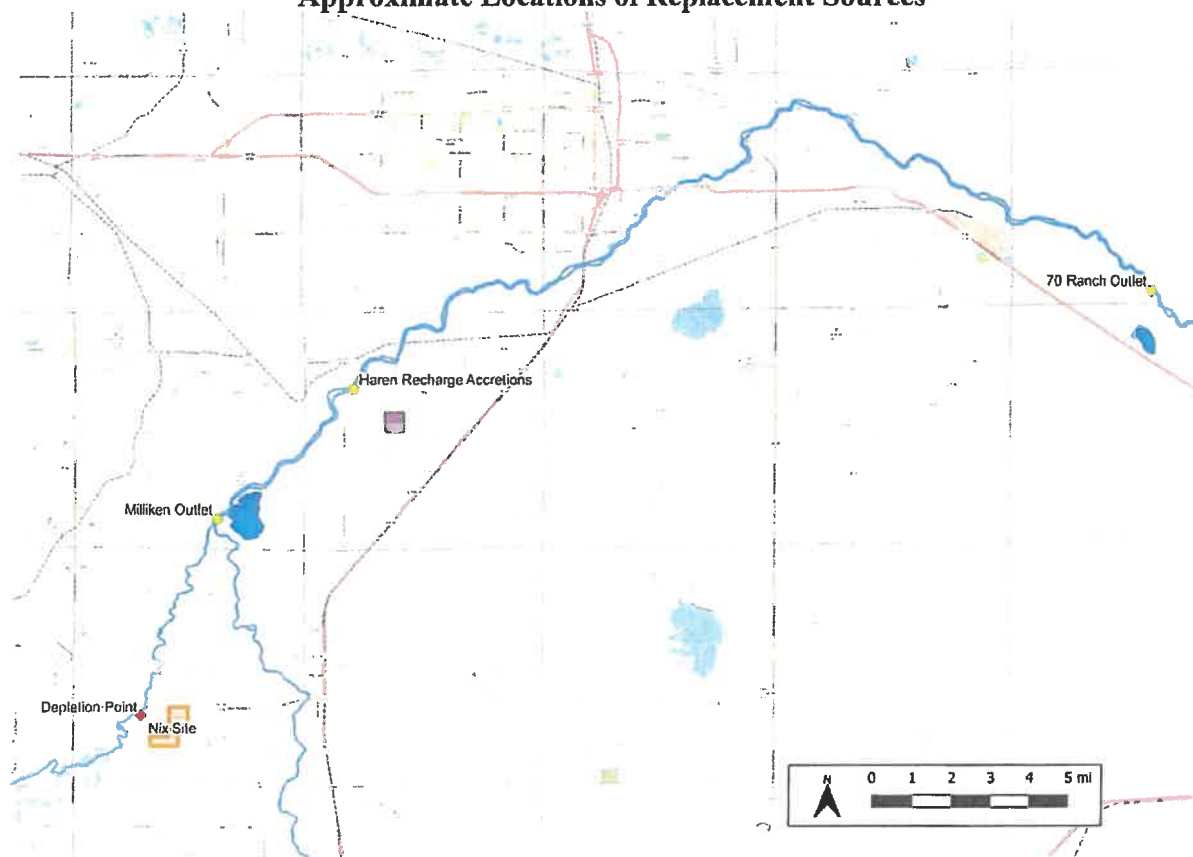


Exhibit 2

Expedited Arbitration Procedures

(a) Filing of a Demand. The initiating party ("the claimant") shall within the time period specified in the Lease, file with JAG a demand for arbitration, the administrative filing fee (if any), and a copy of the applicable arbitration agreement from the parties' contract which provides for arbitration. The claimant shall simultaneously provide a copy of the demand and the applicable arbitration agreement to the opposing party or parties ("the respondent" or "respondents").

(b) Contents of Demand. The demand shall include: a) the name of each party; b) the address for each party, including, if known, telephone and fax numbers and email addresses; c) if applicable, the names, addresses, telephone and fax numbers and, if known, email address of the known representative for each party; d) a detailed statement setting forth the nature of the claim including the relief sought and the amount involved; and e) an affirmation that the claim was the subject of the mediated settlement conference between the parties.

(c) Notice of Demand. JAG shall provide notice to the respondents (or their representatives if so named) of the receipt of a demand when the administrative filing requirements have been satisfied. The date on which the filing requirements are satisfied shall establish the date of filing the dispute. If a filing does not satisfy the Contents of Demand set forth above, JAG shall notify the Claimant of the deficiencies by electronic transmission or facsimile. If the deficiencies are not cured within seven days, the filing shall be returned to the Claimant. If the filing satisfies the Contents of Demand set forth above, JAG shall acknowledge receipt of the Notice of Demand and provide a copy of the Notice of Filing to all parties identified therein.

(d) Answers and Counterclaims If an answer or counterclaim is to be filed, it shall be filed within fourteen calendar days after notice of the filing of the demand is sent by JAG. Counterclaims shall include a) a detailed statement setting forth the nature of the counterclaim including the relief sought and the amount involved; and b) an affirmation that the counterclaim was the subject of the mediated settlement conference between the parties. In the absence of extraordinary circumstances, JAG shall grant no more than one seven-calendar-day extension of the time in which to respond to a demand for arbitration or a counterclaim.

(e) Appointment and Qualification of Arbitrator. Within seven days of filing of the answering statement or the expiration of the time within which the answering statement was to be made, JAG shall simultaneously submit to each party an identical list of five names of arbitrators from which one arbitrator shall be appointed. The parties are encouraged to agree to an arbitrator from this list, and to advise the JAG of their agreement. If the parties cannot agree upon an arbitrator, each party may strike up to two names from the list and rank the remaining names in order of preference. The list shall be returned to JAG within seven calendar days of JAG's transmission of the list. If a party does not return the list by the due date, all names shall be deemed acceptable to that party. JAG

will appoint the arbitrator based on the composite order of preference of the parties, or in the event of a tie, shall designate the arbitrator from those involved in the tie.

The parties will be given notice by JAG of the appointment of the arbitrator, who shall be subject to disqualification for a) partiality or lack of independence, or b) inability or refusal to perform his or her duties with diligence and in good faith. Any objection by a party to the arbitrator shall be made within seven days of notice of selection of the arbitrator for cause and shall be confirmed in writing to JAG with a copy to the other party or parties. In the event the JAG is unable to appoint an arbitrator from the first list submitted following disqualifications for cause, JAG is empowered to appoint an arbitrator without the submission of additional lists.

Any person appointed as an arbitrator shall have the continuing duty to disclose to JAG any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives.

No party and no one acting on behalf of any party shall communicate ex parte with an arbitrator.

(f) Preliminary Management Hearing. A preliminary telephone conference shall be held among the parties or their representatives and the arbitrator within 10 business days from the confirmation of the arbitrator's appointment (the "Preliminary Management Hearing"). Parties shall accept notice of all matters and hearings, including preliminary hearings, by telephone, email, or fax. During the Preliminary Management Hearing, the arbitrator shall direct the parties' preparations and presentations so that the arbitration hearing can be closed no later than 45 days after the date of the Preliminary Management Hearing. Arrangements made during the Preliminary Management Hearing shall be confirmed in writing to the parties.

(g) Exchange of Information. At least seven business days prior to the arbitration hearing or no later than the date established by the arbitrator, the parties shall (a) exchange directly between themselves copies of all exhibits, affidavits and any other information they intend to submit at the hearing, and (b) identify all witnesses they intend to call at the hearing. The arbitrator is authorized to resolve any disputes concerning the exchange of information. There shall be no discovery.

(h) Date, Time and Place of Hearing. The arbitrator shall set and notify the parties of the date, time, and place of the hearing. The hearing shall be set so that it shall close no later than 45 days after the date of the Preliminary Management Hearing.

(i) Hearing. The hearing should not exceed one day. For good cause shown, the arbitrator may schedule additional time, which shall not a) exceed the equivalent of one day, and b) not extend the closing date of the hearing more than 60 days after the date of the Preliminary Management Hearing. The arbitrator may require witnesses to testify under oath.

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, and shall give it such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission. The arbitrator shall determine the admissibility, relevance, weight and materiality of the evidence offered. The arbitrator may request offers of proof and may reject evidence deemed by the arbitrator to be cumulative, unreliable, unnecessary, or of slight value compared to the time and expense involved.

The arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award in whatever form the arbitrator deems appropriate.

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least seven calendar days in advance of the hearing. The requesting party or parties shall pay the cost of the record. No other means of recording the proceedings will be permitted absent the agreement of the parties or per the direction of the arbitrator.

(j) Time Standards. The hearing shall be closed no later than 45 calendar days after the date of the Preliminary Management Hearing unless extended as provided in paragraph (h) above. The award shall be rendered not later than 14 calendar days from the date of the closing of the hearing and shall be binding upon the parties.

April 30, 2010

Permittee Address

RE: Mining Operations with Exposed Ground water

To Whom It May Concern:

The Division of Reclamation Mining and Safety is responsible for ensuring that Sand and Gravel mining operators comply with the requirements of the Colorado Land Reclamation Act for the Extraction of Construction Materials (Act) and the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Rules). Among these requirements are provisions for the protection of water resources. The Act requires that reclamation plans must ensure minimization of disturbances to the prevailing hydrologic balance, including disturbances to the quantity of water in the area affected by mining and in the surrounding areas. § 34-32.5-116(4)(h). Rule 3.1.6(1)(a) requires compliance with Colorado water laws and regulations governing injury to existing water rights both during and after mining. Permits must specify how the permittee will comply with applicable Colorado water laws and regulations governing injury to existing water right rights. Rule 6.3.3(j); Rule 6.4.5(2)(c). After an extensive review, the Division determined that several operators may not have appropriate permit conditions to address certain reclamation liabilities arising from impacts to water resources.

In September 2009 the Division of Water Resources (DWR) updated its Guidelines for Sand and Gravel Pits. These guidelines provide guidance on achieving compliance with state law regarding replacement of depletions from sand and gravel mining, thus the guidelines provide a benchmark for the protection of hydrologic balance required under the Act and Rules. As noted in the Guidelines, sand and gravel operations which expose groundwater without complying with state law create a reclamation liability by impacting available groundwater.

State law requires that any person exposing ground water must obtain a well permit from the SEO pursuant to § 37-90-137(11). Because exposed groundwater results in out-of-priority water depletions, operations which expose ground water must also eventually obtain a water-court approved augmentation plan. Currently, several operators do not have either an augmentation plan or bonding to provide an alternative method to mitigate injurious stream depletions that result from mining-related exposure of ground water. The Division has a statutory duty to ensure that lands affected by mining are reclaimed in a manner that complies with state law and to ensure that operators have sufficient bonding to achieve reclamation. In order to assist operators in achieving compliance with these requirements, the Division proposes that, by April 30, 2011, operators should contact the Division and agree upon a plan for achieving compliance.

The Division has identified four approaches for operators:

1. File a financial warranty that will ensure backfilling of the pit to cover the exposed ground water to a depth of two feet above the static ground water level or,
2. Obtain a court approved augmentation plan prior to exposing ground water or,
3. File a financial warranty to cover the cost of installing a clay liner or slurry wall that meets the Division of Water Resources requirements for preventing ground water exposure or,
4. Obtain approval from the Division of Water Resources that acknowledges compliance with the SEO's requirements pursuant to § 37-90-137(11).

The Division will work with operators on an individual basis as they move to implement one of these plans. It is likely that options 1 and 3 will require the submittal of a technical revision or an amendment to the existing permit depending on the nature of the current mining and reclamation plan and the proposed changes. Increased financial warranties, as a result of these modifications, may be posted in a phased manner not to exceed three years. Amendments or revisions currently under review will be required to be approved by April 30, 2011 and may use the phased financial warranty approach described above. New applications going forward or presently under review by the Division will be required to meet the requirements of one of the options 1-4 at the time of application approval. Failure of affected operators to initiate contact with the Division and gain compliance as described above could result in an enforcement action being issued by the Division.

If you have any questions, please contact Tony Waldron at 303-866-3567, extension 8150.

cc: Permit Id Site Name