COLORADO
Division of Water Resources
Department of Natural Resources

December 9, 2024

Jared Dains, P.E.
Applegate Group, Inc
1490 West 121st Avenue, Suite 100
Denver, CO 80234-2759

Re: Substitute Water Supply Plan for the Schmidt Construction Fountain Pit
DRMS Permit No. M-1982-155
Section 13, T16S, R66W, 6th P.M.
Water Division 2, Water District 10, El Paso County
Plan ID 5242, WDID 1007807

Approval Period: September 1, 2024 through August 31, 2026
Contact Information for Mr. Dains: jareddains@applegategroup.com; 303-452-6611

Dear Jared Dains:

We have reviewed your August 2, 2024 letter (received August 5, 2024) requesting the renewal of the substitute water supply plan ("SWSP") in accordance with section 37-90-137(11), C.R.S., for a sand and gravel pit operated by Schmidt Construction Company ("Schmidt" or "Applicant"). The required renewal fee of $257.00 has been paid and given receipt number 10037577.

SWSP Operation

The Fountain Pit site (well permit no. 77721-F, WDID 1005850, DRMS permit no. M-1982-155) is located in Section 13, Township 16 South, Range 66 West of the 6th P.M. in El Paso County. A small portion of the pit has been mined below the water table resulting in a groundwater pond of approximately 0.2 acres in size, as seen outlined in red in Figure A below. Aerial photos indicate multiple additional ponds on the site, however, the Applicant clarified most of these ponds are created from precipitation runoff and not groundwater. Three of the ponds, seen outlined in blue in Figure A, are settling basins that are above the water table and filled with augmented water for dust suppression. The remainder of the site will be mined above the water table, and the material will not be washed, therefore no groundwater will be lost with the removal of the mined material.

Figure A: The groundwater pond is outlined in red, and dust suppression settling basins used for the delivery and storage of augmented water are outlined in blue.

Up to 3.5 acre-feet of water will be pumped to the site from an existing sump with well permit no. 59834-F (WDID 1005198) and used for dust control purposes, and is considered to be fully consumed. This well is adjacent to Rock Creek and is approximately ¼ quarter of a mile upstream of the confluence of Rock Creek and Little Fountain Creek. A pipeline has been constructed to allow water to be conveyed from the existing sump to the mine site. Additionally, water may be diverted from the sump to the 0.2-acre groundwater pond used as a temporary detention basin to increase the efficiency of the dust control operations. Depletions from pumping of water from the sump will accrue to Rock Creek.

In addition, up to 250 acre-feet of groundwater from Hanna Ranch Wells Nos. 1 through 14 will be used for dust control, aggregate production, and construction activities on the gravel pit site pursuant to a lease agreement with Colorado Springs Utilities ("CS-U"). The Hanna Ranch Wells were decreed in case nos. W-1528 and W-4376 for municipal, industrial, irrigation, and domestic use in El Paso County. The water pumped from the Hanna Ranch Wells will be delivered to Schmidt's Fountain Pit via a pipeline, and will be considered to be out-of-priority and 100% consumed. The Hanna Ranch Wells are located on Clear Springs Ranch (see Figure 1) and withdraw groundwater from the alluvium of Fountain Creek. Consistent with the decree entered in case no. W-4376, depletions from the wells are considered to occur simultaneously with pumping for the purposes of this SWSP.

A storage tank on site will be filled with the water pumped from the well with permit no. 59834-F, or from the Hanna Wells.

A portion of the replacement water will be provided by 20 shares in the Fountain Mutual Irrigation Company ("FMIC") owned by Schmidt. The remainder of the replacement water will be provided by a lease with CS-U.

In accordance with the letter dated April 30, 2010 (see 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 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. 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 $1,542,338 through the DRMS 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

According to the submittal, the water leased from CS-U will be used for dust control, aggregate production, and access road construction activities. The water will be considered 100% consumptive, with instantaneous depletions to Fountain Creek.

The consumptive use of water from the well with permit no. 59834-F is for dust control, which has been estimated to be approximately 3.5 acre-feet per year.

Based on the NOAA Technical Report NWS-33, the gross annual evaporation rate in this area is approximately 46 inches (3.83 feet) per surface acre. The precipitation in the area was estimated to be 15.86 inches (1.32 feet) annually, using data from the Fountain Weather Station. The effective precipitation is estimated to be 70% of the actual precipitation, or 0.93 feet. With a gross evaporation of 3.83 feet, less 0.93 feet of effective precipitation offset credit, the net evaporation is estimated to be 2.91 feet per surface acre annually. Scaled for the 0.2-acre groundwater pond, the net evaporative depletion at the site is approximately 0.58 acre-feet per year.

The total of 3.5 acre-feet per year for dust control would be withdrawn from well permit no. 59834-F and piped approximately one mile to a storage tank, the

groundwater pond, and/or storage basins. The water withdrawn from the groundwater pond will be less than or equal to water delivery, so Schmidt does not anticipate appropriating additional groundwater within the pit itself other than water lost to evaporation. Prior to use of the groundwater pond for temporary detention and subsequent withdrawal of water pumped from well permit no. 59834-F, a meter must be installed to measure all pumping from the pond.

The timing of depletions to Rock Creek attributable to pumping from the sump (well permit no. 59834-F) were calculated using the Integrated Decision Support System AWAS program utilizing the following lagging parameters: Distance to stream (X) = 390 feet; Transmissivity (T) = 30,000 gallons per foot per day; Aquifer width (W) = 3,500 feet; and Specific yield (S) = 0.2.

Due to the location of the sump and the lagging parameters used, the steady-state lagged stream depletions were determined to be 3.49 acre-feet/year as shown in Table No. 3. The groundwater pond is not located within the defined alluvium aquifer; therefore, for the purpose of this SWSP, the Applicant assumed steady-state conditions where the depletions accrue to the stream uniformly through the year. The total steady-state depletions covered by this SWSP are 4.07 acre-feet/year as shown on the attached Table 3.

This SWSP does not allow for use of storm water that may collect in on-site pits. Storm water collected on site will be administered as described in this office's February 11, 2016 *Administrative Statement Regarding the Management of Storm Water Detention Facilities and Post-Wildland Fire Facilities in Colorado*.

Replacements

The Applicant proposes to provide replacement water for this site using a combination of the consumptive use associated with 20 shares in the Fountain Mutual Irrigation Company ("FMIC") that will be changed from irrigation use to replacement purposes under this SWSP, and water from the Hanna Ranch Wells leased from CS-U.

Pumping of the Hanna Ranch Wells for replacement purposes will create additional depletions. The use of water from the Hanna Ranch Wells leased from CS-U will be managed by CS-U pursuant to decrees for Case nos. W-4376, 16CW3056, and consolidated case nos. 84CW202, 84CW203, 86CW118(b), and 89CW36. Water to replace depletions from pumping of the wells will be supplied using reusable sewered return flows released from the Las Vegas Water Reclamation Facility and/or non-sewered return flows.

The lease agreement from CS-U initially remained in effect until June 30, 2021 with a statement that the agreement could be renewed on an annual basis for up

to four additional one-year periods if surplus water is available. The current lease agreement states that it cannot be extended beyond June 30, 2025. CS-U augments depletions from pumping of the Hanna Ranch Wells with both reusable sewered return flows released from Las Vegas Water Reclamation Facility and non-sewered return flows, and will continue to release replacement water for depletions that occur from pumping the wells for use at the Fountain Pit. Nothing in this SWSP authorizes the use of the Hanna Ranch Wells by the Applicant beyond June 30, 2025, unless a subsequent lease is obtained to allow for such continued use of the wells. Should a subsequent lease be obtained for the use of the Hanna Ranch Wells, a copy must be provided to this office.

Replacement water for the use of well permit nos. 59834-F and 77721-F will be supplied by historical consumptive use credits from Applicant's 20 shares of the Fountain Mutual Irrigation Company ("FMIC") delivered to Fountain Creek at FMIC's augmentation station located on Spring Creek in Colorado Springs. Replacement credits for the FMIC shares have averaged 0.7 acre-feet per share per year, representing a portion of farm headgate delivery. This historical yield has been confirmed in previous court cases, most recently by the Division 2 Water Court in case no. 07CW51. You have estimated that the 20 shares would yield 14 acre-feet per year of replacement water, which is sufficient to replace the estimated depletions from the consumptive uses mentioned above. For purposes of this SWSP, historical consumptive use credit for the 20 shares of FMIC will be accepted in accordance with the terms described in case no. 07CW51. The actual consumptive use available from the shares shall be based on the monthly replacement credit percentages of farm headgate deliveries given in case no. 07CW51 applied to Applicant's pro rata share of actual FMIC deliveries to shareholders.

The Applicant shall also be entitled to use its pro rata share of the water attributable to its FMIC shares that is placed into storage, when storage is available, in FMIC's 10,000 acre feet of decreed storage in Big Johnson Reservoir, with prior notification of the Water Commissioner. The water stored in Big Johnson Reservoir is to be used for augmentation and delivered to either augmentation station by means of an intra-ditch exchange during any month in which the Applicant's deliveries of water under its direct flow rights to either augmentation station may be inadequate. The intra-ditch exchange from Big Johnson Reservoir to the Spring Creek augmentation station will operate at any time FMIC is diverting water, except when both (a) Big Johnson Reservoir is full, and (b) the date is between November 15 and March 15.

Transit losses will occur down Fountain Creek to the delivery point, located at an estimated distance of 18 miles. An average transit loss of 0.25% per mile (total transit loss of 4.5%) was estimated and assessed against the 20 shares of FMIC

replacement credits, as shown in the attached Table 5. **Please note that the 0.25% per mile transit loss is only an estimate and the actual transit loss shall be determined by the Fountain Creek Transit Loss Model, as outlined in condition of approval no. 9 of this SWSP.** In the event that accounting shows that the FMIC shares are not yielding adequate amounts for replacements, the applicant will seek supplemental augmentation water from the City of Fountain, the Security Water District, or the Widefield Water & Sanitation District.

Actual water use and depletions during the operation will be submitted to the Division Engineer and Water Commissioner on a monthly basis.

Conditions of Approval

This SWSP is hereby approved pursuant to section 37-90-137(11), C.R.S., subject to the following conditions:

1. This SWSP shall be valid for the period of September 1, 2024 through August 31, 2026, unless otherwise revoked or superseded by decree. If this SWSP will not be made absolute by a water court action by the SWSP 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) with the statutory fee (currently $257 per gravel pit) by **July 1, 2026**.

2. The total surface area of the groundwater exposed at the Fountain Pit site must not exceed 0.2 acre during the approval period of this SWSP, resulting in a net annual evaporative loss of 0.58 acre-feet.

3. The annual amount of water used at the operation from well permit no. 59834-F shall not exceed 3.5 acre-feet for dust control, and the annual amount of water used at the operation from the Hanna Ranch Wells shall not exceed 250 acre-feet for dust control, aggregate production, and construction activities.

4. Total consumption at the Fountain Pit site must not exceed the aforementioned amounts unless a new SWSP allowing such is approved by this office.

5. Water pumped from well permit nos. 59834-F and 77721-F must be measured in accordance with the "Amended Rules Governing the Measurement of Tributary Ground Water Diversions Located in the Arkansas River Basin".

6. Pumping from the groundwater pond during this plan period is limited to the amount of water delivered to the groundwater pond from well permit no.

59834-F. Prior to use of the groundwater pond for temporary detention and subsequent withdrawal of water pumped from well permit no. 59834-F, a meter must be installed to measure all pumping from the pond. Pumping from well permit no. 59834-F must not exceed the amount of replacement water available minus transit losses unless a new SWSP application is submitted and approved, which provides additional replacement supplies.

7. Approval of this SWSP is for the purposes as stated herein and pumping is limited to the wells identified herein. Additional wells and/or additional uses for the water that is the subject of this SWSP will be allowed only if a new SWSP is approved for those additional wells/uses and such additional wells/uses.

8. Approval of this SWSP does not in any way eliminate the obligation of the Applicant to comply with the by-laws that restrict use of any of the shares identified in this SWSP. The use of any changed shares in this SWSP must be consistent with any applicable ditch and/or reservoir company by-laws.

9. Releases of water by the Fountain Mutual Irrigation Company pursuant to this SWSP shall be coordinated with the Water Commissioner and shall equal or exceed the depletions to be replaced on a monthly basis. Applicant shall provide fully executed lease agreements for procured replacement sources prior to use in this SWSP.

10. The FMIC water rights that are proposed to be used for replacement purposes under this SWSP shall not be used for irrigation purposes during the term of this SWSP.

11. Replacement water provided for this SWSP at the Spring Creek augmentation station must be entered into the Fountain Creek Transit Loss Model and shall be tracked from the point of entry into the model domain until the water is delivered near the confluence of Little Fountain Creek to USGS Gaging Station No. 07106000 at Node 25. **Deliveries on Fountain Creek are subject to daily administration by the local Water Commissioner, and actual transit losses on Fountain Creek shall be determined by the Fountain Creek Transit Loss Model.**

12. The Applicant must provide adequate accounting (including, but not limited to storage pond surface area, pumping for dust suppression, pump meter readings pursuant to Well Permit No. 59834-F and 77721-F, water provided by CS-U and replacement water deliveries) on a monthly basis. The accounting must be submitted to the Division Engineer via the online submittal tool. Submission access was established under the previous SWSP approval, please contact Kassidy Davis at kassidy.davis@state.co.us with

any questions related to accounting submission under this SWSP approval. 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.

13. The name, email address, mailing address, and phone number of the contact person who is responsible for operation and accounting of this SWSP must be submitted to the Division office.

14. The approval of this SWSP does not relieve the applicant and/or landowner of the requirement to ensure the permanent replacement of all depletions, including long-term evaporation losses and lagged depletions after the gravel mining operations have ceased. If reclamation of the mine site will produce a permanent water surface exposing groundwater to evaporation, an application for 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 the pond will be backfilled, or 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).

15. 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 water rights has or will occur as a result 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.

16. The replacement water that is the subject of this SWSP cannot be sold or leased to any other entity without the 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.

17. 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 supply 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.

18. 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 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 plans 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 Katharine Anderson in the Denver office at katharine.anderson@state.co.us, or Elizabeth Nosker in the Division 2 office in Colorado Springs at elizabeth.nosker@state.co.us, if you have any questions concerning this approval.

Sincerely,

Sarah Brucker, P.E.
Deputy State Engineer

Attachments: Tables 1-5
Figure 1

ec: Division 2 SWSP Staff
Elizabeth Nosker, Deputy Water Commissioner
Division of Reclamation, Mining and Safety

kea: Fountain Pit M-82-155 SWSP 24-26.docx