DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

John W. Hickenlooper
Governor

Mike King
Executive Director

Dick Wolfe, P.E.
Director/State Engineer

August 8, 2012

Mr. Scott Pelino
Pelino Excavation, Inc.
P.O. Box 5049
Buena Vista, CO 81211

RE: Jesse Lee Pit, Substitute Water Supply Plan
DRMS File No. M-84-043
SE ¼ of Section 28 and NE ¼ of Section 33, T14S, R78W
Water Division 2, Water District 11

Approval Period: November 25, 2011 through October 31, 2012
Contact Phone Number for Mr. Scott Pelino: 719-395-2093

Dear Mr. Pelino:

This letter is in response to the application submitted November 25, 2011 and the additional information received on July 16, 2012 requesting renewal of the substitute water supply plan ("SWSP") for Jesse Lee Pit, operated by Pelino Excavation, Inc. ("Pelino" or "Applicant") in accordance with Section §37-90-137(11), C.R.S. The applicant shall be responsible for compliance with this plan, but the State Engineer's Office may also pursue the landowner for eventual compliance. The required fee of $257 for the substitute water supply plan has been paid.

Plan Operation

This plan seeks to replace depletions resulting from mining at the Jesse Lee Pit. Jesse Lee Pit is located approximately 2 miles south of Buena Vista, on the west bank of the Arkansas River, more specifically in the SE1/4 of Section 33, Township 14 South, Range 78 West of the 6th P.M. Mining at Jesse Lee Pit began in January 2007 and will continue for approximately 9 years. The depletions that results from the mining operation are evaporation, water lost in mined product, and dust suppression. During the period of this SWSP Pelino does not anticipate exposing any additional ground water than what is currently exposed at the site and does not anticipate mining below the water table and therefore will not be dewatering the site. Well permit no. 67722-F was obtained for the current use and exposed pond surface area of the gravel pit in accordance with §37-90-137(2) and (11), C.R.S. No ground water was exposed within the permit boundary prior to January 1, 1981. No phreatophyte credit has been applied to this plan. The replacement water for this pit will be provided by a lease with Upper Arkansas Water Conservantion District.

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 ground water.

In accordance with approach nos. 1 and 3, you have indicated that a bond has been obtained for $32,000 through the Division of Reclamation, Mining, and Safety ("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

The anticipated net depletions for this SWSP are 2.32 acre-feet per year. The currently exposed groundwater at the site totals 0.40 acres, within the existing ponds (0.38 acres) and a drainage ditch (0.02 acres). The drainage ditch is approximately 350 feet long and approximately two feet wide and gravity drains any water trapped within the port to the existing ponds. Gross annual evaporation at the gravel pit location is estimated to be 39.0 inches per year. Using the climate data from the Buena Vista weather station the net evaporation for the 0.40 acres exposed at the site is estimated to be 1.06 acre-feet.

You have provided a monthly breakdown of the annual depletions made up of 1.06 acre-feet of net evaporative loss, 0.26 acre-feet of water lost with the mined product (which represents 9,000 tons of mined product), and 1.00 acre-feet of water used for dust control.

These depletions have been lagged to the Arkansas River. The aquifer parameters used in the stream depletions model are as follows: 1) X=250 feet (distance from the centroid of the exposed surface area to the river), 2) W=2,300 feet (distance from the aquifer impermeable boundary to the river channel), 3) T=50,000 gal/day/foot (transmissivity of the alluvial aquifer), and 4) S=0.2 (specific yield).

Replacement

The proposed source of replacement water for this pit is a lease of fully consumable water from the Upper Arkansas Water Conservation District. Transit losses will be as assessed by the Division Engineer.

The monthly depletions and replacement requirements are found on the attached Table 3.

Conditions of Approval

I hereby approve the proposed substitute water supply plan in accordance with §37-90-137(11), C.R.S. subject to the following conditions:

1. A copy of the fully executed lease with the Upper Arkansas Water Conservation District must be provided to this office by August 21, 2012 via email to Ioana Comaniciu (ioana.comaniciu@state.co.us).

2. This SWSP shall be valid for the period of November 25, 2011 through October 31, 2012, unless otherwise revoked, modified, or superceded by decree. If this plan will not be made absolute by a water court action by the plan's expiration date, a renewal request must be submitted to this office with the statutory fee by September 15, 2012.

3. The total surface area of the groundwater exposed at the Jesse Lee pit must not exceed 0.40 acre during the approval period of this SWSP resulting in an annual evaporative loss of 1.06 acre-feet.

4. The annual amount of water used at the operation shall not exceed 1.0 acre-foot for dust control and the total product mined shall not exceed 9,000 tons per year above the groundwater surface resulting in 0.26 acre-feet of water lost with the product.

5. Total consumption at the Jesse Lee Pit site must not exceed the aforementioned amounts unless an amendment is made to this plan.

6. Approval of this plan is for the purposes as stated herein. Any additional uses of this water must first be approved by this office.

7. All pumping for dust control shall be metered. The meter shall be certified by a state approved Well Tester and the meter readings reported to the Water Commissioner and Division 2 office. The proposed accounting form should be revised to include the meter readings.

8. Accounting of water in this plan, including pumping, stream depletions, and replacement water deliveries must be provided to the Water Commissioner (Bruce.Smith@state.co.us) and Division Engineer (Div2Ground.Water@state.co.us) on forms and at times acceptable to them. Said accounting must be received by the 10th of the month following the month being reported. The name, mailing address, and phone number of the contact person who is responsible for operation and accounting of this plan must be provided on the accounting forms.

9. The name, address and phone number of a contact person who will be responsible for the operation and accounting of this plan must be provided on the accounting forms to the Division Engineer and Water Commissioner.

10. The approval of this substitute water supply plan does not relieve the Applicant and/or the 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 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 a lined pond results after reclamation, replacement of lagged depletions from mining and dewatering shall continue until there is no longer an effect on stream flow.

11. **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 ground water.

In accordance with approach nos. 1 and 3, you have indicated that a bond has been obtained for $32,000 through the Division of Reclamation, Mining, and Safety ("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.

12. This substitute water supply plan may be revoked or modified at any time should it be determined that injury to other vested water rights has or will occur as a result of this plan. Should this substitute water supply plan expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all excavation of product from below the water table, and all other use of water at the pit, must cease immediately.

13. In accordance with amendments to §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 the substitute supply is of a quality to meet requirements of use to which the senior appropriation receiving the substituted supply has normally been put. As such, water quality data or analyses may be requested at any time to determine if the requirements of use of the senior appropriator are met.

14. 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 substitute water supply plan. 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 plan, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by this applicant. Any appeal of a decision made by the State Engineer concerning a SWSP pursuant to C.R.S. §37--90-137(11) shall be to the Division 2 water judge within thirty days of the date of this decision and shall be consolidated with the application for approval of the plan for augmentation.

Please contact Ioana Comaniciu in Denver at (303) 866-3581, or Julie Pearson in Pueblo at (719) 542-3368, if you have any questions concerning this approval.

Sincerely,

Heidi Frey, P.E.
Water Resource Engineer

Enclosure: Table 3

cc: Steve Witte, Division Engineer
Bruce Smith, Water Commissioner, District 11
Division of Reclamation, Mining, and Safety

HF/IDC: Jesse Lee Pit M-84-043 2011-2012.doc

Table-3
Pelino Excavation
Jesse Lee Pit M84-043

Substitute Water Supply Plan - Summary

Prepared By: Scott Pelino
Date: August 26, 2011

	(1)	(2)	(3)	(4)	(5)
Month	Total Evaporative Loss (ac-ft)	Operational Loss (ac-ft)	Total Stream Depletions (ac-ft)	Lagged Total Stream Depletions (ac-ft)	Upper Arkansas Water Conservancy Distrit Lease (ac-ft)
Aug-11	0.13	0.12	0.24	0.25	0.26
Sep-11	0.12	0.12	0.24	0.24	0.25
Oct-11	0.08	0.11	0.22	0.19	0.19
Nov-11	0.04	0.04	0.17	0.13	0.13
Dec-11	0.01	0.09	0.10	0.10	0.10
Water Year 2011 Total	0.38	0.48	0.97	0.91	0.93
Jan-12	0.00	0.09	0.09	0.09	0.09
Feb-12	0.08	0.09	0.17	0.12	0.12
Mar-12	0.17	0.09	0.25	0.15	0.15
Apr-12	0.26	0.11	0.37	0.21	0.22
May-12	0.38	0.12	0.50	0.26	0.27
Jun-12	0.51	0.12	0.63	0.30	0.31
Jul-12	0.47	0.12	0.59	0.29	0.30
Aug-12	0.14	0.12	0.26	0.25	0.26
Sep-12	0.33	0.12	0.45	0.24	0.25
Oct-12	0.21	0.11	0.32	0.19	0.19
Water Year 2012 Total	2.55	1.09	3.63	2.10	2.15

Notes
(1) from Table-1
(2) from Table-2
(3) Total Stream Depletions = Total Evaporative Loss + Total Operational Loss
(4) Lagged Total Stream Depletions based on Glover techniques
(5) Releases from Twin Lakes Reservoir (the reservoir located furthest from the mining site) include a 110% ditch loss for approximately 33 river

Table 1
Pelino Excavation
Jesse Lee Pit M84-043

Prepared By: Scott Pelino
Date: August 26, 2011

Substitute Water Supply Plan *- Evaporative Losses*

	(1)	(2)	(3)	(4)	(5)	(6)
Month	Percent of Annual Evaporation	Gross Lake Evaporation (ft)	Preciptation (in)	Effective Preciptation (ft)	Net Lake Evaporation (acre-ft/acre)	Total Lake Evaporation (ac-ft)
Apr	9.0%	0.29	0.93	0.05	0.24	0.10
May	12.5%	0.41	1.07	0.06	0.34	0.14
June	15.5%	0.50	0.73	0.04	0.46	0.18
July	16.0%	0.52	1.54	0.09	0.43	0.17
Aug	13.0%	0.42	1.89	0.11	0.31	0.13
Sept	11.0%	0.36	0.95	0.06	0.30	0.12
Oct	7.5%	0.24	0.84	0.05	0.19	0.08
Nov	4.0%	0.13	0.53	0.03	0.10	0.04
Dec	1.5%	0.05	0.39	0.02	0.03	0.01
Jan	1.0%	0.03	0.35	0.02	0.01	0.00
Feb	3.0%	0.10	0.42	0.02	0.07	0.03
Mar	6.0%	0.20	0.65	0.04	0.16	0.06
Total	**100%**	**3.25**	**10.28**	**0.60**	**2.65**	**1.06**

Exposed Water Surface =	0.4	acres	-ponds and a drainage ditch.
Annual Precipitation =	10.3	inches	-Taken from the NOAA Buena Vista Weather Station ID 1071
Gross Annual Evaporation =	39	inches	-Taken from NOAA Technical Report NWS 33

Notes

(1) Taken from State Engineer's Guidelines for Gravel Pits at elevations above 6500 feet

(2) Taken from NOAA Technical Report NWS 33 Map 3 and distributed monthly according to Percent of Annual Evaporation (1)

(3) From the NOAA Buena Vista Weather Station ID 1071 (1948-2006)

(4) Effective Precipitation equals 70% of Average Annual Precipitation, 70% * (3)

(5) Gross Evaporation minus Effective Precipitation converted to units of feet, (2) - (4)

(6) Total Evaporative Loss is the product of Net Evaporation (5) and Exposed Water Surface