

M2010-012

TAK

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY
Department of Natural Resources

1313 Sherman St., Room 215
Denver, Colorado 80203
Phone: (303) 866-3567
FAX: (303) 832-8106



APPLICATION FORM FOR TRANSFER OF MINERAL PERMIT AND SUCCESSION OF OPERATORS

Received
Oct 24, 2012
DPMs

ADMINISTRATIVE INFORMATION

Permit Information

Permit Number: M-2010-012

Operation Name: Mooney 5804 Altura Pit

Permittee Information

Contact Person: Myron Mullett

Company Name: Mullett Excavating, L.L.C.

Street Address: P O Box 322

City: Westcliffe

State: CO Zip: 81252

Phone: (719) 783-2056

Email (optional): _____

Prospective Successor Information

Contact Person: John P. Ary

Company Name: All-Rite Paving & Redi-Mix, Inc.

Street Address: P O Box 165

City: Canon City

State: CO Zip: 81215

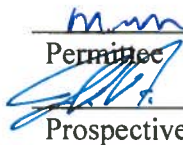
Phone: (719) 275-1280

Email (optional): _____

Other Reclamation Permits held by Prospective Successor (if applicable):

DESIGNATION OF REVIEW TIMELINE

As explained above, the Permittee and Prospective Successor may waive their right to receive a decision on an Application within 30 days in order to allow the Division to calculate the required Financial Warranty before issuing its decision. Permittee and Prospective Successor must initial one of the following two options to designate their choice. If Permittee and Prospective Successor cannot agree, the Division will render its decision within 30 days.



Permittee

Prospective Successor

I have reviewed the information provided in this Application Packet, as well as the applicable Act and Rules. Having been fully informed, I wish to WAIVE MY RIGHT TO A DECISION ON MY APPLICATION WITHIN 30 DAYS.

Permittee

Prospective Successor

I have reviewed the information provided in this Application Packet, as well as the applicable Act and Rules. Having been fully informed, I wish to MAINTAIN MY RIGHT TO A DECISION ON MY APPLICATION WITHIN 30 DAYS.

The Prospective Successor must provide an adequate Financial Warranty or *conditional* replacement Financial Warranty, consistent with the designation above. Hard Rock and Construction Materials Rule 4.3 describes the various acceptable types of Financial Warranties. Each Financial Warranty must be submitted on the Board's approved forms (available online at <http://mining.state.co.us/Mineral%20Forms.htm>).

DUE DILIGENCE CERTIFICATION

The Board wishes to ensure that Prospective Successors are fully informed of their duties and obligations should they become Successor to the Permit. Accordingly, the Prospective Successor must carefully review the items below and must initial indicating its agreement and understanding.



If the Application is approved, the Prospective Successor will assume all liability for the reclamation of the affected land, and for compliance with the Hard Rock Act and Rules or the Construction Materials Act and Rules, as applicable (available online at <http://mining.state.co.us/Rules%20and%20Regs.htm>). Successor will be liable for any pre-existing conditions or violations, whether known or unknown at the time of the SO. It is the Prospective Successor's sole responsibility to investigate the operation prior to filing an Application.



If the Application is approved, the Successor will be solely responsible for maintaining the mining and reclamation operations in compliance with the Reclamation Permit. The Permit includes the original approved Application, along with any and all subsequent revisions, amendments, and conversions thereto. It is not uncommon for a Permit to include dozens of documents that span many years. It is the Successor's sole responsibility to obtain a full and complete copy of the Permit and to understand the extent of his/her/its obligations thereunder. Permit documents may be purchased from the Division of Reclamation, Mining and Safety (the "Division") upon request or viewed on the Division's website at <http://drmsweblink.state.co.us/drmsweblink/search.aspx?dbid=0>



If the Application is approved, the Successor must submit Annual Fees and Annual Reports to the Division on the anniversary date of the Reclamation Permit. For hard rock and designated mining operations, consult C.R.S. § 34-32-127(2) for the amount of the Annual Fee. For construction materials operations, consult the C.R.S. § 34-32.5-125 for the amount of the Annual Fee. Required annual reporting information is described in Hard Rock and Construction Materials Rule 1.15 and in the Annual Report Form provided by the Division. Failure to submit Annual Fees or Annual Reports may result in enforcement action.

**APPLICANTS' AGREEMENT TO REQUEST TRANSFER
OF MINERAL PERMIT AND SUCCESSION OF OPERATORS**

WHEREAS, on June 30, 2011 Permit Number M-2010-012 ("Permit") was granted to Mullett Excavating, L.L.C. ("Permittee"), pursuant to which Permit, Permittee has engaged in a mining operation located in Las Animas County, Colorado.

WHEREAS, The Permit includes and incorporates any and all subsequent Amendments, Technical Revisions and/or Conversions.

WHEREAS, Permittee wishes to assign the entire Permit, along with all associated rights and responsibilities to All-Rite Paving & Redi-Mix, Inc. ("Prospective Successor"), and Prospective Successor wishes to become Successor Permittee under the Permit.

WHEREAS, Prospective Successor has inspected the mining and reclamation operations and is fully aware of the conditions thereof.

WHEREAS, Prospective Successor understands that the Reclamation Plan (the "Plan") is an integral part of the Permit and is required by law. Prospective Successor has had an opportunity to thoroughly review the Plan, understands that the Plan has not been completed and that, if Prospective Successor becomes Successor, he/she/it will assume full responsibility for the completion of the Plan.

NOW THEREFORE, Permittee and Prospective Successor hereby agree, for their own benefit and for the benefit of the State, as follows:

Prospective Successor agrees to accept all of the conditions of the Permit, including the condition that the operation remains in compliance with all applicable laws and regulations, and to perform all of the obligations of the Permittee under the Permit.

Prospective Successor agrees to complete the Plan, and to assume all liability for the same, as to all areas presently disturbed, as well as to all areas hereafter disturbed.

Prospective Successor agrees to submit to the Division of Reclamation, Mining and Safety ("Division"), Performance and Financial Warranties, as required by applicable law and regulations, which will be substituted for the Performance and Financial Warranties previously filed by the Permittee, if and when the Division approves a Transfer of Mineral Permit and Succession of Operators ("SO") and releases the latter Warranties.

Prospective Successor represents to the State that, to the best of its knowledge, information and belief, it is not in violation of any of the provisions of the Mined Land Reclamation Act (C.R.S. § 34-32-101 *et. seq.*) ("Hard Rock Act") and associated Rules (2 C.C.R. 407-1) ("Hard Rock Rules") or the Land Reclamation Act for the Extraction of

Construction Materials (C.R.S. § 34-32.5-101 *et. seq.*) ("Construction Materials Act") and associated Rules (2 C.C.R. 407-4) ("Construction Materials Rules"), with respect to any other operation conducted by the Prospective Successor in the State of Colorado.

Permittee and Prospective Successor hereby request that the Mined Land Reclamation Board ("Board") approves their SO Application, recognizes the Prospective Successor as Successor Operator under the Permit, accepts the Prospective Successor's Performance and Financial Warranties, and releases the current Permittee's Performance and Financial Warranties.

SIGNED, SEALED AND DATED this 23rd day of October, 2012.

PERMITTEE

Mullett Excavating, L.L.C.

Name of Permittee

By

[Signature]
Signature of Officer

Owner
Title of Officer

PROSPECTIVE SUCCESSOR

All-Rite Paving & Redi-Mix, Inc.

Name of Prospective Successor

By

[Signature]
Signature of Officer

Sec./Treas.
Title of Officer

NOTARY FOR PERMITTEE

STATE OF Colorado)

COUNTY OF Custer) ss.:

The foregoing instrument was acknowledged before me this 24th day of October, 2012,
by Myron Mullett as owner of Mullett Excavating, LLC

Notary Public

[Signature]

My Commission Expires

03/04/2013



NOTARY FOR PROSPECTIVE SUCCESSOR

STATE OF Colorado)
) ss.:
COUNTY OF Fremont)

The foregoing instrument was acknowledged before me this 23rd day of October, 2012,
by John F. Arz as Sec. / Treas. of All-Rite Paving & Redi-Mix, Inc.



Notary Public Denise Gonzales
My Commission Expires 2-14-2014

STATE APPROVAL
[for completion by Division]

- Commission expires 2/14/2014
- (a) The Board hereby approves the transfer of permit number M 2010-012 from
Mullett Excavating, LLC to All-Rite Paving & Redi-Mix, Inc.
- (b) The Board hereby recognizes All-Rite Paving & Redi-Mix, Inc. as Successor Operator under
such Permit.
- (c) The Board hereby accepts the Performance and Financial Warranties submitted by Successor and hereby
releases Mullett Excavating, LLC, as former Permittee from all obligations under
its Performance and Financial Warranties. The Board further releases all affected financial warrantors from
obligations under Financial Warranties associated with the former Permittee.

STATE OF COLORADO
DEPARTMENT OF NATURAL RESOURCES
MINED LAND RECLAMATION BOARD
DIVISION OF RECLAMATION, MINING AND SAFETY

By: Scott Elmsick
Division Director

Date Executed: 12/3/12

RECEIVED

OCT 26 2012

Division of Reclamation,
Mining & SafetyLease Agreement
With option to Buy MaterialM-2010-012
Legal Right to Enter

This agreement is entered into on this 25th day of October, in the year of 2011, by and between the Owners Warren and Patricia L. McDonald whose mailing address is; 15403 County Road 41.7 Weston, Colorado 81091 and the Company; All Rite Paving & Redi Mix, Inc. whose mailing address is P.O. Box 165 Canon City, Colorado 81215.

WITNESS THAT: The owners for the consideration of ONE HUNDRED dollars (\$100.00) and further agreement hereby leases to the Company an exclusive option for the purpose of purchasing, processing, producing, and removing such material located on land described as follows:

SEE ATTACHED EXHIBIT "A"

1. Definitions.

- a. Lease Year shall mean a period of one year beginning on the date the Term of the Lease commences, as set forth in Section 2, below, or on any annual anniversary thereof.
- b. Materials shall mean stone, sand and gravel and any overburden and valuable solid minerals, other than hydrocarbon minerals such as coal, oil, and gas and associated liquid hydrocarbons, that are removed incident to sand and gravel operations hereunder and which are saleable and recoverable from the Property in the course of such operations.
- c. Net Sales Ton shall mean 2000 pounds of Materials from the Property actually sold or used in products that are sold, measured or weighted after any processing of such Materials. Processing of Materials from the Property, including washing of sand and gravel, removes a portion of the total pit run Materials mined from the Property, which Materials are not saleable and not subject to payment of Sales Royalty.

Plant shall mean a portable and/or fixed facility for processing, storing, washing, sorting, handling loading and shipping of Materials, along with ancillary facilities, and shall also mean a concrete or asphalt batch plant.

2. Term. The Term of this Lease shall be an initial period of ten years commencing on the _____ day of _____, 2011 ("Term"). So long as the Company is not in default hereunder, the Company may obtain a five (5) year extension of the Term after the end of the Initial Term by written notice to Lessor at least thirty (30) days prior to the end of the Initial Term and payment of the sum of \$0.

The Company desires to extract or purchase aggregate for cement and road base located on the above described land. Royalty fees will be paid at the following rate;

Aggregate products removed at \$. per ton for the first five years.
Then at _____ for the next five years.

- a. the Company shall pay to Owner a "Sales Royalty" calculated from a "Base Royalty" at the rate of _____ per Net Sales Ton, within twenty (20) days after the close of each calendar month.
- b. The Company shall keep and maintain adequate and accurate records of the quantities of Materials mined and sold. The Sales Royalty payments shall be accompanied by a monthly statement with the royalty calculation that includes an accounting of the tons of Materials mined from the Property and sold or deemed sold. Owner shall have the right at all reasonable times during business hours and upon reasonable prior notice to examine such records of the Company at the offices of the Company and to verify the quantities of Material removed and sold, and the accuracy of the scales used to weigh the Materials.

This lease agreement with option to buy materials shall commence on the day of this agreement and remain in force for a term of ten (10) years, with the option to renew until the material is mined out.

Except the Owners may cancel the provisions of the lease agreement for any reason at any time provided thirty (30) days notice is given.

The Company agrees to provide a mining plan consistent with the future development criteria of the Owner mutually acceptable to both parties.

The Company shall have the right of ingress and egress to and from the subject premises and to erect any temporary structures, such as screening, crushing, and/or asphalt or concrete plants; to stockpile material in any area of sufficient size; and to employ any reasonable methods for the removal as said material. The Company shall also have the right of ingress and egress for the purpose of reclamation.

The Company agrees to provide liability insurance and shall be responsible for all of its operations related to mining of the property. The Company agrees to provide proof of such liability insurance to the Owners. The Owners will be held harmless for acts of the Company and its employees or subcontractors related to operations on the property.

Payments for materials removed from the property will be made to the Owners in a timely fashion.

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The Company desires to extract or purchase aggregate for cement and road base located on the above described land. Royalty fees will be paid at the following rate;

Aggregate products removed at \$1.00 per ton for the first five years.

Then at _____ for the next five years.

- a. the Company shall pay to Owner a "Sales Royalty" calculated from a "Base Royalty" at the rate of one dollar (\$1.00) per Net Sales Ton, within twenty (20) days after the close of each calendar month.
- b. The Company shall keep and maintain adequate and accurate records of the quantities of Materials mined and sold. The Sales Royalty payments shall be accompanied by a monthly statement with the royalty calculation that includes an accounting of the tons of Materials mined from the Property and sold or deemed sold. Owner shall have the right at all reasonable times during business hours and upon reasonable prior notice to examine such records of the Company at the offices of the Company and to verify the quantities of Material removed and sold, and the accuracy of the scales used to weigh the Materials.

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The Company agrees to provide liability insurance and shall be responsible for all of its operations related to mining of the property. The Company agrees to provide proof of such liability insurance to the Owners. The Owners will be held harmless for acts of the Company and its employees or subcontractors related to operations on the property.

Payments for materials removed from the property will be made to the Owners in a timely fashion.

The terms hereof are binding upon and inures to the benefit of the heirs, executors, administrators and assigns of the respective parties hereto.

The Owners hereby warrant they have good title to the above property described premises that they have lawful right to grant this option and that they agree to hold the Company harmless from any all claims from others asserting any interest in the subject land.

- a. Owner warrants that Owner owns the surface estate and the Materials within the Property subject to restrictions and reservations of record or in use, and Owner agrees to defend said title against all adverse claims.

SPECIAL CONDITIONS:

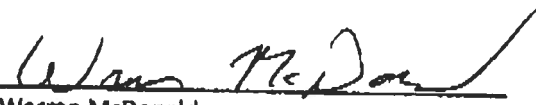
The Contractor shall abide with all provisions of the MLRB pit permit issued for the property.

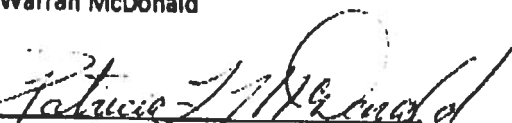
So agreed, this 25th day of October, 2011

Company: ALL RITE PAVING & RED MIX, INC.


John L. Ary, President

Landowners:


Warran McDonald


Patricia L. McDonald

Application Checklist

- ☒ **Application Form:** Complete the form located on page 5.
- ☒ **Application Fee:** Include check payable to Colorado Division of Reclamation, Mining and Safety.
- ☒ **Performance Warranty:** Complete the form located on page 11.
- ☒ **Financial Warranty:** Submit the appropriate Financial Warranties or conditional replacement Financial Warranties using the forms posted on the Division's website (available online at <http://mining.state.co.us/Mineral%20Forms.htm>).
- ☒ **Demonstration of Legal Right to Enter:** Identify the owners of all surface and mineral rights, obtain the documentation described above, and submit to the Division.
- ☒ **Structure Agreements:** Obtain new Structure Agreements if Permittee had been required to do so.

STATE OF COLORADO

DIVISION OF RECLAMATION, MINING AND SAFETY
Department of Natural Resources

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Denver, Colorado 80203
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RECEIVED

OCT 26 2012

Division of Reclamation,
Mining & Safety



REQUEST FOR TRANSFER OF MINERAL PERMIT AND SUCCESSION OF OPERATORS APPLICATION PACKET

The Mined Land Reclamation Board ("Board") has approved this Transfer of a Mineral Permit and Succession of Operators Application Packet pursuant to the Mined Land Reclamation Act (C.R.S. § 34-32-101 et. seq.) ("Hard Rock Act") and associated Rules (2 C.C.R. 407-1) ("Hard Rock Rules") and the Land Reclamation Act for the Extraction of Construction Materials (C.R.S. § 34-32.5-101 et. seq.) ("Construction Materials Act") and associated Rules (2 C.C.R. 407-4) ("Construction Materials Rules"). This Application Packet cannot be altered without the consent of the Board.

Applicability

This Transfer of a Mineral Permit and Succession of Operators Application Packet applies to mining operations where the current permitted mine operator ("Permittee") wishes to transfer the Reclamation Permit ("Permit"), along with all associated reclamation responsibilities and liabilities, to a Successor Operator ("Successor"). This process is referred to as a Succession of Operators ("SO").

Filing Requirements for SO Application

An SO Application is not complete until the Division of Reclamation, Mining and Safety ("Division") has received each of the six items listed below. The Board has authorized the Division to review SO Applications and to issue approvals and denials based on its review. The Division will not review incomplete Applications.

- 1) **Application Form:** An Application Form is included in this Application Packet. Please note that the Application Form must be fully completed, and must bear the original notarized signature of an authorized representative of BOTH the Permittee and the Prospective Successor.
- 2) **Application Fee:** If an Application concerns a Hard Rock or Designated Mining Operation, then a filing fee of \$115.00 must be submitted to the Division. See C.R.S. § 34-32-127(2)(a)(I)(L). If an Application concerns a Construction Materials operation, then a filing fee of \$144.00 must be submitted to the Division. See C.R.S. § 34-32.5-125(1)(a)(X). Make all checks payable to the "Colorado Division of Reclamation, Mining and Safety."

CMB/NOV: NONE

AF: 6/30/12: ~~PAID~~ Paid 11/1/12

- 3) **Performance Warranty Form:** The party wishing to become Successor ("Prospective Successor") must agree to assume all liability for the reclamation of affected land, and must provide a Performance Warranty covering the same. *See* C.R.S. §§ 34-32-119 and 34-32.5-119. A Performance Warranty Form is included in this Application Packet. The Performance Warranty Form must bear the original notarized signature of an authorized representative of the Prospective Successor.
- 4) **Financial Warranty:** The Prospective Successor must provide Financial Warranties sufficient to cover the cost of completing reclamation in compliance with the Permit, the applicable Act and Rules. *See* C.R.S. §§ 34-32-119 and 34-32.5-119. In order to ensure the adequacy of the Financial Warranties, the Division must recalculate the required Financial Warranty whenever it receives an SO Application. Depending upon the state of the operation and the outstanding reclamation work, the Successor may be required to post a higher (sometimes significantly) or lower Financial Warranty than the Permittee currently has in place.

The Division must act on all SO Applications within 30 days. *See* Hard Rock and Construction Materials Rule 1.12.1(2)(a). Since the Division cannot typically review the amount of the required Financial Warranty within this 30-day period, applicants have the following two options:

Applicants may waive their right to receive a decision within 30 days. If the applicants waive their right to a decision within 30 days, the Division will recalculate the required Financial Warranty *before* issuing its decision on the Application. As a result, the Prospective Successor will know, prior to becoming Successor, whether the current Financial Warranty is adequate to cover the reclamation liability, or if the Financial Warranty must be increased. In this case, the Prospective Successor must submit the full Financial Warranty as part of the Application.

Applicants may decide not to waive their right to a decision within 30 days. If the applicants choose not to waive their right to a 30-day review, the Division will review the Financial Warranty *after* issuing its decision on the Application. In this case, the Prospective Successor must submit a conditional replacement Financial Warranty in the amount of the Permittee's current Financial Warranty as part of the Application.

If the Application is approved, the Division will conduct an inspection within 60 days to assess the amount of the reclamation liability. If the inspection reveals that the reclamation liability exceeds the amount of the conditional replacement Financial Warranty, the Successor must submit the difference within sixty days. Failure to meet this deadline may result in an enforcement action. If the inspection reveals that the reclamation liability is less than the conditional replacement Financial Warranty, the Successor may request a Financial Warranty reduction for release of the difference.

It is the applicants' right to receive a decision on their complete Application within 30 days. The applicants are free to choose whichever option they decide is best. Permittee and Prospective Successor must designate their decision on the attached Application Form.

- 5) **Demonstration of Legal Right to Enter:** All Permittees must provide a description of the basis for legal right of entry to the site and to conduct mining and reclamation. *See* Hard Rock and Construction Materials Rules 6.3.7 and 6.4.14. To comply with this requirement, the Prospective Successor must demonstrate that he/she/it has obtained a legal right of entry from any and all surface and mineral rights owners in the affected lands, independent of the current Permittee. *See* Hard Rock and Construction Materials Rules 6.3.7, 6.4.14, and 1.6.2(1)(e)(i). This may be a copy of an access lease, deed, abstract of title, current tax receipt, or a signed and notarized statement by the property owners stating that the Prospective Successor has a legal right to enter. *See* Hard Rock and Construction Materials Rule 6.3.7.
- 6) **Structure Agreements:** In many cases, operators must provide the Division copies of agreements to compensate the owners of any significant, valuable, and permanent man-made structures and utilities within 200 feet of the affected land ("Structure Agreements"). *See* Hard Rock Rules 6.3.12 and 6.4.20; Construction Materials Rules 6.3.12 and 6.4.19. If the Permittee was required to provide Structure Agreements, the Prospective Successor must obtain *new* Structure Agreements from each owner and provide copies of the same to the Division with the Application.

Application Review Process

The Division will grant an Application if it finds that all required information has been submitted, that the Prospective Successor is capable of assuming all responsibility for original permit by virtue of acceptable performance and Financial Warranties, and that the Prospective Successor has no outstanding violations. *See* C.R.S. §§ 34-32-119 and 34-32.5-119. If the Division does not act within 30 days from the date that a complete Application has been filed, the Application will be considered automatically approved. *See* Hard Rock and Construction Materials Rule 1.12.1(2). If an Application is denied, the Division will notify the Permittee and Prospective Successor no later than 10 days from the date it renders its decision. Both the Permittee and Prospective Successor may appeal a denial of an Application to the Board by submitting a written request for an administrative appeal hearing to the Board within 30 days of final decision date. *See* Hard Rock and Construction Materials Rule 1.4.11.