

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



Enclosed please find an Order Granting Requests to Participate by Telephone issued by the Mined Land Reclamation Board. The hearing is scheduled to begin at approximately 9:00 a.m. on August 14, 2013. Parties who have been granted permission by the enclosed order to participate in the hearing by telephone may contact the Board at **303-866-3567**, extension **7654** at or before the hearing time.

Please read the enclosed order in its entirety as it contains important instructions and conditions on parties who choose to participate in the hearing by telephone. Also, in order to minimize background noise when a party is not speaking, the Board encourages the parties participating by telephone to use a telephone with a "mute" button.

The conditions for participation by telephone in the August 14-15, 2013 hearing are as follows:

- due to equipment limitations and for effective management of the hearing, the Board strongly prefers and encourages all telephone participants to be in one physical location;
- only one telephone participant at a time shall speak during the hearing;
- each telephone participant shall identify himself or herself before each time he or she speaks;
- only the telephone participants approved in the attached Order shall be permitted to appear or testify by telephone;
- the time restrictions and other provisions set forth in the Prehearing Order, as approved by the Board, will be strictly enforced; the telephone participants must determine among themselves how to allot the available time.

A handwritten signature in cursive script, appearing to read "Loretta Pineda".

Loretta Pineda
Division Director

BEFORE THE MINED LAND RECLAMATION BOARD
STATE OF COLORADO

ORDER GRANTING REQUESTS TO PARTICIPATE BY TELEPHONE

IN THE MATTER OF THE 112c PERMIT APPLICATION OF ROCKY
MOUNTAIN AGGREGATE & CONSTRUCTION, LLC, File No. M-2013-007

THIS MATTER came before the Mined Land Reclamation Board ("Board") on August 6, 2013 to consider motions and requests to participate by telephone in the August 14-15, 2013 hearing on the application of Rocky Mountain Aggregate & Construction, LLC ("Applicant") for the Uncompahgre Pit, File No. M-2013-007. Assistant Attorney General Julie M. Murphy and First Assistant Attorney General Jeff Fugate appeared on behalf of the Division of Reclamation, Mining and Safety ("Division"). There were no appearances on behalf of the Applicant, the objectors, or the supporters.

The Board, being fully informed of the facts in the matter, enters the following:

FINDINGS OF FACT

1. On February 26, 2013, the Applicant filed an application with the Division for a 112c reclamation permit for a site known as the Uncompahgre Pit in Montrose County, Colorado ("Application"). An amendment to the Application was filed with the Division on April 22, 2013.

2. During the public comment periods for the Application and the amendment to the Application, the Division received letters of objection, letters of support, and letters of comment from government agencies.

3. On July 25, 2013, the Board, through prehearing conference officer Steven G. Renner and pursuant to Rule 2.7 of the Mineral Rules and Regulations of the Board for the Extraction of Construction Materials ("Rules"), conducted a prehearing conference in Montrose, Colorado. The Applicant, several objectors, and supporters appeared at the prehearing conference. At the prehearing conference, the prehearing conference officer notified the participants that, in accordance with Rule 2.6(1), any motions and requests to participate in the hearing by telephone must be filed with the Board by 5:00 p.m. on July 29, 2013.

4. On July 26 and 29, 2013, the Board received written requests and motions to participate by telephone from the following parties:

Al and Vicki Becker
66810 Solar Road
Montrose, CO 81403

Barbara Bernhardt
20409 Solitude Road
Montrose, CO 81403

Stan and Kathy Borinski
67737 Uintah Court
Montrose, CO 81403

Leigh Robertson
596 Sabeta Drive, #D
Ridgway, CO 81432

Mary Scuderi
68044 Tulare Road
Montrose, CO 81403

Lester and Kathleen Stigall
67751 Uintah Court
Montrose, CO 81403

5. On July 30, 2013, the Board received a written request to participate by telephone from parties Keith and Sharon Rasmussen, 20828 Solitude Road, Montrose, CO 81403. The request from Keith and Sharon Rasmussen, dated July 25, 2013, was sent timely to an incorrect e-mail address; Keith and Sharon Rasmussen resubmitted the request to the proper e-mail address.

CONCLUSIONS OF LAW

6. The Board has jurisdiction over the Applicant and this matter pursuant to the Colorado Land Reclamation Act for the Extraction of Construction Materials, Article 32.5 of Title 34, C.R.S. ("Act").

7. Under Rule 2.6(1), motions must be received by the Board within two working days following the prehearing conference. In this matter, motions and requests were due to be filed within two working days of July 25, 2013, on or before July 29, 2013. The requests to participate in the hearing by telephone filed by the parties listed in paragraph 4 above are timely under Rule 2.6(1). The request to participate in the hearing by telephone filed by Keith and Sharon Rasmussen is technically untimely under Rule 2.6(1). Considering the reason it was untimely, however, the Board deems the request by Keith and Sharon Rasmussen to be timely. As of the August 6, 2013 Board meeting, the Board received no response to any of the motions and requests.

8. The Act, other Colorado statutes, and the Rules do not expressly confer a right to appear or testify by telephone in this proceeding.

9. The Board generally does not favor telephone participation. In the Board's experience, presentation of telephone testimony may compromise the integrity and effective management of administrative proceedings.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Board conditionally GRANTS the requests to participate by telephone in the August 14-15, 2013 hearing filed by Al and Vicki Becker, Barbara Bernhardt, Stan and Kathy Borinski, Keith and Sharon Rasmussen, Leigh Robertson, Mary Scuderi, and Lester and Kathleen Stigall (the "telephone participants"). The conditions for participation by telephone in the August 14-15, 2013 hearing are as follows:

- A. due to equipment limitations and for effective management of the hearing, the Board strongly prefers and encourages all telephone participants to be in one physical location;
- B. only one telephone participant at a time shall speak during the hearing;
- C. each telephone participant shall identify himself or herself before each time he or she speaks;
- D. only the telephone participants approved in this Order shall be permitted to appear or testify by telephone;
- E. the time restrictions and other provisions set forth in the Prehearing Order, as approved by the Board, will be strictly enforced; the telephone participants must determine among themselves how to allot the available time.

DONE AND ORDERED this 6 day of August 2013.

FOR THE COLORADO MINED LAND
RECLAMATION BOARD



Thomas E. Brubaker, Chair

NOTICE OF APPEAL RIGHTS

This order becomes effective and final upon mailing. Any party adversely affected or aggrieved by agency action may commence an action for judicial review by filing a notice of appeal with the district court within thirty-five (35) days after the effective date of this order, pursuant to section 24-4-106, C.R.S. (2012). In the event that an appeal is filed, designations of record made in accordance with section 24-4-106(6), C.R.S. should be served on the Board at: 1313 Sherman Street, Room 215, Denver, CO 80203, Attention: Sitira Pope.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 6th day of August 2013 addressed as follows:

Zane Luttrell
Rocky Mountain Aggregates & Construction
23625 Uncompahgre Road
Montrose, CO 81401

Janice Wheeler
67269 T Road
Montrose, CO 81403

Susan J. Hansen
10990 5880 Road
Montrose, CO 81403

Al & Vicki Becker
66810 Solar Road
Montrose, CO 81403

Dennis Schultz
117 North 4th Street
Montrose, CO 81401

Lester & Kathleen Stigall
67751 Uintah Court
Montrose, CO 81403

Stan & Kathy Borinski
67737 Uintah Court
Montrose, CO 81403

Leigh Robertson
596 Sabeta Drive, #D
Ridgway, CO 81432

Greg Lewicki
Greg Lewicki and Associates
11541 Warrington Court
Parker, CO 80138

Dr. Joseph J. & Mary A. Scuderi
68044 Tulare Road
Montrose, CO 81403

Gene & Carolyn Kliethermes
20462 Tulip Circle
Montrose, CO 81403

Robert G. & Joan D. Hooper
20537 Tulip Circle
Montrose, CO 81403

Barbara Bernhardt
20409 Solitude Road
Montrose, CO 81403

Carter & Stacy Trask
67920 Tulare Road
Montrose, CO 81403

Keith & Sharon Rasmussen
20828 Solitude Road
Montrose, CO 81403

Margaret T. Zanin
65010 Solar Road
Montrose, CO 81401

Susan Berg
67888 Tumbleweed Road
Montrose, CO 81403

Craig B. Schaff
21645 Government Springs Road
Montrose, CO 81403

Karen Michaelis
21115 Uncompahgre Road
Montrose, CO 81403

Patrice Mosher, Board of Supervisors
Shavano Conservation District
102 Par Pl, Suite 4
Montrose, CO 81401

Colorado Parks & Wildlife
Renzo DelPiccolo
2300 South Townsend Avenue
Montrose, CO 81401

Zoe D. Larkin
22893 V-66 Trail
Montrose, CO 81403

Laurie J. Brandt, P.G.
Buckhorn Geotech
222 South Park Avenue
Montrose, CO 81401

Lee R. Bartlett
23400 Horsefly Road
Montrose, CO 81403

Jim & Paula Wyrick
19488 6565 Road
Montrose, CO 81403

Amanda Winston
20798 Solitude Road
Montrose, CO 81403

Richard Schulz
21115 Uncompahgre Road
Montrose, CO 81403

Board of County Commissioners
Montrose County
161 South Townsend Avenue
Montrose, CO 81401

Colorado History, Edward C. Nichols
State Historic Preservation Officer
1200 Broadway
Denver, CO 80203

Rodger & Gail Noble
General Delivery
Ridgway, CO 81432

Jennifer Thurston
INFORM
P.O. Box 27
Norwood, CO 81423

Pam East
67680 Trout Road
Montrose, CO 81403

By interoffice or electronic mail to:

Wally Erickson
Division of Reclamation, Mining & Safety
Durango Field Office
691 CR 233, Suite A-2
Durango, CO 81301

By intraoffice or electronic mail to:

John J. Roberts
Senior Assistant Attorney General
Office of the Attorney General
1300 Broadway, 8th Floor
Denver, CO 80203

Julie M. Murphy
Assistant Attorney General
Office of the Attorney General
1300 Broadway, 7th Floor
Denver, CO 80203

