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August 16, 2013

VIA FAX 970-241-1516  
and FIRST CLASS MAIL

Dustin Czapla  
Environmental Protection Specialist  
Department of Natural Resources  
Division of Reclamation, Mining and Safety  
101 South 3rd, Suite 301  
Grand Junction, CO 81501

**RECEIVED**

AUG 19 2013  
GRAND JUNCTION FIELD OFFICE  
DIVISION OF  
RECLAMATION MINING & SAFETY

Re: State Land Board Objection to Connell Resources, Inc. Hayden Gravel Pit,  
Permit No. M-1987-164

Dear Mr. Czapla:

This firm represents Connell Resources, Inc. In response to your letter to Tony Connell dated July 31, 2013, please see my enclosed letter to Phillip J. Courtney of the State Board of Land Commissioners. The letter explains why the Land Board cannot claim ownership of the sand and gravel to be mined pursuant to the referenced Permit, and requests withdrawal of the Land Board's objection.

If you have any questions or need further information, please let me know.

Very truly yours,

**MYATT BRANDES & GAST PC**

By:

  
Richard S. Gast

RSG/tf  
Enclosure

cc: Connell Resources, Inc. (via email)  
CWH Properties LLC (via email)

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August 16, 2013

VIA FAX (303-866-3152)  
and FIRST CLASS MAIL

Phillip J. Courtney  
Solid Minerals Leasing Manager  
State Board of Land Commissioners  
1127 Sherman Street, Suite 300  
Denver, CO 80203

Re: State Land Board Objection to Connell Resources, Inc. Permit Amendment  
Application, Hayden Gravel Pit, Permit No. M-1987-164

Dear Mr. Courtney:

This firm represents Connell Resources, Inc. ("CRI") and CWH Properties LLC ("CWH"). CRI is the applicant for the referenced Permit Amendment Application. CWH is the owner of the property in Routt County subject to the Permit Amendment Application in Routt County.

This letter responds to your objection letter dated July 31, 2013 to Dustin Czapla at the State Division of Reclamation, Mining and Safety (copy enclosed for your reference). In that letter you point out that the State of Colorado, acting through the State Board Land Commissioners ("State"), conveyed the surface estate of an 80 acre parcel described as the South Half of the Northwest Quarter, Section 12, Township 6 North, Range 88 West of the 6th P.M., Routt County, Colorado ("Property") to Oliver Wolcott Hooker by Patent No. 4577 on February 10, 1927. The State's mineral reservation in that Patent is worded as follows:

Reserving, however to the State of Colorado, all rights to any and all minerals, ores and metals of every kind and character and all coal, asphaltum, oil and other like substances in or under said land and the right of ingress and egress for the purpose of mining together with enough of the surface of same as may be necessary for the proper and convenient working of such minerals and substances.

By its own terms, under Colorado case law, and in light of the State's prior action with regard to the Property, that Patent mineral reservation is insufficient to reserve to the State ownership of the sand and gravel in, on and under the Property. Instead, CWH, as the current owner of the surface estate, owns all sand and gravel in, on and under the Property.

Phillip J. Courtney  
Solid Minerals Leasing Manager  
State Board of Land Commissioners  
August 16, 2013  
Page 2

In evaluating the ownership of the sand and gravel, it is helpful to first look at the language of the mineral reservation itself, and to bear in mind that mining the sand and gravel requires destroying the surface of the Property. The mineral reservation gives the State the right to use "enough of the surface" as is necessary to mine minerals and substances. If the State's right to use "enough of the surface" means it can destroy the entire surface of the Property in order to mine its sand and gravel, the effect of that mineral reservation is to nullify the Patent's grant of the surface estate. It would be illogical to conclude that at the time the State granted the surface estate to Mr. Hooker, the State also intended that its mineral reservation would give it the right to destroy the very surface estate being granted. In that event, the State's mineral reservation would swallow up its grant of the surface estate and render that grant meaningless.

Colorado court cases lend further support to the conclusion that the State did not reserve ownership of the sand and gravel in its mineral reservation. In Morrison v. Socolofsky, 600 P.2d 121 (Colo. App. 1979), the Colorado Court of Appeals was faced with a similar situation where gravel underlay the top soil of the entire parcel of land such that mining the gravel would destroy the surface. The Morrison court held that a mineral reservation in the deed for the parcel did not include gravel where mining the gravel would necessarily destroy the surface of the land. (See also United States ex rel S. Ute Indian Tribe v. Hess, 348 F.3d 1237 (10th Cir. 2003), holding that a reservation of minerals did not include gravel.)

Similarly, in Kinney v. Keith, 128 P.3d 297 (Colo. App. 2005), the Colorado Court of Appeals noted the general rule is that sand and gravel are not normally considered minerals covered by a mineral reservation. The Court also explained that this general rule is not limited to situations in which sand or gravel underlays the entire surface or where their removal would destroy the surface. The Court noted that since gravel is a material of less value than most other mineral substances and is also not particularly identifiable chemically from other substances, gravel ordinarily will not be categorized as part of a mineral estate absent some specific language or circumstances indicating an intent that gravel be included in the mineral estate. There is no specific language in the State's mineral reservation evidencing an intent to include sand and gravel in that reservation. If the State intended to reserve sand and gravel in its 1927 Patent, it could have specifically mentioned those materials.

While not a Colorado case, the North Dakota Supreme Court case of Salzseider v. Brunsdale, 94 N.W. 2d 502 (ND 1959) is helpful because it involves a mineral reservation by the North Dakota Board of University and School Lands. In that case, the Court held that the State's reservation of minerals in a grant of agricultural lands could not include gravel when one considered the ordinary or commonly understood meaning of the word "minerals."

Looking beyond the case law, the State has historically acted in a manner with regard to the Property that now precludes it from claiming ownership of the sand and gravel. Roughly half of the Property (lying east of the area subject to the CRI Permit) is included within the area

Phillip J. Courtney  
Solid Minerals Leasing Manager  
State Board of Land Commissioners  
August 16, 2013  
Page 3

previously permitted by the State (Permit No. M1979058 issued April 26, 1979) for the mining of sand and gravel by Routt County. The northern-most portion of the permitted area has been mined for sand and gravel over the past 15 to 20 years. The State issued the Routt County Permit, raised no objections to that Permit during the permitting process, and has taken no action to assert ownership of the sand and gravel in the permitted area, despite that area being subject to the State's mineral reservation. The State's affirmative act of issuing the permit to Routt County, combined with its failure to assert any ownership of the sand and gravel being mined by Routt County, estops the State from now claiming ownership of the sand and gravel subject to the CRI Permit Amendment Application.

In conclusion, the State does not have a legitimate claim to ownership of the sand and gravel in, on or under the Property. Accordingly, CRI respectfully requests that the Land Board withdraw its objection to CRI's Permit Amendment Application. If the objection is not withdrawn by **August 26, 2013**, CWH intends to pursue the appropriate remedies to confirm its ownership of the sand and gravel.

Very truly yours,

**MYATT BRANDES & GAST PC**

By:

  
Richard S. Gast

RSG/tf  
Enclosure: Objection Letter 073113

cc: Dustin Czapla, Division of Reclamation, Mining and Safety  
Connell Resources, Inc. (via email)  
CWH Properties LLC (via email)

# STATE OF COLORADO

Governor  
John Hickenlooper

Department of Natural Resources  
Mike King, Executive Director



Managing  
State Trust Lands  
Since 1876

STATE BOARD OF  
LAND COMMISSIONERS  
Bill Ryan, Director  
1127 Sherman Street, Suite 300  
Denver, CO 80203  
Phone: (303) 866-3454  
Fax: (303) 866-3152

July 31, 2013

Mr. Dustin Czapla  
Department of Natural Resources  
Division of Reclamation, Mining and Safety  
101 South 3<sup>rd</sup>, Suite 301  
Grand Junction, CO 81501

**RECEIVED**

JUL 31 2013  
GRAND JUNCTION FIELD OFFICE  
DIVISION OF  
RECLAMATION MINING & SAFETY

BY ELECTRONIC MAIL

RE: Notice of 112 Construction Materials Permit Amendment Application  
Connell Resources, Inc., Camilletti Pit, Permit No. M-1987-164  
State Land Board Objection

Dear Mr. Czapla,

Thank you for the notice provided by the Division of Reclamation, Mining and Safety regarding the referenced permit amendment application. The State Board of Land Commissioners (Land Board) has reviewed its mineral ownership records in the vicinity of the requested permit expansion and determined that the mineral estate under much of the proposed expansion, specifically the land listed below, is owned by the State of Colorado:

<u>ACRES</u>	<u>SUBDIVISION</u>	<u>SEC-TWP-RGE</u>	<u>PATENTS</u>	<u>COUNTY</u>
80	S2NW	12 - 6N - 88W	4577	Routt

The State of Colorado, by and through the State Board of Land Commissioners, was granted ownership, both surface and mineral estates, by the US Government through the Colorado Enabling Act, Section 7 wherein Congress granted sections numbered sixteen and thirty-six in every township for the support of common schools. This particular parcel was selected by the Board in the 1890's as an In Lieu Selection for lands lost to the state in Western Colorado, and was conveyed to the state by Clear List No. 6, Indemnity School Land, Glenwood District of the General Land Office.

The surface estate of the above described land was conveyed to Oliver Wolcott Hooker by Patent No. 4577 on February 10, 1927. This patent specifically reserves all minerals to the State of Colorado.

I have attached a copy of the patent along with a map outlining state mineral ownership in the vicinity of permit amendment application.

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COMMISSIONERS: Buck Blessing, Michele A. Bloom, Thomas R. Gray, Gary Butterworth, Robert Bledsoe

The Land Board allows access to minerals for development through mineral leases that must be approved by the Board of Land Commissioners. Current records show that no mineral lease is in effect on the lands that are included in the referenced permit amendment application. Until such time as a mineral lease has been fully executed to allow extraction of the sand & gravel resources owned by the State of Colorado, the Land Board objects to the mine plan proposed in the amendment application. The process for a mineral lease begins by submitting an application form that is available at <http://www.trustlands.state.co.us>.

If you have any questions, please do not hesitate to contact me at 303-866-3454 ext. 3313

Sincerely,



Phillip J. Courtney

Solid Minerals Leasing Manager

Attachments: State of Colorado Patent No. 4577  
Map

Cc: Pete Milonas, Minerals Director – State Land Board



# State of Colorado

PATENT No. 4577

*Oliver Wolcott Hooker*

To all unto Whom these Presents shall Come: Greeting:

Whereas, *Oliver Wolcott Hooker* of the County of *Bozett* and State of Colorado, in accordance with the provisions of the acts of the General Assembly of the State of Colorado, approved and in force at the time of the purchase of the land herein designated and described, and at the time of the execution of this conveyance, has made full payment as appears from the records of the State Board of Land Commissioners, of and for the following described real estate, lying and situate in the County of *Bozett* and State of Colorado, to-wit:

*The South Half of the Northwest Quarter (S 1/2 NW 1/4) and the Southwest Quarter (SW 1/4) of Section 12 (12) Township 13 (13) North, Range Eighty-eight (88) West of the Fifth (5) Principal Meridian, containing Two Thousand Forty (240) acres, more or less, according to Sanitized State Survey.*

Reserving, however, to the State of Colorado, all rights to any and all minerals, ore and metals of every kind and character and all coal, asphaltum, oil and other like substances in or under said land and the right of ingress and egress for the purpose of mining, together with benefit of the surface of same as may be necessary for the proper and convenient working of such minerals and substances.

Subject to any and all easements or rights of way heretofore legally obtained and now in full force and effect, if any, there be.

which said described tract of land has been purchased by the said *Oliver Wolcott Hooker* for the sum of *Three Thousand Seven Hundred Sixty and 1/10 (\$3760.10)* Dollars

Now Know Ye, That the State of Colorado in consideration of the premises, and in conformity with the Act of the General Assembly, in such case provided, has sold and granted, and by these presents does sell and grant unto the said *Oliver Wolcott Hooker* and to *his heirs* and assigns, the said tract above described: TO HAVE AND TO HOLD the same as above specified, together with all the rights, privileges, immunities and appurtenances of whatsoever nature hereunto belonging, unto the said *Oliver Wolcott Hooker* and to *his heirs and assigns forever.*

{  
Seal of State  
of  
Colorado  
}

In Testimony Whereof, I,

*Wm H. Adams*

Governor

of the State of Colorado, have caused these letters to be made Patent, and the Great Seal of the State of Colorado to be hereunto attached.

Given under my Hand at the City of Denver, the *10th* day of

*February*

A. D. 1927

*Wm H. Adams*

Governor.

Attest:

*Chas. M. Armstrong*

Secretary of State of the State of Colorado.

*Carl Cooley*

Register State Board of Land Commissioners.

Indemnity Bond.

South County.

Sold January 6, 1910.

Certificate of Purchase No. 559, Book 14.

Filed for record this *16th* day of *February*

A. D. 1927, at *4 o'clock P. M.*

*Carl Cooley*

Register.



• col\_cities



DRMS\_Permits\_062513



all\_inv\_surface



all\_inv\_minerals



County Boundary

## State Land Board

0.032 0.065 0.13 0.165 0.26

Miles

1:14,313

07/30/2013

2013 - State Land