



August 28, 2020

El Paso County Planning and Community Development Department
Attn: Ms. Nina Ruiz
2880 International Circle, Suite 110
Colorado Springs, CO 80910

Re: Responses to the following comments, Round 3, EA Number EA1881, File Number AL2014:

- El Paso County, Environmental Health Division.
- Upper Black Squirrel Creek Ground Water Management District.
- El Paso County Conservation District.
- El Paso County Planning Dept.

Dear Ms. Ruiz,

Following are our responses to the above listed agency comments. Please note we have not yet received responses from LSC Traffic Consultants, Inc. (LSC). We hope to have the responses to the items LSC is addressing in the next couple of weeks.

- El Paso County Conservation District:
 - **Question:**
 - *"The El Paso County Conservation District Board of Supervisors have no comments on this review at this time."*
 - **Response:**
No response is necessary to their comment at this time.
- El Paso County, Environmental Health Division:
 - **Question:**
"Process water (material processing and dust control) for the commercial operation was not included in the submittal. The source of the process water must be reviewed prior to approval."
 - **Response,** Page 19, Exhibit G, Approved Mined Land Reclamation Board Permit Application (AMLRBPA), page 20:
 - ❖ "We estimate the current water uses at the mine, including, dust control will require 12.0 ac-ft per year. It will be purchased from the Schubert Ranch; they have water that is permitted for industrial uses. No water will be used for reclamation, nor will the revegetated area be irrigated."



- ❖ As an alternative, water for dust control may be purchased from a public water provider and hauled to the site as needed. Potable water will be brought onto the site as needed.

➤ **Question:**

"The source of potable water is undecided. It will either be provided by an individual private well or purchased locally. The potable water system may be subject to Colorado Department of Public Health and Environment (CDPHE) rules and regulations for Public Water Systems if the operation serves water to 25 or more employees for six or more months per year. The potable water source requires review and approval."

➤ **Response:**

- ❖ The source of potable water may be purchased from a municipal water system and hauled to the site.
- ❖ Alternatively, "...obtained from on-site domestic ground water wells." Letter of Intent, page 10, item 16.
- ❖ The site may be operated for more than six continuous months. However, no more than 7 employees will be on the site at any one time.
- ❖ In the event well water use is needed; the wells which appear to allow municipal uses are wells 9642-FP, 20528-FP and 27582-FP. (Please see the attached decree dated, March 19, 1986.) The well of choice is well 9642-FP. If well water is used at the site, it will be used for fugitive dust control.
- ❖ The Well decrees are provided in **Exhibit IX**.

➤ **Question:**

"Wastewater service for the project is proposed to be by portable toilets. Per the El Paso County Public Health, Onsite Wastewater Treatment System (OWTS) Regulations, portable toilets are allowed for temporary use only. If the portable trailer/office building is moved as site entrance location change, then the use of portable toilets is acceptable. If the trailer/office stays at a fixed site, then an OWRS is required and must be designed by a Colorado Registered Professional Engineer."

➤ **Response:**

- ❖ The proposed operation will consist of six Stages. As mining and reclamation moves from Stage to Stage, the scale and scale house (trailer) will move. (There may, however, be instances where one scale and scale house location may serve two Stages.) The main point is the scale and scale house will not be permanent.



- ❖ “No sewer or septic system will be provided for human waste. Instead, portable toilets and solid waste disposal containers will be provided. Portable units are preferred on mining operations as the employees are usually divided between the scale/scale house and the portable processing plant that may be up to a mile from the scale. These units will be serviced and disposed off-site, by commercially available providers.” Letter of Intent, page 10, item 16.
- ❖ Therefore, an OWTS is not proposed.

➤ **Question:**

“The CDPHE, Air Pollution Control Division (APCD), will require an Air Pollutant Emissions Notice (APEN) as noted in the ‘Draft Air Quality Management Plan’ submitted for review. All aspects of the APEN must be complied with including dust control, emissions from equipment, and odor control and response.”

➤ **Response:**

- ❖ We have committed to not begin mining operations until the requirements of the CDPHE, APCD, APEN has been filed and approved.
- ❖ CDPHE air quality regulations do not require an APEN for mine that produces less than 70,000 tons per year. This allows for applying for the permit as the initial stages of site preparation are taking place.
- ❖ Section 6.3.1 of the El Paso County Land Development Code requires an operator comply with County, State and Federal air quality standards. We therefore request that the County review process and application approval occur pending approval of our air quality permit(s).
- ❖ We have included a Waiver Request as to the need to provide an AQCD, Air Quality Permit prior to El Paso County’s considerations of our SUP and Development Applications. **(Exhibit VIII)** In addition to the Waiver Request, we provide the following information as to why we believe an Air Quality permit may be provided the County post SUP/Development Plan approval.
 - ✓ By definition, this is not a construction activity, rather it is a mining operation. In a typical sand and gravel mining operation, such as the proposed operation, the expected air pollutant is fugitive dust.
 - ✓ There will be some emissions from gas and diesel equipment (trucks and mining equipment). Engine emissions from equipment and fugitive dust are subject to regulation by the State Air Quality Control Division (AQCD). The AQCD will review the Operation’s Air Pollution Emission Notice (APEN) and determine what operational controls will be required.



- ✓ Air quality impacts, therefore, will be mitigated by the requirements of the Air Quality Permit(s) issued by the AQCD.
 - ✓ Prior to beginning of any on-site mining operations that exceed 70,000 tons per year, Ellicott Sand and Gravel will provide the documents as required by Section 6.3.1.(B)(2)(b) shortly after approval by the Colorado Air Quality Control Division.
 - ✓ We therefore suggest, since this is not a typical development, it may not be necessary for the County to apply the provision of Section 6.3.1.(B)(3) for the above reasons and waive this provision.
 - ❖ Given the type of operation, a sand and gravel extraction and processing operation, we do not anticipate odor. If, in the unlikely event, there should be odor issues, mitigation measure appropriate to the degree and type of odor will be implemented.
- **Question:**
- "The operation must comply with all environmental water quality rules and regulations, including, but not limited to, a Spill Prevention Control and Countermeasure (SPCC) plan. Water quality detention basins, if any, must have mosquito control responsibilities include as a part of the design and maintenance plan to help control mosquito breeding habitat and minimize the potential for West Nile Virus."*
- **Response:**
- ❖ SPCC Plan:
 - ✓ According to the attached Environmental Protection Agency document, "Does the Spill Prevention, Control and Countermeasure (SPCC) Rule Apply to Your Facility?", and given our level of use and storage of petroleum products, the SPCC Rule does not apply:



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○ Applicability of the Spill Prevention, Control and Countermeasure Rule

An official website of the United States government.

We've made some changes to [EPA.gov](https://www.epa.gov). If the information you are looking for is not here, you may be able to find it on the [EPA Web Archive](#) or the [January 19, 2017 Web Snapshot](#).

[Close](#)



Does the Spill Prevention, Control, and Countermeasure (SPCC) Rule Apply to Your Facility?

Use these questions to determine if SPCC applies to your facility.

1. Is your facility or part of your facility (e.g. complex) considered non-transportation-related?

☒ Yes Please continue to Question 2.

☐ No - Your facility is not subject to SPCC.

2. Is your facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil?

☒ Yes Please continue to Question 3.

☐ No - Your facility is not subject to SPCC.

3. Could the facility reasonably be expected to discharge oil in quantities that may be harmful into navigable waters or adjoining shorelines?

☐ Yes - Please continue to Question 4. **However, if "Yes".**

☒ No Your facility is not subject to SPCC.

4. Is the total aggregate capacity of aboveground oil storage containers greater than 1,320 gallons of oil? (Do not include containers less than 55 gallons, permanently closed container, motive power containers, or storage containers used exclusively for wastewater treatment.)

Yes - Your facility is subject to the SPCC rule. For more information please see our [guidance document to Regional Inspectors](#). This document is also available to owners and operators.

<https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/does-spill-prevention-control-and-countermeasure>

1/2

7/22/2020

Does the Spill Prevention, Control, and Countermeasure (SPCC) Rule Apply to Your Facility? | Oil Spills Prevention and Preparedness Regulations | US EPA

☒ No Please continue to Question 5.

5. Is the total aggregate capacity of completely buried storage tanks greater than 42,000 gallons of oil? (Do not include completely buried tanks subject to all technical requirements of 40 CFR 280/281, containers less than 55 gallons, permanently closed containers, or storage containers used exclusively for wastewater treatment.)

Yes - Your facility is subject to the SPCC rule. For more information please see our [guidance document to Regional Inspectors](#).

☒ No Your facility is not subject to SPCC.

LAST UPDATED ON APRIL 10, 2017

- As noted above, even if we answered “yes” to question 3, questions 4 and 5 would be “no”, and we are therefore not subject to the SPCC Rules.



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- If stored on site, fuel storage should not exceed 1,000 gallons, in one or two self-contained doubled walled tanks. This amount is less than the 1,320 gallons threshold at which an operator becomes subject to the SPCC Rules.
- ✓ However, we will comply with the “Environmental Spill Reporting” requirements (as applicable) from the Office of Emergency Preparedness and Response. That document is attached as **Exhibit I**.
- ❖ Water Quality Detention Basin, Mosquito Control:
 - ✓ No ground water will be exposed.
 - ✓ No water quality detention basins are planned
 - ✓ Any storm water entering an excavated pit, either during mining, reclamation, or post reclamation, is expected to infiltrate into the sandy/gravelly substrate within 72 hours.
 - ✓ Therefore, we do not anticipate the need for mosquito control.
- Upper Black Squirrel Creek Ground Water Management District:
 - **Question:**
 1. “Assessment of hydrological impacts and conditions”

“Applicant has not provided sufficient information assessing the hydrological conditions and potential impact of the Proposed Operation. First, Applicant’s application materials does not include adequate information or data regarding the occurrence of ground water in the alluvial aquifer that is also the source of the sand deposit to be mined. The application material indicates that the sand resource is 70 feet thick and that depth to groundwater exceeds 70 feet across the area to be mined. Apparently, the sand thickness was determined from ‘available’ well logs; yet these well logs and corresponding well permit numbers were not provided.”
 - **Response:**
 - ❖ Attached **Exhibit II** provides the list of 24 wells, to include those within 200 feet of the proposed affected land. We have also included an attached map which shows the approximate well locations.
 - ❖ You may find the well logs for some of the wells at the Office of the State Engineer (OSE), Well Permits website. We are not aware of any other well logs other than those available on the OSE website.
 - **Question:**

“Applicant also concludes that the depth to groundwater is more than 70 feet and bases this conclusion on a review of 24 wells. The names, locations, and well logs for



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these wells are not provided. The only depth-to-groundwater data Applicant actually provides are static water levels measured in three domestic wells installed in the early 1970s (Permit Nos. 6969-f, 6971-F, and 9642-FP). These permits indicate that the depth-to-groundwater in these wells was less than 50 feet at the time of construction, making uncertain Applicant's conclusion that the depth-to-groundwater is greater than 70 feet across the Proposed Operation site. Applicant should construct a water table map based on current depth-to-groundwater data for the Proposed Operation site. Without this water table map, it is unclear how the Applicant will ensure that mining will not occur within 10 feet from the groundwater table in the Upper Black Squirrel Creek alluvial aquifer as Applicant proposes."

➤ **Response:**

- ❖ For all Stages, we have committed to stay at least 10 above the prevailing ground water elevation, regardless of the depth to ground water. This commitment is more restrictive than what is required by the Office of the State Engineer (SEO). The SEO requires that the floor of a mining operation stay at least 2 feet above the prevailing ground water table. The SEO has deemed that the 2 feet of separation is protective of ground water, and will not require an augmentation plan for evaporative loss. Please see **Exhibit III**, DRMS – Mining Operations with Exposed Ground Water Policy



“

The intent is not to intercept ground water in this mine. The commitment originally made was to stay 2 feet above the water table and to immediately place a 2 foot cover over it if encountered. Per the request from the Upper Black Squirrel Creek Groundwater Commission ESG will stay 10 feet above the ground water table so no Well Permit or replacement plan is needed. This may change if stormwater is retained on the mine for more than 72 hours. Details on how ESG will handle this is discussed below.

”

(From Page 7, response to DRMS Adequacy Question 15, Adequacy Response 01, September 9, 2019.)

- ❖ Further, in the unlikely event Ellicott S & G intercepts ground water, it will be backfilled with at least 2 feet of cover. (This should not occur since we have committed to leaving ten feet of cover.)
- ❖ In addition, we have committed to obtain the necessary well permit(s) in the unlikely event ground water is exposed, which again is not likely to occur since we have committed to ten feet of cover.



- ❖ “
Ellicott Sand & Gravel LLC will commit to obtaining any necessary well permits and a replacement water plan for exposed ground water if needed.
(From Page 8, response to DRMS Adequacy Question 15, Adequacy Response 01, September 9, 2019.)
- ❖ Depth to ground water may be determined once mining in a Stage begins by digging a test pit. Such a method may be used to determine the depth of mining, in order to maintain the ten foot of cover.

➤ **Question:**

“Furthermore, in the Application for a Regular 112 Construction Materials Mined Land Reclamation, Applicant states that if groundwater is encountered, two feet of backfill will be placed on the mine floor at that location. This statement is inconsistent with Applicant’s proposal ensuring mining will not occur below 10 feet above the groundwater table.”

➤ **Response:**

- ❖ The ten foot of cover over the historic ground water table is a non-regulatory goal we have imposed upon ourselves. We expect to achieve the ten-foot separation in all Stages.
- ❖ In addition, the Office of the State Engineer requires mining operators maintain at least a two-foot separation between the top of the historic ground water elevation and the surface of a pit floor in order to protect against evaporative losses. Therefore, we are regulatorily prohibited from exposing tributary ground water.

➤ **Question:**

“Additionally, on page 16 of Applicant’s Construction Materials Application, Applicant states that:

- *The operator does not expect ‘prevailing hydrologic conditions’ to be disturbed;*
- *The operator will minimize any disturbance to the ‘prevailing hydrologic balance’;*
- *The operator will minimize disturbance to ‘the quality and quantity of water in the surface and ground-water systems.’*
- *Applicant does not explain or define the meaning of these terms or provide data to support these statements.”*



➤ **Response:**

- ❖ As we recall, the definition for the above term was adopted by the Colorado State legislature, from the Regulations implemented by the Office of Surface Mining during the drafting of the State regulations for mining.
- ❖ “hydrologic balance” means:
 - ✓ “Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship among precipitation, runoff, evaporation, changes in ground and surface water storage.” (30 CFR § 701.5)
 - ✓ We assume the term “prevailing” does not need to be defined.
- ❖ We do not see the need to further provide justification on this matter since the Colorado Division of Reclamation, Mining and Safety has determined that the proposed operation will minimize impacts to the hydrologic balance as to the affects on both the quality and quantity of surface and ground water. This was a determination made during their review process.

➤ **Questions:**

2. *“Setback from Upper Black Squirrel Creek”*

- *“Applicant’s letter of Intent indicates that mining operations will be set back 150 foot from Upper Black Squirrel Creek. Applicant’s Application for a Regular 112 Construction Materials Mined Land Reclamation, however, states that there will be a 50 foot setback. Applicant should reconcile these conflicting statements. And to the extent Applicant proposes a 50 foot setback, this distance is inadequate. The setback on both sides of Upper Black Squirrel Creek should be at least 150 feet from the side of the creek channel.”*

➤ **Response:**

- ❖ The approved DRMS permit application was revised to show a 150-foot setback along all creeks adjacent to the mined areas, within the permit area. Based on the revised Reclamation Plan maps, the buffer between each creek and the final reclaimed 3H:1V slope is 150 feet. Plus, the slopes along the creek and the slopes at the top of the 3H:1V reclaimed slopes, adjacent to the creeks, are to be appropriately armored to resist failure during a high water, from storm water runoff event.



❖ “

As noted in response to question 2, we have increased the setback to 150 feet and plan to install armoring on both banks along the river in accordance with the Urban Drainage Guidelines. Text has been added to the Mining Plan explaining how this will be done as mining progresses. A Bank Protection Plan is also attached for the Divisions review.
”

(Page 8, response to DRMS Adequacy Question 15, Adequacy Response 01, September 9, 2019.)

➤ **Question:**

3. “Captured storm water and surface drainage”

“The operation will create numerous pits that extend up to 70 feet below the surrounding landscape. During operation, Applicant indicates that captured storm water will be released within 72 hours. After the operation ceases, however, it is assumed that surface drainage will no longer be diverted around or pumped out of the mine disturbance area to prevent run-in to the pits. Applicant does not provide information on whether or how the creation of these pits will alter the current surface drainage around and through the site. After operation ceases, the pits may not impound water and therefore Applicant must provide information confirming that no water will be impounded in the future.”

➤ **Response:**

- ❖ You are correct in stating that once mining terminates and reclamation is complete, stormwater drainage and rainfall will enter the pits. The Upper Black Squirrel Creek Groundwater Commission (UBSCGC) felt, “...it (rainfall runoff) would increase the ground water capture, allowing for more recharge and due to the nature of the sand would soak in fast enough to present little problem. The USBS Groundwater Commission’s board felt that if the channel can be preserved, the capturing of the water and soaking in of said water (recharge) would be a benefit to the basin.” (Adequacy response to the CDRMS, dated September 9, 2019, response item #2)
- ❖ In addition, we have committed to filing for an augmentation plan to cover evaporative losses in the event storm water resides in any of the reclaimed pits for more than 72 hours. “One idea was that this (Retention of stormwater more than 72 hours.) would be fairly short time and that Mr. Schubert (the landowner) had enough water (rights) to provide evaporative losses for that period.”



- ❖ “An analysis of the site infiltration rates (in./hr.) indicates rainfall runoff entering the various pits will infiltrate quickly into the sandy sub-soils...and the site has moderately high to very high infiltration rates. Therefore, there is a low likelihood rainwater runoff will pool in a Stage for more than 72 hours.”
(Adequacy response to El Paso County Planning and Community Development Department, Attn: Mr. Gabe Sevigny, July 7, 2020, response to the Colorado Division of Water Resources comment)

➤ **Question:**

4. *“Other issues”*

“Applicant includes a table on Page 4 of the Letter of Intent that includes the acreage available for mining in each phase of the proposed mining operation. The ‘Total Acres Available’ column does not, add up, equal the total for that column.”

➤ **Response:**

Thanks for the question, the total in the column, “Total Acres Available” includes the “Other Not Mined” acres of 220.2 plus the “Total Acres Mined” of 513.5 which equals 733.7 total permitted acres.

➤ **Question:**

“The economic justification given for the mine is based on 1996 data. Applicant should provide more current data.”

➤ **Response:**

We understand your point concerning the age of the data used in our economic justification. However, we used what information was available and the most up-to-date information available to us. Second, we have not received comments from the El Paso County Planning Department that the supplied economic justification was inadequate.

➤ **Question:**

5. *Previous comments, January 8, 2020:*

“The proposal states that water use demand for material processing and fugitive dust control water is approximately 12 acre-feet per year and this water demand will be met from ‘potable water will either be purchased locally’ or ‘obtained from on-site domestic ground water wells.’ Please be aware that on-site domestic ground water wells are strictly limited in type of use and amount of withdrawal by C.R.S. § 37-90-105 and the Upper Black Squirrel District Rule 3. We are not aware of any domestic wells currently permitted that allow for material processing or dust control and



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domestic well cannot be pumped at 12 acre-feet per year. Please review this inclusion in your request and revise as needed."

➤ **Response:**

- ❖ The 12 acre-feet of estimated water use will be purchased from Schubert Ranch. We understand Schubert Ranch has water that is permitted for industrial use.
- ❖ Alternatively, water could be trucked in for fugitive dust control from off-site. (Page 20, Exhibit G, from the approved CDRMS Permit Application.)
- ❖ Potable water needs will be brought onto the site from suitable sources.

• El Paso County Planning Dept.:

➤ **Question:**

"resubmit without special district checked, this is an application for a Special Use Major only." (Type D Application Form (1-2C))

➤ **Response:**

Attached with this submittal is the revised Type D Application Form (1-2C) (**Exhibit VI**)

➤ **Question:**

The "Affidavit of Authority to Execute Financial Warranty Documents", paragraph 2, does not have the permit number.

➤ **Response:**

Attached is a revised "Affidavit of Authority to Execute Financial Warranty Documents" which includes the permit number. (**Exhibit IV**)

➤ **Question:**

The comment concerns the supplied Division of Reclamation, Mining and Safety (CDRMS) Permit Application approval letter dated November 6, 2019.

➤ **Response:**

- ❖ A permit will not be issued until the Performance and Financial Warranties are posted with the CDRMS. We will post the Warranties upon approval of the SUP and Development Plan by El Paso County.
- ❖ We request El Paso County accept the November 6, 2019 letter as evidence the CDRMS has approved the Application in lieu of the CDRMS permit at this time.
- ❖ With approval of the financial warranty and issuance of the CDRMS permit, we will supply the El Paso County Planning Department a copy of the issued permit, prior to beginning any on-site mineral extraction operations.



- **Question:**
Emergency Safety Plan comment. The comment concerns the scale or weight house. El Paso county requests, "Is this a new structure or the ranch structure being converted? If a new proposed structure, include in LOI."
- **Response:**
No permanent structures are planned. The scale and scale house are portable facilities which will typically move with the completion of one Stage and the start of the next Stage. However, where it is possible to use the same access road entrance for the subsequent Stage, then the scale and scale house will remain for the use during the next mining Stage.
- **Question:**
Emergency Safety Plan comment, "Has the applicant made contact with the Fire District about requirements for a possible cistern?"
- **Response:**
We contacted the Ellicott Fire Protection District by certified mail. Attached is a copy of the letter along with the proof of mailing and their response. **Exhibit VII**
- **Question:**
Impact Mitigation Analysis comment, "Cannot grant approval without approval of the air quality permit."
- **Response:**
We are submitting a waiver request, **Exhibit VIII**. The attached Waiver Request is part of this document since the LOI has already been submitted.
- **Question:**
Letter of Intent comment. "As stated in the TIS there is an off-site parking lot that is not included in the Letter of Intent the mining operation or identified in the site plan. Please address." (page 1)
- **Response:**
We were unable to find a reference to an "offsite parking lot" in the TIS. (We assume you are referring to the Traffic Report?) We do not plan to have any off-site parking areas. All parking will be within a Stage. The need for parking will be temporary for as long as a Stage is opened for mining and reclamation. All parking will be confined to the plant site areas as each stage is mined and is typically temporary employee parking or equipment parking when the mine is closed.



➤ **Question:**

Letter of Intent comment. "This is also a Special Use application, applicant needs to provide justification of how to meet the Criteria of Approval in Section 5.3.2.C of the LDC, not just justification of the need of a mining operation." (page 5)

➤ **Response:**

We refer the reviewer to pages 61- 62 of the Mineral Extraction Application where we address the criteria under El Paso County Land Development Code 5.3.2(C) for SUP approval.

➤ **Question:**

Letter of Intent comment. "Phasing indicates a possible structure to be an office." (page 8)

➤ **Response:**

We reviewed page eight and nine of the "Letter of Intent" and could not find a reference to an office or structure? It is true there will be a scale and scale house. The scale house may contain an office where important papers, copies of mine permits and other important information is retained, as required by the permits. IT will also provide a place for the mine superintendent to work when preparing daily logs and reports for the company. These two items will be mobile and move as a Stage moves. However, where it is possible to use the same access road entrance for the next Stage, then the scale and scale house will remain for the use during the next Stage of mining.

➤ **Question:**

Letter of Intent comment. "Applicant is requesting a waiver of Section 6.3.B in the impact mitigation analysis." (page 8)

➤ **Response:**

Please see **Exhibit VIII** below. It is a Waiver Request to not require a CDPE, APQD approval (permit) prior to consideration of our SUP/Development Plan.

➤ **Question:**

Noxious Weed Control Plan. "Re-submit with a cleaner copy, cannot read."

➤ **Response:**

We have attached another copy of the Noxious Weed Control Plan. (**Exhibit V**) Please let us know if there are still problems with document clarity.



➤ **Question:**

Legal Description comments. The legal description, "does not match Title Commitment, please verify and resubmit either Legal or Title Commitment."

➤ **Response:**

- ❖ The legal description for the proposed mineral extraction operation should not match the Title Commitment. The Title Commitment describes the two parcels upon which the proposed mineral extraction operation is to be located. The legal description provided in the Mineral Extraction Application, describes the approved Mined Land Reclamation Board Permit Boundary and not the Parcel's legal description.

➤ **Question:**

Proof of Commercial Mineral Deposit. "This is not a reclamation plan, verify adjust and resubmit."

➤ **Response:**

We do not understand this comment. This section is titled, "Proof of a Commercial Mineral Deposit". This section is not intended to be a reclamation plan. It is intended to provide justification that a commercial mineral deposit exists. The reclamation plan was submitted and approved by the Colorado Mined Land Reclamation Division. Please clarify what is needed by your comment. In addition, we will be happy to supply a copy of the CDRMS approved Reclamation Plan for your files.

Respectfully,

H. Bruce Humphries

Regulatory Permits Management, Inc.

Consultant for Ellicott Sand and Gravel, LLC

Encl: Exhibit I, Environmental Spill Reporting
Exhibit II, Well Permit No., & Locations
Exhibit III, DRMS Policy, Mine Operators with Exposed Ground Water
Exhibit IV, Affidavit of Authority to Execute Warranty Documents

Exhibit V, Copy of approved Weed Control Plan
Exhibit VI, Revised Type D Application Form
Exhibit VII, Contact Letter to Ellicott Fire Protection District



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Exhibit VII-A, Proof to Mailing to Ellicott Fire Protection District

Exhibit VIII, Request for Waiver, Requirement for Air Quality Permit

Exhibit IX, List of Ground Water Well Available for Use



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Exhibit I

Environmental Spill Reporting



Environmental Spill Reporting

*24-Hour Emergency and Incident Reporting Line
Office of Emergency Preparedness & Response*

1-877-518-5608

Updated: June, 2018



General

For all hazardous substance incidents, local emergency response agencies must be notified.

Releases from fixed facilities

The Superfund Amendments and Reauthorization Act (SARA) Title III, requires reporting releases from fixed facilities

Refer to the SARA Title III List of Lists, available from the Environmental Protection Agency (EPA), for the reportable quantity.

The party that owns the spilled material must immediately notify the following agencies or organizations:

- National Response Center (NRC) 1-800-424-8802;
- Colorado Emergency Planning Committee (CEPC), represented by the Colorado Department of Public Health and Environment (CDPHE) 1-877-518-5608; and
- Local Emergency Planning Committee (LEPC) 1-720-852-6600.

In addition to telephone notification, the responsible party must also send written notification describing the release and associated emergency response to both the CEPC (in this case, CDPHE) and the LEPC.

Releases from RCRA facilities

Emergency releases from facilities permitted under the Resource Conservation and Recovery Act (RCRA) are reportable according to the permit requirements.

The permit often requires reporting to CDPHE, even if the amount of the release is less than a reportable quantity under SARA Title III (6 CCR 1007-3 Part 264).

Permitted facilities and generators and transporters of hazardous waste are required to have and implement a contingency plan that describes the actions facility personnel must take in response to fires, explosions or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface or ground water at the facility (6 CCR 1007-3 Sections 261, 262, 263, 264 and 265).

Whenever there is an imminent or actual emergency situation, appropriate state or local agencies, with designated response roles as described in the contingency plan, must be notified immediately.

The National Response Center or government official designated as the regional on-scene coordinator must be notified immediately if it is determined that the facility has had a release, fire or explosion that could threaten human health or the environment outside the facility.

CDPHE and local authorities must be notified when the facility is back in compliance and ready to resume operations. In addition, the facility must send a written report to CDPHE within 15 days of any incident that requires implementation of the contingency plan. The contingency plan should include current contact information for notification and submittal of written reports.

Permitted facilities, generators and transporters that store hazardous waste must notify CDPHE within 24 hours of any release to the environment that is greater than one (1) pound and must submit a written report to CDPHE within 30 days of the release (6 CCR 1007-3).



Transportation accidents

Transportation accidents that require reporting:

- Result in a spill or release of a hazardous substance in excess of the reportable quantity (40 CFR Part 302.6)
- Cause injury or death or cause estimated property damage exceeding \$50,000.
- Cause an evacuation of the general public lasting one or more hours.

Those that close or shut down one or more major transportation arteries or facilities or result in fire, breakage, spillage, or suspected contamination from radioactive or infectious substances must immediately be reported to the National Response Center.

Refer to the EPA SARA Title III List of Lists for those substances that have reportable quantities.

In addition to the NRC being notified, the local emergency number (9-1-1) must be called and CDPHE should be notified.

Written notification of any transportation accident involving a release of hazardous materials must be provided to the U.S. Department of Transportation within 30 days (49 CFR Part 171.16)

Since hazardous waste is a subset of hazardous materials, transporters who have discharged hazardous waste must notify the NRC and provide a written report to the US Department of Transportation as noted in the above reporting requirements.

The transporter must give immediate notice to the nearest Colorado State Patrol office (8 CCR 1507-8 HMP 5) and the nearest law enforcement agency if the accident or spill involved a vehicle (42-20-113(3) CRS).

Notification and a written report detailing the ultimate disposition of the discharge of hazardous waste must also be provided to CDPHE (6 CCR 1007-2 Section 263.30). This may be a duplicate copy of the US Department of Transportation report

In the event of a spill or discharge of hazardous waste at a transfer facility, the transporter must notify CDPHE within 24 hours if the spill exceeds 55 gallons or if there is a fire or explosion.

Within 15 days of a reportable incident, the transporter must submit a written report of the incident to CDPHE, including the final disposition of the material (6 CCR 1007-2 Section 263.40).

Releases of hazardous waste at a transfer facility may also require notification to the National Response Center and a written report to the U.S. Department of Transportation.

Releases to water

A release of any chemical, oil, petroleum product, sewage, etc., which may enter waters of the State of Colorado (which include surface water, ground water and dry gullies or storm sewers leading to surface water) must be reported to CDPHE immediately (25-8-601 CRS).

Written notification to CDPHE must follow within five (5) days (5 CCR 1002-61, Section 61.8(5)(d)).

Any accidental discharge to the sanitary sewer system must be reported immediately to the local sewer authority and the affected wastewater treatment plant.

Releases of petroleum products and certain hazardous substances listed under the Federal Clean Water Act (40 CFR Part 116) must be reported to the National Response Center as well as to CDPHE (1-877-518-5608) as required under the Clean Water Act and the Oil Pollution Act.

Releases to air

Any unpredictable failure of air pollution control or process equipment that results in the violation of emission



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control regulations should be reported CDPHE by 10 a.m. of the following working day, followed by a written notice explaining the cause of the occurrence and describing action that has been or is being taken to correct the condition causing the violation and to prevent such excess emissions in the future (5 CCR 1001-2 Common Provisions Regulations Section II.E).

If emergency conditions cause excess emissions at a permitted facility, the owner/operator must provide notice to CDPHE no later than noon of the next working day following the emergency, and follow by written notice within one month of the time when emission limitations were exceeded due to the emergency (5 CCR 1001-5, Regulation 3 Part C, Section VII.C.4).

Releases from oil and gas wells

All spills or releases of exploration and production wastes or produced fluids which meet the reporting thresholds of the Colorado Oil and Gas Conservation Commission (COGCC) Rule 906 shall be reported verbally to the COGCC within 24 hours of discovery and on the COGCC Spill/Release Report Form 19 within 72 hours of discovery.

Spills or releases are reportable to the COGCC in the following circumstances:

- 1) the spill or release impacts or threatens to impact any waters of the state, (which include surface water, ground water and dry gullies or storm sewers leading to surface water), a residence or occupied structure, livestock or a public byway;
- 2) a spill or release in which 1 barrel or more is released outside of berms or other secondary containment; or
- 3) any spill or release of 5 barrels or more.

COGCC also requires reportable spills or releases be reported to the surface owner and local government. Whether or not they are reportable, spills or releases of any size must be stopped, cleaned up, and investigated as soon as practicable.

If the spill or release impacts or threatens to impact waters of the state, it must also be reported immediately to CDPHE (25-8-601 CRS).

Releases from storage tanks

Petroleum releases of 25 gallons or more (or any size that causes a sheen on nearby surface waters) from regulated aboveground and underground fuel storage tanks must be reported to the Division of Oil and Public Safety (303-318-8547) within 24 hours. If the report is made after business hours, please leave a message on the technical assistance line for the Division of Oil and Public Safety, and contact the 24 hour CDPHE Emergency and Incident Reporting Line. This includes spills from fuel dispensers.

Spills or releases of hazardous substances from regulated storage tanks in excess of the reportable quantity (40 CFR Part 302.6) must be reported to the National Response Center and the local fire authority immediately, and to the Division of Oil and Public Safety within 24 hours. (8-20.5-208 CRS and 7 CCR 1101-14 Article 4).

Owners/operators of regulated storage tanks must contain and immediately clean up a spill or overfill of less than 25 gallons of petroleum and a spill or overfill of a hazardous substance that is less than the reportable quantity.

If cleanup cannot be accomplished within 24 hours, the Division of Oil and Public Safety must be notified immediately (7 CCR 1101-14 Article 4-4).

CDPHE should also be notified in the case of hazardous substance releases as cleanup activities may be covered by state solid or hazardous waste requirements (6 CCR 1007-2, 6 CCR 1007-3).

Any release that has or may impact waters of the state (which include surface water, ground water and dry



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gullies or storm sewers leading to surface water), no matter how small, must be reported immediately to CDPHE (25-8-601 CRS).

Releases from pipelines

Releases of five or more gallons of hazardous liquids or carbon dioxide from a pipeline that result in explosion or fire, cause injury or death or cause estimated property damage (including cost of clean-up and recovery, value of lost product and property damage) exceeding \$50,000 must be reported immediately to the US Department of Transportation Office of Pipeline Safety (49 CFR Part 195 Subpart B) and the National Response Center.

Releases of five or more gallons of hazardous liquids or carbon dioxide from interstate pipelines that do not involve explosion or fire, injury or death or property damage exceeding \$50,000 should be reported to the US Department of Transportation Office of Pipeline Safety within 30 days after the incident.

Releases of natural gas from intrastate pipelines that cause injury or death, property damage in excess of \$50,000 (including the cost of lost product), closure of a public road, or evacuation of 50 or more people must be reported immediately to the Colorado Public Utilities Commission, Pipeline Safety Group (4 CCR 723-11-2).

Releases of natural gas or liquefied natural gas (LNG) from interstate pipelines that cause injury or death, property damage in excess of \$50,000 (including the cost of lost product), or results in an emergency shutdown of the facility must be reported immediately to the National Response Center and the US Dept of Transportation Office of Pipeline Safety.

Releases of oil, petroleum products or other hazardous liquids from interstate and intrastate pipelines that have or may enter waters of the State of Colorado (which include surface water, ground water and dry gullies or storm sewers leading to surface water) must be reported to CDPHE immediately (25-8-601 CRS). CDPHE should also be notified of releases to soil, as cleanup activities may be covered by state solid or hazardous waste requirements (6 CCR 1007-2, 6 CCR 1007-3).

Radiological accidents, incidents, and events

CDPHE must be notified of any condition that has caused or threatens to cause an event, which meets or exceeds the criteria specified in (6 CCR 1007-1) RH 4.51 and RH 4.52 of the State of Colorado *Rules and Regulations Pertaining to Radiation Control*. Reportable events include lost radioactive materials, lost radiation producing machines, over-exposures to persons, contamination events and fires or explosions involving radioactive materials.

Depending upon the severity of the event, notification may be required immediately, within 24 hours, or within 30 days. In most cases, a written follow-up report is also required.

If you are unsure of the proper notification requirement, please contact CDPHE immediately. Telephone event notifications can be made to the CDPHE Radiation Program at any time by calling 1-303-877-9757.

Notification Numbers

Colorado Department of Public Health and Environment toll-free 24-hour environmental emergency and incident reporting line: (877) 518-5608 (24-hour)

National Response Center
(800) 424-8802 (24-hour)

State Oil Inspector (Colorado Division of Oil & Public Safety-Above & Underground Storage Tank Regulators)
(303) 318-8547



Exhibit II

Well Permit Numbers and Locations as Referenced in the Approved Mined Land Reclamation Board Permit Application

WATER (CONT)

EXHIBIT G

PERMITTED WELLS WITHIN 200 FEET OF AFFECTED LANDS

Receipt Number	Permit Number	Permit Status	Contact Name	Township	Range	Section	Q160	Q40	UTM x	UTM y	Permit Category	Aquifer(s)	Uses	Completed Well Depth
SECTION 20, T14S, R62W														
0210820B	25554-F	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	20	SE	NW	555616.8	4296433	General Purpose	LARAME FOX HILLS	Irrigation	583
080360	6965-F-R	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	20	SW	SE	555420.2	4295862	Final Permit	QUATERNARY ALLUVIUM	Irrigation	116
9078901	6963-TP	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	20	SE	SE	55605.3	4295934	Final Permit	QUATERNARY ALLUVIUM	Irrigation	130
9078902	6964-TP	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	20	SW	SE	555400.3	4296224	Final Permit	QUATERNARY ALLUVIUM	Irrigation	109
9078905	6969-TP	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	20	SE	SW	555696.3	4295996	Final Permit	QUATERNARY ALLUVIUM	Irrigation	102
9081160	27551-TP	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	20	SE	NW	555608	4296408	Final Permit	ARAPAHOE	Irrigation	110
SECTION 21, T14S, R62W														
0258775B	29487-F	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	21	SW	SW	556479.8	4296262	General Purpose	LARAME FOX HILLS	Irrigation	594
9081261	27552-TP	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	21	SW	NW	556441.3	4296311	Final Permit	ARAPAHOE	Irrigation	58
9081262	27553-F	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	21	SW	SW	556497.5	4296200	General Purpose	ARAPAHOE	Irrigation	54
SECTION 28, T14S, R62W														
907965.2	15885-RFP	Well Constructed	SCHUBERT BEVERLY & THEODORE	14.0 S	62.0 W	28	SW	SW	556404.6	4294510	Final Permit	ALL UNNAMED AQUIFERS	Irrigation	35
908275.1	3104-F	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	28	NW	SW	556456.7	4295083	Residential	ALL UNNAMED AQUIFERS	Domestic, Stock	51
9084401	9304-F	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	28	SW	SW	556487.5	4295058	Residential	ALL UNNAMED AQUIFERS	Domestic, Stock	332
SECTION 29, T14S, R62W														
0265306A	20528-RFP	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	29	SE	SW	555640.1	4294594	Final Permit	QUATERNARY ALLUVIUM	Irrigation	132
396705	193977-	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	29	SE	NE	55605.8	4295019	Residential	LARAME FOX HILLS	Domestic, Stock	580
0409692A	201026-	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	29	NE	NE	556091.9	4295856	Residential	LARAME FOX HILLS	Domestic, Stock	645
0435035A	212854-	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	29	SE	NE	555641.8	4294704	Residential	ALL UNNAMED AQUIFERS	Domestic, Stock	100
9078906	6970-TP	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	29	NE	NE	555688.5	4295563	Final Permit	ALL UNNAMED AQUIFERS	Irrigation	96
9078907	6971-TP	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	29	NE	SW	555740.7	4295078	Final Permit	ALL UNNAMED AQUIFERS	Irrigation	78.5
9079683	15897-RFP	Well Constructed	SCHUBERT, W T	14.0 S	62.0 W	29	NE	NE	556346.7	4295487	Final Permit	ALL UNNAMED AQUIFERS	Irrigation	61
SECTION 32, T14S, R62W														
27232B	31032-F	Well Constructed	SCHUBERT RANCHES	14.0 S	62.0 W	32	NW	NE	555427.8	4294039	General Purpose	LARAME FOX HILLS	Municipal	565
0263204B	131419-	Well Constructed	PERRY, WILLIAM A (Fred L Wiesner)	14.0 S	62.0 W	32	SW	NE	555110.4	4293204	Residential	ALL UNNAMED AQUIFERS	Domestic, Stock	106
0415035B	212855-	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	32	NW	NE	555257.8	4294129	Residential	ALL UNNAMED AQUIFERS	Domestic, Stock	120
9079072	9642-TP	Well Constructed	SCHUBERT RANCHES INC	14.0 S	62.0 W	32	NW	NE	555500.3	4293877	Final Permit	QUATERNARY ALLUVIUM	Municipal	96
9082118	40160-	Well Constructed	BABCOCK, BUDDY (Fred L Wiesner)	14.0 S	62.0 W	32	SW	NE	555441.2	4293232	Residential	ALL UNNAMED AQUIFERS	Stock	90

DATE: 11/5/18

SOURCE: <https://dnrweb.state.co.us/cdss/WellPermits>



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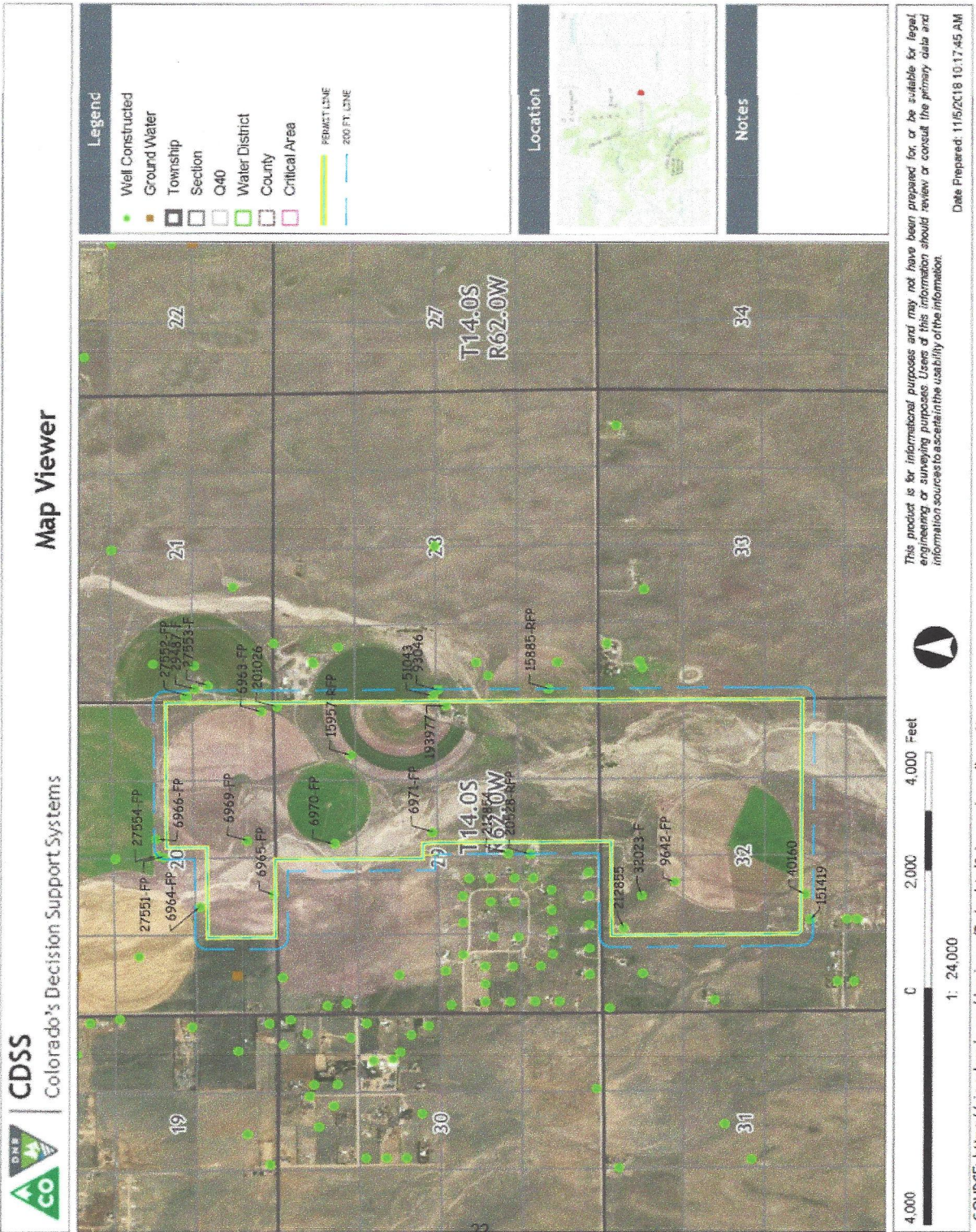




Exhibit III

DRMS – Mining Operations with Exposed Ground Water Policy

April 30, 2010

Permittee Address

RE: Mining Operations with Exposed Ground water

To Whom It May Concern:

The Division of Reclamation Mining and Safety is responsible for ensuring that Sand and Gravel mining operators comply with the requirements of the Colorado Land Reclamation Act for the Extraction of Construction Materials (Act) and the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Rules). Among these requirements are provisions for the protection of water resources. The Act requires that reclamation plans must ensure minimization of disturbances to the prevailing hydrologic balance, including disturbances to the quantity of water in the area affected by mining and in the surrounding areas. § 34-32.5-116(4)(h). Rule 3.1.6(1)(a) requires compliance with Colorado water laws and regulations governing injury to existing water rights both during and after mining. Permits must specify how the permittee will comply with applicable Colorado water laws and regulations governing injury to existing water right rights. Rule 6.3.3(j); Rule 6.4.5(2)(c). After an extensive review, the Division determined that several operators may not have appropriate permit conditions to address certain reclamation liabilities arising from impacts to water resources.

In September 2009 the Division of Water Resources (DWR) updated its Guidelines for Sand and Gravel Pits. These guidelines provide guidance on achieving compliance with state law regarding replacement of depletions from sand and gravel mining, thus the guidelines provide a benchmark for the protection of hydrologic balance required under the Act and Rules. As noted in the Guidelines, sand and gravel operations which expose groundwater without complying with state law create a reclamation liability by impacting available groundwater.

State law requires that any person exposing ground water must obtain a well permit from the SEO pursuant to § 37-90-137(11). Because exposed groundwater results in out-of-priority water depletions, operations which expose ground water must also eventually obtain a water-court approved augmentation plan. Currently, several operators do not have either an augmentation plan or bonding to provide an alternative method to mitigate injurious stream depletions that result from mining-related exposure of ground water. The Division has a statutory duty to ensure that lands affected by mining are reclaimed in a manner that complies with state law and to ensure that operators have sufficient bonding to achieve reclamation. In order to assist operators in achieving compliance with these requirements, the Division proposes that, by April 30, 2011, operators should contact the Division and agree upon a plan for achieving compliance.



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The Division has identified four approaches for operators:

1. File a financial warranty that will ensure backfilling of the pit to cover the exposed ground water to a depth of two feet above the static ground water level or,
2. Obtain a court approved augmentation plan prior to exposing ground water or,
3. File a financial warranty to cover the cost of installing a clay liner or slurry wall that meets the Division of Water Resources requirements for preventing ground water exposure or,
4. Obtain approval from the Division of Water Resources that acknowledges compliance with the SEO's requirements pursuant to § 37-90-137(11).

The Division will work with operators on an individual basis as they move to implement one of these plans. It is likely that options 1 and 3 will require the submittal of a technical revision or an amendment to the existing permit depending on the nature of the current mining and reclamation plan and the proposed changes. Increased financial warranties, as a result of these modifications, may be posted in a phased manner not to exceed three years. Amendments or revisions currently under review will be required to be approved by April 30, 2011 and may use the phased financial warranty approach described above. New applications going forward or presently under review by the Division will be required to meet the requirements of one of the options 1-4 at the time of application approval. Failure of affected operators to initiate contact with the Division and gain compliance as described above could result in an enforcement action being issued by the Division.

If you have any questions, please contact Tony Waldron at 303-866-3567, extension 8150.

cc: Permit Id Site Name



Exhibit IV

Affidavit of Authority to Execute Warranty Documents

Affidavit of Authority to Execute Financial Warranty Documents

Before me this day, the undersigned Perry Hastings [name of authorized person], in his/her capacity as Agent [title of authorized person] ("Affiant"), personally appeared and, being first duly sworn upon oath said:

1. This affidavit is being executed and submitted on behalf of Ellicott Sand and Gravel, LLC [name of business organization], a(n) Limited Liability Corporation [legal form of business organization, e.g., corporation, partnership, limited liability company, etc.], in good standing in the State of Colorado (the "Company").
2. It is in the interest of the Company to execute certain financial warranty documents associated with file number M 2018-063 (DRMS file number), which are required by the Colorado Mined Land Reclamation Board and Division of Reclamation Mining and Safety pursuant to Colorado law ("Financial Warranty Documents").
3. Affiant is duly authorized to sign such Financial Warranty Documents on behalf of the Company and to bind the Company to the same.
4. Affiant is not prohibited or limited by the Company's governing documents or by any applicable law from executing the Financial Warranty Documents.
5. Affiant will inform the Division of Reclamation Mining and Safety within thirty (30) days in the event that his/her authorization to execute Financial Warranty Documents on the Company's behalf is terminated.

Further, Affiant sayeth not.

Perry Hastings
Affiant's Name

[Signature]
Signature

STATE OF
COUNTY OF

Colorado
El Paso

ss:

The foregoing instrument was acknowledged before me this 8 day of October, 2018,
by Perry Hastings as Agent of Ellicott Sand and Gravel, LLC.

Notary Public

Christine Wilson

My Commission Expires

11-10-2021

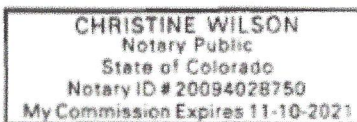




Exhibit V

Weed Control Plan

Weed Control Plan

1. INTRODUCTION

Ellicott Sand & Gravel LLC (hereinafter referred to as the Operator) of the Schubert Ranch Sand Resource, encompassing a parcel of land shown on the vicinity map and located in Parts or the S½NW¼SE¼, S½SE¼, and SE½SW¼ of Section 20, and The E½E½ and NW½NE¼ and parts of the SW½NE¼, SW½SE¼, and NW½SE¼ of Section 29 and The E½NE¼, SW½NE¼, & SE½NW¼, and parts of the NW½NE¼ & NE½NW¼, Section 32, Township 14 South, Range 62 West, 6th P.M. El Paso County, Colorado, Containing 733.7 acres more or less. Construction materials mining operations will occur across all, or part, of the rangeland area on this 733.7 acre mine. The site currently has areas that have been used as a ranch yard complex, an creek bottom and undisturbed areas used as rangeland or irrigated sod grass and hay production.

Recognizing the presence of state-listed and county-listed noxious weeds in the general vicinity of this project area; and understanding the destructive nature of these noxious weeds, the Colorado Division of Reclamation, Mining & Safety has required the operator to develop and implement a weed management plan that encompasses the total project area.

The CSU Cooperative Extension office operates under cooperative agreement with the El Paso County government, and provides technical assistance regarding noxious weed management on public and private lands within the county. Ellicott Sand & Gravel LLC will do biennial checks on the active mine for any noxious weeds on site. On the area outside the active mine area the landowners will be responsible for weed control. Implementation of this plan will begin in the spring after mining starts and will continue until the state determines that reclamation is complete.

It is not possible to totally eradicate the noxious weeds from the mine since much of the surrounding property is not owned by Ellicott Sand & Gravel LLC, nor managed for noxious weed control. These uncontrolled areas are the seed sources for the infestation occurring on the mine. For this reason the Operator will be continually working to control noxious weeds throughout the life of the mine and until reclamation is done.

2. OVERVIEW OF APPROACH TO WEED MANAGEMENT

Weed control is part of the over all property management activities done by Schubert Ranch as part of their good farming/ranching practices. This plan is based on controlling the undesirable plant species and communities, rather than on simply eliminating weeds. Preventive programs are implemented to



keep the management area free of species that are not yet established there, but which are known to be pests elsewhere in the area. Priorities are set to reduce or eradicate weeds that have already established on the property, according to their actual and potential impacts on the land management goals for the property, and according to the ability to control them now versus later. Actions will be taken only when careful consideration indicates leaving the weed unchecked, would result in more damage than controlling it with best available methods.

The plan follows the adaptive management approach:

- First, weed species are identified through inventory of the property and by gathering information from other sources.
- Second, land management goals and weed management objectives are established for the property.
- Third, priorities are assigned to the weed species and weed patches based on the severity of their impacts, while considering the ability to control them.
- Fourth, methods are considered for controlling them or otherwise diminishing their impacts and, if necessary, re-order priorities based on likely impacts on target and non-target species.
- Fifth, An Integrated Weed Management (IWM) plan is developed based on this information.
- Sixth, the IWM plan is implemented in the spring or fall as recommended by the CSU Cooperative Extension local office.
- Seventh, the results of management actions are monitored and evaluated in light of weed management objectives for the management area.
- Finally, this information is used to modify and improve weed management objectives, control priorities, and IWM plans, thereby starting the cycle again.

The premise behind a weed management plan is that a structured, logical approach to weed management, based on the best available information, is cheaper and more effective than an ad-hoc approach where one deals with weed problems as they arise.



3. NOXIOUS WEEDS TO BE WATCHED FOR AT THE Perrino PIT.

- | | |
|--|---|
| 1. Leafy spurge (<i>Euphorbia esula</i>) | a. Spotted knapweed (<i>Acroptilon repens</i>) |
| 2. Canada thistle (<i>Cirsium arvense</i>) | b. Musk thistle (<i>Carduus nutans</i>) |
| 3. Russian knapweed (<i>Acroptilon repens</i>) | c. Purple loosestrife (<i>Lythrum salicaria</i>) |
| 4. Yellow toadflax (<i>Linaria vulgaris</i>) | d. Showy milkweed (<i>Aisclepias speciosa</i>) |
| 5. Saltcedar (<i>Tamarix</i> sp.) | e. Russian Olive (<i>Elaeagnus angustifolia</i>) |
| 6. Hoary cress (<i>Cardaria draba</i>) | f. Bursage, skeltonleaf (<i>Ambrosia tomentosa</i>) |
| 7. Perennial pepperweed (<i>Lepidium latifolium</i>) | g. Bursage, wolyleaf (<i>Ambrosia greyi</i>) |
| | h. Field bindweed (<i>Convolvulus arvensis</i>) |
| | i. Jointed goatgrass (<i>Aegilops cylindrica</i>) |
| | j. Diffuse knapweed (<i>Centaurea diffusa</i>) |

The first 7 species are listed as Priority 1 or 2 for control in El Paso County and the remaining 10 are on the State noxious weed list and should be looked for on the mine and controlled if needed.

4. NUISANCE WEEDS THAT SHOULD BE ADDRESSED

- a. Russian thistle, common name tumbleweed
- b. Kosha

5. CONTROLLING ABOVE LISTED WEEDS

All of the above weeds can be controlled or eradicated by using mechanical, biological, or chemical control depending on species. The Operator will have a qualified weed control agent observe the mine for possible noxious weeds and advise the Operator on how noxious species should be treated. Initially it may require semi-annual spraying or mowing to control the problem weeds and digging the woody species, but eventually we expect to revert to an annual control program to maintain the site. Records of weed control activities, including dates work was done; methods used; area sprayed and types/quantities of chemical used if any, will be kept at the Corporate office in Colorado Springs, Colorado for review.



Exhibit VI

Revised Type D Application Form

**Planning and Community Development Department**

2880 International Circle, Colorado Springs, CO 80910

Phone 719.520.6300 | Fax 719.520.6695 | www.elpasoco.com**Type D Application Form (1-2C)**

Please check the applicable application type
(Note: each request requires completion of a
separate application form):

- ☐ Appeal
- ☐ Approval of Location
- ☐ Board of Adjustment
- ☐ Certification of Designation
- ☐ Const. Drawings, Minor or Major
- ☐ Development Agreement
- ☐ Final Plat, Minor or Major
- ☐ Final Plat, Amendment
- ☐ Minor Subdivision
- ☐ Planned Unit Dev. Amendment, Major
- ☐ Preliminary Plan, Major or Minor
- ☐ Rezoning
- ☐ Road Disclaimer
- ☐ SIA, Modification
- ☐ Sketch Plan, Major or Minor
- ☐ Sketch Plan, Revision
- ☐ Solid Waste Disposal Site/Facility
- ☐ Special District
- ☐ Special Use
 - ☒ Major
 - ☐ Minor, Admin or Renewal
- ☐ Subdivision Exception
- ☐ Vacation
 - ☐ Plat Vacation with ROW
 - ☐ Vacation of ROW
- ☐ Variances
 - ☐ Major
 - ☐ Minor (2nd Dwelling or Renewal)
 - ☐ Tower, Renewal
- ☐ Vested Rights
- ☐ Waiver or Deviation
- ☐ Waiver of Subdivision Regulations
- ☐ WSE0

☒ Other: Mineral Extraction

This application form shall be accompanied by
all required support materials.

PROPERTY INFORMATION: Provide information to identify properties and
the proposed development. Attached additional sheets if necessary.

Property Address(es): 1555 S. Baggett Rd., 1550 S. Baggett Rd.	
Tax ID/Parcel Numbers(s) 2400000276, 2400000275	Parcel size(s) in Acres: 2,122.98, 40.0
Existing Land Use/Development: Farming and Ranching	Zoning District: A-35, A-35

- ☐ Check this box if **Administrative Relief** is being requested in
association with this application and attach a completed
Administrative Relief request form.
- ☐ Check this box if any **Waivers** are being requested in association
with this application for development and attach a completed
Waiver request form. No waivers are being requested at this time.
We reserve the right to request a waiver(s) at a future date, if needed.

PROPERTY OWNER INFORMATION: Indicate the person(s) or
organization(s) who own the property proposed for development.
Attach additional sheets if there are multiple property owners.

Name (Individual or Organization): George H. Schubert (Parcel #2400000275)	
Mailing Address: 1555 Baggett Rd., Calhan, CO 80808	
Daytime Telephone: 719-683-2265	Fax: -
Email or Alternative Contact Information:	

For PCD Office Use:

Date:	File :
Rec'd By:	Receipt #:
DSD File #:	

Description of the request: (submit additional sheets if necessary):

We request approval to initiate a dry mining operation where mining
related equipment will remove material from a dry deposit for on-site
processing. Raw product will be fed to a processing plant that will
crush, wash and screen the product into various sizes and place the
product into finished product stockpiles for sale.

Schubert Ranches, Inc., Phone: 719-683-2265
1550 Baggett Rd. Calhan, CO 80808
Parcel 2400000276



RPM, Inc. 25049 E. Alder Dr., Aurora, CO 80016

Phone: 303 854-7499

Email: hlhumphries2@comcast.net



Planning and Community Development Department

2880 International Circle, Colorado Springs, CO 80910

Phone 719.520.6300 | Fax 719.520.6695 | www.elpasoco.com

APPLICANT(S): Indicate person(s) submitting the application if different than the property owner(s) (attach additional sheets if necessary)

Name (Individual or Organization): Ellicott Sand and Gravel LLC	
Mailing Address: 235 Franceville Coal Mine Rd., Colorado Springs, CO 80929	
Daytime Telephone: 719-568-3164	Fax: -
Email or Alternative Contact Information: gatewaytrucking@gmail.com (Contact Christine Wilson)	

AUTHORIZED REPRESENTATIVE(S): Indicate the person(s) authorized to represent the property owner and/or applicants (attach additional sheets if necessary).

Name (Individual or Organization): Harold B. Humphries, Regulatory Permits Management, Inc	
Mailing Address: 25049 E. Alder Dr., Aurora, CO 80016	
Daytime Telephone: 303-854-7499	Fax: NA
Email or Alternative Contact Information: hlhumphries2@comcast.net	

AUTHORIZATION FOR OWNER'S APPLICANT(S)/REPRESENTATIVE(S):

An owner signature is not required to process a Type A or B Development Application. An owner's signature may only be executed by the owner or an authorized representative where the application is accompanied by a completed Authority to Represent/Owner's Affidavit naming the person as the owner's agent.

OWNER/APPLICANT AUTHORIZATION:

To the best of my knowledge, the information on this application and all additional or supplemental documentation is true, factual and complete. I am fully aware that any misrepresentation of any information on this application may be grounds for denial or revocation. I have familiarized myself with the rules, regulations and procedures with respect to preparing and filing this application. I also understand that an incorrect submittal may delay review, and that any approval of this application is based on the representations made in the application and may be revoked on any breach of representation or condition(s) of approval. I verify that I am submitting all of the required materials as part of this application and as appropriate to this project, and I acknowledge that failure to submit all of the necessary materials to allow a complete review and reasonable determination of conformance with the County's rules, regulations and ordinances may result in my application not being accepted or may extend the length of time needed to review the project. I hereby agree to abide by all conditions of any approvals granted by El Paso County. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale. I acknowledge that I understand the implications of use or development restrictions that are a result of subdivision plat notes, deed restrictions, or restrictive covenants. I agree that if a conflict should result from the request I am submitting to El Paso County due to subdivision plat notes, deed restrictions, or restrictive covenants, it will be my responsibility to resolve any conflict. I hereby give permission to El Paso County, and applicable review agencies, to enter on the above described property with or without notice for the purposes of reviewing this development application and enforcing the provisions of the LDC. I agree to at all times maintain proper facilities and safe access for inspection of the property by El Paso County while this application is pending.

Owner (s) Signature: <u>George H. Schubert</u>	Date: <u>8/6/2020</u>
Owner (s) Signature: <u>George H. Schubert</u>	Date: <u>8/6/2020</u>
Applicant (s) Signature: <u>Christine Wilson</u>	Date: <u>8-6-2020</u>



Exhibit VII

Contact Letter to the Ellicott Fire Protection District and Proof of Mailing:



RPM, Inc.

August 5, 2020

Ellicott Fire Protection District
Attn: Fire Chief
75 North Ellicott Highway
Calhan, CO 80808

Certified Mail #:7019 1640 0000 5396 8216

Dear Fire Chief,

I represent Ellicott Sand and Gravel, LLC. We are applying for El Paso County approval to open a sand and gravel mining operation in El Paso County, south of Ellicott, Colorado. The proposed operation will be known as the Schubert Ranch Sand Resource (Pit). The attached map shows the location and proposed permit boundary for the Operation. We are presently going through the El Paso County review and approval process. One of the questions the County asked concerns whether we need to have a cistern for fire suppression and to contact the local fire district for input. We are therefore requesting your input as to whether we need to install a cistern.

We request you consider the following information in making your decision:

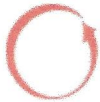
- This will be a mining operation. As such, the area of active mining will be stripped of topsoil and combustible vegetation. The stripped soil and entrained vegetative materials will be placed in topsoil stockpiles for site reclamation. All combustible waste materials (paper, etc.) will be placed in fire proof/resistant containers for disposal off-site, at an approved disposal facility.
- A Schubert Ranch ground water will be available for use. (well # 9642-FP)
- No structures, other than a portable scale house and scale are proposed for the site, at this time.
 - ❖ Processing equipment will be brought on to the site to produce salable product stockpiles. Once a sufficient amount of stockpiled product is produced, the processing equipment will be moved to a different Ellicott Sand and Gravel mining operation. This cycling of process of equipment will continue for the life of the pit.
 - ❖ We may need to retain a loader or two on-site in order to load out of product stockpiles and into highway haul trucks. The on-site loader(s) may be moved off-site during extended periods of time, in order to prevent equipment vandalism.



RPM, Inc. 25049 E. Alder Dr., Aurora, CO 80016

Phone: 303 854-7499

Email: hlhumphries2@comcast.net



RPM, Inc.

- Toxic and hazardous materials:
 - ❖ No toxic or hazardous materials, other than what will be used in a typical piece of mining equipment will be on-site, i.e. diesel fuel, hydraulic fluid, antifreeze and oil and greases.
 - ✓ As needed, we will return highway haul trucks to our maintenance facility in Colorado Spring for servicing and fueling.
 - ✓ Option 2, a diesel fuel tank may be brought on-site. It will be double walled and will hold less than 1,320 gallons.
 - ✓ Option 3, we may make use of a lube and fuel truck to service, on-site, mobile mining equipment.
- We will have a water truck on-site to provide fugitive dust control. Fugitive dust control will include water for roads, crushing, screening and stackers.
- All mobile mine equipment (to include the scale house) will have fire extinguishers, as required by the Mine Safety and Health Administration (MSHA). Staff will also be trained in the proper use of fire extinguishers.
- There will be no open burning.
- We will clean up spills of petroleum products which meet the reportable quantities limits and dispose of the material used for clean-up at an approved, off-site waste disposal facility.
- Other than what is stated above, we do not plan any additional "Fire Protection and Wildfire Mitigation". Therefore, we suggest a "Wildfire Mitigation Plan" is not needed at this time.
- Once operations begin, we encourage you or one of your staff, to visit the site and provide your input to as to the measures we may take, to improve site fire safety.

Respectfully,

H. Bruce Humphries

Regulatory Permits Management, Inc.

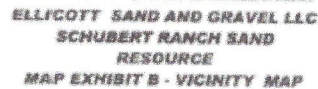
hlhumphries2@comcast.net

(303) 854-7499

Consultant for Ellicott Sand and Gravel, LLC

Encl:

Mine Site Location Map





RPM, Inc. 25049 E. Alder Dr., Aurora, CO 80016

Phone: 303 854-7499

Email: hlhumphries2@comcast.net

Exhibit VII-A

Proof of Mailing to Ellicott Fire Chief

UNITED STATES POSTAL SERVICE

PARKER
18695 PONY EXPRESS DR
PARKER, CO 80134-9992
(800)275-8777

08/06/2020 05:03 PM

Product	Qty	Unit Price	Price
First-Class Mail® Letter	1		\$0.55
Calhan, CO 80808			
Weight: 0 Lb 0.70 Oz			
Estimated Delivery Date			
Monday 08/10/2020			
Certified			\$3.55
USPS Certified Mail #			
70191640000053968216			
Return Receipt			\$2.85
USPS Return Receipt #			
9590940249549063082372			
Total			\$6.95
Grand Total:			\$6.95

Debit Card Remit'd \$6.95

Card Name: VISA
Account #: XXXXXXXXXX0382
Approval #
Transaction #: 246
Receipt #: 026786
Debit Card Purchase: \$6.95
Cash Back: \$0.00
AID: A0000000980840 Chip
AL: US DEBIT
PIN: Verified

Due to limited transportation availability as a result of nationwide COVID-19 impacts package delivery times may be extended. Priority Mail Express® service will not change.

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

Calhan, CO 80808

Certified Mail Fee \$3.55

Extra Services & Fees (check box, add fee)

<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.55

Total Postage and Fees \$6.95

Postmark Here 08/06/2020

Sent To Ellicott Fire Protection Dist
Street and Apt. No., or PO Box No. 75 N Ellicott Highway
City, State, ZIP+4® Calhan, CO 80808

PS Form 3800, April 2015 PSN 7520-02-000-9047 See Reverse for Instructions



RPM, Inc. 25049 E. Alder Dr., Aurora, CO 80016

Phone: 303 854-7499

Email: hlhumphries2@comcast.net

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.			
1. Article Addressed to: <i>Ellicott Fire Protection Dist. Attn: Fire Chief 75 N Ellicott Highway Calhan, CO 80808</i>		A. Signature <i>X [Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
2. Article Number (Transfer from service label) <i>7019 1640 0000 5396 8216</i>		B. Received by (Printed Name) <i>Nelma Houghton</i> C. Date of Delivery	
3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Mail <input type="checkbox"/> Mail Restricted Delivery (01)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt	

Email from Fire Marshal:

Fwd: Ellicott sand and gravel



Mark Stanwood <markstanwood32@gmail.com>

10:00 AM

To: hlhumphries2@comcast.net

Mr. Humphries,

This is my original reply to the EDARP on 7/2/2020:

Please provide as needed any on hazardous materials lists including fuel storage throughout the duration of the project. Access will need to be provided to the fire department for after hour emergency response. Occasional site specific training will need to be provided to the fire department. Example site visit.

No objections to this project as presented.

Mark A. Stanwood

Fire Marshal

Ellicott Fire Department

719-360-0578

----- Forwarded message -----

From: Mark Stanwood <markstanwood32@gmail.com>

Date: Wed, Aug 12, 2020 at 9:55 AM

Subject: Fwd: Ellicott sand and gravel

To: <Environment-inc@outdrs.net>

Response:

We agree to the email stipulations.



Exhibit VIII

Air Quality Permit Waiver Request

- 7.3.4. *Timing of Waiver Request*

A written waiver request shall be submitted no later than at the time of the preliminary plan application in the case of a major subdivision. The waiver request may be a separate request, or requested in conjunction with an application. If the waiver request substantially alters the design, location, anticipated construction, phasing, impacts on adjacent properties or roads, impacts on designated protected areas, or other special circumstances as were reviewed during the previous application review, the applicant shall submit a revised plan including the waiver. The Planning Commission shall review the revised plan and provide a recommendation to the BOCC.

Response:

- This Waiver Request is to allow us to receive approval of our SUP/Development Plan application prior to receiving the required Air Quality permits from the Colorado Department of Public Health and Environment, Air Quality Control Division (AQCD).
- This Waiver Request is being supplied at the request of the El Paso County Planning Department (EPCPD) staff. As part of the Letter of Intent (LOT) we supplied the EPCPD, we stated we did not, at that time, believe a Waiver Request would be needed.
- However, since your El Paso County Development Code requires an air quality permit prior to approval of a SUP/Development Plan applications, we request you accept the attached Waiver Request.
 - ✓ This Waiver Request does not “...alter design, location, anticipated construction, phasing, impacts on adjacent properties or roads, impacts on designated protected areas...” for the reason that the Colorado Air Pollution Emissions Notice permit (APEN) is not needed unless all the permits to operate the sand and gravel mine are approved.
 - ✓ In addition, the Air Quality Permit cannot be submitted until the operating standards imposed by El Paso County are known. County imposed limitations could affect our operating limits and therefore APCD, Air Quality Permit requirements.
 - ✓ Initially, the rate of mineral extraction production will not exceed 70,000 tons per year of overburden and mineral resource removal and production, below the Regulatory limit which triggers the need for a State Air Quality Permit. We will be able, during this initial period of operation, to secure the required Air Quality Permit, as may be required.



- 7.3.3. *Criteria for Approval of Waivers*

A waiver from standards shall be approved only upon the finding, based upon the evidence presented in each specific case, that:

➤ *The waiver does not have the effect of nullifying the intent and purpose of this Code;*

➤ **Response:**

- ❖ We will not begin any on-site mineral extraction operations until the EPCPD is provided a copy of the approved, AQCD air quality permit(s).
- ❖ This will ensure the intent and purpose of the EPCPD code is not circumvented.

➤ *The waiver will not result in the need for additional subsequent waivers;*

➤ **Response:**

With the approval of the requested Waiver, we should not need additional waivers since the Waiver Request specifically states we will not begin mineral extraction operations until we provide a copy of the AQCD, approved air quality permit(s).

➤ *The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property;*

➤ **Response:**

- ❖ We commit to not beginning mineral extraction operations until we supply El Paso County Planning Department staff a copy of our APCD approval.
- ❖ The permit will be for on-site fugitive dust control that can easily be controlled with water spray.
- ❖ The mine will have less impact to public health than the dust from the surrounding gravel roads and agricultural practices which have no controls.

➤ *The conditions upon which the request for a waiver is based are unique to the property for which the waiver is sought and are not applicable to other property;*

➤ **Response:**

- ❖ We suggest since we are applying for a SUP for a mineral extraction operation, the request for a Waiver is reasonable. We will not begin operations until the Air Quality approvals are in hand and copies have been provided to the El Paso County Planning Department.
- ❖ Since the request is for a mineral extraction operation for two specific parcels of land and will involve only parts of those two parcels, the Waiver Request should not be applicable to other properties.



RPM, Inc. 25049 E. Alder Dr., Aurora, CO 80016 Phone: 303 854-7499 Email: hlhumphries2@comcast.net

- *A particular non-economical hardship to the owner would result from a strict application of this Code;*

- **Response:**

- ❖ If a SUP is not granted, there will be no need to pursue an AQCP with the AQCD.
- ❖ The County suffers no detrimental effect if the SUP process goes forward, since we commit to no mineral extraction operations until the AQCD approval is received.
- ❖ Preparation of an Air Pollution Emission Notice is difficult at this time since we do not know what restrictions the County may impose which could impact the APEN preparation.
- ❖ An APEN Permit is not required if less than 70,000 tons of material are mined each year, or the SUP/Development Plans for a Mineral Extraction operations are not approved by El Paso County.

- *The waiver will not in any manner vary the zoning provisions of this Code; and*

- **Response:**

- ❖ The waiver should not alter the zoning provisions of the El Paso County Code. The parcels are Zoned A-35 which allows mineral extraction.
- ❖ No mineral extraction will occur until we provide the El Paso County Building Department staff a copy of the AQCD's approval.

- *The proposed waiver is not contrary to any provision of the Master Plan.*

- **Response:**

- ❖ Mineral extraction does not appear to be contrary to the Ellicott Valley Comprehensive Plan. (Excerpts below) The Waiver Request is simply to allow the SUP process to go forward to completion. Once the SUP/Development Plan approval are obtained, we will file with the AQCD, an application for an Air Quality Permit.
- ❖ No mineral extraction will occur until we provide the El Paso County Planning Department staff a copy of the AQCD's approval.
- ❖ "Ellicott Valley Comprehensive Plan, Chapter IV-Policy Plan and Land Use Scenarios and Special Uses":
- ❖ "Item 6., Agriculture, Mineral Extraction and Special Uses."

- ✓ "Goal Statement"

"6.A – Allow for agricultural, extraction and other comparable uses when these uses can be accommodated without adversely impacting surrounding development and overall environmental quality."



✓ “Policies”

“6.4 – Mineral aggregate extraction operations in the planning area should not be located where they may adversely impact groundwater supplies. Potential operations should be reviewed for their visual and environmental compatibility with adjacent uses.”

- ❖ The “El Paso County Master Plan for Mineral Extraction”, February 8, 1996, states on pages 18 and 19, (b) Small Area Plans, Ellicott Valley Comprehensive Plan (1989):
 - ✓ “...The Ellicott Valley Plan addresses a primarily rural section of the east-central County. It utilizes a policy-only approach and emphasizes economic development values. A policy section on Agriculture, and Mineral Extraction and Special Uses contains some generalized guidance pertaining to mining.”
 - ✓ Therefore, given the above two documents, with approval of the Special Use Application and Development Plan which address potential impacts, i.e., adverse impacts to ground water supplies, and visual and environmental compatibility there are no outright land use prohibitions against mineral extraction at the proposed site.
 - ✓ Please note, we attempted to locate the “Mineral Resource Maps and Planning Overlays” on-line. However, we were not able to locate the documents on-line. We also emailed the El Paso Planning Department. However, the Planning Department, as of the date of this document, has not returned our email request as to where to locate the “Mineral Resource Maps and Planning Overlays”.



RPM, Inc. 25049 E. Alder Dr., Aurora, CO 80016

Phone: 303 854-7499

Email: hlhumphries2@comcast.net

Exhibit IX

Ground Water Well(s) Available for Use

➤ Water right:

RICHARD D. LAMM
Governor



KEITH C. KEPLER
State Engineer

Best Copy Available

OFFICE OF THE STATE ENGINEER DIVISION OF WATER RESOURCES

1313 Sherman Street Room 313
Denver, Colorado 80203
(303) 836-3581

March 19, 1986

Mr. Buddy Babcock
Route 2
Calhan, Colorado 80806

Re: Change of use for well permit
Nos. 9642-FP, 20528-FP, 27582-FP

Dear Mr. Babcock:

Enclosed is the Findings, Conclusion and Order of the Colorado Ground Water Commission concerning your application to change the use of the above listed wells. Also enclosed are copies of amended final permits. Your attention is drawn to the conditions of approval contained therein. These conditions of approval set a specific limit on the amount of water which you may take in any year and set operational criteria which you are expected to meet. If you are aggrieved by any part of the Order and would like to request a hearing you must do so in writing within thirty (30) days.

If you have any questions, please feel free to call me.

Sincerely,

Keith C. Kepler, P.E.
Chief, Designated Basins
Ground Water Section

KCK/pdt
Enclosure

cc: Upper Black Squirrel GWD

75681/Form #49321



FINDINGS, CONCLUSIONS AND ORDER OF THE COLORADO GROUND WATER COMMISSION

IN THE MATTER OF A REQUEST BY BUDDY BABCOCK TO CHANGE THE TYPE OF USE ALLOWED BY PERMIT NOS. 9642-FP, 20528-FP, and 27582-FP

FINDINGS

1. Well numbers 20528-FP and 27582-FP were both registered April 26, 1960 and both have priority dates of April 1, 1956 (priority 106 and 107). Final permit 9642-FP is for a well supplement to final permit numbers 20528-FP and 27582-FP. The supplemental well has no appropriation assigned to it but may divert water assigned to the two above referenced appropriations.
2. Pursuant to Section 37-90-111(1)(g) C.R.S., Buddy Babcock submitted a request to change the use of the three wells from irrigation to municipal use. Under the proposed municipal use the water would be used within the Upper Black Squirrel Creek Designated Ground Water Basin. The period of use would change from seasonal to year-round.
3. Buddy Babcock is the owner of the wells.
4. Information provided by the applicant on historic crop and irrigation practices was used to determine the annual consumptive use of water by the crops. The calculations indicate that an average of 135 acre-feet per year was consumed by crops during the period from 1976 through 1980. A greater crop acreage was irrigated prior to 1976 and a lesser crop acreage since 1980. The period 1976 through 1980 was considered a good representation for purposes of determining the historic use of this well.
5. U.S.G.S. water level data for the area show that historic water level declines have caused reduced well yields at this location. Many wells in the Upper Black Squirrel Creek Basin are unable to produce the amount of water to which they have a right.
6. The change in year-round use increases the applicant's opportunity to pump water. On an annual basis the amount of water would not be affected by water level declines to the same extent as seasonal irrigation use.
7. The application specifies no place of use other than within the Upper Black Squirrel Designated Ground Water Basin. Since no place of use is specified, no credit can be considered for return flows. Future diversions must be limited to historic depletions.
8. The application to change the use of the three wells was published in the Colorado Springs Gazette Telegraph on January 2 and 9, 1986.
9. No objections were received to the proposed change in use.



Findings, Conclusions and Order of the
Colorado Ground Water Commission

Page 2

10. No comments were received from the Upper Black Squirrel Creek Ground Water Management District in response to a letter requesting recommendations dated December 11, 1985.
11. The Colorado Ground Water Commission finds that material injury to existing water rights will not occur from issuance of these changes of use if the conditions listed in the following Order are complied with:

ORDER

It is therefore ordered that the type of use allowed under permit nos. 9642-FP, 20528-FP, 27582-FP be changed from irrigation to municipal pursuant to the following conditions:

1. The combined maximum annual appropriation from wells 9642-FP, 20528-FP, and 27582-FP shall not exceed 135 acre-feet per year. After the first 5 years, reductions in withdrawals may be required to compensate for the greater opportunity afforded by the change to year-round pumping. The basis for assigning such a reduction is discussed in Condition 6 below.
2. 67.5 acre-feet per year is assigned to priority 106 and 67.5 acre-feet per year is assigned to priority 107.
3. The amount of water taken in any one year from any individual well subject of this approval shall not exceed one half of the total allowable appropriation for that year.
4. The water from these three wells shall be used only for municipal use within the Upper Black Squirrel Creek Designated Ground Water Basin. Water shall not be used for any other purpose without first obtaining the authorization of the Colorado Ground Water Commission.
5. A totalizing flow meter shall be installed and maintained on each well by the applicant. Diversion records shall be collected monthly by the applicant and submitted to the Division of Water Resources and the Upper Black Squirrel Creek Ground Water Management District annually and at other times upon request.
6. The static water levels will be measured by the applicant each January and the results submitted to the Division of Water Resources and the Upper Black Squirrel Creek Ground Water Management District by March 1. All three wells will be shut down for 12 hours prior to the water level measurement and during measurement.
7. The basis for the reduction in annual appropriation required by the change to year-round use shall be as follows: during the first 5 years after the change to year-round use no reduction shall be made but water levels shall be observed. In year 6 and in subsequent years, the appropriations shall be reduced by 4.5 acre-feet for each 1 foot drop in the water table from the referenced 5-year measurement or some other reference point to be approved by the Commission.

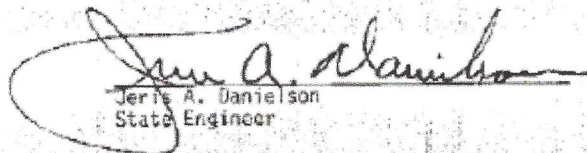


Findings, Conclusions and Order of the
Colorado Ground Water Commission

Page 3

8. The change in use and amendment of the final permits shall be effective on the first day water is put to municipal use. Until that time, these wells may continue to be used for irrigation in accordance with the original final permits. Once water is first put to municipal use the water from these wells may no longer be used for irrigation use and the amendment to the final permits becomes effective.

Ordered this 18th day of MARCH, 1986.


Jerie A. Danielson
State Engineer

75331



RPM, Inc. 25049 E. Alder Dr., Aurora, CO 80016

Phone: 303 854-7499

Email: hlhumphries2@comcast.net

Optional Ground Water Wells Available for Use:



DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

John W. Hickenlooper
Governor

Mike King
Executive Director

Dick Wolfe, P.E.
Director

June 14, 2011

Certified letter no: 7004 0550 0001 1025 7498

Schubert Ranches
Attn: George
1555 S. Baggett Rd
Calhan, CO 80808-7808

RE: Well Permit Nos.: 25554-F, 29487-F, and 29488-F final permits
Location: Sections 20, 21, and 28, Township 14 South, Range 62 West

THIS LETTER CONCERNS YOUR WATER RIGHT! FAILURE TO RESPOND COULD AFFECT YOUR WATER RIGHT AND THE USE OF YOUR WELL.

Dear George:

As we discussed on the phone today, this office is currently reviewing permit files in preparation for the issuance of final permits in the Upper Black Squirrel Creek Designated Ground Water Basin in Colorado. You may view images of the original permit documents from your file on a website at: <http://www.dwr.state.co.us/WellViewWeb/default.aspx>.

All of the required documents are in the files for the subject permits. We are sending this letter to inform you of the results of our evaluation and give you an opportunity to provide any correction needed.

Final permits for the following wells are already completed: 19887-RFP, 19888-RFP, 19889-RFP, 27551-FP, 20585-RFP, 27552-RFP, 6961-FP, 6971-FP, 6966-FP, 6970-FP, 27552-FP, 6969-FP, 6964-FP, 6965-FP, 6963-FP, 6959-FP, 27553-FP, 15885-RFP, 15957-RFP. These final permits allow for commingling on 280 acres with a total combined appropriation not to exceed 1,120 acre-feet.

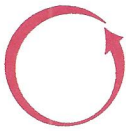
Permit no. 25554-F (LF #1) was issued for the irrigation of an additional 53 acres and 133 acre-feet. The diagram on the permit shows a larger area in the SE1/4 and the SE1/4 of the SW1/4 of Section 20. The statement of beneficial use (SBU) claims 53 acres and describes NW1/4, SE1/4 of Section 20. From aerial photos, it appears that the actual area specific to this well is 53 acres of a partial circle within the SE1/4 of Section 20.

The permits for 29487-F (LF #3) and 29488-F (LF #2) were issued for 40 acres together, and the diagram on the permit for 29488-F shows an area in the W1/2 of the SW1/4 of Section 28. Each permit was given an appropriation of 160 acre-feet. The permitted beneficial uses were: domestic, livestock, commercial, industrial, irrigation, and municipal. The SBUs for these wells claim 320 acres, parts of Sections 20, 21, 28, and 29, with a diagram on the back showing the various partial circles irrigated by all of the wells together. The irrigation of about 320 acres as shown on the SBUs is confirmed by the 1999 photo. There is no permanent pump installation information for either permit. Please provide pump installation reports for both wells if they are available. There is no evidence that the wells had any use other than irrigation within three years of when the permits were issued. If there were other uses, please provide specific information about what those uses were. If the uses included

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Schubert Ranches 25554-F, 29487-F, and 29488-F
June 14, 2011

Page 2

commercial, industrial, or municipal, please include meter records and other information to support the appropriation attributable to those types of uses.

Therefore, this office believes that the three permits should be issued final permits according to their actual use within 3 years of permit issuance, as summarized in the table below.

Permit	Irrigated Acres	Description of Acres	Appropriation (AF)	Use
25554-F	53	Partial circle within the SE1/4 of Section 20	133	Irrigation
29487-F	40	Part of the W1/2 of the SW1/4 of Section 28	160	Irrigation
29488-F	40	Part of the W1/2 of the SW1/4 of Section 28	160	Irrigation

The commingled area of these 3 wells together with the final permits listed above appears to be 320 acres, parts of Sections 20, 21, 28, and 29, corresponding to the diagram on the SBU for permit 29487-F. This is 40 acres greater than the commingling approved in the earlier final permits. This additional 40 acres can be assigned the standard appropriation for Upper Black Squirrel Creek of 2.5 feet per acre, for an additional appropriation of 100 acre-feet (40 acres x 2.5 ft per acre). Therefore, the combined annual appropriation of all of the wells would be 1220 acre-feet (1120 + 100). The final permits for the older wells will be amended to allow for this change in commingling.

We briefly discussed your LF #4 permit (32023-F). This permit is commingled with a different group of wells south of Sanborn Road, which you discussed with Ivan Franco of this office on May 31. Ivan noted in the permit file that this group of wells is still being used for irrigation only.

If there are any questions or corrections required, please notify me by July 14, 2011. Thank you.

Sincerely,

Tracy Kosloff
Water Resources Engineer
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