

FILED

MAY 12 2011

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL Jim Ruby, Executive Secretary
Environmental Quality Council

STATE OF WYOMING

IN THE MATTER OF THE OBJECTION)
TO THE SMALL MINE PERMIT OF OWL) DOCKET NO. 11-4801
CREEK GRAVEL PRODUCTS, LLC)

**JOINT STIPULATED MOTION FOR DISMISSAL OF
OBJECTION WITH PREJUDICE**

Comes now, Owl Creek Gravel Products, LLC (Owl Creek), the Wyoming Department of Environmental Quality (Department) and Matt and Theresa Brown (Objectors), by and through their attorneys jointly stipulate and move for dismissal of the objection with prejudice:

1. Owl Creek applied for a small mine permit pursuant to Article 4 of the Wyoming Environmental Quality Act for its gravel operation in Hot Springs County, Wyoming on October 28, 2010. The Department notified Owl Creek that the application was suitable for publication. Public Notice, including notice of opportunity to object, was published on March 24 and March 31, 2011. Matt and Theresa Brown filed an objection to the proposed permit On April 20, 2011. In accordance with Wyo. Stat. § 35-11-406(k), the Environmental Quality Council (Council) set this matter for a contested case hearing on May 13, 2011.

2. Objectors questioned whether the proposed permit addressed concerns expressed by representatives of the State Engineer's Office regarding the potential effect of the gravel operation on groundwater quantify. To address the Objectors' concerns, the Parties have reached an agreement requiring modified language in the Mine Plan.

Wyoming Department of Environmental Quality

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Joint Stipulated Motion for Dismissal of Objection with Prejudice and copies of the Proposed Owl Creek's Exhibits were served by electronic mail, this 11th day of May, 2011, to the following:

Tim Flitner
Chairman Environmental Quality Council
122 W. 25th Ave., Room 1714
Herschler Building Cheyenne, WY 82002
kim.waring@wyo.gov

3. The Parties have agreed to the modifications of the Mine Plan, as set forth in Exhibit A. The replacement pages for the Mine Plan are contained in Exhibit B.

4. The Council has authority to approve informal dispositions of contested cases pursuant to Wyo. Stat. 16-3-107(n). In this case, settlement resolves the Objectors' questions regarding groundwater protection, preserves the resources of the Council and allows all parties to avoid the time and expense of a contested case hearing.

5. This represents a good faith settlement and shall not be construed as an admission by any party outside of its express terms.

6. The parties request that the Council order the Department to issue the permit with the modified Mine Plan pages, found in Exhibit B, and dismiss the objection with prejudice. A proposed Order accompanies this motion.

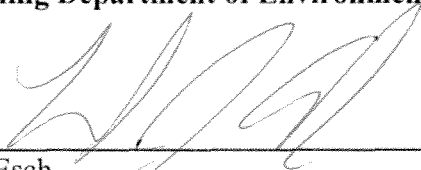
Respectfully submitted this 11th day of May, 2011.

Owl Creek Gravel Products, LLC



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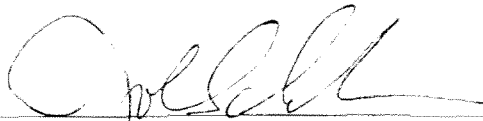
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IN THE MATTER OF THE OBJECTION TO THE SMALL
MINE PERMIT OF OWL CREEK GRAVEL PRODUCTS, LLC

DOCKET NO. 11-4801

EXHIBIT "A"

OWL CREEK GRAVEL PRODUCTS, LLC
John Stipulated Motion for Dismissal of Objection with Prejudice

Exhibit A to Joint Motion for Dismissal of Objection with Prejudice

Modification to pg. 2 of mine plan:

As stated above, Pit 1 includes the lands affected under Ten-Acre Exemption No. 1488ET. Pit 2 will move to the southeastern corner of the permit area and will begin with topsoil removal and stockpiling and construction of a permanent drainage channel that will connect the to a **THE EXISTING** drainage ditch at the southeastern corner of the permit area. (**SEE APPENDIX C MAP**). This ~~drainage ditch~~ **PERMANENT DRAINAGE CHANNEL** will assure compliance with stipulation number 3 ... By constructing this ~~drainage ditch~~ **PERMANENT DRAINAGE CHANNEL** first and progressing westward and northward with the pit, the reclaimed surface (shown on Map MP-2) will be constructed contemporaneously with the mining operation. Topsoil, overburden and excess fines from the crushing and sizing operation will be stockpiled for most of the initial two pits, but will be direct hauled after that to the extent possible. ...

The ~~drainage ditch~~ **PERMANENT DRAINAGE CHANNEL** is designed to pass the peak discharge from the 10-year, 24-hour precipitation event at a velocity that will be non-erosive and yet fast enough to minimize sedimentation and channel blockage. **THE PERMANENT DRAINAGE CHANNEL WILL BE USED TO COLLECT AND CONVEY SURFACE RUN-OFF THROUGH AND AROUND THE MINING OPERATION DURING STORM OR RUNOFF EVENTS.** Figure MP-1 shows the Trihydro printout for the 10-yr, 24-hr storm, and Figure MP-2 shows the channel hydraulics for the design storm. The **PERMANENT DRAINAGE** channel will be trapezoidal in shape with a 3-foot bottom width and 2.5:1 side slopes. This **PERMANENT DRAINAGE** channel can be built with the equipment that will be on the site.

Modification to pg. 3 of the mine plan, beginning the middle of the 1st full paragraph:

In response to his concerns, ~~it was agreed that operator would~~ **AGREES TO** leave at least 2 feet of **UNDISTURBED** gravel ~~beneath the pit floor~~ **ABOVE THE CODY SHALE LAYER TO FACILITATE GROUNDWATER MIGRATION THROUGH THE PIT AREA.**

IN THE MATTER OF THE OBJECTION TO THE SMALL
MINE PERMIT OF OWL CREEK GRAVEL PRODUCTS, LLC

DOCKET NO. 11-4801

EXHIBIT "B"

OWL CREEK GRAVEL PRODUCTS, LLC
John Stipulated Motion for Dismissal of Objection with Prejudice

progression is shown on Map MP-1. This progression is subject to market conditions, and may go slower than shown, but in no case will the operator affect more than 10 additional acres per year.

As stated above, Pit 1 includes the lands affected under Ten-Acre Exemption No. 1488ET. Pit 2 will move to the southeastern corner of the permit area and will begin with topsoil removal and stockpiling and construction of a permanent drainage channel that will connect the pit to the existing drainage ditch at the southeastern corner of the permit area (see Appendix C Map). This permanent drainage channel will assure compliance with stipulation number 3 that accompanied WDEQ/LQD approval of the Ten-Acre Exemption and states that: *The reclaimed topography of the pit must daylight at a grade sufficient to insure through drainage across the site. No depression may be left that would impound any surface water.*

By constructing this permanent drainage channel first and progressing westward and northward with the pit, the reclaimed surface (shown on Map MP-2) will be constructed contemporaneously with the mining operation. Topsoil, overburden and excess fines from the crushing and sizing operation will be stockpiled for most of the initial two pits, but will be direct hauled after that to the extent possible. A minimum of 1.5 feet of topsoil and subsoil will be placed atop the regraded surface and planted with the seed mix described in the reclamation plan.

The permanent drainage channel is designed to pass the peak discharge from the 10-year, 24-hour precipitation event at a velocity that will be non-erosive and yet fast enough to minimize sedimentation and channel blockage. The permanent drainage channel will be used to collect and convey surface runoff through and around the mining operation during storm or runoff events. Figure MP-1 shows the Trihydro printout for the 10-yr, 24-hr storm, and Figure MP-2 shows the channel hydraulics for the design storm. The permanent drainage channel will be trapezoidal in shape with a 3-foot bottom width and 2.5:1 side slopes. This permanent drainage channel can be built with the equipment that will be on site.

TRIHYDRO-98	
Jones Road Gravel Pit	
SCS Type II, 24-Hour General Storm	
10-Year Return Period	
Drainage Basin Characteristics	
Drainage Area (A) _____	0.090 square miles
Stream Length of Longest Watercourse (L) _____	0.580 miles
Elevation Difference Along Longest Watercourse (H) _____	32.000 feet
Runoff Curve Number (CN) _____	68.000
Minimum Infiltration Loss (iph) _____	0.140 inches/hour
Precipitation for the Specified Storm	
Adjusted Precipitation for the Selected Storm _____	2.200 inches
Resultant Hydrograph Values	
Peak Discharge _____	7.08 cfs
Runoff Volume _____	0.46 acre-feet
Time to Peak Discharge _____	12.40 hours
Time of Concentration _____	0.54 hours

Figure MP-1. Design Event for Drainage Channel

Jones Road Gravel Pit Drainage Channel Worksheet for Trapezoidal Channel	
Project Description	
Project File	untitled.fm2
Worksheet	Jones Road Gravel Pit Drainage Channel
Flow Element	Trapezoidal Channel
Method	Manning's Formula
Solve For	Channel Depth
Input Data	
Mannings Coefficient	0.032
Channel Slope	0.005000 ft/ft
Left Side Slope	2.500000 H : V
Right Side Slope	2.500000 H : V
Bottom Width	3.00 ft
Discharge	7.10 cfs
Results	
Depth	0.72 ft
Flow Area	3.43 ft ²
Wetted Perimeter	6.86 ft
Top Width	6.58 ft
Critical Depth	0.48 ft
Critical Slope	0.021623 ft/ft
Velocity	2.07 ft/s
Velocity Head	0.07 ft
Specific Energy	0.78 ft
Froude Number	0.51
Flow is subcritical.	

Figure MP-2. Drainage Ditch Hydraulics

Stipulation No. 1 that accompanied the approval letter for Ten-Acre Exemption No. 1488ET requires that: *Groundwater may not be exposed in the excavation at any time. The pit floor must at all times be above the water table if present.* In view of the seasonal high water levels (see Appendix D-6), this stipulation would place a severe restriction on the amount of gravel that could be recovered in many areas of the pit. The mining plan was discussed with Loren Smith, Superintendent of Water Division No. III, on August 3. In response to his concerns, operator agrees to leave at least 2 feet of undisturbed gravel above the Cody Shale layer to facilitate groundwater migration through the pit area. Three cross sections are shown on Figure MP-3 to demonstrate compliance with this request. Except for a very small area near Station 10+00 on Cross Section C-C', there will be at least two feet of gravel remaining on the pit floor prior to replacement of topsoil. Further, the pit will be graded and reclaimed to drain groundwater and storm water to the existing drain ditch (which currently intercepts the water table) shown on the Legal Description Map in Appendix C.

Since the Mine Plan provides for drainage of groundwater and storm water to the existing drain ditch (via overland flow and through the remaining gravel materials), OCGP mine operations is using available, reasonable and standard precautions within the mining industry to prevent injury to any down-gradient water right. Additionally, OCGP has spent considerably more time and money documenting ground water elevations and evaluating ground water management alternatives for this mine than is normally done for gravel pits. This extensive effort has led to a plan that has been affirmed by Mr. Loren Smith, Superintendent of Water Division No. III (SEO official responsible for administration of water rights). That being said, if it can be established that injury to a water right results solely from OCGP mining operations, OCGP shall make all reasonable efforts to remedy said injury.