

## LEGISLATIVE SUMMARY SHEET

Tracking No. 0334-18

**DATE:** September 28, 2018

**TITLE OF RESOLUTION:** PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A SAND AND GRAVEL LEASE AGREEMENT FOR SEIFERT ENTERPRISES, LLC, FOR 104 ACRES, MORE OR LESS, LOCATED ON LANDS KNOWN AS BOYER RANCH, CUSTER COUNTY, COLORADO, TO OPERATE AND MAINTAIN A SAND AND GRAVEL PIT

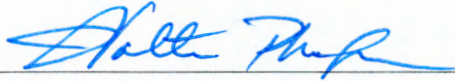
**PURPOSE:** The purpose of the resolution is to approve a Sand and Gravel Lease Agreement for Seifert Enterprises, LLC, for 104 acres, more or less, located on lands known as Boyer Ranch, located in Custer County, Colorado, to operate and maintain a sand and gravel pit.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

PROPOSED NAVAJO NATION COUNCIL RESOLUTION

23<sup>rd</sup> NAVAJO NATION COUNCIL -- Fourth Year, 2018

INTRODUCED BY



(Prime Sponsor)

TRACKING NO. 0334-18

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A SAND  
AND GRAVEL LEASE AGREEMENT FOR SEIFERT ENTERPRISES, LLC,  
FOR 104 ACRES, MORE OR LESS, LOCATED ON LANDS KNOWN AS  
BOYER RANCH, CUSTER COUNTY, COLORADO, TO OPERATE AND  
MAINTAIN A SAND AND GRAVEL PIT

BE IT ENACTED:

**Section One. Authority**

- A. The Resources and Development Committee is a standing committee of the Navajo Nation Council and exercises oversight over the land and environmental protection. 2 N.N.C. § 500 (C).
- B. The Resources and Development Committee of the Navajo Nation Council has authority to give final approval of all land withdrawals, non-mineral leases, permits, licenses, rights-of-way, surface easements and bonding requirements on Navajo Nation lands and unrestricted (fee) land. N.N.C. § 501 (B) (2).

**Section Two. Findings**

- 1 A. The Navajo Nation purchased land identified as "Boyer Ranch" located in  
2 Custer County, Colorado, R 71 W, T 24 S, Section 5 and Section 6, 6<sup>th</sup> PM;  
3 the transaction closed on December 25, 2017.
- 4 B. Seifert Enterprises, LLC, of Westcliffe, Colorado, has submitted a request for  
5 a sand and gravel lease to occupy 104 acres, more or less, contained with the  
6 property known as Boyer Ranch. The proposed Sand and Gravel Lease  
7 Agreement is attached as **Exhibit A**.
- 8 C. Seifert Enterprises, LLC, had a sand and gravel lease with the previous owner  
9 of the Boyer Ranch property and wishes to continue its operations on the  
10 property.
- 11 D. The proposed Sand and Gravel Lease states that Colorado law will govern,  
12 except as expressly stated in the lease.
- 13 E. Seifert Enterprises, LLC, currently has all the necessary permits and other  
14 documentation required by Colorado law. Although not incorporated into the  
15 Sand and Gravel Lease Agreement, a copy of Seifert Enterprises, LLC's,  
16 Mining Plan and Reclamation Plan are herein attached as **Exhibit B** and  
17 **Exhibit C**, respectively.
- 18 F. This application for a Sand and Gravel Lease Agreement has been reviewed by  
19 the Fish and Wildlife Department, Historic Preservation Department, Minerals  
20 Department, Navajo Nation Environmental Protection Agency, Division of  
21 Natural Resources and the Department of Justice and "Approve" or found  
22 "Sufficient." See **Exhibit D**.

23  
24 **Section Three. Approvals**

- 25 **A.** The Navajo Nation hereby approves a Sand and Gravel Lease Agreement for  
26 Seifert Enterprises, LLC, for 104 acres, more or less, located on lands known  
27 as Boyer Ranch, located in Custer County, Colorado, to operate and maintain  
28 a sand and gravel pit. The location is more particularly described in **Exhibit**  
29 **A**.
- 30

1 B. The Navajo Nation hereby approves the Sand and Gravel Lease Agreement  
2 subject to, but not limited to, the terms and conditions in the Lease Agreement  
3 attached hereto as **Exhibit A** and made a part hereof.

4 C. The Navajo Nation hereby authorizes the President of the Navajo Nation to  
5 execute any and all documents necessary to affect the intent and purpose of  
6 this resolution.

# **BOYER RANCH SAND AND GRAVEL LEASE AGREEMENT**



## ***PARTIES:***

The parties to this agreement (or "Lease") are the Navajo Nation, herein referred to as "Lessor", and Seifert Enterprises,, LLC of Westcliffe, Colorado as "Lessee".

## ***PROPERTY:***

The property which is the subject of the Lease is generally located within the West One-half of Section 5 and the East One-half of Section 6, Township 24 South, Range 71 West on the 6<sup>th</sup> Principal Meridian, County of Custer, State of Colorado (herein referred to as "Property"). Lessor warrants that Lessor is the owner of the above-described property and has the right to convey and grant the rights and privileges provided in this Lease.

## ***PURPOSE:***

The Lessor is the owner of the Property described in Exhibit A which has deposits of sand, gravel, rock, topsoil and aggregate. The Lessor has agreed to lease to the Lessee for the purposes of removing, processing and selling the same in the general business of sand, gravel and aggregate production and sales the area of the Property addressed in Exhibit A (herein referred to as the "Leased Premises"), subject to the terms and conditions set forth in this Lease.

## ***TERM:***

In consideration of the payments herein provided, the Lessor hereby leases unto Lessee the following described premises beginning on the 15<sup>th</sup> day of June 2018 for a term of five (5) years until the 31<sup>st</sup> day of June 2022.

## ***EQUIPMENT USED:***

Lessor further grants to Lessee the right to use all or any portion of the Leased Premises for the purpose of erecting any and all equipment and temporary structures that may be used by Lessee in the production of Product as authorized herein and the right to grade roads or rights-of-way on the Property to any and all points on such Property necessary or useful in the production and removal of Product from the Leased Premises, provided that Lessee provide notice of the Navajo Nation Minerals Department or its successor prior to the grading of such roads or use of such rights-of-way.

*PRODUCT:*

Lessor grants unto Lessee the right to remove the following Product from the Leased Premises:

Sand, gravel, interbedded sandy clay and topsoil for production of sand, gravel, aggregate, decorative rock, base course, pit run and rock chips and topsoil to the extent not required for reclamation of the property.

Lessee acknowledges and agrees that lessee has no right to remove any other minerals or any material containing same from the Property.

*CONSIDERATION:*

As consideration for this Lease, the Lessee shall pay to the Lessor the sum of One Dollar (\$1.00) per ton or 2,000 pounds of Product. Lessee shall furnish Lessor with monthly records of material removed within ten (10) days of the close of each month and at the time of same shall tender payment to the Lessor for materials sold at the rate provided of One Dollar (\$1.00) per ton. Lessor shall, at all times, have the right to examine the Leased Premises, review and audit the records of the Lessee and to verify any information by contacting Lessee account holders. The payment of One Dollars (\$1.00) per ton or 2,000 pounds of Product shall be subject to annual adjustments on each June 31<sup>st</sup> anniversary date. The adjustments shall be based upon the increase in the Consumer Price Index (CPI), U.S. City Average for All Urban Consumers. The CPI for January 2018 shall be used as the base for all adjustments.

*RIGHTS OF LESSOR:*

It is agreed and understood that Lessor shall, at all times during the term of this agreement, have the use of any and all parts of the above-described Property for any and all purposes, including sand and gravel operations, except for those portions actually being occupied and used by Lessee for the production and removal of sand or gravel as provided in this agreement. Lessee, however, shall have the right of ingress and egress to and from the Leased Premises to be used by Lessee. Lessee shall coordinate its use of the Leased Premises with Lessor and will not open pit sites on the Lease Premises without discussing and coordinating the same with the Lessor.

*CONSTRUCTION OF FENCES:*

Lessee agrees to construct and maintain a good and sufficient fencing around the sand and gravel pits and to dispose of the overburden as may be directed by the Lessor and as required by permits with the State of Colorado.



*PERMITS:*

Lessee shall take all steps to arrange for permits for mining, crushing, washing, distributing and hauling its Product upon and from the Leased Premises and shall pay all costs for the same and fully comply with all of the provisions, terms and conditions of all laws, whether federal, state or local and orders issued thereunder which may be in effect during the Term of this Lease relating to the operations of the Lessee under this Lease and the marketing of any Product thereof. Lessee shall provide to Lessor a copy of the required permits prior to execution of this Lease.

*LIVESTOCK OPERAITONS:*

Lessee acknowledges that Lessor may lease out portions of its Property for livestock and growing crops to third parties. Lessee shall be liable and agrees to pay for all damages to the surface of the Property, livestock, growing crops, or improvements caused by Lessee's operations on the Leased Premises or adjacent Property.

*LIABILITY:*

Lessee shall indemnify Lessor against all liability and loss and against all claims and actions of any kind, including the defense of such claims or actions based upon or arising out of damage or injury including death, to persons or property caused by or sustained in connection with this Lease by conditions created thereby or by any operations of the Lessee, Lessee's agents, employees or subcontractors or based upon any violation of any applicable law. In that regard, the Lessee shall maintain throughout the term of this agreement, a public liability insurance policy naming Lessor, The Navajo Nation, as additional insured with minimum single limits of One Million and 00/100 Dollars (\$1,000,000.00). Such policy shall require notice to Lessor of cancellation at least thirty (30) days prior to any cancellation date. Failure to maintain such insurance shall be deemed a default of the terms of this Lease.

*WATER:*

It is agreed that Lessee shall supply its own water supply.

*INSPECTION:*

The Lessor shall, at all reasonable times, have the right of full access to the Leased Premises for the purpose of inspection of the same, including the right to inspect all records, permits, and reports utilized in the operation of the same. In that regard, the parties understand and agree that Lessor may make such inspections in-person or by its representative, Samuel Diswood, or by any other representative designated in writing by Lessor throughout the term of this Lease.

*REMOVAL OF IMPROVEMENTS:*

All fences and other improvements installed by the Lessee during the Term of the Lease shall be removed at its termination unless otherwise agreed between Lessee and Lessor in writing.

*DISPUTE RESOLUTION:*

Any claim, dispute, or other matter in question arising out of or relating to this Lease shall be resolved by negotiations, mediation and/or arbitration procedures set forth as follows:

- A. **Negotiation:** In the event a dispute shall arise between the parties to this Lease, the parties agree to attempt to negotiate a just and equitable settlement thereof. If either party fails or refuses to participate in such negotiations or such negotiations do not result in the parties resolving the dispute within twenty (20) working days after one party has requested that negotiation begin (and the period is not extended with the consent of the parties), then either party may cause the dispute to be referred to mediation.
- B. **Mediation:** The parties shall endeavor to resolve claims, disputes and other matters in questions between them by good faith negotiation and mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Commercial Mediation Rules of the American Arbitration Association, as modified by the following:
  - 1. Unless otherwise agreed to in writing by the parties, all mediation procedures shall be held in Window Rock, Arizona;
  - 2. A single mediator may be chosen by mutual agreement of the parties;
  - 3. The party desiring mediation shall submit to the other party a written notice of intent to mediate, and such notice shall indicate whether the hiring of a mediator is desired;
  - 4. The parties shall equally share the mediator's fee and any other costs related to the mediation; and
  - 5. The mediation shall not exceed ninety (90) calendar days, unless otherwise agreed to in writing by the parties.



- C. **Arbitration:** If the mediation provided for the subsection (B) above does not result in resolution of the parties' dispute within ninety (90) calendar days of commencement of the mediation, then, unless the parties agree in writing to extend the time for mediation, either party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§ 554 J and § 554 K, and as set forth in the Navajo Nation Arbitration Act, as amended at 7 N.N.C. §§ 1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:
1. Unless otherwise agreed to in writing by the parties, all arbitration procedures shall be held in Window Rock, Arizona;
  2. The arbitration shall be conducted by a single arbitrator selected by the Navajo Nation , unless one of the parties' claims exceeds \$1,000,000.00, exclusive of interest, costs, and fees; in such case the arbitration shall be conducted by a panel consisting of three (3) arbitrators, one of which shall be chosen by each party, with the two arbitrators choosing the third; at least one arbitrator shall possess at least ten (10) years of experience in Indian Law;
  3. Notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. § 555;
  4. Whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Nation shall be in strict conformance with the provisions of 1 N.N.C. § 554 K 1-6;
  5. Pursuant to 1 N.N.C. § 554 K and 7 N.N.C. § 1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Nation's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; neither party may recover from the other any attorney fees or costs.

- D. **Waiver of Suit:** The negotiation, mediation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising out of this Lease. Commencement of negotiations, mediation or arbitration shall be a complete defense to any suit, action or proceeding instituted in any federal, state, or tribal court or any administrative tribunal, with respect to any dispute or controversy arising out of this Lease that is negotiated, mediated or arbitrated as set forth herein.
- E. **Post-termination; Post-expiration:** The dispute resolution provisions of this Lease shall, with respect to such any dispute or controversy arising out of this Agreement, survive the termination or expiration of this Lease.

*WAIVER:*

The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement or the waiver of any breach of any of the terms and conditions of this agreement shall not be construed as thereafter waiving any such terms and conditions in the event of a subsequent breach, and the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

*MODIFICATION OF AGREEMENT:*

A modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing, signed by each party or an authorized representative of each party.

*ASSIGNMENT:*

This agreement may not be assigned or transferred by Lessee nor may any interest in the Leased Premises be sublet, assigned, transferred, or hypothecated by Lessee without the prior written consent of Lessor.

*ENTIRE AGREEMENT:*

This agreement shall constitute the entire agreement between the parties and any prior understanding or representative of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

*GOVERNING LAW:*

It is agreed that this agreement shall be governed by, construed and enforced in accordance with the laws of the State of Colorado, unless expressly stated otherwise herein.

*SOVEREIGN IMMUNITY:*

Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

*PARTIES BOUND:*

This agreement shall be binding upon the parties hereto, their heirs, successors, executors, administrators, employees, agents, or assigns.

*DEPARTMENT OF JUSTICE APPROVAL:*

Pursuant to 1 N.N.C. § 554(J)(2) and (K)(2), Navajo Nation Department of Justice Approval is required for all agreements that include a limited waiver of sovereign immunity to compel or enforce arbitration under the Navajo Nation Arbitration Act, as amended, 7 N.N.C. § 1101 et seq.

  
\_\_\_\_\_  
Navajo Nation Department of Justice

**LESSOR:**

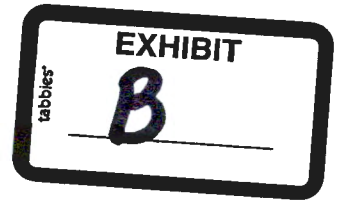
DATED this 2<sup>nd</sup> day of July, 2018.

Russell Begay  
The Navajo Nation

**LESSEE:**

DATED this 18<sup>th</sup> day of June, 2018.

[Signature]  
Seifert Enterprises, LLC



**Exhibit “B”**

**Mining Plan**

## **EXHIBIT "B"**

### **Mining Plan**

#### **6.4.4 Exhibit (D) Mining Plan**

All areas to be mined are considered high and dry with no groundwater to be encountered during mining. The deposit is fairly deep, ranging from 0.5' deep to possibly 45' deep, along the upland deposit.

Excavation is to be an open pit with the use of standard mining equipment used for such operations, eg. Scraper, dozer, wheel loaders, excavators and draglines. However, due to the life of this mine, other types of equipment not yet economical for gravel may be employed in the future.

Processing will take place on site in order to size by crushing and screening, and some reject material will be used for final reclamation. Also a concrete and/or asphalt batch plants will be erected on site as needed for projects in this part of the state of Colorado. If the demand is sufficient to warrant they may become permanent for the life of the mine.

As much as possible, mining will be conducted in such a way as to facilitate reclamation, such as pushing slopes to a 3H:1V when practical. Reclamation will follow in a timely manner once an area is deemed mined-out. Seeding and final grading will be to a final reclamation use of rangeland, which the landowner has prescribed.

The following will address the items listed under Rule 6.4.4 - Exhibit D - in order of appearance:

Please see Mining Plan Map for more information and correlation's.

##### **6.4.4(a)**

Like similar open-pit sand and gravel operations, this pit will be stripped of the available topsoil (growth medium) by earthmoving scrapers and loaders, and will be placed along the areas bounding the mining areas and left in place until needed for re-topsoiling. These topsoil stockpiles will be seeded to reduce soil erosion.

(b) All earthmoving will be done by mining equipment suitable for this type operation, including the following types: crawler dozer, wheel loaders, earthmoving scrapers, excavator, draglines, and haul trucks of various sizes up to and including haul units with a 50-ton capacity. Over-land conveyors may also be employed during the life of this mine to transport material to the processing areas.

(c) The only water diversions would be for stormwater management to keep all stormwater from running into or off site, and for erosion control.



No water impoundments are planned at this time; however, water for processing will become available at a future date. At that time all the needed water systems and controls would be engineered for this site. At the time of needing water to wash aggregates the operator will most likely get the water from a nearby well and run a pipeline to this site. The State Engineers Office will be notified and all of the proper permits will be obtained and in place before the washing operation would begin. The Division of Minerals and Geology / MLRB Office will also be informed.

(d) The proposed mining would be done in the direction shown on the Mining Plan Map - Exhibit "C" of this application. The area disturbed would not exceed 10 acres at any time, including haul roads and processing areas. The 10 acre section that is active shall not have more than 5 acres being excavated at one time and the remainder shall be in the process of being reclaimed as requested by the Division of Wildlife and the Custer County Board of County Commissioners per the granted S.U.P. on November 7, 2002.

(e) An approximate timetable to describe the mining operation is shown on the Mining Plan Map - Exhibit "C". The life of this mine may extend beyond the 50 years. It is proposed to use a floating bond on 10 acres on this operation as mining is completed in the mining units as proposed (see Mining Map Exhibit "C").

(i) The estimate of the periods of time which is stated above, is between 3 to 5 years to establish the reclaimed area back to rangeland that may be considered for release by the Mined Land Reclamation Board of the Division of Mining and Geology. The reclamation will be an ongoing process as soon as the first unit is deemed mined-out, and the phasing of the mining and reclamation will follow a natural progression with final reclamation as the ultimate goal.

(ii) As stated in this report, the mining units will range between 5 to 15 acres with a maximum of 10 acres being disturbed at any time. Reclamation would be occurring on the lands mined out concurrently with mining.

(iii) The sequence in which each stage or phase will be carried out is outlined in this report. Also, please see Mining Map Exhibit "C".

(f) The backsloping and final pit floor will be done in concert with the mining. It is planned to start reclaiming 5 acres as they are deemed mined-out. This allows the operator the allotted time to establish a planned reclamation plan and continue to mine, hence the 10 acre floating bond.

As stated before, this site is on an upland terrace deposit with the following characteristics:

(i) The areas to be mined are as follows: **USDA soil unit 8 - Coutis sandy loam**, 2% to 5% slopes. This is a deep, well drained soil in drainageways and foot slopes. It formed in mixed alluvium. Elevation is 7,800 to 8,800 feet. Typically, the surface is dark brown sandy loam 11 inches thick. It is underlain by dark sandy loam 37 inches thick. The substratum is brown gravelly loam to a depth of 60 inches or more. This Coutis soil is a good source of topsoil.

**USDA soil unit 11 - Feltonia- Coutis sandy loams**, 6% to 15% slopes. This complex is on fans and terraces. Elevation is 7,800 to 8,500 feet. The Feltonia soil makes up 50% of this complex, and the Coutis soil makes up 35 %. The Feltonia soil is on the tops of rolling terraces, and the Coutis soil is on the foot slopes along drainageways. The Feltonia soil is deep and well drained. It formed in alluvium. Typically, the surface layer is grayish brown sandy loam 8 inches thick. The subsoil is dark grayish brown gravelly sandy loam 11 inches thick. The substratum is light brownish gray sandy loam in the upper 13 inches and is white very gravelly sandy loam to a depth of 60 inches or more. The Coutis soil is deep and well drained. It formed in alluvium and colluvium. Typically, the surface layer is dark brown sandy loam 11 inches thick. The underlying material is dark brown sandy loam 37 inches thick. The substratum is brown gravelly loam to a depth of 60 inches or more. This soil makes good construction aggregates. **USDA soil unit 23 - Norriston extremely cobbly sandy loam**, 15% to 40% slopes. This is a deep, somewhat excessively drained soil on terraces and fans. It formed in glacial outwash. Elevation is 8,400 to 9,00 feet. Typically, the surface layer is brown very cobbly sandy loam 6 inches thick. The subsoil extends to a depth of 23 inches. It is brown extremely cobbly sandy loam in the upper 5 inches, light brown extremely gravelly sandy loam in the middle 7 inches, and light brown extremely gravelly loamy sand in the lower 5 inches. The substratum is light brown extremely cobbly loamy sand in the upper 11 inches and is light brown extremely cobbly sand to a depth of 60 inches or more. This soil makes good construction aggregates.

(ii) The stratum beneath the deposit is presumed to be sandstone, shale, or conglomerate or a combination thereof.

(g) The primary commodities to be mined/extracted are sand and gravel to be used for construction, eg. Landscaping "Rock", Road Base, Concrete and Asphalt Sizes ASTM C-33 specifications, topsoil and all other construction aggregates for which the material is suitable.

(h) This site has Topsoil type soil as a secondary commodity that are of commercial value at the present time. Therefore, topsoil will be a product mined and sold at this mine.

**NORTH**

**MINE PHASING**

ACRES	AREA	YEARS
13	(1)	2003-2008
14	(2)	2007-2012
15	(3)	2011-2016
13	(4)	2015-2020
14	(5)	2019-2025
9	(6)	2024-2029
7	(7)	2028-2033
11	(8)	2032-2037
8	(9)	2036-2041
		2040-2045

**PERMIT BOUNDARY**

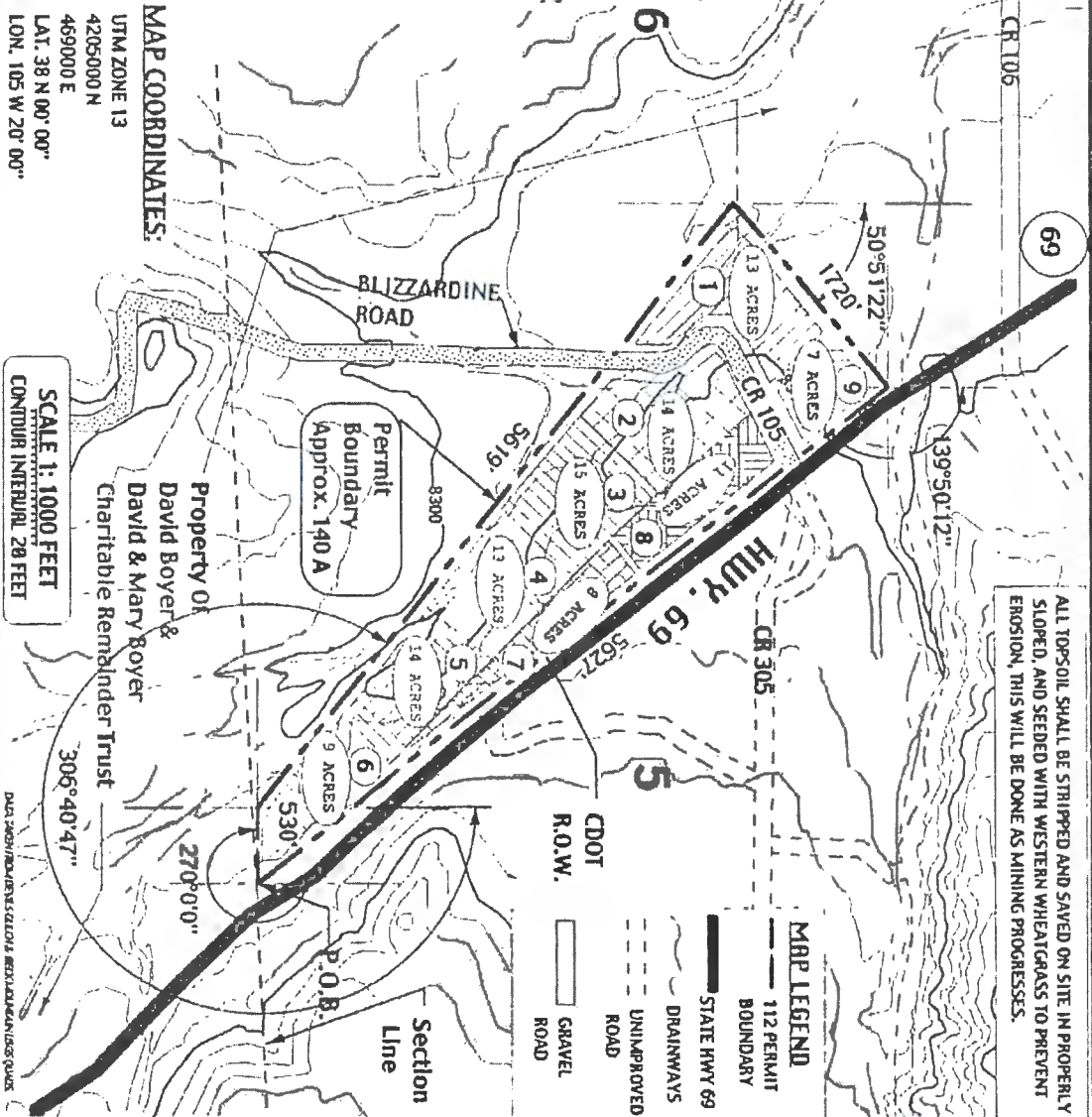
**TRAVERSE AS FOLLOWS:**

Starting at the P.O.B. on the South R.O.W. of Highway 69 on the North section line of section 8, thence 270 degrees 00' 00" azimuth, a distance of 530 feet, thence 306 degrees 40' 47" azimuth, a distance of 5619 feet, thence 50 degrees 51' 22" azimuth, a distance of 1720 feet, thence 139 degrees 50' 12" azimuth, a distance of 5627 feet, back to the P.O.B. Containing 140 acres more or less.

**LEGAL DESCRIPTION**

A PORTION OF LAND LOCATED IN CUSTER COUNTY, COLORADO R 71 W, T 24 S, SECTION 5, & SECTION 6, 6th P.M.

BOYER PIT PRE-MINING C/MINING



**BOYER GRAVEL PIT**

MINING MAP EXHIBIT "C"	CUSTER COUNTY COLORADO	CONSULTANT: J.P. GAGLIANO
SEUERT CONSTRUCTION, 198 RANGE VIEW LOOP WESTCLIFFE, CO 81252	DATE: AUGUST 24, 2002	

Exhibit A



**Exhibit "C"**

## **Reclamation Plan**



## EXHIBIT "C"

### Reclamation Plan

#### 6.45 Exhibit (E) Reclamation Plan

(1) The Operator/Applicant will reclaim this mine site back to rangeland. No trees, shrubs or bushy-type vegetation will be planted, only the appropriate grasses selected by the NRCS will be used. The saved topsoil (please see Mining Map Exhibit C for locations) will be spread over all the disturbed areas and prepared for seeding according to the NRCS recommendations. Topsoil will be replaced at 4" - 7". Final grading will leave slopes at 3:1 or flatter to match the surrounding topography. The grading will also address the issue of stormwater drainage all ground shaping will be such that historical water flows are maintained and that soil erosion is not promoted. In some areas shallow depressions will be left after final shaping to serve to collect water to encourage the establishment of native trees and shrubs, as well as providing some extra wildlife habitat.

Fertilizer will be applied to the area to be reclaimed, either prior to seeding or after grass seedlings have reached the 2 to 3 leaf stage. No less than 10 pounds of nitrogen (N) and 40 pounds of phosphate (N<sub>2</sub>O<sub>5</sub>) per acre will be applied, unless a soil analysis indicates sufficient amounts of these elements. Animal manure, or similar organic material, will be used to supply all or part of the specified nutrients.

Seedbed will be prepared as follows: the seedbed will be well settled and firm, but friable enough that seed can be drilled at the recommended depth. Soils that have been compacted by trucks and heavy equipment will be tilled ( deep chiseled or ripped, if needed) this will break up the compacted layers, and then harrowed and rolled or packed to prepare the required firm seedbed. If it is deemed better to broadcast the seed, then the seedbed will be settled and fairly firm, but left rough to catch the seed and allow some coverage by soil when either harrowed and packed, or tracked into the soil surface using heavy equipment. The seedbed preparation will not be done when the soil is wet. Seed will be planted with a grassland drill equipped with double disc openers, depth bands, seed box agitator, and either packing wheels or a cultipacker. If it is determined that drilling is not feasible due to rock fragments on the surface, or other circumstances, the seed will be broadcast, then harrow and pack the soil surface, or track in the seed by walking a dozer over the seeded area. The seeding rates will be doubled if the seed is to be broadcast.

The seed depth when planted with a drill will be covered with soil to a depth of 1/4 to 3/4 inch. Seed planted by broadcasting will be incorporated into the surface of the soil no deeper than 3/4 inch, by raking or harrowing, and rolling or packing, or by tracking the seed in with the tracks of a dozer.

The seeding will most likely take place between the month of October through April. The rate of seeding is covered in exhibit "L" and on the Reclamation Plan Map Exhibit "F". The species selected can be see on Map in Exhibit "F".

Mulching will be done to conserve moisture, reduce runoff and erosion, and to help establish vegetation. Weed free straw or hay will be used at an application rate of 4000 pounds per acre.

No grazing will be allowed until the grass is well established.

(2) The entire affected area will be reclaimed as rangeland. This use was selected by the landowners as being consistent with the other acreage they own adjacent to the affected area. The landowners do not want any access/haul roads reclaimed, as it will provide ingress and egress to the balance of their acreage, and will allow for cattle feeding and round-up.

(a) Earthmoving in reclamation will be simple and typical of this type deposit. Mining will leave a level pit floor with some differential contours to facilitate revegetation and to conform more closely to the surrounding topography. A Special Use Permit in Custer County will be necessary to mine this deposit.

(b) Post mining land use as rangeland is consistent with the land use in the vicinity.

(c) A description of how the Reclamation Plan will be implemented to meet each applicable requirement of Section 3.1, Reclamation Performance Standards.

### **3.1.1 Establishing Post-Mining Use**

(1) The Operator/Applicant, in consultation with the Landowners, have decided to reclaim the affected area back to rangeland for a commercial cattle operation.

(2) The results of this application, of which this is a part, and all of the decisions formulated into it, constitute what the applicant believes is an appropriate and workable Reclamation Plan.

### **3.1.2 Reclaiming Substituted Land.**

Reclaiming substitute land is not a consideration of this operation. All of the affected land will be reclaimed under this application.

### **3.1.3 Time Limit and Phased Reclamation**

The operator/applicant agrees that all reclamation shall be carried to completion with all reasonable diligence, and each phase shall be completed within five (5) years from the date the Operator/Applicant informs the Board or office that such phase has commenced.

### **3.1.4 Public Use**

The Operator/Applicant and Landowners do not propose the use of this land by the public. Mining will be done by an MSHA approved contractor and the public will not be allowed on site without a company representative. After the site has been released by the Board, the Landowners may allow public access if it is deemed beneficial. Part 46 of MSHA will be followed on this site.



### **3.1.5 Reclamation Measures - Material handling**

(1) Grading shall be carried on so as to create a final topography appropriate to the final land use selected in the Reclamation Plan.

(2) When backfilling of the excavated area will consist of overburden and/or any inert materials which may be hauled in from off site. Additionally all backfill material will be compacted in place to insure stability. No toxic or acid-forming materials will be on site nor will any be delivered to this mine site.

(3) All grading shall be done in a manner to control erosion and siltation of affected lands.

Best Management practices of mining will be used to protect areas outside the affected land from slides and other damage. No highwalls are planned at this open pit mine.

(4) All backfilling and grading will be completed as soon as feasible after the mining process. The operator will establish reasonable timetables consistent with good mining and reclamation procedures. Grading of backslopes will be as mining is occurring, and the pit floor will be contoured for seeding as mining proceeds.

Topsoiling will be accomplished after mining has moved away far enough to make it practical for seedbed prep and seeding. Also, time of year and weather conditions will play a role in this timing.

(5) No refuse will be generated by this mining operation for cleaning and preparation of substances mined. No acid-forming or toxic-producing materials will be mined or used for processing at this sand and gravel mining - processing plant. Therefore, no plans have been developed for their handling.

(6) There will not be any drill or auger holes unfilled after mining. All exploration will most likely be done with small bore coring by a trained crew or by backhoe in selected areas, and after discovery, all holes shall be backfilled as soon as possible. No adits or shafts will be employed in this open pit.

(7) Maximum slopes and slope combinations shall be compatible with the configuration of the surrounding conditions and selected land use. Where the pit does not daylight, backsloping during mining will be completed at a slope of 3H:1V or flatter. No lakes or ponds are designed for the final reclamation, which is rangeland. Therefore, no swimming areas are proposed.

(8) The Operator's/Applicant's and Landowners' choice of rangeland reclamation for cattle production will require slopes of 3H:1V or flatter in order to establish good cattle grazing areas, and to prevent erosion. Farm machinery will be used only at the time of revegetation and will not be a factor long range.

(9) The Operator/Applicant, in conjunction with the landowners, may decide to use reject/overburden to fill areas outside the permit boundary to improve the rangeland on the landowners adjacent lands. The operator will notify the office (DMG-MLRB) of any proposed backfill activity not identified in the approved Reclamation Plan. However, this option has some merit only if excess reject/overburden is generated.

(a) No specific location has been chosen at this time.

(b) Volume of inert material to be backfilled would have to be determined if this option is adopted.

(c) A signed affidavit will be supplied certifying that the material is clean and inert, if this option is taken.

(d) No date of proposed activity can be given at this time. If this option is chosen, the office will be notified.

(e) Backfilled areas will be done in order to increase grazing land, and thus all operations will be done in a manner compatible with the surrounding rangeland contours and stability.

(f) All backfilled areas will be compacted to industry standards for general field backfilling.

(10) All mined material will be handled in such a manner so as to prevent any unauthorized pollutants to the surface drainage system. The sand and gravel stockpiles will be located and arranged to avoid any uncontrolled runoff of stormwater from this site.

(11) No groundwater pollutants will be released at this site. This mine is a high and dry area, and the deposit is sand and gravel with no known pollutants.

### **3.1.6 Water - General Requirements**

(1) The hydrology and water quality of this site will not be adversely affected by this operation. No groundwater will be encountered during mining, and the only surface changes shall be controlled and monitored to minimize the affects on the historical stormwater runoff patterns.

(a) The operator/applicant will comply with Colorado water quality laws and regulations governing injury to existing water rights.

(b) The operator/applicant will comply with applicable Federal and Colorado water quality laws and regulations, including all the standards adopted by the State Water Quality Control Commission.

(c) No dredge of streambeds will be done, and the fill areas will not injure the water quality nor restrict historical flow.

(d) No earthen structures will remain that were used to control stormwater after mining. Reclamation requires no structures eg. dams or ponds.

(2) No dams will be constructed on this mine site.

(3) All surface areas of the affected land, including spoil piles, will be stabilized and protected so as to effectively control erosion.

### **3.1.7 Groundwater - Specific Requirements**

(1) This area is high and dry. No groundwater will be exposed during mining. There are no permits contemplated or needed.

### **3.1.8 Wildlife**

(1) The operator will consider the safety and protection of wildlife on site. No described critical periods or species are known by this operator/applicant or landowner.

(2) No habitat management is planned on this site. Reclamation is planned rangeland not wildlife habitat.

### **3.1.9 - Topsoiling**

(1) Topsoil will be stockpiled in close proximity to the mine areas in order to shorten haul distances to and from the areas that were stripped. Once the topsoil has been removed and segregated from the other spoil or product, it will be saved for replacement. If the duration before use exceeds one full growing cycle, the topsoil stockpiles will be seeded with a western wheatgrass to control erosion.

(2) Mining on the affected lands will disturb no woody vegetation.

(3) Stockpiles will be configured to minimize erosion and will be located in areas where disturbance by ongoing mining operations will be minimized.

As stated in 3.1.9 topsoiling (1) above, if necessary, stockpiles will be seeded for the purpose of stabilization.

(4) It is planned to locate topsoil stockpiles so material will only have to be handled one time. No relocation of topsoil is proposed.

(5) The operator will take measures to assure the stability of replaced topsoil on graded slopes by roughing the subgrade to gain a mechanical bond to the topsoil being replaced. This should insure the elimination of any slippage zones.

(6) It is the operator/applicant and landowners opinion that the topsoil present on site is adequate to establish the seed mix recommended by the NRCS. No replacement topsoil is planned to be imported for reclamation.

(7) Fertilization: As per NRCS recommendation. No less than 10 pounds of nitrogen (N) and 40 pounds phosphate (P<sub>2</sub>O<sub>5</sub>) per acre.

(8) Vegetative piles, if any, will be minimal and shall be removed from the area or utilized in the reclamation of the mine site.

### **3.1.10 Revegetation**

(1) In the revegetated areas, the reclamation plan has been designed for pasturing cattle with grasses that self-regenerate without continued dependence on irrigation. Fertilization will be as per NRCS recommendations.

(2) No forest planting is planned. This is not consistent with the reclamation plan of rangeland.

(3) The operators/applicant and landowner choose to have this site reclaimed as rangeland, therefore, all slopes will be 3H:1V or flatter. Seeding will be accomplished by grassland drill equipment, where feasible, and/or broadcast.

(4) Since this mine site will be reclaimed for cattle grazing, grazing will not begin until the grasses have been established to a point that the landowners, in conjunction with the Board (MLRB) and the local Soil Conservation District/NRCS, determine it is ready.

(5) The site will be prepared to provide the best chance of grass being established by doing the following as recommended by the local Soil Conservation office:

Seedbed Preparation: The seedbed should be well settled and firm, but friable enough that seed can be drilled at the recommended depth. Soils that have been compacted by traffic or other equipment should be tilled (deep-chiseled or ripped, if necessary) to break up restrictive or compacted layers, and then harrowed and rolled or packed to prepare the required firm seedbed. If the seed is to be broadcast, then the seedbed should be settled and fairly firm, but left rough to catch the seed and allow some coverage by soil when tracked in by heavy equipment or harrowed and packed into the surface. Avoid seedbed preparation when the soil is wet to prevent compaction of the seedbed.

(6) Noxious weeds are not a problem on this site, however, if noxious weeds do invade this site, a weed control program will be implemented as soon as possible to stop the spread of the noxious weeds. A portion of the reclamation cost will be devoted to this item.

(7) It will not be necessary to construct fire lanes or access roads for the express purpose of fighting fire, since this area is for grazing, the haul roads that will be constructed for mining will remain in use for the ranch operations.



(8) It is understood by the operator/applicant that planting required for reclamation may be delayed, through the period of use related to places of refuse disposal, haulage roads, and road cuts. All industry standards for such storage will be used to stabilize the surfaces. The operator/applicant is aware that no planting is required on these areas, as follows:

(a) on any affected land being used or proposed for the deposit or disposal of refuse until after the cessation of operations for productive use of such refuse;.

(b) on lands proposed for future mining;

(c) within depressed haulage roads or final cuts while such roads or final cuts are being used or made.

(d) where permanent pools or lakes have been formed; and

(e) on any affected land so long as chemical and physical characteristics of the surface and immediately underlying materials of such affected land are toxic, deficient in plant nutrients, or composed of sand, gravel, shall feasibly be remedied by chemical treatment, fertilization, replacement of overburden, or like measures.

(9) The operator understands that where adverse characteristics of the surface exist, and it is not feasible to remedy by artificial measures, that substitute acres may be reclaimed.

### **3.1.11 Buildings and Structures**

This site is privately owned, and does not fall under the State Historic Preservation Office Requirements for a cultural or history study, however, there is no cause to believe there are any areas of interest to be mined. If the operator uncovers any site, the State Historic Preservation Office will be notified.

There are no structures except ranch fences presently on site, nor are there any permanent structures planned for this site.

### **3.1.12 Signs & Markers**

(1) The operator will post a sign which will be clearly visible from the access road with the following information addressed:

(a) The name of the operator;

(b) a statement that a reclamation permit for the operation has been issued by the Colorado Mined Land Reclamation Board; and

(c) the permit number.



(2) The boundaries of the affected area will be marked with monuments, that are clearly visible:

(a) This is a 112 operation, therefore, the permit boundary and the affected boundary are not the same, and the operator/applicant is proposing a floating bond to cover a portion of the site, to allow mining and reclamation to be ongoing.

(3) The affected land will be monumented for easy delineation.

(d) Where applicable, the operator/applicant has plans developed for the segregation, preservation, replacement, compaction and grading of soil used for revegetation. The revegetation plan will contain a list of the preferred species of grasses to be planted as recommended by the field office of the NRCS. All seeds recommended should be available and in sufficient quantity to accomplish the revegetation.

Seedbed preparation has been covered in Section 3.1 of this application.

(e) The schedule of reclamation will closely follow the mining phasing, and the operator would expect to start reclamation as soon as feasible after mining has been completed, in a 4 acre mining area, and the operator would expect to have vegetation ready for release within a 3 - 5 year period. This sequencing will allow for the floating bond of 10 acres.

The final grading also will be done in conjunction with mining. All backsloping, daylighting and contouring will be done as mining progresses.

As stated before, this land will be used for grazing cattle as a final land use, and all of the NRCS recommendations will be followed.

Topsoil will be replaced at between 4 and 7 inches on all disturbed areas.

Attached is the Seed Mixture recommendation from Rick Romano, District Conservationist, of the NRCS at 248 Dozier Ave., Canon City, CO 81212, phone (719) 275-4465.

SUBJECT: Reclamation Plan

DATE: August 6, 2002

TO: Buck Barnhart  
Barnhart Agency

**SITE PREPARATION:** Unsuitable soil material should be removed and buried so that it does not adversely affect water quality or plant growth. Areas to be graded shall be cleared of trees, logs, brush, and any other material that would interfere with reclamation operations. Boulders, other rocks, and similar material shall be buried or otherwise placed where they do not interfere with reclamation operations, planned land use, or adversely affect plant growth.

An effort should be made to reconstruct the soil with materials available on the site. There is some soil material suitable for this use onsite and adjacent to the proposed site. This material should be stockpiled and protected for use as final cover material. Any areas used for borrow material will also need to be graded and shaped to blend in with the adjacent landscape and final slopes of the area to be reclaimed.

All roads to be reclaimed and excavations should be shaped and graded to blend in with the original slope.

Final grading should leave slopes flatter than 3:1 where at all possible. Slopes of 6:1 or flatter are much more desirable for greater success in revegetation and safe operation of equipment. In some areas shallow depressions might be left after final shaping. These would serve to collect water to encourage the establishment of native trees and shrubs, as well as providing some extra wildlife habitat.

At the time of reclamation, the stockpiled topsoil should be spread about 6 inches thick over the area to be reclaimed and then disked or ripped to incorporate it with the subsurface material.

**FERTILIZATION:** We recommend that fertilizer be applied to the area to be reclaimed, either prior to seeding or after grass seedlings have reached the 2 to 3 leaf stage. No less than 10 pounds of nitrogen (N) and 40 pounds of phosphate (P<sub>2</sub>O<sub>5</sub>) per acre should be applied, unless a soil analysis indicates sufficient amounts of these elements. Animal manure, or similar organic material, may be used to supply all or part of the specified nutrients.

**SEEDBED PREPARATION:** The seedbed should be well settled and firm, but friable enough that seed can be drilled at the recommended depth. Soils that have been compacted by traffic or equipment should be tilled (deep chiseled or ripped, if necessary) to break up restrictive or compacted layers, and then harrowed and rolled or packed to prepare the required firm

seedbed. If the seed is to be broadcast, then the seedbed should be settled and fairly firm, but left rough to catch the seed and allow some coverage by soil when either harrowed and packed, or tracked into the soil surface using heavy equipment. Avoid seedbed preparation when the soil is wet to reduce compaction of the soil surface.

METHOD OF SEEDING: Seed should be planted with a grassland drill equipped with double disc openers, depth bands, seed box agitator, and either packing wheels or a cultipacker. If drilling is not feasible due to rock fragments on the surface, steep slopes, or other circumstances, the seed may be broadcast, then harrow and pack the soil surface, or track in the seed by walking a dozer over the seeded area. Double the seeding rates on the attached CO-ECS-5 form (Grass Seeding Plan) if seed is broadcast.

DEPTH OF SEEDING: Seed planted with a drill shall be covered with soil to a depth of 1/4 to 3/4 inch. Seed planted by the broadcast method shall be incorporated into the surface of the soil no deeper than 3/4 inch, by raking or harrowing, and rolling or packing, or by tracking the seed in with the tracks of a dozer.

TIME OF SEEDING: The best times would be between October 15 through April 1.

RATE OF SEEDING: | See attached CO-ECS-5 form

SELECTION OF SPECIES: | "Grass Seeding Plan"

MULCHING: Plantings should be mulched to conserve moisture, reduce runoff and erosion, and help establish vegetation. Mulching material should be applied immediately after seeding. Weed and seed free native grass hay is preferred or straw may be used at an application rate of 4000 pounds per acre of air dry material. See the attached SCS Standards and Specification 484-Mulching for more information and alternatives.

SOILS AND VEGETATION INFORMATION: This information is contained on the attached worksheets, soil maps, and mapping unit descriptions.

PROTECTION OF PLANTING: Planted sites shall be protected from trampling and grazing until plants are well established. In heavy-use areas, fencing or barriers should protect critical area plantings.

NOXIOUS WEED CONTROL: Although not a problem in this case, operator will be required to control any noxious weeds that may move on to the site before reclamation is completed. Once weed species are identified, use an appropriate herbicide for control. Follow all label instructions when using any herbicide. Noxious weeds are especially difficult to control so additional treatments will probably be needed.

Sincerely,

A handwritten signature in cursive script that reads "Rick Romano".

Rick Romano  
District Conservationist  
Canon City Field Office

Attachments: CO-ECS-5 Form--Grass Seeding Plan  
Soil Map  
Soil Mapping Unit Descriptions  
Soil interpretations for Construction Materials - Gravel

USDA IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER

Form CO-ECS-5 Computer Draft  
GRASS SEEDING RATE CALCULATIONS

PRODUCER: Buck Barnhart  
PLANNER: Rick Romano  
DATE: 6-Aug-02

PART I: SEEDING PLANNED

Contract or Agreement #:

Field No.: 1  
Acres: 160.00  
CIN No.:  
Pract. No.: 342  
Pract. Name: critical area planting

MLRA: 48B  
Irrigated:  
Dryland: yes  
Eco-Site: loamy park/mountain outwash  
Custer County Gravel Pit

Seedbed Preparation

Seeding Operation:

Method- final grading and top soiling  
Approx. Dates- prior to seeding  
Clean-tilled- yes, if drilling seed  
Firm Seedbed- yes, if drilling seed  
Stubble-  
Interseed-  
Other- leave surface rough if broadcasting  
then drag harrow or track in with do

Dates: Oct 1 to Apr 30  
Method-  
Interseed-  
Broadcast- see remarks  
Drill- yes (preferred)  
Drill type- grass  
Spacing- 6 to 12 inches  
Depth- 1/4 to 3/4 inch

Fertilizer: OPTIONAL, use soil analysis for recommendation  
Pounds actual per acre (avail.)

Nitrogen:  
Phosphate:  
Potassium:

Weed Control: follow label instructions  
Dates:  
Mowing-  
Chemical-  
Type and Amount-

Mulch:

Kind- native hay or straw  
Amount- 4000 (lbs/ac)  
How Applied- mulch spreader or manually  
How Anchored- mulch crimper or straight disc  
Anchor depth- 4 inches

SEEDING PLANNED:		(3)	(4)	(5)	(6)	(7)
(1)	(2)	PLS/ACRE	% OF	PLS RATE	PLANNED	TOTAL PLS
VARIETY	SPECIES	@ 100%	MIXTURE	PER ACRE	ACRES	REQUIRED
=====	=====	=====	=====	=====	=====	=====
Redondo	Arizona fescue	4.5	10	0.45	160.00	72.0
Durar	hard fescue	4.0	10	0.40	160.00	64.0
San Luis, Pryor	slender wheatgrass	11.0	40	4.40	160.00	704.0
Arriba, Barton, or Rosana	western wheatgrass	16.0	40	6.40	160.00	1024.0

=====

100	11.65	1864.0
		Pounds

REMARKS: BE SURE TO SPECIFY PURE-LIVE-SEED WHEN ORDERING THIS MIX.  
DOUBLE ALL SEED QUANTITIES IN COLUMN 7 IF BROADCASTING THIS MIX INSTEAD OF DRILLING.  
IF BROADCASTING THIS MIX, LEAVE THE SOIL SURFACE A LITTLE ROUGH AFTER PUTTING DOWN TOPSOIL, THEN BROADCAST  
THE SEED EVENLY OVER THE AREA AND COVER SEED USING A HARROW AND A PACKER OR TRACK IN USING A DOZER.

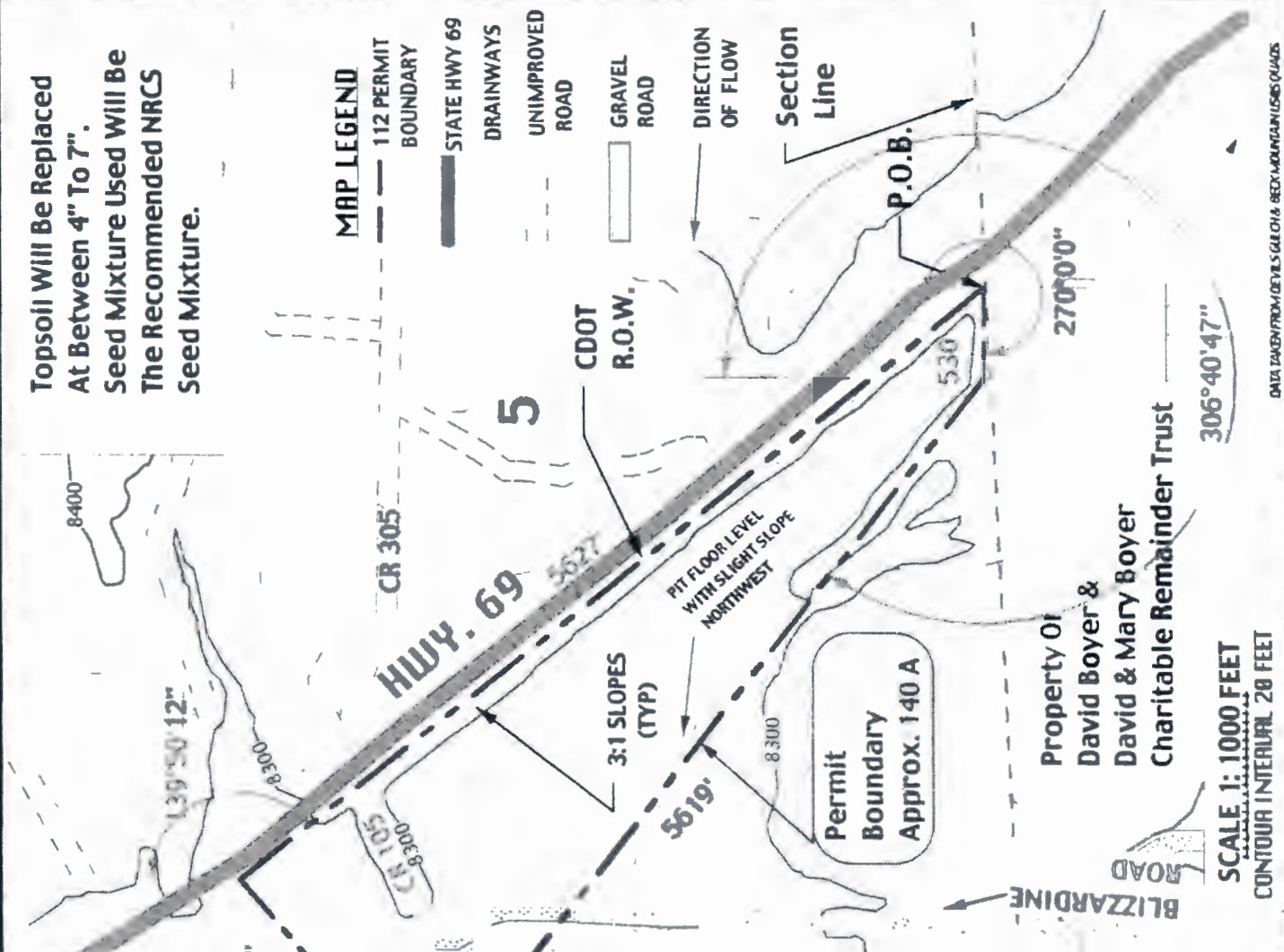


# BOYER GRAVEL PIT

Topsoil Will Be Replaced  
 At Between 4" To 7".  
 Seed Mixture Used Will Be  
 The Recommended NRCS  
 Seed Mixture.

## MAP LEGEND

- 112 PERMIT BOUNDARY
- STATE HWY 69
- DRAINWAYS
- UNIMPROVED ROAD
- GRAVEL ROAD
- CDOT R.O.W.
- DIRECTION OF FLOW
- Section Line



69

WS:

uth R.O.W. of  
 in line of section 8,  
 muth,  
 muth,  
 muth,  
 the P.O.B.  
 ess.

6

IS FOR 140 ACRES

LS/ACRE	% OF MIXTURE	PLS RATE PER ACRE	TOTAL PLS REQUIRED, FOR SEEDING
1.5	10	0.45	140.00
4.0	10	0.40	140.00
11.0	40	4.40	140.00
16.0	40	6.40	140.00
OTALS	100	11.65	1631.0

BROADCASTING THIS MIX INSTEAD OF DRILLING.

MAP COORDINATES:

UTM ZONE 13  
 4205000 N  
 480000 E  
 LAT. 38 N 00' 00"  
 LONG. 105 W 20' 00"

SCALE 1: 1000 FEET  
 CONTOUR INTERVAL 20 FEET

Property Of  
 David Boyer &  
 David & Mary Boyer  
 Charitable Remainder Trust

DATA TAKEN FROM DEVEL'S GLECH & RECLAMATION QUADS



NOTE: ALL DRAINWAYS WILL BE RECONSTRUCTED TO MAINTAIN THE HISTORIC FLOWS OF STORMWATER.

**NORTH**

**PERMIT BOUNDARY**

**TRAVERSE AS FOLLOWS:**

Starting at the P.O.B. on the South R.O.W. of Highway 69 on the North section line of section 8, thence 270 degrees 00' 00" azimuth, a distance of 530 feet, thence 306 degrees 40' 47" azimuth, a distance of 5619 feet, thence 50 degrees 51' 22" azimuth, a distance of 1720 feet, thence 139 degrees 50' 12" azimuth, a distance of 5627 feet, back to the P.O.B. Containing 140 acres more or less.

**SEEDING PLANNED: THIS PLAN IS FOR 140 ACRES**

VARIETY	SPECIES	PLS/ACRE @ 100%	% OF MIXTURE	PLS RATE PER ACRE	PLANNED ACRES	TOTAL PLS REQUIRED FOR SEEDING
Redondo	Arizona fescue	4.5	10	0.45	140.00	63.0
Durac	hard fescue	4.0	10	0.40	140.00	56.0
San Luis, Pryor	slender wheatgrass	11.0	40	4.40	140.00	616.0
Artida, Barton, or Rosana	western wheatgrass	16.0	40	6.40	140.00	896.0
	<b>TOTALS</b>	<b>100</b>		<b>11.65</b>		<b>1631.0</b>

REMARKS: DOUBLE ALL SEED QUANTITIES IF BROADCASTING THIS MIX INSTEAD OF DRILLING.

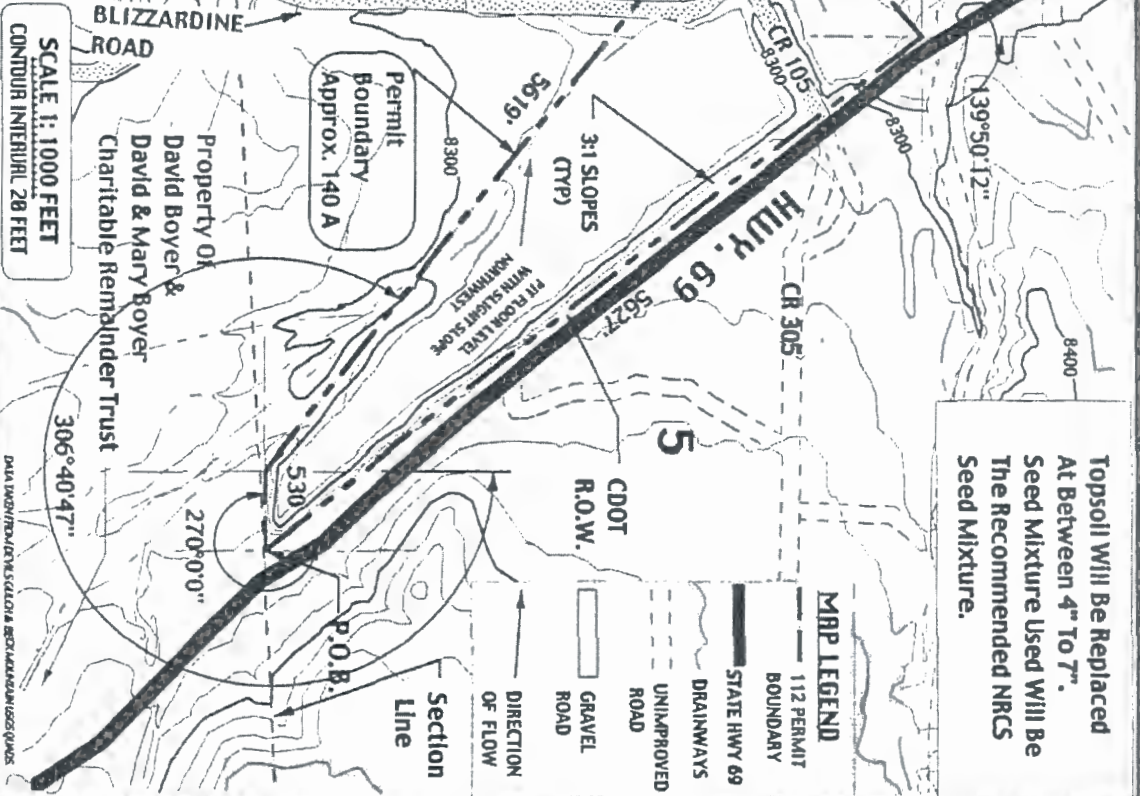
**LEGAL DESCRIPTION**

A PORTION OF LAND LOCATED IN CUSTER COUNTY, COLORADO R 71 W, T 24 S, SECTION 5, & SECTION 6, 6th P.M.

**MAP COORDINATES:**

UTM ZONE 13  
4200000 N  
460000 E  
LVL: 38 NAD 83  
LON: 103 W 20 00"

BOYER PIT PRE-MINING & RECLAMATION



# **BOYER GRAVEL PIT**

RECLAMATION MAP EXHIBIT "F"	CUSTER COUNTY COLORADO	CONSULTANT: J.P. GAGLIANO
SEIFERT CONSTRUCTION, 198 RANGE VIEW LOOP WESTCLIFFE, CO 81252		DATE: AUGUST 24, 2002

**NORTH**

**MINE PHASING**

ACRES	AREA	YEARS
13	1	2003-2008
14	2	2007-2012
15	3	2011-2016
13	4	2015-2020
14	5	2019-2025
9	6	2024-2029
7	7	2028-2033
11	8	2032-2037
8	9	2036-2041
		2040-2045

**PERMIT BOUNDARY**

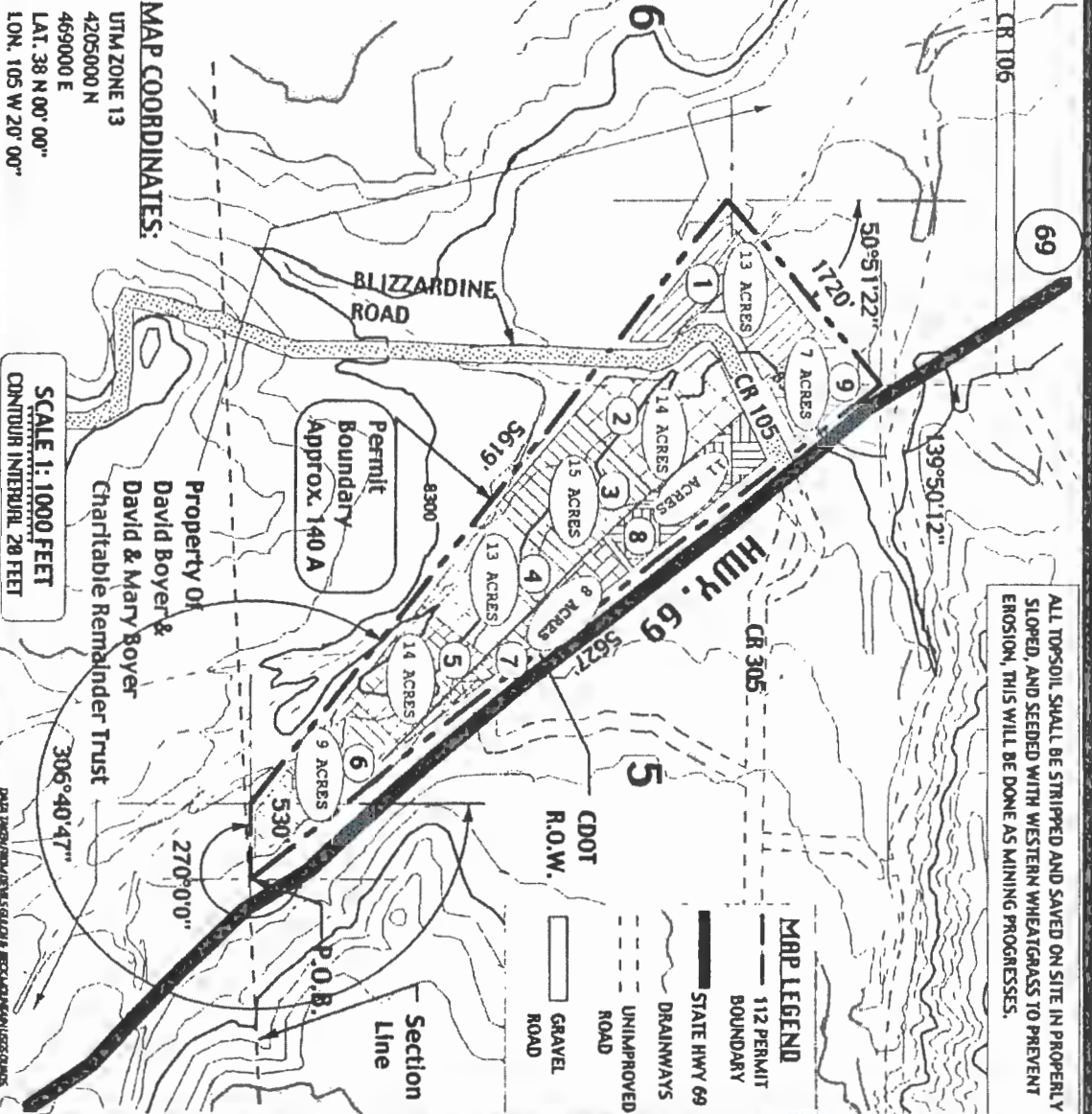
**TRAVERSE AS FOLLOWS:**

Starting at the P.O.B. on the South R.O.W. of Highway 69 on the North section line of section 8, thence 270 degrees 00' 00" azimuth, a distance of 530 feet, thence 306 degrees 40' 47" azimuth, a distance of 5619 feet, thence 50 degrees 51' 22" azimuth, a distance of 1720 feet, thence 139 degrees 50' 12" azimuth, a distance of 5627 feet, back to the P.O.B. Containing 140 acres more or less.

**LEGAL DESCRIPTION**

A PORTION OF LAND LOCATED IN CUSTER COUNTY, COLORADO R 71 W, T 24 S, SECTION 5, & SECTION 6, 6th P.M.

BOYER PIT PRE-MINING C. MINING



**BOYER GRAVEL PIT**

MINING MAP EXHIBIT "C"

CUSTER COUNTY COLORADO

CONSULTANT: J.P. GAGLIANO

SEIFERT CONSTRUCTION, 198 RANGE VIEW LOOP WESTCLIFFE, CO 81252

DATE: AUGUST 24, 2002.

Document No. 010535Date Issued: 06/21/2018**EXECUTIVE OFFICIAL REVIEW**Title of Document: BoyerRanchS&GLeaseAgmt.-SeifertEnterpr. Contact Name: CARLTON, RICHARD JProgram/Division: DIVISION OF NATURAL RESOURCESEmail: richardcarlton@frontier.com Phone Number: (928) 871-7949☐ **Business Site Lease** Sufficient    Insufficient1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

(only if Procurement Clearance is not issued within 30 days of the initiation of the E.O. review)

3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Business and Industrial Development Financing, Veteran Loans, (i.e. Loan, Loan Guarantee and Investment) or Delegation of Approving and/or Management Authority of Leasing transactions**1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Fund Management Plan, Expenditure Plans, Carry Over Requests, Budget Modifications**1. Office of Management and Budget: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Navajo Housing Authority Request for Release of Funds**1. NNEPA: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Lease Purchase Agreements**1. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐

(recommendation only)

2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Grant Applications**1. Office of Management and Budget: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Office of the Controller: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Five Management Plan of the Local Governance Act, Delegation of an Approving Authority from a Standing Committee, Local Ordinances (Local Government Units), or Plans of Operation/Division Policies Requiring Committee Approval**1. Division: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐☐ **Relinquishment of Navajo Membership**1. Land Department: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐2. Elections: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐3. Office of the Attorney General: \_\_\_\_\_ Date: \_\_\_\_\_ ☐ ☐



☐ **Land Withdrawal or Relinquishment for Commercial Purposes**

1. Division:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. Office of the Attorney General:	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **Land Withdrawals for Non-Commercial Purposes, General Land Leases and Resource Leases**

1. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6. DNR	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
7. DOJ	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **Rights of Way**

1. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Office of the Attorney General	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
7. OPVP	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permit, Mining Lease**

1. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. OPVP	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **Assignment of Mineral Lease**

1. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. DNR	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. DOJ	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☐ **ROW (where there has been no delegation of authority to the Navajo Land Department to grant the Nation's consent to a ROW)**

1. NLD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
2. F&W	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. HPD	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4. Minerals	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5. NNEPA	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6. DNR	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
7. DOJ	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
8. OPVP	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>

☒ **OTHER: Boyer Ranch Sand & Gravel Lease Agreement – Seifert Enterprises, LLC**

1. DOJ	<i>VB</i>	Date: <i>6/28/18</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. OP/VP	<i>Ry</i>	Date: <i>7-2-18</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. RDC/Legislative Branch	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
4.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
5.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>
6.	_____	Date: _____	<input type="checkbox"/>	<input type="checkbox"/>



# NAVAJO NATION DEPARTMENT OF JUSTICE

## DOCUMENT REVIEW REQUEST FORM



DOJ
6/21/18 11:11 am
DATE / TIME
<input type="checkbox"/> 7 Day Deadline
DOC #: 010535
SAS #:
UNIT: NRU

☐ RESUBMITTAL

\*\*\* FOR NNDJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. \*\*\*

CLIENT TO COMPLETE			
DATE OF REQUEST:	6/21/2018	DIVISION:	Natural Resources
CONTACT NAME:	Richard Carlton	DEPARTMENT:	Minerals #12
PHONE NUMBER:	928-871-6588	E-MAIL:	richardcarlton@frontier.com
TITLE OF DOCUMENT: Executive Official Review: Doc No. 010535, Title: Boyer Ranch S&G Leases Agmt. - Seifer Enterpr.			
DOJ SECRETARY TO COMPLETE			
DATE/TIME IN UNIT:	6-21-18 3pm	REVIEWING ATTORNEY/ADVOCATE:	April G 6-29-18
DATE TIME OUT OF UNIT:	6/28/18 2:43		
DOJ ATTORNEY / ADVOCATE COMMENTS			
Legally sufficient. DOJ assisted in the drafting of this lease.			
REVIEWED BY: (Print)	Date / Time	SURNAMED BY: (Print)	Date / Time
Quinn	6/28/18 1:07pm	VBlackhat	6/28/18 2:10pm
DOJ Secretary Called: Richard for Document Pick Up on 6/28/18 at 2:43 By: CJ			
PICKED UP BY: (Print)		DATE / TIME:	
Charmagne Tan		6/28/18 3:48	

NNDJ/DRRF-July 2013

Sponsen's COPY



**NAVAJO NATION DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

ETHEL B. BRANCH  
ATTORNEY GENERAL

CHERIE ESPINOSA  
ACTING DEPUTY ATTORNEY GENERAL

MEMORANDUM

TO: Mariana Kahn, Attorney  
Office of Legislative Counsel

FROM:   
April Quinn, Attorney  
Natural Resources Unit, Department of Justice

DATE: September 24, 2018

SUBJECT: Boyer Ranch Sand and Gravel Lease

Last year, the Navajo Nation purchased 11,380 acres of land in Custer County, State of Colorado, which is sometimes referred to as "Boyer Ranch". The Resources and Development Committee approved the purchase in accordance with the Navajo Nation Land Acquisition Act. See RDCO-113-17. Among other things, Boyer Ranch had a sand and gravel operation on-site when the Navajo Nation purchased the property. The Navajo Nation Minerals Department negotiated a new lease with the current sand and gravel operator. The Department of Justice (DOJ) assisted with the drafting of the lease.

Response to Questions

I have been asked two main questions concerning this lease, which are below, along with my brief responses.

**1) Does the Navajo Nation's regulatory jurisdiction apply to this lease?**

No. This lease concerns fee land located in Custer County, Colorado. Among other things, the Nation's laws pertaining to mining activities, environmental requirements and employment are not structured for a situation such as this, whereby the lease concerns fee land located several hundred miles away from the Navajo Nation.

The Lessee will be required to comply with Colorado law and any applicable federal laws. Among other things, the Lessee will comply with Colorado's mining and environmental requirements associated with sand and gravel activities. As this is an existing sand and gravel operation, the Lessee already has the necessary permits, reclamation plan and financing assurances required for these operations.

Although the Lessee will comply with Colorado law, nothing affects the Navajo Nation's



sovereign immunity. The Navajo Nation has agreed to a limited waiver for arbitration as a dispute resolution mechanism, in accordance with the Navajo Nation Arbitration Act, 7 N.N.C. § 1101 *et seq.* and Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*

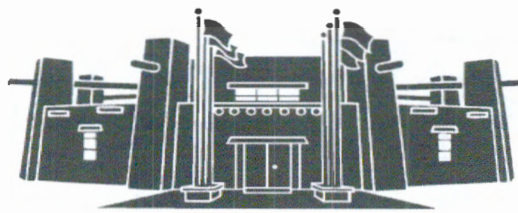
**2) Who has the authority within the Navajo Nation government to approve this lease?**

Although the Nation does not have regulatory authority over the lease, the Nation, as the Lessor, must determine who within the government has the authority to approve this lease on behalf of the Nation. DOJ believes the Resources and Development Committee has the authority. Under 2 NNC 501(B)(2), the Resources and Development Committee is the standing committee with final authority concerning leases "on Navajo Nation lands and unrestricted (fee) land".

**DOJ Recommendation**

In consultation with the Minerals Department, DOJ has the following recommendation: Given the uniqueness of this situation, in that we are dealing with fee land located in the State of Colorado, DOJ would recommend that the legislation approving the Boyer Ranch sand and gravel lease also state that any further actions with respect to this lease (amendment, renewal, etc.) should be delegated to the Executive Branch. The purchase of the Boyer Ranch property was partly in consideration for economic development. This sand and gravel operation is part of that economic development component. Allowing a delegation to the Executive Branch with respect to this lease would create an expedited process that would allow for economic development to continue without delay.

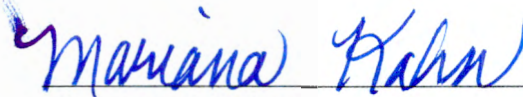
cc: Walter Phelps, Council Delegate, 23<sup>rd</sup> Navajo Nation Council  
Akhtar Zaman, Director, Navajo Nation Minerals Department



## MEMORANDUM

TO: Honorable Walter Phelps  
Cameron, Coalmine Canyon, Birdsprings, Leupp, Tolani Lake Chapters

FROM:



Mariana Kahn, Attorney  
Office of Legislative Counsel

DATE: September 28, 2018

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING A SAND AND GRAVEL LEASE AGREEMENT FOR SEIFERT ENTERPRISES, LLC, FOR 104 ACRES, MORE OR LESS, LOCATED ON LANDS KNOWN AS BOYER RANCH, CUSTER COUNTY, COLORADO, TO OPERATE AND MAINTAIN A SAND AND GRAVEL PIT

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that this particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: \_0334-18\_\_\_\_\_

SPONSOR: Walter Phelps

**TITLE: An Action Relating to Resources and Development; Approving a Sand and Gravel Lease Agreement for Seifert Enterprises, LLC, for 104 acres, more or less, located on lands known as Boyer Ranch, Custer County, Colorado, to operate and maintain a sand and gravel pit**

**Date posted: October 10, 2018 at 9:15am**

Digital comments may be e-mailed to [comments@navajo-nsn.gov](mailto:comments@navajo-nsn.gov)

Written comments may be mailed to:

Executive Director  
Office of Legislative Services  
P.O. Box 3390  
Window Rock, AZ 86515  
(928) 871-7590

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

**Please note:** This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION  
LEGISLATIVE BRANCH  
INTERNET PUBLIC REVIEW SUMMARY**

**LEGISLATION NO.: 0334-18**

**SPONSOR: Honorable Walter Phelps**

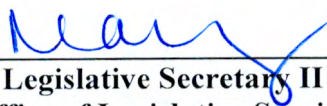
**TITLE: An Action Relating to Resources and Development; Approving a Sand and Gravel Lease Agreement for Seifert Enterprises, LLC, for 104 acres, more or less, located on lands known as Boyer Ranch, Custer County, Colorado, to operate and maintain a sand and gravel pit**

**Posted: October 10, 2018 at 9:15am**

**5 DAY Comment Period Ended: October 15, 2018**

**Digital Comments received:**

<b>Comments Supporting</b>	<i>None</i>
<b>Comments Opposing</b>	<i>None</i>
<b>Inconclusive Comments</b>	<i>None</i>

  
\_\_\_\_\_  
**Legislative Secretary II  
Office of Legislative Services**

10/14/18 8:17am  
\_\_\_\_\_  
**Date/Time**

**RESOURCES AND DEVELOPMENT COMMITTEE  
23rd NAVAJO NATION COUNCIL**

**FOURTH YEAR 2018**

**COMMITTEE REPORT**

Mr. Speaker,

The **RESOURCES AND DEVELOPMENT COMMITTEE** to whom has been assigned:

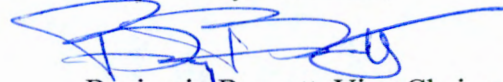
**LEGISLATION # 0334-18:** AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING A SAND AND GRAVEL LEASE AGREEMENT FOR SEIFERT ENTERPRISES, LLC, FOR 104 ACRES, MORE OR LESS, LOCATED ON LANDS KNOWN AS BOYER RANCH, CUSTER COUNTY, COLORADO, TO OPERATE AND MAINTAIN A SAND AND GRAVEL PIT. *Sponsor: Honorable Walter Phelps*

Has had it under consideration and reports a **DO PASS** with the following amendment;

Amendment # 1: Extract Exhibit A, entitled "Boyer Ranch Sand and Gravel Lease Agreement" and incorporate the attached revised **Exhibit A** as the new Sand and Gravel Lease Agreement for the final resolution.

And thereafter the matter was approved.

Respectfully submitted,



Benjamin Bennett, Vice-Chairperson  
Resource and Development Committee of  
the 23<sup>rd</sup> Navajo Nation Council

Date: October 31, 2018 - Regular Meeting

Meeting Location: Navajo Nation Council Chambers, Window Rock, Arizona

**MAIN MOTION:** Walter Phelps S: Jonathan Perry V: 3-0-1 (VCNV)

YEAS: Jonathan Perry, Walter Phelps, Davis Filfred

NAYS: NONE

EXCUSED: Alton Joe Shepherd and Leonard Pete

**AMENDMENT # 1:** Walter Phelps Second: Davis Filfred Vote: 3-0-1 (VCNV)

YEAS: Walter Phelps, Davis Filfred and Jonathan Perry

NAYS: None

EXCUSED: Alton Joe Shepherd and Leonard Pete



**BOYER RANCH**  
**SAND AND GRAVEL LEASE AGREEMENT**

***PARTIES:***

The parties to this agreement (or "Lease") are the Navajo Nation, herein referred to as "Lessor", and Seifert Enterprises, LLC of Westcliffe, Colorado as "Lessee".

***PROPERTY:***

The property which is the subject of the Lease is generally located within the West One-half of Section 5 and the East One half of Section 6, Township 24 South, range 71 West of the 6th Principal Meridian, County of Custer, State of Colorado (herein referred to as "Property"). Lessor warrants that Lessor is the owner of the above-described property and has the right to convey and grant the rights and privileges provided in this Lease.

***PURPOSE:***

The Lessor is the owner of the Property described in Exhibit A which has deposits of sand, gravel, rock, topsoil and aggregate. The Lessor has agreed to lease to the Lessee for the purposes of removing, processing and selling the same in the general business of sand, gravel and aggregate production and sales the area of the Property addressed in Exhibit A (herein referred to as the "Leased Premises"), subject to the terms and conditions set forth in this Lease.

***TERM:***

In consideration of the payments herein provided, the Lessor hereby leases unto Lessee the following described premises beginning on the 1<sup>st</sup> day of November 2018 for a term of five (5) years until the 30th day of November 2022.

***EQUIPMENT USED:***

Lessor further grants to Lessee the right to use all or any portion of the Leased Premises for the purpose of erecting any and all equipment and temporary structures that may be used by Lessee in the production of Product as authorized herein and the right to grade roads or rights-of-way on the Property to any and all points on such Property necessary or useful in the production and removal of Product from the Leased Premises, provided that Lessee provide notice to the Navajo Nation Minerals Department or its successor prior to the grading of such roads or use of such rights-of-way.



**PRODUCT:**

Lessor grants unto Lessee the right to remove the following Product from the Leased Premises:

Sand, gravel, interbedded sandy clay and topsoil for production of sand, gravel, aggregate, decorative rock, base course, pit run and rock chips and topsoil to the extent not required for reclamation of the property.

Lessee acknowledges and agrees that lessee has no right to remove any other minerals or any material containing same from the Property.

**CONSIDERATION:**

As consideration for this Lease, the Lessee shall pay to the Lessor the sum of One Dollar (\$1.00) per ton or 2,000 pounds of Product. Lessee shall furnish Lessor with monthly records of material removed within ten (10) days of the close of each month and at the time of same shall tender payment to the Lessor for materials sold at the rate provided of One Dollar (\$1.00) per ton. Lessor shall, at all times, have the right to examine the Leased Premises, review and audit the records of the Lessee and to verify any information by contacting Lessee account holders. The payment of One Dollars (\$1.00) per ton or 2,000 pounds of Product shall be subject to annual adjustments on each June 31<sup>st</sup> anniversary date. The adjustments shall be based upon the increase in the Consumer Price Index (CPI), U.S. City Average for All Urban Consumers. The CPI for January 2018 shall be used as the base for all adjustments.

**RIGHTS OF LESSOR:**

It is agreed and understood that Lessor shall, at all times during the term of this agreement, have the use of any and all parts of the above-described Property for any and all purposes, including sand and gravel operations, except for those portions actually being occupied and used by Lessee for the production and removal of sand or gravel as provided in this agreement. Lessee, however, shall have the right of ingress and egress to and from the Leased Premises to be used by Lessee. Lessee shall coordinate its use of the Leased Premises with Lessor and will not open pit sites on the Lease Premises without discussing and coordinating the same with the Lessor.

**CONSTRUCTION OF FENCES:**

Lessee agrees to construct and maintain a good and sufficient fencing around the sand and gravel pits and to dispose of the overburden as may be directed by the Lessor and as required by permits with the State of Colorado.

***PERMITS:***

Lessee shall take all steps to arrange for permits for mining, crushing, washing, distributing and hauling its Product upon and from the Leased Premises and shall pay all costs for the same and fully comply with all of the provisions, terms and conditions of all laws, whether federal, state or local and orders issued thereunder which may be in effect during the Term of this Lease relating to the operations of the Lessee under this Lease and the marketing of any Product thereof. Lessee shall provide to Lessor a copy of the required permits prior to execution of this Lease.

***LIVESTOCK OPERAITONS:***

Lessee acknowledges that Lessor may lease out portions of its Property for livestock and growing crops to third parties. Lessee shall be liable and agrees to pay for all damages to the surface of the Property, livestock, growing crops, or improvements caused by Lessee's operations on the Leased Premises or adjacent Property.

***LIABILITY:***

Lessee shall indemnify Lessor against all liability and loss and against all claims and actions of any kind, including the defense of such claims or actions based upon or arising out of damage or injury including death, to persons or property caused by or sustained in connection with this Lease by conditions created thereby or by any operations of the Lessee, Lessee's agents, employees or subcontractors or based upon any violation of any applicable law. In that regard, the Lessee shall maintain throughout the term of this agreement, a public liability insurance policy naming Lessor, The Navajo Nation, as additional insured with minimum single limits of One Million and 00/100 Dollars (\$1,000,000.00). Such policy shall require notice to Lessor of cancellation at least thirty (30) days prior to any cancellation date. Failure to maintain such insurance shall be deemed a default of the terms of this Lease.

***WATER:***

It is agreed that Lessee shall supply its own water supply.

***INSPECTION:***

The Lessor shall, at all reasonable times, have the right of full access to the Leased Premises for the purpose of inspection of the same, including the right to inspect all records, permits, and reports utilized in the operation of the same. In that regard, the parties understand and agree that Lessor may make such inspections in-person or by its representative, Samuel Diswood, or by any other representative designated in writing by Lessor throughout the term of this Lease.

**REMOVAL OF IMPROVEMENTS:**

All fences and other improvements installed by the Lessee during the Term of the Lease shall be removed at its termination unless otherwise agreed between Lessee and Lessor in writing.

**DISPUTE RESOLUTION:**

Any claim, dispute, or other matter in question arising out of or relating to this Lease shall be resolved by negotiations, mediation and/or arbitration procedures set forth as follows:

- A. **Negotiation:** In the event a dispute shall arise between the parties to this Lease, the parties agree to attempt to negotiate a just and equitable settlement thereof. If either party fails or refuses to participate in such negotiations or such negotiations do not result in the parties resolving the dispute within twenty (20) working days after one party has requested that negotiation begin (and the period is not extended with the consent of the parties), then either party may cause the dispute to be referred to mediation.
- B. **Mediation:** The parties shall endeavor to resolve claims, disputes and other matters in questions between them by good faith negotiation and mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Commercial Mediation Rules of the American Arbitration Association, as modified by the following:
  - 1. Unless otherwise agreed to in writing by the parties, all mediation procedures shall be held in Window Rock, Arizona;
  - 2. A single mediator may be chosen by mutual agreement of the parties;
  - 3. The party desiring mediation shall submit to the other party a written notice of intent to mediate, and such notice shall indicate whether the hiring of a mediator is desired;
  - 4. The parties shall equally share the mediator's fee and any other costs related to the mediation; and
  - 5. The mediation shall not exceed ninety (90) calendar days, unless otherwise agreed to in writing by the parties.



7.

**C. Arbitration:** If the mediation provided for the subsection (B) above does not result in resolution of the parties' dispute within ninety (90) calendar days of commencement of the mediation, then, unless the parties agree in writing to extend the time for mediation, either party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§ 554 J and § 554 K, and as set forth in the Navajo Nation Arbitration Act, as amended at 7 N.N.C. §§ 1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:

1. Unless otherwise agreed to in writing by the parties, all arbitration procedures shall be held in Window Rock, Arizona;
2. The arbitration shall be conducted by a single arbitrator selected by the Navajo Nation, unless one of the parties' claims exceeds \$1,000,000.00, exclusive of interest, costs, and fees; in such case the arbitration shall be conducted by a panel consisting of three (3) arbitrators, one of which shall be chosen by each party, with the two arbitrators choosing the third; at least one arbitrator shall possess at least ten (10) years of experience in Indian Law;
3. Notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. § 555;
4. Whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Nation shall be in strict conformance with the provisions of 1 N.N.C. § 554 K 1-6;
5. Pursuant to 1 N.N.C. § 554 K and 7 N.N.C. § 1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Nation's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; neither party may recover from the other any attorney fees or costs.

- D. **Waiver of Suit:** The negotiation, mediation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising out of this Lease. Commencement of negotiations, mediation or arbitration shall be a complete defense to any suit, action or proceeding instituted in any federal, state, or tribal court or any administrative tribunal, with respect to any dispute or controversy arising out of this Lease that is negotiated, mediated or arbitrated as set forth herein.
- E. **Post-termination; Post-expiration:** The dispute resolution provisions of this Lease shall, with respect to such any dispute or controversy arising out of this Agreement, survive the termination or expiration of this Lease.

**WAIVER:**

The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement or the waiver of any breach of any of the terms and conditions of this agreement shall not be construed as thereafter waiving any such terms and conditions in the event of a subsequent breach, and the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

**MODIFICATION OF AGREEMENT:**

A modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing, signed by each party or an authorized representative of each party.

**ASSIGNMENT:**

This agreement may not be assigned or transferred by Lessee nor may any interest in the Leased Premises be sublet, assigned, transferred, or hypothecated by Lessee without the prior written consent of Lessor.

**ENTIRE AGREEMENT:**

This agreement shall constitute the entire agreement between the parties and any prior understanding or representative of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

**GOVERNING LAW:**

It is agreed that this agreement shall be governed by, construed and enforced in accordance with the laws of the State of Colorado, unless expressed stated otherwise herein.

**SOVEREIGN IMMUNITY:**

Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

**PARTIES BOUND:**

This agreement shall be binding upon the parties hereto, their heirs, successors, executors, administrators, employees, agents, or assigns.

**DEPARTMENT OF JUSTICE APPROVAL:**

Pursuant to 1 N.N.C. § 554(J)(2) and (K)(2), Navajo Nation Department of Justice Approval is required for all agreements that include a limited waiver of sovereign immunity to compel or enforce arbitration under the Navajo Nation Arbitration Act, as amended, 7 N.N.C. § 1101 et seq.

  
\_\_\_\_\_  
Navajo Nation Department of Justice



**LESSOR:**

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
The Navajo Nation

**LESSEE:**

DATED this 11<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
Seifert Enterprises, LLC

**RESOURCES AND DEVELOPMENT COMMITTEE**

**Regular Meeting**

**October 31, 2018**

**ROLL CALL**

**VOTE TALLY SHEET:**

**LEGISLATION # 0334-18:** AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING A SAND AND GRAVEL LEASE AGREEMENT FOR SEIFERT ENTERPRISES, LLC, FOR 104 ACRES, MORE OR LESS, LOCATED ON LANDS KNOWN AS BOYER RANCH, CUSTER COUNTY, COLORADO, TO OPERATE AND MAINTAIN A SAND AND GRAVEL PIT. *Sponsor: Honorable Walter Phelps*

**MAIN MOTION:** Walter Phelps S: Jonathan Perry V: 3-0-1 (VCNV)

**YEAS:** Jonathan Perry, Walter Phelps, Davis Filfred

**NAYS:** NONE

**EXCUSED:** Alton Joe Shepherd and Leonard Pete

**AMENDMENT # 1:** Walter Phelps Second: Davis Filfred Vote: 3-0-1 (VCNV)

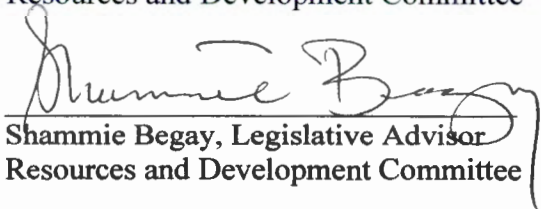
**YEAS:** Walter Phelps, Davis Filfred and Jonathan Perry

**NAYS:** None

**EXCUSED:** Alton Joe Shepherd and Leonard Pete



Benjamin Bennett, Vice-Chairperson  
Resources and Development Committee



Shammie Begay, Legislative Advisor  
Resources and Development Committee