

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

**IN RE BENTONITE PERFORMANCE) DOCKET 18-1601
MINERALS LLC)**

BENTONITE PERFORMANCE MINERAL'S RESPONSE TO INTERROGATORIES

Bentonite Performance Minerals, LLC (BPM), by and through undersigned counsel, hereby responds to 2U Ranch LLC's (2U) Interrogatories as follows:

TERMS AND DEFINITIONS

BPM incorporates and adopts the terms and definitions as provided in Exhibit A of the November 5, 2018 Notice of Deposition Duces Tecum of Mr. Ronald Ericsson.

GENERAL OBJECTION TO INTERROGATORIES

Interrogatory Nos. 3, 4, 5, 6 and 9 request information beyond the scope of the proceeding as ordered by the Hearing Examiner in the August 21, 2018 Order of Schedule. Pursuant to the Order of Schedule, the scope of this proceeding is limited to the following four statutory elements: (1) that the Mining and Reclamation Plans have been submitted to the surface owner for approval; (2) that the Mining and Reclamation Plans are detailed as to illustrate the full proposed surface use, including proposed routes of ingress and egress; (3) that the use does not substantially prohibit the operations of the surface owner; and (4) that the Reclamation Plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible. Order of Schedule at 1. The Hearing Examiner has prohibited testimony on issues concerning (1) whether the application is technically correct; (2) whether the lease is valid; and (3) whether the permit should be issued. Order at Schedule at 2. BPM objects to Interrogatory Nos. 3, 4, 5, 6 and 9 to the degree that the interrogatories seek information beyond the scope of the proceeding as ordered by the Hearing Examiner.

INTERROGATORIES

1. The approximate tonnage of bentonite which lies under the area where the 10,936 trees are located.

RESPONSE: It is unclear what “the area where the 10,936 trees are located” means as used in this request. BPM understands Interrogatory No. 1 to request the approximate tonnage of recoverable bentonite deposits existing under the Subject Lands. Based on available data, BPM approximates the tonnage of recoverable bentonite deposits existing under the Subject Lands to be 979,972 tons, with 974,040 tons being low-grade blue and yellow bentonite.

2. The depth in feet below the surface where the bentonite is located under the area where the 10,936 trees are located.

RESPONSE: It is unclear what “the area where the 10,936 trees are located” means as used in this request. BPM understands Interrogatory No. 2 to request the approximate depth of recoverable bentonite deposits existing under the Subject Lands. Based on available data, BPM approximates the depth of recoverable bentonite deposits existing under the Subject Lands to range from 0 feet (outcrop) to 69 feet, with an average depth of 38 feet from surface to the bottom of the bentonite deposits.

3. The number of property owners with which Bentonite Performance Minerals, LLC has had, or now has, mining agreements within the past five years, and the term in years of each of these agreements

RESPONSE: BPM objects to Interrogatory No. 3 to the degree that it seeks information beyond the scope of the proceeding as ordered by the Hearing Examiner or confidential business information. Notwithstanding, it is unclear what the term “mining agreements” means as used in this request. BPM understands Interrogatory No. 3 to request contractual agreements granting

BPM the right to conduct the Proposed Mining Operations. The State of Wyoming is the owner of the mineral estate of the Subject Lands. BPM has a leasehold right to conduct the Proposed Mining Operations by virtue of a June 2, 2011 lease agreement by and between BPM and the State of Wyoming, whereby the State of Wyoming granted BPM the exclusive right and privilege to strip-mine, extract, remove and dispose of the bentonite deposits existing under the Subject Lands.

4. How many of the property owners referred to in Interrogatory Number 3 have only the surface ownership and not the mineral ownership, including their names and addresses.

RESPONSE: BPM objects to Interrogatory No. 4 to the degree that it seeks information beyond the scope of the proceeding as ordered by the Hearing Examiner or confidential business information. Notwithstanding, the property owners of the Subject Lands are 2U (surface estate) and the State of Wyoming (mineral estate). BPM has no contractual relationship with 2U.

5. The tonnage of bentonite which Bentonite Performance Minerals, LLC has mined on an annual basis over the past five years.

RESPONSE: BPM objects to Interrogatory No. 5 to the degree that it seeks information beyond the scope of the proceeding as ordered by the Hearing Examiner or confidential business information. Notwithstanding, BPM understands Interrogatory No. 5 to request the tonnage of bentonite mined and hauled to BPM's Colony, Wyoming plant on a per annum basis. The tonnage of bentonite mined and hauled to BPM's Colony, Wyoming plant on a per annum basis varies because of unpredictable market forces, bentonite quality and availability, and extraction and refining limitations. The bentonite deposits existing under the Subject Lands are predominantly low-grade blue and yellow bentonite. Over the past five years, BPM has mined

and hauled an average of 67,000 tons of low-grade blue and yellow bentonite per year to the Colony, Wyoming plant.

6. Did Bentonite Performance Minerals, LLC have any type of bond protecting the surface owners in these mining agreements from damage resulting from mining activities.

RESPONSE: BPM objects to Interrogatory No. 6 to the degree that it seeks information beyond the scope of the proceeding as ordered by the Hearing Examiner or confidential business information. Notwithstanding, BPM is required to post bonds prior to initiating surface mining operations. Bonding requirements are set by the Administrator of the Wyoming Department of Environmental Quality, Land Quality Division after the issuance of a surface mining permit as provided by Wyoming statutes and regulations. The Administrator of the Wyoming Department of Environmental Quality, Land Quality Division has not yet required BPM post bonds for the Proposed Mining Operations as the permit application is pending.

7. Explain with specificity how Bentonite Performance Minerals, LLC plans on restoring the surface, which is to be mined, back to its original condition, including, but not limited to, the number of trees, the age of the trees, the height of the trees, the circumference of the trees, natural water spring, wetlands, wildlife habitat, and scenic value.

RESPONSE: BPM objects to Interrogatory No. 7 to the degree it misstates surface mine reclamation standards. Notwithstanding, BPM will reclaim the Subject Lands equal to or greater than the highest previous use of the Subject Lands as required by Wyoming statutes and regulations. The Reclamation Plan details BPM's reclamation obligations for the Proposed Mining Operations, including but not limited to the collective reclamation techniques to be utilized, the post-mining surface configurations, restored drainage patterns, approved post-mining stock ponds, and the type and vigor of seeded plant species.

8. Has Bentonite Performance Minerals, LLC conducted a survey of the 10,936 trees, to be removed during the mining activities, to permit the replacement of each and every tree to correspond to each trees age, height, circumference, and species.

RESPONSE: BPM objects to Interrogatory No. 8 to the degree it misstates surface mine permitting baseline survey and reclamation standards. Notwithstanding, BPM conducted a baseline vegetation survey (including tree density and woodland community type) of the Subject Lands as required by Wyoming statutes and regulations. The Vegetation Report, together with the associated Vegetation Map and Data Table, have been provided to the Wyoming Department of Environmental Quality, Land Quality Division for review. Regarding reclamation obligations, BPM incorporates and adopts its response to Interrogatory No. 7.

9. Please name each of the property owners which BPM must travel across to reach the proposed mining area; and please name each of the property owners which have provided BPM permission to cross their property.

RESPONSE: BPM objects to Interrogatory No. 9 to the degree that it seeks information beyond the scope of the proceeding as ordered by the Hearing Examiner or confidential business information. Notwithstanding, access to the Subject Lands for purposes of conducting the Proposed Mining Operations has not been finalized. Points of ingress to and egress from the Subject Lands for purposes of conducting the Proposed Mining Operations are identified in the Mining and Reclamation Plans, as is proposed road construction and use on and over the Subject Lands.

DATED this 5 December 2018.

AS TO INTERROGATORIES:


Tyler Tetrault
Mineral Resource Coordinator

STATE OF ^{Wyoming} ~~SOUTH DAKOTA~~)
COUNTY OF ~~BUTTE~~ ^{Crook}) ss.

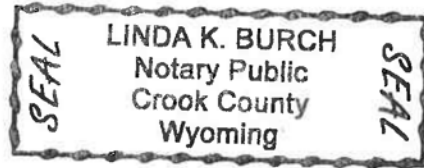
The foregoing instrument was subscribed and sworn to before me this 7 day of December, 2018, by Tyler Tetrault, Mineral Resource Coordinator for Bentonite Performance Minerals, LLC.

Witness my hand and official seal.


Linda K Burch

My commission expires:

My Commission Expires
April 15, 2021



AS TO OBJECTIONS:

A handwritten signature in blue ink, appearing to read "S.R. Yemington" with a stylized flourish at the end.

Matthew J. Micheli, P.C.
Samuel R. Yemington
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CERTIFICATE OF SERVICE

I certify that on December 7, 2018 I served a copy of the foregoing document to the following by email:

Ronald Ericsson/2U Ranch
ericsson@childselect.com