

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

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

**ORDER GRANTING IN PART BENTONITE
PERFORMANCE MINERALS, LLC'S MOTION FOR SUMMARY JUDGMENT**

Petitioner, Bentonite Performance Minerals, LLC (BPM) filed a motion for summary judgment on December 21, 2018. The motion requested the Council to grant BPM summary judgment on its petition requesting an order in lieu of consent. The Council heard oral argument on BPM's motion on January 16, 2019.

Having considered the motion, 2U Ranch's response, BPM's reply, and relevant filings and being fully advised, the Council finds and concludes as follows:

1. BPM's motion for summary judgment is granted in part and denied in part based upon the reasons stated during the Council's deliberations on January 16 following the oral argument. The Council has the authority under its rules and the Wyoming Rules of Civil Procedure to grant a summary judgment in part.

2. The Council concludes that summary judgment for BPM is appropriate as to the first two elements that BPM must prove under Wyoming Statute § 35-11-406(b)(xii). The materials attached to the parties' filings, viewed in the light most favorable to 2U Ranch, reveals that no genuine issues of material fact exist as to the elements outlined in Wyoming Statute § 35-11-406(b)(xii)(A) and (B) and BPM is entitled to judgment as a matter of law.

3. Based upon the filings and attachments, it is undisputed that the mining and reclamation plans have been submitted to the surface owner for approval and that those plans are

detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress.

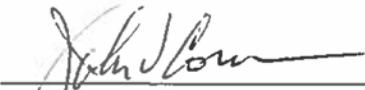
4. However, the Council finds and concludes that there are disputed material facts that relate to the third and fourth elements in section 406(b)(xii)(C) and (D). As a result, summary judgment is not appropriate as to those two elements.

5. Accordingly, during the contested case hearing scheduled for February 11, the Council will hear and consider evidence relevant to the elements in section 406(b)(xii)(C) and (D), specifically whether BPM's use substantially prohibits the operations of the surface owner and whether the proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible.

6. BPM's motion for summary judgment is granted in part and denied in part as stated herein.

SO ORDERED.

DATED this 30th day of January 2019.



John Corra, Hearing Examiner
Environmental Quality Council

CERTIFICATE OF SERVICE

I, Jim Ruby, certify that at Cheyenne, Wyoming, on the 30 day of January 2019, I served a copy of the foregoing **Order Granting in Part Bentonite Performance Minerals, LLC's Motion for Summary Judgment** by electronic mail to the following:

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