

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

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

**PETITIONER BENTONITE PERFORMANCE MINERALS, LLC'S RESPONSE IN
OPPOSITION TO RESPONDENT 2U RANCH, LLC'S MOTION TO DISMISS**

Petitioner Bentonite Performance Minerals, LLC (BPM), pursuant to Chapter 2, Section 11(a) of the Rules of the Wyoming Department of Environmental Quality (DEQ) and the Hearing Examiner's August 21, 2018 Order of Schedule, hereby responds in opposition to Respondent 2U Ranch LLC's (2U) Motion to Dismiss the above-captioned proceeding and states as follows in support:

Introduction

In an effort to further frustrate this proceeding, 2U alleges – for the first time and without factual or legal support – that BPM trespassed on its surface lands to collect baseline soil, vegetation, and wildlife data. 2U's allegations are spurious. Wyo. Stat. Ann. § 6-3-414, the data trespass statute relied upon by 2U, does not criminalize access by persons having an ownership interest in the property or permission from a property owner to access the property. When the surface was severed from the mineral estate, the State of Wyoming expressly reserved the right to enter and use the surface lands to develop the minerals. When the State of Wyoming leased the bentonite to BPM, it assigned its rights to access and use the surface to BPM. As a result, BPM has the right to enter upon, occupy, and enjoy such surface areas as are necessary for the mining of bentonite. This includes the right to access the surface lands to gather resource data related to the mining operations. Gathering baseline resource data is a lawful exercise of BPM's property rights and cannot constitute a trespass.

BPM 78

BPM's motion to dismiss underscores its fundamental misunderstanding of this dispute and its property rights. BPM has property rights associated with its bentonite lease, including the right to access and use the surface lands as reasonably necessary to develop the leased bentonite deposits. Ever since the State of Wyoming severed the surface estate from the mineral estate in 1939, the subsequent owners of the surface lands (including 2U) have had no legal interest in the mineral estate and no legal right to obstruct or block the development of the minerals. BPM, in exercising the State of Wyoming's property rights to access and use the surface lands to gather resource data necessary for the development of its mineral estate cannot constitute a trespass. One cannot trespass on its own property, and Wyo. Stat. Ann. § 6-3-414 acknowledges this reality.

Setting aside the fact that BPM had the right to collect baseline data from the surface lands above the leased bentonite, the EQC lacks the statutory and regulatory authority to resolve issues of trespass. Wyo. Stat. § 6-3-414 is a criminal statute. The authority to interpret and enforce a criminal trespass statute rests exclusively with the Wyoming judiciary. 2U presents no argument and BPM identifies no support for the premise that the Wyoming Legislature intended to vest the EQC with the authority to resolve data trespass disputes. Absent the requisite statutory or regulatory directive, the EQC does not have the authority to interpret or enforce Wyo. Stat. § 6-3-414 or grant the relief requested by 2U.

Even if the EQC were vested with the authority to resolve trespass disputes, the issue exceeds the scope of this proceeding. Pursuant to the Order of Schedule, the scope of this proceeding is limited to determining whether (1) the mining and reclamation plans have been submitted to 2U; (2) the mining and reclamation plans adequately detail the proposed surface use, including routes of ingress and egress; (3) that the proposed surface use does not

substantially prohibit the operations of the surface owner; and (4) the proposed reclamation plan reclaims the surface lands to their approved future use of grazingland as soon as feasibly possible. 2U's allegations of trespass are irrelevant because an Order in Lieu of Consent proceeding in no way implicates baseline soil, vegetation, or wildlife data. The mining and reclamation plans at issue here constitute one aspect of a mine permit amendment application; the plans do not include or rely upon baseline soil, vegetation, or wildlife data. As such, granting the relief requested by 2U – the expungement of DEQ records – would have no consequence on this proceeding.

If 2U is sincere in their belief that BPM trespassed on its lands, it is obligated to pursue its remedy through the appropriate legal authority. The EQC is not that authority. BPM respectfully requests that the motion should be denied.

Threshold Matter Regarding Effective Date of Wyo. Stat. § 6-3-414

It is not disputed that BPM obtained baseline soil, vegetation, and wildlife data from Lease 0-42804 surface lands in 2014. Wyo. Stat. Ann. § 6-3-414, the data trespass statute relied upon by 2U, was not in force and effect until March 5, 2015. *See* Laws 2015, Ch. 146, § 1, eff. March 5, 2015. The data trespass statute cannot be applied retroactively, and BPM could not have violated a law that did not exist. *See Johnson v. Safeway Stores, Inc.*, 568 P.2d 908, 914 (Wyo. 1977); *see also Mullinax Concrete Serv. Co. v. Zowada*, 2012 WY 55, ¶ 6, 275 P.3d 474, 476 (Wyo. 2012). As such, 2U's allegations of data trespass prior to March 5, 2015 are entirely without legal basis and must be denied.

Background and Facts

BPM conducts bentonite surface mining operations pursuant to Mine Permit 267C. Certain bentonite deposits included in Mine Permit 267C exist under surface lands owned by 2U,

and BPM has conducted strip-mining operations on 2U surface lands. A Surface Use and Haulage Agreement (SUA), dated June 1, 2007, provided BPM access to approximately 1,827.64 acres of 2U surface lands for purposes of conducting bentonite mining operations. Ex. A, SUA. The SUA expired by its terms on May 31, 2017.

BPM is the lessee of certain unpermitted bentonite deposits owned by the State of Wyoming and existing under 2U surface lands. Ex. B, Lease 0-42804. Pursuant to Lease 0-42804, the State of Wyoming granted BPM the exclusive right and privilege to strip-mine, extract, remove, and dispose of an estimated 1,000,000 tons of bentonite deposits under approximately 608.66 acres of 2U surface lands. *Id.* at 1. Notably, the lease provides BPM “the right to enter upon, occupy and enjoy such surface areas of the described tract as are necessary for the mining of bentonite and the construction of all buildings and other surface improvements incidental to the work contemplated by this lease.” *Id.* at 4.

Beginning in 2014, BPM initiated efforts to amend Mine Permit 267C to include the Lease 0-42804 bentonite deposits. BPM notified 2U of its intent to develop the Lease 0-42804 bentonite deposits and, in the years to follow, solicited 2U’s review and input regarding the proposed operations. Ex. C, Taylor Letter. BPM worked closely with 2U in planning the development of Lease 0-42804, and the parties discussed all aspects of the anticipated operations, including routes of ingress and egress, surface disturbance, mining progression, and reclamation. Even though BPM had the leasehold right to access the Lease 0-42804 surface lands, out of courtesy, it coordinated these activities with 2U. Though not legally obligated, BPM notified 2U of its intent to access Lease 0-42804 surface lands to gather baseline soil, vegetation and wildlife data necessary for the processing the Mine Permit 267C amendment

application. At no point did 2U object. The parties' interactions regarding the collection of baseline data from Lease 0-42804 surface lands are as follows:

- On April 25, 2014, BPM notified 2U that, throughout the year as weather permitted, BPM and their consultants would be collecting baseline data (soils, vegetation, wildlife, hydrology, etc.) on Lease 0-42804 surface lands for the purpose of amending Mine Permit 267C. 2U did not object.
 - On May 15, 2014, BPM's Environmental Specialist, Jennifer Hartman, and a consultant conducted a brief field reconnaissance on Lease 0-42804 surface lands in preparation for the vegetation and wildlife survey.
 - In June 2014, BPM again notified 2U that a consultant intended to conduct baseline vegetation and wildlife surveys on June 17 and 18. BPM informed 2U that the consultant intended to camp overnight on Lease 0-42804 surface lands. 2U advised BPM to warn the consultant to watch out for mountain lions.
 - On June 17 and 18, 2014, biologist Amber Travsky collected vegetation data from Lease 0-42804 surface lands and camped overnight on the property.
 - On July 14, 2014, Hartman and BPM Mine Manager Joel Severin met with 2U representatives Ronald and Scott Ericsson. The parties discussed, among other matters, BPM's need to gather additional baseline data on Lease 0-42804 surface lands. The Ericssons did not object to BPM gathering the baseline data. In fact, the Ericssons encouraged BPM to explore for bentonite deposits on 2U surface lands north of the boundary of Lease 0-42804 near Green Mountain.
 - From August 11 to 15, 2014, a second consultant collected soils information on Lease 0-42804 surface lands.
-
- On December 16, 2014, BPM collected soil samples on Lease 0-42804 surface lands.
 - In January 2016 and February 2016, during ongoing mining operations on adjacent 2U lands, Hartman conducted two raptor studies on Lease 0-42804 lands.

Ex. D, Hartman Declaration.

On February 24, 2016, BPM formally requested the DEQ amend Mine Permit 267C to include those bentonite deposits covered by Lease 0-42804. The submitted application materials included, among other information, the proposed mining and reclamation plans and the baseline soil, vegetation, and wildlife data obtained by BPM's consultants. At no point did 2U protest the permit amendment application or raise issue with the utilization of the baseline data collected

from 2U surface lands. On June 28, 2016, the DEQ determined that the Mine Permit 267C amendment application satisfied completeness requirements. Ex. E, LQD Letter. However, the DEQ suspended the processing of the amendment application pending the submission by BPM of an executed Form 8 (Surface Owner Consent Form) or, alternatively, an Order in Lieu of Consent. Unable to agree to the terms of a surface access agreement with 2U and obtain the requisite surface owner consent, BPM requested the EQC convene a hearing and issue an Order in Lieu of Consent as prescribed by Wyo. Stat. § 35-11-406(b)(xii). The issuance by the EQC of an Order in Lieu of Consent will allow DEQ to process the Mine Permit 267C amendment application.

Legal Standard

The EQC conducts contested case proceedings in accordance with the Wyoming Rules of Civil Procedure. DEQ Rules, Chapter 2, Section 2. On September 17, 2018, 2U filed a Motion to Dismiss pursuant to Rule 12 of the Wyoming Rules of Civil Procedure. A Rule 12 Motion to Dismiss is converted to a Rule 56 Motion for Summary Judgment if materials outside the pleadings are offered and considered. *Wilson v. Bd. of Cty. Comm'rs of Cty. of Teton*, 153 P.3d 917, 921–22 (Wyo. 2007). In this instance, the parties offer evidence beyond the pleadings, thus converting the Motion to Dismiss to a Motion for Summary Judgment. The Council thus applies the standard of review for summary judgment.

Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *James v. Taco John's Int'l, Inc.*, 2018 WY 96, ¶ 7 (Wyo. 2018). The Council examines the record from the vantage point most favorable to the party opposing the motion – in this case, BPM – and gives that party all favorable inferences which may be fairly drawn. *Id.* 2U, as the party requesting summary

judgment, bears the initial burden of establishing a prima facie case that no genuine issue of material fact exists, and that summary judgment should be granted as a matter of law. *Bogdanski v. Budzik*, 408 P.3d 1156, 1160 (Wyo. 2018). After a movant has adequately supported the motion for summary judgment, the burden shifts to the opposing party to provide “competent evidence admissible at trial showing there are genuine issues of material fact.” *Jones v. Schabron*, 113 P.3d 34, 37 (Wyo. 2005). The party opposing the motion must present specific facts; relying on conclusory statements or mere opinion will not satisfy that burden, nor will relying solely upon allegations and pleadings.” *Bogdanski*, 408 P.3d at 1161. A material fact is one which, if proved, would have the effect of establishing or refuting an essential element of the cause of action or defense asserted by the parties. *Claman v. Popp*, 279 P.3d 1003, 1011 (Wyo. 2012).

Argument

2U alleges – for the first time and without factual or legal support – that BPM trespassed on its surface lands to collect baseline soil, vegetation, and wildlife data in violation Wyo. Stat. § 6-3-414. 2U’s motion fails for multiple reasons. First, 2U’s allegation of trespass is demonstrably false. At all times relevant, BPM – as the leasehold owner of the bentonite deposits under 2U surface lands – had the legal right to access the surface estate. Moreover, 2U was aware of and authorized the collection of baseline resource data. Second, even if 2U’s allegation was credible, the EQC lacks the authority to interpret or enforce a criminal trespass statute. Lastly, issues related to baseline soil, vegetation, and wildlife data fall beyond the limited scope of this proceeding. Even if the EQC had the authority to grant the relief requested by 2U, such action (i.e., the expungement of DEQ resource data) would be of no consequence to this proceeding.

A. BPM did not trespass because it has a leasehold interest in the mineral estate that authorizes access and use of the surface lands, and BPM obtained verbal and contractual authorization from 2U to collect the baseline data.

Wyo. Stat. Ann. § 6-3-414 criminalizes the unlawful trespass of real property for the purpose of collecting resource data. A person cannot violate Wyo. Stat. Ann. § 6-3-414 if they have an ownership interest in the real property, a contractual right, or written or verbal permission of the owner, lessee or agent of the owner to enter onto the private land to collect the resource data. Wyo. Stat. Ann. § 6-3-414(a)(ii), (b), (c)(ii). Because BPM had (1) a leasehold interest in the bentonite deposits under the subject surface lands granting access to and use of the surface estate, (2) a contractual right to access the surface lands pursuant to a surface use agreement, and (3) verbal permission from 2U, it could not have violated Wyo. Stat. Ann. § 6-3-414 when it gathered baseline resource data in 2014.

Prior to May 9, 1939, the State of Wyoming owned 100% the surface estate and 100% of the mineral estate of Lease 0-42804 lands. On May 9, 1939, the State of Wyoming sold the surface estate to Clarence and Bert Robbins, subject to the following reservation:

The party of the first part [State of Wyoming] hereby reserves to the Wyoming Farm Loan Board, its successors and assigns, all minerals and mineral rights in and to the above described premise and **the right of ingress and egress to said premises and the use of so much of the surface thereof as may be necessary to prospect for, develop and remove such minerals**, or any part thereof.

Ex. F, Warranty Deed at 2 (emphasis added). The State of Wyoming's reservation of the mineral estate, together with the surface access and use rights necessary to develop the mineral estate, have been public record since October 24, 1939. *Id.* 2U is a successor in interest to the Robbins. 2U took ownership of the Lease 0-42804 surface lands subject to the State of Wyoming's express mineral and surface access and use reservation. 2U's property rights are burdened by and subservient to the State of Wyoming's 1939 reservation.

BPM is the lessee of the State of Wyoming's bentonite deposits under 2U surface lands, and as such, assumes the property rights of the mineral owner. It is a long-standing and fundamental principle of real property law that the mineral estate has dominance over the surface estate. *Holbrook v. Cont'l Oil Co.*, 73 Wyo. 321, 332 (1955) (surface lands subject to the dominant right of the defendants' mineral leases); *Mingo Oil Producers v. Kamp Cattle Co.*, 776 P.2d 736 (Wyo. 1989) (surface landowner could not require lessee to execute an access damage agreement before granting an initial right of access under terms of the mineral lease). Lease 0-42804 recognizes this fundamental principle by granting BPM the right to enter upon, occupy, and enjoy such surface areas as are necessary for the mining of bentonite. Ex. B, Lease 0-42804 at 4. The State of Wyoming, in leasing its bentonite deposits to BPM (together with all rights incidental to developing the minerals), expressly authorized BPM to access the surface lands. BPM is entitled, as the lessee of the dominant mineral estate, to possess that portion of 2U's surface estate "reasonably necessary" for the exploration, production, and storage of the bentonite. *Sanford v. Arjay Oil Co.*, 686 P.2d 566, 572 (Wyo. 1984); *Ready v. Texaco, Inc.*, 410 P.2d 983, 986 (Wyo. 1966) (mineral lessee's right to access the surface lands for purposes of exploration and development is incidental to the mineral lease). As such, 2U cannot prevent BPM from accessing and developing its minerals (i.e., BPM exercising the property rights reserved by the State of Wyoming in 1939), and BPM's access of 2U's surface lands for purposes of developing its minerals cannot constitute a trespass (i.e., BPM cannot trespass on property rights reserved by the State of Wyoming in 1939 and assigned by lease to BPM).

In addition to having a mineral leasehold interest (together with the incidental rights of surface access and use), BPM had a contractual right and verbal authorization from 2U to access the subject lands for purposes of collecting baseline data. The SUA included approximately 200

acres of the Lease 0-42804 surface lands, and the SUA expressly authorized access to those lands for the “usage of the surface occasioned by BPM’s mining, hauling and *related activities* on the Property.” SUA at 1 (emphasis added). BPM collected its baseline soil, vegetation, and wildlife data in 2014, nearly three years before the SUA expired on May 31, 2017. At the time of collection – and at all times during the preparation of the Mine Permit 267C amendment application – BPM was contractually entitled to collect data from those surface lands covered by the SUA.

To the extent the SUA did not cover Lease 0-42804 surface lands, as a matter of courtesy, BPM notified 2U of its intent to gather baseline data. Each time 2U provided verbal authorization. On April 25, 2014, prior to entering the property, BPM notified 2U that it would collect baseline data throughout the year as weather permitted. Ex. D, Hartman Declaration. 2U did not object. *Id.* In June 2014, BPM again notified 2U that the consultant intended to conduct additional baseline vegetation and wildlife surveys and camp overnight on Lease 0-42804 surface lands. *Id.* 2U did not object and advised BPM to warn the consultant to watch out for mountain lions. *Id.* The consultant, duly advised, collected baseline data over a two-day period and camped on Lease 0-42804 surface lands. *Id.* On July 14, 2014, 2U discussed with Severin and Hartman the gathering of additional baseline data from Lease 0-42804 surface lands. *Id.* 2U did not object to BPM’s consultants gathering additional resource data and, in fact, encouraged BPM to explore for bentonite deposits on 2U surface lands north of the boundary of Lease 0-42804 near Green Mountain. *Id.* Subsequently, from August 11 to 15, 2014, a second consultant collected additional baseline data. *Id.* At no point did 2U object or allege trespass.

The data trespass statute relied upon by 2U does not criminalize access by persons having a mineral leasehold interest in the property, permission from an owner of the property, or a

contractual right to access the surface lands. BPM had all three. Because BPM had a leasehold interest in the dominant mineral estate granting access to and use of the surface estate, as well as verbal permission and the contractual right to enter 2U's lands, it did not violate Wyo. Stat. Ann. § 6-3-414.

B. EQC lacks the jurisdictional authority to resolve 2U's trespass allegation.

Regardless of the merits of 2U's claim of trespass, the EQC cannot grant the relief requested. The EQC lacks the statutory and regulatory authority to resolve disputes of criminal trespass or expunge the records of the DEQ. The authority rests exclusively with the Wyoming judiciary. Wyo. Const. art. V, § 10 (district courts in Wyoming have jurisdiction over all criminal cases except as otherwise provided in statute); Wyo. Stat. § 5-9-129 (circuit courts have original jurisdiction in all misdemeanor criminal cases). Wyo. Stat. § 6-3-414 is a misdemeanor criminal statute. 2U presents no argument and BPM identifies no support for the premise that the Wyoming Legislature intended to vest the EQC with the authority to interpret or enforce the data trespass statute. Absent such evidence, the EQC lacks the authority to interpret or enforce Wyo. Stat. § 6-3-414. If 2U is sincere in their belief that BPM trespassed on its lands, it is obligated to pursue its remedy through the appropriate legal authority. The EQC is not that authority.

C. 2U's request is beyond the scope of this proceeding because the four statutory elements necessary for the issuance of an Order in Lieu of Consent do not implicate baseline resource data.

Pursuant to the Order of Schedule issued by the Hearing Examiner on August 21, 2018, the scope of this proceeding is limited to determining whether (1) the mining and reclamation plans have been submitted to 2U; (2) the mining and reclamation plans adequately detail the proposed surface use, including routes of ingress and egress; (3) that the proposed surface use does not substantially prohibit the operations of the surface owner; and (4) the proposed

reclamation plan reclaims the surface lands to their approved future use of grazingland as soon as feasibly possible. Order of Schedule at 1. 2U's allegations of trespass are irrelevant because an Order in Lieu of Consent proceeding in no way implicates baseline soil, vegetation, or wildlife data. The mining and reclamation plans at issue here do not include or rely upon baseline soil, vegetation, or wildlife data. The mining and reclamation plans are simply one aspect of the mine permit amendment application submitted by BPM to DEQ; the plans only detail the proposed mining progression, surface use and disturbance (including routes of ingress and egress), and the reclamation of the disturbed lands. A cursory review of the mining and reclamation plans proves this point. Ex. G, Mine Permit 267C Section 2.10 (Mining Plan); Ex. H, Mine Permit 267C Section 2.11 (Reclamation Plan).

As such, the remedy sought by 2U – the expungement of the baseline soil, vegetation, and wildlife data – would not cause “the mining and reclamation plans to cease to exist” as alleged by 2U. Motion to Dismiss at 1. In fact, such expungement of resource data would have no impact or bearing on the mining and reclamation plans. At hearing, BPM intends to establish the four Order in Lieu of Consent statutory elements without the use of baseline soil, vegetation, or wildlife data. Therefore, granting the relief requested by 2U would be of no consequence to this proceeding. BPM has a statutory right to petitioner the EQC for an Order in Lieu of Consent and to be heard at hearing. 2U's spurious claims of trespass does not abrogate BPM's lawful right to pursue an Order in Lieu of Consent from the EQC and the motion must be denied.

Conclusion

BPM has met its burden by providing competent and admissible evidence that BPM lawfully obtained the resource data from 2U's surface lands. The evidence, viewed in the light most favorable to BPM, supports the conclusion that, at all relevant times, BPM had the requisite

leasehold interest, contractual right, and verbal authorization to collect baseline data from 2U's surface lands. Moreover, 2U's motion fails as a matter of law. The EQC lacks jurisdiction to interpret or enforce a criminal trespass statute or grant the relief requested by 2U. If 2U is sincere in their belief that BPM trespassed on its lands, it is obligated to pursue its remedy through the appropriate legal authority. Just as BPM must comply with the law, so must 2U. In the absence of any factual or legal basis to grant the motion, 2U's motion to dismiss must be denied.

DATED this 5 day of October 2018.



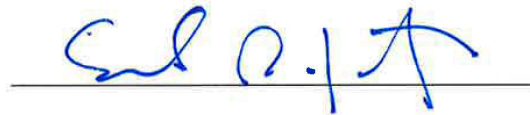
Matthew J. Micheli, P.C.
Samuel R. Yemington
Holland & Hart LLP
2515 Warren Ave., Suite 450
Cheyenne, WY 82001
mjmiceli@hollandhart.com
sryemington@hollandhart.com

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2018, I served a true and correct copy of the foregoing
RESPONSE IN OPPOSITION TO RESPONDENT 2U RANCH, LLC'S MOTION TO DISMISS
by email to:

2U Ranch, LLC
c/o Ronald Ericsson
ericsson@childselect.com

Jim Ruby
Executive Secretary, Wyoming Environmental Quality Council
jim.ruby@wyo.gov



11422787_8

EXHIBIT A

SURFACE USE AND
HAULAGE AGREEMENT

THIS AGREEMENT, made effective June 1st 2007, by and between Lonesome Country Limited, a Wyoming Corporation, with a mailing address of 426 Lonesome Country Road, Alzada, Montana 59311, (hereinafter called the "Owner") and Bentonite Performance Minerals, a New Jersey limited liability company, with a mailing address of 554 U. S. Hwy 212, Belle Fourche, South Dakota 57717, (hereinafter called "BPM").

W I T N E S S E T H

WHEREAS, the Owner holds surface rights to certain lands situated in Crook County, Wyoming, hereinafter called the "Property", a description of which is set forth in Exhibit "A" which is attached and incorporated by this reference; and

WHEREAS, BPM holds mineral rights and operating interests to certain portions of the Property; and

WHEREAS, the Owner and BPM desire to enter into an agreement for the payment of future usage of the surface occasioned by BPM's mining, hauling and related activities on the Property; and

WHEREAS, the Owner and BPM intend that this Agreement be a covenant running with the Property and to be binding for the duration of its term upon the Owner and BPM, and their respective successors, heirs and assigns.

NOW THEREFORE, in consideration of these premises, and the mutual covenants and conditions set forth, the parties hereto agree as follows:

SECTION 1

TERM OF AGREEMENT

Unless terminated earlier as provided herein, the term of this Agreement shall be for a period of ten (10) years commencing on June 1, 2007 and expiring on May 31, 2017.

BPM is committed to mining all bentonite on the Property that BPM determines to be economically useful to BPM. After BPM has exhausted all such bentonite that, in BPM's sole and absolute judgment, is economical for BPM's use, BPM may elect to terminate this Agreement at any time by providing Owners with thirty (30) days prior written notice.

SECTION 2

PAYMENT FOR SURFACE USAGE

During the term of this Agreement, BPM shall make yearly payments ("Surface Usage Payments") to the Owner, no later than March 31, in the amount of \$250 per acre for each acre that is newly disturbed by BPM during the 12-month period immediately preceding the date on which the Surface Payment is due. However, BPM shall not be required to pay more than \$250 for a particular acre throughout the entirety of the term of this Agreement. If a particular acre is disturbed by BPM during two separate 12-month periods for which a Surface Payment is calculated, BPM shall not be required to make any additional Surface Usage Payment for that particular acre after the initial Surface Usage Payment is made for that particular acre.

The Surface Usage Payment shall be calculated on a per acre basis, and shall be full and complete satisfaction for damages to the surface resulting from surface disturbance occasioned by virtue of BPM's mining, hauling and related activities on the Property.

As used in this Agreement, "Surface Disturbance" shall mean the surface areas from which soils, overburden or bentonite have been removed or deposited thereon. For the purpose of accounting for Surface Disturbance and surface acreage which has actually been disturbed, said acreage shall correspond to the disturbed acreage reported annually by BPM to the Wyoming Department of Environmental Quality.

SECTION 3

GRANTING OF HAULAGE EASEMENT AND PAYMENT OF HAULAGE FEE

3.1 The Owner hereby gives, grants and conveys unto BPM and its successors-in-interest for the term of this Agreement, an easement for the purpose of transporting bentonite ore across over and through all or any portion of the Property.

3.2 As consideration for Owner granting such easement and entering into this Agreement, BPM shall make an advance haulage payment ("Advance Haulage Payment") of ten thousand dollars (\$10,000.00) upon execution of this Agreement. Advance Haulage Payments, of similar amount, shall be made by BPM to Owner on or before the yearly anniversary of the effective date of this Agreement, subject to the earlier termination of this Agreement as described in Section 1.

3.3 Subject to the deduction as stated in Section 3.5 below, as further consideration for Owner granting said easement and entering this Agreement, BPM

shall make additional haulage payments ("Earned Haulage Payment") to Owner, based on the number of tons (2,000 avoirdupois pounds) of bentonite ore that are mined and transported across the Property by BPM.

Said Earned Haulage Payments shall be calculated at the following rates:

<u>For Bentonite hauled During the period:</u>	<u>Payment Per Ton:</u>
June 1, 2007 through May 31, 2012	\$0.20
June 1, 2012 through May 31, 2017	\$0.23

3.4 Subject to Section 3.5 below, BPM shall pay Owner said Earned Haulage Payment annually, within thirty (30) days after the anniversary of the effective date of this Agreement, for bentonite hauled during the 12 months immediately preceding the anniversary date.

3.5 Notwithstanding any of the foregoing, the Earned Haulage Payment shall be reduced by the Advance Haulage Payment as provided in this Section 3.5. When an Earned Haulage Payment comes due, BPM shall first deduct the amount of the Advance Haulage Payment paid to the Owner from the amount of the Earned Haulage Payment. If the amount of the Earned Haulage Payment for a certain 12-month period is less than the amount of the Advance Haulage Payment for such 12-month period, BPM shall not owe an Earned Haulage Payment to the Owner for that 12-month period, and the balance of the Advance Haulage Payment amount shall be carried forward to be applied as a deduction against each succeeding Earned Haulage Payment due the Owner. If the amount of the Earned Haulage Payment for a certain 12-month period is greater than the Advance Haulage Payment (and any carry over of the balance of a Advance Haulage Payment from previous 12-month periods) for such 12-month period, BPM shall pay to Owner the amount by which the Earned Haulage Payment exceeds the Advance Haulage Payment for that 12-month period.

The tonnage of all bentonite removed from the Property shall be determined by weights taken on BPM's certified truck scale at Colony Wyoming. BPM shall keep full and accurate records of all bentonite removed from the Property. Owner shall have the right, during BPM's business hours, to inspect the scale and to audit scale records for all bentonite removed from the Property.

SECTION 4

METHOD OF PAYMENT

BPM shall deliver the Advance Haulage Payment, Earned Haulage Payment (if any), and the Surface Use Payment to the Owner's account #18-546 at the Sundance State Bank in Sundance, Wyoming via wire transfer.

Any change to this method of payment shall be submitted to BPM in writing by Owner at least 30 days prior to the payment due dates.

SECTION 5

MISCELLANEOUS

Memorandum of Agreement. A short form of this Agreement setting forth the pertinent terms necessary for the purpose of giving notice to the public of the rights of both parties shall be filed in a place of record in Crook County, Wyoming.

Weed Control. BPM shall use reasonable efforts to control undesirable weeds on Disturbed Acres detailed in Section 2.

Final Reclamation. BPM shall complete final reclamation by the first Fall following final hauling, Weather permitting. BPM's mining permit with Wyoming Department of Environmental Quality stipulates seeding of topsoiled areas is to take place between October 15th and first freeze of each year.

Enclosure Fence. BPM shall construct and maintain fenced enclosures, consisting of four strands of barbed wire, while mining on the Property. Owner consents to using existing fence, where practical, for the purpose of establishing reasonably secure enclosures. When the enclosure is no longer needed, BPM is responsible for dismantling and removing fence it has constructed, but shall have no responsibility to remove fences not constructed by BPM.

Livestock Losses. BPM shall compensate Owner for Owner's livestock losses directly caused by virtue of BPM's mining and hauling activities

Reservoirs. BPM will cooperate with Owner to establish reservoirs in practical locations during the reclamation process. Reservoirs that need to be removed during mining will be replaced with a reservoir of equal or better condition and capacity.

Obtaining Permits. Owner will use its best efforts and cooperate in good faith with BPM in obtaining necessary local, state and federal operating permits and will consent, in writing, to the mutually agreeable mining and reclamation plan to be submitted to Wyoming Department of Environmental Quality

Deficiency Notice. BPM shall conduct itself in a workman-like manner and maintain a reasonably safe operation at all times while on the Property. In the event BPM fails to do this, Owner may notify BPM in writing via us mail of such deficiency. BPM shall have 30 days after receipt of said notice to correct or address said deficiency.

Annual Accounting. During the term of this agreement, BPM shall remit to the Owner in writing via US mail, no later than March 31, an annual accounting of the acres of Owners Property disturbed by BPM during the preceding calendar year.

SECTION 6

INDEMNIFICATION AND REPRESENTATIONS

So long as this Agreement remains in full force and effect, except to the extent of the negligence or willful misconduct of the Owner, its agents or assigns, and except for those permitted activities and rights granted to BPM under this Agreement, BPM agrees to indemnify, defend and hold the Owner harmless from and against any and all claims, damages, liability and causes of action resulting from or arising out of BPM's negligence or willful misconduct in its operations on the Property as of the effective date of this Agreement.

Except to the extent of the negligence or willful misconduct of the BPM, its employees, agents or assigns, Owner agrees to indemnify, defend and hold BPM harmless from and against any and all claims, damages, liability and causes of action resulting from the negligence or willful misconduct of Owner or Owner's employees, contractors, or agents.

In order to induce BPM to enter into this Agreement, the Owner herewith represents and covenants to BPM that (1) it owns the surface rights to the Property and is empowered to make its grants hereunder; (2) the Agreement does not violate any agreement or instrument respecting the Property to which Owner is a party; and (3) no approvals or consents are required from any third party with respect to Owners entry into this Agreement

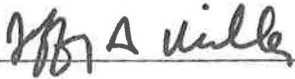
SECTION 7

LAW

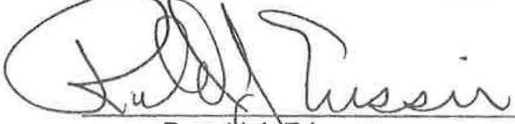
This Agreement, and all of the terms, provisions and conditions hereof, shall be construed and determined in accordance with the laws of the State of Wyoming.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date written above.

**BENTONITE PERFORMANCE
MINERALS, a New Jersey
Limited Liability Company**

By 
Vice President

**LONESOME COUNTRY LIMITED,
a Wyoming Corporation - Owner**


Ronald J. Ericsson
President

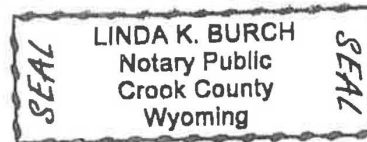
APPROVED
Law Dept
By 
Date 5/1/2007

STATE OF Wyoming)
) ss.
COUNTY OF Crook)

On this 1 day of June, 2007, personally appeared before me, a Notary Public in and for the county and state aforesaid, Ronald J. Ericsson, known to me to be the person whose name is subscribed to the within instrument as President of Lonesome Country Limited, and who acknowledged to me that he subscribed the name of said corporation thereto as principal, and his own name as President freely and voluntarily and for the uses and purposes therein mentioned.

Linda K Burch
Notary Public

My Commission Expires: 4-15-09



STATE OF Texas)
) ss.
COUNTY OF Harris)

On this 6 day of June, 2007, personally appeared before me, a Notary Public in and for the county and state aforesaid, Jeff A. Miller, known to me to be the person whose name is subscribed to the within instrument as Vice President of Bentonite Performance Minerals, LLC, and who acknowledged to me that he subscribed the name of said corporation thereto as principal, and his own name as Vice President freely and voluntarily and for the uses and purposes therein mentioned.

Deana Biles
Notary Public

My Commission Expires: 02-28-2008

EXHIBIT A

PROPERTY

STATE OF WYOMING, COUNTY OF CROOK

ACRES

Township 56 North, Range 62 West, 6th P. M.

Section 3	Lot 17 (SWSW),	37.18
Section 4,	Lots 8, 9 (W2NW); Lots 17, 18, 19, 20 (S2S2);	226.02
Section 5	ALL	672.76
Section 6	Lots 8, 9, 14, 15, 16, 17, 22, 23 (E2); Lots 10, 13 (E2NW);	443.20

Township 57 North, Range 62 West, 6th P. M.

Section 31	SENE, Lots 10, 11, 14, 15 (SE); Lots 12, 13 (E2SW);	326.34
Section 32:	SW4NW4, <u>Lots 10, 11 (W2SW4);</u>	122.14

TOTAL ACRES 1827.64

EXHIBIT B

Lease No. 0-42804-KNOWN
P.L. #21
Amended January 6, 1998

**BENTONITE
STRIP - MINING LEASE**

THIS INDENTURE OF LEASE entered into by and between the STATE OF WYOMING, acting by and through its Board of Land Commissioners, party of the first part, hereinafter called the lessor, and

Bentonite Performance Minerals, LLC

party of the second part, hereinafter called the lessee:

WITNESSETH:

Section 1 - PURPOSES. The lessor, in consideration of the rents and royalties to be paid and the covenants and agreements hereinafter contained and to be performed by the lessee, does hereby grant and lease to the lessee the exclusive right and privilege to strip-mine, extract, remove and dispose of the bentonite deposits in or under the following described land, to-wit:

81.74 Lots 18,19 Section 30, Township 57N, Range 62W, 6th P.M.
445.92 Lots 3,4,5,6,7,11,12,13:S2NE:SENW Sec. 31, Twp 57N, Rg 62W, 6th p.m.
81.00 Lot 3:SWNW Section 32, Township 57N, Range 62W, 6th p.m.
608.66 Total Acres

consisting of 608.66 acres more or less in Crook county together with the right to construct and maintain thereon all works, buildings, plants, waterways, roads, communication lines, power lines, tipples, hoists or other structures and appurtenances necessary to the full enjoyment thereof, subject, however to conditions hereinafter set forth.

Section 2 - TERM OF LEASE. This lease, unless terminated at an earlier date as hereinafter provided, shall remain in force and effect for a term of ten (10) years beginning on the 2nd day of June, 2011 and expiring on the 1st day of June, 20 21.

Section 3 - In consideration of the foregoing, the lessee covenants and agrees:

A. BOND. When the lease becomes operating or actual operation for the mineral are to be commenced, the bond shall be furnished in such reasonable amount as the Office of State Lands and Investments shall determine to be advisable in the premises. The operating bond shall preferably be a corporate surety bond, executed by the lessee, the surety being authorized to do business in the State of Wyoming. A cash bond may be furnished on consent of the Office of State Lands and Investments if the lessee is unable to obtain a corporate surety bond. Form of bond will be furnished by the Office of State Lands and Investments. The State will require two executed copies of the bond, therefore, as many additional copies should be made as will be required by the lessee and the bonding company.

B. PAYMENTS. To make all payments as due or accruing hereunder to the Office of State Lands and Investments - 122 W. 25th Street-3 West - Herschler Building - Cheyenne, Wyoming 82002-0600.

C. RENTALS. Prior to the discovery of commercial quantities of bentonite in the lands herein leased to pay the lessor in advance, beginning with the effective date hereof, an annual rental of one dollar (\$1.00) per acre or fraction thereof per year for the first to fifth year (1-5) inclusive and two dollars (\$2.00) per acre or fraction thereof per year for the sixth to tenth years (6-10) inclusive, or renewal thereof; operated at the end of two (2) years from the date hereof such rental may be increased at the option of the lessor, to such an amount as the lessor may decide to be fair and equitable.

After the discovery of commercial quantities of bentonite in the

lands herein leased to pay to the lessor in advance, beginning with the first day of the lease year succeeding the lease year in which commercial discovery was made, an annual rental of \$2.00 per acre or fraction thereof, such rental so paid for any one year to be credited on the royalty for that year.

Annual rentals on all leases shall be payable in advance for the first year and each year thereafter. No notice of rental due shall be sent to the lessee. If the rental is not received in this office on or before the date it becomes due, notice of default will be sent to the lessee and a penalty of 50¢ per acre or fraction thereof, for late payment will be assessed.

The lessee is not legally obligated to pay either the rental or the penalty, but if the rental and penalty are not received in this office within thirty (30) days after the Notice of Default has been received by the lessee, the lease will terminate automatically by operation of law.

Termination of the lease shall not relieve the lessee of any obligation incurred under the lease other than the obligation to pay rental or penalty. The lessee shall not be entitled to a credit on royalty due for any penalty paid for late payment of rental on an operating lease.

D. ROYALTY A per ton royalty will be paid on all bentonite mined and removed from the land herein leased. The royalty rate per ton will be based on the current year annual weighted average bulk sales price per ton, F.O.B. the loadout facility. Estimated monthly royalty payments will be made using the prior year weighted average bulk sales price. A royalty payment or credit adjusted for the current year's bulk selling price will be due on March 31st of the subsequent year.

Royalty rates will be based on the following schedule:

<u>Average Sales Price</u> <u>Bulk Bentonite Products</u>	<u>Cents per Ton Royalty Rate</u>
\$15.00 - 20.99/ton	\$.55/ton
\$21.00 - 23.99/ton	\$.60/ton
\$24.00 and above	\$.60/ton plus \$.05/ton for each dollar or fraction thereof above \$24.00

A ton for royalty purposes shall mean two thousand pounds of bentonite as mined from the leased land, without deduction for the moisture content thereof. Bulk products for royalty purposes shall mean unpackaged/unbagged bentonite product in a powdered (excludes granular) sale form sold for domestic oilfield, foundry, or taconite.

Lessor reserves the right to renegotiate the valuation basis for royalties in the event that there is a significant change in the form in which bentonite is sold or in the major industrial uses of bentonite.

Lessee is required to provide an accounting of the weighted average sales price per ton as calculated in a form prescribed by Lessor.

E. MONTHLY PAYMENT AND STATEMENTS. Unless a different time or method of payment is agreed to by the Board, Lessee shall make payment in full on or before the twentieth (20th) day of the calendar month succeeding the month of production for all bentonite mined from the land; and to furnish sworn monthly statements therewith showing in tons the amount of all bentonite mined, accompanied by the mine weights; and such other information as may be called for in the form of reports prescribed by the lessor. These statements are to be subject to verification by examination of the books and records of the lessee.

F. STRIP WORKINGS. All strip workings shall be operated in such a manner so as to remove all bentonite in the vein or veins worked; that strip mining shall be continuous across the property according to a definite plan and pattern submitted to and receiving the approval of the Office of State Lands and Investments; provided, however, that where the vein of bentonite is less than one (1) foot in thickness the lessee

shall not be required to mine or work that portion of such vein; and, provided further, that if the thickness of the over-burden is such that the lessee considers it not profitable to excavate the bentonite beneath, notice is to be served on the lessor and the matter is to be adjusted fairly and impartially between the parties; that all over-burden removed shall, as mining progresses, be returned to original pit, so that at the expiration or surrender of the lease or termination of mining activities the land will approximate its previous configuration; that all road and bridges built and necessary to mining operation on the land shall upon the expiration, forfeiture or surrender of said lease become the property of the lessor.

G. WEIGHT RECORD. That all bentonite mined or taken from the premises shall be weighed and the weight thereof, together with the proper check numbers, entered in due form in books kept for such purposes by the lessee; and accurate record of the weight of all bentonite mined from the land shall be preserved separate from the records of the bentonite mined from other lands. Measuring devices so used and weights obtained thereby shall be and are subject to full compliance with Title 36 W.S. 1977 School and State Lands and Title 11, W.S. 1977 as to Farm Loan Lands.

The term "ton" as herein used means a ton of two thousand (2,000) pounds, no deduction being allowed for moisture content.

H. MAPS AND REPORTS. Upon demand to furnish the Office of State Lands and Investments with copies of blueprints of all maps of underground surveys of leased lands made or authorized by the lessee, including engineer's field notes, certified by the engineer who made such survey; and to make such other reports pertaining to the production and operations by the lessee as may be called for by the lessor.

Copies of all electrical, gamma-ray neutron, resistivity or other types of sub-surface log reports obtained by or for lessee in conducting operations on the leased premises shall be submitted to the state Geologist as required by W.S. 36-6-102.

I. TAXES AND WAGES - FREEDOM OF PURCHASE. To pay when due, all taxes lawfully assessed and levied under the laws of the State of Wyoming upon improvements and bentonite produced from the land hereunder, or other rights, property or assets of the lessee; to accord all workmen and employees complete freedom or purchase and to pay all wages due workmen and employees as required by law.

J. STATUTORY REQUIREMENTS AND REGULATIONS. To comply with all State statutory requirements and valid regulations thereunder.

K. ASSIGNMENT OF LEASE - MINING AGREEMENTS.

(1.) Lessee shall not assign this lease or any interest therein, nor sub-let any portion thereof, except with the consent in writing of the lessor first had and obtained.

(2.) Lessee shall submit a signed copy of any mining agreement entered into affecting the possessory title to any of the land hereby leased for approval by the lessor.

(3.) All overriding royalties to be valid must have the approval of the Board and be recorded with the lease. The Board reserves the right of disapproval of such overriding royalties when in its opinion they become excessive and hence are detrimental to the proper development of the leased lands.

L. DELIVER PREMISES IN CASE OF FORFEITURE. To deliver the leased premises with all permanent improvements thereon, in good order and condition, in case of forfeiture of this lease; but this shall not be construed to prevent removal, alteration or renewal of equipment and improvements in the ordinary course of operations.

M. DILIGENCE IN DEVELOPMENT. This lease is granted with the express understanding that prospecting, bentonite mining, and the recovery of the valuable bentonite content of the above described lands

shall be pursued with diligence, and if at any time the lessor has reasonable belief that the operations are not being so conducted it shall so notify lessee in writing and if compliance is not promptly obtained and the delinquency fully satisfied, it may then, at the end of any lease year, declare this said lease terminated. Any improvements then on the property shall be disposed of pursuant to Section 6 of this lease.

Section 4 - GENERAL COVENANTS.

A. Subject to the rules and regulations governing the multiple use and development of sub-surface resources, the lessee shall have the right to enter upon, occupy and enjoy such surface areas of the described tract as are necessary for the mining of bentonite and the construction of all buildings and other surface improvements incidental to the work contemplated by this lease. The lessee shall fully protect the rights of any agricultural and grazing leases which have heretofore or may hereafter be granted by erecting cattle guards or gates and keeping closed gates in all fences in which openings are or may be made, and for protection of stock grazing thereon to fence or close all holes, pits or open cuts in which injury might be sustained, and shall not contaminate any living water upon the land so as to make it injurious to livestock.

Should the lessee or any person holding from, by or under the lessee, in any operation on said premises under this lease, destroy or injure any crop, building or other improvements of any tenant, lessee, purchaser or any other person holding under the State, the lessee agrees to fully indemnify all such injured parties in such sum or sums as may be mutually agreed upon by the respective parties or as may be fixed by appraisers appointed by each party. If agreement is impossible, the Board of Land Commissioners may fix the amount of such indemnity after inspection or hearing.

Bentonite mining operations shall not be conducted nearer than two hundred (200) feet from any productive oil or gas well without consent of the oil and gas lessee. Lessee further shall not disturb any existing road or roads now on said lands nor roads leading to or from any mine, well or well location without first providing adequate and suitable roads in lieu thereof. Lessee shall fully indemnify any other sub-surface lessee for any injury or damages resulting from negligent or unauthorized operations hereunder in such amount so fixed as above provided.

B. The lessee shall, during the term of this lease have the right to transport bentonite and equipment across these premises from properties adjacent to and operated by lessee.

C. The lessee may upon a sixty (60) days notice in writing to the lessor, surrender the lease or any legal sub-division thereof, providing all obligations under the terms of this lease at the date of the relinquishment have been fully complied with by the lessee. Providing, however, that if no development has taken place during the life of the lease, such lease may be surrendered.

D. Such methods of mining shall be used as shall extract the greatest amount of bentonite possible, and all bentonite mining operations on these premises shall be subject to the supervision of the State Inspector of Mines as such supervision as the Board of Land Commissioners may designate.

E. During the proper hours and at all times during the continuance of this lease the lessor or its representatives shall be authorized to go through any of the shafts, openings or workings on the premises, and to examine, inspect and survey the same and to make extracts of all books and weight sheets which show in any way the bentonite output from the land.

F. This lease shall include only the right and privilege of bentonite mining, but if the lessee shall discover any other vein, lode, lead or ledge of mineralized rock or other valuable substance in or

under said lands, he shall immediately report the same to the lessor and shall then have a preferential right for a period of thirty (30) days following the date of discovery to lease said vein, lode, lead or ledge upon such terms, conditions and royalty as may be fairly fixed by the State Board of Land Commissioners, providing the land had not been leased prior to such time for that specific mineral.

Section 5 - THE LESSOR EXPRESSLY RESERVES:

DISPOSITION OF SURFACE. The right to lease, grant rights of way, sell or otherwise dispose of the surface of the land embraced within this lease under existing laws or law hereafter enacted, or in accordance with the Rules and Regulations of the Board of Land Commissioners, insofar as the surface is not necessary for the use of the lessee in the extraction and removal of the bentonite herein.

Section 6 - APPRAISAL OF IMPROVEMENTS. Upon the expiration of this lease, or earlier termination thereof pursuant to surrender or forfeiture or if such land be leased to another other than the owner of the improvements thereon, the lessee agrees that the improvements shall be disposed of pursuant to Title 36, W.S. 1977 and amendments thereof, as to State and School Lands and Title 11 W.S. 1977 and amendments thereof as to Office of State Lands and Investments Lands. In the event that, within ninety (90) days after the expiration of this lease, or earlier termination thereof pursuant to surrender or forfeiture, there is no new lessee of said lands or of the part thereof on which Lessee has caused improvements to be made, then Lessee may, within the sixty (60) day period next succeeding said ninety (90) days, cause to be removed from said lands any improvements theretofore made thereon by lessee; provided, that lessee shall repair any damage to the land caused by such removal.

Section 7 - FORFEITURE CLAUSE. In the event that the Board, after notice and Hearing, shall determine that the lessee has procured this lease through fraud, misrepresentation or deceit, then and in that event this agreement, at the option of the lessor, shall cease and terminate and shall become ipso facto null and void, and all improvements upon said land or premise under the terms so this lease shall forfeit to and become the property of the State of Wyoming.

In the event that the lessee shall fail to make payments of rentals and royalties as herein provided, or make default in the performance or observance of any of the terms, covenants and stipulations hereof, or of the general regulations promulgated by the Board of Land Commissioners and in force on the date hereof, the lessor shall serve notice of such failure or default, either by personal service or by registered mail upon the lessee, and if such failure or default continues for a period of thirty (30) days after the service of such notice, then and in that event, the lessor may at its option, declare a forfeiture and cancel this lease whereupon all rights and privileges obtained by the lessee hereunder shall terminate and cease and the lessor may re-enter and take possession of said premises or any part thereof; but these provisions shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any other cause of forfeiture, or for the same cause of forfeiture or for the same cause occurring at any other time.

Section 8 - HEIRS AND SUCCESSORS IN INTEREST. It is further agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to the heirs, executors, administrators, successors of or assigns of the respective parties hereto.

Section 9. This lease is issued by virtue of and under the authority conferred by Title 36, W.S. 1977 as to the State and School Lands and Title 11, W.S. 1977 as to State Lands and Investment Board and amendments thereto.

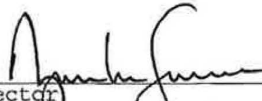
Section 10. Sovereign Immunity. The State of Wyoming and the lessor do

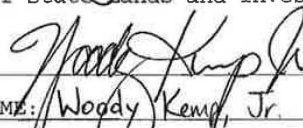
not waive sovereign immunity by entering into this lease, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyoming Statute § 1-39-104(a) and all other state laws.

IN WITNESS WHEREOF, this lease has been executed by lessor and lessee effective as of the day and year first above written.

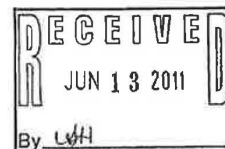
LESSOR, STATE OF WYOMING, Acting by and through its Board of Land Commissioners and State Lands and Investment Board

SEAL

By: 
Director
Office of State Lands and Investments

LESSEE: 
PRINT NAME: Wogdy Kemp, Jr.
TITLE: Attorney In Fact; Real Estate Services

CORPORATE SEAL



LEASE NO.: 0-42804-KNOWN

TYPE OF LEASE: Bentonite

NAME OF LESSEE: Bentonite Performance Minerals, LLC

ADDRESS: 554 US Highway 212
Belle Fourche, SD 57717

EXPIRATION DATE OF LEASE: June 1, 2021

AMOUNT OF ANNUAL RENTAL: \$1,218.00

COUNTY: Crook

FUND: Farm Loan

BOND:

EXHIBIT C



March 9, 2017

Ronald Ericsson
426 Lonesome Country Road
Alzada, Montana 59311

Subject: Mining Lease between Lonesome Country Ltd. ("LC")
and Bentonite Performance Minerals, LLC ("BPM")

Dear Mr. Ericsson,

As you are aware in February 2015, BPM initiated contact with LC to amend the existing Surface Use Agreement ("Agreement"), which expires on May 31, 2017, to add new surface lots not currently covered under the Agreement. The land covered under the Agreement is land in which BPM owns the mineral rights through patented minerals or state mineral leases and LC owns the surface. After discussions regarding outlining the future mining areas within LC surface ownership, LC preferred to have a new agreement for these new lands instead of amending the current Agreement. To that extent, LC proposed the following conditions as part of the new agreement:

- \$300 per acre surface disturbance one-time payment
- Haulage rate of \$0.3175/ton
- Construct 3 new reservoirs
- No mining or hauling during deer hunting season
- Assess and harvest marketable ponderosa pine trees before mining disturbance
- Reclaim land with specific grasses

LC also indicated it was in the process of being dissolved and replaced by Lonesome Country Limited Corporation which manages 2U Ranch, LLC ("2U Ranch") and Sextus Limited Corporation ("Sextus"), all of which were incorporated after the Agreement was signed in 2007. LC also stated that the new agreement would only cover land owned by 2U Ranch.

In February 2015, BPM reviewed LC's proposal and agreed to the following items:

- \$300 per acre surface disturbance one-time payment
- Constructing 3 new reservoirs
- No mining or hauling during deer hunting season
- Coordinate with LC's timber contractor to harvest ponderosa pine trees before mining
- Reseed with specified grasses from LC if approved by DEQ

Exhibit C

And BPM countered with the following:

- 12 year agreement (2 years on the current agreement and additional 10 years thereafter)
- Haulage rate of \$0.2553/ton for years 1-5 and \$0.2833/ton for the remainder of the agreement

In April 2015, LC countered BPM's above proposal for the additional mining lands with:

- 10 year agreement
- Haulage rate of \$0.26/ton with no inflection clause
- Construct permanent roads when mining is complete
- Meet with Neiman Timber Co. to assess commercial value of ponderosa pine trees
- Annual advanced hauling payment of \$20,000
- Construct permanent fences on sub-divided property boundaries

In May 2015, BPM reviewed LC's counter and agreed to the following:

- 10 year agreement
- Further look at the fences on sub-divided boundaries,
- Further look at the water system in the future to see what LC had in mind
- Coordinate with Neiman Timber Co for timber harvesting

Note, however, that BPM did not agree on either the \$0.26 haulage rate or the \$20,000 annual advanced payment.

All of the above items only cover the land owned by 2U Ranch and would be covered under the new agreement. This discussion did not include any lands covered under the Agreement that is set to expire on May 31, 2017. As stated above, LC requested two separate surface mining agreements: one agreement to cover lands owned by 2U Ranch and Sextus, and the other agreement to cover lands owned by 2U Ranch under which BPM owns or leases the mineral rights.

In July 2015, BPM met with LC to continue future mining discussions. At the conclusion of this meeting, it was agreed that instead of signing two separate agreements, BPM would create a new agreement with 2U Ranch and Sextus which would include all land owned by 2U Ranch and Sextus, and would be effective beginning at the expiration of the current Agreement.

In January 2016, BPM sent LC maps of the mine and reclamation plans for review and input. LC had questions regarding mining through a spring and requested BPM to (i) expand three existing reservoirs, (ii) create two new reservoirs outside the mining areas, (iii) build two ponds and (iv) construct permanent ranch roads when mining is complete. BPM agreed to these requests and would maintain the spring integrity if it was mined through. LC then asked BPM about the estimated disturbance area, tons mined, start date, and end date of the future mining area. BPM replied that there would be approximately 180 acres disturbed, approximately one million tons mined, it would be 3-6 years before mining begins and 15-20 years to complete dependent upon market conditions. LC then responded that the projected length of time for mining was too long and did not want mining for that long a duration. BPM explained the estimated time to mine was derived from the large amount of minerals owned by BPM and production capabilities at the Colony plant, as well as market conditions. It was agreed that BPM and LC would

discuss terms of a new agreement and BPM would postpone permitting the future mining areas for the additional land.

In February 2016, BPM presented a draft agreement for the land owned by 2U Ranch and Sextus which would be effective at the conclusion of the existing Agreement and would contain the following terms:

- 7 year term with a 3 year extension by both parties
- Surface disturbance of \$300 per acre one-time payment
- \$10,000 annual advanced hauling prepayment
- Hauling rate of \$0.26/ton
- Construct new fences on subdivided property boundary
- Coordinate mining with logging activities on the property.
- Construct permanent ranch roads as directed by LC
- Construct 3 reservoirs and improve 3 reservoirs
- Stop mining and hauling operations during hunting season

In February 2016, LC countered BPM's offer with:

- Surface disturbance increased to \$325 per acre one-time payment
- \$20,000 annual advanced hauling prepayment
- Construct a bridge across the Belle Fourche River as compensation for non-ponderosa pine trees disturbed by mining
- Haulage rate of \$ 0.26 per ton
- Survey and construct 3 miles of fence on subdivided property boundary
- Drill a new water well
- Install a water system from the new well with 6 tire tanks and 15,000 feet of buried water lines
- Clean and enhance 5 reservoirs
- Construct 2 new reservoirs

BPM's senior management discussed LC's requests, as they were not typical of standard mining agreements, and would was willing to agree to the following:

- Construct new fences subdivided property boundaries
- Construct 2 new reservoirs
- Enhance 5 existing reservoirs
- Surface disturbance of \$325/acre one-time payment
- Haulage rate \$0.26 per ton.

However, BPM would not agree to construct a bridge, water well, pipeline and tank system due to liability issues.

In March 2016, BPM proposed the following:

- Rolling over any advanced prepayment balances at the end of the existing Agreement into the new agreement;
- A contract term of 20 years (20 years is needed to mine the tons owned by BPM on the property and to spread out the cost of the excessive contractual demands requested by LC);

- A payment of \$20,000 for year 1 of the new agreement, no advanced prepayment on years 2-5 and then \$10,000 advanced prepayments for years 6-20 of the new agreement;
- Surface disturbance compensation would be deducted from the annual advanced prepayment.

In March 2016, LC responded with the following proposal:

- No rolling over advanced payment from current agreement
- New 3 year maximum term agreement
- No drilling in the spring or associated wetlands
- Replace water well which BPM drill truck allegedly ran over and crushed metal casing
- Non-ponderosa pine trees replanted
- Annual advanced haulage prepayment of \$15,000
- Haulage rate of \$0.30 per ton
- \$325 per acre one time surface disturbance not deducted from annual prepayment
- No mining or hauling during deer hunting season
- No longer asking for bridge, pipeline or water tanks.
- Determine value of non-ponderosa trees disturbed by mining and be assessed by an independent appraiser and compensated by BPM.

In July 2016, BPM met with LC to further discuss the new agreement and future mine planning. The parties agreed to the following terms:

- LC stated they would only consider a 3 year agreement;
- LC and BPM discussed a new agreement to only include lands which are currently mined by BPM in the current agreement;
- LC stated there would need to be 2 separate surface agreements, one with 2U Ranch and one with Sextus. Half of BPM's current mining is on land owned by 2U Ranch and the other half is on land belonging to Sextus.

In September 2016, LC proposed:

- 3 year agreement (separate agreements for 2U Ranch and Sextus)
- Annual advanced prepayment of \$12,500 each
- Haulage rate of \$0.26/ton
- Surface disturbance of \$300/ acre one-time payment
- Relocate and construct fences on subdivided property lines
- Permanent ranch roads as determined by LC
- Construct 2 reservoirs and clean 2 reservoirs
- No mining or hauling during hunting season
- No mining through springs or riparian zones
- \$43,000 to compensate for non-ponderosa pine trees disturbed by mining
- Install cattle guards with locking gates on roads which enter 2U Ranch

- If well casing is disturbed by mining activities, then BPM will replace existing 50'-100' well casing with new water well which is 4" diameter and min. of 450' deep and location determined by LC

In October 2016, BPM reviewed LC proposal and would agree to the following:

- 3 year agreement (separate agreements for 2U Ranch and Sextus, LC)
- Haulage rate of \$0.26/ton
- Surface disturbance of \$300/acre one-time payment
- Relocate and construct fences on subdivided property lines
- Construct permanent ranch roads as determined by LC
- Construct 2 reservoirs and clean 2 reservoirs
- No mining during hunting season
- Install cattle guards with locking gates where you enter 2U Ranch.

BPM proposed the following:

- Only include current mining lands, as discussed during July meeting, since mining will not begin in future mining areas during the 3 year term
- Remove language which pertained to the non-ponderosa pine trees payments, water well and springs, as these lands would not be disturbed by future mining within the 3 year agreement
- BPM would agree to keep the annual advanced hauling prepayment for Sextus at \$12,500 but proposed to change the annual advanced haulage prepayment for 2U Ranch to \$6,250. This was due to the fact that half of the minerals are on Sextus surface, and bentonite mined, and hauled from Sextus surface but does not cross land owned by 2U Ranch, making it difficult to deplete a \$12,500 advanced payment

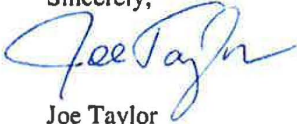
In November 2016, LC responded by stating BPM was trying to avoid paying for non-ponderosa pine trees 2U Ranch logged solely based on BPM future mine planning, and BPM is obligated to compensate 2U Ranch for non-ponderosa pine trees even if it is not mined. BPM replied and stated that no trees will be disturbed within the 3 year agreement and when mining advances into the new area with trees in future agreements, then BPM may compensate LC for those trees if agreed upon in the future agreement. LC stated they disagreed and logging was only initiated due to BPM stating these areas would be mined in the near future; otherwise, they would have not logged at this time and the decision to delay mining was unilaterally made by BPM, which is incorrect based on the March 2016 proposal by LC. In November 2016, BPM responded by forwarding LC an email which was sent to LC by BPM indicating before logging began and based on the BPM mine plan, mining would commence in the logging area in 3 - 6 years.

In January 2017, LC stated the new agreement needs to include a 3 year mine plan and details of where, when and the number of tons of bentonite are to be mined per year in the agreement. BPM responded to the LC request and provided a map of the disturbance areas in the 3 year term, as well as planned tonnages to be mined on a yearly basis from Sextus and 2U Ranch combined. LC responded stating they wanted this information and mining map to be included in the new agreement with DEQ documents but LC will not sign an agreement which does not compensate LC \$43,000 for non-ponderosa trees.

During this extensive negotiation process, BPM has been more than reasonable trying to work with LC by negotiating the terms for a new agreement as shown above. Unfortunately, these negotiations have been unproductive. The minerals owned by BPM require approximately twenty years to mine, and it is unrealistic to require BPM to continually negotiate short term agreements as proposed by LC. BPM requires a sufficient amount of time to mine and reclaim the lands without the constant threat of suspension while renegotiating multiple surface contracts.

BPM wants to reach a common ground on the commercial terms with LC and enjoy a productive relationship. To that extent, BPM proposes a meeting at your earliest convenience so we can negotiate and sign a new agreement that will be mutually beneficial to both parties.

Sincerely,

A handwritten signature in blue ink that reads "Joe Taylor". The signature is fluid and cursive, with the first name "Joe" being more prominent than the last name "Taylor".

Joe Taylor
Global Manager
Bentonite Performance Minerals, LLC

EXHIBIT D

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

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

DECLARATION OF JENNIFER HARTMAN

I, Jennifer Hartman, declare as follows:

1. I am an Environmental Specialist for Bentonite Performance Minerals LLC (BPM). I have held this position for approximately 5 years. As an Environmental Specialist, I routinely work with consultants, specialists, and property owners to assess and manage the environmental impact of mining operations conducted by BPM.
2. Wyoming Department of Environmental Quality Mine Permit 267C authorizes BPM to mine and remove bentonite deposits, some of which are located under surface lands owned by 2U Ranch LLC (2U). I worked with 2U in conjunction with BPM's mining operations conducted on 2U's surface lands.
3. 2U owns surface lands above bentonite deposits owned by the State of Wyoming and leased to BPM (Lease 0-42804). In 2014, BPM notified 2U of its intent to seek amendment of Permit 267C to develop Lease 0-42804 bentonite deposits.
4. I communicated multiple times with 2U's representative, Ronald Ericsson, regarding the collection of resource data for the amendment application. During the process of preparing the application, 2U was aware of, permitted, and did not object to BPM's entry onto 2U property to collect baseline data for the purpose of amending Permit 267C:

- a. On April 25, 2014, I notified Ronald Ericsson by telephone that BPM and their consultants would be collecting baseline data (soils, vegetation, wildlife, hydrology, etc.) on Lease 0-42804 lands for the purpose of amending Permit 267C. I explained that the collection would take place throughout the year as weather permitted. Mr. Ericsson understood and did not object.
- b. On May 15, 2014, a consultant and I conducted a brief field reconnaissance on Lease 0-42804 surface lands in preparation for the consultant's vegetation and wildlife survey.
- c. In June 2014, I notified 2U that BPM's consultant would conduct baseline vegetation and wildlife surveys on June 17 and 18 and camp overnight on surface lands owned by 2U. Mr. Ericsson advised me to warn the consultant to "watch out for mountain lions" because a neighbor had shot a large cat in the area.
- d. BPM's consultant collected data on June 17 and 18, 2014 and camped on the 2U surface lands on the night of June 17, 2014.
- e. On July 14, 2014, I accompanied BPM Mine Manager, Joel Severin, to meet with Ronald and Scott Ericsson at Ronald Ericsson's office. We discussed, among other things, BPM's need to gather additional baseline data on Lease 0-42804 surface lands. The Ericssons did not object to BPM collecting baseline data. In fact, the Ericssons encouraged BPM to explore for bentonite deposits on 2U surface lands north of the boundary of Lease 0-42804 near Green Mountain.
- f. Subsequently, from August 11, 2014 to August 15, 2014, a consultant collected soils information from Lease 0-42804 surface lands.

- g. On December 16, 2014, I collected overburden samples on Lease 0-42804 lands during ongoing mining operations on adjacent 2U lands.
 - h. In January 2016 and February 2016, during ongoing mining operations on adjacent 2U lands, I conducted two short raptor studies on Lease 0-42804 lands and made notes of my observations.
5. After the expiration of the SUA on May 31, 2017, BPM did not access 2U's surface lands except to accompany DEQ on an annual mine inspection in June 2017, of which 2U was aware.
 6. From 2014 to 2016, 2U fully supported BPM's plan to amend Permit 267C and cooperated in BPM's preparation of its amendment application.
 7. 2U made no allegations of trespass against BPM prior to the filing of its Motion to Dismiss.

I declare under penalty of perjury that the foregoing declaration is true and accurate to the best of my knowledge and belief.

Dated: October 04, 2018.



Jennifer Hartman

EXHIBIT E



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Matthew H. Mead, Governor

Todd Parfitt, Director

June 28, 2016

Ms. Jennifer Hartman
Bentonite Performance Minerals
554 U.S. Highway 212
Belle Fourche, SD 57717

**RE: Completeness Declaration for Bentonite Performance Mineral's (permit no. 267c)
Wyoming State Lease 42804 Amendment (TFN 6 1/197)**

Dear Ms. Hartman:

LQD received a response package to round one completeness comments under your cover letter that arrived in the District III office on May 9, 2016. I have reviewed the responses which adequately address my round one concerns. LQD now declares the amendment application to be **complete** and will move forward with technical review.

The acreage of this amendment application combined with acreage added since the last public notice is less than the 20% threshold for public notice. Thus public notice is not required for this amendment application. Technical review will begin automatically and nothing is required of the mine at this time.

If you have any question please contact me at (307) 673-9337.

Sincerely,

Josh Malmberg
Natural Resources Analyst
LQD District 3

/jm

xc: Cheyenne LQD files

Exhibit E

use 6/28/16

2100 West 5th Street • SHERIDAN, WY 82801
(307) 673-9337 • FAX (307) 672-2213



EXHIBIT F

My commission expires May 10, 1939

Myrtle Summers
Notary Public

Filed for record at 4 o'clock and 15 minutes P.M., on the 24 day of Oct. A.D. 1939

Francis Hojda
County Clerk

No. 111100

QUIT CLAIM DEED

THIS INDENTURE, Made this 9 day of May, 1939, between the WYOMING FARM LOAN BOARD, a loan board organized and existing under and by virtue of the laws of the State of Wyoming, party of the first part and CLARENCE ROBBINS and BERT ROBBINS, Aladdin, Wyoming, parties of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of TWO THOUSAND AND NO/100---DOLLARS (\$2,000.00), lawful money of the United States of America, to it in hand paid, by the said parties of the second part, at or before the enrolling and delivery of these presents, the receipt whereof is hereby confessed and acknowledged, has remised, released and quitclaimed, and by these presents does remise, release and quit claim, all its estate, right, title, interest and possession, unto the said parties of the second part, and to their heirs and assigns, forever, in all that certain lot and parcel of land situated in Crook County, and State of Wyoming, and bounded and particularly described as follow to-wit:

Lot Eight (8) in Section Five (5); Lots Eight (8), Nine (9) and Ten (10) in Section Six (6), Township Fifty-six (56) North, and the Southwest Quarter of Northeast Quarter, West Half of Southeast Quarter, Southeast Quarter of Southwest Quarter, or Lots Eleven (11), Fourteen (14), Eighteen (18), and Nineteen (19) in Section Thirty (30); Lots Three (3), Four (4), Five (5), Six (6), Seven (7), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), South Half of Northeast Quarter, Southeast Quarter of Northwest Quarter of Section Thirty-one (31); Lot Three (3), Southwest Quarter of Northwest Quarter of Section Thirty-two (32), Township Fifty-seven (57) North, all in Range Sixty-two (62) West of the 6th Principal Meridian, containing 1,001.16 acres, more or less, according to the government Survey, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interest, property possessions, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises and every part and parcel thereof, with the appurtenances.

Exhibit F

Crook County, Wyoming, Deed Record, No. 89

Provided, however, that this conveyance is made subject to the following reservation and condition, to-wit:

The party of the first part does hereby reserve to the Wyoming Farm Loan Board, its successors and assigns, all minerals and mineral rights in and to the above described premises and the right of ingress and egress to said premises and the use of so much of the surface thereof as may be necessary to prospect for, develop and remove such minerals, or any part thereof.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises, together with the appurtenances, unto said parties of the second part and their heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has caused its name to be hereunto subscribed by its President and its official seal to be hereunto affixed by its Secretary, all in the City of Cheyenne, Wyoming, the day and year first above written.

Signed, Sealed and Delivered
in the Presence of:

W. E. Hartwell

(W.F.L.B. Seal)

WYOMING FARM LOAN BOARD

By Nels H. Smith (SEAL)
President

Attest Winifred S. Kienzle (SEAL)
Deputy Farm Loan Commissioner

EXHIBIT G

Section 2.10.58 WY State Lease 42804 (WSL04) Amendment Area Mine Plan

The claim that is included in the WY State Lease 04 Amendment area is as follows:

Amendment Areas	Legal	Total Acres
Wyoming State Lease 42804	SE4SW4, SW4SE4 Section 30 T57N R62W	80
	NE4, E2NW4, SW4, NW4SE4 Section 31T57N R62W	440
	W2NW4 Section 32 T57N R62W	80
		600

Section 2.10.58.1 Outstanding Permit Conditions and General Information

The WY State Lease 42804 surface is owned by the Lonesome Country LC. An illustration of the mine plan for the claim is presented in Map 2.10.58-1. Mining is expected to start on the proposed portion of the WY State Lease 42804 amendment in 2020. The area has been surveyed/cleared baseline soils, wildlife and vegetation in accordance with WY-DEQ regulations.

WY State Lease 42804 Mining Description

The majority of the ore on the WSL04 claim lies in a single deposit, with only a couple small deposits out-laying. There will be four pit series on the WSL04 claim, labeled on the Mine Map as S4-A through S4-D. Most of the soil associated with mining in the WSL04 claim will be live-spread, however there may be situations which require soil to be stockpiled for later application. It is expected that three out-of-pit permanent overburden piles will be constructed in relation to mining the WSL04 claim.

The ore is a continuation of the same deposit that is currently being mined in the Jolley Edsall 14 (JE 14) claim (Change #31 to permit 267C) and is adjacent to the WY State Lease 42804 claim. Pit Series S4-A is the southernmost series and is a continuation of mining from the Jolley Edsall claim. Mining will progress from the east (coming from JE 14) to the west. One permanent overburden pile will be placed near the central portion of the series on the southern edge, the overburden pile will be contoured into an existing hill to flow with the existing landscape. In addition salvaged soil will be placed near the south-central disturbance edge as well. This pit series will end when it meets the western claim border. Pit Series S4-A is bordered on the north by Pit Series S4-B.

Pit Series S4-B begins in the northwestern corner of the southwestern portion of the claim (refer to Mine Map for illustration). The mining will progress initially to the southeast for a short time before turning and progressing north for a large portion of the series, eventually turning to the east and wrapping around in a horse-shoe pattern and moving to the west in the central portion of the permit area. Soil will be placed in multiple locations

along the mining as illustrated on the mine map. One out of pit overburden pile will be constructed near the end of this series, also the beginning of Pit Series S4-C.

Pit Series S4-C will begin just west of the end point of pit Series S4-B in the north-central portion of the claim. It is a relatively short pit series. One permanent out of pit overburden pile will be constructed in relation to mining this pit series, on the southern edge of mining near the center of the series. Soil for this series will be placed in along the northeast edge.

Pit series S4-D is located in the southeast portion of the claim north of JE14. It is very small, consisting of only a couple pit cuts. Soil for these pits will be salvage and stored west of the mining and reapplied once mining has concluded.

The soil (0-54" based on Soil Report) will be live-spread on previous pits within that series or stockpiled for future use, depending on the area and pit progression. The permittee will adjust the "general backfilling and handling of overburden in the 'tiered system" manner as discussed in Section 2.5.3 in order to ensure that the most suitable overburden material lies next to the topsoil. Pits will be backfilled, contoured, topsoiled and seeded per information provided in Section 2.11.3.3 (Reclamation Section).

The mining camp will remain on the disturbance from previous mining where soil has already been salvaged. Sumps will be constructed so potential petroleum spills in this area will be directed to the sumps thereby protecting area surface water. This is consistent with directives written into the permittee's SPCC plan. Any petroleum contaminated soil (PCS) in the area will be removed, hauled and placed in the permittee's permitted PCS treatment site located at the Colony Plant site. The quantity of soil removed will be documented in the permittee's Annual Report.

Section 2.10.58.2 Life of Mining Operations

The permittee expects that the mining operations associated with the WY State Lease 42804 Amendment will extend through 2040.

Section 2.10.58.3 Mining Operation and Progressions

Under the provision outlined in Section 2.10.6, the permittee will be submitting proposed mining disturbance in its 2019 Annual Report.

Section 2.10.58.4 Mine Progression Time Schedule

Under the provisions outlined in Section 2.10.7, the Permittee has presented the previous narration and accompanying illustration (Mine Plan Map 2.10.58-1) to describe the progression. The permittee also commits to those timing requirements listed in section 2.11.3.3 of Permit 267C. The Mining Map is labeled as Map 2.10.58-1. The majority of soil salvaged during the mining process will be live-spread on the previous mining. Some soil from the mining in the S4 pit series may have soil piled adjacent to the mining.

Bentonite Performance Minerals, LLC
Permit 267C
Mine Plan-2.10

Some roads built in the area will be temporary and where possible be constructed on backfill where soil has already been salvaged, with the exception of landowner requested permanent(s) road which will remain in place once mining is completed.

Section 2.10.58.5 Mining Hydrology

The WY State Lease 42804 amendment covers 600 acres on rolling to hilly terrain with most of the disturbance occurring in the flat open areas located amongst the steeper terrain. The Belle Fourche River is located 0.6 miles to the east, 1.35 miles to the north and 1.6 miles to the northeast since it forms an inverted U-shaped meandering corridor near the permit area. Green Mountain is located in the northwest quarter of the amendment area where the elevation rises to 3,754 feet at the summit. The lowest elevation on the site is 3,585 feet at the southern edge of the site.

Refer to section 2.6.3 regarding general practices regarding drainages within the mining area. One unnamed drainage will be affected by mining in the amendment area. Approximately 1000 yards of this drainage which course through the center of the amendment area from east to west will be affected; the largest pond in the claim spills into this drainage.

In addition the small southern most pond in the amendment area will be mined through and replaced with improvements, including steeper slopes and greater depth.

All pre-mine surface water on the amendment area underwent quarterly baseline water sampling for a year. Results from this sampling can be found in section 2.6.5.24.

General BMP's utilized, concerning discharge, are listed in the Bentonite Performance Minerals' Wyoming General Storm Water Permit for Mining Operations Authorization and are listed in Section 2.10.11-1 of Permit 267C.

In addition, due to the revised Wyoming General Storm Water Permit for Mining Operations Authorization, Bentonite Performance Minerals will be allowed to discharge to "waters of the state" however will be required to monitor discharged water for Total Suspended Solids.

There are surface and ground water right claims within the eight surrounding sections, these water rights are presented in section 2.6.5.24. Bentonite mining takes place at a shallow depth and since groundwater is deep in the area bentonite mining is not expected to affect groundwater.

Section 2.10.58.6 Haul, Access, and Light-Use Roads

Under the provisions outlined in Section 2.10.17 (Volume 13, page 2.10-11), the permittee is required to submit the road types to be constructed in the WY State Lease 42804 Amendment permit application. Per landowner request permanent haul roads will

Bentonite Performance Minerals, LLC
Permit 267C
Mine Plan-2.10

be constructed in the WY State Lease 42804 Amendment area. Road construction will be on surface where soil has been salvaged.

Section 2.10.58.7 Topsoil and Subsoil Salvage

The information and commitments in Sections 2.10.8 through 2.10.16 remain current for the WY State Lease 42804 Amendment Area. Disturbance of ten soil communities will take place with an estimated 177 acres of disturbance within the 600 acre project area. Refer to pages 2.7.3.45-10 & 11 or the Soils Map 2.7.3.45-1 for a table listing all projected soil types, affected acreage and salvage depths for the amendment area.

The soil (0-54" based on Soil Report 2.7.3.45) will be live-spread on previous pits within that series or stockpiled for future use, depending on the area and pit progression. The Subsoil will be salvaged and stored separately.

Section 2.10.58.8 Mining Commitments

The information and commitments in Section 2.10.9 through 2.10.23 remain current for the WSL04 Amendment area.

Section 2.10.58.9 Power Transmission and Communication Lines

There are no transmission or communication lines running through the WSL04.

Section 2.10.58.10 Mitigation

Habitat for the northern long-eared bat is present, however in a telephone consultation with WG&F it was decided that mitigation was not necessary for this case where no White Nose Syndrome has been recorded. The proposed mining will have "no effect" on the northern long-eared bat.

Due to the documentation of ground nesting passerines and waterfowl initial ground disturbing activities will occur outside the nesting and early brood rearing time frame of migratory birds (May 1 - July 15) to avoid direct mortality or nest destruction. (Refer to page 2.9.3.45-25 thru 27).

EXHIBIT H

Bentonite Performance Minerals, LLC
Permit No 267C
Reclamation Plan-2.11

Section 2.11.41 Wyoming State Lease 42804 (WSL04) Amendment Reclamation Plan

The area that is included in the Wyoming State Lease 42804 Amendment area is as follows:

Amendment Areas	Legal	Total Acres
Wyoming State Lease 42804	SE4SW4, SW4SE4 Section 30 T57N R62W	80
	NE4, E2NW4, SW4, NW4SE4 Section 31T57N R62W	440
	W2NW4 Section 32 T57N R62W	80
		600

The WSL04 surface is owned by Lonesome Country LC. The area has been surveyed/cleared for baseline soils, wildlife and vegetation in accordance with WY-DEQ regulations.

Section 2.11.41-1 General Reclamation Standards & Practices

The information and commitments in Permit 267C Sections 2.11.1 through 2.11.8.1 remain current for the reclamation operations performed on the Amendment area. Reclamation progress will follow that listed in Section 2.11.3.3. In regards to post-mining slope, topography and through drainage, reclamation on the WSL04 Amendment will not deviate from the standards listed in Section 2.11.4.

Section 2.11.41-2 Permanent Out-of-Pit Overburden

As stated in section 2.11.3.2 of Permit 267C when the permittee creates permanent overburden stockpiles, the reclamation will achieve the performance standards of LQD Non Coal Rules and Regulations including:

- Overburden placement will not occur on native slopes that exceed 20 degrees (approximately 33% or 3:1 slopes)
- Stabilizing the overburden slopes by grading and contouring them to blend with adjacent native and reclaimed lands
- Covering the stabilized overburden with subsoil and topsoil.
- Seeding the topsoil with an approved permanent seed mix.
- Overburden placement will not block ephemeral, intermittent or perennial drainage channels

- Overburden which is placed on pre-Act affected lands will be subject to the other reclamation practices in the reclamation section of the permit.

Specifically regarding the WSL04 Amendment three out of pit overburden piles will be constructed in relation to mining on the WSL04 claim. One will be in relation to Pit series S4-A, one will be in relation to Pit series S4-B and one for S4-C. These post mine features are illustrated on the reclamation map 2.11.41-1. The out of pit overburden will have topsoil, subsoil, or third lift spread over it, or parts of it in a “candy-striping” or “patch-work” pattern, it will then be seeded. This practice is consistent with mining progression Schedule A and Schedule C illustrated in Section 2.10.6 of the permit. The soil (0-54+” based on Soil Report) will be removed and live-spread or stockpiled adjacent to the active mining for reclamation. Seeding will take place in the fall of each year as outlined in Section 2.11.8.

Section 2.11.41-3 Permanent Post-Mining Impoundments

One new permanent post-mine impoundment is planned for the WY State Lease 42804 Amendment area per landowner request. This impoundment will be immediately west of the largest pond found on the Amendment area and can be found illustrated on the Reclamation Plan map 2.11.41-1. In addition, one impoundment will be mined through and enhanced through reclamation with steeper slopes and a greater depth. It is noted in the letter from WG&F has suggested constructing no impoundments, but these recommendations are directly conflicting of the land owner’s desires. Therefore, enhancements will be made, such as steeper slopes and greater depths than what currently exist, but impoundments will still be replaced.

Section 2.11.41-4 Ephemeral Drainage Construction

The information and commitments in Section 2.11.6 remain current for the reclamation operations on the WY State Lease 42804 Amendment area.

Section 2.11.41-5 Subsoil and Topsoil Redistribution Methods and Depths

Refer to section 2.11.7 for general reclamation practices regarding soil management. Topsoil and subsoil depths are delineated in the Soil Section (2.7.3.45). The soil (0-54” based on Soil Report 2.7.3.45) will be live-spread on previous pits within that series or stockpiled for future use (subsoil will be salvaged and stored separately), depending on the area and pit progression. The permittee will adjust the “general backfilling and handling of overburden in the ‘tiered’ system” manner as discussed in Section 2.5.3 in order to ensure that the most suitable overburden material lies next to the topsoil.

Disturbance of ten soil communities within 177 acres of the 600 acre project area will take place. Refer to pages 2.7.3.45-10 & 11 or the Soils Map 2.7.3.45-1 for a table listing all projected soil types, affected acreage and salvage depths for the amendment area.

Section 2.11.41-6 Revegetation & Seed

The information and commitments in Section 2.11.8 remain current for the revegetation process of the WY State Lease 42804 Amendment lands. The Permit 267C approved seed mix (Pages 2.11-16 and 2.11-17) is to be used in the reclamation.

In the correspondence from the WGFD (Section 2.9.3.45, Addendum B), it is recommended that reclamation efforts target restoration of the pre-disturbance shrub components. The permit seed mix is entirely made up of native seeds and offers a variety of forbs, grasses and shrubs (depending on availability) for the permit area. Refer to Reclamation section 2.11 pages 2.11-13 & 2.11-14 for a list of species in seed mix. Specifically shrub species are listed in section 2.11.8.2. Sampling results are presented in the Vegetation section (2.8.8.36). Based on the comment, reclamation plans will include this shrub component. However, the land owner, Lonesome Country, LC has requested that no trees be replaced in the reclamation.

Section 2.11.41-7 Husbandry Practices on Revegetated Lands

The information and commitments in Sections 2.11.9 through 2.11.11 remain current for the WY State Lease 42804 Amendment area.

Section 2.11.41-8 Fencing

Any fencing removed by the permittee will be temporarily replaced during mining events. Any fencing removed by the permittee will be permanently replaced in equal or better condition of initial fencing as part of the reclamation plan.

Section 2.11.41-9 Hydrologic Restoration

The Wyoming State Lease 42804 amendment covers 600 acres on rolling to hilly terrain with most of the disturbance occurring in the flat open areas located amongst the steeper terrain. The Belle Fourche River is located 0.6 miles to the east, 1.35 miles to the north and 1.6 miles to the northeast since it forms an inverted U-shaped meandering corridor near the permit area. Green Mountain is located in the northwest quarter of the amendment area where the elevation rises to 3,754 feet at the summit. The lowest elevation on the site is 3,585 feet at the southern edge of the site.

Refer to section 2.6.3 regarding drainages within the mining area.

One unnamed drainage will be affected by mining in the amendment area. Approximately 1000 yards of this drainage which course through the center of the amendment area from east to west will be affected; the largest pond in the claim spills into this drainage. This drainage will be reclaimed back to its original contour with the exception the addition of a pond at the beginning of the drain on the west. This pond will have steeper slopes as

Bentonite Performance Minerals, LLC
Permit No 267C
Reclamation Plan-2.11

well as greater depth than the water that currently collects in that area making a marshy pool.

In addition the small southern most pond in the amendment area will be mined through and replaced with improvements, including steeper slopes and greater depth. See WYG&F correspondence regarding post min impoundment on private surface.

All surface water on the amendment area underwent quarterly baseline water sampling for a year. Results from this sampling can be found in section 2.6.5.24. Information regarding wetlands in the amendment area can be found in section 2.12-20, this is also where correspondence with USACE can be located as well as illustrations of the wetlands within the amendment area.

General BMP's utilized, concerning discharge, are listed in the Bentonite Performance Minerals' Wyoming General Storm Water Permit for Mining Operations Authorization and are listed in Section 2.10.11-1 of Permit 267C.