

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

**IN THE MATTER OF BLACK HILLS** )  
**BENTONITE PERMIT TO MINE NO. 248C** ) **Docket No. 24-1601**  
**MURPHY CREEK UPDATE AREA** )  
)

**ORDER DENYING BLACK HILLS  
BENTONITE'S MOTION FOR SUMMARY JUDGMENT**

Petitioner, Black Hills Bentonite filed a motion for summary judgment on July 12, 2024. The motion requested the Council to grant Black Hills summary judgment on its petition requesting an order in lieu of consent. The Council heard oral argument on Black Hill's motion on August 8, 2024.


Having considered the motion, Bruce and Betty Jean Firnekas' (Landowners') response, and Black Hill's reply, and being fully advised, the Council unanimously finds and concludes as follows:

1. Black Hill's motion for summary judgment is denied based upon the reasons stated during the Council's deliberations on August 8 following the oral argument.
2. The Council concludes that summary judgment is not appropriate because there are disputed material facts. Specifically, the Council is without the necessary facts to ascertain what statute is applicable in this matter—Wyo. Stat. Ann. § 35-11-406(b)(xi) or § 406(b)(xii). Because genuine issues of material fact exist as to what statute applies, Black Hills is not entitled to judgment as a matter of law.

3. In addition, if § 406(b)(xii) is the applicable statute, the Council finds and concludes that there are disputed material facts that relate to whether the elements in (b)(xii) have been satisfied. As a result, summary judgment is not appropriate.

**IT IS HEREBY ORDERED** that Black Hills Bentonite's motion for summary judgment is denied.

**ENTERED** this 8th day of August 2024.

  
Ryan Greene (Aug 8, 2024 16:54 MDT)  
Ryan Greene, Hearing Examiner  
Environmental Quality Council