

# EXHIBIT

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April 25, 2022

Black Hills Bentonite, LLC  
c/o Jennifer L. McDowell, Esq.  
Welborn Sullivan Meck & Tooley, P.C.  
159 North Wolcott, Suite 220  
Casper, WY 82601

*Re: Bruce & Betty Jean Firnekas – Murphy Creek Mine (BHB)*

Dear Ms. McDowell:

As you are aware, our office represents Bruce & Betty Jean Firnekas. Our clients own land in the N1/2 of Section 1, Township 41 North, Range 83 West, 6<sup>th</sup> P.M., Johnson County, Wyoming. As was previously noted in a letter from Black Hills Bentonite to our clients, dated August 24, 2021, Black Hills Bentonite acknowledged that it does not have and that it needs to obtain a surface use agreement with our clients for mining and other operations in this area. On December 3, 2021, we sent a letter to Black Hills Bentonite reaching out to introduce ourselves and begin negotiations toward a surface use agreement. To date, Black Hills Bentonite has not engaged in negotiations with our clients in this regard, and no agreements have been reached.

A few months ago, your office provided us with a copy of Black Hills Bentonite's *Mine and Reclamation Plans for Permit to Mine No. 248C, Murphy Creek Update Area*, which we presume Black Hills Bentonite intends to submit to the Wyoming Department of Environmental Quality with an application for a mine permit and/or permit amendment. With the copy, Black Hills Bentonite again requested that our clients execute a "Surface Landowner's Consent." I am writing to inform you that, at this time, our clients are not able or willing to sign any such surface landowner's consent.

As previously provided, Black Hills Bentonite has not entered into a surface use agreement with our clients to provide payments for any damages to the surface estate, to crops or forage, or to any improvements of the surface owner as a result of the mining operations. Pursuant to statute, payment for damages to the surface estate is required to be made to the surface owner annually,

Black Hills Bentonite, LLC  
c/o Ms. Jennifer L. McDowell, Esq.  
Letter, dated April 25, 2022  
Re: Firnekas – Murphy Creek Mine (BHB)  
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unless otherwise agreed to by the surface owner and the operator. Short of negotiating a surface use agreement with our clients, Black Hills Bentonite must provide a bond or other undertaking to the state, for the direct use and benefit of the surface owner, in such amounts which are sufficient to secure payment for any damages to the surface estate, etc. Part of the compensable damages includes, among other things, any financial loss which may result from disruption of the surface owner's use of the lands. The amount of the bond is required to be commensurate with the reasonable value of the surrounding land, and the effect of the overall operation of the landowner. To be clear, this bond for the protection of the surface owner is separate from and in addition to the required performance bond for reclamation. Pursuant to WYO. STAT. § 35-11-416, without either a surface use agreement with our clients, providing for surface damage payments and waiving the bonding requirement or a sufficient bond with the state, the Wyoming Department of Environmental Quality is prohibited from issuing any permit/permit amendment for mining operations on our clients' lands.

In the information provided, we do not see any information that would assist in determining the amount of any bond for the protection of the surface owner, or any indication that Black Hills Bentonite is offering to submit such a bond. As you can imagine, if Black Hills Bentonite intends to submit a bond for the protection of the surface owner as required by statute, then our clients need to be provided with the opportunity to review the basis for the calculation of such bonding amounts so that annual payments to them for damages to the surface estate are secured and will be made from that bond.

Again, our clients would like to engage with Black Hills Bentonite in negotiations toward a mutually acceptable surface use agreement, providing for surface damage payments based on the anticipated operations set forth in the mining and reclamation plans. Only upon execution of such a surface use agreement, would our clients be willing to waive the statutory bonding requirement or provide the surface landowner's consent form. Please let us know if Black Hills Bentonite is willing to negotiate a surface use agreement. If Black Hills Bentonite is unwilling to do so, we will plan to let the Wyoming Department of Environmental Quality know that our clients object to the issuance of any mining permits that would include any operations or entry upon our clients' land without the required bond for the protection of the surface owner.

We look forward to hearing from you on this matter. If you have any questions, please contact me at (307) 742-7140.

Sincerely,  
NICHOLAS & TANGEMAN, LLC

  
Mitchell H. Edwards

cc: Client (via email)