

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

FEB 26 2014

Jim Ruby, Executive Secretary
Environmental Quality Council

IN RE WILLITS COMPANY INC.
TFN 5 3/062

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DOCKET NO. 13-4806
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER.

On the 9th day of January, 2014 at 9:00 a.m. the above entitled matter came on for final hearing in Cheyenne, Wyoming. The Hearing Officer was Tim Flitner. Council members present in person were, Vice-Chairman David Searle, Councilmen Tim Flitner, Dr. David Bagley and Councilwoman Meghan Lally. Present via video conference was Chairman Tom Coverdale, Councilman Andy Schwartz and Councilman Rich Fairservis. Staff present were Joe Girardin, John Knepper and Jim Ruby.

Representing the Department of Environmental Quality (DEQ) was Andrew Kuhlmann Asst. Attorney General. Representing Willits Company Inc. (Willits) was Robert Willits. The Petitioner, Donald MacNeil (MacNeil) appeared pro se.

Present and testifying on behalf of the DEQ was Julie Powell from the Land Quality Division of the DEQ. The Petitioner testified on his own behalf. Willits did not call any witnesses.

The following Exhibits were offered and received. DEQ 1 and 4. MacNeil 1, 2, 3,4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14. Willits 1, 2, and 3.

FINDINGS OF FACT

1. Willits Company Inc. filed an application with the Land Quality Division of the Wyoming Department of Environmental Quality (DEQ) for a new noncoal small mine permit for

the mining of quarry rock, granite, sand and gravel located in a portion of Sections 13 and 14, T 13N R 70W and a portion of Sec. 18 T 13 N R 69W or the 6th P.M. Laramie County Wyoming. The mine is located approximately 17 miles west of Cheyenne north of I-80 at M.P. 342.

2. Public notice of the DEQ's intent to issue a permit to mine to the Company was published for four consecutive weeks beginning the week of November 4th 2013. On November 4th, 2013 Willits mailed a copy of the notice to all surface owners of record of the land within the permit area, to all surface owners of record of immediately adjacent lands and to all surface owners within one-half mile of the proposed mining site. On November 4th, 2013 Willits mailed a copy of the application mining plan map to the Wyoming Oil and Gas Commission.

3. The public comment period extended for 30 days after the last public notice was published. Mr. MacNeil filed an objection to the issuance of the permit to mine within the 30 day comment period and requested a hearing before the Environmental Quality Council (Council).

4. The grounds for objection listed by MacNeil in his letter of objection were:

- a. "Much environmental damage, would be caused."
- b. "Granite Reservoir and Crystal Sec 16 and river close to fragile mountain landscape."
- c. "Our water supply could be adversely be exacted by destruction of water shed."
- d. "Scaring of Ranch Land"
- e. "I own the Water and Mineral Rights to the Ranch and Ranchets."
- f. "There will be no sub:Renting of surface land any more. Grazing of livestock only. Also I want control of the ranches to see that that's all my land and ranch is

used for. Any and all other leases are illegal.”

5. MacNeil did not present any evidence or testimony touching on issues a, b,c,d or f.
6. MacNeil did testify to his genealogy and introduced multiple exhibits of pictures of persons he identified as his ancestors. The pictures failed to identify the persons as relatives of MacNeil or that they currently owned any of the land under consideration in this matter. **MacNeil 1, MacNeil 3, MacNeil 4, MacNeil 7, MacNeil 8, MacNeil 9, MacNeil 10, MacNeil 11, MacNeil 12, MacNeil 13, and MacNeil 14.**
7. MacNeil did not offer any evidence other than his own testimony that would establish his ownership of the surface or the mineral rights in the permit area. What evidence he did offer failed to establish his right of ownership. **MacNeil 2, MacNeil 5, MacNeil 6,**
8. Willits produced a Warranty deed conveying all right, title and interest in and to the land contained within the permit area to John R. Willits. **Willits 1**
9. Willits produced a Mineral deed conveying all right, title and interest in and to all oil, gas, uranium, coal, shale, sand, gravel and other minerals, gems and precious stones to John R. Willits. **Willits 2**
10. Mr. John R. Willits is the President of Willits Company, Inc.
11. Willits also produced a title report on the permit area which identified Mr. John Willits as the owner of the property contained within the permit area. **Willits 3.**
12. DEQ Exhibit 1 and the testimony of Julie Powell established that the application was complete and complied with all the provisions of Wyoming Revised Statutes 35-11-406. Ms. Powell testified that the application contains a self-certification of ownership or ability to conduct the activities proposed and that this certification was reviewed by the department.

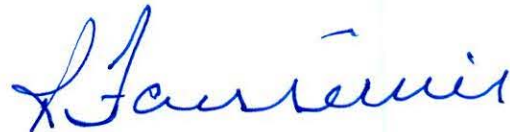
CONCLUSIONS OF LAW

13. The EQC has jurisdiction over the parties and the subject matter of this proceeding pursuant to W.S. 35-11-112(a)(iv) and 406(k) .
14. All notice requirements have been met.
15. Willits application meets all statutory and regulatory requirements. DEQ EXHIBIT 1.
16. None of the grounds enumerated in W.S. 35-11-406(k) exist to deny the issuance of the permit to Willits.
17. The Petitioner bears the burden of proof to show that one of the statutory grounds enumerated in W.S. 35-11-406(k) exist to deny the issuance of the permit to mine to Willits or that the Department actions were arbitrary and capricious or contrary to law.
18. The burden of proof is preponderance of the evidence.
19. The Petitioner has failed to meet that burden.
20. Willits application is complete. The application complies with all statutory and regulatory requirements.

ORDER

WHEREFORE, it is HEREBY ORDERED that permit identified in **TFN 5 3/062** be issued by the DEQ to Willits Company Inc.

DATED this 25th day of February, 2014.



Tim Flitner, Presiding Officer
Environmental Quality Council

CERTIFICATE OF SERVICE

I, Tyffanne Rowan, certify that at Cheyenne, Wyoming, on the 27th day of February, 2014, I served a copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** by electronic mail to the following:

Andrew Kuhlmann
Asst. Attorney General
andrew.kuhlmann@wyo.gov

Robert Willits
Willits Company Inc.
willits.bob@gmail.com

Nancy Nuttbrock
LQD Administrator
nancy.nuttbrock@wyo.gov

Todd Parfitt
Director, DEQ
Todd.Parfitt@wyo.gov

and by depositing copies of the same in the United States mail, certified, postage prepaid, duly enveloped and addressed to:

Donald MacNeil
P.O. Box 3252
Cheyenne, WY 82003



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