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FILED

FEB 10 1994

Terri A. Lorenzon, Attorney
Environmental Quality Council

February 9, 1994

VERIFIED NOTICE OF CLAIM
AGAINST THE STATE OF WYOMING

FEB 10 1994
A & INSURANCE SECTION

TO: Dave Ferrari
Wyoming State Auditor
State Capitol Building
Cheyenne, Wyoming 82002

Procurement Services Division
Department of Administration and Information
State of Wyoming
Emerson Building
Cheyenne, Wyoming 82002

SUBJECT: Verified Claim of Rissler & McMurry Co.
Against The State Of Wyoming
For Temporary and Permanent Takings Of The
Fair Market Value of Plaintiff's
State Limestone Mining Lease

Gentlemen:

As required by the provisions of W.S. 9-1-404, this letter is to serve notice of and to document a claim against the State of Wyoming by Rissler & McMurry Co., a Wyoming corporation, as a prerequisite to the filing of litigation. This Notice is likewise given under the Governmental Claims Act, W.S. Section 1-39-101 et. seq. (1991 Cum.Supp.), although Claimant does not believe this claim for takings qualifies under that statute. That legal issue is undecided for a constitutional takings claim, hence notice is hereby given under both statutes.

This claim is submitted by Rissler & McMurry Co. of Casper, Wyoming, a Wyoming corporation, in verified form by affidavit in accordance with Article 16, Section 7 of the Wyoming Constitution.

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The notice statutes do not provide a time frame for the State's response to this claim. Accordingly, we will borrow from the Rules of Civil Procedure, and the State Auditor is requested to audit, settle and act upon this claim within thirty (30) days with advice to counsel so that if the claim is not settled, the Claimant may proceed to litigation forthwith.

NATURE AND DOCUMENTATION OF THE CLAIM

Rissler & McMurry Co. applied for and was granted a Mining Lease for limestone by the State of Wyoming on July 2, 1989, for a school section of land owned by the State in Natrona County, Wyoming. This Lease is attached. On December 17, 1991, Rissler & McMurry Co. submitted an Application for a Small Mining Permit to the Department of Environmental Quality of the State of Wyoming as required by law prior to commencing mining of the limestone under this Lease. The DEQ certified the Small Mine Permit Application technically complete and by law the Permit Hearing was to be held on May 5, 1992, by the Environmental Quality Council. That Hearing date was mandatory under the statute and the law provides for no continuances or stays. After the DEQ'S actions in finding the Mine Permit Application technically complete and ready for public hearing by the EQC, the EQC then elected to subsequently take the steps to declare the area encompassing the Lease as rare and uncommon and without statutory authority continued the mandatory Hearing date on the Permit and, without authority, remanded the Application to the DEQ for recertification under an undefined rare and uncommon criteria. This was an ex post facto regulation in direct violation of Article I, Section 35 of the Wyoming Constitution. The May 5, 1992, Permit Hearing was not held and to this date has never been held.

In order to protect its private property rights under the Mining Lease, Rissler and McMurry Co. was then forced to appeal the conduct of this Mining Permit Application by the EQC to the Wyoming Supreme Court. The Supreme Court concurred on July 13, 1993, that the EQC's conduct was indeed arbitrary and capricious. In July of 1993, the DEQ again certified the Small Mine Permit Application as technically complete. A Hearing was again mandated by law for August 25, 1993. This Hearing was never held and to this date has not been held. The EQC has, without authority, now continued this mandatory Permit Hearing three more times and has now set the matter for April of 1994, in excess of two years beyond the original statutorily mandated Hearing date. The latest continuance, granted without any statutory authority, occurred on January 31, 1994.

In this latest interim, the EQC has determined it will promulgate new rules and regulations for a rare and uncommon designation under the Mine Permit Statutes and has indicated that it intends to apply same again on an ex post facto basis to Rissler & McMurry Co.'s Mining Permit Application filed in 1991. This ex post facto application of Administrative rules is again in direct violation of the Wyoming Constitution and outside the mandate of the Supreme Court.

Rissler & McMurry Co.'s claims are premised upon the theories of unconstitutional temporary and permanent takings of its viable private property rights in its Limestone Mining Lease by the hostile regulatory conduct of the EQC. The EQC's conduct as pertains to this Mining Lease and Permit Application can only be characterized as bungling, incompetent, arbitrary and unlawful so as to make any future efforts by Rissler & McMurry to utilize the Mining Lease futile.

The Application of a rare and uncommon criteria to this Small Mine Permit by the EQC after the Application was filed and deemed technically complete in 1992 and the intended reapplication of that criterion to this Permit Application in 1994 are classic unconstitutional ex post facto rules and regulations and takings under Article I, Sections 33 and 35 of the Wyoming Constitution. That, coupled with the multiple continuances and remands by the EQC, without authority, constitute violations of Claimant's rights of procedural and substantive due process and have rendered valueless Claimant's State Mining Lease so as to constitute unconstitutional takings under the Fifth and Fourteenth Amendments of the United States Constitution for which, under the law, just compensation must be paid.

The temporary takings that occurred here commenced on May 5, 1992, reoccurred on August 25, 1993, and January 31, 1994, and are deemed continuing in nature until this matter is resolved.

The permanent takings claim is based upon the Administrative futility rule which Claimant asserts accrued on January 31, 1994, when the Permit Hearing was continued again, without any statutory authority, by the EQC. Rissler & McMurry is now convinced that further Administrative attempts to obtain a hearing and any further mining permits under its State Mining Lease are futile under this hostile regulatory environment.

The temporary takings claim is for 2,923,840 tons of recoverable limestone in the 40-acre Small Mine Permit Application which has now been pending hearing since May 5, 1992. The fair market value of this limestone is at \$7.00 per ton. The claim for the

temporary takings is therefore in the amount of \$20,466,880.00.

The permanent takings claim is for the investor backed expectation of being able to mine 110 acres under the State of Wyoming Limestone Mining Lease. The total tonnage of recoverable limestone under this claim is 2,834,289 tons likewise with a fair market value of \$7.00 per ton. Accordingly, the claim for the permanent takings is \$19,840,023.00.

The total of both claims is \$40,306,903.00. The Mining Engineer's projections are attached. You are advised that Rissler & McMurry could conceivably claim deprivation of all the recoverable limestone provided in the Lease. That would be in excess of 28 million tons with a value of over 200 Million Dollars. This claim is, however, limited to Rissler & McMurry's mining expectations of 40 and 110 acres as documented herein.

This claim is based upon the Fifth and Fourteenth Amendments of the United States Constitution; Article I, Sections 33 and 35 of the Wyoming Constitution, and *Lucas v. So. Carolina Coastal Council*, 120 L.Ed. 2d 798 (U.S. 1992).

COUNSEL OF RECORD FOR CLAIMANT

Counsel for the Claimant are:

John R. Hursh
Donald J. Rissler
Central Wyoming Law Associates, P.C.
105-107 South 6th East
P.O. Box 1783
Riverton, WY 82501
(307) 856-4157

Notice and advice of Rissler & McMurry Co.'s claim against the State pursuant to W.S. 9-1-404 and the Governmental Claims Act, W.S. 1-39-101 et. seq., is hereby given. You are advised that Rissler & McMurry will be withdrawing its Small Mine Permit Application under Claimant's Mining Lease forthwith in order to pursue this claim. The State of Wyoming is invited to audit and process this claim and entertain settlement negotiations prior to litigation as required by law.

The Claimant shall await your advice as a prerequisite to the filing of litigation for this claim within thirty (30) days.

DATED this 9 day of February, 1994.

RISSLER & MC MURRY CO.,
A Wyoming Corporation

BY: *John R. Hursh*
John R. Hursh
Attorneys for Claimant

VERIFICATION AFFIDAVIT

STATE OF WYOMING)
 : ss.
County of Natrona)

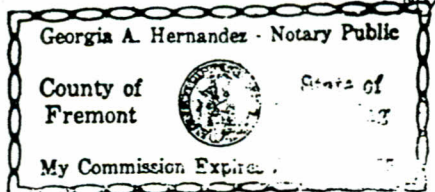
Neil McMurry, being first duly sworn upon his oath, deposes and states that he is the President of Rissler & McMurry Co., a Wyoming Corporation, that he has read the foregoing **Verified Notice of Claim Against The State of Wyoming**, knows the contents thereof, and that the facts and documentation contained therein are true and accurate to the best of his knowledge and belief; that said Notice of Claim was signed on behalf of Rissler & McMurry Co. by authority of its Board of Directors, and the said Neil McMurry acknowledges said instrument to be the free act and deed of said corporation.

Neil McMurry
NEIL MC MURRY

Subscribed and sworn to before me this 9th day of February, 1994, by Neil McMurry.

WITNESS my hand and official seal.

Georgia A. Hernandez
Notary Public
My commission expires: 2/25/95

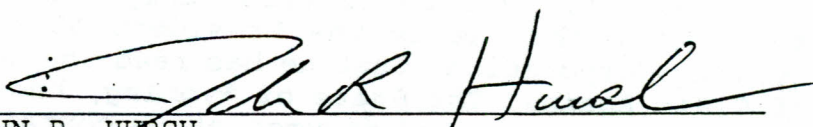


CERTIFICATE OF MAILING

I, John R. Hursh, hereby certify that on this 9 day of February, 1994, I did serve a true and correct copy of the foregoing **Verified Notice of Claim Against The State of Wyoming** upon the State of Wyoming depositing the same in the United States mails, postage prepaid, Registered Mail, Return Receipt Requested, addressed as follows:

Mr. Dave Ferrari
Wyoming State Auditor
State Capitol Building
Cheyenne, WY 82002

Procurement Services Division
Department of Administration & Information
State of Wyoming
Emerson Building
Cheyenne, WY 82002



JOHN R. HURSH
Attorney for Claimant Rissler & McMurry Co.