

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**

NOV 19 1985

Terri A. Lorenzon, Adm. Aide  
Environmental Quality Council

IN THE MATTER OF OBJECTIONS )  
TO THE PERMIT APPLICATION OF )  
AMAX COAL COMPANY, EAGLE BUTTE MINE, )  
TFN 1 6/212 )

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PERMIT

The application of Amax Coal Company for a surface coal mining permit and the objections thereto of LeRoy Grams and Mary H. Grams were considered by the Environmental Quality Council at a public meeting in Jackson, Wyoming, on September 30, 1985, following an evidentiary hearing held in Cheyenne, Wyoming, on August 28, 1985. Amax Coal Company appeared and was represented by Steven R. Youngbauer of Amax Coal Company. Mary H. Grams did not appear and was not represented at the hearing, and LeRoy Grams appeared pro se. The Land Quality Division of the Department of Environmental Quality appeared and was represented by Weldon S. Caldbeck, an Assistant Attorney General. Having considered the evidence presented at the hearing and the arguments of counsel, the Environmental Quality Council hereby finds and concludes as follows:

FINDINGS OF FACT

1. This proceeding arises from the application of Amax Coal Company, a division of Amax Incorporated (hereinafter "Amax"), to the Department of Environmental Quality, Land Quality Division, to obtain a permit to conduct surface coal mining activities.

2. The Eagle Butte Mine received a permit from the Land Quality Division in 1976. This permit application was submitted pursuant to Wyoming statutes and regulations that implement the Surface Mining Control and Reclamation Act, P.L. 95-87.

3. On May 21, 1985, the Land Quality Division, determined the Eagle Butte Mine application, assigned the temporary filing number TFN

1 6/212, is complete and suitable for final publication pursuant to W.S, 35-11-406(g).

4. LeRoy Grams and Mary H. Grams, received notice of the filing of the permit application pursuant to W.S. 35-11-406(g) and (j).

5. On August 6, 1985, the Land Quality Division received timely, written objections from the protestants LeRoy Grams and Mary H. Grams.

6. On August 20, 1985, Amax filed a Motion to Dismiss alleging that specified allegations in the protestants' petitions failed to state a claim upon which relief could be granted, and further stating that the Council lacked subject-matter jurisdiction over the issues raised.

7. Mary H. Grams is the owner of the surface estate of lands contiguous to the proposed mine permit area and water rights appurtenant to such lands (as described subsequently by the protestants' attorney), comprising the NW $\frac{1}{4}$  of Section 34, NE $\frac{1}{4}$  of Section 33 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, Township 51 North, Range 72 West, 6th P.M., Campbell County, Wyoming.

8. LeRoy Grams is the owner of all mineral rights underlying the lands owned by Mary H. Grams described in the above paragraph.

9. The protestant, Mary H. Grams, presented no evidence to substantiate allegations in her petition protesting the issuance of the mining permit to Amax Coal Company.

10. Evidence at the hearing demonstrated that the Eagle Butte Mine application does not request approval to mine the Little Rawhide Tract which was purchased in the 1982 coal lease sale held by the Department of Interior.

11. Evidence at the hearing demonstrated that access to the Grams' property will not be limited due to the mining operation, and a highway location project to which Mr. Grams objected, is a project of the Wyoming Highway Department and not Amax Coal Company.

12. The protestant, LeRoy Grams, produced no evidence on the issues raised in his petition alleging that:

A. The mining operation constitutes a public and private nuisance;

B. The coal company originally sought authorization for mining on an area and for a time in excess of that authorized by the Environmental Quality Act;

C. The application does not contain a map required by the Environmental Quality Act;

D. The reclamation plan did not comply with the Environmental Quality Act;

E. Amax Coal Company is in non-compliance with its current permit;

F. The present operation has lowered the groundwater on the Grams' property;

G. The issuance of this permit is contrary to the law and policy of the State of Wyoming and the United States;

H. Unidentified test holes were drilled beyond the terms of an exploration permit; and

I. No accommodation was made for private oil and gas leases or abandoned oil and gas wells.

13. Section 1.8 of the permit application contains a legal description of the permit area and this description does include the railroad to the point it splits to the Carter spur.

14. Section 1.10 of the permit application contains a demonstration that the current and proposed operation is in compliance with the Environmental Quality Act.

15. Section 2 of the permit application contains a general description of the area including a description of wildlife. No bald eagle roosts, bald eagle nests, or black-footed ferrets have been observed within or adjacent to the permit area by the U.S. Fish and Wildlife Service, wildlife consultants, or Amax Coal Company during studies conducted through 1985.

16. Neither the Amax Coal Company permit area nor the Grams' property contains habitat, such as Ponderosa Pine Hills or wooded riparian bottoms, suitable for bald eagle roosts.

17. Neither the Amax Coal Company permit area nor the Grams' property contains extensive colonies of burrowing animals, primarily prairie dogs, which are needed to support black-footed ferret populations.

18. Although bald eagles and golden eagles have been seen on the Grams' property and on the permit area, no evidence was produced indicating they roosted or nested in the area.

19. It is highly unlikely that black-footed ferrets live in the Eagle Butte Mine permit area or in the vicinity of the permit area.

20. Although drainage into a livestock reservoir on the Grams' property will be affected by the mining operation, much of the drainage area will remain intact.

21. The three (3) groundwater wells located on the Grams' property will not be significantly affected by the mining operation, and permit provisions for mitigation are sufficient for any unforeseen problems.

22. The reclamation plan will accomplish reclamation as required by the Environmental Quality Act.

23. The permit application contains a plan for special handling of acid and toxic materials to prevent contamination of ground or surface waters.

24. Eagle Butte Mine is grandfathered under W.S. 35-11-406(n)(v)(B) in regard to mining an alluvial valley floor.

25. All maps required by the Environmental Quality Act are included in the permit application.

26. Section 3.0 of the permit application contains a ground control plan that identifies a safe slope and benching conditions in order that the topographic surface beyond the affected area will not be in danger of collapse or nor will there be danger of interior collapse. There will be no lack of lateral and subjacent support for the Grams' property.

27. Amax Coal Company's mining operation will not mine around the Grams' property, thus, leaving that property with unreclaimed, vertical walls.

28. Section 3.8 of the permit application contains a blasting plan which insures that explosives will be used in accordance with existing state and federal laws. No blasting activities will occur within one half mile of the Grams' ranch buildings.

29. The proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

30. No prime farmland is included within the permit area.

#### CONCLUSIONS OF LAW

1. This proceeding is under the Wyoming Environmental Quality Act, W.S. 35-11-101 through 1207, 1977 as amended.

2. Statutory notice was given by the applicant, Amax Coal Company.

3. Actual and statutory notice of the application was received by the protestants.

4. As the Eagle Butte Mine application, TFN 1 6/212, does not request approval to mine the Little Rawhide Tract, which was issued in the 1982 coal lease sale held by the Department of Interior, allegations concerning the existing permit allegations that this permit application should be deemed incomplete because of the 1982 coal lease sale should be dismissed.

5. The protestants are not precluded by this order from seeking any relief from any state agency having jurisdiction in the event of future, adverse effects on groundwater underlying the Grams' property.

6. The protestants, LeRoy Grams and Mary H. Grams, have not met their burden of going forward with evidence to demonstrate this permit application is incomplete.

7. Amax Coal Company has met its burden of proof demonstrating that the Eagle Butte Mine is in compliance with W.S. 35-11-406(n), and all other applicable state laws.

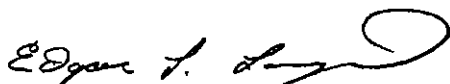
ORDER

IT IS HEREBY ORDERED THAT:

1. Allegations IV, V, VI, VII, VIII, X, XIV, and XV of the objections of LeRoy Grams, and allegations IV, V, VI, VII, and VIII of the objections of Mary H. Grams, are hereby dismissed; and

2. The permit to mine shall be granted pursuant to W.S. 35-11-406(p).

DATED this 19<sup>th</sup> day of November, 1985.

  
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Edgar L. Langrand  
Hearing Examiner