

FILED

DEC 22 1982

Terri A. Lorenzon, Adm. Aide
Environmental Quality Council

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING
Docket No.

IN THE MATTER OF OBJECTIONS TO)
THE PERMIT APPLICATION OF GEORGE)
W. KLOVER, J.W.K. AND T. MINING)
COMPANY, TFN 1 6/281.)

FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

PURSUANT TO NOTICE duly given to all parties in interest, this matter came on for hearing on the 27th day of September, 1982 at 10:00 a.m. in the new lunchroom of the County Fairgrounds located at South Federal, Riverton, Wyoming. Mr. Walter Perry, III, Senior Assistant Attorney General, presided as hearing officer.

The Applicant appeared and was represented by Mr. Richard D. Gist and Mr. Richard Kraemer, Attorneys at Law. All Protestors represented themselves. Protestants were Ethel Nauman, William Moffat, Margaret Brown, Lennis Goliher, Albert Brown and Peggy Moffat. The Department of Environmental Quality, Land Quality Division was represented by Mr. Weldon S. Caldbeck, Assistant Attorney General.

With all parties participating in the hearing, the Environmental Quality Council having taken this matter under advisement and having been fully advised, and having considered all the testimony and evidence submitted by the parties, now makes its Findings of Fact, Conclusions of Law and Order.

e: LQD 12-23-82.ak.

FINDINGS OF FACT

1. George W. Klover, hereafter referred to as Applicant, has filed an application, TFN 1 6/281 for a small mining permit to mine gold within the NE1/4 of the SE1/4, North 1/2 of the SE1/4 of the SE1/4, NW1/4 of the SE1/4, Section 11, T29N, R100W, Fremont County, Wyoming. Applicant's mining operation will be known as the J.W.K. and T. Mining Company of Atlantic City, Wyoming.

2. During the statutory prescribed time limit objections were filed by interested persons to the Land Quality Division. Said objectors include Mr. Ethel Nauman, Mr. Lawrence Nauman, Mr. William Moffat, Mrs. Peggy Moffat, Mr. Albert Brown, Mrs. Margaret Brown and Mrs. Lennis Goliher, all of whom were present at the hearing on this matter. Objectors are hereafter collectively referred to as Protestants.

3. The Protestants generally have objected to the dust and noise potential created by the proposed operation; that mining would harm, destroy, or materially impair an area that has been designated as rare or uncommon and having particular historical, archeological, wildlife, botanical or scenic value; that aspen, willow and pine trees in the area would be destroyed and not replaced; that there is a possible affect on the water table; that the mining will occur within three hundred feet of an occupied residence; and that all people within one half mile were not afforded the statutory notice required by W.S. 35-11-406(j); and, that the mining would decrease property values in the area.

4. No testimony, beyond conclusory statements, nor any other evidence was offered with regard to the objections alleging dust problems created by the mining operation.

5. Testimony from Mr. Mark Moxley, Land Quality Division, represented that no dust problem was foreseen by the Division.

6. No testimony, beyond conclusory statements, nor any other evidence was offered with regard to the objection alleging mining would harm, destroy, or materially impair an area that has been designated as rare or uncommon and having particular historical, archeological, wildlife, botanical or scenic value; furthermore, the area in question has not been designated as rare or uncommon by the Council.

7. No testimony, beyond conclusory statements, nor any other evidence was offered with regard to the objection alleging mining would affect water tables in the area.

8. Testimony did reveal that the operation would continually recycle any water used.

9. No testimony, beyond conclusory statements, nor any other evidence was offered with regard to the objection alleging mining would occur within three hundred feet of an occupied dwelling; all Protestant's who testified indicated their residence was further than three hundred feet or they were silent on this issue.

10. No testimony, beyond conclusory statements, nor any other evidence was offered with regard to the objection alleging that the mining would decrease property values in the area.

11. Numerous homes and cabins are in the area and are occupied either permanently as residences or occasionally for recreational purposes; the mining will be within hearing distance of many such homes and cabins.

12. The Applicant testified that operations would only occur between the months of June and mid-September and during the hours between 8:00 a.m. and 7:00 p.m..

13. There are no specific plans in the Applicant's reclamation to replace quaking aspen, willow and pine trees destroyed and displaced by the operation. Testimony revealed the operation would require destruction of some of these said trees.

14. The quaking aspens, willow and pine trees presently contribute to an animal habitat for moose, elk and deer. The applicant proposes to return the land to such use postmining.

15. The Applicant testified to his willingness to replace such tree growth if that were required of him.

16. The Applicant's testimony and mine plan submittals reveal that the Applicant will not affect more than one acre of land per year and that the mine will occur along and within the "Rock Creek", further, the Applicant testified reclamation would follow two hundred yards behind the operation as the operation moved up Rock Creek.

CONCLUSIONS OF LAW

1. The Environmental Quality Council has jurisdiction over both the subject matter and parties of this proceeding.

2. Due and proper notice of the hearing in this matter was given by the Council as required by law.

3. The record does not contain substantial evidence to support a conclusion that any part of the proposed operation,

as described by the Applicant, would:

- a.) create a dust problem;
- b.) harm, destroy or materially impair an area that has been designated as rare or uncommon and having particular historical, archeological, wildlife, botanical or scenic value;
- c.) affect the water table;
- d.) occur within three hundred feet of an occupied dwelling;
- e.) decrease property value in the area;
- f.) cause a nuisance.

4. The Applicant's mine plan and reclamation plan must provide for reestablishment of the animal habitat which would include replacement of willows, quaking aspen and pine trees destroyed or displaced by mining operations.

5. The Applicant is limited by his mine plan which allows for affected no more than one acre of land per year along Rock Creek.

ORDER

WHEREFORE, PURSUANT TO W.S. 35-11-112(c)(ii), IT IS HEREBY ORDERED THAT:

1. The Department of Environmental Quality, Land Quality Division issue a small mining permit to the Applicant.

2. Said small mining permit shall set forth and be subject to the following conditions:

a.) in the event that the permit is transferred to another person or entity the permit shall be reviewed by the Administrator of the Land Quality Division who shall review the permit to determine that the new permittee will not cause a nuisance to the neighboring landowners.

b.) Reclamation must follow within two hundred yards of the mining operation and the operator shall replace all quaking aspen, willow and pine trees destroyed or displaced by the operation.

3. Said aforementioned conditions shall not be exclusive but shall be in addition to those conditions which are inherent in the permit, and any other conditions which may be set forth in accordance with law.

DATED this 14th day of Dec, 1982.


Hearing Officer

CERTIFICATE OF SERVICE

I, Walter Perry, III, Senior Assistant Attorney General, certify that on this 22nd day of December, 1982, I placed a true and correct copy of the Findings of Fact, Conclusions of Law and Order in this case in the United States mail, postage prepaid, addressed as follows:

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