

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

JUL 25 1986

Terri A. Lorenzon, Adm. Aide
Environmental Quality Council

IN THE MATTER OF OBJECTIONS)
TO THE APPLICATION OF A)
MINING PERMIT AMENDMENT BY)
ROBERT LEFAIVRE,)
PERMIT NO. 503, TFN 1 1/338)

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 May 15, 1986, at 10:00 a.m. in the City Hall Council Chambers Room, 212 D Street, Rock Springs, Wyoming. Mr. John V. Crow, a member of the Environmental Quality Council, presided as hearing officer. Mr. David B. Park, a member of the Environmental Quality Council, was also in attendance.

The Applicant, Robert LeFaivre, appeared and was represented pro se. The protestants, Charles M. Love and Steven D. Creasman, appeared and were represented pro se. The Department of Environmental Quality, Land Quality Division, was represented by Mr. Weldon S. Caldbeck, Senior Assistant Attorney General.

With all parties participating in the hearing, the Environmental Quality Council, having taken this matter under advisement, 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.

FINDINGS OF FACT

1. Robert C. LeFaivre, (the Applicant), has filed an application with the Department of Environmental Quality, Land Quality Division, (the Department), TFN 1 1/338, for an amendment to Mine Permit No. 503.
2. Mine Permit No. 503, issued by the Department on June 25, 1980 is in the name of Western Aggregates of Mineral and Rock, Inc. The application for an amendment to Mine Permit No. 503, TFN 1 1/338 is in the name of Robert C. LeFaivre.

3. Permit No. 503 is a small mining permit as the surface mining operations do not involve more than ten thousand (10,000) yards of overburden and ten (10) acres of affected land in any one (1) year. The permit amendment would not change this designation.

4. Public notice of the permit amendment application was accomplished by publication in the Green River Star once a week for two consecutive weeks, to wit: March 13, 1986 and March 25, 1986.

5. Mr. Charles M. Love, Professor, Anthropology and Geology, Western Wyoming College, and, Mr. Steven D. Creasman, Director, Archaeological Services, Western Wyoming College, filed timely objections to a portion of the mine permit amendment application.

6. The Protestants' objections are applicable only to the NW $\frac{1}{4}$ of Section 18, T21N, R101W, Sweetwater County, Wyoming. This area will hereinafter be described as the Natural Corrals.

7. Public notice of the public hearing conducted relative to the aforesaid permit objections was printed and published once a week for two consecutive weeks, prior to the hearing, in the Casper Star-Tribune and the Rock Springs Daily Rocket-Miner.

8. Permit amendment application, TFN 1 1/338, covers two non-contiguous parcels of property. The first parcel is a building stone collection area located at the Natural Corrals. The second parcel is a millsite located south of Interstate 80 in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 10, T19N, R103W, Sweetwater County, Wyoming. No objections have been filed against the proposed operation in the second parcel.

9. The United States of America owns the surface and mineral rights for the land identified as the Natural Corrals. The land is managed by the Department of Interior, Bureau of Land Management.

10. The Applicant did not present any direct evidence at the hearing in support of his application, but he chose to rely on his application and documents submitted to the Department to support his application.

11. Applicant's permit amendment application for the area around the Natural Corrals is to allow the mining of large blocks of rock for

sale as building stone. The mining and reclamation plan summary indicates that no excavation, earthmoving or roadbuilding will be conducted at the mine site. Surface rocks will be removed whole or cut and split on-site and then removed. Overland travel will be by four wheel drive with the possible use of horses and helicopters. Operations will be conducted to avoid streams, springs, marshy areas and drainages. Trees and large shrubs will be preserved. There may be a need to house employees on site using small travel trailers or skid mounted buildings. The mining and reclamation plan summary further states that if significant environmental concerns are identified during the inspection, then alternate sites and or methods will be developed by the operator.

12. The Applicant's mining and reclamation plan summary does not identify any existing archaeological, cultural or recreational values at the proposed site located around the Natural Corrals. Accordingly, no proposals or statements are made on how such values will be reclaimed, or will be affected.

13. The area of the Natural Corrals is a small portion of a much larger area known as Zirkel Mesa. The building stone material present in the Natural Corrals consists of large boulders which are the result of a lava flow.

14. Contrary to the assertions of the Applicant, evidence at the hearing demonstrated that the boulders in the Natural Corrals are of the same mineralogy and petrology as boulders in other sections of the Zirkel Mesa, and other areas of the mesa are more accessible.

15. The Natural Corrals has unique archaeological values, including shallow sites of two or three different types of Indian pottery, beads, trade beads, leather fragments, soapstone, pipes, projectile points, stone tool fragments, various types of obsidian and bone tools, and the only occurrence of mammoth tusk known in southwestern Wyoming. Current data suggests the area has been intermittently occupied by prehistoric and historic populations for the last 11,000 years.

16. The spring located immediately adjacent to the Natural Corrals has a good deal of geologic deposition. The stratigraphy within the spring or immediately adjacent to the spring could yield a valuable climatological, wildlife and human occupation sequence.

17. Ice caves at the Natural Corrals contain extensive archaeological values that are unique and therefore cannot be reclaimed.

18. Known archaeological sites at the Natural Corrals are very shallow and would be irreparably destroyed by mining disturbance.

19. Removal of any stones or boulders around the Natural Corrals could precipitate an erosion process which would adversely affect the shallow archaeological resources.

20. The natural placement of the boulders around the Natural Corrals is integral to the total environment; and removal of any of the boulders would affect the entire site.

21. The area of the Natural Corrals has been used as a recreational area by the citizens of Sweetwater County for many years, and in particular has been extensively used by the Town of Superior. The use has been of such duration and nature that the use itself has caused the site to have historic importance to Wyoming.

22. The Natural Corrals has a combination of available water, food and shelter not otherwise available in the desert terrain and, consequently, the area is a habitat for abundant and varied wildlife.

23. Access to the Natural Corrals is by a two-track dirt road, which is in poor condition, and has not been maintained as it has been closed to public vehicle use by the Bureau of Land Management.

24. The Natural Corrals is currently being considered for nomination on the National Register of Historic Places. In June, 1982, the Natural Corrals was designated as an area of critical environmental concern by the United States Department of Interior, Bureau of Land Management.

25. The management objectives of the Bureau of Land Management for the Natural Corrals, as stated in "Natural Corrals Area of Critical

Environmental Concern Management Plan" (DEQ Exhibit #4), include protection of this area from the degradation of its cultural, recreation, and geologic values.

26. The botany of the Natural Corrals is unusual for the southwestern part of Wyoming. Disturbance by mining would cause perhaps irreversible changes to both the vegetative and water regimes of the area.

27. The historic, archaeological, recreation, and wildlife values which make the Natural Corrals area unique are irreplaceable, and if disturbed by the proposed mining activity, could not be reclaimed.

CONCLUSIONS OF LAW

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

2. Due and proper notice of the hearing in this matter has been given in all respects as required by law and, specifically, by Section 35-11-406(k), Wyoming Statutes, 1977, as amended.

3. The policy and purpose of the Wyoming Environmental Quality Act is to enable the State to prevent, reduce and eliminate pollution, to preserve, and enhance the air, water and reclaim the land of Wyoming and to plan the development, use, reclamation, preservation and enhancement of the air, land and water resources of the State.

4. The archaeological, historic, recreational, and wildlife values which are unique to the Natural Corrals area must be preserved and enhanced in accordance with the policy and purpose of the Environmental Quality Act.

5. Section 35-11-402, Wyoming Statutes 1977, as amended, requires that land must be reclaimed to its highest previous use.

6. The Applicant has presented no evidence to demonstrate that the Natural Corrals can be reclaimed to its archaeological, historic, wildlife, and recreational use.

7. Section 35-11-406(m)(iii), Wyoming Statutes 1977, as amended, provides that a permit may be denied if any part of the proposed operation, or reclamation program, or proposed future use is contrary to the law or policy of this state, or the United States.

8. The Applicant bears the burden of proving that his application is complete and that it meets all legal requirements; and has failed to demonstrate that this burden has been met insofar as the Applicant seeks to amend Permit No. 503 to include the Natural Corrals.

9. As no objections were filed, and no evidence was presented in regard to the addition of the millsite area to Permit No. 503, this portion of the permit amendment application should be granted as it is complete.

ORDER

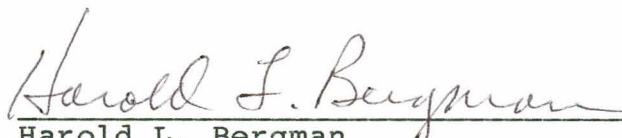
WHEREFORE, PURSUANT TO W.S. 35-11-112(c)(ii), IT IS HEREBY ORDERED THAT:

The Director of the Department of Environmental Quality and the Administrator of its Land Quality Division shall issue the permit amendment, TFN 1 1/338 to Robert LeFaivre, to conduct the proposed operations for a millsite which will be located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 10, T19N, R103W, Sweetwater County, Wyoming, conditioned upon Mr. LeFaivre's demonstration to the satisfaction of the Land Quality Division, that he is the rightful holder of Permit No. 503. Said operations shall at all times be conducted in accordance with the Wyoming Environmental Quality Act and the rules and regulations promulgated thereunder.

IT IS FURTHER ORDERED that no permit shall be issued for the area described in TFN 1 1/338 for lands located within the NW $\frac{1}{4}$, Section 18, T21N, R101W, Sweetwater County, Wyoming.

DATED this 22 day of July, 1986.

ENVIRONMENTAL QUALITY COUNCIL



Harold L. Bergman
Chairman

CERTIFICATE OF SERVICE

I, Terri A. Lorenzon, certify that at Cheyenne, Wyoming, on the 25th day of July, 1986, I served a copy of the foregoing Findings of Fact, Conclusions of Law and Order, by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Charles M. Love
Steven D. Creasman
Western Wyoming College
2500 College Drive
Rock Springs, WY 82901

Robert LeFaivre
Apartment No. 1
Little America, WY 82929

and by interoffice mail of the same date to;

Randolph Wood, Director
Department of Environmental Quality
122 W 25th Street, Herschler Building
Cheyenne, WY 82002

Roger Shaffer, Administrator
Land Quality Division
Department of Environmental Quality
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