

**2U RANCH LLC  
Sextus LC and GLAM LC**

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November 28, 2017

Matt Mead, Governor and Member of the State Board of Land Commissioners  
Bridget Hill, Director, Office of State Lands and Investments  
Kyle Wendtland, Department of Environmental Quality, Land Quality Division  
Lucy Pauley, Mediation Coordinator, Wyoming Department of Agriculture

RE: Wyoming State Mineral Lease 42804 and amended Department of Environmental Quality  
Mining Permit 267C.

We request that the proposed Bentonite Performance Minerals (BPM) – Halliburton (Joel Severin, 554 US Hwy 212, Belle Fourche, SD 57717) mining on lands described in Wyoming State Mineral Lease 42804 (hereinafter called “Lease”) and amended Department of Environmental Quality (DEQ) Mining Permit 267C (hereinafter called “Permit”) be prevented; modified; or reassigned to an alternative mining company.

All the mining would be on land that the 2U Ranch LLC owns the surface rights. The bentonite would be transported on a haul road that runs through and is owned by three separate ranches (2U Ranch LLC, Sextus LC, and GLAM LC).

These lands are located in Crook County, Wyoming (mailing address is Alzada, MT as it is the closest Post Office), positioned at the intersection of the Black Hills and the rolling plains of southeastern Montana, have been historically utilized for livestock grazing, wildlife habitat – hunting, recreation and were featured in Marlboro cigarette advertising for a decade. This is mountainous (includes Green Mountain) timbered lands with meadows. Very scenic, not your typical flat treeless bentonite mining sites.

This mining will permanently alter and disrupt wildlife habitat, ranching operations and viewscape. The submitted mining permit states the removal of 10,936.55 trees (7,928.99 ponderosa pines, 2,460.72 bur oak, and 546.82 junipers) which would permanently and significantly reduce the value of the land. The loss of these trees would remove natural habitat for wildlife and areas of shade and wind protection for livestock. These trees are not

replaceable as bur oak trees do not mature for 200 years and live for 400 years. It takes 90-100 years to grow a marketable ponderosa pine.

Deficiencies and problems with the Lease and Permit include the following (underlined words illustrate violation of Lease or inadequate – missing information in the Permit):

1. Permit does not include a bond for payment to owners for damages to surface estate, forage, trees, roads, reservoirs, water well and disruption to the surface owners operation as specified by W. S. 35-11-416 (a) Protection of the Surface Owner shown below:

In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by mining operations a permit shall not be issued without the execution of a bond or undertaking to the state, whichever is applicable, for the use and benefit of the surface owner or owners of the land, in an amount sufficient to secure the payment for any damages to the surface estate, to the crops and forage, or to the tangible improvements of the surface owner. This amount shall be determined by the administrator and shall be commensurate with the reasonable value of the surrounding land, and the effect of the overall operation of the landowner. This bond is in addition to the performance bond required for reclamation by this act. As damage is determined it shall be paid. Financial loss resulting from disruption of the surface owner's operation shall be considered as part of the damage. A bond for surface damage shall not be required when the agreement negotiated between the surface owner and the mineral owner or developer waives any requirement therefor. Payment of damages shall be paid annually unless otherwise agreed to by the surface owner and the operator.

2. Permit does not address damages due to the disruption in water supply for our cattle or hunting operations as stated by W. S. 35-11-416 (b) Protection of the Surface Owner:

An owner of real property and who holds a valid adjudicated water right and who obtains all or part of his supply of water for domestic, agricultural, industrial, recreational, or other legitimate use from a surface or an underground source other than a subterranean stream having a permanent distinct known channel may maintain an action against an operator to recover damages for pollution, diminution, or interruption of such water supply resulting from surface, in situ mining or underground mining.

Permit will eliminate two reservoirs(Permit, 2.10 Mine Plan and Map), destroy wetlands (Permit, 2.12 Wetlands and map) and interfere with road and livestock access to the following nine surface water rights (Permit, 2.10 Mine Plan and Map): BUTTERFIELD STOCK RESERVOIR (Water Right Number (WR) P1771.0S), AML-11 SITE 116 NO 2 STOCK RESERVOIR (WR P10122.0S), AML-11 SITE 116 NO 1 STOCK RESERVOIR (WR P10123.0S),

AML 11 SITE 116 NO 3 STOCK RESERVOIR (WR P10183.0S), AML 11 SITE 116 NO 4 STOCK RESERVOIR (WR P10184.0S), JOLLEY EDSALL 14 (WR P20363.0S), MASSEY STOCK RESERVOIR (WR P1776.0S), JOLLEY EDSALL 15 (WR P20364.0S), and ERICSSON STOCK RESERVOIR (WR P13085.0S).

3. Permit "Life of Mining Operations" for 20 years is a violation of the following Lease terms, Wyoming State Statutes and DEQ Regulations:
  - a. Lease states "M. DILIGENCE IN DEVELOPMENT. This lease granted with the express understanding that prospecting, bentonite mining, and the of the valuable bentonite content of the above described lands shall be pursued with diligence, and if at any time the lessor has reasonable belief that the operations are not being so conducted shall so notify lessee in writing and if compliance is not promptly obtained and the delinquency fully satisfied, it may then, at the end of any lease year, declare this said lease terminated".

This lease is for a term of ten years beginning on the 2<sup>nd</sup> day of June, 2011 and expiring on the 1<sup>st</sup> day of June, 2021. Permit mining plan states that mining will start 2020 and continue through 2040. This is not diligence in development to take almost 30 years to mine the bentonite with an additional minimum of 5 years for the tree reclamation.

- b. W. S. 35-11-406, Application for Permit; Generally; Denial; Limitations, (D) states that "the proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible."

25 years of mining and reclamation cannot be considered "as soon as feasibly possible".

- c. DEQ, Land quality – Non Coal, Ch 2: Regular Non Coal Mine Permit Applications, Sec 2 (b) (ii) states that "A time schedule for each major step in the reclamation which coordinates the operator's reclamation plan with the mining plan in such a manner so as to facilitate reclamation at the earliest possible time consistent with Chapter 3, Section 2(k) and the orderly development of the mining property."

Mining plan for 20 years is too long, does not specify either a defined time schedule or anticipated annual and total production by tonnage. Plan only states that they will mine 4 pits that will be open for three years each. Three years to mine each pit is too long and would equal 12 years of mining (4 pits x 3 yrs/ea = 12 years) not 20 years of mining.

4. Permit does not adequately reclaim the land, contains incorrect landowner statements, and does not address the below Wyoming State Statutes and DEQ Regulations - Guidelines:

- a. Permit Reclamation Plan-2.11 Section 2.11.41-6 Revegetation & Seed states “However, the land owner, Lonesome Country, LC has requested that no trees be replaced in the reclamation”. The landowner is 2U Ranch, LLC not Lonesome Country, LC. We want all the trees to be replaced that are disturbed by mining. BPM will disturb 177 acres which includes 86.23 ac of woodlands (Permit, 2.8 Vegetation). These woodlands have a density of 126.83 trees/ac. The composition of the woodlands is 72.5% ponderosa pines, 22.5% bur oak, and 5% juniper. They will disturb a total of 10,936.55 trees (7,928.99 ponderosa pines, 2,460.72 bur oak, and 546.82 junipers). BPM has received a certified letter with return from the landowners that they want the same size and age of the trees that are removed to be replanted.
- b. The reclamation plan must include tree replanting (DEQ, Non Coal, Standard Operating Procedure,(SOP) No. 7.4, Land Quality Division, SUBJECT: Bond Release Procedures for Bentonite Mines, Category 4: Lands Disturbed Post August 1981. Lands affected on after September 1, 1981. Reclamation goals on these lands are outlined in WDEQ/LQD Chapter 3, Section 2 (d). Bond release on Category 4 lands is evaluated through an application and a field inspection that addresses the following criteria:(h) If the approved Reclamation Plan includes a specific commitment(s) (i.e. trees, stockpond, etc.), the commitment(s) must be fulfilled.)
- c. W.S. 35-11-402, Establishment of Standards states that reclamation should be to the “highest previous use of the affected lands, the surrounding terrain and natural vegetation, surface and subsurface flowing or stationary water bodies, wildlife and aquatic habitat and resources, and acceptable uses after reclamation including the utility and capacity of the reclaimed lands to support such uses.”
- d. DEQ - Non Coal Chapter 3 Non Coal Mine Environmental Protection Performance Standards state “Reclamation shall restore the land to a condition equal to or greater than the highest previous use.” and “Operators are required to restore wildlife habitat, whenever the Administrator determines that this restoration is possible, on affected land in a manner commensurate with or superior to habitat conditions which existed before the land became affected.”
- e. DEQ – Non Coal, Chapter 3 Non Coal Mine Environmental Protection Performance Standards, Revegetation states “reforestation shall be deemed to be complete when a reasonable population density as established in the reclamation plan has been achieved, the trees have shown themselves capable of continued growth for a minimum period of five years following planting, and the understory vegetation is adequate to control erosion and is appropriate for the land-use goal”. “The plan shall include the method and schedule of revegetation, including but not limited to species of plants, seeding rates, seeding techniques, mulching requirements or other

erosion control techniques, and seeding times to be used in a given area for reclamation purposes”.

- f. W. S. 35-11-406, Application for Permit; Generally; Denial; Limitations states “An estimate of the total cost of reclaiming the affected lands as outlined in the written proposal computed in accordance with established engineering principles”.
- g. DEQ Guideline No. 2 Vegetation Requirements for Exploration by Dozing, Regular Mines, and In Situ Leaching Ch. 2, Sect. 2(B)(iii)(C) states “ Assessment of costs for reclamation of all lands to be affected during the first year as if the mining operation were to stop at the end of this period. Itemize costs on a unit cost”.
- h. DEQ Guideline No. 2 Vegetation Requirements for Exploration by Dozing, Regular Mines, And In Situ Leaching Ch. 2, Sect. 2(b) states “For grazing lands the approximate carrying capacity of the land in AUMs”.
- i. DEQ Guideline No. 2 Vegetation Requirements For Exploration By Dozing, Regular Mines, And In Situ Leaching Ch. 2, Sect. 2(C) states “The vegetation plan should include restoration of wildlife habitat which is required to be commensurate with or superior to habitat conditions which existed before the land became affected”.
- j. DEQ Guideline No. 2 Vegetation Requirements for Exploration By Dozing, Regular Mines, and In Situ Leaching Ch. 2, Sect. 2(G) states that the reclamation plan should address the following Fish and Wildlife Habitat items:
  - 1) Areal distribution of shrubs and trees on the post mining landscape.
  - 2) Species occurring and estimated density of each.
  - 3) Methods used to establish shrubs and trees.
  - 4) Assessment of the quantitative and qualitative aspects of the post mining shrub and tree communities in terms of providing wildlife habitat.
- k. DEQ Guideline No. 2 Vegetation Requirements for Exploration By Dozing, Regular Mines, And In Situ Leaching Ch. 2, Sect. 2 (I)(B) states that the vegetation plan “include heights of trees to be removed by mining” which is necessary to calculate value of trees.
- l. DEQ, Guideline, No. 6, Non Coal, Application for a Permit to Mine or an Amendment states “Specify methods for evaluating the suitable re-establishment of postmining wildlife habitat”.
- m. DEQ, Guideline, No. 6, Non Coal, Application for a Permit to Mine or an Amendment states “Reclamation schedule. Annual progress of reclamation in accordance with Mine Sequence Map”.

- n. DEQ, Guideline, No. 6, Non Coal, Application for a Permit to Mine or an Amendment “Woody species transplants (a) Number, type and age of species used; (b) Implanting methods; and (c) Protection methods”.
5. The mining plan shows that the historical Baxter Homestead (BLM resurvey map, 57N, 62W, 1914) is to be mined. There are 19 known cultural sites and 7 isolated finds on lands surrounding the proposed mining. One cultural site - 48Ck1493 (Section 30, T57N-R62W) is adjacent to the Lease and was recommended as eligible for listing to the National Register of Historic Places (Appendix D-3, Summary Report, Cultural Resources, Permit 620, DEQ). A Cultural Resource survey was not submitted as part of the Permit. This is a violation of the following Rules And Regulations - Board Of Land Commissioners, Wyoming State Statutes and DEQ Regulations:
- a. W.S. 35-11-406, Application for Permit; Generally; Denial; Limitations states “The proposed mining operation would irreparably harm, destroy, or materially impair any area that has been designated by the council a rare or uncommon area and having particular historical, archaeological, wildlife, surface geological, botanical or scenic value”.
- b. W. S. 36-1-114, Protection of Prehistoric Ruins; Permits to Excavate, Regulations and Violations states “Before any excavation on any prehistoric ruins, pictographs, hieroglyphics, or any other ancient markings, or writing or archaeological and paleontological deposits in the state of Wyoming on any state or federal lands, shall be undertaken, a permit shall first be obtained from the state board of land commissioners. The state board of land commissioners is hereby authorized to promulgate and enforce such regulations as it may deem needful to protect from vandalism or injury the prehistoric ruins, relics, archaeological and paleontological deposits of the state, as well as all natural bridges and natural scenic features and formations. Any violation of such regulations shall be a misdemeanor”.
- c. DEQ, Land Quality – Non Coal, Chapter 2, Regular Non Coal Mine Permit Applications states “A description of any significant artifacts, fossil or other article of cultural, historical, archaeological or paleontological value. Upon recommendation by a qualified archaeologist or a qualified paleontologist, the Administrator may require an evaluation of the proposed permit area prior to the time that a permit or license is issued.
- d. Rules And Regulations, Board Of Land Commissioners, Chapter 22, Leasing of Bentonite, adopted pursuant to the authority granted in W.S. 36-6-101(b) states the following:
- (b) The Board may condition the issuance of any bentonite lease upon specific stipulations for the protection of the public, the environment, the waters of the state, historical, archeological or paleontological materials, the wildlife resources, or any of the subsurface or surface resources of the state.

- (g) Discovery of historical, archaeological, or paleontological deposits on state lands during the course of development shall be reported to the Office by the lessee prior to further disturbance, and operations may only re-commence as authorized by the Director. The Director shall notify the lessee regarding mitigation within five (5) working days after receiving the report.
- e. DEQ, Guideline 11, Reporting Cultural and Paleontological Resources Within Mine Permit Areas states each application for a mining permit shall contain:
  - 1. a description and map of any significant articles of cultural, historical, archeological, or paleontological value within the permit area;
  - 2. a report describing the inventory for such articles including names of all persons consulted or responsible for the inventory; and
  - 3. measures to be taken to salvage or to minimize or prevent adverse impacts to these resources.
- f. DEQ, Guideline, No. 6, Non Coal, Application for a Permit to Mine or an Amendment states “Description of the land must include archaeological and paleontological resources – surveys”.
- 6. Permit does not include adequate public nuisance or public health and safety information. This is in violation of the following Wyoming State Statutes and DEQ Regulations:
  - a. DEQ, Guideline No. 6, Non Coal; Application For A “Permit To Mine” Or An “Amendment” Iii (A), E. Public Nuisance and Safety states:
    - 1. As required by W.S. § 35-11-406(b)(xiii), describe the procedures proposed to avoid constituting a public nuisance, endangering the public safety, human or animal life, property, wildlife and plant life in or adjacent to the permit area including a program of fencing all stockpiles, roadways, pits and refuse or waste areas to protect the surface owner's ongoing operations.
    - 3. LQD recommends including hours and seasons of operations, routes of haulage, access routes, and estimated truck and vehicle traffic per route.
  - b. DEQ, Coal and Non Coal Standard Operating Procedure No. 1.12, Addressing Public Nuisance Issues (Endangering Public Safety, Property, Livestock, Wildlife, and Plant Life) in Mine Permit Applications states: “Noise Concerns: Excessive noise from the operation of equipment and machinery at all hours of the day can rise to the level of a public nuisance. Operators should consider including specific “hours of operation” and “days of operation” commitments in the Mine Plan. Noise can also be reduced to acceptable levels by locating equipment below grade or constructing berms around the pit”;

“The specific hours and days of operation necessary to avoid a public nuisance depend upon factors specific to the proposed area of mining. These may include:

type of equipment being used; number of adjacent dwellings, distance to nearest dwelling; any type of noise screening between the equipment and the dwelling; and, the presence of any unique adjacent landowner, such as a church or recreation area that may necessitate weekend restrictions. The hours of operation should be posted in a conspicuous location near the mine entrance”;

“Traffic concerns: Operators should also consider the impacts of traffic as a result of loading trucks, the use of Jake brakes, and excessive speeds. Operators are encouraged to post signs both entering and leaving the permit area stating that “No Jake Brakes” are allowed and stating the speed limit on all applicable public roads”;

“Unauthorized Access: Wyoming Statute § 35-11-415 (b)(i) (Duties of the Operator) requires the operator to conspicuously post and maintain at each entrance to the operation, a sign which clearly shows the name, address and telephone number of the operator, the name of his local authorized agent, and the permit number of his operations. A permit entrance sign alone may be sufficient in controlling unauthorized access for those proposed permit areas not readily accessible by public roads and with no adjacent occupied dwellings. Proposed permit areas that are readily accessible by frequently used public roads should generally be fenced and have a locked gate to control unauthorized vehicular access”;

“The applicant should provide a discussion on how they will minimize potential hazards to livestock, wildlife, and plant life by the proposed mining operation.

- i. Livestock Protection: Livestock protection generally consists of fencing the perimeter of the operation to prevent livestock from entering
- ii. Wildlife Protection: Wildlife protection concerns should be addressed in the Wyoming Game and Fish review of the permit application. Wildlife protection may involve the use of fences designed to keep wildlife out of hazardous areas or fences designed to allow the passage of migrating big game animals. A description of specific fence types is provided in the LQD Guideline No. 10. “Fencing”.
- iii. Speed Limits: The Wyoming Game and Fish generally requests a maximum speed limit on proposed haul and access roads to avoid wildlife collisions. A 30 mph speed limit has commonly been requested by that agency”.

7. The mining of wetlands in Permit does not address W.S. Statute 35-11-309, Legislative policy and intent which states “The legislature recognizes that significant differences exist in Wyoming between naturally occurring wetlands and those wetlands that result from human activities. Because portions of Wyoming are arid or semiarid, water was diverted from streams and rivers for irrigating cropland, resulting in the creation of wetlands. These wetlands have partially compensated for wetlands losses. Additionally, road and highway construction, petroleum industry operations and other human activities have created wetlands where none previously existed. While these man-made wetlands are equally as important as naturally occurring wetlands, having the same



characteristics and providing the same values and functions, management flexibility is required to acknowledge their different origins and to protect the property rights of landowners and water right holders.” And “In view of the legislative findings and conclusions of the importance of wetlands, water development and management, and industry in Wyoming it is hereby declared to be the wetlands policy of this state that water management and development and wetland preservation activities should be balanced to protect and accommodate private property, industry, water and wetland interests and objectives.”

8. Permit clarification - Lease No. 0-42804 includes acreage (lots 5, 6, and 7 Sec. 31, Twp, 57N, Rg 62W, 6<sup>th</sup> p.m.) that is claimed in Probate No. 4349 Hilda W. Robinson as “Undivided 9/10 interest in the bentonite and associated clays” on this acreage. If the bentonite mineral rights are split between the state and private interests did BPM submit a cooperative mining development plan as required by W.S. 36-6-101 (k)?
9. Permit does not show all roads, springs, or water wells as per the following DEQ, Guideline, No. 6, Non coal, Application for a Permit to Mine or an Amendment “Location and names, where known, of all roads, railroads, public or private rights-of-way and easements, utility lines, buildings, lakes, streams, creeks, springs, and other surface water courses, oil wells, gas wells, and water wells”.
10. Permit does not show list all water wells as per the following DEQ, Guideline, No. 6, Non Coal, Application for a Permit to Mine or an Amendment “List of water wells inside and within three (3) miles of permit area boundary and illustrate on a map all well locations inside and within one-half (½) mile of the permit area boundary”.
11. Permit does not adequately address show wildlife impacts as per the following DEQ, Guideline, No. 6, Non Coal, Application for a Permit to Mine or an Amendment “Wildlife impacts, short-term and long-term, resulting from the mining operation”.
12. Permit does not state mining sequence as per the following DEQ, Guideline, No. 6, Non Coal, Application for a Permit to Mine or an Amendment “Mine advance, by year, for life of mine”.
13. Permit section 1.8.3 Probable Limits of all Lands Previously or To-Be-Disturbed by Underground Mining Operations within and Immediately Adjacent to (within one-half mile of) the Permit Area or Amendment Area states “There are no known underground mining or surface mining sites within or adjacent to the amendment area boundaries. No known underground mining will occur within the amendment areas”.

DEQ permit 267C is adjacent to bentonite currently being mined on DEQ permit 620.

14. Permit section 1.8.5, the location, ownership and uses of all building on, or lands adjacent to, the land to be affected states "There are no buildings on State 04 Amendment lands".

The Baxter homestead and water well are located on Permit lands. BPM mining plan shows that they will mine directly on top of the homestead and water well.

15. Two reservoirs will be mined and eventually replaced, but the Permit does not include provisions to provide livestock and wildlife water during the time these reservoirs are out of service.

16. The area to be mined is a direct pathway to other areas of the ranch and the Permit does not provide an alternative access road.

17. A 20 year agreement to mine ignores the rights of the landowner and creates serious problems in managing our ranches.

18. Hunting is a major source of revenue and changing the wildlife habitat reduces the environment for hunting.

19. Disturbing nearly 200 acres with thousands of trees and the major sources of water dramatically changes the environment and is to the detriment of the land long term.

20. There are many other sources of bentonite in northeastern Wyoming that can be mined without these undesirable long term changes to the environment and the land.

21. No rancher wants a company to mine for 20 years especially when 20 years is not justified.

22. Our ranch that is mined would never be the same and the minimal amount BPM want to pay for trespassing is not justified.

23. After more than 30 years of having bentonite mined on our land we want to have our ranches back.

24. Permit does not include Surface Landowner Consent due to the above deficiencies in the mining and reclamation plans and the following additional problems:

- a. A surface use and haulage agreement does not exist between BPM and 2U Ranch LLC (location of all mining and portion of haulage), Sextus LC (haulage), and GLAM LC (haulage).

BPM will not negotiate less than a 20 year agreement.

BPM will only pay the following haulage rates per ton:

2U Ranch LLC - \$0.06

Sextus LC - \$0.14

GLAM LC - \$0.01

BPM paid us \$0.23 ton in 2012 on an expired surface use and haulage agreement

- b. BPM entered property and collected Permit data without notice to the landowners.
- c. BPM has initiated condemnation proceedings against 2U Ranch LLC, Sextus LC, and GLAM LC for the haul road.

We would prefer that no mining occurs, but if mining is to be allowed, then we would like to request that the Lease and Permit be reassigned to American Colloid Company. They have expressed an interest in this mining and already have all the data necessary for a permit on the lease. We have had a good business relationship with American Colloid Company for over 30 years. This is a much larger company that would be able to complete the mining in a much shorter period of time and therefore have less disruption to surface owner operations and wildlife.

Sincerely,

Ronald J. Ericsson, PhD  
2U Ranch LLC

Scott A. Ericsson, PhD  
2U Ranch LLC

Roland S. Ericsson, Esquire  
Sextus LC and GLAM LC