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Fw: In Re Bentonite Performance Minerals LLC/Docket 18-1601

1 message

Ronald Ericsson <ericsson@childselect.com>

Wed, Aug 15, 2018 at 5:10 PM

To: "jim.ruby@wyo.gov" <jim.ruby@wyo.gov>, Lucy Pauley <lucy.pauley@wyo.gov>, Joel Severin <joel.severin@halliburton.com>, "Warren.Scott@halliburton.com" <Warren.Scott@halliburton.com>, Tyler Tetrault <tyler.tetrault@halliburton.com>, Jennifer Hartman <jennifer.hartman@halliburton.com>, "joe.girardin@wyo.gov" <joe.girardin@wyo.gov>, "mjmicheli@hollandhart.com" <mjmicheli@hollandhart.com>, "sryemington@hollandhart.com" <sryemington@hollandhart.com>, "kyle.wendtland@wyo.gov" <kyle.wendtland@wyo.gov>, "todd.parfitt@wyo.gov" <todd.parfitt@wyo.gov>, "bridget.hill1@wyo.gov" <bridget.hill1@wyo.gov>

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In response to the attached document before the Environmental Quality Council.

2U Ranch did not request an indefinite stay of proceeding. That statement is wrong 2U Ranch requested to mediate and then a delay in order to obtain information from the Office of State Lands, DEQ and BPM of which some requested information has not been received.

The Council hearing is about the rights of the surface landowner. In the past some rights of landowners have been ignored. Those days are gone and the DEQ and mining companies have to change the way they operate in order to be good stewards of the land. Surface landowners know their rights and will continue to make certain our rights are granted by Wyoming laws.

BPM wants 2U Ranch to sign Form 8 (surface Owner Consent). This is a charade as BPM does not have a valid lease to mine bentonite from the state of Wyoming nor does BPM have a valid permit from the DEQ to mine. 2U Ranch will not be pressured to sign an owner consent that is meaningless.

4. BPM determined that the Mine Permit 267C amendment application of June 28, 2016 satisfied completeness requirements. That Permit was invalid then and invalid now. In order for the permit to be valid the following are required and have not been submitted or approved:

- **Bond executed to protect rights of the surface owner.**
- **Cultural Survey.**
- **15. D. Reclamation process can not meet DEQ and state of Wyoming requirements.**
- **Invalid lease to mine bentonite from the state.**

Until the above four issues are in compliance with state statutes, regulations and rules BPM has no permit to mine and can not request 2U Ranch sign Form 8 let alone to go to the EQC and let this council rule on a non-existing permit to mine on state minerals without a lease. The EQC should reject the request by BPM as being bogus.

19. Wrong again on several issues. 2U Ranch did not request to negotiate with BPM on surface access issues. Wrong again - 2U Ranch never informed BPM that it was no longer interested in pursuing mediation (read the many emails sent - 2U Ranch is on record willing to mediate in good faith with no preconditions). BPM on the other hand stated a willing to mediate only if two condition were met - that is not negotiating in good faith.

12. 2U Ranch did make contact with Lucy Pauley by email on mediation and council was included on this email - email address was incorrect and now corrected.

For the record the Ericsson family has had a good working relationship with American Colloid on mining bentonite that included many agreements over a period of three decades. Our and Colloid approach to mining is to have an agreement that is fair to both parties. 2U Ranch has sent many emails to state regulatory agencies about our surface rights going back to 2017 - to include a summer 2017 meeting with BPM at the Colony, WY plant. The same issues were presented on how BPM was going to comply with Wyoming Statutes to reclaim the land in a manner equal to or greater than before being mined. Specifically the issue of the 10,936 trees, springs, wetlands, historic culture, wildlife habitat that BPM wants to remove and destroy. Again and again we have asked BPM how BPM can comply with the statues to restore trees and reclaim the land to required conditions. We still await an answer. No answer because BPM, Office of State Lands and DEQ know the conditions can never be met - therefore another issue where BPM does not have a valid permit to mine bentonite on 2U Ranch land. BPM continues to want a permit full well knowing BPM can never comply with DEQ regulations - starting with executing a bond to protect the rights of the surface owner. It all comes down to economics.

The only thing BPM has accomplished with their hardball approach to dealing with a landowner is to alienate a number of other landowners in the area who we are certain will not want to enter into similar agreements with BPM. All of this is on record and sent to BPM - Office of State lands - DEQ - ECQ and BPM's hired guns.

Two of us are Eagle Scouts and learned at a young age to set high standards for ourselves and to associate with like minded people and organizations. BPM and Wyoming state government agencies need to raise their standards. Because of the low standards that prevail on the issue of rights of surface owners 2U Ranch has had to spend way too much time on non-productive labor. Our request to BPM is to get it right or withdraw the request to mine on our land. On a positive note: a telephone call was received while this email was being written. The caller wanted to know the location of our Sperm Centers for gender selection. This is productive labor www.childselect.com.

Childselect

www.childselect.com

Welcome to Gametrics Limited which offers male and female sex selection (22+X/Y) throughout the world using the ERICSSON ALBUMIN METHOD. *For contact information view below*

Ronald J. Ericsson, PhD
Scott A. Ericsson, PhD
Roland S. Ericsson, Attorney at Law

From: Brittney Wells <BTWells@hollandhart.com>
Sent: Tuesday, August 14, 2018 2:26 PM
To: ericsson@childselect.com
Cc: jim.ruby@wyo.gov; Matt J. Micheli; Samuel R. Yemington
Subject: In Re Bentonite Performance Minerals LLC/Docket 18-1601

Good afternoon Mr. Ericsson. Please see the attached pleading, which was filed today in the above mentioned matter.

Also, for all future correspondence and pleadings in this case please use the following email addresses:

Samuel R. Yemington (sryemington@hollandhart.com)

Matt J. Micheli (mjmicheli@hollandhart.com)

Thank you for your cooperation.

Sincerely,

Brittney Wells

Legal Secretary, Holland & Hart LLP
2515 Warren Ave, Suite 450, Cheyenne, WY 82001
T 307.778.4206 F 307.222.6254

HOLLAND & HART 



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 **2018-08-14 BPM's Response in Opposition to 2U's Request for Indefinite Stay.pdf**
1330K

FILED

AUG 14 2018

Jim Ruby, Executive Secretary
Environmental Quality Council

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

IN RE BENTONITE PERFORMANCE) DOCKET 18-1601
MINERALS LLC)

**BENTONITE PERFORMANCE MINERALS LLC'S RESPONSE IN OPPOSITION TO
2U RANCH LLC'S REQUEST FOR INDEFINITE STAY OF PROCEEDING**

Petitioner Bentonite Performance Minerals, LLC (BPM), pursuant to Chapter 2, Section 11(a) of the Rules of the Wyoming Department of Environmental Quality, hereby responds in opposition to Respondent 2U Ranch LLC's (2U) request for an indefinite stay of the above-captioned proceeding and states as follows in support:

1. BPM is engaged in the business of mining in the State of Wyoming, and BPM is authorized to and conducts bentonite surface mining operations pursuant to Wyoming WDEQ/LQD Mine Permit 267C.
2. BPM is the lessee of certain unpermitted bentonite deposits located in Crook County, Wyoming by virtue of a June 2, 2011 lease agreement by and between BPM and the State of Wyoming (Lease 0-42804).
3. On February 24, 2016, BPM requested WDEQ/LQD amend Mine Permit 267C to include those adjacent bentonite deposits covered by Lease 0-42804, of which 2U is the surface owner.
4. On June 28, 2016, WDEQ/LQD determined that the Mine Permit 267C amendment application satisfied completeness requirements.
5. To date, WDEQ/LQD has not determined the Mine Permit 267C amendment application to be technically complete as an executed Form 8 (Surface Owner Consent) or an Order in Lieu of Consent has not been provided by BPM.

6. Beginning in January 2015, BPM shared with 2U the proposed mining and reclamation plans and, to the extent possible, revised the mining and reclamation plans to address 2U's interests and concerns.

7. To date, 2U has withheld its consent and the permitting process has stalled.

8. For this reason, on July 5, 2018 – approximately 28 months after BPM initiated the permit amendment process – BPM requested the EQC, pursuant to Chapter 2, Section 4 of the Rules of the Wyoming Department of Environmental Quality, convene a hearing and issue an Order in Lieu of Consent as prescribed by Wyo. Stat. § 35-11-406(b)(xii).

9. The issuance by the EQC of an Order in Lieu of Consent will allow WDEQ/LQD to process the Mine Permit 267C amendment application.

10. On August 7, 2018, the Hearing Examiner issued an order setting an August 21, 2018 pre-hearing conference.

11. On August 9, 2018, 2U moved the Hearing Examiner to indeterminately delay the pre-hearing conference, thereby effectively requesting that the Hearing Examiner agree to an indefinite stay of the proceeding.

12. 2U did not contact or confer with counsel for BPM prior to filing its motion as required by Chapter 2, Section 11(c) of the Rules of the Wyoming Department of Environmental Quality.

13. 2U alleges that the August 21, 2018 pre-hearing conference is “premature” because (1) Mine Permit 267C is technically inadequate; (2) Lease 0-42804 is invalid; and (3) the parties have not mediated the dispute.

14. BPM disputes each allegation; however, regardless of merit, 2U's claims regarding the technical adequacy of Mine Permit 267C and the validity of Lease 0-42804 are irrelevant to and have no bearing on this proceeding.

15. The subject matter of this proceeding is strictly limited to the four elements enumerated by Wyo. Stat. § 35-11-406(b)(xii) and necessary to obtain an Order in Lieu of Consent. Specifically, in this hearing the EQC will be asked to determine whether:

- A. The mining and reclamation plans were submitted to the landowner;
- B. The mining and reclamation plans were detailed so as to illustrate the proposed surface use;
- C. The use does not substantially prohibit the operations of the surface owner; and
- D. The reclamation plan reclaims the surface to its approved future use as soon as feasibly possible.

16. Any challenges to the adequacy of Mine Permit 267C or the validity of Lease 0-42804 fall beyond the purview and jurisdiction of the EQC for this proceeding.

17. Wyoming law affords 2U the opportunity and right to challenge the adequacy of the of Mine Permit 267C and the validity of Lease 0-42804; however, an Order in Lieu of Consent proceeding is not the appropriate venue to raise these allegations.

18. With respect to mediation, BPM is not obligated, whether contractually, statutorily or otherwise, to mediate any matter with 2U.

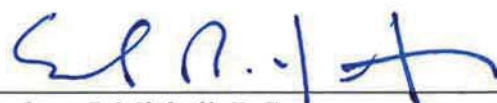
19. On July 13, 2018 – eight days after BPM initiated this proceeding – 2U requested that BPM mediate surface access issues. BPM agreed to mediate surface access issues at 2U's earliest convenience. However, on August 6, 2018, 2U informed BPM that it was no longer interested in pursuing mediation. It appears to BPM that 2U is not sincerely interested in

resolving the surface access issues, but rather set on delaying and disrupting this proceeding and the processing of the Mine Permit 267C amendment application.

20. An indefinite stay of the proceeding unfairly prejudices BPM. BPM initiated the Mine Permit 267C amendment process approximately 30 months ago, and surface owner consent is all that prevents WDEQ/LQD from processing the Mine Permit 267C amendment application. BPM has a statutory right to petition the EQC for an Order in Lieu of Consent, and the EQC is mandated to grant BPM an Order in Lieu of Consent upon a showing of compliance with Wyo. Stat. § 35-11-406(b)(xii). In light of the considerable delays experienced thus far and the importance of making meaningful progress, BPM respectfully requests the Hearing Examiner deny 2U's request to indefinitely stay this proceeding.

WHEREFORE, Petitioner Bentonite Performance Minerals, LLC respectfully requests the Hearing Examiner deny Respondent 2U Ranch LLC's request to indefinitely stay the above-captioned proceeding.

DATED August 14, 2018.



Matthew J. Micheli, P.C.
Samuel R. Yemington
Holland & Hart LLP
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Cheyenne, WY 82001
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CERTIFICATE OF SERVICE

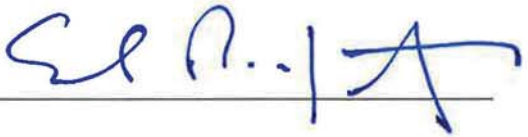
I hereby certify that on August 14, 2018, I served a true and correct copy of the foregoing BENTONITE PERFORMANCE MINERALS LLC'S RESPONSE IN OPPOSITION TO 2U RANCH LLC'S REQUEST FOR INDEFINITE STAY OF PROCEEDING to the following:

By Hand Delivery:

Jim Ruby
Executive Secretary, Wyoming Environmental Quality Council
122 W. 25th Street
Herschler Building 1W, Room 1714
Cheyenne, WY 8200
jim.ruby@wyo.gov

By Electronic Mail:

2U Ranch, LLC
c/o Ronald Ericsson
ericsson@childselect.com



A handwritten signature in blue ink, appearing to read "Jim Ruby", is written over a horizontal line.