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FILED

MAR 20 2024

**ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

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

In re: Black Hills Bentonite
Permit to Mine No. 248C
Murphy Creek Update Area

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) EQC Docket No. _____
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**PETITION TO THE ENVIRONMENTAL QUALITY COUNCIL
FOR ORDER IN LIEU OF LANDOWNER CONSENT**

Petitioner, Black Hills Bentonite, LLC (“**BHB**” or “**Petitioner**”), a Wyoming limited liability company, through its undersigned counsel, Kayla A. Albertson, Patrick R. Tolley, and John A. Masterson of Welborn Sullivan Meck, & Tooley P.C., petitions the Environmental Quality Council (“**EQC**” or “**Council**”) for an Order in Lieu of Landowner Consent under Wyo. Stat. § 35-11-406(b)(xii), and requests that the Council set a hearing on such request. As grounds therefore BHB provides the following:

1. BHB is a Wyoming limited liability company, in good standing with the State of Wyoming, with bentonite mining operations dating back to 1947. BHB’s principal office is located at 55 Salt Creek Highway Casper, Wyoming 82601.
2. On November 29, 1957, a patent to mine the Property (defined below) was granted by the United States through the Bureau of Land Management office located in Cheyenne, Wyoming. See Patent No. 1176995 attached hereto as Exhibit A
3. Bethlehem Steel Company acquired the rights to mine all the bentonite on the Property on December 24, 1957 (see Exhibit B attached hereto and incorporated herein by this

reference). The property in question is more particularly described as follows (the “**Property**”):

The N½ of Section 1, Township 41 North, Range 83 West, 6th P.M., Johnson County, Wyoming.

4. BHB acquired the mining rights to all the bentonite under the Property from Bethlehem Steel Corporation through a Warranty Deed dated April 17, 1991, and recorded in Johnson County as Instrument No. 490529. Attached hereto as Exhibit C.
5. Bruce and Betty Jean Firnekas acquired the surface interest in the Property on December 18, 2013, as evidenced by the Warranty Deed recorded in Johnson County as Document No. 134738 (the “**Firnekas Warranty Deed**”). Attached hereto as Exhibit D.
6. The Firnekas Warranty Deed contains language stating the Property is “subject to easement and reservations appearing of record.”
7. The Firnekas Warranty Deed thereby incorporates easements and reservations found in the prior instruments of conveyance in the Firnekas’s chain of title, including, but not limited to, those found in the Warranty Deed that transferred the Property from R. L. Greene and Rose Green, husband and wife, to Mitchell Johnson and Jean Johnson, husband and wife, on July 31, 1961 (the “**1961 Deed**”), recorded in Johnson County as Document No. 94523. Attached hereto as Exhibit E.
8. Such reservations include, but are not limited to, “all mineral rights...including bentonite, are hereby excepted from this deed...” and “the bentonite...was sold to... Bethlehem Steel Company...” and “...that Bethlehem Steel Company, and its successors and assigns shall at all times have the full and exclusive right to mine and remove the bentonite from said lands...and also may enter, reenter, use and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of said bentonite, including drilling, stripping of overburden from the bentonite, depositing such overburden on the surface of said premises, and other activities connected with the mining, production and removal of bentonite therefore, without liability in damages for any injury to the surface...” and “...that necessary buildings, installations, or drilling equipment pertinent to the mining, production or removal of bentonite may be erected by [Bethlehem Steel Company], its successors and assigns, including the erection of any lines necessary to bring public utility services to the premises where drilling, mining or other activities

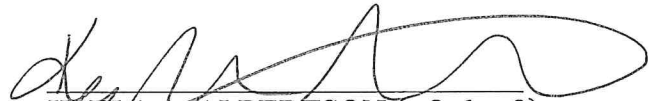
connected with the mining, production or removal of bentonite may be carried on, or for any other mining or drilling purposes...”

9. BHB became Bethlehem Steel Company’s successor in interest when it purchased the rights to mine the bentonite in 1991 and therefore owns the right to mine all the bentonite on the Property.
10. BHB has properly filed its mine plan revision for Permit to Mine 248C (See Permit to Mine 248C – Murphy Creek Update Area 2021 Mine Plan Revision, attached hereto and incorporated herein as Exhibit F) The Revision amends the Permit to Mine 248C to include the Property. BHB has approximately 41.6 acres of current or proposed mining features on the Property. However, future mining could affect up to an additional 130 acres. See the *Permit to Mine No. 248C – Murphy Creek Update Area Firnekas Lands Map*, attached hereto and incorporated herein as Exhibit G.
11. BHB believes it already has the necessary “instruments of consent” from the surface landowner under Wyo. Stat. § 35-11-406(b)(xii), however, out of an abundance of caution and in conjunction with the application, BHB sought written landowner consent from the Firnekases.
12. Although not required because of the language in the 1961 Deed, BHB has made substantial efforts to obtain the Firnekas’s written approval of the mining and reclamation plans and to secure their consent.
13. On August 24, 2021, BHB sent a complete copy of the mining and reclamation plans, legal descriptions of the real property, description of the access roads, detailed drawings and descriptions of the proposed reclamation, and other documents consistent with the requirements outlined in Wyo. Stat. § 35-11-406(b). Attached hereto as Exhibit H, See also Exhibit F.
14. Counsel for the Firnekases responded to BHB on or about December 3, 2021, to negotiate the terms of a surface use agreement. Attached hereto as Exhibit I.
15. Counsel for the Firnekases sent another letter on or about April 25, 2022, again requesting to negotiate the terms of a surface use agreement. Attached hereto as Exhibit J.
16. Thereafter, the Firnekases and BHB conducted negotiations regarding a surface use agreement without the assistance of counsel but did not reach an agreement.

17. Despite the efforts of BHB to come to terms on an acceptable surface use agreement and to establish a good working relationship, the Firnekases have refused to consent to the surface use by BHB. Thus, making it necessary for BHB to file this Petition with the Environmental Quality Council seeking an Order in Lieu of Landowner Consent under Wyo. Stat. § 35-11-406(b)(xii).
18. The mining will not substantially prohibit the operations of the surface owner, and the mining and reclamation plans explain in detail the plans for reclamation of the surface to its approved future use, in segments as circumstances permit, and as soon as feasibly possible.
19. The EQC has jurisdiction over this matter under Wyo. Stat. § 35-11-112 (a)(iv), (c)(ii), and Wyo. Stat. § 35-11-406 (b)(xii).

WHEREFORE, Petitioner requests that the EQC set a hearing on BHB's request for Order in Lieu of Landowner Consent, and thereafter enter its order granting Petitioner the right to enter upon said lands to conduct mining operations per its mining and reclamation plans in lieu of surface owner consent.

Respectfully Submitted this 15 day of MARCH, 2024.



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