

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL STATE OF WYOMING

FILED

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Terri A. Lorenzon, Attorney Environmental Quality Council

IN THE MATTER OF A MINING PERMIT APPLICATION OF RISSLER & MCMURRY, INC. TFN 2 6/247

Rissler & McMurry, INC.)
Applicant,) DOCKET NO. 2373-92
vs.)
FRIENDS OF BESSEMER MOUNTAIN)
Protestants.)

PROTESTANT'S PREHEARING MEMORANDUM

COME NOW THE PROTESTANTS, the FRIENDS OF BESSEMER MOUNTAIN, by and through counsel, LAWYERS AND ADVOCATES FOR WYOMING, and present their Prehearing Memorandum as follows:

SUMMATION OF THE FACTS

In July of 1989, Rissler & McMurry received a mining permit from the Department of Environmental Quality (DEQ). The permit was a ten acre exemption contained in the state's Environmental Quality Act (EQA). Through use of the exemption, Rissler & McMurry was able to begin mining without giving public notification or subjecting the area to environmental studies normally required by the EQA prior to granting a mining permit. Rissler & McMurry is now seeking to expand their mining operations from the original ten acres allowed by the exemption. Rissler & McMurry now wishes to expand mining operations to 110 acres through an application for small mining permit TFN 2 6/247.

The mining operation has been vigorously opposed by area residents, and has been the subject of numerous contested hearings, court cases, and appeals. In addition to the well publicized dispute between Rissler & McMurry and Mr. Rod Stalkup over the condemnation of an access road,

disputes developed regarding the issuance of an air quality permit for the mine. Rissler & McMurry sued Mr. Stalkup and others for libel and slander based upon their public opposition to the proposed mine. The Department of Environmental Quality (DEQ) issued the permit, but was criticized for not giving sufficient notice to allow opponents to voice their objections. After mining began, further complaints arose regarding the damaging effect of blasting on the Speas Fish Hatchery, and the dangerous build-up of silt in Speas Spring due to Rissler & McMurry's mining operations. Disputes developed regarding poor air quality and high dust levels caused by mining operations, and the proposed use of waste crude on the haul roads as a dust suppressant.

The most recent dispute concerned the area's designation as "rare and uncommon" pursuant to §35-11-112(a)(v) of the Environmental Quality Act. On April 24, 1992 the Environmental Quality Council (EQC) unanimously approved designation of several sections of Bessemer Mountain as "rare and uncommon." The EQC based its decision on the unique surface geological features, historical value, wildlife value, and scenic value of the area. Several potential mine sites have been proposed by individuals as alternatives to the rare and uncommon Bessemer Mountain area, but Rissler & McMurry has not indicated willingness to stop mining on Bessemer Mountain.

PROTESTANT'S WITNESS LIST

1. **STEVE GNAGY**

5120 Alcova Rt., Box 10
Casper, WY 82604
307-473-8890

Mr. Gnagy is the Superintendent of the Speas Fish Rearing Station. He will testify about past and future effects of blasting on the Speas Spring and Fish Rearing Station. He will also testify about the economic benefits the Speas Fish Rearing Station provides to the State of Wyoming and businesses that are dependent on the fisheries.

2. **BETTY STROOK**

Sweetwater Consultants

535 West Yellowstone
Casper, WY 82601
307-266-4523

Ms. Strook is a Geoscientist and will testify about the geologic and hydrologic formations around the proposed mine site and the Speas Spring. Additionally, Ms. Strook will testify about the area soils.

3. JOE WHITE

Wyoming Game & Fish
5400 Bishop Blvd.
Cheyenne, WY 82006
307-7774600

Mr. White is the Assistant Director of the Wyoming Game and Fish. He will testify about the impact of the mine on surrounding wildlife and the potential economic impact to the State and businesses that depend on fisheries supplied by the Speas Rearing Station.

4. ROGER SHAFFER

Department of Environmental Quality
Herschler Building
Third Floor - West
Cheyenne, WY 82002
307-777-7756

Mr. Shaffer is the Administrator of the Land Quality Division of the Department of Environmental Quality. He may be called to testify about the applicant's application for a mining permit and the Department of Environmental Quality's findings thereon.

5. WALTER MERSCHAT

104 South Wolcott Street
Casper, WY 82602
307-266-4409

Mr. Merschat is a consulting geologist from Casper, Wyoming and a member of the Wyoming Geological Association. Additionally, he is a on the Paleontological Resource Committee of that Association. Mr. Merschat will testify about the presence of Nothosaur fossils on Bessemer Mountain.

Also, Mr. Merschat will testify about rarity of Nothosaur fossils and their importance to science.

6. GEORGE RITZ

United States Geologic Survey
2617 East Lincolnway
Suite B
Cheyenne, WY 82002
307-772-2872

Mr. Ritz works for the United States Geologic Survey. He may be called to testify about data he collected at the Speas Spring.

7. ROD STALKUP

5120 Alcova Route
Box 4
Casper, WY 82604
307-234-3043

Mr. Stalkup owns land adjacent to the permit area. He will testify about how the existing mine has affected his land and the effects of the proposed mine.

8. KATHY KILLEAN

5138 Alcova Route
Box 3
Casper, WY 82604
307-472-0553

Ms. Killean owns land near the permit area. She will testify about how the existing mine has affected her land and the effects of the proposed mine.

8. W. NEIL MCMURRY

P. O. Box 2499
Casper, WY 82602
307-473-9581

Mr. McMurry may be called to testify about the proposed limestone mining operation on Bessemer Mountain.

9. ANN STRAND

721 B Street
Rock Springs, WY

307-362-6944

Ms. Strand was on the Mines and Minerals committee of the Wyoming Legislature when the 10 acre exemption legislation was passed. Ms. Strand may be called to testify about the legislative intent of the 10 acre exemption law. Due to Lawyers and Advocates for Wyoming's recent entry into this matter we have been unable to confirm Ms. Strand's availability to testify in this matter. Should Ms. Strand not be available to testify in this matter she will be removed from the witness list.

10. AMBER TRAVSKY

161 North Sixth Street
Laramie, WY 82070
307-7742-5840

Ms. Travsky is a wildlife biologist and former employee of the Speas Fish Hatchery. She will testify about how the proposed mine will affect wildlife in the permit and surrounding areas.

11. GERALD NELSON

Tate Museum
Casper College
125 College Drive
Casper, WY

Mr. Nelson is the curator of the Tate Museum at Casper College. He will testify about the paleontology in the permit area.

12. ERNEST SKRETTEBERG

P. O. Box 2499
Rissler & McMurry Co.
Casper, WY 82602
307-473-9581

Mr. Skretteberg may be called to testify about the mine plan, blasting plan and the reclamation process. He may also be called to testify about the excavation of fossils and protection for wildlife and historic sites within the permit area.

13. RICK CHANCELLOR

Department of Environmental Quality
Land Quality Division
Herschler Building
Cheyenne, WY 82002

307-777-7937

Mr. Chancellor may be called to testify about the permit application.

14. PAT BAUMAN

Department of Environmental Quality
Land Quality Division
Herschler Building
Cheyenne, WY 82002
307-777-7937

Mr. Bauman will testify regarding the permit application.

15. OLIVER SCOTT, M.D.

Alcova Road
Casper, WY 82602
307-234-3975

Dr. Scott will testify that the proposed mine will have a detrimental effect on Bald Eagle habitat and feeding grounds.

16. FRIENDS OF BESSEMER MOUNTAIN

Any person listed as a Friend of Bessemer Mountain on this firm's Entry of Appearance or supplement thereto may be called as a witness in this matter.

17. The Protestant reserves the right to list additional witnesses and any witnesses listed by any of the other parties in their prehearing memorandum or supplemental list of witnesses.

LIST OF EXHIBITS

1. SEE ATTACHED LIST

2. The Protestants' reserve the right to list additional exhibits and any exhibits listed by any of the other parties in their prehearing memorandum or supplemental list of exhibits.

SUPPLEMENT TO FRIENDS OF BESSEMER MOUNTAIN

The following people have become Friends of Bessemer Mountain since the filing of this firm's Entry of Appearance:

1. Henry C. Phibbs ✓

P.O. Box 1082
Jackson, WY 83001

2. R. E. McLaughlin ✓
P.O. Box 339
Mills, WY 82644

SUMMARY OF LEGAL ISSUES

1. Whether the application for small mine permit TFN 2 6/247 is complete based on the requirements of the Wyoming Environmental Quality Act (Wyo. Stat. §35-11-101 through §35-11-1104).

2. Whether any part of the proposed operation, reclamation program, or the proposed future use is contrary to the law or policy of this state or the United States. Wyo. Stat. §35-11-406(m)(iii) (Supp. 1992).

3. Whether the proposed mining operation would irreparably harm, destroy or materially impair any area that has been designated by the council as a rare or uncommon area and having particular historical, archaeological, wildlife, surface geological, botanical or scenic value. Wyo. Stat. §35-11-406(m)(iv) (Supp. 1992).

4. Whether the proposed mining operation will cause pollution of any waters in violation of the laws of this state or of the federal government. Wyo. Stat. §35-11-406(m)(v) (Supp. 1992).

5. Whether the proposed operation constitutes a public nuisance or endangers the public health or safety. Wyo. Stat. §35-11-406(m)(vii) (Supp. 1992).

6. Whether information in the application shows that reclamation cannot be accomplished consistent with the purposes and provisions of the Wyoming Environmental Quality Act. Wyo. Stat. §35-11-406(m)(xi) (Supp. 1992).

7. Whether the applicant, Rissler & McMurry, has been and continues to be in violation of the provisions of the Wyoming Environmental Quality Act. Wyo. Stat. §35-11-406(m)(xv) (Supp. 1992).

8. Whether "site sensitive criteria" as discussed in LeFaivre v. EQC / DEQ, 735 P.2d 428 (Wyo. 1987) is applicable to the matter now before the Council.

9. Whether there is any other basis that justifies or requires denial of the permit.

UNCONTESTED FACTS

1. That Rissler & McMurry, Inc. filed for small mine permit TFN 2 6/247 to mine in the Bessemer Mountain area near Casper, Natrona County, Wyoming.

2. That the proposed mine site in Rissler & McMurry's small mine permit application TFN 2 6/247 is very rare and uncommon having particular surface geological, historical, scenic, and wildlife value.

3. That letters and petitions have been received by the administrator of the Land Quality Division protesting the granting of said mining permit.

4. That the aforementioned protests generally concern dust, truck traffic, damage to wildlife habitat including Bald Eagle and Merlin Falcon habitat, damage to the area's scenic value, damage to Goose Egg or Speas Spring, damage to paleontological resources, and detrimental effects of mining on the Speas fish hatchery.

5. That Rissler & McMurry, Inc. has properly paid the required fee for the issuance of the mining permit.

6. That the affected land does not lie within 300 feet of any existing occupied dwelling, home, public building, school, church, community or institutional building, park, or cemetery.

PROPOSED FINDINGS OF FACT

1. That the application of Rissler & McMurry, Inc. for the issuance of small mine permit TFN 2 6/247 is not complete.

2. That Rissler & McMurry's proposed operation, reclamation program, and proposed future use is contrary to the law or policy of the State of Wyoming or the United States.

3. That Rissler & McMurry's proposed mining operation will irreparably harm, destroy, or materially impair an area that has been designated by the Council a rare and uncommon area having a particular historical, archaeological, wildlife, surface geological, botanical, or scenic value.

4. That Rissler & McMurry's proposed mining operations will cause pollution of waters in violation of the laws of the State of Wyoming or the federal government.

5. That Rissler & McMurry's proposed operation will constitute a public nuisance or endangers the public health and safety.

6. That Rissler & McMurry controls or has controlled mining operations with a demonstrated pattern of willful violations of subject matter and duration with such resulting in irreparable harm to the environment as to indicate reckless, knowing or intentional conduct.

7. That reclamation cannot be accomplished consistent with the purposes and provisions of the Wyoming Environmental Quality Act.

8. That Rissler & McMurry is in violation of the Wyoming Environmental Quality Act.

9. That reclamation of the mine site is impossible because the special nature of Bessemer Mountain will be destroyed by the cutting up and hauling away of the area's special features.

PROPOSED CONCLUSIONS OF LAW

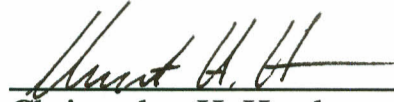
1. That Rissler & McMurry has not complied with all requirements contained within the Wyoming Environmental Quality Act.

2. That the application for small mine permit TFN 2 6/247 is not complete based on the requirements of the Wyoming Environmental Quality

Act (Wyo. Stat. §35-11-101 through §35-11-1104).

3. That the application for small mine permit TFN 2 6/247 should not be granted.

RESPECTFULLY SUBMITTED this 17th day of June, 1993.



Christopher H. Hawks

Gerry L. Spence

Edward P. Moriarity

Robert P. Schuster

Gary L. Shockey

J. Douglas McCalla

Roy A. Jacobsen

Of, Lawyers and Advocates for

Wyoming, Attorneys for the

Friends of Bessemer Mountain.

P.O. Box 548

Jackson, WY 83001

307-733-7290

PROTESTANT'S EXHIBIT LIST

1. Copy of Mining Permit Application TFN 2 6/247.
2. Memo to Rissler and McMurry Employees from Neil McMurry.
3. March 4, 1993 Letter from Pat Moore to Neil McMurry.
4. January 31, 1952 Sundry Notices and Reports on Wells.
5. April 10, 1992 Letter from Walt Merschatt to Environmental Quality Council.
6. April 20, 1992 Letter from Joe White to Patrick Bauman.
7. July 13, 1992 Letter from Don Rissler to Terri Lorenzon.
8. July 1992 USGS Report on Water Quantity, Quality and Soil Sediment Data.
9. Photographs of Permit Area.
10. Photograph of Eagle's Nest.
11. Paleontological Sensitivity Survey Prepared by Dr. Gerald E. Nelson.
12. BLM Map Listing Recreational Activities in the Area.
13. Platte River Resource Area Maps.
14. Platte River Resource Area Resource Management Plan Final Environmental Impact Statement Prepared by U. S. Department of the Interior Bureau of Land Management, November, 1984.
15. U. S. National Park Service, Oregon Trail Comprehensive Management Plan, Vol. III at 152, 153 (1981).
16. A Map Prepared by Stanley H. McInroy Showing School Bus Stops, Turns, Crossings, Residences, and Location of Unfenced Road on and Along the Proposed Mine Haul Route.
17. List of Terrestrial Vertebrates for the Speas Hatchery/Bessemer Mountain Area Prepared by Wyoming Game and Fish.
18. Thermopolis, Alcova, Casper, Transmission Line Project Wyoming Draft Environmental Impact Statement Prepared by U. S. Department of Energy, 1983.
19. January 16, 1992 Letter from Joe White to Patrick Bauman.
20. Report of Steve Gnagy Concerning Dust at Bessemer Quarry.
21. Video Cassette Prepared by Rod Stalkup.
22. Report Prepared by Martha Horn entitled "Origin of Sediment in Speas Spring."
23. Report Prepared by Charles Dow in Regard to Blasting at Bessemer Mountain.