

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL STATE OF WYOMING

FILED

JAN 25 1994

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, vs. FRIENDS OF BESSEMER MOUNTAIN Protestants. DOCKET NO. 2373-92

MEMORANDUM IN SUPPORT OF PROTESTANT'S MOTION TO CONTINUE THE CONTESTED CASE HEARING IN THIS MATTER

This matter came before the Council on the Motion and Supplement of the Protestants. The Motion and Supplement were not opposed by the Department and as of the date hereof counsel for the Protestants has not received a response from the Applicant. The basis for the Motion is three-fold. First, the Protestants need thirty days from the date of the designation hearing to adequately prepare for the contested case hearing. Second, the Department refuses to respond to certain of the Protestants written deposition questions. And third, the new factors and criteria relied upon by the Council at the designation hearing may raise issues as to completeness of the mine permit application. Accordingly, the Protestants ask the Council to continue the contested case hearing for thirty days.

In the spirit of cooperation the Protestants did not oppose the Applicant's request to have the contested case hearing scheduled within a reasonable time following the designation hearing. The Protestants were, however, shocked to learn that they would have one working after the designation hearing to prepare for the contested case hearing. In light of the fact that Bessemer Mountain may or may not be designated rare and uncommon that places all parties in the position of having to prepare for two trials.

After knowing the outcome of the designation hearing the Protestants may have to call additional witnesses. Without knowing the designation status of Bessemer Mountain it is impossible to pre-designate such witness. The scenario, as it now exists, places the burden on the Protestants to guess what criteria and factors a potential designation may be based upon and then have witnesses prepared to testify on those hypothetical factors. Additionally, once the Protestants know what criteria the Council did or did not rely upon in the designation hearing they have been given only one working day to prepare their witnesses and locate any new and necessary witnesses and evidence. In order that the parties be able to present a complete and accurate record at the contested case hearing it is only reasonable that they have adequate opportunity to prepare and be able to present evidence on the Council's findings from the designation hearing.

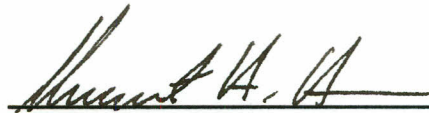
The Protestant's written deposition questions were served upon Don Rissler. Mr. Rissler informed counsel for the Protestants that he was forwarding the questions here at issue to Mr. Roan. Mr. Roan informed counsel for the Protestants that Mr. Shaffer and the other Department witnesses refuse to answer certain of the questions until after the designation

hearing. This position was affirmed in Mr. Roan's response to the Protestant's Motion to Compel. In the spirit of cooperation Mr. Roan said he would, however, make certain answers available prior to the designation hearing but that all responses related to the rare and uncommon designation would come after the hearing. Absent the short time frame, that is a reasonable position and one that may protect the Department from duplicative discovery requests. Given the contested case hearing date, however, that position becomes unreasonable and makes it impossible for the Protestants to prepare for their contested case hearing.

Lastly, the Council's findings at the designation hearing may raise issues as to completeness of the application. Mr. Rissler asserts that the application covers all rare and uncommon issues. Not knowing what the newly adopted rare and uncommon issues were when he made that statement it is obviously impossible for the application to cover the said issues. Suppose the Council makes a rare and uncommon designation based upon factors and criteria that are not addressed in the permit application. When the Protestants introduce evidence on those new criteria and factors it will raise issues of completeness of the mine permit application. The application would have to be declared incomplete and the contested case hearing could not be held. This determination, however, cannot accurately be made until after the designation hearing. It is therefore that the Protestants request that the contested case hearing be delayed for thirty days so that they may examine the permit application, prepare their witnesses and receive the Department's discovery responses all of which are based upon the outcome of the designation hearing.

As a scheduling note, counsel for the Protestants are previously committed to another matter on March 4th through March 9th, 1994 and will therefore be unable to try the contested case of this matter on those dates. In the event that this matter can be rescheduled until after March 9, 1994 counsel respectfully suggests that this matter, if possible in light of the schedules of the Council members, be set to begin the week of March 14, 1994.

RESPECTFULLY SUBMITTED this 20th day of January, 1994.



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CERTIFICATE OF SERVICE

On the 20th day of January, 1994, a true and correct copy of the foregoing Memorandum was delivered to all counsel of record by placing the same in prepaid mail to the following addresses:

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