

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

FILED  
FEB 25 2011

Jim Ruby, Executive Secretary  
Environmental Quality Council

IN THE MATTER OF THE OBJECTION )  
TO THE SMALL MINE PERMIT OF ) DOCKET NO. 10-4803  
McMURRY READY MIX CO., )  
TFN 5 3/143 )

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S OBJECTIONS TO  
OBJECTORS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND  
ORDER

The Wyoming Department of Environmental Quality (DEQ) hereby submits the following objections to Objectors' Proposed *Findings of Fact, Conclusions of Law and Order*. DEQ is mindful of the Council's desire to limit the findings of fact and conclusions of law to those facts and provisions of the law which are relevant and necessary to support the Council's decision and which are well established in the evidence presented at the hearing. Therefore, DEQ also submits the attached Proposed Findings of Fact and Conclusions of Law (Proposed Findings) for the Environmental Quality Council's (Council) consideration.

DEQ objects in general to Objectors' Proposed Findings of Fact and Conclusions of Law and Order (Objectors' Findings) for several reasons. The Objectors' Findings are argumentative and in many instances unsupported by testimony from the hearing. Many of the Objectors' Findings improperly contain a host of superfluous characterizations masquerading as facts without any citation to the record or transcript. Furthermore, the Objectors' Findings go well beyond the reasons stated by the Council for denial as it expressed during the deliberations on January 13, 2011, and attempt to expand the scope of the Council's decision beyond that which was set forth at the hearing. While DEQ understands the Objectors' desire to deviate from the reasons set forth by the Council for denying the McMurry permit, DEQ believes that the scope of the findings should be

match the wishes expressed by the Council at the hearing. DEQ believes that the attached Proposed Findings address the Council's reasons for denying the McMurry permit without unnecessary and unfounded conclusions that could set dangerous precedent for future agency actions. DEQ sets forth its specific objections to the Objectors' Findings below:

Introductory Paragraphs:

**Objection:** DEQ does not object to the substance of Objectors' introduction, but DEQ would like to point out that "Debrra White" and "Residnets" may be misspelled. DEQ also would like to note that there is no evidence in the record which suggests that Tanya King is the "permit administrator." The evidence shows that Tanya King is a "natural resource analyst." *See Transcript of December 10, 2010 Hearing, 27:4-5.*

I. Jurisdiction

**Objection:** DEQ objects to this finding. DEQ believes that much of this finding is unnecessary and duplicative. DEQ refers the Council to its Proposed Findings ¶ 3 for an alternate finding on jurisdiction.

III. McMurry Bears the Burden of Proof

**Objection:** DEQ objects to this finding. Based on DEQ's review of the hearing transcript, the Council did not make this finding and this issue was not addressed during the hearing. DEQ believes that this finding should be removed.

Furthermore, in the event the Council did reach a finding on this issue, DEQ believes that the Boulder Residents' finding is incomplete. The burden of proof switches throughout a case. As stated in *DEQ's Response to Boulder Resident Objectors' Motion to Modify Schedule*, the initial burden of presenting evidence is on the

objectors. It is initially up to anyone objecting to the proposed issuance to bear the burden of showing that DEQ's proposed issuance is not appropriate. The Council determined that the Boulder Residents met that burden and the burden shifted to the applicant to show that the requirements of WYO. STAT. ANN. § 35-11-406(m) were satisfied. Therefore, DEQ would ask that the Council either remove this provision or refer to its Proposed Findings ¶¶ 37-38 for an alternate finding.

III. The Boulder Residents' Objections

**Objection:** DEQ objects to this finding. DEQ believes that most of this finding is unnecessary. DEQ is mindful of the Council's desire to keep findings and conclusions focused on necessary bases. DEQ refers the Council to its Proposed Findings ¶ 5 for an abbreviated conclusion of this nature.

IV. Findings of Fact

- ¶ 1. **Objection:** DEQ objects to this finding. DEQ believes that most of this finding is argumentative and without foundation in the record. DEQ refers the Council to its Proposed Findings ¶¶ 7-14 for an alternate conclusion of this nature.
- ¶ 3. **Objection:** DEQ objects to this finding. DEQ believes that this finding is argumentative and without foundation in the record. There is no testimony in the record that supports the Objectors' conclusion that the mine entrance "follows a nearly blind curve." DEQ refers the Council to its Proposed Findings ¶ 32 for an abbreviated conclusion of this nature.
- ¶ 4. **Objection:** DEQ objects to this finding. DEQ believes that this finding is argumentative, duplicative and should be removed. DEQ refers the Council to its Proposed Findings ¶ 32 for an alternate conclusion of this nature.

- ¶ 5. **Objection:** DEQ objects to this finding. DEQ believes that this finding is argumentative. DEQ refers the Council to its Proposed Findings ¶ 33 for an alternate conclusion of this nature.
- ¶ 6. **Objection:** DEQ objects to this finding. Based on DEQ's review of the hearing transcript, the Council did not make such a finding. DEQ refers the Council to its Proposed Findings ¶ 52 for an alternate conclusion of this nature.
- ¶ 7. **Objection:** DEQ objects to this finding. DEQ believes that this finding is argumentative and the Council made no finding of the nature of the truck traffic in Boulder Residents' Exhibit 1. DEQ refers the Council to its Proposed Findings ¶¶ 11-14 for alternate conclusions of this nature.
- ¶ 8. **Objection:** DEQ objects to this finding. DEQ believes that this finding is duplicative of other findings and should be removed.
- ¶ 9. **Objection:** DEQ objects to this finding. Based on DEQ's review of the hearing transcript, the availability of Mathis Lane was not a reason for the denial of the permit. DEQ also believes that this finding is irrelevant to the basis for the Council's decision and should be removed. Furthermore, DEQ asserts that such a basis for denial of a permit would be a violation of WYO. STAT. ANN. § 35-11-406(m) and outside DEQ's authority when reviewing permit applications.
10. **Objection:** DEQ objects to this finding. Based on DEQ's review of the hearing transcript, the Council did not state that "the applicant must evaluate all available alternatives that would eliminate the public safety and public nuisance impacts[.]" This would create a new requirement outside the authority of WYO. STAT. ANN. § 35-11-406 and DEQ does not believe this was a basis for the Council's decision. DEQ

asks that this finding be removed.

- ¶ 11. **Objection:** DEQ objects to this finding. The evidence in the record does show that DEQ imposed hours of operation limitations on the mining operation. (“Mining operations will normally be conducted during daylight hours on any day of the week.” *See DEQ Exhibit A, MP-17*). DEQ refers the Council to its Proposed Findings ¶¶ 34-35 conclusions of a similar nature.
- ¶ 12. **Objection:** DEQ objects to this finding. DEQ believes that this finding is argumentative and without foundation in the record. Based on DEQ’s review of the hearing transcript, the Council did not find that the noise and vibrations constituted a significant disruption of the public peace. DEQ refers the Council to its Proposed Findings ¶¶ 50-55 for an alternate conclusion of this nature.
- ¶ 13. **Objection:** DEQ objects to this finding. DEQ believes this finding is unnecessary and should be removed.
- ¶ 14. **Objection:** DEQ objects to this finding. While DEQ admits that the McMurry mine is located in a core area, DEQ objects to the Boulder Residents’ second sentence. There is no information in the record that the sage grouse is listed as “threatened” under the ESA. To the contrary, the Executive Order 2010-4 specifically states that the sage grouse is not listed as “threatened.” (*See Executive Order 2010-4 at 1*, “[t]he United States Department of the Interior has determined that listing the Greater Sage-Grouse as a threatened or endangered species is currently precluded by higher priority listing actions.”) DEQ asks the Council to remove this finding and refers the Council to its Proposed Findings ¶¶ 44-45 for a similar conclusion of this nature.
- ¶ 16. **Objection:** DEQ objects to this finding. DEQ believes that most of this finding is

unnecessary. DEQ is mindful of the Council's desire to keep findings and conclusions focused on necessary bases. DEQ refers the Council to its Proposed Findings ¶¶ 44-45 for an abbreviated conclusion of this nature.

- ¶ 17. **Objection:** DEQ objects to this finding. Based on DEQ's review of the hearing transcript, the Council made no such conclusion on the appropriateness of including conditions in the permit to address sage grouse issues. To the contrary, statements made by the Council supported such a proposal. ("I have a couple comments. One is the sage grouse issues, I think there are some open issues there. I think Mr. Esch proposed some language changes or additions to the permit in order to correct those. I think those are pretty straightforward." *Tr. 5:18-22*. "So, I guess the way it sounds, the way if I'm reading it right, the Council is probably not prepared to sign off on this permit right now, but I think we're also open to the fact that with just a few changes, I haven't heard anybody say yet that this just can't be done." *Tr. 20:4-8*.) DEQ also believes that this finding is contrary to the Council's authority under WYO. STAT. ANN. § 35-11-112 and asks the Council to remove this finding.
- ¶ 18. **Objection:** DEQ objects to this finding. DEQ believes that most of this finding is unnecessary. DEQ is mindful of the Council's desire to keep findings and conclusions focused on necessary bases. DEQ refers the Council to its Proposed Findings ¶ 47 for an abbreviated conclusion of this nature.
- ¶ 19. **Objection:** DEQ objects to this finding. DEQ does not dispute the substance of this finding; however DEQ does not believe that the assumptions used in the habitat assessment were a basis for the permit denial. DEQ refers the Council to its Proposed Findings ¶¶ 27-28 for an alternate conclusion.

- ¶ 20. **Objection:** DEQ objects to this finding. DEQ does not dispute the substance of this finding; however DEQ does not believe that the assumptions used in the habitat assessment were a basis for the permit denial. DEQ refers the Council to its Proposed Findings ¶ 27-28 for an alternate conclusion.
- ¶ 21. **Objection:** DEQ objects to this finding. Based on DEQ's review of the hearing transcript, the Council made no such conclusion on the appropriateness of assuming all habitat to be suitable in the PIAA area. Furthermore, DEQ does not believe that the assumptions used in the habitat assessment were a basis for the permit denial. DEQ refers the Council to its Proposed Findings ¶¶ 27-28 for an alternate conclusion.
- ¶ 22. **Objection:** DEQ objects to this finding. Based on DEQ's review of the hearing transcript, the Council made no such conclusion on the appropriateness of assuming all habitat to be suitable within the PIAA area. Furthermore, DEQ does not believe that the assumptions used in the habitat assessment were a basis for the permit denial. DEQ refers the Council to its Proposed Findings ¶¶ 27-28 for an alternate conclusion and ¶¶ 43-48 for proposed conclusions regarding sage grouse issues.
- ¶ 23. **Objection:** DEQ objects to this finding. Based on DEQ's review of the hearing transcript, the Council made no such conclusion on the location of the haul roads falling within 1.9 miles of the Goodwin lek. Furthermore, evidence in the record shows that the haul roads were considered by Game and Fish to be existing roads and not subject to the 1.9 mile requirement. ("The way we approach the sage grouse strategy is that whatever is existing is within compliance. Anything new that is going to take place needs to comply with the 1.9. So the existing road complies with

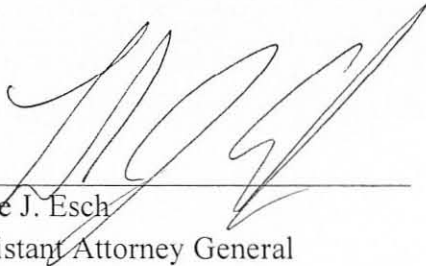


the 1.9.” *See Dec. 10, 2010 Tr. 125:10-13.*) DEQ refers the Council to its Proposed Findings ¶¶ 43-48 for a proposed conclusion regarding sage grouse issues.

- ¶ 24. **Objection:** DEQ objects to this finding. Based on DEQ’s review of the hearing transcript, the Council made no such conclusion regarding the habitat assessment, the 5% disturbance cap or the location of the haul roads. DEQ refers the Council to its Proposed Findings ¶¶ 43-48 for proposed conclusions regarding sage grouse issues.

For the above stated reasons, DEQ asks the Council to reject the above referenced Proposed Findings and reach an objective decision on the facts which led the Council to deny the McMurry permit, without the argumentative and unsupported allegations contained in the Objectors’ Findings.

DATED this 25<sup>th</sup> day of February, 2011.

  
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Luke J. Esch  
Assistant Attorney General



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the *WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S OBJECTIONS TO OBJECTORS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW* and *WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW* was served by electronic mail, this 25<sup>th</sup> day of February 2011, to the following:

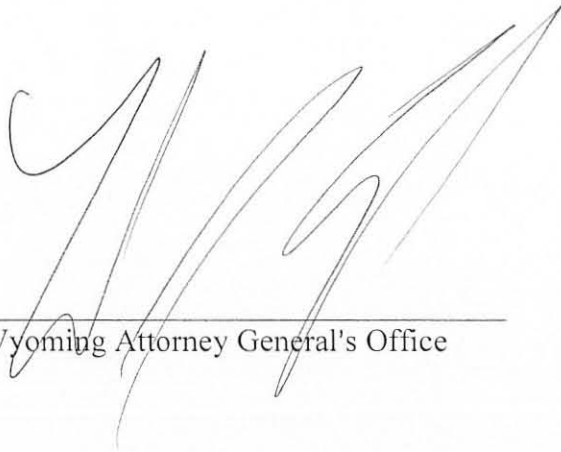
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Wyoming Attorney General's Office

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

**IN THE MATTER OF THE OBJECTION                     )  
TO THE SMALL MINE PERMIT OF                     ) DOCKET NO. 10-4803  
McMURRY READY MIX CO.,                     )  
TFN 5 3/143                     )**

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S PROPOSED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. This matter came before the Environmental Quality Council (Council) as a contested case hearing pursuant to WYO. STAT. ANN. § 35-11-406(k) on the issuance of small mine permit TFN 5 3/143 to McMurry Ready Mix Company (McMurry). Council members present included Dennis M. Boal, presiding officer; Catherine Guschewsky; Dr. Fred Ogden, (via videoconference); John N. Morris (via teleconference); and Chairman Tim Flitner (via teleconference).

2. The Council held the contested case hearing on December 10, 2010, in Rock Springs, Wyoming at which the objectors to the permit, Dave and Sandra Goodwin, Harv and Denise Hastings, Debbra White, David Payne, Randy Simpson, and Kelly Garside (collectively the Boulder Residents), were represented by Mark Sullivan; the East Fork Limited Partnership (East Fork) was represented by Jon Aimone; McMurry was represented by Harriet Hageman; and the Department of Environmental Quality, Land Quality Division (DEQ) was represented by Luke J. Esch.

3. Jurisdiction was proper for the Council for this contested case pursuant to WYO. STAT. ANN. §§ 35-11-406(k) and 35-11-112(a)(iv).

**I. FINDINGS OF FACT**

4. On September 22, 2010, DEQ authorized McMurry to issue a public notice that

its application for a small mine permit TFN 5 3/143 (McMurry Permit) was to be approved by DEQ pursuant to WYO. STAT. ANN. § 35-11-406. *Dec. 10, 2010 Tr. 32:9-13.*

5. The Boulder Residents and East Fork filed timely objections to the proposed issuance of the McMurry Permit. The Boulder Residents alleged that the truck traffic resulting from the McMurry Permit would result in a public nuisance; the McMurry Permit did not comply with the Governor's Executive Order 2010-4 on Greater Sage-Grouse (Executive Order); and McMurry should not receive a permit due to past alleged willful violations of DEQ rules and regulations pursuant to WYO. STAT. ANN. § 35-11-406(o). *See Boulder Residents List of Witnesses, Exhibits and List of Issues.*

6. East Fork alleged that the McMurry Permit did not comply with local zoning regulations and interfered with water rights. *See East Fork's Statement of Issues and List of Witnesses and Exhibits.*

7. The McMurry mine is a sand and gravel operation that has been in operation since February 15, 2008, as a limited mining operation. *Dec. 10, 2010 Tr. 30:21-25.*

8. The McMurry Permit authorizes the expansion of the limited mining operation beyond ten acres and allows it to expand over the next twenty years. *DEQ Exhibit A, MP-1.*

9. The McMurry mine is accessed by State Highway 353. *DEQ Exhibit A, Figure E-1.*

10. Trucks traveling to the McMurry mine also use County Road 133 to reach Highway 353. *Boulder Residents Exhibit 1.*

11. Many of the Boulder Residents live along County Road 133 and have been impacted by the truck traffic traveling to and from the McMurry mine. *Dec. 10, 2010 Tr. 181:15-18, 193:11-21.*

12. Sandra Goodwin testified that she does not let her grandchildren cross County Road 133 and will not cross on horseback when the McMurry mine is operating. *Dec. 10, 2010 Tr. 187:7-14, 187:23-188:1-3.*

13. Randy Simpson testified that in the past he drove into the ditch to avoid an accident with a truck on County Road 133. *Dec. 10, 2010 Tr. 255:17-23.*

14. Denise Hastings testified that she and her husband do not ride their ATV on County Road 133 when trucks are traveling on the road. *Dec. 10, 2010 Tr. 248:23-249:3.*

15. Kenneth Routh testified that he was concerned that his water rights on the Banes No. 1 Ditch and the Hittle Enlargement of the Jorgenson Ditch would be impacted by the expansion of the McMurry mine. *Dec. 10, 2010 Tr. 263:8-18.*

16. The Banes No. 1 Ditch will not be impacted by the approval of the McMurry Permit. *Dec. 10, 2010 Tr. 75:20-22.*

17. According to the State Engineers Office, the Hittle Enlargement of the Jorgenson Ditch has been abandoned for more than thirty years. No evidence was presented that showed Mr. Routh had an established right in the Hittle Enlargement of the Jorgenson Ditch. *Dec. 10, 2010 Tr. 83:14-25.*

18. The Sublette County Planning and Zoning Department determined that the McMurry mine did not require a conditional use permit because the County's regulations provide that the County may accept a permit issued by a state agency as evidence of compliance with all necessary regulations. *McMurry Exhibit K.*

19. Sublette County is responsible for the maintenance of County Road 133 and has imposed a thirty-five mile-per-hour speed limit and prohibited the use of jake brakes along County Road 133. *Dec. 10, 2010 Tr. 206:12-16, 37:12-15.*

20. McMurry submitted its application to expand the McMurry mine to DEQ in December of 2009. *DEQ Exhibit A*.

21. When McMurry first submitted its permit application to DEQ, the Executive Order had not been issued. *Dec. 10, 2010 Tr. 119:1-3*.

22. On August 18, 2010, Governor Freudenthal signed the Executive Order into law.

23. DEQ consulted with the Wyoming Game and Fish Department (WGF) on the Executive Order and incorporated its comments into the McMurry Permit. *Dec. 10, 2010 Tr. 47:14-16*.

24. DEQ relies on WGF to recommend permit conditions that comply with the Executive Order. *Dec. 10, 2010 Tr. 57:17-18*.

25. A Project Impact Analysis Area (PIAA) was conducted for the project as required by the Executive Order. *Dec. 10, 2010 Tr. 55:13-16*.

26. The PIAA was not conducted by McMurry, but rather by WGF. *Dec. 10, 2010 Tr. 50:8-13, 55:13-16*.

27. No habitat assessment was conducted by WGF for the PIAA; however, the WGF process manual states that if a habitat assessment is not conducted, WGF assumes all habitat within the PIAA is considered suitable for the PIAA. *Dec. 10, 2010 Tr. 133:9-12, 20-24*.

28. Assuming all habitat to be suitable for the purposes of the PIAA results in a more conservative result. *Dec. 10, 2010 Tr. 143:17-144:22*.

29. A disturbance analysis was conducted pursuant to the requirements of the Executive Order; however, no disturbance analysis was conducted by WGF for individual leks within the PIAA. *Dec. 10, 2010 Tr. 139:17-140:3*.

30. WGF did not require a monitoring plan on the McMurry Permit for the evaluation of impacts on sage grouse. *Dec. 10, 2010 Tr. 142:5-8.*

31. WGF did not impose any noise restrictions in the McMurry Permit or require McMurry to demonstrate that its operations will not exceed the ten decibels limit included in the Executive Order. *10, 2010 Tr. 126:15-20.*

32. The entrance to the McMurry mine from Highway 353 is narrow, thus requiring the trucks turning into the mine when traveling from the north to the south to enter the opposite lane in order to make the turn into the McMurry mine. *Dec. 10, 2010 Tr. 163:8-17.*

33. The McMurry Permit does not address the issues of trucks entering or accessing the McMurry mine or the volume of trucks using the local roadways. *DEQ Exhibit A.*

34. The McMurry Permit states that “[m]ining operations will normally be conducted during daylight hours on any day of the week.” *DEQ Exhibit A, MP-17.*

35. Ron McMurry testified that he interprets the hours of operation provision of the permit to mean that McMurry can operate outside of daylight hours so long as they do not do it more than fifty percent of the time. *Dec. 10, 2010 Tr. 335:1-25.*

## II. CONCLUSIONS OF LAW

36. To the extent any of the above findings of fact include conclusions of law, they are incorporated.

37. The objecting parties bear the initial burden of presenting evidence showing that the proposed issuance of permits is improper. *In the Matter of the Objection to the Small Mine Permit of Croell Redi-Mix, Inc. TFN 5 6/072, EQC Docket No. 09-4806.*

38. Once the objecting parties meet their burden of presentation, the burden shifts to the applicant to show that the application complies with the requirements of the Environmental

Quality Act (Act). WYO. STAT. ANN. § 35-11-406(m).

39. The policy and purpose of the Act is expressly described in WYO. STAT. ANN. § 35-1-102 where it states that it is the “policy and purpose of this act to enable the state to prevent, reduce and eliminate pollution; to preserve and enhance the air, water and reclaim the land of Wyoming; [and] to plan the development, use, reclamation, preservation and enhancement of the air, land and water resources of the state.”

40. The extent to which the Act authorizes the establishment of mining operations within the state is governed by Article 4 of the Act. WYO. STAT. ANN. § 35-11-401.

41. WYO. STAT. ANN. § 35-11-406 establishes requirements for mine permit applications and the procedures under which DEQ reviews and approves or denies mining applications.

42. WYO. STAT. ANN. § 35-11-406(m) sets forth the bases upon which the director of DEQ may deny a permit application. Included in these criteria are: (1) whether any part of the proposed operation, reclamation program, or proposed future use would be contrary to the law or policy of Wyoming or the United States, and (2) whether the proposed operation would constitute a public nuisance or endanger public health or safety.

43. DEQ considers properly issued executive orders to be part of the laws and policy of the State of Wyoming and therefore authorized activities must satisfy the requirements of executive orders.

44. The Executive Order requires state agencies to review new development or land uses within core areas and authorize or conduct it only when it can be demonstrated that the activity will not cause declines in sage grouse populations. Development conducted consistent with the requirements of the Executive Order is deemed sufficient to demonstrate that the



activity will not cause declines in sage grouse populations. *Executive Order at 2.*

45. The Executive Order requires certain analyses to be conducted on the project to determine potential impacts on sage grouse, including the PIAA, a disturbance analysis, and a habitat assessment. The Executive Order also places general stipulations on projects in core areas, including limitations on surface disturbance, surface occupancy, seasonal use, and noise, in addition to monitoring requirements. *Executive Order at B-1 – B-6.*

46. However, existing land uses must be recognized and respected by state agencies and existing uses are exempt from compliance with the requirements of the Executive Order. *Executive Order at 2, Dec. 10, 2010 Tr. 125:6-9.*

47. The McMurry Permit does not meet the requirements of the Executive Order because it failed to include monitoring requirements for sage grouse, noise restrictions, and a disturbance analysis for individual leks within the PIAA.

48. With the exceptions identified above, DEQ and WGF adequately satisfied the requirements of the Executive Order and a proper consultation was conducted. *Jan. 13, 2011 Tr. 21:13-22.*

49. The McMurry Permit would comply with all required zoning requirements. *Dec. 10, 2010 Tr. 88:6-17.*

50. DEQ is also required to consider whether the operation will endanger public safety. WYO. STAT. ANN. § 35-11-406(m)(vii).

51. The Council acknowledges that it has no jurisdiction over traffic on public roads, however, it does have jurisdiction over haul roads for the mine. *Jan. 13, 2011 Tr. 6:10-16.*

52. The entrance to the McMurry mine from Highway 353 constitutes an issue of public safety due to the risk that an accident may occur when trucks enter into the opposite lane

to make the turn onto the access road to the McMurry mine. *Jan. 13, 2011 Tr. 6:1-6.*

53. DEQ is also required to consider whether the operation will constitute a public nuisance. WYO. STAT. ANN. § 35-11-406(m)(vii).

54. A public nuisance is an unreasonable interference with a right common to the general public. The public peace is a right that is common to the general public. Restatements (Second) of Torts § 821B (1979).

55. Operating the McMurry mine 24 hours a day seven days a week in accordance with Mr. McMurry's testimony would be an unreasonable interference with the public peace. *Jan. 13, 2011 Tr. 13:2-18.*

### III. CONCLUSIONS

56. The Boulder Residents have shown that, as drafted, the McMurry Permit (1) does not meet the requirements of the Executive Order, (2) could constitute a threat to public safety due to the access road, and (3) may constitute a public nuisance if allowed to operate twenty-four hours a day, seven days a week. Therefore, the Council FINDS that the McMurry Permit is contrary to the laws and policies of the State and may constitute a public nuisance and endanger public health and safety and hereby ORDERS that the McMurry Permit be DENIED.

DATED this \_\_\_\_ day of February, 2011.

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Dennis Boal, Presiding Officer  
Environmental Quality Council