

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

DEC 09 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE)
OBJECTION TO THE SMALL MINE)
PERMIT OF McMURRY READY)
MIX CO.)
TFN 5 3/143)
_____)

Docket No. 10-4803

EAST FORK LIMITED PARTNERSHIP'S
REPLY TO BOLDER RESIDENTS
MOTION TO MODIFY HEARING SCHEDULE AND McMURRY'S
MOTION IN LIMINE

COMES NOW East Fork Limited Partnership ("East Fork"), by and through its attorneys, and responds to the Bolder Residents' Motion to Modify Hearing Schedule and McMurry's Motion in Limine as follows:

MOTION TO MODIFY HEARING SCHEDULE

East Fork agrees with the order of presentation found in the December 1, 2010, *Order of Schedule*. It is the most logical order for presentation. East Fork understood during the December 1, 2010, prehearing conference that the order of presentation did not determine the burden of proof in this matter.

East Fork believes that McMurry has met its initial burden of production. Such appears inherent by the current state of the proceeding. It is now for the objectors to rebut

that burden of production. As the applicant, McMurry carries the burden of proving they are entitled to the permit.

MOTION IN LIMINE

The word “adjacent” is used eight (8) times in Wyo. Stat. 35-11-406. Notably, Wyo. Stat. §35-11-406(b)(xiii) requires the applicant to include in the mining plan and reclamation plan the “procedures proposed to avoid constituting a public nuisance, endangering the public safety, human or animal life, property, wildlife and plant life in or adjacent to the permit area including a program of fencing all stockpiles, roadways, pits and refuse or waste areas to protect the surface owner's ongoing operations[.]”

Wyo. Stat. §35-11-406(a)(ix) requires:

A map based upon public records showing the boundaries of the land to be affected, its surrounding immediate drainage area, the location and names, where known, of all roads, railroads, public or private rights-of-way and easements, utility lines, lakes, streams, creeks, springs, and other surface water courses, oil wells, gas wells, water wells, and the probable limits of underground mines and surface mines, whether active or inactive, on or immediately adjacent to the land to be affected. The map shall also show:

(A) The names, last known addresses and boundary lines of the present surface landowners and occupants on the adjacent land to be affected;

(B) The location, ownership, and uses of all buildings on, or on lands adjacent to, the land to be affected;

(C) An outline of all areas previously disturbed by underground mining or that will be affected by future underground mining as a guide to potential subsidence problems;

(D) Any political boundaries of special districts on or near the land to be affected.

CONCLUSION

McMurry appears to have met its initial burden of production. The order of presentation currently in place is logical and appears to be the most efficient order of presentation. As the applicant, however, it is McMurry's burden of proof to establish it is entitled to a permit.

The DEQ must consider how the proposed operation affects the general public. Additional consideration is given to adjacent property owners. McMurry's motion in limine should be denied.

DATED this 9th day of December, 2010.

EAST FORK LIMITED PARTNERSHIP,
Objector.

By: _____/s_____
Jon Aimone, 6-4433

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CERTIFICATE OF SERVICE

I certify that, on December 9, 2010, I served a true and correct copy of the foregoing by electronic mail, to the following:

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