

FILED

MAY 09 2011

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

THE STATE OF WYOMING

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE)
OBJECTION TO THE SMALL MINE) DOCKET NO. 11-4801
PERMIT OF OWL CREEK GRAVEL,)
PRODUCTS, LLC)

PRE-HEARING MEMORANDUM

Comes now, Mary A. Throne of Throne Law Office, P.C., on behalf of Owl Creek Gravel Products, LLC (Owl Creek) to submit this Pre-Hearing Memorandum, pursuant to the May 4, 2011 Order of the Environmental Quality Council.

LEGAL ISSUES

Whether the Objectors, Matt and Theresa Brown, have demonstrated the proposed small mine permit fails to meet the requirements of Article 4 of the Wyoming Environmental Quality Act.

Whether the Council has jurisdiction over the case under Wyo. Stat. § 35-11-406(k) since Matt and Theresa Brown did not provide their objections to the parties until the prehearing conference held on May 3, 2011.

SUMMARY OF THE CASE

Owl Creek applied for a small mine permit under Wyo. Stat. § 35-11-401(j) for the construction of a gravel mine in Hot Springs, County on October 28, 2010. The proposed permit went to public notice on March 24, 2011, with a deadline for objections of April 23, 2011. Matt and Theresa Brown filed their intention to object on April 18, 2011, but failed to state any specific objections by April 23, 2011. Based on oral representations of the Browns' counsel at the prehearing, Owl Creek understands the objections are limited to concerns about whether the proposed permit protects downstream water interests. To date, Mr. and Mrs. Brown have never provided their specific objections in writing which has hampered Owl Creek's ability to prepare for the hearing. As a result, Owl Creek may seek leave to supplement Witness and Exhibit lists.

The mine plan and the reclamation plan for the proposed gravel operation contain several requirements intended to protect groundwater interests. In August 2010, representatives of Owl Creek met with Loren Smith, the Superintendent for Water Division III for the Wyoming State Engineer, to discuss stipulations for the operation that he would like to see to protect the aquifer. Mr. Smith requested that two feet of gravel remain on the floor of the pit during operations and following reclamation to allow water

to flow through the property to down gradient users. The mine plan contains this stipulation. In addition, during operation, a drain ditch will be in place to convey stormwater and any water in the pit to an existing drain ditch that borders the property, allowing water to flow down gradient. During mining and following reclamation there will be no impoundments on the property that could affect downstream users.

With these mine plan and reclamation plan requirements in place, the proposed permit addresses the concerns voiced in 2010 by Mr. Smith and will prevent injury to downstream holders of water rights. However, in the event there is any injury to water rights resulting from the operation, the mine plan requires the permittee "to make all reasonable efforts to remedy said injury."

WITNESSES

WILL CALL:

1. Harry E. Hughes
Owl Creek Gravel Products, LLC
P.O. Box 783
Thermopolis, Wyoming 82443-0783
307-864-3024

Mr. Hughes is the Managing Member of Owl Creek Gravel Products, LLC and a licensed professional engineer in Wyoming. Through his engineering firm, Owl Creek Engineering, he developed the land quality application for Owl Creek, TFN 5 6/206. Mr. Hughes is expected to testify regarding the application and in particular, the mine plan and the reclamation plan.

2. Doyl Fritz, WWC Engineering
1849 Terra Avenue
Sheridan, Wyoming 82801
307-672-0761

Mr. Fritz is a licensed professional engineer in Wyoming, Montana and Colorado. He has over 30 years of experience in civil engineering, hydrologic investigations, hydrologic design, water rights, water supply and surface mine permitting and regulation. Mr. Fritz assisted in the development of the mine permit application for the proposed Owl Creek mine. He is expected to testify as a fact witness and an expert witness about groundwater issues related to the application.

MAY CALL:

1. Mark Moxley
Department of Environmental Quality
Land Quality Division
Lander Field Office
510 Meadowview Drive
Lander, Wyoming 82520
307-332-3047

Mr. Moxley is the supervisor in the Lander office and may be called to testify regarding his review of the application for the Owl Creek small mine.

2. David Frost
Mountain Construction Company
142 E. 3rd Street
Lovell, Wyoming 82431-2028
307-548-7186

Mr. Frost is with Mountain Construction Company, a Member of Owl Creek Gravel Products, LLC, and may be called to testify regarding the anticipated operations of the mine.

3. Craig Smith
Environmental Scientist
Department of Environmental Quality
Land Quality Division
Lander Field Office
510 Meadowview Drive
Lander, Wyoming 82520
307-332-3047

Mr. Smith, on behalf of the Department of Environmental Quality, conducted the primary agency review of the small mine permit application and may be called to testify regarding his review.

Owl Creek reserves the right to call any witnesses listed by another party or any witnesses needed for rebuttal.

EXHIBITS

*Owl Creek 1: Email dated August 24, 2010 from Doyl Frits to Loren Smith and Harry Hughes

Owl Creek reserves the right to use exhibits relied on by any other party, including, but not limited to DEQ 1, the file for the proposed permit at issue, TFN 5 6/206. In addition, Owl Creek, reserves the right to use any exhibits as necessary for purposes of impeachment or rebuttal.

DATED THIS 9th DAY OF May, 2011.

OWL CREEK GRAVEL PRODUCTS, LLC:



Mary A. Throne
Throne Law Office
P.O. Box 828
211 W. 19th Street, Suite 200
Cheyenne, Wyoming 82001

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Pre-Hearing Statement and copies of the Proposed Owl Creek's Exhibits were served by electronic mail, this 9th day of May, 2011, to the following:

Tim Flitner
Chairman
Environmental Quality Council
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Mary A. Throne
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P.O. Box 828
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Cheyenne, Wyoming 82001

IN THE MATTER OF THE OBJECTION TO THE SMALL MINE PERMIT OF OWL
CREEK GRAVEL, LLC

DOCKET NO. 11-4801

OWL CREEK EXHIBIT 1

Subject:Re: RE Owl Creek Gravel:

Date:Tue, 24 Aug 2010 14:42:36 -0600

From:Doyle Fritz <dfritz@wwcengineering.com>

Organization:WWC Engineering

To:Loren Smith <lsmith@seo.wyo.gov>

CC:Harry Hughes <owlcreekgravel@rtconnect.net>, Mike Wolf <mwolf@wwcengineering.com>, David Deutz <ddeutz@seo.wyo.gov>, Tiffany Searcy <tsearc@seo.wyo.gov>, Mark Moxley <MMOXLE@state.wy.us>

Loren:

Thank you for your prompt consideration and review of our request for guidance on acceptable mining plans for this pit. We fully understand and share your desire to protect the appropriators on Steward Springs and Lower Owl Creek by assuring continued groundwater migration through (or around) the site area after operations cease and reclamation is complete. We will proceed with preparation of the mine permit application with the understanding that for now we will leave at least two feet of gravel above the pit floor wherever the pit encroaches on the seasonal high water table. If, through additional planning, data collection and analysis, we can demonstrate to your satisfaction that leaving two feet of gravel is not necessary or helpful to assure protection of downstream appropriators, we may request permission to modify this constraint. After all, 2 feet of gravel over 60 acres is about 200,000 cubic yards, or over 300,000 tons of material.

Thank you again for your prompt response.

Doyle Fritz, P.E.

WWC Engineering

On 8/12/2010 10:33 AM, Loren Smith wrote:

Harry,

Dave Deutz, my assistant superintendent and I toured the site of the proposed expansion late last week and we have discussed this with Tiffany Searcy the hydrographer for district 5, we have arrived at the conclusion that at mining can proceed to such a depth as to leave two feet of the gravel remaining above the Cody Shale interface. The primary reasoning behind this requirement is that we must protect the appropriators on Steward Springs and Lower Owl Creek and their source of supply by maintaining enough of this aquifer to assure continued groundwater migration through the site area after operations have ceased and reclamation is completed. Thank you for the opportunity to look into this early in the process.



Loren Smith
Superintendent Water Division III
lsmith@seo.wyo.gov