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MAR 26 2013

Jim Ruby, Executive Secretary
Environmental Quality Council



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MAR 25 2013

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March 25, 2013

Nancy Nuttbrock, Administrator
Wyoming Department of Environmental Quality
Land Quality Division
Herschler Building
122 East 25th Street
Cheyenne, WY 82002

Re: McMurray Ready Mix Company Eastfork Ranch Mine Permit Application

Dear Ms. Nuttbrock:

This firm represents Dave and Sandra Goodwin, Harv and Denise Hastings, Debra White, David Payne, Kelly Garside and Randy Simpson (the "Boulder Residents"), all Boulder, Wyoming residents who live very near the McMurray Ready Mix Company's proposed Eastfork Ranch Mine (the "McMurray Mine"). I submit these written comments in opposition to the issuance of a small mine permit for the McMurray Mine and to supplement the comments already filed by Kelly Garside. On behalf of the Boulder Residents, and for the reasons set forth below, I recommend that DEQ send the applicant back to revise its permit application, which in its current form cannot be approved. If DEQ will not do so, I request that an Environmental Quality Council hearing be conducted on this application.

I. Overview

~~At the conclusion of the EQC hearings in 2011, Dennis Hoal, the Presiding Officer,~~ advised the parties that they need to work together to avoid a return to the EQC. Unfortunately, throughout the subsequent application and review process, neither the DEQ nor McMurry did anything to bring the Boulder Residents or any other member of the public into its discussions with the DEQ, Wyoming Game & Fish, Sublette County, the BLM or any other permitting and approval authority. The Boulder Residents' input was not sought in connection with any of the issues of most concern to them: the hours of operation, the safety of Highway 353, truck traffic on Highway 113, and sage grouse impacts and monitoring.¹

When the revised permit application was released to the Boulder Residents, it was clear that McMurry had no intention to address the residents' concerns in any way. The new application has done nothing to change the unlawful impacts its mine will have. The hours of operation are not meaningfully different, the proposed route to the mine is no different, the impact on sage grouse has not been mitigated and continues to violate Wyoming public policy, and the dangerous traffic and truck turning movements remain the same. So, regrettably, we are right back where we started and heading for another EQC hearing.

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As set forth in greater detail below, the application cannot meet the standards for issuance of a Land Quality Division Small Mine Permit, and the permit application should either be denied, or conditions imposed on its approval that will mitigate or eliminate its adverse impacts.

II. The McMurray Mine Is a Public Nuisance That Endangers the Health and Safety of the Boulder Residents and Members of the Public

A. Uncured Traffic Problems

First, the application should be denied because the mine, by its former operation under a 10-acre Limited Mining Operation approval, proved to be a public nuisance and a danger to public health and safety. W.S. § 35-11-406 (viii). In March, 2011 the Environmental Quality Council concluded that the operation of the mine constituted a public nuisance and a threat to public safety and that the requested permit was contrary to the laws of the State of Wyoming. The EQC denied the permit. In particular, the EQC found as follows:

Use of the entrance to the McMurry mine from Highway 353 as described in testimony given at the contested case hearing, endanger the public health and safety due to the significant 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 or when they exit the access road onto Highway 353.

¹ McMurry's only outreach to the Boulder Residents was letter from counsel dated August 8, 2011. A copy is attached hereto as **Exhibit A**. That letter was an attempt to impose upon the Boulder Residents the cost and burden of due diligence necessary to evaluate the feasibility of an alternative route to the mine, Mathis Lane. The residents responded by volunteering their assistance in working with the County and the federal government on Mathis lane, but stressed that the cost of developing the mine permit application should fall on McMurry. See **Exhibit B**. McMurry did not again attempt any form of outreach or coordination with the Boulder Residents.

McMurry has failed to address the EQC's concern regarding the roadway. The entrance to the mine was widened, but this was inadequate and doing so did not change the dangerous turning movement trucks must make to enter the mine from Highway 353.² I wrote to the DEQ regarding this point on both July 18, 2011 and September 29, 2011. Copies of those letters are attached hereto as Exhibit C. In particular, on September 29, 2011, I attached photos of a truck making the very turn in question while encroaching upon the oncoming lane of traffic.

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When the DEQ decided to publish the proposed permit anyway, I expressed my frustration concerning the patent danger posed by the truck turning movements. My correspondence with counsel and representatives of your office is attached hereto as Exhibit D. Contrary to the EQC's prior order in this matter, the DEQ's counsel Luke Esch asserted that the DEQ has no authority to consider public safety on a state highway. He stated:

As for your concern regarding the truck traffic, DEQ is only able to regulate those issues within its jurisdiction. The issue of truck travel on a county road is one of those issues that is outside of DEQ's authority and is better addressed by the County or WYDOT. With regard to the entrance of the mine, it is DEQ's understanding that McMurry performed considerable work on the entrance to make it safer.

Mr. Esche is mistaken. As the EQC correctly concluded, the DEQ has the authority and the obligation to ensure that the operation of the mine will not create a public nuisance, or endanger public safety. As proposed, the mine continues to create a public safety concern. The work performed by McMurry has not cured this problem, and the permit cannot now be approved in its current state. If it is, I am confident that a District Court Judge will see the patent inconsistency of doing so, and conclude that the DEQ's decision to issue the permit was the very essence of an arbitrary and capricious action.

B. Noise and Hours of Operation

Sublette County issued a conditional use permit for a small mine for the Bousmann Pit on March 18, 2008. From that time until 2011 (at which time mining activities all but ceased, because the available gravel had been removed), the pit was operated in a manner that constitutes a public nuisance. The operator repeatedly violated the terms of its permit relating to dust suppression, hours of operation, and the size of the mine. Moreover, the operation generated

² Apart from the truck turning movement, the volume of traffic to and from the mine, on a narrow country road, creates a public safety concern. The Boulder Residents will present evidence concerning the public's frequent recreational use of the area, which use gives rise to many conflicts that could result in death or serious injury for area users.

incredible truck traffic, often several hundred trips per day, and the noise and vibration of those trucks took a severe toll on the nearby residents' quality of life and health.

It has now been several years since the mine has been in operation, and peace and tranquility has returned to the area. However, if approved, the mine will return to its disruptive ways, destroying the quality of life for area residents and visitors.

Trucks headed to the site travel right past the Boulder Residents' homes, on a dirt road, loaded with gravel, at 50 miles per hour or more. The massive trucks generate tremendous noise, and rattle area homes. Often, the trucks have arrived before six A.M., and rumbled down the road every few minutes thereafter without letting up until late in the day. The current permit application states that the mine will operate from 6 A.M. until 7 p.m., and that equipment maintenance requiring lighting will be conducted at any time, including holidays. MP-18. This means that the very large haul trucks can again be expected to rumble down Highway 113 in pre-dawn hours, on their way for a 6 A.M. load time. This is exactly the operation of the mine that has so thoroughly disrupted the Boulder Residents' lives in the past, and constitutes a public nuisance. The mine operator has made no concession whatsoever on these hours of operation.

Noise is a very serious health concern. The effects include hearing impairment, cardiovascular problems and mental health issues. This is particularly true when the noise shatters the peace of an otherwise quiet, rural setting. The noise endured by the Boulder Residents as a result of the McMurray Mine has caused them severe stress and anxiety. At least two residents have heart conditions that have likely been aggravated by the pit-related noise. At times the noise has been so unbearable and unrelenting that residents have been forced to leave their homes just to escape it. What was once a pristine, quiet, rural setting, is now an industrial zone.

The permit application does not give an estimate of the number of trucks that may leave the site daily, monthly or annually. There is no discussion of the timing or intensity of the hauling activity. However, McMurray proposes an annual production rate of 300,000 tons of aggregate, and its prior air quality permit application anticipates an average of 15,790 hauls annually (this estimate is found in the air quality permit application, which suggests that trucks will have an average load capacity of 19 tons). Round trip, that's a truck passing by the Boulder Residents' homes approximately 31,580 times during the roughly six month (June to November) period that aggregate sales are typically conducted. Assuming the mine is closed on Sunday, that is roughly 200 heavy trucks every day. Assuming hauling proceeds for ten hours a day, that's one truck, roughly, every 3 minutes.

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In reality, the mine's operating history shows that the mine's aggregate sales are condensed into certain periods of frenetic activity, where more than 200 trucks in a day may be common over a period of several weeks.

The mine has also been a source of dust. In 2008, the mine incurred complaints and was inspected by the DEQ, which found significant, uncontrolled dust problems. The DEQ furthermore found that McMurray had failed to maintain dust suppression logs. McMurray assured the DEQ it would address its deficiencies (and denied any wrongdoing). No enforcement action was taken.

Just as it did in 2010, the Mine Plan for the permit summarily dismisses the question of public nuisance and safety in a total of four paragraphs. See MP-18. It completely ignores the severe impact mining has had on neighboring landowners' health and happiness. It states that the mine's "rural location...relative to the nearest public thoroughways is beneficial for minimizing public nuisance due to noise, dust and visual impacts." That is simply not true. Precisely because the area is rural and had been so pristine, the extraordinary noise and dust generated by truck traffic, and the dust generated by mining activities, constitutes a public nuisance. During its past operation, the mine and the associated truck traffic has been a living nightmare for the neighbors.

It is the applicant's burden to show that the permit will not violate the law, or create a public nuisance. The applicant has utterly failed to meet that burden and the permit should be denied for that reason.

III. The McMurray Mine May Adversely Impact Sage Grouse

Permitting the McMurray Mine, with its associated hauling activity, would contradict the law and public policy of the State of Wyoming relating to the conservation of sage grouse, a critically imperiled species in the State. For many years, it has been the stated policy of the State to protect sage grouse, both for its own intrinsic value, and because the bird is perilously close to a federal endangered species listing. Such a listing would bring with it very strict controls on habitat degradation, and potentially threaten many industries in Wyoming, including the mining and oil and gas industries. Thus, it is in the state's interest to demonstrate that it is vigilantly protecting this bird.

A. Lack of Compliance with EO 2011-5

In an attempt to demonstrate its commitment to protecting this species, and with the approval of the United States Fish and Wildlife Service, Wyoming has implemented a "Core Population Area Strategy" to protect sage grouse. The implementation of this strategy has been

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governed by Executive Orders expressly aimed at preserving the bird and preventing a federal endangered species listing. The current executive order on the subject, signed by Governor Mead on June 2, 2011, is Executive Order 2011-5. The McMurray Mine falls within the sage grouse Core Population Area, and is thus governed by EO 2011-5.

As required by EO 2011-5, in consultation with the Wyoming Game & Fish Department, the applicant has performed a Sage-Grouse Habitat Density and Disturbance Assessment. Although Game and Fish has expressed its view that the assessment complies with EO 2011-5, it does not. On the contrary, the assessment performed badly understates the significant impact this proposed mine will have on sage grouse.

The DEQ has an independent obligation to ensure that that the permit application complies with EO 2011-5. Game and Fish's conclusion is not binding on this agency and does not satisfy DEQ's obligation in that regard. Below, we briefly summarize the shortcomings of McMurray's assessment, and the reasons why the permit cannot be issued on the basis of this assessment.

1. McMurray's DDCT Is Misleading and Understates Impacts

As you know, the heart of EO 2011-5 and the sage grouse review process is the so-called "Maximum Disturbance Process." EO 2011-5 requires that all activities be evaluated to determine if they are consistent with the "maximum allowable disturbance" in the project area, using a Density/Disturbance Calculation Tool (the "DDCT"). See Attachment B to EO 2011-5. The purpose of this assessment is to determine whether the proposed activity may cause declines in this sensitive species.

In performing its DDCT, McMurray initially, and correctly, concluded that the DDCT showed 6.5% disturbance, exceeding the 5% disturbance cap. See MP D9-AD-3. Based on that analysis, no further disturbance within the DDCT area would be permissible. Where the initial review shows such an exceedence, under EO 2011-5 a habitat assessment is to be performed in order to determine if the facility can be relocated to an already-disturbed area. EO 2011-5 states as follows:

A habitat assessment should be conducted when the initial DDCT indicates proposed project will cause density/disturbance thresholds to be exceeded, to see whether siting opportunities exist within unsuitable or disturbed areas that would reduce density/disturbance effects.

EO 2011-5 at page 8 (emphasis added). Here, McMurray did not perform a habitat assessment so that it could find an alternative location for the project within existing disturbed or unsuitable

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areas. McMurry has made no attempt to relocate its facility and does not consider alternatives locations for its mine. Rather, it used a Habitat Assessment in an attempt to show that their project, as proposed and in the very same location, will not exceed permissible disturbance thresholds. To do so, McMurry had to manipulate the data.

In performing its Habitat Assessment, McMurry used aerial photographs to identify "unsuitable" habitat. McMurry included in those purportedly "unsuitable" areas, "natural flood-irrigated or subirrigated areas, primarily associated with riparian areas along streams, as well as areas irrigated for agriculture." This area totals 7,645.2 acres, and is shown in Figure D9-D-1, as a vast area in pink.

The majority of this "unsuitable" area is agricultural land long used for growing hay and alfalfa. It was, before agricultural development, likely vegetated with sagebrush. It should be considered a "disturbed area" and included in the density/disturbance calculation. Instead, McMurry's analysis excluded this area from the calculation entirely by simply labeling it "unsuitable" and then re-calculating the disturbance area without including it. By excluding this vast agricultural area from the calculation, the McMurry magically transforms a 6.5% disturbance to a 3.36% disturbance.

Nothing in EO-2011-5 permits this approach. The permit is inconsistent with EO 2011-5 and should be denied because it exceeds the 5% disturbance limitation and will therefore adversely impact area sage grouse.

2. The Disturbance Area Associated with the Goodwin Lek Violates EO 2011-5

In addition, the applicant is required to evaluate disturbance not just for the entire DDCT area, but also for each individual breeding lek within the DDCT. For the Goodwin Lek, the closest lek to the mine site, McMurry's own assessment shows that the project will exceed the permissible maximum disturbance area. The Goodwin Lek was at 4.97% disturbance pre-project, and will be at 5.94% disturbance after the project. See MP D9-Ad-A3-3. This exceeds the permissible limit of 5%.

The applicant and Game and Fish both breeze past this impermissible exceedance. G&F's John Emmerich's letter to the applicant, dated July 23, 2012, notes this exceedance, then simply states that the mine "could not be relocated" and says nothing further. Thus, the G&F is ignoring this clear impact, despite the fact that G&F acknowledges that existing mine activity, in particular traffic on the haul road, is likely impacting the Goodwin Lek. See D9-AD-A3-4. While G&F appears willing to overlook this exceedance and the impact on the Goodwin Lek, the DEQ may not, and this project cannot be approved with this clear violation of Wyoming public policy.

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IV. Conclusion

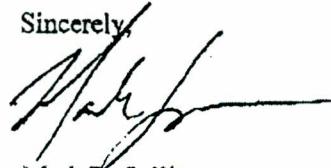
The Boulder Residents continue to believe that Mathis Lane, an alternative route to the proposed mine, is a viable and preferable alternative, and one that would reduce or eliminate all of the significant public health and safety impacts of mine activity, and reduce impacts on sage grouse as well. This option has apparently been rejected by McMurry, but no reasons are given.

The Boulder Residents remain aware of the importance of mineral and oil and gas interests in the State of Wyoming, and our country, and understand that a gravel mine close to the Jonah field and other drilling areas in Sublette County is needed. However, the costs of the mine – in terms of impacts on public health, welfare and happiness – should not be borne by the Boulder Residents.

The Boulder Residents hope that the DEQ will take these comments into consideration, and find that this permit may not be issued in its present form, and withdraw its notice. Otherwise, the Boulder Residents look forward to appearing before the Environmental Quality Council to present evidence in opposition to the permit as proposed.

I respectfully thank you for your attention to this matter.

Sincerely,



Mark D. Sullivan

Mar. 25. 2013 2:53PM

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EXHIBIT A



HAGEMAN & BRIGHTON, P.C.

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August 8, 2011

Via E-Mail and Regular Mail

Mark D. Sullivan
Mark D. Sullivan, P.C.
Attorney at Law
5237 HHR Ranch Road
Wilson, Wyoming 83014

Re: McMurry Ready Mix Company, TFN 5 3/143
Eastfork Ranch Mine Permit
Our File No.: 20020

Dear Mr. Sullivan:

In both your May 25, 2011 letter to me, and your July 18, 2011 letter to the Wyoming Department of Environmental Quality (Tanya King), you have suggested that Mathis Lane provides an alternate route for McMurry Ready Mix's customers to use for traveling to and from the Eastfork Ranch Mine Pit. To our knowledge, however, Mathis Lane does not connect with Highway 191. Considering your position regarding the viability of this alternate route, we would greatly appreciate it if you would please provide us with the information that you currently have in your possession, or that is readily available, regarding the following issues associated with constructing and using Mathis Lane:

- the current condition of Mathis lane along its entire route;
- the feasibility of constructing Mathis Lane from the Eastfork Ranch Mine Pit to Highway 191;
- a cost estimate for constructing Mathis Lane;
- the proposed route for the road;
- the identity of the landowners across whom easements would be

Mark D. Sullivan
August 8, 2011
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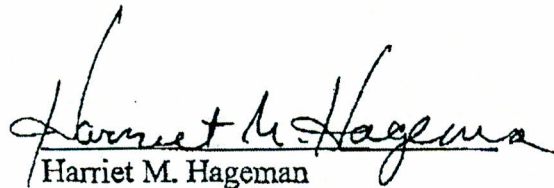
- required or from whom the land would need to be purchased;
- any wildlife issues that McMurry Ready Mix would need to address;
- whether there is any local opposition to the construction of Mathis Lane as you propose;
- documentation showing that the County intends to take jurisdiction of Mathis Lane as a County Road if it is constructed; and
- maintenance considerations (i.e., who, estimated costs).

Finally, the area in question is within the Governor's designated "Sage Grouse Core Area." In issuing his Executive Order earlier this year, the Governor adopted more onerous restrictions and requirements on new road construction within the Core Area as compared to the use of existing roads. Please provide any information you have regarding the location of sage grouse leks with reference to the Mathis Lane route that you are proposing. Please also produce any other information that you may have that may implicate sage grouse concerns as they relate to construction of Mathis Lane.

We appreciate your efforts to identify an alternative route for traveling to and hauling gravel from the Eastfork Ranch Mine Pit. We look forward to receiving the information that is requested above.

Please call with any questions you may have.

Sincerely,


Harriet M. Hageman

cc: Ron McMurry
cc: Luke Esch

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EXHIBIT B



ATTORNEY AT LAW

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August 20, 2011

By E-Mail and U.S. Mail

Harriet Hageman
Hageman & Brighton, P.C.
222 East 21st Street
Cheyenne, WY 82001

Re: McMurry Ready Mix East Fork Ranch Mine Permit

Dear Harriet:

This letter is in response to your correspondence dated August 8, 2011. First, let me point out that on behalf of the Boulder Residents, I have been recommending that your client explore the use of Mathis Lane for several years, not just since my May 25, 2011 letter. Indeed, the Boulder Residents' efforts to encourage the County and your client to explore the use of Mathis Lane have been ongoing since at least December, 2008, when I first wrote to Ron McMurry seeking cooperation on alternative routes to the pit. Here are some of the interactions in which I have raised this issue:

- On January 8, 2009, I wrote to invite a discussion of alternative routes.
- On January 18, 2010 I wrote you with an offer to withdraw the Boulder Resident's opposition to McMurry's mine, if McMurry would agree to share the cost of improving Mathis Lane with the County.
- In March, 2010, you and I discussed the use of Mathis Lane on the phone, and you indicated that your client would not pay for the cost of improving Mathis Lane.
- On May 12, 2010, I wrote to Sublette County Commissioners, and copied you, encouraging them to push your client to use Mathis Lane and to cooperate in its improvement for your clients' use.

Of course, Mathis lane was also an issue before the Environmental Quality Council in December, 2010, when we presented it as an alternative route to the pit.

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Now, you ask that the Boulder Residents perform engineering due diligence for your client with respect to Mathis Lane. You ask them to document the condition of the road, determine the feasibility of reconstructing it, provide a cost estimate, identify all landowners on the route, evaluate wildlife impact issues, provide documentation that the County "intends to take jurisdiction" of the road, and supply a summary of maintenance costs.

My clients are not in the gravel business; yours is. To obtain a mining permit, McMurry must bear the costs of demonstrating that its proposed mine operation will not cause a public nuisance. Therefore, the engineering and environmental impact issues you raise with respect to Mathis Lane must be addressed by McMurry, not the Boulder Residents.

That being said, the Boulder Residents will cooperate and assist your client in any way that they can, and offer the following information in that spirit.

We have suggested Mathis Lane as an alternative route for the following reasons:

1. There are no occupied homes along the entire route of Mathis Lane, and thus there would be no impact on area residents and thus, critically, no public nuisance.
2. Mathis Lane is a shorter route to Highway 191 (roughly half the distance now traveled), and thus would save costs and reduce environmental impacts.
3. Mathis Lane is further from occupied sage grouse leks than the existing route traveled by trucks accessing the mine.

Here are some additional answers to your questions:

1. Mathis Lane is an existing two-track. While it is passable all the way from The East Fork Ranch Mine to 191, it would require significant work to support the trucks that serve the mine. A small bridge would likely need replacement, and the road itself would need to be improved. Materials for this reconstruction could easily come from the East Fork Ranch mine itself.
2. 98% of the land over which Mathis Lane travels is owned by the federal government, managed by the BLM. We believe that Sublette County already holds an easement for the road and recommend that you work with County Surveyor Skyler Wilson to determine what rights the County holds.

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3. The route of Mathis Lane was documented in the map we put into evidence during the EQC hearing. So too were the locations of known sage grouse leks in the area. Should you require additional copies of those exhibits, please let me know.

Obviously, using Mathis Lane will require significant cooperation from Sublette County. However, we believe that if McMurry were committed to using Mathis Lane, and agreed to bear the cost of reconstruction and maintenance, the County would work with McMurry in engineering and reconstructing the road.

The Boulder Residents will do everything they can to bring the County together with McMurry and see that the road is reconstructed. We will meet with your client at the site, drive Mathis Lane with them, and encourage County and BLM officials to make this happen. The reality is, though, that the Boulder Residents do not hold the cards here. Your client does, and can readily work with Sublette County to address the engineering and environmental issues set forth in your letter. I ask you to encourage your client to do so. As I have promised many times, if your client commits to using Mathis Lane as its haul route, the opposition to the mine from the Boulder Residents will cease.

Sincerely,



Mark D. Sullivan

Cc: Luke Esch (by e-mail)

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EXHIBIT C



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July 18, 2011

Tanya King, P.E.
Wyoming Department of Environmental Quality
Land Quality Division
510 Meadowview Drive
Lander, WY 82520

Re: McMurry Ready Mix Co. Application for Permit to Mine, Eastfork Ranch Pit

Dear Ms. King:

I write on behalf of the Boulder Residents, a group of neighbors that, as you know, have opposed the operation of the Eastfork Ranch mine because of the public nuisance, public safety and adverse environmental impacts of the mine operation. As you know, in Findings of Fact and Conclusions of law dated March 10, 2011, the Environmental Quality Council found that the McMurry Permit would be contrary to the laws and policies of the state of Wyoming, and would create a public safety problem and public nuisance in the area, and therefore denied the permit.

I now write concerning deficiencies in the applicant's renewed Application for Permit to Mine, transmitted to your office on June 21, 2011. As set forth below, the applicant has utterly failed to address the issues for which the Environmental Quality Council rejected the permit. Moreover, the application falls far short of demonstrating that a permit should be granted under W.S. 35-11-406(m). On the contrary, the permit should be denied because it is contrary to law and policy of the state of Wyoming, and will cause a public nuisance and endanger public safety.

I. Sage Grouse

The EQC found that McMurry had failed to meet the requirements of Executive Order 2010-4 relating to the protection and preservation of sage grouse in core habitat areas. In particular, the EQC found that McMurry's application "does not meet the requirements of the Executive Order because it fails to include monitoring requirements for sage grouse, noise restrictions, and a disturbance analysis for individual leks within the PIAA."

Recently, Governor Mead signed a new executive order pertaining to Sage Grouse protection. That new order is Executive Order 2011-5. Governor Mead's order continues the protections afforded sage grouse by the prior order. It requires "consistency review"

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between the applicant and the Wyoming Game and Fish Department. That review must include a detailed habitat assessment, including, in particular, a maximum disturbance analysis using a "Density/Disturbance Calculation Tool (DDCT)." That analysis must include disturbance analysis for individual leks, as was required by the previous order. EO 2011-5 also continues the noise restrictions and monitoring requirements imposed by EO 2010-4.

McMurry's renewed application makes almost no effort whatsoever to address these issues. Paying mere lip service to the deficiencies, the revised application baldly asserts:

Stipulations for mining have been considered or will be implemented based on the 2011 Executive Order and in consultation with WGFD for operations at the Eastfork Ranch Pit.

Permit Application at MP-5. The application then states, with no support, that mining is "unlikely" to affect the sage-grouse lek identified southeast of the permit, asserting that mine personnel sightings of sage grouse "indicate that mining to date has not affected sage-grouse within the permit area." Obviously, more is required of the applicant to demonstrate consistency with EO 2011-5.

The Boulder Residents have contacted Wyoming Game and Fish to determine what the applicant has done to date to meet its obligations under EO 2011-5. Shockingly, G&F reported that the applicant has not consulted with G&F at all. There has been no disturbance analysis performed for individual leks, no noise studies performed, and no monitoring proposed.

McMurry has paid only nominal lip service to the sage grouse protections recently affirmed by Governor Mead. Until McMurry conducts the required consistency review, and demonstrates that its application is consistent with the preservation and protection of this imperiled species, the DEQ cannot determine that McMurry's permit application is complete and ready for public review, let alone that it does not violate the law or policy of the State of Wyoming, as required by W.S. 35-11-406(m).

II. Highway 353 Hazards

The EQC also determined that truck turning movements from Highway 353 into the mine are a public safety concern. Trucks approaching the mine from the east on Highway 353 must cross into the oncoming lane of traffic in order to negotiate the narrow turn into the mine.

To the knowledge of the Boulder Residents, McMurry has done nothing to remedy this condition. Trucks accessing the mine and adjacent mine facilities to this date continue to make this dangerous turn. Indeed, today at 1:05 p.m. a truck was observed making the dangerous right-hand turn into the mine while crossing over into the oncoming lane of traffic.

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Yet, McMurry's renewed application states as follows:

To increase safety onto the access road from Highway 353, the access has been widened within the easement on the Jensen property that abuts the highway, and a larger crossing gate has been installed further from the highway to accommodate the widened access. The access will be permitted with WYDOT, documentation for which will include an as-built drawing of the reconstructed access.

Permit Application at MP-17. Again, the Boulder Residents know of no work that has been performed on the mine entrance, and trucks continue to make the hazardous turning movement to enter the mine. Documentation demonstrating that this hazardous condition has been remedied should be provided to the DEQ before the permit is deemed complete and ready for public review, let alone approved.

III. Public Nuisance

As demonstrated to the EQC, the operation of the mine, and the attendant truck traffic and noise, constitute a public nuisance. The prior mine permit application contained no restrictions on the hours of operation of the mine, and the EQC determined that 24/7 operation of the mine would constitute an unreasonable interference with the public peace.

Now, with its revised permit application, McMurry has stated that it intends operate the mine from 6 a.m. to 7 p.m., Monday through Saturday. MP-17. This is no concession, and will perpetuate the public nuisance generated by mine activities. If loading operations commence at 6 am, trucks will be approaching the mine before then, as they have during the life of the 10-acre exempt operation, rattling the area homes and waking residents from their sleep, often before sunrise. The applicant's proposed hours of operation would perpetuate that public nuisance and continue to interfere with the Boulder Residents' use and enjoyment of their properties. Mine hours should be restricted to 9 am to 5 pm, standard business hours reasonable in a residential neighborhood.

IV. Mathis Lane: The Reasonable Alternative Route

At the December, 2010 hearing, Members of the EQC firmly instructed the parties to get together to work out a reasonable solution to the public nuisance and safety concerns raised by the Boulder Residents. Certain members of the EQC made it clear that they did not want to see another appeal from the issuance of a permit for this application, and that the parties should be able to work this out as neighbors, not antagonists.

The Boulder Residents have attempted to do so, inviting a discussion with McMurry about the use of an alternative access road to the mine, Mathis Lane. Mathis Lane, if improved, would be a shorter haul road to McMurry's principal customers, and would avoid entirely any occupied homes, thus eliminating the public nuisance the mine creates. Since the EQC decision, the Boulder Residents have explored the possibility of using Mathis lane with Sublette County officials, who expressed an openness to the idea. The Boulder

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Residents then made a proposal, based on those discussions, to McMurry, and sought to further that proposal by working with McMurry and Sublette County officials. McMurry has not even responded. Instead, it simply re-filed its application to mine, with no changes made to meaningfully address the public nuisance the mine creates.

The Boulder Residents sincerely hope that a reasonable accommodation can be made. The Boulder Residents do not wish to continue this fight, but rather would much prefer to work out an amicable resolution to the satisfaction of all parties involved. Thus far, McMurry has demonstrated no willingness to do so, and we appear headed for another challenge to the permit. The Boulder Residents therefore ask the DEQ to encourage McMurry to help find a solution to these issues.

Sincerely,



Mark D. Sullivan

Cc: Harriet Hageman, Esq.



ATTORNEY AT LAW

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September 29, 2011

By E-Mail

Mark Moxley
Wyoming Department of Environmental Quality
Land Quality Division
510 Meadowview Drive
Lander, WY 82520
Fax: (307) 332-7726

Re: McMurry Ready Mix Company Eastfork Ranch Mine Permit Application

Dear Mr. Moxley:

As you know, I represent certain residents of Boulder Wyoming who are neighbors to the proposed Eastfork Ranch Mine. First, I want to thank you and Tanya King for keeping me and the Boulder Residents informed about the permitting status of this mine operation, and copying me on correspondence among the DEQ and the applicant, McMurry Ready Mix. I believe that keeping that dialogue open will avoid misunderstandings and allow for meaningful public input at an early stage.

On Tuesday of this week Ms. King copied me on a letter from the Department of Transportation addressed to Mr. Ron McMurry. The letter consists of three sentences. It reads:

The approach at the gravel pit known as the McMurry Pit has been updated to a commercial access. It has been paved, widened and approved by WYDOT.

Thank you for your attention regarding this access.

In response, Ms. King wrote to Ron McMurry and stated: "Mark Moxley and I both looked at this. It is acceptable. Thanks."

It is not clear to us from these brief exchanges what the DOT means when they say "approved by WYDOT" or what Ms. King meant when she said it is "acceptable." However, this would appear to indicate that the DEQ is satisfied that the improvements made to the mine

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entrance satisfy the DEQ and that the permit application may now be publicly noticed for the second time. That would be a mistake. The problems with the mine entrance have not been remedied.

Along with this letter, I am e-mailing photos, taken yesterday, of a gravel-hauling truck leaving the mine entrance and turning on to Wyoming 353. As you will plainly see, despite the re-paving that DOT undertook, the trucks still must cross into the opposite lane, into oncoming traffic, in order to make this turn. Similarly, when trucks are traveling from the east, and turn into the mine, they have to maneuver into the oncoming lane of traffic in order to swing wide and make the turn into the mine entrance.

The work that has been done in the area has done absolutely nothing to cure this problem. In fact, the work has probably made the situation worse. The speed limit on 353 is 65 MPH, and at the mine entrance, there is a bridge, a blind turn and lots of roadside vegetation, all of which obscure drivers' vision. With Highway 353 now freshly re-paved, drivers can and will go even faster on this stretch of highway. This is indeed a very dangerous situation.

The EQC's March 10, 2011 decision denying the McMurry mine permit, expressly found that these dangerous truck turning movements constitute a threat to public safety and on that basis, among others, ordered that the permit be denied. The decision stated:

60. Use of the entrance to the McMurry mine from Highway 353 as described in testimony given at the contested case hearing, endanger (sic.) the public health and safety due to the significant 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 or when they exit the access road onto Highway 353.

As the attached photos demonstrate, this significant public safety concern has not been fixed. The turn into the mine remains highly dangerous for the traveling public.

The DEQ cannot lawfully approve this permit with this significant unresolved public safety issue. If it does, we will be back before the EQC addressing the exact same issues raised previously.

I recommend that your office send McMurry back to the drawing board to come up with a solution that addresses the EQC's concerns, and eliminates this threat to public safety. As we have for several years, we encourage the applicant and the DEQ to look into the feasibility of using Mathis Lane as the haul route. Mathis Lane would require less travel, would eliminate the public nuisance created by truck traffic, and would eliminate this safety problem. It is the

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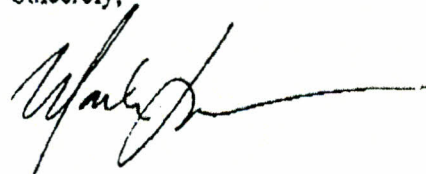
sensible solution to this problem.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Mark D. Sullivan', with a long horizontal flourish extending to the right.

Mark D. Sullivan

Cc: Tanya King
John Corra
Harriet Hageman
Nancy Nuttbrock
Steve Stresky
Luke Esch

Mar. 25. 2013 2:54PM

No. 6022 P. 25

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EXHIBIT D

Subject: Re: Eastfork Ranch Pit
Date: Wednesday, January 30, 2013 8:44:35 AM MT
From: luke esch
To: Mark Sullivan
CC: Tanya King, Mark Moxley, Nancy Nuttbrock

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Mr. Sullivan,

DEQ has reviewed the Eastfork Ranch Mine Application for its compliance with the Environmental Quality Act and Land Quality Rules and Regulations. At this point, DEQ believes that it satisfies the above mentioned requirements and the public notice process can begin. We understand that you disagree with DEQ's determination. As you are aware, the Environmental Quality Act provides you the opportunity to express your concerns about the proposed permit to the Environmental Quality Council. We look forward to reviewing your comments during the public comment period.

As for your concern regarding the truck traffic, DEQ is only able to regulate those issues within its jurisdiction. The issue of truck travel on a county road is one of those issues that is outside of DEQ's authority and is better addressed by the County or WYDOT. With regard to the entrance of the mine, it is DEQ's understanding that McMurry performed considerable work on the entrance to make it safer.

As always, comments regarding the mine plan and reclamation plan are always welcome.

Thanks,

On Tue, Jan 29, 2013 at 9:44 AM, Mark Sullivan <mark@mdslawoffice.com> wrote:

I cannot for the life of me understand how you can proceed with this publication. Has anything been done about the dangerous truck turns? Do you have any response to my repeated correspondence on this question?

Mark Sullivan

From: Tanya King <tanya.king@wyo.gov>
Date: Tue, 29 Jan 2013 09:20:21 -0700
To: Mark Sullivan <mark@mdslawoffice.com>
Cc: Mark Moxley <mark.moxley@wyo.gov>, luke esch <luke.esch@wyo.gov>, Nancy Nuttbrock <nancy.nuttbrock@wyo.gov>
Subject: Fwd: Eastfork Ranch Pit

----- Forwarded message -----

From: Steve Stresky <steve@atcwyo.com>
Date: Mon, Jan 28, 2013 at 3:43 PM
Subject: Eastfork Ranch Pit
To: Tanya King <tanya.king@wyo.gov>

Tanya -

Attached is the public notice for your review. I put March 25 for the end of the public comment period if we publish this Friday (the notice due at the paper Tuesday by noon). Otherwise I'll change it to April 1.

Thanks, and let me know if you have any questions.

Steve Stresky

Aqua Terra Consultants, Inc.

(307) 672-7133

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Tanya King, P.E.

Natural Resources Analyst

Wyoming DEQ/Land Quality Division

District 2, Lander Field Office

(307) 332-3047

E-Mail to and from me, in connection with the transaction of public business, is subject to the Wyoming Public Records Act and may be disclosed to third parties.

Luke J. Esch

Assistant Attorney General

State of Wyoming

Attorney General's Office

Water and Natural Resources Division

123 State Capitol

Cheyenne, WY 82002

(307) 777-6946

E-Mail to and from me, in connection with the transaction of public business, is subject to the Wyoming Public Records Act and may be disclosed to third parties.

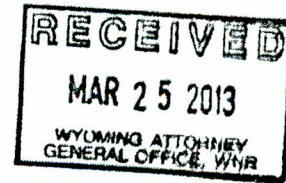
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COPY



FACSIMILE

To: Jeremiah I. Williamson
Assistant Attorney General

Fax: (307) 7773542

Date: March 25, 2013

Re: McMurry Mine Permit Comments

Pages: 26

Message:

Please see the attached comment letter.

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