

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

**A PETITION TO THE ENVIORNMENTAL)
QUALITY COUNCIL FOR DESIGNATION)
OF AN AREA KNOWN AS SAND CREEK)
AS RARE OR UNCOMMON)**

Docket No. 09-1102

FILED
JUL 07 2009
Jim Ruby, Executive Secretary
Environmental Quality Council

ANSWER AND
MOTION TO DISMISS

COMES NOW, John Green, General Partner of Mineral Hill, L.P., hereinafter Respondent, which are surface and mineral owners of property located in the Sand Creek area and answers and motions that the case be dismissed.

ANSWER

1. Respondent specifically denies each and every allegation of the petition.
2. Respondent pleads the following affirmative defense[s]: res judicata and collateral estoppel.
3. Respondent reserves the right to plead further and reserves objections on the basis of lack of jurisdiction over the subject matter; improper venue; and failure to state facts upon which relief can be granted.

MOTION TO DISMISS

The above referenced petition filed on behalf of the Friends of Sand Creek, Prairie Hills Audubon Society, Defenders of the Black Hills and the Biodiversity Conservation Alliance, was filed unsigned. However, the Addendum filed on 06/01/2009 is signed by Erik Molvar.

The basis for the current petition is the same as a previous petition, styled *A Petition to the Environmental Quality Council for Designation of an Area Known as Sand Creek as Rare and Uncommon*, Docket No. 07-1102, filed by the Friends of Sand Creek. Respondent in the prior case, filed a Motion to Dismiss on 06/23/2008 and the Council dismissed the petition on 09/03/2008. An involuntary dismissal under Rule 41(b), W.R.C.P. based on a motion to dismiss

filed by a defendant which is premised on a failure of the plaintiff to comply with these rules or any order of the court "operates as an adjudication upon the merits." Counsel for the Friends of Sand Creek acknowledged in their motion of 09/03/2008 that they had failed to include the updated property owners listing as required by statute. The adjudication upon the merits operates as res judicata with regard to this subsequent petition, also filed by the Friends of Sand Creek, even though they are now joined by additional parties.

Petitioners have had their day in court and repeated attempts to re-litigate these matters is an abuse of process and waste of valuable judicial resources.

WHEREFORE, Respondent prays that the Petition be dismissed, for costs expended; and for any and all other just and proper relief.

Dated: July 7, 2009

Respectfully submitted,



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CERTIFICATE OF MAILING

I certify that I have this 7th day of July, 2009, mailed the above and foregoing Answer and Motion to Dismiss to the Wyoming Environmental Quality Council, Herschler Bldg., Room 1714, 122 W. 25th St., Cheyenne, Wyoming 82002 and faxed it to them at 307-777-6134. I have also mailed a copy to the Attorney General's Office, Administrative Division, 123 Capital Building, 200 W. 24th St., Cheyenne, WY 82002.


John Green