

**Custer County Commissioners
Public Hearing Appeal Minutes
U.S. Calcium Mine CUP
October 19, 2022**

Call to Order at 6:10 p.m.

Roll Call

Present: Commissioners Wayne F. Butts, Randy Corgatelli, and Steve W. Smith, Prosecutor Justin Oleson, Planning & Zoning Administrator Jessica Clemenhagen and Deputy Clerk Tamara Giampedraglia.

Public Hearing Called to Order at 6:13 p.m. (Recorded)

Commissioner Chairman Wayne Butts reviewed the procedure to be followed at this Appeal. U.S. Calcium will present the petitioners information. There are three issues that have been appealed and only these issues will be heard. Those testifying will be given 15 minutes for testimony.

Opening Comments: Michael Fife, 2667 E. Gayle Court, Suite #120, Meridian, ID 83462 and I work with US Calcium. The public hearing process didn't allow us to respond at the end of the process, so this is our way of getting clarification on these three items that we cannot make work without waiting for the full six months. We have supported the county with access to 800 to 900 truckloads of road base for their projects. We have also offered product to all the area communities as well as Butte County, and we try to help where we can.

Noise is the first issue we want to address. We are required to put a monitor in place, but Custer County does not have a "Noise Ordinance" and we need to know what constitutes a violation. We are willing to keep records and provide a report. We have submitted a plan of operations to the BLM that we will not exceed 85-90 decibels, which is acceptable to the BLM. Our monitoring has shown that the only activity that exceeded 60 decibels is blasting and that it only within 200 feet of the blast. Otherwise our operation stays within the 40-45 decibel range. The report shows how all these figures were generated.

Water is the second issue we need to address. We were requested to get a commercial well, and we have contacted the IDWR and were informed that we were welcome to apply, but that they are not issuing any new commercial permits. The well we currently use is permitted and we are limited to 2500 gallons per day which we monitor. We are looking at using magnesium chloride as well as beet juice to control dust. Other water sources are also being explored. The fine powder lime production causes the most dust and requires the most water, and that line has been suspended due to no building. With no building we cannot meet the DEQ standards. Power is the final issue. We have reached out to the local power company with our estimated needs and were informed that it would be some time next year and no cost estimate was given. We had to eliminate the generators to stay under the DEQ noxious emission levels. The fine powder equipment has been pulled off the site due to DEQ air emission requirement. We will build a containment building when the power is on site, and we will be able to meet the DEQ requirements. We are currently doing only the primary crushing process on site.

We need clarification on these three items before we can proceed with how we can meet the requirements.

Chairman Butts questioned Mr. Fife about the fine powder products. Are you processing these fine powder products off site currently?

Mr. Fife responded that yes, they were, due to the power required, lack of building and dust created.

Chairman Butts then asked if they have applied for a domestic well permit with IDWR?

Mr. Fife responded that no they have not applied for an additional well permit as yet, but they plan to.

Chairman Butts then asked if any other water sources have been developed, such as from the City of Mackay.

Mr. Fife responded that they have not developed them yet, and understand there is more DEQ permitting required to do so.

Commissioner Corgatelli asked if any Mag-chloride has been applied to their roads to date?

Mr. Fife responded that yes, they have used mag-chloride, but not any of the beet juice.

P & Z Administrator Testimony:

Jessica Clemenhausen reviewed the US Calcium Mine Conditional Use Permit for parcels RP06N25E148403, RP06N25E147200, and RP06N25E243610.

The mine is located at 3737 E. Highway 93, Darlington, Idaho. A public hearing notice was posted two times each, in the Arco Advertiser and Challis Messenger starting on May 5, 2022. Notices were mailed to all property owners within 300 feet of the property boundaries on May 4, 2022. The property was physically posted on May 17, 2022. Notices were posted on the Custer County Courthouse doors and uploaded to the Custer Co. Planning & Zoning web page. Notices were given to Mackay City Hall, ID Transportation Dept., Lost River Highway Dist., South Custer Fire Dept., Mackay School Dist., Big Lost River Irrigation, Mackay Water, E. ID Public Health Dept., Custer Co. Sheriff, South Custer Ambulance, ATC Communications, Lost River Electric, Department of Environmental Quality and the Bureau of Land Management.

Research: On September 29, 2021 U.S. Calcium Mine's manager was physically served a Cease and Desist Letter explaining that by continuing to operate without a conditional use permit, they were in violation of the Custer County Ordinances and could be charged and fined if they did not stop. Custer County's Prosecutor made an agreement with U.S. Calcium Mine to let them continue to operate until they could obtain a condition use permit, but they were advised they would be given a daily fine by doing so. U.S. Calcium has paid their fine in full.

On December 9, 2021 the Custer County Planning and Zoning Department adopted the findings of fact and conclusions of law for a temporary conditional use permit to U.S. Calcium Mine. The permit would expire in 6 months and the company would have to reapply in order to continue their operations.

On March 13, 2022 the Custer County Planning & Zoning Department received the new application for a conditional use permit to mine on parcels that are zoned transitional agriculture, from U.S. Calcium.

On May 19, 2022 Custer County Planning & Zoning Department received a notice from a deputy attorney general from the Department of Environmental Quality stating that U.S. Calcium and the DEQ are still operating under a Consent Order, pursuant to which U.S. Calcium is obliged to submit an application for a Permit to Construct by May 31, 2022. On May 18, 2022 the DEQ received a written request from U.S. Calcium for a seventh extension, which would make the application due June 30, 2022. The extension request is under consideration at this time.

U.S. Calcium has filed an application to build the berms in the flood plain with Custer County's Planning and Zoning Department, making them in compliance with the Custer County Flood Prevention Ordinances.

The request for a conditional use permit to mine on parcels that are zoned transitional agriculture is in compliance with the Custer County Zoning Ordinances 2007-09. Numerous letters have been received by the Custer County Planning and Zoning Office and given to the Planning and Zoning Commission to review.

On May 26, 2022 the Custer County Planning and Zoning Commission held a public hearing and heard all testimony. The Commission deliberated and voted unanimously to issue a 2nd temporary conditional use permit to the U.S. Calcium Mine that would expire in six months. The Findings of Facts and Conclusions of Law were adopted on August 4, 2022.

On September 2, 2022 a Notice of Appeal was e-mailed to Custer County by U.S. Calcium. It was found to be complete on September 15, 2022, after the check had been received. The information was passed on to the Custer County Commissioners and a hearing was scheduled for October 19, 2022. One letter was received by Custer County and given to the Custer County Commissioners to review.

Chairman Butts reminded everyone in attendance that their deliberation does not need to be completed at this time. He asked those that wished to testify only give new information on the three issues that are being considered.

Support testimony was heard from the following:

Erica Morlen: Did not wish to testify, just make herself available for questions.

Neutral testimony – there was none.

Opposition testimony was given by Gary Rogers

Gary Rogers, living at 3771 N Highway 93, Moore, ID 83255. Provided documentation from The Department of Water Resources. Gary spoke about the volume of water they are entitled to. A sprinkler head puts out 10 gallons a minute, which would be 4 hours a day to use their allotted daily water. A water truck can haul 1500 gallons per day, so that limits them to less than two loads a day to stay within their allotted water allowance. I contacted the Dept. of Environmental Quality and they do not have a completed application from US Calcium, and

have been given until November 7, 2022 to address the incomplete issues. The closest landowner does not live one mile away, as David Fullmer lives right across the street. I have spoken with Lost River Electric Co-op. manager, Brad Gammett and inquired about the problem of getting power to the mine. Brad informed me that they have not received an engineered plan, and they don't know how much power they need. LREC is about 2 months out when they order transformers. Moving the crushers up onto the BLM ground has not made the dust they create disappear.

Opposition testimony: Dan Bell (passed as the information was already given)

Opposition testimony: LaVon Fullmer (passed)

Opposition testimony was given by Loy Pehrson.

Loy Pehrson living at 3624 W 3700 N, Darlington, Idaho. I would like to submit new photos (28) that were taken at 2:20 PM yesterday, and have the date and time printed on the photos. They state that they have removed the fine powder crushing equipment to mitigate the dust problems. I'm here to report that the fine particle dust is a bad or worse than it has ever been. He stated that the permit application the DEQ has received is not acceptable and they have been given until Nov. 7th to refile the permit application correctly. I live 3 miles away from the site and the noise is the same as it has always been, no improvement. My summary is that they have not addressed the following issues: the overburden is still in the old river channel, the noise has not been mitigated, the dust is as bad as ever, the culverts have not been placed in the 3 IN 1 canal, the berm is still along highway 93, their commercial well has not been established and they do not have a permit from the DEQ. The items they have done are: they have crushed more rock, created more noise and created more dust than they every have. I feel it is time they are held accountable, and the P&Z Commission suggestions need to be followed.

Commissioner Smith asked if the "certified observer rules" for flash photography were followed?

Loy Pehrson asked for a copy of the rules from Mr. Smith.

Opposition testimony was given by David Fullmer.

David Fullmer, living at 3790 N Highway 93, Moore, Idaho for over 40 years. I suspect that Mr. Fife is trying to do the best they can with what they have. Has there been a monthly report turned in? Jessica verified that it has been. The Lost River Electric Co-op is able to provide them with enough power if requested. I'm concerned that they have not met the DEQ guidelines for 6 or 7 extensions, the latest being 11/7/22. I appreciate that the P&Z Commission has tried to hold them accountable with their attached conditions. We just want to be able to live in a clean environment.

Commissioner Smith asked for the "silica level" readings of the dust, if they were available. Mr. **David Fulmer** responded that he does not have such equipment or readings, but has provided the fact sheets on silica in the past.

Opposition testimony was given by Jeff Kraczek.

Jeff Kraczek living at 3915 N 3650 W, Moore, Idaho and also owner of the adjoining property between Darlington Land Holdings and the river, we are direct neighbors. They are using a residential well for their business. I don't see that they have fixed any of the issues from the last time we had a hearing. There are two kinds of mining companies. One gets all their permits and everything into compliance before they begin mining. The other type just begins working without permits and when the income dries up they just disappear, leaving all their junk. My property value has fallen, and I am unable to use it for the purpose I purchased it. I wonder why there is no perimeter fence around their mine? I would like to see you to require compliance with all permits before they continue mining.

This concluded the opposition testimony.

Rebuttal by applicant: Michael Fife

Our permit application with DEQ has gone back and forth within their 30-day review window, if they deem more information is needed they mark it "incomplete" and you begin another 30-day review process. We submit information every time they ask. Dust has generated DEQ phone calls the last two days and we will continue to work on that. We did submit a plan to Lost River Electric and it is the amount of power that we asked for (1500 KW) that is the problem. They did let us know that a smaller amount of power could be delivered sooner. (within 60 days) The DEQ application needs to know the power you will use, and if you don't have a power source the application is deemed incomplete. Without full power then the application needs to be re-submitted and it will not be completed within the allotted time. Because of this issue we have moved the fine powder production equipment off site. None of the primary crushing operations have buildings over them. We are currently using a domestic well and trying to utilize other methods to make things work.

Chairman Butts: I understand the list of items that you were given by the Planning & Zoning Commission. We are here to discuss the three issues of Dust, Noise and Water. Did you submit paperwork to the P&Z Board to prove that you have submitted application for electrical power? **Mike Fife** responded that he believed they had, but would get back to him.

Chairman Butts: You were requested to get a commercial well by the P&Z Board, but have since learned that you would never get an approved commercial permit from IDWR. **Mike Fife** responded that it makes no sense for us to go down a road that goes nowhere.

Commissioner Smith: I would like to know more about the silica content of the dust generated. **Mike Fife** responded that we do lab testing on our products and it is usually at -sub 2%. The overburden is full of silica, but the mined ore is 96 ½ % calcium carbonates.

Commissioner Smith: What creates the largest amount of the dust?
Mike Fife responded it is the handling of the ore.

Commissioner Smith: Where did you end up putting the fine powder crushing operation?
Mike Fife responded that it depends on how things turn out over time, for now we don't see a clear path forward for it to be onsite. It depends on a power supply.

Commissioner Butts: I believe you should apply for the commercial well permit from IDWR, regardless of your chance of success, and comply with their request.

Mike Fife Fair enough, we would like to comply with their requests. We can leave the berm as is, seed it, or cover it, whichever you would like. We would like to do it in the fall when there is more moisture. The building can be built, but without enough power and water it cannot be operated effectively.

Commissioner Corgatelli: I want verification that you have a "Reclamation Bond" at this time.

Mike Fife responded that we do.

Commissioner Smith: How much dust is currently coming of the dirt berms?

Mike Fife responded I believe the natural crust has diminished the dust from the berms from what it was when we were putting them in.

Chairman Butts closed the testimony for the public hearing.

Chairman Butts reviewed the legal requirements for the process of deliberation, and decision.

Commissioner Smith asked for a date and time be set for the decision to be made.

Commissioner Corgatelli felt that both could be done at this time.

Commissioner Butts would like to go over #4, #5 and #6. He didn't see the actual report from Trinity Consulting for the noise requirement for #4. He felt that a dust containment plan and reasonable time frame needs to be completed per the P&Z Commissions request for #5. Did removing the fine product processing fulfill the dust containment requirement. For #6 the commercial well application has not been completed, but they were requested to put an application by P&Z Commission.

Commissioner Corgatelli stated that on #4 Custer County needs to actually have a Noise Ordinance before they can enforce it.

Commissioner Smith agreed that #4 needs to have a County Ordinance, but I still back up the P&Z decision. He agreed with P&Z that dust containment plan be made, but with the removal of the fine product production from the site, it changes the requirements and needs to be clarified. He supports P&Z on #6 with the requirement that an application be submitted.

Commissioner Butts reviewed the P&Z request for #5 that the applicant submit a Dust Containment Facility Plan, and he felt it should be written as well as a reasonable time line for building it. I stand with the P&Z Commissions decision.

Commissioner Corgatelli felt the P&Z decision needed some clarification for #4 and #5.

Commissioners Butts spoke on the legal requirements for the decision from this hearing, with Jessica verifying his statement. He went over the requirements from the P&Z Commission.

Commissioner Corgatelli inquired about what Jessica's office has received from the Mine. She verified that she has been receiving monthly reports, as per the last CUP conditions.

Prosecutor Oleson went over the public hearing conditions and actual decisions to be made. The Commissioners need to either uphold the conditions, do you modify the conditions, or do you remand it back to the Planning & Zoning Commission.

Commissioner Smith feels that condition #5 needs to be modified, but #4 and #6 are OK.

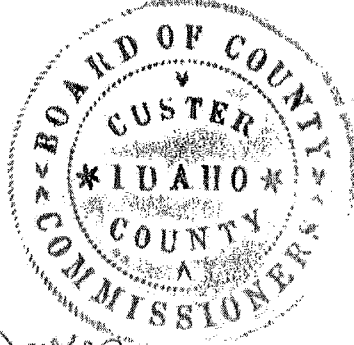
Prosecutor Oleson assisted with the legalities of changes in wording of the conditions.

Commissioner Corgatelli suggested that condition #5 be worded "dust containment facility plan and reasonable time frame for getting it implemented".

Commissioner Butts clarified the board was in agreement on conditions #4, and #5 be worded as "dust containment facility plan and a reasonable time from for getting it implemented", and in agreement on #6.

Commissioner Corgatelli made a motion that the Planning & Zoning recommendations be upheld as written on conditions #4 and #6, and a modification to #5 of changing the word "built" to "implemented". Commissioner Smith seconded the motion. Roll call vote was Butts/aye, Corgatelli/aye and Smith/aye, with the motion passing.

Public Hearing Adjourned at 7:30 P.M.



Lura H. Baker

Attest: Clerk, Lura H. Baker

Wayne F. Butts
Chairman, Wayne F. Butts