

**Custer County Commissioners  
Public Hearing Appeal Minutes  
U.S. Calcium CUP  
February 16, 2022**

**Call to Order** at 6:00 p.m.

**Roll Call**

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

**Public Hearing Called to Order** at 6:05 p.m. (Recorded)

Commissioner Chairman Wayne Butts reviewed the possible scenarios to complete the Appeal and deliberation process. The Commissioners are here to either uphold the P&Z Board decision or to remand it back for further review. Any deliberation meeting will be posted for public attendance.

**Declaration of Disclosure:** Commissioner Randy Corgatelli disclosed that Yvonne Fullmer is his first cousin and he will not let her relationship influence his decision. Commissioner Steve Smith disclosed that Lynn and Arvella Rothwell are his fathers first cousins, and the Fullmer's are related on his grandmother's side.

**Opening Comments:** Fritz Haggmmerlo with Haggmmerlo Law, 400 S Main St. Suite 102, Hailey Idaho, is representing a group of 20 people known as "The Concerned Citizens of Custer County". All members live in close proximity to the US Calcium mine and a map was provided. This mine has been open since 2012 in a basically unregulated state. My clients have not had any health, safety or welfare protection for the past 10 years. To date not a single government entity has stepped up to protect these people. We plan to ask for relief by reversing the granting of the CUP, or revoke the CUP because the conditions in Exhibit A have not been complied with.

The US Calcium mine is producing particulates that leave the site, or "air pollution" as described by the Dept. of Environmental Quality. The photo exhibit from David Fullmer shows what the conditions are over a period of 2 years. (showed 7/28/2021 photo, after the "consent to decree" with DEQ. He asked "How would you like to live next to this?" The photos show that this is not an average situation, but occurs repeatedly. The DEQ has given regulations that they cannot create dust, and if dust is created it better not leave their site. In 2020 DEQ began to understand the situation with US Calcium, and entered into the Consent Decree. (See Exhibit 5) This decree acknowledges that this mine creates air pollution. They required (1) a PTC Permit and (2) you need to develop a plan to control future dust emissions, (3) you need to provide a no-see evaluation. The last deadline to comply with those three things was April 2021, and they did not comply. August 31, 2021 the DEQ sent the mine a letter acknowledging the failure to comply. It stated the mine had not complied, and would they please do so, along with another time extension. They failed to comply with that request also. In August the DEQ referred the matter to the Attorney Generals Office. The AG's office sent a letter dated October

27, 2021 that addressed all of this mine's failures to comply. A copy was sent to the Custer County P&Z Administrator. This letter contained: (Exhibit 6, page 2) The dust plan accepted stated that dust will be controlled at all times, including weekends, holidays and hours when work is not in progress. It lists the activities and areas that have potential to generate fugitive dust and controls that will be implemented. It stated, it does not appear that controls are being implemented, or simply not enough to ensure that future dust does not leave the property. The AG letter sets out other failures of the US Calcium mine. They failed to comply with the BLM requirements, and they failed to obtain a Custer County CUP Permit. They noted also that it appears the US Calcium mine has difficulty complying with local, state and federal laws. Actually, they haven't complied with anything, not a single regulation that was designed to protect the citizens. Despite all the regulatory failures to procure necessary permits this mine has been in operation since 2012. When they appealed to Custer County P&Z, they then received a Conditional Use Permit. This CUP didn't require compliance, but did require them to file stuff. The CUP probably should have said they need to acquire all necessary permits before operating.

My public records request to Custer County P&Z provided me the following:

#1 -Condition 7, proof of submitting an application to DEQ that didn't happen, even though they received 4 extensions. When will they be required to comply?

#2 -Condition 9, comply with Custer County flood plain management regulations. They have not even "applied" for such a flood plain management permit. The danger of not enforcing the Flood Plain Management Ordinance is that you risk of losing the National Flood Insurance. The BLM requirements that weren't met either were significant. Someone needs to enforce these laws and rules. We feel the CUP should not have been issued, and they have not complied with the CUP rules set forth, so please revoke the CUP.

**Chairman Butts:** Requested everyone continue to show absolute respect for testimony given.

#### **P & Z Administrator Testimony:**

Jessica Clemenhagen reviewed the US Calcium mine Custer County Conditional Use Permit. The mine is located at 3737 E. Highway 93, Darlington, Idaho. A public hearing notice was posted in the Challis Messenger and Arco Advertiser on October 14, 2021. Notices were mailed to all property owners within 300 feet of the property boundaries on Oct. 14, 2021. The property was physically posted that same date. Notices were posted on the Courthouse doors and uploaded to the Custer Co. P&Z web page. Notices were given to City of Mackay, Idaho Transportation Dept., Lost River Highway Dist., S. Custer Fire Dept., Mackay School Dist., Big Lost River Irrigation, Mackay Water, East ID Public Health Dept., Custer Co. Sheriff, S. Custer Ambulance, ATC Communications, Lost River Electric, Dept. of Environmental Quality and the Bureau of Land Management.

Research: In August the County received a few phone calls from an owner and the manager of the US Calcium Mine, asking what they would need to do to become compliant with Custer County. They were told they would have to complete the conditional use permit process, which requires a public hearing. Their property is zoned transitional agricultural and has been used for mining purposes since 2012.

On Sept. 29<sup>th</sup>, 2021 US Calcium mine 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 Co. Ordinances and could be charged and fined if they did not stop. Custer County Prosecutor Justin Oleson made an agreement with US Calcium to let them continue operation until they could obtain a CUP, but they were advised they would be given a daily fine by doing so.

The first application received on Sept. 30, 2021 was incomplete and returned to the applicant to finish completely. The complete application and supporting documents were received on Oct. 25, 2021. Numerous complaints were received during Sept. by the P&Z Dept. regarding the increased activity and dust that seemed to be affecting the neighbors. Upon speaking with representatives from both the DEQ and the BLM, I understood that US Calcium may not be in compliance with multiple state and federal agencies.

The request for a conditional use permit to mine on Custer Co. parcels that are zoned Trans-Ag is in compliance with the Custer Co. Zoning Ordinance #2007-09. Twenty-three (23) letters have been received by the P&Z office and were given to the P&Z Commission to review.

On Nov. 4, 2021 the Custer Co. P&Z Commission had the first Public Hearing for this application. They heard testimony from the applicant and persons in support, neutral and in opposition of this CUP application. They set a date to continue the public hearing and deliberation for Nov. 19, 2021 at 6:00 PM.

On Nov. 19<sup>th</sup> the P&Z Commission continued their public hearing to deliberate. Chairman Corinne Jones explained the choices the Commission had to choose from. They could deny the application, approve the application as is, or approve the application with conditions attached. They discussed the idea of approving a temporary CUP, with attorney Justin Oleson's agreement they could put a time limit on a CUP.

The Custer P&Z Commission deliberated and voted unanimously to approve a temporary CUP to US Calcium mine that would allow them to operate for 6-months with these conditions attached.

1. The CUP will expire in 6-months and the applicant will need to reapply.
2. Hours of operation shall be between 7:00 AM and 7:00 PM, 7 days a week.
3. Blasting shall only occur between 12:00 PM and 2:00 PM
4. Proof of applying for mining permits from the ID Dept. of Lands by Jan. 31, 2022
5. Proof of applying for reclamation permits from ID Dept. of Lands by Jan 31, 2022
6. Proof of applying for a bond from ID Dept. of Lands by Jan 31, 2022
7. Proof of applying for air quality permits from DEQ by Jan 31, 2022
8. Shall maintain sound management according to the Mine Safety & Health Assn.
9. Shall comply with Custer County's Flood Damage Prevention Ordinance
10. Shall comply with Custer County's Zoning Ordinance, Article XVIII Section C. regarding Lighting and "light pollution" that may diminish the ability to view the night sky.

On January 1, 2022 the Custer Co. P&Z Administrator received an appeal letter from Concerned Citizens regarding the CUP that was issued to US Calcium. The letter was date/time stamped and given to the Custer County Clerk to start the appeal process.

A Public Hearing Notice was posted in the Challis Messenger in the Public Notice Sections on Jan. 27, 2022. Notices were mailed to all property owners within 300 feet of the property boundaries. The mine property was physically posted on Feb. 4, 2022. Notices were posted on the Custer County courthouse doors and uploaded to the Custer Co. P&Z web page.

**Commissioner Smith asked questions;**

Jessica responded: All information received from the mine has been given to the P&Z Commissioner at their last meeting. They are currently waiting for DEQ information. Her e-mail from AG's office showed the new application deadline is Feb. 22, 2022. Chairman Butts inquired if the information was admissible at this time. Attorney Justin Oleson responded the information was brought out earlier in the appeal, and they have filed the application. (The mic was given to Justin to repeat his statement)

Chairman Butts re-stated the time limit for testimony to be given at this time.  
Clerk Lura Baker called for Support testimony.

**Support testimony was heard from Michael Coleman, I live 1 mile N of the mine.**

My concern is for the safety and wellbeing of my family. We like to leave our windows open. In 2018 I noticed the dust and how it was blowing in our direction so I made a complaint and made another complaint in 2019. I have talked to the mine and they have received others. I talked to them again last year and was told the mine is fine and the public lack the teeth to enforce compliance. I called Boise and received the same answers. It is apparent they are not in compliance and haven't been for years. We have to live with that, and I feel they need to give their neighbors some security. I understand that air quality samples are required in the mining industry. It demonstrated their incompetence in being able to get the system right. Our air and water is at risk of contamination. Remember Libby, Montana where the asbestos mine contaminated their natural resources. The dust is not the only problem, the blasting is a problem, and it needs to be done correctly. I protest.

**Support testimony was heard from Jeff Kraczek**

I own a business in Mackay, employ 10 persons, that is in the mental health field. In 2008 or 2009 we bought the property between the mine and the river to build a campground for my clients to work on family dynamics and mental health. Due to the dust and noise this is not possible now. We own a home nearby also that has developed ceiling cracks that I attribute to the blasting. At night the loading of the trucks is really, really loud. I talked to mine personnel early on and was told they would be starting on the other side of the mountain. They did not do that, but began on the front side of the mountain which made things rough on the neighbors. If they had begun on the other side some of the dust would have been trapped. I believe they are using a lot of water from their well which is not a commercial well. I have never observed a water truck at work when I am going past. They have not been good neighbors for us. They do not have many employees, and are getting more obnoxious to try to talk to. There about 5 different LLC companies before you get down to the actual owner.

**Support testimony was heard from LaVon Fullmer**

I received a call from the Lords that live just north of the mine and receive the brunt of the dust and noise. She asked me to comment in her stead as they could not attend due to medical appointments. We live east of the Lords and we receive a lot of dust, but not quite what they do. The mine has ramped up lately and the dust particulates in the air concern me. The BLM allowed them to operate behind the mountain for a time. They have since been shut down on the BLM property. The trucks do not always stop at the highway, be careful. They should have dust monitors but I don't believe they do. I call when I see clouds of dust flying away. The berms of dirt were placed along the highway create a lot of dust. My concern is that the berms could change the flood plain and overflow channels. I was told the berms were there to help control the noise.

**Support testimony was heard from Kris Mendenhall**

I live towards Mackay about ¼ mile north of the mine. At first, we didn't hear a lot of the noise from the mine, but spring of 2019 it really started becoming uncomfortable. The dust is hard to remove and my husband had lung issues. He wore a mask and relied on oxygen, but passed away in Nov. 2018. The trees along the river are always coated with dust, and have since begun to die. My horse developed a health condition and the vet diagnosed her with excessive calcium levels. The noise pollution is severe, from the screeching of the rocks being unloaded to the big dynamite blasts. My concern is about erosion on the mountain also.

Commissioner Smith inquired about the photo of the horse, and the vet she took her horse to? Chris responded: Dr. Cleal Hill – Lost River Vet Clinic, Arco, Idaho

**Support testimony was heard from David Fullmer**

I hope you realize we are serious. I want provide 3 pictures taken today 2/16/21 of the mine that shows building that were put in place before they were permitted. I guess they figured the berms would reduce the noise, but I hasn't helped. They have been given 6-months to comply. There were trucks that were loaded and left before 7:00 AM, so they are in violation. The wind was blowing hard today and the dust was extreme from north to south. I watch daily and even on days when there is no wind the dirt flies off their property. The dirty snow photos provide evidence that the dust is not contained. They don't care that it affects their neighbors, the dust means money to them. I feel they are blatant bullies that continue to abuse the CUP. They are not complying at 3 months into their agreement on the dust, noise or hours.

**Support testimony was heard from Gary Rodgers**

On February 8<sup>th</sup> I noticed a loaded truck leaving the mine at 9:10 PM. They are not complying with the CUP rules that they received from the P&Z Board. The idea of having an independent firm monitor the dust leaving their property did not get included in the CUP. We have concerns about the blasting and the possible effect on ground water. If they have applied for the DEQ Permits as required, they would need to complete an Environmental Impact Study. I don't believe they have been required to do that. You have a "safety data sheet" for crushed limestone and it is considered a carcinogen. We are having to breathe that dust as neighbors. The actual water right for the mine well is set at about 2500 gallons per day. That is not enough water to mitigate the dust they produce. There is a moratorium on more well drilling so they can't expand their water right.

**Support testimony was heard from Loy Pehrson**

Thanked the Board for hearing the testimony. The day after Thanksgiving was a beautiful day and I walked out through the corrals. The crusher fired up and the noise of loading trucks began. On a recent trip through Nev., Calif., and Arizona I did not notice any huge clouds of dust at any of the many mines I know are in those areas. Why are we being punished here? As a farmer I don't understand how this mine is able to operate the way it does. When the old river bypass channel was filled, we lost our recharge system for the Lost River. The Darlington Land Co. has an agreement with Lost River Irrigation to allow them to cross it. I'm not aware of any culverts currently, but they need to be put in. He reminded the Board of their oath wording.

**Support testimony was heard from Dan Bell**

I live at 3940 Remsen Run, next door to Fullmer's. I purchased the property about 5 years ago and the mine was inactive at the time. Now it is extremely busy. I've taken a lot of the photos in your files. Starting with the dust which is excessive. It always blows with the winds when they are in operation. The noise is excessive in their operation when loading trucks, crushing and excavating the mountain. I have a boat in San Diego which I live on 4 months of the year. It is moored directly across from the US Navy base. A F18 leaving the tarmac does not generate any more noise than the loading of these mine trucks. They are going to affect our aquifer with this open pit mine. I am totally opposed to US Calcium and their operation.

**This concluded the support testimony.**

**Neutral testimony has heard from Matt Marsh**

I work for the BLM in Challis. The authorizing officer for this project is Jeremy Casterson of our Upper Snake Field Office in Idaho Falls. [jcasterson@blm.gov](mailto:jcasterson@blm.gov). phone 208-524-7555. I would like to answer any questions from the Board of Commissioners.

**Question from Commissioner Smith:** What complaints have you had on BLM permits?

Matt responded: I can answer about where they have been in the past, but have not seen the plans they have for the future. In 2020 the BLM discovered that US Calcium had been mining on BLM land without authorization. We issued them an order to suspend all activity and remove all equipment from the site. They complied. We also required US Calcium to secure a bond for this un-authorized disturbance. In 2021 BLM discovered that the US Calcium had again occupied some BLM land without authorization. They had cleared some land and staged some equipment on BLM land. We again issued an order that they suspend all activity and remove all equipment. They complied. In Nov 2021 US Calcium secured a bond for all unauthorized disturbances.

**Neutral testimony has heard from Jim Kopp**

I live in Challis, Idaho. I regret that all of this is going on. I caution the Board about testimony they have heard on DEQ dust regulations on zero dust. That is not what the regulation is, it is a restorable dust that is not easy to measure. However it is measurable. It is unfortunate that this mine moved into a neighborhood, and there will be disagreement. As a lifelong miner it is possible to mine responsibly and it is possible to be a good neighbor. I ask that if they are allowed to go on mining, that we as a county gather together and expect responsible mining methods. We can control dust, not completely as it is going to leave the property at times. But

we can control dust and we can control noise. I am disturbed by the lack of permits that I am hearing about. I have been involved in mining throughout the USA and have never heard of a mine that started without permits in hand. I have heard of people crossing the permit and being shut down by the various agencies. It is a surprise that this actually happened, and it can be fixed. Responsible mining is like logging, ranching and farming in that it is "land use". We have to use the land in the right way and be good neighbors or it is not going to work. We have to work together or we give every other miner a bad name.

**Opposition testimony was given by Logan Patten**

I am with US Calcium and live at 292 S 1300 W, Hill City, ID. We have heard these comments when we went through the CUP application process. We do understand some of the feelings. I was not involved early on but came in later on. When we found out what transpired with the BLM, we started reaching out to the different agencies. We had been told that all this had been taken care of when we got involved. It was a big disappointment that it wasn't completed. We were working on the permitting process before we started with the County. We continue to work on these issues. The sound and the dust is being addressed, and I admit that when we picked up operations it became atrocious. We are working on finding solutions and engineering firms have been hired to help us. Sound is not regulated, but we moving forward to getting a third-party firm to monitor the sound and the dust. Yes, we recognize that it was not right what was going on, but bwe have dedicated time to become responsible miners and good community members. The crossing did have a culvert that was not installed properly and was removed. We offered Lost River recharge the opportunity to use it for recharge while opened up, they declined at this time. We filled it back in to be able to cross the ditch. The new culvert will arrive next week and it will be properly installed the following week. The product we mine is "calcium carbonate" which all life requires. We don't need it in excessive amounts but it is required for all forms of life. Basic limestone surrounds the valley and our aquifer sits in it.

**Question from Commissioner Corgatelli:** Do you have a dust management plan, and how long do you feel it will take to fully implement this plan to actually control the dust?

**Logan responded:** I feel that we have made some good strides over the last 6-months. There are still things we are working through with the DEQ to get to where we need to be. It will probably take 2 years to completely control the dust with putting up buildings and moving the excavation to the back side of the mountain onto BLM land.

**Question from Commissioner Corgatelli:** Do you have any additional sources of water?

**Logan responded:** We have looked at our options. We need to use the water to wet all the transitionary places in the crushing and screening areas. Previously we have been using the water for roads, but we will need to change to using mag-chloride on the road ways as the limited water will be needed elsewhere.

**Question from Commissioner Smith:** How are you responding to the conditions attached to the CUP by P&Z Board; specifically, your lack of compliance with set work hours, as well as permits.

**Logan responded:** Every single permit we are required to have is being actively worked on or we are getting close to receiving. Mike will respond further with permit details. The lighting has been

removed to stop any light pollution. If a truck is arriving outside of the 7:00 to 7:00 it is an outside hauler that is arriving, but we do not load until 7:00. We are trying to finish up around 5:30 and we turn the lights off at 7:00. We work some Saturdays, but we do not work on Sundays. I have heard they need a reprieve from mine and we are trying to give them the weekends.

**Question from Commissioner Smith:** Are you following the time frame allowed for blasting?

**Logan responded:** Yes, we had one that went just a few minutes after 2:00, but we are working hard to remain between 12:00 and 2:00. We are also doing smaller blasts with fewer holes. It gets set in the AM and is done by the blast window.

**Question from Commissioner Smith:** Can you respond to the “dust” issues that have been raised?

**Logan responded:** First of all, the dust was atrocious in the past and the Lord family was affected the most. It was bad. In working with the DEQ we have gone to engineers to help us understand our product and how far it travels. There are many things required by the DEQ. The “Permit to Construct” and emission control will eventually require monitors, but we have no basis for what is needed. We can create dust, but will have to keep our dust within the property line. It will eventually require dust monitors along the outside. The wind seems to blow one way or the other, and when it gets to bad we are required to shut down, such as today when we shut down at 3:00.

**Opposition testimony was given by Erica Morlen**

Erica Morlen, with Kirkland, & Kuey Law, I want to point out that no testimony argues that US Calcium is not out of compliance with Custer County comprehensive plan. Mistakes were made early on and the new owners are working hard to remedy them. Please know that some of these permits are very difficult to procure and require technical engineering modeling, that takes a lot of time. It is not illegal to create dust on your property, but they require a dust control program. Please review the materials submitted by US Calcium on Feb. 9th, that address each one of the arguments made by the Concerned Citizens. Michael Fife will address the actions that have been taken. This mine is in compliance with Custer County ordinances. There has been dust and we are addressing that issue with the DEQ. If it was a serious health issue the mine would have been shut down by the DEQ, which they were not. The comment “dust means money to us” was taken out of context, and it referred to the fact that dust is product that should have been sold to Amalgamated Sugar, or other buyers. Several citizens have been on the US Calcium property and I respectfully ask that you get prior permission before coming onto the property. This is a safety issue and a liability issue.

Commissioner Butts apologized to the audience for his comment about “dust is money to us”.

**Question from Commissioner Smith:** Has US Calcium applied for the flood plain permit?

**Erica responded:** I do not believe there has been a flood plain application with Custer County, as the entire site needs to be included. They are working with Idaho Dept. of Lands and the BLM to include the entire mine site on the flood plain application. There have been communications with the County P&Z, but no formal flood plain application.



**Question from Commissioner Smith:** Will you address the P&Z conditions and Idaho State Lands permits?

**Erica responded:** Condition #1 was application for another Conditional Use Permit which we are currently doing. Condition #2 was hours of operation; which testimony was given about tonight. It has been very quiet on this, which is good news. #3 Blasting -there was one instance of blasting occurring after 2:00 PM, which was testified about tonight. #4 Dept. of Lands has an approved reclamation plan and the required bonding in place. However, they are updating the reclamation plan which will require updated bonding also. ID Dept of Lands does not require a plan of operations on private property, but they do require a reclamation plan. It is very similar with BLM. IDEQ permit requires extensive engineering and complex modeling and we have submitted our correspondence and received an extension. The MSHA requirements are being complied with. They have found some minor electrical issues that have since been taken care of and the MSHA inspector has signed off. #9 the Flood Control Ordinance is causing some struggle. We are working with the Dept of Lands and the BLM to be sure we have a comprehensive plan in place. #10 light pollution, Mike will respond to this.

**Question from Commissioner Smith:** How do you plan to become a good neighbor and what is the phone number or point of contact for neighbors to communicate issues?

**Erica responded:** This was a big issue at the P&Z Hearing, and US Calcium did not realize they had been such a poor neighbor until the hearing. It was very hard for us to hear. We have given out Logan's phone number and encouraged the neighbors to contact him for any reason, including complaints. We realize this will take some work on everyone's part.

**Opposition testimony was given by Michael Fife:**

I live at 2667 E. Gala Ct., Meridian, Idaho. I am one of the owners of US Calcium. We know that there are problems that we need to work hard to fix. One of the early owners lead us to believe that we had a limited permit on BLM for 50,000 tons. We found out very quick that there is no such thing as a "limited permit", you either have a permit or you don't. At that point we began to question everything we had been told about permits, and went to work. We complied immediately and it took a few months to get the reclamation plan approved and a bond to get things straightened out. We believed we had 6-months to get things worked out. Dust & Sound – We are working with ES2 Engineering to get dust and sound monitors and a base line in place. This is a process to figure out just how to do this job. We feel they are very competent firm, and have engaged their services. We are working with BLM and ID Dept of Lands and we have retained Eric Buffer with Buffer Mining to help us with updating and expanding our current permit and bond. That application and our \$600 fee is in the Dept of Lands hands. We have a ¼ acre exploration disturbance on a knoll that we had forgotten about, to add to our reclamation plan. This will take 120 days to get our plan updated. We have submitted the first round of our Plan of Operations and our Mining Plan to the BLM. It came back with their feedback, so we are sending in our revised plan this Friday. We are working through this process and the EIS or ES is required for the BLM permit will probably begin this summer. We are pursuing these permits because we have about 2 ½ square miles of claims on BLM lands that will allow us to get further away from the neighbors. The quality of the calcium is a bit higher on the back side of the mountain, as well as distance will help with the noise and dust for the neighbors. The only

process that will continue on the front side of the mountain is to mill the finer powder. The larger rock and crushing will be done on the back side as soon as we receive the permit. The reason the blasting occurred 10 minutes after 2:00 PM was that MSHA was on site and we waited until the review was completed before we set off the charge. We have been told we can operate 7 days a week, but we are not operating on Sundays, and only partial days on Saturday. This coming year we are bringing in larger equipment with which we can accomplish our crushing operation in a 7-month period of time. In the off months we will only be loading trucks, not crushing year around. This is to preserve our employees during the colder weather and also to give everyone a reprieve from year around crusher operation. ID Dept of Lands and BLM PTC will be submitted on February 22. All other items on the list are on track to comply within the 6-month time frame.

**Questions asked by Commissioner Corgatelli:** What kind of buildings are you looking into putting up to help mitigate the dust?

**Michael responded:** Yes, we are researching with ES2 Engineering to see what will work best for our situation. As well as other handling systems to help with dust and noise.

**Questions asked by Commissioner Corgatelli:** Do you haul your products from the crusher to the trucks, or do you use a conveyor for loading? What do you use to load your trucks?

**Michael responded:** We load them out with loaders currently. We hope to use towers or tunnel systems one day. Moving around to the backside of the mountain will help greatly too.

**Question from Commissioner Smith:** How have you addressed the animal issues, and even the river with the public?

**Michael responded:** The horse incident happened a few years ago and a lot of changes have been made since then. We installed the berm and we want to know if it helps, if it doesn't we will remove it. If it does help we will cover it with rock so the dust doesn't blow. To address the water issues, we have confined our blasts to much smaller loads so they are not quite as concussive. They are welcome to come any time and schedule a visit. The windows in our mine site buildings are not cracked, so we don't understand how the blasts are cracking windows that are over a half mile away.

**Question from Commissioner Smith:** Can you address the possible effects of blasting on the local aquifer and wells within 6-mile radius?

**Michael responded:** We can address these issues with our engineers. One blast was certainly larger than it should have been.

Chairman Butts checked for any further testimony, being none, he then opened the way for the rebuttal.


**Appellants rebuttal:** Fritz Hagmmmerlo - Hagmmmerlo Law

I would like to set the record straight from what I have heard. The US Calcium comments say to me, "trust us, we're doing our best, believe us." They received a consent decree in late 2020. It

gave several deadlines for the mine to obtain permits, the latest one was April 6<sup>th</sup>. They did not comply with any of those deadlines. DEQ then granted them three extensions, which were noted in the letter from the Attorney General dated Oct. 7, 2021. The DEQ then granted a 4<sup>th</sup> extension, and the final sentence in this letter states "no communication has transpired; thus this matter has been referred to the Idaho Attorney Generals Office". When they state they have been working on this process, I think it is pretty clear that they haven't. I have also heard in their testimony, "we are doing really well", "we're doing great". All the photos attached to our affidavits are dated 2020 and 2021. They show a lot of dust being generated and leaving the site. According to them they are doing a great job now, but the photos show differently. On page 4 (middle paragraph of my submission) there is a quote stating "the purpose of the PTC permit is to 'prevent the generation of (unintelligible) dust". It is clear to me that they haven't done all that they were supposed to. I disagree with Erica's testimony that stated that they have complied with all of Custer Counties ordinances. Condition #9 stated that they shall comply with the Custer County Flood Damage Ordinance. My FOIA request which is exhibit #7, dated Feb. 8, 2022 is the letter from P&Z Administrator Jessica Clemenhagen and states "I have yet to receive any application for a Flood Plain Permit, and none has been issued". Another one of the requirements was #7 Proof of applying for permits regarding air quality through the Department of Environmental Quality by Jan. 31<sup>st</sup>. My public records response also generated an e-mail dated Feb. 1<sup>st</sup> from Mr. Fife (exhibit #7 - page 8) to Eric recognizing they understood they had to show proof of applying for these permits by Jan. 28<sup>th</sup>. He states in this e-mail to his employee, that he will forward this email to Custer County regarding the PTC permit. I don't believe they have complied because of the date differences, and surprisingly they state they are still working on it. There is a letter from DEQ in this same records request, that says they have until Feb. 7<sup>th</sup>. Evidently this deadline just keeps moving down the road. Yet they wish for us to "trust them, they are doing our best". They have not proven that they are doing their best, for they are still harming their neighbors through the generation of dust, which the DEQ calls air pollution, for two more years. Are they doing a good job of complying with requirements? No! because the Attorney General said so. Are we seriously going to allow another two years of the same dust conditions, it is absurd? You had an opportunity to deny this CUP when they applied, but you gave them a bone, and said they needed to satisfy your conditions. The neighbors deserve better. I urge you to reverse the CUP approval, or to revoke the permit.

Chairman Butts reviewed the options available to the Board of Commissioners for their decision on this appeal. Do we want to continue with deliberations today, or are there further questions that you need answered? He stated his desire to get more answers from the Idaho Department of Transportation. Commissioner Corgatelli expressed his need for further information unavailable at this hearing. Commissioner Smith also needs more answers about the dust issue, and from the Lost River Irrigation District about the recharge waters. It was decided by the Commissioners Board to delay the decision-making process until a later at a publicized Special Meeting date. Clerk Lura Baker will notify all attending of the date, time and place of the Deliberation Hearing. Prosecutor Justin Oleson clarified the rules on gathering information from any other source.

Meeting Adjourned at 8:15 P.M.

  
Chairman, Wayne F. Butts

  
Attest: Clerk, Lura H. Baker