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Commissioners

Paul Vogelheim, Chair
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**County
 Commissioners'
 Administrator**
 Stephen Foster

Department of Environmental Quality
 Administrator of the Land Quality Division
 Herschler Building
 122 West 25th Street
 Cheyenne, WY 82002

November 20, 2013

RE: RST Sand & Gravel Small Mining Permit application

To Whom It May Concern,

Thank you for the opportunity to comment on the RST Sand & Gravel application. Teton County is currently in litigation in the Supreme Court of the State of Wyoming with the applicant regarding the County's authority to regulate grandfathered uses. At this time, the outcome is unknown; however, there is a District Court Order affirming the Teton County Board of County Commissioners' decision described below.

On November 7, 2011, the Teton County Board of County Commissioners approved a *Findings of Fact, Conclusions of Law and Order* subsequent to an Abatement Hearing against Mr. Seherr-Thoss and RST Sand & Gravel. This contested case hearing was held in order to determine if the RST activities were legal nonconforming (grandfathered) uses and if the operation had legally expanded per Teton County Land Development Regulations (LDRs) Section 7120, Enlargement or Expansion. The Order to Abate set forth the following limitations and requirements:

1. Any gravel operation located at 4520 South Park Loop Road shall disturb not more than three (3) acres at any one time. This three (3) acre limit shall include gravel extraction, screening, stockpiling and crushing. Ponds not used for excavation shall be excluded from the three (3) acres that can be disturbed for the gravel operation at any one time. The 5.68 acre pond that already exists on site shall be excluded from this three (3) acre limit, provided that any expansion or enlargement of this pond for extraction shall count toward the maximum three (3) acres permissible disturbance. In the event extraction resumes from the 1.39 acre pond that exists on site, this acreage shall be counted toward the maximum three (3) acres permissible disturbance.
2. Within sixty (60) days of Teton County adopting these *Findings of Fact, Conclusions of Law and Order*, Seherr-Thoss or the current property owner shall submit a reclamation plan to the Teton County Planning Department for review and approval which will reduce the size of the gravel operation to three (3) acres as described above. A surety shall be provided to the Planning Department consistent with the LDRs. All terms of the approved reclamation plan shall be completed in a timely manner.

Post Office Box 3594
 Jackson, Wyoming 83001

Tel: (307) 733-8094
 Fax: (307) 733-4451

Email:
 commissioners@tetonwyo.org

3. To ensure that volumes do not exceed the 15,000 cubic yards or 17,000 tons per year approved by the Board of County Commissioners, scale receipts for the gravel operation shall be submitted to the Planning Department no later than January 31 of each year beginning in 2013 for the prior year. Amounts in excess of permitted volumes shall constitute a violation of this Order.
4. Hours of operation on site shall be limited to Monday through Friday, 7:00 am to 5:00 pm.
5. The gravel operation shall comply with all requirements of the Department of Environmental Quality Land Quality and Air Quality Divisions.

It appears that your agency has decided to process this application based on information submitted to you by Mr. Peter Moyer on behalf of RST Sand & Gravel regarding grandfathered uses. Teton County recognizes gravel extraction, screening, stockpiling and crushing as legal nonconforming or grandfathered uses that may continue on the Seherr-Thoss property located on South Park Loop Road without obtaining a Special Use Permit. Should the operation wish to expand larger than the three (3) acres described above, a Special Use Permit shall be obtained from Teton County per the Land Development Regulations.

Mr. Moyer's letter references the status of Evans Construction gravel operation as viewed by Teton County and then compares it to RST's operation. Staff did forward an email to Mr. Moyer on July 31, 2013 regarding the Evans' status stating that that particular operation is considered grandfathered and therefore no permits for the processing and extraction activities have been required. The week following this correspondence, Attorney Mr. Joe Moore on behalf of Mr. Seherr-Thoss, contacted Teton County regarding this same status. After further discussion with Mr. Seherr-Thoss' new attorney and Deputy County Attorney, Mr. Brian Hultman, it was determined that technically the Evans' operation is not a nonconforming or grandfathered use. Rather the Evans' operation is an outright use described in the Land Development Regulations Section 231200.C. Gravel Processing and Extraction, Location. In 1996, Evans' Construction Yard and Gravel Pit was specifically added to the LDRs as a location that best serves the operational requirements of gravel processors, while minimizing the negative impacts and obtrusiveness to the County's residents, visitors, wildlife, and scenic resources. The operation is an allowed use that does not have a Special Use Permit, similar to a nonconforming or grandfathered use. Should the Evans' processing and extraction operation propose expansion, they would be required to obtain a Special Use Permit through Teton County.

RST Sand & Gravel is not listed in the LDRs as an approved location for a gravel operation. Teton County recognizes the RST Sand & Gravel operation on Mr. Seherr-Thoss' property on South Park Loop Road as a legal nonconforming or grandfathered use, specifically acknowledging the right to continue gravel extraction, screening, stockpiling and crushing activities. After reviewing the two operations in detail, RST Sand & Gravel and Evans' Construction cannot be compared to one another based upon one is a nonconforming use and the latter a recognized operation specifically described in the LDRs as an allowed gravel extraction and processing location. Teton County believes that reviewing this application based only upon this letter from Mr. Moyer is misguided and should be reviewed in more detail.

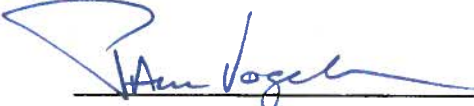
Based on all of the above information, Teton County requests that the application be tabled until such time that Teton County and the applicant receive a final decision from the Supreme Court of the State of Wyoming regarding the questions of grandfathered uses and expansion. Currently, the District Court Order affirmed the Teton County Board of County Commissioners' order, which limits Mr. Seherr-Thoss' gravel operation to three (3) acres only as described above and should be adhered to by DEQ.

Should the Department of Environmental Quality not table the application until the Supreme Court decision, Teton County Board of County Commissioners respectfully request that the application be revised to be consistent with the current District Court Order **OR** deny the application based upon non-compliance with Teton County Land Development Regulations, *Findings of Fact, Conclusions of Law and Order* document dated November 7, 2011 from the Teton County Board of County Commissioners, and the District Court Order dated January 30, 2013 from The Honorable Timothy C. Day, Judge, District Court.


Thank you again for allowing us to comment on this application.

Sincerely,

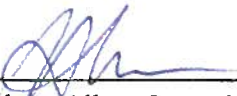
**BOARD OF COUNTY COMMISSIONERS
COUNTY OF TETON**



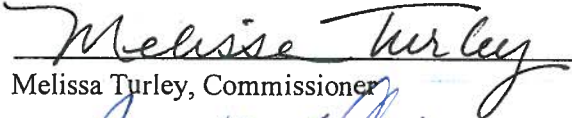
Paul Vogelheim, Chair



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