

September 14, 2021

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FROM: Margi and Tony Kaspari
185 West Bard Creek Road
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Sirs,

We are strongly opposed to the proposed Frei Quarry expansion, an expansion that will nearly double the quarry footprint to approximately 750 acres.

Please accept and consider our testimony of opposition since we are property-owning residents and are an “**aggrieved**” party to the Frei Quarry expansion. Under the rules governing a citizen’s rights as related to Construction Material Rules and rule 1.1 (38.1) of the Hard Rock/Metals Mining Rules, “aggrieved” is defined as “suffering actual loss or injury or being exposed to potential loss or injury to legitimate interests. Such interests include, but are not limited to, business, economic, aesthetic, governmental, recreational, or conservational interest.”

Additional testimony should be allowed regarding the expansion. It is our understanding that **only one objection to the expansion has been registered**. As such that single party is the only party to be included in the hearing process, however, aggrieved citizens still have rights as outlined above.

Also, we submit the lack of objections is not due to lack of concern, it is simply the result of **inadequate and antiquated public notification requirements**. There has been little to no outreach by Frei. Hence, there is a general lack of awareness in the impacted communities. It is true that Frei has published a webpage pertaining to the expansion, however, we respectfully suggest that a webpage is not outreach to the community. We fear the Frei location in a remote corner of Clear Creek, Gilpin and bordering Jefferson County **hides the project from public awareness and dilutes regulatory oversight** by relying on small Clear Creek. Additionally, because Frei Quarry is tucked away in the northeast-most corner of the county, we believe residents and businesses in Clear Creek County have minimal awareness of the quarry and it’s impacts on infrastructure and the environment. Douglas Mountain, Clear Creek Canyon, and

Golden Gate Canyon residents and users have just now become aware of expansion plans and are extremely concerned.

Is past performance indicative of the future, exacerbated by an expansion and a larger quarry footprint? Some observations of past performance are alarming, including:

- **Outside Permit Boundary:** We understand that the MLRB (Mine Land Reclamation Board) has allowed the Frei Quarry to perform mining activity outside the permit boundary. This is evident in the Frei utilization of the Gilpin Waste Fine Dump which because it is outside the Quarry Permit Boundary is not within the jurisdiction of the Division.
- **Fines Dump Over Limit:** The Frei Gilpin Waste Fines Dump may not have been properly regulated over the last 14 years and such lack of regulation has caused grievances (many) including poor air quality, stream degradation, visual impact, potential wildlife hazards due to the "angle of repose placement of the fill", and general mismanagement of the area. Gilpin County placed several stipulations on the use of the site which appear not to have been adhered to. [Please refer to the 2007 grading permit and Special Use Review (SUR 06-03) which identify the stipulations.] Currently, **at approximately 44 acres the Fines Dump far exceeds the allowed 12 acres un-reclaimed disturbed area**; it has not been managed per MLRB recommendations, which we assume would regulate placement, compaction, dust mitigation, slope stability and grades, among other items. We do realize this area is not within the jurisdiction of the Division, however, going forward can we ask that all mining activity be within the Permit Boundary? Gilpin County does not appear to have the technical expertise to manage an extensive mining operation such as this dump, nor, in our opinion, should they be expected to regulate it. DRMS is highly qualified in this type of regulation and should be the lead agency on this going forward! See photos (A.) below of eroded Gilpin Waste Fine Dump.
- **Dust Pollution:** Dust from the fill area has been a constant issue for at least 14 years. The SUR clearly states "All fill surfaces left fallow beyond two weeks shall be stabilized." Placing the dump on the peak of a windy hill, adjacent to and up-wind from, residential areas without safeguarding, stabilizing, revegetating, or otherwise managing the dump, has been a huge burden on both the residents of the area as well as the many citizens of Colorado that cherish this area for its recreational opportunities. The canyon acts like a wind tunnel, at times launching a haboob-like cloud from and over the quarry as it then creeps down the canyon. As the cloud of particulate blows east into the metro area, the health impacts, we suspect, are more widespread. We feel there certainly has not been adequate effort to control dust and that will surely get worse if the quarry footprint grows. See (B.) dust cloud photos below.

We must ask the question, is it time to involve United States Environmental Protection Agency? That agency encourages "reports of what appears to be a possible violation of environmental laws and regulations." EPA further recommends environmental events

observed that may lead to an immediate threat to human health or the environment should be reported when affecting land, water, air, and workers.

- **Waste Plan?** How will Frei accommodate future waste? The geological composition of this site is already known to produce a significant amount of waste, both solid and airborne materials. It is estimated that they have produced over 6 million cubic yards of stored waste in the last 14 years. To date they have failed the community and the environment in terms of dust and erosion management; what assurances do we have that this will not be allowed to continue or get worse in the future with expansion?
- **Environmental Damage:** Sediment oozes from the Frei site on all sides and in all directions. Trucks track it onto the highway. Slopes have washed out and failed. Relying on Frei's own numbers, the Fines Dump has maxed out while it is still eroding, only sporadically covered with weeds. It has previously failed and washed into North Clear Creek, in violation of the spirit of the OU4 Record of Decision remediation approved by Colorado Department of Public Health and Environment (CDPHE) and the EPA. With every weather event, the un-reclaimed Frei Fines Dump still pours gray silt into lower North Clear Creek (Gilpin County) undetected and unreported via Frei's backdoor tailings chute into the waters of Clear Creek proper (Jefferson County), thence to Golden, the Front Range and Denver. Silt kills streambed habitat for aquatic insects and spawning trout, worse if it contains heavy metals. Trout and aquatic insects are indicator species for clean water (i.e. canaries in the coal mine). Ignoring ongoing erosion would seem to be a willful evasion of OU4, undermines the good work Gilpin County has done uphill and upstream, and is directly contrary to the intent of cleaning up Clear Creek to improve trout survival. By any measure, **Frei has not followed the clearly stated Gilpin Waste Fines Dump site rules for over 14 years** and there is no indication they will suddenly begin to follow the Special Use Resolution if this expansion plan is approved. Should these alleged poor ownership values and very poor management practices be rewarded with additional entitlement?
- **Meaningful Reclamation?** The very minimal amount of revegetation activity performed over the last several years does not bring the landforms back to an acceptable visual standard, as evidenced by the views from I-70 and Highway 40, as well as Highway 6 through Clear Creek Canyon. According to the expansion plan, Frei is asking to increase the slope of the existing highwall, essentially making it twice as steep as it currently exists! While that may be a benefit to Frei as it will remove the need to revegetate in the future since revegetation will be all but impossible, is this the right thing for the visual impacts, for erosion and pollution of the air and streams? Where is there any balance between maximizing the minable rock with any semblance of meaningful revegetation? Is this the time to insist the Frei operation do better and there are better ways? **Meaningful reclamation has never been observed to be implemented at the Frei Quarry.** The area of disturbance is large now; it will surely grow much larger. Is it best mining practice to mine and re-mine, grow waste

piles, etc. without ever successfully bringing the property to a state that is eligible for release from their reclamation permit or bond?

Future concerns, resulting from the expansion of the Frei Quarry are many, including and not limited to:

1. There will be **safety, environmental and economic impacts to recreational resources**. For example, millions are being invested in the Peaks-to-Plains Trail that parallels Clear Creek and Highway 6. Derived benefits are being negatively impacted and impeded by the continual noise, jake brakes and all, down the canyon from the current 300-400 trucks per day (and permitted to 1,400 trucks per day!) Hikers, fishermen, bicyclists, rafters and rock climbers are all impacted.
2. In our opinion, the Frei Quarry has already wrought **severe aquatic environmental damage and the expansion poses additional threat to Clear Creek**, a natural wild brown trout fishery that is valued by thousands of Front Range anglers, tourists, trout stream conservationists and Colorado Parks and Wildlife. The heavy wash from the Frei "fines" dumping slope reached the North Fork of Clear Creek about seven years ago via Gilpin County and to the best of our knowledge has never been repaired, addressed or tested for heavy metals. The murky tailings waste still drains downstream into the main stem of Clear Creek, in Jefferson County, within a few hundred feet. See photos (C.) below of silt erosion into North Clear Creek from April 1, 2014.
3. With **future excavation far below current ground and water table**, a proposed reservoir will require extensive (and undefined) engineering and risks, potentially becoming "anaerobic and putrid." Is this a good use of Colorado's water resources?
4. The proposed expansion will **create large volumes of waste dump material**. Where is this going to be dumped? Will it be regulated by the State or the County? Will Frei be forced to adhere to reasonable mining standards?
5. Does the expansion consider the **safety of the many users, human and animal, of the Clear Creek corridor**? There is concern regarding the slope stability in the area and one must question whether adequate measures have been taken to appropriately design the expansion? For example, the expansion area is designed to have 0.6:1 slopes, which appears to be pushing safety boundaries beyond what is necessary. The Frei website states that "mining is temporary, reclamation is forever". With 0.6:1 slopes, the proposed Frei reclamation will not be sustainable for the short term, let alone "forever."
6. The existing Frei Quarry is considered to have a very large "disturbed" area for a single mine. At Frei's, it seems that they never finish an area, but rather move about and continue to open new areas. In our opinion as residents, visually this is unacceptable. More importantly, the dust that is generated from this mining method is assuredly a health hazard. Coupled with Frei's arguably **horrid Fines Dump management practices**, the dust is well beyond what should be acceptable in any first world operation. The proposed expansion increases the disturbed area and their plan states that they will continue to keep the current mine area open as well as expanding into the already entitled northern area and the proposed expansion area. In total, they will likely more than double the disturbed area!

7. Frei's plan states that the near vertical mine walls that they will be creating will be future habitat for Big Horn Sheep. Regardless of any study that they may have performed, isn't it obvious that Frei simply designed the expansion to maximize the minable quantity while disregarding safety, wildlife, visual impacts, the citizens that recreate in the area, future generations who will use the Peaks-to-Plains Trail, those who enjoy the creeks lure and the best interests of the community? We have 20 plus miles of Clear Creek canyon that is part of the existing Rocky Mountain Big Horn Sheep Habitat for our Colorado State Mammal. There are ample cliffs and plenty of habitat in its natural form. The Floyd Hill Trail Master Plan identifies the expansion area as Winter Concentration area for Bighorn Sheep. To say that Frei is creating additional habitat is seemingly disingenuous and misleading, this proposed expansion plan is simply the easiest and most profitable way to maximize the mining area. Instead of creating more habitat in its natural form, the opposite seems to be true: **wildlife is pushed into an even greater level of conflict**, pushed out into a narrower canyon habitat, already busy with human activity such as climbing, rafting, kayaking, and the Peaks-to-Plains Trail that is currently under phased construction. See (D.) Floyd Hill Trail Project Map.
8. The Frei **proposal appears to be contrary to local planning and zoning**. The area has not yet been rezoned while numerous plans for the area indicate rezoning would not be appropriate. The Clear Creek corridor is the subject of a stand-alone greenway plan. The area is slated for open space on current county long-range land use plans, indicating that the land use of the current quarry is not to be expanded into this area.
9. We must ask the question: **what benefit are Clear Creek and surrounding counties and their residents deriving** from this proposed expansion? How can any amount of tax justify the destruction of an area in such close proximity to a recreational gem such as the already truck-congested Clear Creek corridor? Additionally, we fear that with slopes as steep as are proposed, it is not a matter of if, but rather when a tragic accident happens. Considering the hundreds of hikers, climbers, rafters, kayakers, fisherman, and others, is this a responsible design? From our layman's point-of-view, this plan would appear to be extreme engineering by any measure. Why is it necessary?
10. Understanding that traffic is not something within the jurisdiction of DRMS regulation, it is none-the-less an issue near and dear to all who use the canyon. Perhaps you can and even should consider that in addition to all to personal commuters, recreationists, casino buses, commercial and resident uses, as well as all the rock-hauling trucks (again, currently about 300-400 loaded trucks per day but permitted to over 1,400 per day), **the canyon is already overwhelmed with traffic and its impact**. Trucks have turned a greenway to an industrial zone. We submit, that's enough! This mountainous canyon road is full; this canyon has done its fair share. This two-lane Highway 6 was never designed for heavy truck volume/heavy load traffic and is already congested with a dangerous mix of trucks, buses, and personal vehicles.

Beyond traffic impact, the Frei Quarry expansion will also:

- **Increase road damage** requiring more frequent repair. Much of Highway 6 was resurfaced some 3 years ago and it is now under a major repair and improvement effort by CDOT at a cost of over \$20 Million. We contend that much of the road damage is directly attributable to the volume of heavy rock-hauling trucks from the quarry. It

appears to us that if Frei is going to continue and/or increase its production and thereby increase heavy highway traffic, a “use fee” should also be included in any agreement, if for no other reason than to pay for the road deterioration caused by heavy truck traffic (to say nothing about the inherent increased risk to life and limb that comes with mixing these huge commercial trucks with residential and recreational traffic).

- **Cause additional pollution.** Not only does the canyon act like a ‘wind tunnel’, ideal for distributing the voluminous dust that explodes from the quarry, the canyon also serves as a megaphone, that amplifies blasting/echoing noise up the canyon, disturbing both man and beast. The use of jake brakes is common and especially annoying.

Why cannot trucks be directed to use Highway 40/Floyd Hill to I-70, rather than Highway 6 through the canyon? I-70 is most certainly designed for the type and volume of traffic that the Frei Quarry generates. It has been argued that trucks are unable to climb the long steep grade on Highway 40 up Floyd Hill, yet we personally have recently witnessed an increase in quarry truck traffic up Floyd Hill during the construction activity on Highway 6 through the canyon. Obviously, trucks from the quarry can utilize that much less traveled route, they are doing it now.

In conclusion and in consideration of our testimony above, we are vehemently opposed to the expansion of the Frei Quarry. Thank you for the consideration afforded us and please acknowledge receipt of this letter of opposition.

Regards,

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