

October 9, 2021

TO: Al Frei, Jr. President  
Albert Frei & Sons  
35715 U.S. Highway 120  
Evergreen, CO. 80439

FROM: Tim and Mary Preister  
2433 Dogie Spur  
Golden, CO 80403

SUBJECT: AFS Walstrum Spur Amendment – Frei Rebuttal

Dear Sir:

Thank you for your letter dated October 6, 2021 with your comments concerning our objection letter sent to the DRMS on or about September 10, 2021.

The history of the Albert Frei & Sons was an interesting read. Our history in this canyon dates back even further. Tim first became aware of the existence of Clear Creek Canyon back in 1965 and 1966 when, as a senior at Thornton High School, he frequented the canyon, enjoying its beauty and majesty. At the time he thought “what a treasure to have such a gorgeous gift of nature so close to the city.” Never in his wildest dreams did he think that one day he would be fortunate enough to live here, though now we do.

Let us begin by first addressing one basic apparent misunderstanding. We do not object to a quarry in our backyard. Of course, we all recognize the immense need for your product and the benefit of having such materials available locally. We acknowledge that most likely the roads we drive on and the house we live in contains aggregate from the AFS quarry. Our only issues are a) lack of transparency about this expansion plan and b) the existing quarry operation and impact as well as the proposed additional burdens of a quarry that will almost double in size. *Our issue is that you are not providing your raw material to the marketplace in the most responsible way.*

Examples of your 1980’s style of mining that are no longer appropriate in today’s environmentally-conscious world are many. For instance, the steep cliffs of the Frei quarry offer no possibility of real restoration; there appears to be no real plan to handle your waste fine material in a responsible way; and your mining operation exhibits total disregard for the viewsheds from the Clear Creek Corridor, I-70, Floyd Hill Trail, Centennial Cone Open Space or to the adjacent communities and homeowners. There does not seem to be a need to mine in such a destructive way, except for the maximization of the resource and ease of the mining process. We understand that if you leave the slopes at a .6 to 1 slope, it allows for more resource extraction and reduces much of the cost of reclamation (it’s difficult to reclaim a cliff face), but is it right for the land, for future generations? Is it necessary? This mining method appears to have served AFS well for some 40 years, however, we suggest it may be time to modernize.

It is our belief the expansion provides AFS with a golden opportunity to both satisfy the construction needs of the area far into the future while protecting the environment and quality of life for the residents and users of Clear Creek Canyon. Is it ok to leave the mined land in a ruined and unusable state? The implication that AFS is creating a Bighorn habitat is truly a stretch. The Bighorn Sheep have 12 plus miles of pristine canyon east of the Walstrum Quarry, and many more miles west, they do not need more cliffs. Further, how will these extensive cliff faces hold up over time? Reclamation needs to be designed for the existence of man, not just the quarry lifetime. We do not normally see these steep cliff faces in nature because the forces of nature take them down as they may with your cliff faces. Is this a reasonable approach to safety as you are mining? Do your crews have concerns about these extreme cliff faces and

their livelihood? Why do you need such extreme engineering to go about your work? Is it simply wanting more volume of resource and is that responsible?

While it is true that our objection letter was considered “untimely” by the DRMS in accordance with Rule 1.7.1(2)(a) and thus we will not be considered a Party to the action, we strongly object to being denied a voice. Our objection was “untimely” only because of a lack of awareness as AFS did an effective job of keeping the greater community in the dark regarding their plans for expansion. With your bevy of attorneys, no doubt AFS believes that they have complied with the rules. However, we contend that you have not. For instance, you state that you published notification 4 consecutive times in a newspaper of general circulation in the locality of the mining operation; we understand that newspaper is published in Clear Creek County. What about Gilpin and Jefferson counties, do not the residents of those adjacent and impacted counties and communities have a right to know? We know you met the minimum requirements of the rules, but did you effectively notify the general impacted community? We say you did not.

Additionally, in your letter dated October 6, you state that notification was sent to all adjacent landowners, county commissioners, and conservation districts. However, we ask you to please consider the following:

- 1) Colorado Open Lands have a conservation easement that is adjacent to the proposed AFS development area. When and how was Colorado Open Lands notified?
- 2) When and how was the Board of County Commissioners for Gilpin County notified? As an “affected party”, Gilpin County Board of Commissioners should have been notified by AFS. Beyond any doubt and easily provable is the fact that mining activity related to the Frei quarry is ongoing in Gilpin County, and furthermore, the quarry fill site in Gilpin County has exceeded the allotted amount of 5 million cubic yards as granted by the Gilpin County SUR. Gilpin County is “affected” by any definition despite your assertions to the contrary. Mining activity by AFS has taken place in Gilpin County for years. Google Earth clearly shows that mining equipment, fuel storage, and mining parts have been stored on the fill site for years. Your claims of no mining activity in Gilpin County is negatively impacting your credibility. Gilpin County Board of Commissioners should have been notified of your expansion plans and they were not. That is the simple truth.

We believe these omissions by AFS should dictate that DRMS re-open the case and comment period for permit M-1983-033 to allow for comment and input from the above and other affected parties.

Additionally, we contend that our objection letter should be accepted for consideration by DRMS in spite of being ruled ‘untimely’ by DRMS as we are property-owning residents and are an “aggrieved” party to the Frei Walstrum 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.”

It is obvious that the community is demanding transparency from AFS and a re-opening of the case and public comment period. Even if AFS complied with the minimalistic notification rules (which you did not), did you comply with the intent of the rules, rules that according to the DRMS have been in place for decades (maybe that’s part of the problem)? Do those inadequate and antiquated notification rules really apply in today’s electronic world or are they in place merely to give an illusion of outreach to the community for their input and buy-in?

As you can tell from the above opinionating, we have issues that are beyond your control, they are mentioned here only to provide some context (and because a copy of this rebuttal is being forwarded to the DRMS). Now, let's focus on what we consider to be some significant "selective fact distortion" that is contained throughout your "brag" letter. Examples are numerous, here are but a few:

1. Reclamation and Revegetation: The Frei letter goes to great lengths to define and explain their reclamation and revegetation efforts, however, they gloss-over, exaggerate, or just plain mis-represent the facts and are clearly derelict in their responsibilities. Case in point, the SUR of 2007 states: "hydro-mulch, or an acceptable equivalent, shall be applied to all exposed fill surfaces left fallow for a period in excess of two weeks." We have lived here over 8 years and look at that fines dump every single day; concerning the north-face of the fines dump slope, located in Gilpin County, never have we observed any mulch material being applied to the dump area even though the area has been fallow for years. Look closely at the picture below of the area that was recently taken from Douglas Mountain Road. It clearly reveals a sloped area that is riddled with ravines, crevices, washouts, and surface-cracks, some appearing to be many feet deep. It has very little to no vegetation, allowing for severe erosion and washing of sediment. All the waste must go somewhere; our fear is some of it ends up in North Clear Creek. We expect this is but one example of non-compliance.



We have observed that AFS has finally done some revegetation in other areas over the past few years. However, it seems that with the proposed expansion plan, AFS will no longer have to perform that work because the proposed grades are simply too steep for any meaningful revegetation, is this the right path to take, are there no better alternatives?

2. Dust: Frei's letter mentions the pictures that we took of dust clouds emanating from the Walstrum Quarry. The AFS defense is that there is little to no air pollution resulting from the quarry and that the attached pictures must have been taken on a windy day as if that would relieve them of any blame or culpability. It will come as no surprise to you, Mr. Frei, that Clear Creek Canyon is a windy place; wind is the norm not the exception. The canyon acts as a funnel as the wind drives the quarry dust down the length of the canyon and throughout the

community. It seems any responsible quarry operator would factor that common weather condition into their operational activities and design. If not, how can its operation be approved and condoned by the DRMS?

Further, dust emanating from the mine is not restricted to only windy days. Please refer to the attached pictures that I recently took from our home. They clearly show dust rising from the quarry and the dust goes straight up; the dust clearly is not caused by wind. It seems Frei is not dealing with dust generated, even on a calm day.



Last minute addition: The photos below from Oct. 9, 2021, show the worst dust clouds we have seen.



3. View Shed: Frei maintains that once AFS moves into the Spur Amendment area, mining will be visible initially but then you will move below the viewed corridor, behind the natural site berms. That may be good from the I-70 viewshed but what about the backside, the side facing Douglas Mountain and Centennial Cone Open Space? Is the view of the existing quarry that is now visible from I-70 what residents of the Douglas Mountain community have to look forward to? Is there going to be a scar adjacent to the existing fines dump in Gilpin County for the Gilpin residents and visitors to admire? On the AFS website it states that mining is temporary and that reclamation is forever. Is a rock-face cliff that is exposed to all the I-70 traffic considered reclamation by AFS and is that 'picture' a legacy to be proud of? It seems to us that Frei has set the bar quite low; AFS is not doing justice to the area or to Colorado in general.
4. Truck Traffic: Frei accurately states that the Spur Amendment permitting process is not changing the amount of truck trips approved under the current CDOT permits. You go on to say that Highway 6 is a highly effective haul route for AFS and their customers. Again, that



is all true. But what you don't state is that AFS is permitted by CDOT to haul **up to 1,400 truck trips per day!** Currently, the canyon endures 300-400 heavy truckloads per day, in the busy season there are up to 600 heavy truck trips per day. *Any plan that allows up to 1,400 truck trips per day is a flawed plan, a fatally flawed plan.* Not including the truck traffic from the quarry, Highway 6 is already heavily traveled. Clear Creek Canyon greenway is very popular with locals and tourists due to its high-use functionality, and close proximity to the metro area. Traffic conditions are exasperated even further by bus and car traffic to the casinos of Central City and Blackhawk. It is sheer lunacy to expose the public and users of the canyon to significantly more truck traffic.

There is also the matter of the very substantial road damage that results from the volumes of heavy truck traffic from the quarry. Much of Highway 6 was resurfaced some 4 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. We believe it may be reasonable for AFS, if they are going to continue using Clear Creek Canyon as their primary thoroughfare, to include some kind of "use fee" 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).

5. Stormwater Discharge: Again, the Frei letter contends that the Walstrum Quarry has little impact on the water quality of Clear Creek and North Clear Creek. When confronted with evidence (pictures of erosion sediment along the banks of the North Clear Creek), that stream pollution is dismissed as being the result of a "100-year flood event", again as if to say the quarry is thereby excused from culpability. It is Frei's responsibility to plan and design for such a contingency. Even today, erosion continues down the slope face of the fines dump (see photo above in Example 1). To the best of our knowledge, there has been no attempt to vegetate that slope. And one certainly must wonder, what else may be contained in the quarry, are standards from water run-off of exposed waste areas being met, has the run-off ever been tested for heavy metals/uranium?
6. Noise: We cannot claim to be victimized by excessive noise coming directly from the quarry itself; we are confident that the quarry meets all noise standards, but again Frei is missing the point. We invite you, Mr. Frei to drive up Douglas Mountain Road at 5:30 in the morning on a business day. When you do, you will be treated to the sounds of truck after truck slowing or stopping at the intersection of Highways 6 and 119, as they then turn down Highway 6 for the 12+ mile trip down Clear Creek Canyon, jake brakes echoing down the canyon as they go. Then tell us that we are not 'aggrieved parties', tell us we should just ignore all that noise and that we should not be concerned when truck traffic increases to up to 1,400 trips per day!

We raised various other issues in our objection letter to DRMS that you have chosen to ignore in your response but are nevertheless valid issues that must be addressed. This included the MLRB allowing the Frei quarry to perform mining activity outside of the permit boundary and because it (the fines dump) is outside of the quarry permit boundary, it is not within the jurisdiction of the Division. Speaking of the fines dump, at approximately 44 acres, it far exceeds the allowed 12 acres un-reclaimed disturbed area, and it has not been managed per MLRB recommendations, yet dumping continues. 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?

We ask that you carefully consider our view and concerns. Our intent is not to insult your life's work but rather to encourage you to do better. A good place to start would be to deliver on the promised outreach effort.

While we hope your invitation to meet with the Frei family and employees was sincere, we are dubious given that we were not consulted as to an appropriate date for that meeting, nor is a six-day notice respectful of us. Perhaps you will schedule any future meetings with that in mind.

Sincerely,

Tim and Mary Preister

CC: DRMS Peter Hays:

Email: [peter.hays@state.co.us](mailto:peter.hays@state.co.us)

DRMS Jared Ebert, Team Leader, Senior Environmental Specialist

Email: [jared.ebert@state.co.us](mailto:jared.ebert@state.co.us)

DRMS Russ Means, Director – Minerals Regulatory Program

Email: [russ.means@state.co.us](mailto:russ.means@state.co.us)

Web Sill, Gilpin County Board of Commissioners

District 1

Email: [wsill@gilpincounty.org](mailto:wsill@gilpincounty.org)

Linda Isenhardt, Gilpin County Board of Commissioners

District 2

Email: [lisenhardt@gilpincounty.org](mailto:lisenhardt@gilpincounty.org)

Sandy Hollingsworth, Gilpin County Board of Commissioners

District 3

Email: [shollingsworth@gilpincounty.org](mailto:shollingsworth@gilpincounty.org)

Tim and Mary Preister

2433 Dogie Spur

Golden, Colorado 80403

720.812.8450 (Tim)

720.812.8451 (Mary)

Email: [timpreiber@aol.com](mailto:timpreiber@aol.com)  
[marypreister@aol.com](mailto:marypreister@aol.com)

Dennis and Martie Fast

2353 Dogie Spur

Golden, Colorado 80403

303.870.0239 (Martie)

303.582.5355 (Dennis)

Email: [fast.dennisd@gmail.com](mailto:fast.dennisd@gmail.com)  
[martie4941@gmail.com](mailto:martie4941@gmail.com)

Dannel and Lynn Agar

2294 Douglas Mountain Drive

Golden, Colorado 80403

214.384.2925 (Dannel)

214.418.9926 (Lynn)

Email: [dagar2@wispertel.net](mailto:dagar2@wispertel.net)  
[lagar@wispertel.net](mailto:lagar@wispertel.net)

Ed and Suzan Dentry

2302 Dogie Spur

Golden, Colorado 80403

303.279.8776 (Ed)

303.988.9802 (Suzan)

Email: [edrmn@msn.com](mailto:edrmn@msn.com)  
[mizsuzan@msn.com](mailto:mizsuzan@msn.com)

Ted and Debbie Johnson  
1368 Robinson Hill Road  
Golden, Colorado 80403  
303.667.2552 (Debbie)  
720.837.8960 (Ted)  
Email: [debbie@goldengroupealestate.com](mailto:debbie@goldengroupealestate.com)  
[TedCJohnsonDMD@gmail.com](mailto:TedCJohnsonDMD@gmail.com)

Tom and Kaye Ripley  
3214 Douglas Mountain Drive  
Golden Colorado 80403  
303.278.1885  
Email: [triple1953@gmail.com](mailto:triple1953@gmail.com)

Jan Lowe  
2522 Dogie Spur  
Golden, Colorado 80403  
303.674.1147  
Email: [jlowe0527@att.net](mailto:jlowe0527@att.net)

Sheila Carlon  
32189 Robinson Hill Road  
Golden, Colorado 80403  
303.909.6554  
Email: [carlons529@gmail.com](mailto:carlons529@gmail.com)

Bob and Jeanine DiMaria  
2443 Dogie Spur  
Golden, Colorado 80403  
720.933.4981 (Bob)  
303.668.0673 (Jeanine)  
Email: [bobincolor@aol.com](mailto:bobincolor@aol.com)  
[hffrequencies@aol.com](mailto:hffrequencies@aol.com)

Alexander Bazewicz  
1118 13<sup>th</sup> Street  
Golden, Colorado 80403  
720.345.1764  
Email: [alexinkfish@gmail.com](mailto:alexinkfish@gmail.com)

Richard A. and Suzanne A. Pershall  
2403 Dogie Spur  
Golden, Colorado 80403  
303.999.7323 (Richard)  
303.881.4946 (Suzanne)  
Email: [persalls@gmail.com](mailto:pershalls@gmail.com)

Dylan Domaille  
Monica Miller-Domaille  
2124 Douglas Mountain Drive  
Golden Colorado 80403  
425.283.8608  
Email: [dylan.domaille@gmail.com](mailto:dylan.domaille@gmail.com)  
[damesithy@gmail.com](mailto:damesithy@gmail.com)

Marith Cady Reheis  
3955 Douglas Mountain Drive  
Golden, Colorado 80403  
303.277.1843 (home)  
720.351.7668 (cell)  
Email: [marith16@gmail.com](mailto:marith16@gmail.com)

David R. Kinnard, M.D.  
3973 Douglas Mountain Drive  
Golden, Colorado 80403  
303.586.2744  
Email: [5peaksdoc@gmail.com](mailto:5peaksdoc@gmail.com)

Michael and Meghan McSchaefer  
2445 Douglas Mountain Drive  
Golden, Colorado 80403  
612.804.5973  
Email: [michael.the.engineer@gmail.com](mailto:michael.the.engineer@gmail.com)

Carrie Preister  
1118 13<sup>th</sup> Street  
Golden, Colorado 80403  
303.359.8586  
Email: [shineingolden@gmail.com](mailto:shineingolden@gmail.com)

Stanley and Nancy Gale  
2205 Douglas Mountain Drive  
Golden, Colorado 80403  
303.902.4423 (Stanley)  
303.726.4715 (Nancy)  
Email: [rockymsc@earthlink.net](mailto:rockymsc@earthlink.net)

Bobby and Terri Costeldia  
25281 Golden Gate Canyon Road  
Golden, Colorado 80403  
303.277.0351  
Email: [terricosteldia@hotmail.com](mailto:terricosteldia@hotmail.com)

Karen and Gary Pavék  
2944 Douglas Mountain Drive  
Golden, Colorado 80403  
720.273.0010  
Email: [karen.pavek@wispertel.net](mailto:karen.pavek@wispertel.net)  
[gary.pavek@wispertel.net](mailto:gary.pavek@wispertel.net)

Gil Folsom and Carol Scardello  
2293 Dogie Spur  
Golden, Colorado 80403  
720.207.8519  
303.913.6300 (Carol)  
Email: [scardello@msn.com](mailto:scardello@msn.com)  
[gilfolsom@hotmail.com](mailto:gilfolsom@hotmail.com)