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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR JEFFERSON COUNTY

IRON MOUNTAIN QUARRY, LLC, a Washington Limited Liability Company, and POPE RESOURCES, a Delaware Limited Partnership;)	NO. 10-2-00181-5
)	
Petitioner/Plaintiffs,)	
vs.)	ANSWER, AFFIRMATIVE DEFENSES
)	AND COUNTERCLAIM
JEFFERSON COUNTY, a Washington Municipal Corporation, acting through its Department of Community Development; and STACIE L. HOSKINS, Planning Mana- ger, Jefferson County Department of Com- munity Development;)	
)	
Respondents/Defendants.)	

COME NOW respondents/defendants Jefferson County, a municipal corporation, acting through its Department of Community Development, and Stacie L. Hoskins, Planning Manager, Jefferson County Department of Community Development (collectively hereafter “defendants”), and for answer and affirmative defenses respond to plaintiffs’ petition for constitutional writ of certiorari and complaint for damages (the “complaint”) as follows:

1 **I. ANSWER**

2 1.1 In answering paragraph 2.1.1 of plaintiffs’ complaint and the footnote related thereto,
3 defendants admit the same except deny that plaintiffs have all necessary regulatory approvals and
4 entitlements to mine the property and therefore deny the second sentence of said paragraph.
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6 1.2 In answering paragraph 2.1.2 of plaintiffs’ complaint, defendants admit the same.

7 1.3 In answering paragraph 2.2.1 of plaintiffs’ complaint, defendants admit the same.

8 1.4 In answering paragraph 2.2.2 of plaintiffs’ complaint, defendants admit the same except
9 to deny that the County is an agency under RCW 64.40.110. There is no such statute referenced as
10 “64.40.110” contained in the Revised Code of Washington.
11

12 1.5 In answering paragraph 3.1 of plaintiffs’ complaint, defendants admit the same.

13 1.6 In answering paragraph 3.2 of plaintiffs’ complaint, defendants admit the same.

14 1.7 In answering paragraph 4.1.1.1 of plaintiffs’ complaint, defendants admit the same.

15 1.8 In answering paragraph 4.1.2.1 of plaintiffs’ complaint, defendants admit that Jefferson
16 County issued a stormwater management permit for expansion of the Mason/Shine Quarry.
17 Defendants aver that Jefferson County was not the lead agency for such SEPA review and therefore
18 Jefferson County did not require a SEPA checklist or issue a SEPA determination for said action.
19 Defendants aver that approval was based on the “diminishing asset doctrine,” and further aver that
20 the applicability of the diminishing asset doctrine was based upon a mineral resource overlay
21 designation. Defendants deny each and every remaining allegation of said paragraph.
22

23 1.9 In answering paragraph 4.1.3.1 of plaintiffs’ complaint, defendants admit the same except
24 to deny the final sentence of said paragraph.
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1 1.10 In answering paragraph 4.1.3.2 of plaintiffs' complaint, defendants admit the same
2 except to deny that DCD "declined to recognize" the applicability of the diminishing asset doctrine,
3 and admit that the County's position was based on a good faith disagreement as to the applicability of
4 the doctrine.
5

6 1.11 In answering paragraph 4.1.3.3 of plaintiffs' complaint, defendants admit the same.

7 1.12 In answering paragraph 4.1.3.4 of plaintiffs' complaint, defendants admit that DCD
8 disagreed with IMQ regarding the applicability of the diminishing asset doctrine, and admit that the
9 same was based on a good faith disagreement as to the applicability of the doctrine. Defendants deny
10 the characterization that this was a "refusal" of defendants to apply or recognize the doctrine.
11

12 1.13 In answering paragraph 4.1.3.5 of plaintiffs' complaint, defendants admit the same.

13 1.14 In answering paragraph 4.1.3.6 of plaintiffs' complaint, defendants admit the same,
14 except to deny that Jefferson County objected to the Hearing Examiner's issuance of his decision.
15

16 1.15 In answering paragraph 4.1.3.7 of plaintiffs' complaint, defendants admit the same.

17 1.16 In answering paragraph 4.1.3.8 of plaintiffs' complaint, defendants admit the same.

18 1.17 In answering paragraph 4.1.4.1 of plaintiffs' complaint, defendants admit the same.

19 1.18 In answering paragraph 4.1.4.2 of plaintiffs' complaint, defendants deny the first
20 sentence, admit the second and third sentences, and deny the fourth sentence of said paragraph.
21

22 1.19 In answering paragraph 4.1.4.3 of plaintiffs' complaint, defendants admit the same.

23 1.20 In answering paragraph 4.1.4.4 of plaintiffs' complaint, defendants admit the same.

24 1.21 In answering paragraph 4.1.4.5 of plaintiffs' complaint, defendants admit the same
25 except deny that any court has previously ruled that plaintiffs have all necessary regulatory approvals
26 and entitlements to mine the property.

1 1.22 In answering paragraph 4.1.4.6 of plaintiffs' complaint, defendants admit the same.

2 1.23 In answering paragraph 4.1.5.1 of plaintiffs' complaint, defendants admit the first
3 sentence and deny the last sentence of said paragraph.

4 1.24 In answering paragraph 4.1.5.2 of plaintiffs' complaint, defendants admit the same
5 except deny that Mr. Scalf's statement constituted a "predetermination of the EIS requirement."
6

7 1.25 In answering paragraph 4.2.1 of plaintiffs' complaint, defendants admit the same.

8 1.26 In answering paragraph 4.2.2 of plaintiffs' complaint, defendants are without
9 information or knowledge sufficient to form a belief as to the truth of said allegations, and therefore
10 deny the same.

11 1.27 In answering paragraph 4.2.3 of plaintiffs' complaint, defendants admit the same.

12 1.28 In answering paragraph 4.2.4 of plaintiffs' complaint, defendants deny the same.

13 1.29 In answering paragraph 4.2.5 of plaintiffs' complaint, defendants admit the same.

14 1.30 In answering paragraph 4.2.6 of plaintiffs' complaint, defendants admit the same.

15 1.31 In answering paragraph 4.2.6.1.1 of plaintiffs' complaint, defendants admit the same.

16 1.32 In answering paragraph 4.2.6.1.2 of plaintiffs' complaint, defendants admit only the first
17 sentence. With respect to the second sentence, defendants admit that AMEC concluded that the slope
18 hazard on the site is low and deny that AMEC concluded that "any such hazard will be mitigated as
19 part of quarrying operations."
20

21 1.33 In answering paragraph 4.2.6.2.1 of plaintiffs' complaint, defendants admit the same
22 except defendants are without information or knowledge sufficient to form a belief as to the truth of
23 the allegations in the final sentence thereof, and therefore deny the same.
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1 1.34 In answering paragraph 4.2.6.2.2 of plaintiffs' complaint, defendants admit only the
2 first sentence. With respect to the remaining allegations of said paragraph, defendants are without
3 information or knowledge sufficient to form a belief as to the truth of said allegations, and therefore
4 deny the same.
5

6 1.35 In answering paragraph 4.2.6.2.3 of plaintiffs' complaint, defendants are without
7 information or knowledge sufficient to form a belief as to the truth of said allegations, and therefore
8 deny the same.

9 1.36 In answering paragraph 4.2.6.2.4 of plaintiffs' complaint, defendants admit the first
10 sentence. With respect to the remaining allegations of said paragraph, defendants admit that the
11 wetland mitigation plan includes both onsite and offsite mitigation but defendants are without
12 information or knowledge sufficient to form a belief as to the truth of the remaining allegations of
13 said paragraph, and therefore deny the same.
14

15 1.37 In answering paragraph 4.2.6.2.5 of plaintiffs' complaint, defendants are without
16 information or knowledge sufficient to form a belief as to the truth of said allegations, and therefore
17 deny the same.

18 1.38 In answering paragraph 4.2.6.2.6 of plaintiffs' complaint, defendants deny the same.

19 1.39 In answering paragraph 4.2.6.3.1 of plaintiffs' complaint, defendants admit the same.

20 1.40 In answering paragraph 4.2.6.3.2 of plaintiffs' complaint, defendants admit the same.

21 1.41 In answering paragraph 4.2.6.3.2 (being the second of said paragraphs denominated
22 "4.2.6.3.2") of plaintiffs' complaint, defendants admit only that Environ concluded that there are no
23 permanent water wells within the footprint of the proposed New Shine Quarry. With respect to the
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1 remaining allegations of said paragraph, defendants are without information or knowledge sufficient
2 to form a belief as to the truth of said allegations, and therefore deny the same.

3 1.42 In answering paragraph 4.2.6.3.4 of plaintiffs' complaint, defendants admit only that
4 Environ concluded that there will be no appreciable long term changes to runoff resulting from the
5 addition of impervious surfaces at the Site. With respect to the remaining allegations of said
6 paragraph, defendants are without information or knowledge sufficient to form a belief as to the truth
7 of said allegations, and therefore deny the same.
8

9 1.43 In answering paragraph 4.2.6.4.1 of plaintiffs' complaint, defendants admit the same.

10 1.44 In answering paragraph 4.2.6.4.2 of plaintiffs' complaint, admit only that Environ
11 concluded that there will be no direct impacts or loss of designated critical habitat or habitat that is
12 essential to any federally- or state-listed threatened or endangered species resulting from the proposed
13 mine operations. With respect to the remaining allegations of said paragraph, defendants are without
14 information or knowledge sufficient to form a belief as to the truth of said allegations, and therefore
15 deny the same.
16

17 1.45 In answering paragraph 4.2.6.5.1 of plaintiffs' complaint, defendants admit the same.

18 1.46 In answering paragraph 4.2.6.5.2 of plaintiffs' complaint, defendants are without
19 information or knowledge sufficient to form a belief as to the truth of said allegations, and therefore
20 deny the same.
21

22 1.47 In answering paragraph 4.2.6.5.3 of plaintiffs' complaint, defendants admit only that the
23 language in the said paragraph paraphrases the conclusion in AMEC Geomatrix's report. With
24 respect to the remaining allegations of said paragraph, defendants are without information or
25 knowledge sufficient to form a belief as to the truth of said allegations, and therefore deny the same.
26

1 With respect to the allegations set forth in the footnote to said paragraph, defendants respond that the
2 same sets forth statements of law to which no responsive pleading is required. To the extent that a
3 responsive pleading is required, defendants admit that the law states what it states, and deny each and
4 every remaining allegation of said paragraph.
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6 1.48 In answering paragraph 4.2.6.5.4 of plaintiffs' complaint, defendants admit only that
7 said paragraph paraphrases the conclusion in AMEC Geomatrix's report. With respect to the
8 remaining allegations of said paragraph, defendants are without information or knowledge sufficient
9 to form a belief as to the truth of said allegations, and therefore deny the same.

10 1.49 In answering paragraph 4.2.6.6.1 of plaintiffs' complaint, defendants admit only that the
11 language in the said paragraph paraphrases statements made in the Centre Pointe report. With respect
12 to the remaining allegations of said paragraph, defendants are without information or knowledge
13 sufficient to form a belief as to the truth of said allegations, and therefore deny the same.
14

15 1.50 In answering paragraph 4.2.6.6.2 of plaintiffs' complaint, defendants admit only that the
16 language in said paragraph corresponds with Centre Pointe's purported research activities, as set forth
17 in their report. With respect to the remaining allegations of said paragraph, defendants are without
18 information or knowledge sufficient to form a belief as to the truth of said allegations, and therefore
19 deny the same.
20

21 1.51 In answering paragraph 4.2.6.6.3 of plaintiffs' complaint, defendants admit only that
22 said paragraph paraphrases the conclusions in Centre Pointe's report. With respect to the remaining
23 allegations of said paragraph defendants are without information or knowledge sufficient to form a
24 belief as to the truth of said allegations and therefore deny the same.
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1 1.52 In answering paragraph 4.2.6.7.1 of plaintiffs' complaint, defendants admit only that
2 plaintiffs engaged TSI. With respect to the remaining allegations of said paragraph defendants are
3 without information or knowledge sufficient to form a belief as to the truth of said allegations and
4 therefore deny the same.
5

6 1.53 In answering paragraph 4.2.6.7.2 of plaintiffs' complaint, defendants admit only that
7 said paragraph describes the scope of the analysis performed by TSI. With respect to the remaining
8 allegations of said paragraph, defendants are without information or knowledge sufficient to form a
9 belief as to the truth of said allegations, and therefore deny the same.
10

11 1.54 In answering paragraph 4.2.6.7.3 of plaintiffs' complaint, defendants admit only that the
12 language in said paragraph corresponds with TSI's purported research activities. With respect to the
13 remaining allegations of said paragraph, defendants are without information or knowledge sufficient
14 to form a belief as to the truth of said allegations, and therefore deny the same.
15

16 1.55 In answering paragraph 4.2.6.7.4 of plaintiffs' complaint, defendants admit only that
17 said paragraph paraphrases the opinions and assumptions of TSI. With respect to the remaining
18 allegations of said paragraph, defendants are without information or knowledge sufficient to form a
19 belief as to the truth of said allegations, and therefore deny the same
20

21 1.56 In answering paragraph 4.3.1 of plaintiffs' complaint, defendants admit the same.
22

23 1.57 In answering paragraph 4.3.2 of plaintiffs' complaint, defendants respond that the same
24 sets forth statements of law to which no responsive pleading is required. To the extent that a
25 responsive pleading is required, defendants admit that the law states what it states, and deny each and
26 every remaining allegation of said paragraph.

1 1.58 In answering paragraph 4.3.3 of plaintiffs' complaint, defendants respond that the same
2 sets forth statements of law to which no responsive pleading is required. To the extent that a
3 responsive pleading is required, defendants admit that the law states what it states, and deny each and
4 every remaining allegation of said paragraph.
5

6 1.59 In answering paragraph 4.3.4 of plaintiffs' complaint, defendants respond that the same
7 sets forth statements of law to which no responsive pleading is required. To the extent that a
8 responsive pleading is required, defendants admit that the law states what it states, and deny each and
9 every remaining allegation of said paragraph. Defendants deny the allegations in the final sentence
10 of said paragraph.
11

12 1.60 In answering paragraph 4.4.1 of plaintiffs' complaint, defendants admit the same.

13 1.61 In answering paragraph 4.4.2 of plaintiffs' complaint, defendants admit that the same
14 accurately quotes a portion of the DS, and deny the remaining allegations of said paragraph.
15

16 1.62 In answering paragraph 4.4.3 of plaintiffs' complaint, defendants respond that the same
17 sets forth statements of law to which no responsive pleading is required. To the extent that a
18 responsive pleading is required, defendants admit that the law states what it states, and deny each and
19 every remaining allegation of said paragraph.
20

21 1.63 In answering paragraph 4.4.4 of plaintiffs' complaint, defendants deny the same except
22 to admit that DCD did not request public comment prior to issuing the DS.

23 1.64 In answering paragraph 4.4.5 of plaintiffs' complaint, defendants deny the same.

24 1.65 In answering paragraph 4.4.5.1 of plaintiffs' complaint, defendants admit only that
25 plaintiffs' environmental analyses and environmental checklist speak for themselves as to their
26 contents, and deny all of the remaining allegations of said paragraph.

1 1.66 In answering paragraph 4.4.5.2 of plaintiffs' complaint, defendants admit that the
2 entitlement of plaintiffs to mine at the site pursuant to the diminishing asset doctrine has been settled
3 but deny that plaintiffs have all necessary regulatory approvals and entitlements to mine the property
4 and therefore deny the second sentence of said paragraph. Defendants deny all of the remaining
5 allegations of said paragraph.
6

7 1.67 In answering paragraph 4.4.5.3 of plaintiffs' complaint, defendants deny the same.

8 1.68 In answering paragraph 4.4.5.4 of plaintiffs' complaint, defendants respond that the first
9 sentence thereof sets forth statements of law to which no responsive pleading is required. To the
10 extent that a responsive pleading is required, defendants admit that the law states what it states, and
11 deny each and every remaining allegation of said sentence. Responding to the second sentence of
12 said paragraph, defendants are without information or knowledge sufficient to form a belief as to the
13 truth of the statement that IMQ's operations will comply with applicable air quality standards and
14 therefore deny the second sentence thereof. Defendants deny the third sentence thereof.
15

16 1.69 In answering paragraph 4.4.5.5 of plaintiffs' complaint, defendants deny the first
17 sentence thereof. Defendants are without information or knowledge sufficient to form a belief as to
18 the truth of the remaining allegations of said paragraph, and therefore deny the same.
19

20 1.70 In answering paragraph 5.1.1 of plaintiffs' complaint, defendants respond that the same
21 sets forth statements of law to which no responsive pleading is required. To the extent that a
22 responsive pleading is required, defendants admit that the law states what it states, and deny each and
23 every remaining allegation of said paragraph. Defendants further specifically deny the next-to-last
24 sentence thereof.
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26

1 1.71 In answering paragraph 5.1.2.1 of plaintiffs' complaint, defendants respond that the
2 same sets forth statements of law to which no responsive pleading is required. To the extent that a
3 responsive pleading is required, defendants admit that the law states what it states, and deny each and
4 every remaining allegation of said paragraph, except to admit that the County has not approved or
5 denied the Stormwater Permit Management Application.
6

7 1.72 In answering paragraph 5.1.2.2 of plaintiffs' complaint, defendants respond that the
8 same sets forth statements of law to which no responsive pleading is required. To the extent that a
9 responsive pleading is required, defendants admit that the law states what it states, and deny each and
10 every remaining allegation of said paragraph.
11

12 1.73 In answering paragraph 5.1.2.3 of plaintiffs' complaint, defendants respond that the
13 same sets forth statements of law to which no responsive pleading is required. To the extent that a
14 responsive pleading is required, defendants admit that the law states what it states, and deny each and
15 every remaining allegation of said paragraph.
16

17 1.74 In answering paragraph 5.1.3.1 of plaintiffs' complaint, defendants deny the same.

18 1.75 In answering paragraph 5.1.3.2 of plaintiffs' complaint, defendants deny the same.

19 1.76 In answering paragraph 5.1.3.3 of plaintiffs' complaint, defendants deny the same.

20 1.77 In answering paragraph 5.1.3.4 of plaintiffs' complaint, defendants deny the same.

21 1.78 In answering paragraph 5.1.3.5 of plaintiffs' complaint, defendants deny the same.

22 1.79 In answering paragraph 6.1.1 of plaintiffs' complaint, defendants hereby incorporate
23 their responses to all preceding allegations of plaintiffs' complaint.

24 1.80 In answering paragraph 6.1.2 of plaintiffs' complaint, defendants deny the same.

25 1.81 In answering paragraph 6.1.3 of plaintiffs' complaint, defendants deny the same.
26

1 1.82 In answering paragraph 6.1.4 of plaintiffs' complaint, defendants deny the same.

2 1.83 In answering paragraph 6.1.5 of plaintiffs' complaint, defendants admit that this Court
3 may review the DS and deny each of the remaining allegations of said paragraph.

4 1.84 In answering paragraph 6.2.1 of plaintiffs' complaint, defendants hereby incorporate
5 their responses to all preceding allegations of plaintiffs' complaint.

6 1.85 In answering paragraph 6.2.2 of plaintiffs' complaint, defendants deny the same.

7 1.86 In answering paragraph 6.2.3 of plaintiffs' complaint, defendants deny the same.

8 1.87 In answering paragraph 6.2.4 of plaintiffs' complaint, defendants deny the same.

9 1.88 In answering paragraph 6.2.5 of plaintiffs' complaint, defendants deny the same.

10 1.89 Except to the extent specifically admitted herein, defendants deny each and every other
11 remaining allegation of plaintiffs' complaint.
12
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14 **II. AFFIRMATIVE DEFENSES**

15 By way of further answer, and as affirmative defenses, defendants allege as follows:

16 2.1 Plaintiffs have failed to state a claim upon which relief can be granted;

17 2.2 Plaintiffs have failed to mitigate their damages;

18 2.3 Plaintiffs' claims are barred by the doctrine of laches;

19 2.4 Plaintiffs' claims are barred by plaintiffs' own course of conduct;

20 2.5 The damages alleged to have been sustained by the plaintiffs were proximately caused or
21 materially contributed to by the negligence or actions of persons, including plaintiffs, over whom the
22 defendants had no control, or right of control;
23

24 2.6 Plaintiffs have failed to exhaust available administrative remedies;

25 2.7 Plaintiffs' claims are not ripe;
26

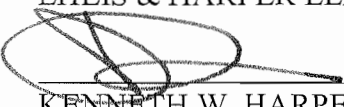
1 3.4 Jefferson County is entitled to reasonable costs and reasonable attorney's fees incurred
2 herein against the counterclaim defendants jointly and severally as may be allowed by RCW
3 64.40.020 and RCW 4.84.185 in an amount to be determined by the Court at trial or further
4 proceeding herein.
5

6 WHEREFORE, defendants having fully answered the plaintiffs' complaint and having
7 asserted their affirmative defenses, and defendant Jefferson County having asserted its counterclaim,
8 pray as follows:

- 9 1. For dismissal of plaintiffs' complaint with prejudice;
10 2. For an award of all reasonable costs and reasonable attorney's fees incurred herein as may
11 be provided for by applicable law, and for judgment against plaintiffs as counterclaim defendants
12 jointly and severally for the same; and
13
14 3. For such other and further relief as the Court deems just and equitable.

15 DATED THIS 1st day of September, 2010.

16
17 MENKE JACKSON BEYER
18 EHLIS & HARPER LLP

19 
20 KENNETH W. HARPER
21 WSBA #25578
22 Attorneys for Defendants
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