

# Exhibit A

1                   BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

2 STATE OF WYOMING

3 IN RE: BROOK MINE APPLICATION)  
4 ) Civil Action No. 16-1601  
5 )

IN RE: BROOK MINE APPLICATION)

) Civil Action No. 16-1601

)

6                               TRANSCRIPT OF HEARING PROCEEDINGS  
VOLUME II OF II

TRANSCRIPT OF HEARING PROCEEDINGS  
VOLUME II OF II

VOLUME II OF II

PURSUANT TO NOTICE, duly given to all parties in interest, this matter came on for hearing on the 18th day of August, 2016, at the hour of 9:00 a.m., in the Elk Room, Game and Fish Commission, 5400 Bishop Boulevard, Cheyenne, Wyoming, before the Wyoming Environmental Quality Council. Council members present were Mr. Aaron Clark, presiding, with Dr. David Bagley, Mr. Rich Fairservis, Mr. Tim Flitner, Mr. Nick Agopian, and Ms. Meghan Lally.

PURSUANT TO NOTICE, duly given to all parties in interest, this matter came on for hearing on the 18th day of August, 2016, at the hour of 9:00 a.m., in the Elk Room, Game and Fish Commission, 5400 Bishop Boulevard, Cheyenne, Wyoming, before the Wyoming Environmental Quality Council. Council members present were Mr. Aaron Clark, presiding, with Dr. David Bagley, Mr. Rich Fairservis, Mr. Tim Flitner, Mr. Nick Agopian, and Ms. Meghan Lally.

9 in interest, this matter came on for hearing on the

10 18th day of August, 2016, at the hour of 9:00 a.m., in

11 the Elk Room, Game and Fish Commission, 5400 Bishop

12 Boulevard, Cheyenne, Wyoming, before the Wyoming

13 Environmental Quality Council. Council members present

14 were Mr. Aaron Clark, presiding, with Dr. David Bagley,

15 Mr. Rich Fairservis, Mr. Tim Flitner, Mr. Nick Agopian,

16 and Ms. Meghan Lally.

17           Mr. Ryan Schelhaas, Attorney for the council;  
18   Mr. Jim Ruby, Executive Director to the council; Mr.  
19   Joe Girardin, Business Office Coordinator, were also in  
20   attendance.

18 Mr. Jim Ruby, Executive Director to the council; Mr.

19 Joe Girardin, Business Office Coordinator, were also in  
20 attendance.

20 attendance.

21

22

23

24

25

1 Q. Can I please call your attention to Big Horn  
2 Coal Exhibit 2. Is that the 1983 release agreement  
3 that you just referenced?

4 A. Yes, this is the May 6, 1983 release  
5 agreement.

6 Q. And you're personally familiar with this  
7 agreement?

8 A. I am.

9 Q. And are you personally familiar with this  
10 agreement because it does control the extent of the  
11 rights which Big Horn Coal and Ramaco/Brook Mine have  
12 to those areas in Section 15 and the north half of 22  
13 that we have been discussing?

14 A. Yes, it does.

15 Q. And is this an agreement between the same  
16 parties as who were parties to the 1954 deed?

17 A. Yes, Sheridan, Wyoming Coal Company, a  
18 Delaware corporation, and Big Horn Coal Company, a  
19 Wyoming corporation.

20 Q. You testified yesterday that there had been a  
21 change with regard to Big Horn Coal surface use of  
22 Section 15 and the north half of Section 22 between  
23 1954 and 1982. Can you please just summarize what that  
24 change of surface use was?

25 A. Between 1954 and 1982, the area here, it was

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, JACKIE GALLO, a Registered Professional  
Reporter and a Notary Public of the State of Colorado,  
do hereby certify that I reported by machine shorthand  
the foregoing proceedings contained herein,  
constituting a full, true and correct transcript.

Dated this 14th day of September, 2017

*Jackie Gallo*



-----  
*Jackie Gallo*  
JACKIE GALLO  
Registered Professional Reporter

My Commission expires November 24, 2019.



# Exhibit B

RELEASE AGREEMENT

THIS RELEASE, made this 6<sup>th</sup> day of May, 1983, is by and between SHERIDAN-WYOMING COAL COMPANY, INC., a Delaware corporation, whose address for purposes of this Release is c/o Kennedy, Connor and Healy, P.O. Box 607, Sheridan, Wyoming 82801 (hereinafter called the "Lessor"), and BIG HORN COAL COMPANY, a Wyoming corporation, of Sheridan, Wyoming, whose address for purposes hereof is One Thousand Kiewit Plaza, Omaha, Nebraska 68131 (hereinafter called the "Lessee").

WITNESSETH:

WHEREAS, Lessor and Lessee entered into a certain Coal Mining Lease on June 28, 1954, and Supplemental Coal Mining Lease Agreements dated February 15, 1956, October 1, 1957, and September 9, 1977, and entered into a certain Coal Mining Lease dated June 12, 1979, to lease certain property situate in Sheridan County, Wyoming, and more particularly described in Schedule "A" attached hereto and by this reference incorporated herein; and

WHEREAS, Lessee exercised by letter on September 5, 1968, the option provision in the Coal Mining Lease dated June 28, 1954, to extend the lease term for fifteen years, which subsequently provided for that lease to terminate on June 30, 1984; and

WHEREAS, Lessor and Lessee desire to settle certain claims with respect to the Leases and to mutually terminate certain obligations thereunder;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained, the Lessor and Lessee agree as follows:

1. Lessee agrees to release, relinquish, and surrender unto Lessor all right, title, interest, claim and demand in and to the Leases insofar as they cover certain coal ("Released Coal") situate in Sheridan County, Wyoming, and more particularly described in Schedule "B" attached hereto and by this reference incorporated herein. Lessee will release its interest in the Released Coal to the Lessor by executing and recording this Release, as provided by Section 34-2-130, Wyoming Statutes (1977).

2. Lessee agrees that its obligations under the Leases with respect to property covered by the present Pits 1, 4, and 5 and more particularly described by Schedule "C" attached hereto and by this reference incorporated herein, will continue in force and effect until June 30, 1984.

3. Lessee agrees to quit, vacate, and surrender possession of the property covered by the present Pit 5 to Peter Kiewit Sons' Co. on June 30, 1984.

4. Lessor shall be entitled to retake possession of any of the above-described Released Coal which is not currently in Lessor's possession immediately upon execution of this Agreement, and shall be relieved from further duties and obligations under the aforementioned lease with respect to the Released Coal.

5. Lessor expressly consents and agrees to allow Lessee to leave intact any and all permanent structures, stockpiles, or spoil materials (referred to herein collectively as "structures and stockpiles") currently located in Sections 9, 10, 14, 15, 21, and the N $\frac{1}{2}$  of Section 22 of T. 57N., R. 84W., 6th P.M., as more specifically identified in Schedule D attached hereto. Unless Lessor's express written consent is received, any temporary or permanent structures or stockpiles located south of old Wyoming State Highway 338 in the SE $\frac{1}{4}$  of Section 22 or the N $\frac{1}{2}$ NE $\frac{1}{4}$  and NE $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 27 shall be located at Lessee's sole risk and expense, and shall be subject to the following express conditions: The placement of any temporary or permanent structures or stockpiles in that part of Section 22 south of old Wyoming State Highway 338 and in Section 27 shall be subject to the terms and conditions of the Road Relocation Agreement, dated August 7, 1981, between Big Horn Coal Company and Sheridan-Wyoming Coal Company. In addition, Lessee agrees to move any structures and stockpiles, including the relocation of Wyoming State Highway 338, as necessary, at its sole cost and expense, at such time as the Lessor, or its successors in interest, presents to Lessee a mine plan approved by all applicable governmental agencies to mine the coal in either Section 22 or 27. If the Lessor makes application for approval of a plan to mine any of the coal in the pertinent portions of these two sections, its application shall in no way be prejudiced by the existence of any structures or stockpiles or the location of State Highway 338 in these sections. Lessee will not oppose any such mine plan before any governmental agency and will take no action, direct or indirect, to induce any federal, state, or local agency to disapprove or otherwise object to such mine plan. If approval is conditioned upon Lessee's consent to remove or relocate the road or any structures or stockpiles, Lessee shall not withhold such consent. Lessor reserves the right to seek specific performance of this obligation in addition to any and all remedies available to Lessor including all remedies provided under the Road Relocation Agreement. The parties recognize that the payment of monetary damages will not adequately and sufficiently compensate Lessor in the event Lessee breaches its obligation to move the highway and any structures or stockpiles located on Section 27 and south of old Wyoming State Highway 338 in Section 22. Lessee expressly waives, and shall be estopped from asserting any defenses to Lessor's claim for specific performance of these obligations. If Lessee breaches

8/7/81 Road Re-  
location Agrmt.

its obligation, Lessor may, at its option, undertake to relocate the highway and move any structures or stockpiles located on said parts or Sections 22 and 27, and Lessee agrees to reimburse Lessor for any and all costs and expenses resulting from such action.

6. With respect to the coal in those areas described in Schedule B that is to be released, Lessee agrees that it will, upon execution of this Agreement, continue to perform within eighteen months thereafter all abandonment, reclamation, and related procedures required by any applicable law or regulation subject to Paragraph 7 of this Release Agreement. With respect to the coal in those areas described in Schedule C that is to be released on June 30, 1984, Lessee agrees that it will, "by no later than December 31, 1985, perform all abandonment, reclamation and related procedures required by any applicable law or regulation. It is understood, however, that the final reclamation for the identified portion of Section 15 which involves the Pit 3 extension out-of-pit stockpile area, will not necessarily be completed until June of 1987 and that that portion identified in the N $\frac{1}{4}$  of Section 22, and north of old Wyoming State Highway 338 in the SE $\frac{1}{4}$  of Section 22 will need to be redisturbed in the early 1990's with placement of out-of-pit soil from the Pit 1 southeast extension. Such reclamation and restoration activities shall be conducted diligently and in compliance with all applicable federal, state or local laws and regulations, as the same may exist or be enacted or amended from time to time.

7. Lessee agrees to apply for transfer to Lessor, at the option of the Lessor, of those permits and governmental authorizations identified in Schedule E attached hereto and incorporated by this reference with respect to the Released Coal within thirty (30) days from the date of execution of this Release Agreement. Lessee also agrees to transfer, at the option of the Lessor, to the Lessor any and all permits and governmental authorizations with respect to the property covered by the present Pits 1 and 4 by June 30, 1984.

8. Lessee hereby agrees to and does hereby assume all liability for and indemnify, protect, save, and hold harmless Lessor and Lessor's assigns and successors from and against any and all losses, costs, expenses, attorneys' fees, claims, demands, suit, and actions of any character whatsoever (hereinafter referred to collectively as "Liabilities") imposed upon or incurred by the Lessor on account of or arising directly or indirectly out of or in connection with the operations of Lessee with respect to the Released Coal. In the event that any Liabilities arise or are contributed to by the negligence of the Lessor, Lessee's liability for payment of such Liabilities shall be reduced in proportion to the amount of Lessor's negligence.

۲۴۰

By:

Title:

By:

Title:

-4-

# Exhibit C



**BIG HORN COAL COMPANY  
10980 SOUTH JORDAN GATEWAY  
SOUTH JORDAN, UT 84095**

January 25, 2017

Wyoming Department of Environmental Quality  
Land Quality Division  
200 W. 17<sup>th</sup> Street  
Cheyenne, WY 82002

ATTN: Mr. Alan Edwards, Assistant Administrator

**RE: Objections to Proposed Brook Mine Permit Application, Sheridan County,  
Wyoming**

Dear Mr. Wendtland,

Big Horn Coal Company (BHCC) writes to provide objections to the Brook Mine permit application.

During the course of our review, we discovered that the information was inconsistent among the locations noted in the public notice. We advised Brook Mine's legal counsel of the inconsistency on December 20, 2016. We are not aware if the information was updated to correct the inconsistency between the locations.

Our objections are based upon what BHCC believes to be the most accurate, up-to-date information and relate primarily to the permit application's lack of adequately addressing hydrologic issues that could significantly affect existing and future water rights, the quantity and quality of surface water and groundwater within and adjacent to BHCC, the potential for coal seam fires to erupt in both the open pit and subsurface openings and the potential for miner safety and environmental harm proposed in the permit Mine Plan. The objections are referenced to text section headings, exhibits and addenda of the permit application Mine and Reclamation Plan.

**Objection No. 1 – Mine Plan & Rec Plan Review**

Big Horn Coal has reviewed the proposed mine and reclamation plan and is concerned with the general lack of detail contained in the proposed plan. It appears that no sampling, testing or analytical work of any sort has been performed to support the surface and highwall mine designs and plans. It is Big Horn Coal's opinion that excavating in the area, surrounding the Big Horn Mine will create a large safety concern and environmental

liability as the TR-1 trench cut could become inundated with water from the historic backfill of the BHCC spoils of Pit 1 and Pit 2.

BHCC would like to put on record that it is providing written notice of its concerns so Brook Mine and other affected parties have notice and are aware of these issues and that Big Horn Coal is not responsible for any personal, property or environmental damage or other loss due to the disturbance activities associated with the Brook Mine, its affiliated companies or successors in interest.

BHCC has not consented to overlapping permit boundaries nor has it been indemnified of any disturbance related to Brook Mine's proposed activities as it relates to the reclamation obligations and BHCC's reclamation liabilities.

**Objection No. 2 – Section MP.4; Exhibit MP.4-1; Section MP.5; Section MP.13; Addendum MP-6**

Section MP.4 and Exhibit MP.4-1 provide plans for the development of a highwall mining trench through and the development of highwall mining panels beneath reclaimed backfill of BHCC Pits 1 and 2 adjacent to Goose Creek and the Tongue River in the southeastern portion of the Brook Mine permit area. The trench would penetrate through the bottom of the backfill allowing mining of Carney coal found about 70 feet beneath the backfill. The backfill of the proposed trench area averages about 90 feet thick. The northeast corner of the highwall panel area appears on Exhibit MP.4-1 to be equivalent to the Brook Mine permit boundary, and would be less than 100 feet from the bank of the Tongue River. On Figure MP-6.1-1 of Addendum MP-6, the highwall mining panels are shown even closer to the Tongue River channel, and the reason for the disparity between the figure and Exhibit MP.4-1 is unexplained. BHCC is very concerned over and objects to the permit's disturbance, affected and permit boundaries all being equivalent to the mining panel boundary in this most environmentally sensitive area adjacent to the bank of the Tongue River. The affected area boundary shown on Exhibit MP.4-1 around the other proposed mining panels typically extends well beyond the disturbance boundary for reasons unexplained in the Mine Plan.

Mine Plan Section MP.4, together with all Mine Plan text inclusive of Section MP.13 and Addendum MP-6, are silent on the subject of the special textural and hydrologic characteristics of the proposed southeastern highwall mining area in Sections 15 and 22, T57N, R84W. The area is unique in that the strata overlying the coal to be mined includes a thick layer of unconsolidated, saturated backfill exhibiting shallow groundwater elevations of 20 feet or less below ground surface where existing ground elevations are 3600 feet and lower. The water surface in BHCC's postmining Reservoir 14 in the SESE Sec. 15 is an expression of the groundwater table. The groundwater throughout Pits 1 and 2 is directly connected to and recharged by Goose Creek and the Tongue River, as documented in the Big Horn Mine's Reclamation History, Groundwater Restoration Demonstration (GRD) approved by the WDEQ/LQD as Change No. 9 to Permit 213-T5 in August 2002. The GRD verifies that the Pits 1 and 2 backfill resaturated very rapidly, indicative of unconsolidated, porous material connected to perennial stream recharge sources nearby. Mine Plan Section MP.4 is silent on the subject of managing massive sloughing that may occur in the saturated and nonsaturated backfill of the southeastern highwall mining area as the highwall mining trenches are excavated through the backfill to the base of Carney coal. Section MP-5 of the Mine Plan also fails to present an



alternative water management and treatment plan to be followed should groundwater inflow volumes exceed infrastructure design capacities.

BHCC finds the assessment of potential land subsidence and the remediation plan presented for land subsidence in Addendum MP-6 to be inadequate relative to protecting the value and function of its lands, particularly for protecting the stability of the Tongue River and the quality of shallow groundwater connected to the river. Addendum MP-6 does not absolutely discount the possibility of land subsidence above the highwall miner holes, nor does it provide a plan for the discontinuation of any southeastern area highwall mining should subsidence occur in the lowlands contiguous to Tongue River or Goose Creek. The environmental implications of subsidence developing adjacent to Tongue River and Goose Creek are so severe as to warrant, at a minimum, a permit commitment to temporarily or permanently cease all mining throughout all of the southeastern highway mining area should any subsidence develop in any of the area at any time. The permit's plan for "backfilling will commence within 12 months of a subsidence location being identified if self-healing is not providing sufficient remediation" (Section MP-6.4, Addendum MP-6) is environmentally unacceptable for the southeastern highwall mining area because: 1) the stability and alignment of Goose Creek and Tongue River could be jeopardized should subsidence occur, and; 2) any groundwater quality impacts associated with underground coal fires developing in mine openings would have direct and essentially immediate access to Goose Creek and Tongue River via the shallow groundwater table.

The subsidence control plan presented in Addendum MP-6 is inadequate. It appears that no analytical work of any sort (sampling, material testing, etc.) has been performed in support of the highwall mining design presented in the mine plan. Additionally, it also appears that no geotechnical work of any sort has been performed. Addendum MP-6 discusses general assumptions for highwall mining penetration depths, entry widths, cutting heights and support pillars. This information is presented somewhat anecdotally and in the case of the support pillars, it states that "Support pillars will be designed to have a width equal to or exceeding the maximum extraction thickness anticipated in a highwall mining hole based on the mine's geologic model. This width-to-height ratio of at least 1:1 results in pillar stability factors that exceed recommended values suggested by National Institute for Occupational Safety and Health's (NIOSH) ARMPS-HWM stability program for the overburden thicknesses expected. Pillar dimension will also be in accordance with Brook Mine's Ground Control Plan approved by MSHA."

No material strength data (coal strength, overburden strength, interburden strength, etc.) is provided in the mine plan document. BHCC suspects that no material strength information has been gathered or determined. Can the NIOSH stability factors actually be achieved? This is unknown at this point as no definitive geotechnical and material strength data has been presented in the mine plan. The coals present in this area are of a younger age. Younger age coals have much weaker strengths than older age, deeper coals and it is quite possible that the safety and stability factors needed to safely and effectively execute the highwall mining approach presented in the mine plan cannot be achieved. BHCC insists that further analysis be performed to definitively prove that the web and barrier pillars dimensions are appropriate and that they will meet NIOSH's minimum stability factor of 1.3.

Very little highwall mining has been performed in Wyoming. Highwall mining has been performed relatively recently at the Bridger Mine, which is located in Southwest Wyoming.

While the exact details are unknown, BHCC is aware of at least one “cascading pillar failure” at that operation and fortunately, there were no injuries. It is suspected that this failure was caused by improper pillar layout and design. BHCC is concerned that the anecdotal mine design presented in this document is inadequate and must be performed with proper analytical data.

### **Objection No. 3 – Section MP.5.9; Section MP.6.2; Addendum MP-3; Section MP.8**

The groundwater model of Addendum MP-3 was improperly constructed and executed because the model does not recognize the unique textural and hydraulic characteristics of saturated backfill in BHCC’s Pits 1 and 2, but instead simulates the backfill in the same fashion as native overburden strata (see Section 4.0 of Addendum MP-3). Section 2.5.1 of Addendum MP-3 states “no site-specific hydraulic conductivity information is available for the over/interburden (model) layers”. In fact, hydraulic conductivity data are available for the backfill from former monitor wells in the Pit 1 and Pit 2 area and for the Plachek Pit backfill. That data are provided in the GRD referenced under Objection No. 1 above. Hydraulic conductivity values assigned to the spoils together with all other “overburden” strata in the model are very small (less than one tenth) relative to those shown for backfill in the GRD. The groundwater model ignores determination of the spatial extent of drawdown in the water table of Pit 1 and Pit 2 backfill that is connected to the water table in Tongue River and Goose Creek alluvium, which in turn is supplied by flows in both streams. The text of Section MP.6.2.3 states “Drawdowns of the overburden were not modeled and only isolated sands where encountered are expected to be affected”.

Section 4.9 and Figure 4.9-11 of Addendum MP-3 shows where the groundwater model was used to predict water table drawdown in Tongue River valley alluvium at “alluvial target” points distributed over nearly a six-mile reach of the valley floor. Section 4.9 states that “the maximum impact to the Tongue River alluvium is conservatively estimated to reach 2.5 feet of drawdown near the river”. Addendum MP-3 and Section MP.6.2 provide no description or drawing of the spatial distribution of drawdown during mining in BHCC’s saturated backfill or in the alluvium of Tongue River and Goose Creek that is hydraulically connected to the backfill. Neither does the groundwater model explore potential permanent groundwater elevation changes associated with the highwall mining panels acting as drains to the backfill and alluvial water table via the highwall trench pits. Water table drawdown approaching 2.5 feet in the alluvium of Tongue River valley over a valley distance of nearly six miles would in fact represent a very large volume water loss that would likely cause stream flow losses.

The groundwater model of Addendum MP-3 fails to report groundwater inflow rates to any of the proposed mine excavations. Section MP.8 of the Mine Plan states “It is estimated that the total water use will be approximately 400 million gallons per year.” This is equivalent to an average daily use rate of 760 gallons per minute, about 3.36 acre-feet per day, or about 1,226 acre-feet per year. The Mine Plan does not identify the specific source(s) of the water beyond mentioning that “Industrial water will be obtained from groundwater wells or from water collected in sediment and flood control reservoirs”. The groundwater model of Addendum MP-3 does not include the effects of withdrawing any groundwater from wells for industrial or other uses, nor does it include the effects of dewatering wells mentioned in Section MP.5.9. In short, the Mine Plan is devoid of a hydrologic budget identifying specific groundwater sources, the quantity of industrial

water projected to be available from flood control reservoirs and sediment ponds, and the determination of what would remain of groundwater and surface water supplies while supplying the industrial water needs. BHCC is concerned that the value of its surface estate and future options for developing its surface estate could be marginalized by such a large water use demand, especially considering that water demands at Wyoming coal mines are primarily consumptive.

#### **Objection No. 4 – Section MP.11; Addendum MP-5**

The fire control plan referenced in Section MP.11 and presented in Addendum MP-5 describes measures to be taken to prevent and control fires in the mine pits, fires in the mine's processing and shop facilities, equipment fires and rangeland fires. BHCC objects, however to the Mine Plan and Addendum MP-5 not providing plans to control and extinguish new subsurface coal fires that may develop or existing subsurface coal fires that may become rekindled or enlarged as a result of the highwall mining panels that will be opened outboard of the highwall trench openings.

Attachment 1 provided with this Objection No. 4 is a drawing showing the approximate extent of underground coal mine fires in the area of proposed highwall mining in Sections 10 and 15, T57N, R84W, as reported by the U.S. Geological Survey in 1980. The fires in this particular area originated with mining of the Monarch coal. This and other nearby historic underground mines have long been known to exhibit numerous subsidence features and underground coal mine fires, and in the late 1980s BHCC received approval from the WDEQ/LQD to permanently place nearly 10 million bank cubic yards of overburden over the area shown on Attachment 1 in an attempt to reclaim the subsidence and control the fire. That unique reclamation feature is known as the Pit 3 Subsidence Dump in Big Horn Mine's reclamation history. The proposed highwall mining will develop mine openings in the Carney and Masters coal seams beneath the Monarch seam in areas that are known to still exhibit evidence of underground coal fires. Plumes of steam and smoke have been observed again over the general area of Sections 10 and 15 this winter of 2016-2017. These observations indicate that, in places, the perimeter of the historic subsurface coal seam fires has expanded notable distances from the referenced 1980 boundary delineation.

The subsidence control plan of Addendum MP-6 does little to guarantee the long-term protection of BHCC's surface estate especially where highwall mining panels will be driven beneath underground coal mine fires having a long history of activity. Section MP-6.2 of Addendum MP-6 provides numerical calculations for subsidence chimney heights, but there is no investigation of the potential that the historic mine fires may have compromised the structural integrity of strata underlying the fires and overlying the coals targeted for highwall panel mining (the interburden), leaving the interburden more prone to subside than normal. BHCC is particularly concerned and objects to highwall mining beneath or adjacent to pre-existing underground mine fires because of the potential for oxygen and water to be transmitted from the highwall mining openings to "hotspots" in the seams already burning via highwall trenches or via fractured or subsided interburden above the panel openings. BHCC strongly disagrees with the legitimacy of the plan stated in Section MP-6.4 of Addendum MP-6 which states "Backfilling will also be performed if it is determined that the introduction of water and oxygen could contribute to spontaneous ignition of the remaining coal not extracted from the highwall mining operations". BHCC

contends it to be common knowledge in the mining industry that oxygen and water are key catalysts in causing spontaneous combustion in coal, whether the coal be in mine openings or in stockpiles. BHCC also believes that the introduction of additional water and air to a coal seam already on fire is especially problematic.

Section MP-6.3 of Addendum MP-6 commits to maintaining highwall mining mapping and subsidence documentation in a subsidence report that will be available for inspection. BHCC objects to the Mine Plan not committing to freely submitting the highwall mining mapping and subsidence documentation report to all owners of surface estate within the Brook Mine permit area. BHCC also objects to the fact that the Subsidence Monitoring and Assessment reporting of Section MP-6.3 does not include mapping, photographing and describing all evidence of surface or underground coal fires occurring within the Brook Mine permit area whenever such evidence becomes available throughout the life of the mining and post-mining periods.

#### **Objection No. 5 – Section MP.1.3; Exhibit MP.1-1**

The mine plan on Page MP-5, identifies the “disturbance boundary includes all lands that will be physically and directly disturbed during mining.” Exhibit MP.1-1 shows the disturbance boundary as a dashed orange symbol that outlines an entire pink hatched polygon, identified as “DISTURBANCE FOR YEAR 2016,” located in Sections 15, 21, 22 and 27 of Township 57 North, Range 84 West.

Within the pink hatched polygon, there are existing assets to Big Horn Coal Company. These assets include a rail spur, water tank, pump house, access roads, fences and land owned by BHCC. Also within the pink hatch polygon is the mainline of the Burlington Northern Railroad and associated lands owned by Burlington Northern.

Based on the definition of Disturbance Boundary as indicated on page MP-5, does Brook Mine indeed have the rights to physically and directly disturb these lands within the pink hatched polygon? From the public record, BHCC has not been able to determine whether Brook Mine has secured surface owner consent from all surface owners, including the railroad, for these activities

#### **Objection No. 6 – Section MP.1.5**

The mine plan states on Pages MP-5 and continue onto page MP-6 that “Coal will either be temporarily stored in the pit or directly hauled off site.”

There is no mention in the permit as to where the coal will be hauled off site. Additionally there is no known agreement with the County of Sheridan, indicating approval to haul mineral across county roads.

#### **Objection No. 7 – Section MP.1.9**

The mine plan states on Pages MP-7 that “The Brook Mine will operate in conjunction with Taylor Quarry (Permit No. SP-757)... The Mine will work with Taylor Quarry to minimize impacts on Taylor Quarry’s operation.”

The following paragraph states “The Brook Mine will not obstruct Big Horn Coal’s (Permit 231-T8) Shop, Bridge, and Rail Road Siding as they exist in Big Horn Coal’s 2015 Annual Report. An access road equivalent to the existing improved road will be provided if proposed stockpiles or pits should restrict the existing access as shown on Exhibit MP.1-1.

To remain consistent with the statements made in regards to the Taylor Quarry, Big Horn Coal requests that the paragraph referencing Big Horn to be replaced and restated as follows:

“The Brook Mine will operate in conjunction with the Big Horn Mine and that the Brook Mine will work with Big Horn Coal to minimize impacts to Big Horn Coal operations. Specifically, Brook Mine will not obstruct Big Horn Coal’s (Permit 213-T8) Shop, Bridge, and Rail Road Siding as they exist in Big Horn Coal’s 2015 Annual Report. An access road equivalent to the existing improved road will be provided if proposed stockpiles or pits should restrict the existing access as shown on Exhibit MP.1-1.”

Big Horn Coal requests that the text be updated in the previous paragraph to reference the correct permit number for Big Horn Coal Company as (Permit 213-T8).

#### **Objection No. 8 – Section MP.3.1, Section MP.3.1.3 – Roads; Exhibit MP.3-1**

As stated in the mine plan on Page MP-11, “Primary roads are any road used for transporting mineral or spoil, or frequently used for access or other purposes for a period in excess of six months, or roads to be retained for postmining use.”

WDQ/LQD Rules and Regulations (R&R) Chapter 4, Section 2(j)(vii):

Primary roads.

(A) Certification. The construction or reconstruction of primary roads shall be certified in a report to the Administrator by a registered professional engineer. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan. The report shall be available for review at the mine site within 30 days following the completion of construction of each primary road.

Mine plan Exhibit MP.3-1, titled Transportation Network identifies proposed primary haulroads as a solid black line, for the use of transporting mineral or spoil. Yet, there are no haulroads identified in the SE quarter of Section 15, Sections 21, 22 or 27. If the Brook Mine plans to haul mineral or spoil materials from the proposed Trench Cut (TR-1), there should be indication of a primary haul road leaving TR-1, accompanied by a certification of the road design. Unless there are no plans of transporting mineral or spoil from the TR-1 area.

#### **Objection No. 9 – Section MP.4.2.3 – Stockpiles; Exhibit MP.4-3**

The mine plan states on Page MP-16, “Stockpiles will not be constructed on unsuitable backfill.”

Mine plan Exhibit MP.4-3, Stockpile Locations identifies Topsoil Stockpile TS-1B proposed location within an area known as the Placheck Pit. This area was mined by Big Horn Coal from 1956 through 1963. It is Big Horn Coal's understanding that the proposed area beneath TS-1B is indeed unsuitable material and that topsoil should not be placed in the area as proposed on Exhibit MP.4-3. Additionally, Big Horn Coal is not aware of a surface owner consent document between Brook Mining Company and the Burlington Northern Railroad that would allow the crossing of the mainline with loaded haul trucks.

**Objection No. 10 – Section MP.6.1; Exhibit MP.7-1**

Exhibit MP.7-1 represents the operational Surface Water and Groundwater Monitoring Program. There are only two downstream surface water monitoring sites, identified as Big Horn No. 2 Reservoir and Big Horn No. 14 Reservoir. The text on page MP-41 of the Mine Plan states "However, the Big Horn No. 2 Reservoir and Big Horn No. 14 Reservoir will be disturbed by facilities disturbance."

Big Horn Coal believes there is inadequate downstream monitoring in the proposed plan. Upon disturbing of Big Horn No. 2 Reservoir and Big Horn No. 14 Reservoir, there will be no sites downstream of the Brook Mine to collect adequate surface and groundwater data to prove that there are no off site environmental impacts from the proposed operation.

**Objection No. 11 - Addendum MP-2, Exhibit MP-2**

The proposed Sediment Pond SP-8 is located within the current postmine approved Reservoir 14 constructed by BHCC. The bottom elevation of Reservoir 14 is currently at 3575 with a peak elevation at 3589. Sediment Pond SP-8 bottom elevation is proposed at 3585 with a high water elevation proposed at 3590. It is noted below the area capacity table on Exhibit 13, "1. Pond is entirely incised. No Spillway hydraulics are provided."

These elevations lead BHCC to believe the plan for construction of SP-8 will require Reservoir 14 to be completely backfilled prior to construction of SP-8. BHCC requests that the reconstruction and the water quality within Reservoir 14 be restored to pre-mining conditions before final bond release is allowed.

**Objection No. 12 – Exhibit MP.4-1; Exhibit MP.4-2; Exhibit MP.4-5; Exhibit RP.5-1**

The proposed mine plan indicates that topsoil and overburden removal will occur upon the BHCC Property and within the TR-1 area in years 1 and 2 of operation. Exhibit MP.4-1 shows coal removal to occur over the same first two years of operation. Exhibit MP.4-5 shows the overburden backfill sequence within TR-1 will occur in year 2. Exhibit RP.5-1 shows the topsoil replacement sequence within the BHCC Property occurring in years 12-16.

BHCC objects to this timeline of topsoil replacement upon its property. The BHCC property is the first to be disturbed and the last to be reclaimed. BHCC asks the question as to why every other proposed disturbance area is backfilled and topsoiled within a 2 to 3 year time frame except around the BHCC facilities area. The topsoil replacement timeframe is unacceptable and not contemporaneous in accordance with the Surface Mining Control and Reclamation Act, (SMCRA) and it is requested that the final

reclamation around the BHCC Property be within the 2 to 3 year time frame, similar to all other areas around the mine.

**Objection No. 13 – Section MP.1.2.1; Figure MP.1-2.**

Section MP.1.2.1 discusses the work that will be done to “prepare for highwall mining” and describes how the “trenches” will be constructed to “create working areas for highwall mining equipment”. This section of the mine plan states that “The highwalls will have a 65-degree bench slope to provide a stable trench environment. Where the trench intersects the burnt Monarch coal seam, a 35-foot wide safety bench will be added. Where the Carney and Masters coal seams come close to convergence, a vertical wall will be used to maintain the desired pit width.” Earlier, under Objection No. 2, BHCC discussed the presence of saturated backfill where trench TR-1 is planned to be excavated. Section MP.1.2.1 does not address in any fashion the fact that trench TR-1 will be constructed in an area containing a significant amount of saturated backfill material. In our opinion, utilizing a 65-degree bench slope in this material will be impossible as the saturated backfill will not safely stand at this angle. Furthermore, no geotechnical information (sampling, testing or analysis) supporting slope stability assumptions for the surface mining or highwall mining operations have been provided in the mine plan. BHCC finds the information regarding highwall bench slope angles presented in MP.1.2.1 to be inadequate given the variability of non-coal material that will be encountered during excavation of trenches in support of the highwall mining operation.

**Objection No. 13 – Section MP.1.2.1; Figure MP.1-2.**

Section MP.1.2.1 discusses the work that will be done to “prepare for highwall mining” and describes how the “trenches” will be constructed to “create working areas for highwall mining equipment”. This section of the mine plan states that “The highwalls will have a 65-degree bench slope to provide a stable trench environment. Where the trench intersects the burnt Monarch coal seam, a 35-foot wide safety bench will be added. Where the Carney and Masters coal seams come close to convergence, a vertical wall will be used to maintain the desired pit width.” Earlier, under Objection No. 2, BHCC discussed the presence of saturated backfill where trench TR-1 is planned to be excavated. Section MP.1.2.1 does not address in any fashion the fact that trench TR-1 will be constructed in an area containing a significant amount of saturated backfill material. In our opinion, utilizing a 65-degree bench slope in this material will be impossible as the saturated backfill will not safely stand at this angle. Furthermore, no geotechnical information (sampling, testing or analysis) supporting slope stability assumptions for the surface mining or highwall mining operations have been provided in the mine plan. BHCC finds the information regarding highwall bench slope angles presented in MP.1.2.1 to be inadequate given the variability of non-coal material that will be encountered during excavation of trenches in support of the highwall mining operation.

**Objection No. 14 – Section MP.4.4.1**

It is a well-known fact within the mining industry that the term “Reserves” connotes that the mineral being extracted can be done so economically. BHCC opines that the mining approach presented in the mine plan cannot be done economically. Based on our internal

knowledge; the operating cost for a contractor to perform highwall mining is in the \$8/Ton to \$12/Ton range, which is very close to the domestic spot price for this type of coal. By the time the other costs for the surface mining to develop the highwall mining, transportation, G&A, etc. are taken into consideration, this operation appears to be completely uneconomical.

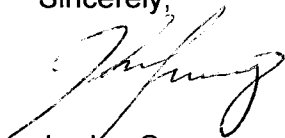
The market for this coal is unclear. The two closest coal mines, Decker and Spring Creek, serve the domestic and international market. Port capacity to the international market is constrained and it is unlikely that Brook Mine will secure access. Domestic demand has been in decline and is significantly oversupplied. Without a definitive market, the Brook Mine is at risk of commencing operations, producing product it cannot sell economically, and reclamation obligations that it cannot fund.

**Objection No. 15 – Section MP.15**

Objection No. 4 above introduces the fact that the underground mine fires in this area are still burning and have expanded. Section MP.15 does not, in any way, address that the burned areas have expanded. A surface mine excavation that comes in contact with a historic mine fire could be catastrophic in many ways, including: impacting the safety of mine workers, damage to equipment, wildfire initiation, etc. BHCC believes this mine plan has not adequately addressed surface mining activities that will occur near underground mines and insists that the Brook Mine operators must perform the necessary testing and analysis to prove that the proposed mine plan will not be impacted by historic mine fires. Specifically, attachment 1 provided with Objection No. 3 above shows that trench TR-2 is planned very near an area that was burning and is likely still burning. Given that the burned area has likely expanded, this area should not be disturbed at all.

In conclusion, Big Horn Coal Company feels strongly that the Brook Mine permit application should not be approved or deemed technically complete. The mine and reclamation plan lack a significant amount of detail that is required for a technical completeness determination, as stated in the above mentioned objections.

Sincerely,

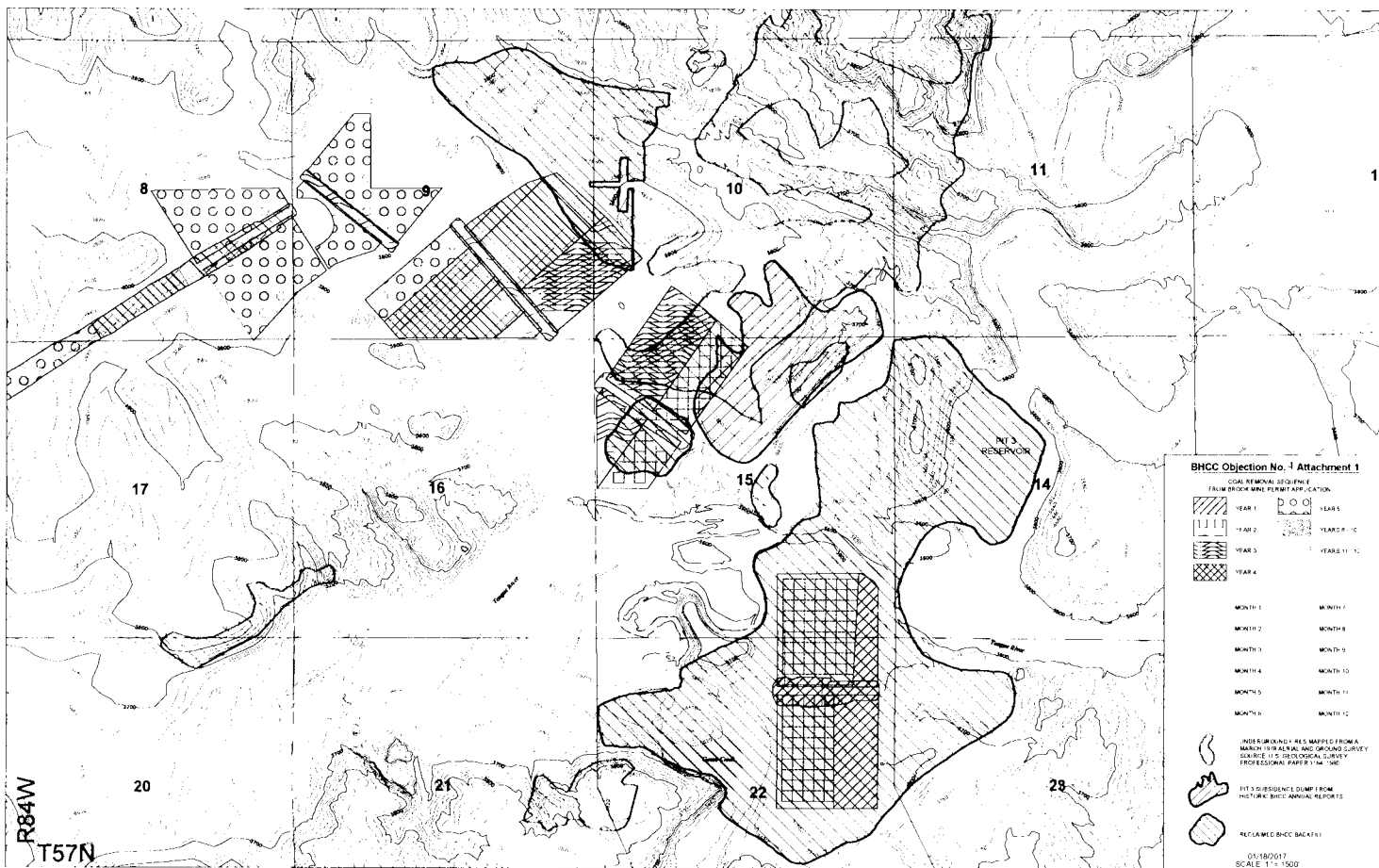
A handwritten signature in black ink, appearing to read 'Jordan Sweeney', written over a horizontal line.

Jordan Sweeney

General Manager  
Big Horn Coal Company

Attachment: BHCC Objection No.4 Attachment 1





**BHCC Objection No. 4 Attachment 1**

COAL REMOVAL SEQUENCE  
FOLLOW BROCK MINE PERMIT APPLICATION

	YEAR 1		YEAR 5
	YEAR 2		YEARS 9-10
	YEAR 3		YEARS 11-12
	YEAR 4		

MONTH 1	MONTH 7
MONTH 2	MONTH 8
MONTH 3	MONTH 9
MONTH 4	MONTH 10
MONTH 5	MONTH 11
MONTH 6	MONTH 12

01/18/2017  
SCALE 1" = 1500'

# Exhibit D

CASE NO. CR-2014-372

BROOK MINING COMPANY,

Plaintiff,

**VS.**

MOTION TO DISMISS

**BIG HORN COAL COMPANY,**

**Defendants.**

The above-entitled matter came on for hearing before the Honorable William J. Edelman, Judge of the Fourth Judicial District of Wyoming, on January 8, 2015 at Sheridan, Wyoming.

The proceedings were reported by Jeff S. Eaton,  
Official Court Reporter for the Fourth Judicial District, as  
hereinafter certified.

## APPEARANCES

The Plaintiff was present and represented by Anthony Todd Wendtland, Wendtland & Wendtland, LLP, Sheridan, Wyoming, and Thomas L. Sansonetti, Holland & Hart, LLP, Cheyenne, Wyoming.

The Defendant was present and represented by Jon T. Dyre and Lynnette J. Boomgaarden, Crowley Fleck PLLP, Billings, Montana.

## EXHIBIT B

Jeff S. Eaton, Official Court Reporter  
307-425-6057  
jeaton@courts.state.wy.us

1 MR. DYRE: Thank you, Your Honor.

2 May it please the Court, Counsel.

3 As you know, I represent Big Horn Coal Company.

4 And Big Horn Coal Company owns some land just outside  
5 of Sheridan on which -- which RAMACO wants to use for a  
6 proposed coal mine.

7 We've referred to that land in the briefs as BHC  
8 Land, I'll do so today.

9 Big Horn Coal Company obtained its interest in land  
10 back in 1954 in a deed from Sheridan-Wyoming Coal Company. And  
11 we've referred to that deed as the 1954 deed. We're not very  
12 imaginative, but that's what we called it.

13 The grantor of the interest with Sheridan-Wyoming  
14 Coal Company and Sheridan-Wyoming Coal Company reserved all  
15 minerals including the coal.

16 In the last few years through I think two  
17 conveniences, RAMAC Wyoming Coal Company, LLC is now the owner  
18 of the mineral interests, including the coal.

19 And I believe that there has now been a lease of the  
20 coal between RAMACO and Brook, which is why the two plaintiffs  
21 in this case.

22 I'm not sure if you saw a reply brief we faxed and  
23 filed it yesterday. But as we mentioned in the brief, Big Horn  
24 Coal Company acknowledges that RAMACO now owns the coal and the  
25 mineral -- minerals. And BHC also acknowledges -- Big Horn

1 Coal Company also acknowledges that under the 1954 deed, RAMACO  
2 has the right, and I quote, To use as much of the surface of  
3 the lands as may be necessary and convenient in order to enable  
4 RAMACO to explore, drill, and extract and remove the coal.

5 Now, it's Big Horn's position that the right to use  
6 the surface is limited to access of the coal that's under the  
7 BHC lands and the adjacent land.

8 It's also Big Horn's position that RAMACO's right to  
9 use the surface to mine is limited by certain legal principles  
10 such as the accommodation doctrine, and it is also limited by  
11 the Wyoming specrum [sic] Section 35-11-406.

12 We also contest the damage limitations that are in  
13 the deed, \$10 per acre, I believe, and so forth.

14 Now, the -- the issues I just mentioned may be issues  
15 before the Court at some point, but right now they're not.

16 Right now, the only issue that's been raised by  
17 RAMACO is whether the mining operations set forth in RAMACO's  
18 pending mine permit applications are within RAMACO's right to  
19 use as much of the surface of the lands as may be necessary and  
20 convenient for exploring, drilling, and extracting the coal.

21 Now, the key words in their requested relief is  
22 "pending". Pending means not yet decided. Pending means we  
23 are waiting for it to happen or yet to happen.

24 Synonyms for the word pending would include future,  
25 contingent, and uncertain. And each of those words appears in

1 the Wyoming Supreme Courts decision in international  
2 Association of Firefighters Local, Union No. 279 versus The  
3 City of Cheyenne, in which the Court used those words in the  
4 following manner: It is well established that a court cannot  
5 declare the rights of parties upon a set of facts which is  
6 future, contingent and uncertain, i.e., pending.

7 Other synonyms for the word pending would include  
8 future or anticipated, where it is used by the Wyoming Supreme  
9 Court in White versus Board of Land Commissioners, where the  
10 court held, "The declaratory judgment act does not give the  
11 courts power to determine future rights or anticipated disputes  
12 or controversies, i.e., the Court does not have power to hear  
13 pending rights.

14 The Court's jurisdiction under the Declaratory  
15 Judgment Act is limited to determining those rights that  
16 currently exist. And at the current time RAMACO doesn't have  
17 the right to operate a mine.

18 The Wyoming Department of Environmental Quality is  
19 the only entity that can give RAMACO and Brook the right to  
20 start mining on Big Horn Coal's property.

21 As we pointed out in our brief, that is a lengthy  
22 process that will probably take at least a year and maybe more  
23 before we know whether RAMACO will be allowed to mine at all,  
24 and if so, what operations will be actually be permitted and  
25 allowed by Wyoming DEQ.

1           Now, from the standpoint of judicial economy, it  
2 makes little sense for us to litigate whether or not RAMACO can  
3 use Big Horn's property for a mine that may never happen.

4           From the standpoint of the jurisdictional limitations  
5 on the Court, the fact that there is no -- we don't yet know  
6 whether RAMACO will be allowed to mine or what they'll be  
7 allowed to do is fatal to the jurisdictional requirements of  
8 the Wyoming Supreme Court.

9           Any decision that you might render in this case now  
10 could be rendered moot. If we take the mining permit and look  
11 at the pending proposed operations.

12           If you were to rule based on that, we have no idea a  
13 year from now they -- he may say either no, you cannot mine at  
14 all, RAMACO, or all those operations you asked for, we don't  
15 approve. And so whatever order you enter would have no effect,  
16 it would be rendered moot.

17           Because we don't know what mining operations might  
18 actually be approved by the DEQ, any ruling you would give at  
19 this point particular point in time would be clearly advisory,  
20 which is clearly not allowed.

21           The most you could do at this point is say, Well, if  
22 the DEQ actually approves RAMACO's plans to do highwall mining,  
23 which is also known as coffin pit mining.

24           The most the Court could do is say, Well, if that's  
25 allowed it would or would not, however you rule, would be

1 within RAMACO's rights under the 1954 deed.

2 The "if" in that decision is fatal to jurisdiction.  
3 The "if" is what shows that there is no relief that can be  
4 granted at this time because it renders any decision that you  
5 may reach on these hypothetical pending facts, purely advisory  
6 and outside the Court's jurisdiction.

7 Now, as I said earlier, Big Horn Coal Company doesn't  
8 contest what the deed says. It says what it says.

9 But what the deed says is that RAMACO has the right  
10 to use as much of the surface of the lands that may be  
11 necessary convenient.

12 The problem with the words like "necessary" and  
13 "convenient" is you have to apply them to something, you have  
14 to look at -- well, you have to know what you're looking at to  
15 determine whether or not it's necessary or convenient, or, as  
16 they say, "The devil's in the detail."

17 Here, we don't know all the details because the  
18 detail's pending.

19 RAMACO's right to mine is a contingent right. The  
20 operations are anticipated. They are not yet vested, they are  
21 not yet determined.

22 And until pending rights and pending operations  
23 become actual, the Court cannot grant final relief in this  
24 case.

25 It's been suggested in the briefs that "I filed this



1 motion", "We filed this motion as a stall tactic." I didn't.

2 Pointing out a lack of subject matter of jurisdiction  
3 is not a stall tactic.

4 Pointing out a lack of jurisdiction is not only  
5 proper, but I believe it is mandatory, and needs to be raised  
6 at the first opportunity, which we did.

7 Now, in RAMACO's reply brief RAMACO raised some  
8 issues that they thought maybe the Court would have  
9 jurisdiction to hear. They might -- they could probably could  
10 bring a quiet title action, or maybe they could limit relief  
11 being sought to permitting the deed. I don't know what issues  
12 RAMACO might come up with. I only know what RAMACO requested  
13 in the complaint as drafted.

14 And that complaint asked for one thing and only one  
15 thing, and that's a ruling based on mining operations that have  
16 been described in the pending application before DEQ.

17 And for reasons in our brief, and the reason I've  
18 just mentioned, that claim for relief in the complaint fails to  
19 state a claim upon which relief could be granted at this time.

20 Unless you have any questions, that concludes my  
21 comments for the moment.

22 THE COURT: I don't. Thank you.

23 Mr. Wendtland, Mr. Sansonetti, who is responding on  
24 behalf of RAMACO?

25 MR. SANSONETTI: Tony is going to take the lead.

## REPORTER'S CERTIFICATE

STATE OF WYOMING                    )  
  :  SS.  
COUNTY OF SHERIDAN                )

I, Jeff S. Eaton, do certify that I am a Registered Professional Reporter in and for the State of Wyoming.

That as such reporter, I reported the occasion of the proceedings of the above-entitled matter at the aforesaid time and place.

That the proceeding was reported by me in stenotype using computer-aided transcription consisting of pages 2 through 26 inclusive;

That the same constitutes a true and correct transcription of the said proceedings;

That I am not of kin or otherwise associated with any of the parties herein or their counsel, and that I am not interested in the events thereof.

WITNESS my hand at Buffalo, Wyoming, this 10th day of April, 2015.

---

Jeff S. Eaton, RPR

# Exhibit E

**FILED**

**APR 15 2016**

**CROWLEY | FLECK** PLLP  
ATTORNEYS

April 15, 2016

Jim Ruby, Executive Secretary  
Environmental Quality Council

**VIA HAND DELIVERY**

Wyoming Environmental Quality Council  
Attn: Jim Ruby  
125 W. 25<sup>th</sup> Street  
Herschler Building 1W, Room 1714  
Cheyenne, WY 82002

Re: Docket 16-1601: In re Brook Mine Application  
Big Horn Coal Co. Response to  
Brook Mine Request for Order in Lieu of Consent

Dear Mr. Ruby:

Big Horn Coal Company (BHC) hereby submits its timely response to Brook Mining Company, LLC's (Brook) Petition for Order in Lieu of Consent (Petition) in the above-referenced docket. Because a scheduling conference has been set in this matter for April 20, 2016, this response does not specifically address Brook's request for expedited hearing. BHC respectfully reserves all rights to address scheduling issues during the April 20<sup>th</sup> conference call.

**I. Introduction**

BHC is a non-resident, non-agricultural surface landowner entitled to protections afforded by the Environmental Quality Act (EQA) at W.S. 35-11-406(b)(xii).<sup>1</sup> In 1954, BHC purchased surface land and the right to lease and mine the coal under that land from Brook's predecessor, Sheridan-Wyoming Coal Company (SWC). BHC leased and mined coal on the land for more than thirty years. By 1982, BHC had developed facilities which connected the regional coal reserves to the main rail line. For example, BHC had built a bridge across the Tongue River and a rail spur that allowed coal to be hauled on the BNSF main line. Those facilities provided a base from which BHC mined and transported coal leased from SWC and others. Though BHC is not currently actively mining, BHC maintains valuable improvements and infrastructure and has existing rights and obligations pursuant to its existing Mine Permit No. 213-T8. Approximately 370 acres of land encompassed within BHC's existing mine permit overlap with lands included in Brook's mine permit application. Approximately 1,100 acres of BHC surface lands are within the proposed Brook mine permit area.

---

<sup>1</sup> BHC is wholly owned by LHR Coal, LLC (f/k/a AE Coal, LLC) and LHR Coal, LLC is wholly owned by Lighthouse Resources, Inc. (f/k/a Ambre Energy North America, Inc.)

## II. Relevant Facts

By way of background, prior to Brook submitting its mine permit application, AE Coal, LLC, was party to an exploration agreement with Ramaco.<sup>2</sup> That July 2012 exploration agreement, together with all associated permissions for Ramaco to conduct pilot hole and core drilling and other related mineral exploratory and coal prospecting activities on BHC surface lands, expired by its own terms on July 19, 2014. Upon receiving preliminary mine plans from Ramaco in late 2012, BHC expressed in writing its general support of coal mining in the area and, specifically, its support for Ramaco's proposed mining beneath BHC's surface lands located north of the Tongue River.

Also prior to Brook submitting its mine permit application, on March 13, 2013, BHC consented to Ramaco conducting baseline environmental studies and surveys on certain BHC surface lands. Notwithstanding the March 2013 Landowner's Consent Agreement, on April 9, 2013, Ramaco sent a letter to BHC declaring that the June 28, 1954 Warranty Deed (the 1954 Deed) between its predecessors and BHC provides Ramaco "the legal right to access the surface land for core drilling, pre-permit monitoring or any other pre mining activities" without any additional approval or consent from BHC.<sup>3</sup>

Ramaco nevertheless provided BHC with revised, but incomplete, mine plans in the Spring of 2013, and with yet another set of maps and a request for surface owner consent in July 2014. Notably, the surface owner consent request and Form 8 that Ramaco provided BHC on July 23, 2014, did not include a complete mine plan and reclamation plan (collectively, "mine and reclamation plan") as required by W.S. 406(b)(xii)(A). Instead, that request was accompanied by just two maps. The first illustrated mine progression blocks; the second illustrated the Brook mine permit boundary and post mine topography. Based on these materials, BHC understood that Brook's rail spur loadout and facilities would be located on the south side of I-90, along the Tongue River toward the Town of Ranchester. BHC sent a letter to Ramaco on October 9, 2014, confirming that Ramaco's proposed activities on BHC lands south of the Tongue River do not conform to BHC's development plans, that BHC "does not consent to the mining and reclamation plan that is being proposed by the Brook Mine," and that BHC further does not agree with Ramaco's continued assertion that it has the right under the 1954 Deed to make reasonable use of BHC's surface lands for mine planning, mining and mine related facilities and

---

<sup>2</sup> Brook is the developer and operator of coal and coal mining interests owned by Ramaco Wyoming Coal Co., LLC (Ramaco).

<sup>3</sup> This position starkly differed from Ramaco's course of conduct when submitting its Notice of Intent to Explore for Coal By Drilling to DEQ/LQD (Mr. Mark Taylor) on September 21, 2012, in which it referenced the now-expired July 19, 2012 exploration agreement between AE Coal, LLC and Ramaco.

activities without surface owner's consent. Rather than negotiate, Ramaco instead chose to litigate.<sup>4</sup>

BHC received Brook's most recent, incomplete mine and reclamation plan from Brook's consultant, Western Water Consultants Engineering (WWC), on February 5, 2016. WWC's correspondence included a Surface Ownership Request cover letter along with an attached Form 8. BHC's response was requested no later than February 19, 2016. Given BHC's long-standing concerns with Brook's ever-changing plans, BHC responded in a letter dated March 9, 2016, that it would not provide surface landowner consent.

### **III. The Council should deny the requested order in lieu of consent.**

BHC refused to consent to the mine and reclamation plan Brook offered for review on February 5, 2016, and the EQC should deny Brook an order in lieu of BHC's consent to that mine and reclamation plan, for the following reasons:

#### **A. Brook's mine and reclamation plan, as most recently submitted for BHC's consideration, was incomplete and differs significantly from those materials previously provided to BHC and WDEQ/LQD, with no explanation.<sup>5</sup>**

Brook's plans have changed significantly with each new set of information BHC received. None of the plans BHC received were complete and Brook has provided no explanation regarding what has changed over time and why, or how the various plans relate to Brook's initial and/or amended mine permit application. BHC did not receive a copy of Exhibit 3-3 – Rail Loadout Facility in the materials it received on February 5, 2016. Moreover, to this day, Brook has failed to outline its operations relative to BHC's activity within the overlapping mine permit area. That failure, together with Brook's otherwise incomplete and ever-changing mine and reclamation plan, stands in direct contrast to the cooperation and agreement contemplated by DEQ/LQD SOP 2.1 and the spirit and intent of W.S. 35-11-406(b)(xii)(A).

#### **B. Brook's mine plan and reclamation plan are not sufficiently detailed to illustrate the full proposed surface use, including proposed route of egress and ingress.**

Being a mine permit holder and long-standing mine operator, BHC is knowledgeable of the mine and reclamation plan detail necessary for a surface owner to fully and fairly assess the full scope

---

<sup>4</sup> Though not disclosed in Brook's Petition, the extent of Brook's right to use BHC surface lands under the 1954 Deed currently is being litigated pursuant to a Declaratory Judgment Complaint filed by Brook in *Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372 (Fourth Judicial District Court, Sheridan County).

<sup>5</sup> The various mine and reclamation plan materials Brook has provided to BHC and WDEQ/LQD also differ from the proposed mine operations Brook has documented with the District Court.



of intended surface use and the foreseeable impacts of that use on the surface landowner's operations. Viewing the materials BHC has received from Brook through the lens of its mining experience, BHC would characterize the Brook mine and reclamation plan as generic, with little more than boilerplate, standardized descriptions. Specific insufficiencies in Brook's mine and reclamation plan include, but are not necessarily limited to the following:

1. The Transportation Network Exhibit 3-1 shows haul roads that terminate in the middle of BHC's permit boundary prior to a loadout and/or facilities location. The first materials BHC received from Ramaco indicated Ramaco would build loadout facilities along I-90 near the BNSF mainline. The next set of materials provided to BHC and the District Court indicated that Ramaco intended to build a new rail spur on BHC-owned surface. The most recent information Ramaco provided to BHC shows haul roads that terminate in the middle of BHC's permit boundary with no loadout or rail facilities in proximity. BHC questions how Brook plans to ship coal to its customers without loading coal onto a train. The location of all anticipated haul roads are material to BHC's consideration of the mine and reclamation plan.

2. Exhibit 3-3 – Railroad Loadout Facility is listed in the Table of Contents, but BHC did not receive a copy of Exhibit 3-3 in the materials it received on February 5, 2016. The text of the materials BHC received says coal will be placed in pit crushers to haul off-site. However, the materials provide no explanation or illustration of where or how that haulage will occur other than the reference to a railroad loadout facility in the table of contents. BHC questions how Brook plans to ship coal to its customers without rail loadout facilities and how Brook's mine permit application can be deemed complete without haul roads leading to a rail loadout facility. This omission is material to BHC's consideration of the mine and reclamation plan.

3. The text of the mine and reclamation plan on page MP-7, Section MP.2 – Mine Facilities, discusses the location of a Change House, Equipment Service Shop, Additional Facilities, Fuel Station, Cistern, Septic Tank and Leach Field. However, none of these facilities are identified on Exhibit MP.2-1. Does Brook intend to provide the locations of these key surface mine facilities for review? These omissions are material to BHC's consideration of the mine and reclamation plan.

**C. Brook's proposed use of BHC surface lands will substantially prohibit BHC operations.**

Given present coal industry market conditions and the resulting uncertainty as to whether, when, and how Brook's mine and reclamation plans might come to fruition, it is inherently difficult for BHC or the EQC to assess the full scope of impact that Brook's mine and reclamation plan will have on BHC operations. Brook is well aware that BHC owns and controls access to valuable infrastructure and improvements on its surface lands. Namely, BHC surface lands within Brook's proposed mine permit area include an industrial shop, a rail spur facility, and a bridge across the Tongue River (collectively, BHC Facilities).

BHC has existing and planned future uses of its infrastructure and improvements – uses which are supported by surface rights BHC claims pursuant to a 1983 Release Agreement under which Ramaco's predecessor granted specific surface protections and property rights to BHC.<sup>6</sup> BHC currently leases its shop facility and is negotiating to lease its rail spur to BNSF. In addition, BHC could in the future develop coal it leases from the State of Wyoming – proven economic reserves of 40 million tons. BHC would use its surface lands and BHC Facilities to access the coal and for a rail load-out facility. BHC's future plans to mine the state coal are as reasonably expected to occur as are Brook's mine plans.

As BHC understands Brook's most recent mine plan, Brook will disturb approximately 460 acres near BHC Facilities. By removing and storing topsoil and overburden related to its Phase I highwall mining, Brook would restrict access to and utilization of BHC Facilities, as well as BHC grazing land and additional BHC land north of the Tongue River, for more than twenty (20) years. Accordingly, Brook's use would substantially prohibit BHC operations.

**D. Brook's proposed reclamation plan would not reclaim the surface to BHC's proposed future use as soon as feasibly possible.**

Brook's mining plan contemplates beginning highwall mining on BHC surface lands, directly south of BHC's shop. The disturbance area appears to encompass all of the BHC property south of the Tongue River except for approximately 20-40 acres around the BHC Facilities. The overburden removal sequence for the initial highwall trench TR-1, is proposed to begin twelve (12) months following permit approval. The spoil backfilling sequence for TR-1 is twelve (12) months after overburden removal. The topsoil replacement sequence is contemplated to take an additional twenty (20) years after TR-1 is backfilled. Brook's reclamation plan would result in the disturbance of BHC surface lands and restricted access to BHC Facilities for 20-30 years. Brook's reclamation plan not only fails to reasonably accommodate BHC's existing land use, it also effectively blocks BHC efforts to secure approval for reasonably foreseeable future land use.

**E. Brook has overstated the scope of its legal authority.**

---

<sup>6</sup>BHC asserts that the 1983 Release Agreement, not the 1954 Deed, controls the surface rights of BHC and Ramaco. The 1983 Release Agreement states in relevant part: "SWC expressly consents and agrees to allow BHC to leave intact any and all permanent structures, stockpiles, or spoil materials (referred to herein collectively as 'structures and stockpiles') currently located in Sections 9, 10, 14, 15, 21, and the N1/2 of Section 22 of T. 57 N., R. 84 W., 6<sup>th</sup> P.M. ... as more specifically identified in Schedule D attached hereto...." The scope and effect of the 1983 Release Agreement is among the issues to be determined by the District Court in *Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372.



Brook repeatedly asserts in its Petition that it not only owns the coal but also has broad rights to use BHC surface as necessary or convenient for mining pursuant to the 1954 Deed. Interestingly, however, nowhere in its Petition does Brook disclose that the 1954 Deed, together with the 1983 Release Agreement, is the subject of active litigation. (See footnotes 4 and 6, above.) BHC does not contest Brook's ownership of coal deposits subject to its mine permit application. BHC does, however, ardently dispute Brook's assertion that Brook's proposed mine and reclamation plan contains permitted uses of the surface under the 1954 Deed.

Issues pertaining to the scope of use, if any, permitted by the 1954 Deed are subject to the District Court's jurisdiction. As of this date, the District Court has denied both Brook's and BHC's competing motions for summary judgment; no formal discovery plans have been made and no trial date has been set. For these reasons, and those set forth in the BHC letters to WDEQ/LQD dated March 6, 2015, and to Mr. Andrew Kuhlmann, Senior Assistant Attorney General, dated December 16, 2015 (attached hereto as Exhibits A and B, respectively), it is wholly inappropriate and disingenuous for Brook to suggest that the EQC should give any weight or authority whatsoever to the existence of, or its alleged rights under, the 1954 Deed. BHC's surface owner rights under W.S. 35-11-406(b)(xii) are independent of any interpretation or operation of the 1954 Deed. By Brook's own admission, the Wyoming Attorney General has concluded the same.

**F. Brook has not posted a bond as required by W.S. 35-11-416 and any order in lieu of consent should be conditioned upon the prior posting of an adequate surface owner protection bond.**

Pursuant to W.S. 35-11-416, in addition to the performance bond Brook must post to secure reclamation costs, Brook also must execute a bond with the State for the use and benefit of BHC and other split estate surface owners within the proposed mine permit boundaries "in an amount sufficient to secure the payment for any damages to the surface estate, to the crops and forage, or to the tangible improvements of the surface owner." The statute makes clear that the surface owner protection bond must be in place prior to issuance of a mine permit. The statute does not otherwise specify when the surface owner protection bond must be posted or by what process the administrator will determine the bond amount.

The statute does specify that the amount of the surface owner protection bond "shall be commensurate with the reasonable value of the surrounding land, and *the effect of the overall operation of the landowner*," and that "[f]inancial loss resulting from disruption of the surface owner's operation shall be considered as part of the damage." (Emphasis added.) The surface owner protections offered by the bond and the determination of the bond amount closely align with certain required elements for an order in lieu of consent (e.g. the effect of the proposed use on the surface owner's operations and the extent to which reclamation accommodates approved future uses as soon as feasibly possible). Accordingly, BHC requests that if the EQC should

conclude that an order in lieu of consent is warranted, any such order be issued only upon Brook's posting of the requisite surface owner protection bond, and that the parties have an opportunity to present further evidence to the administrator and/or EQC to support what bond amount is necessary to provide the surface owner statutory protections, and when such bond should be posted.

#### IV. Conclusion

The applicable provisions of the EQA say nothing about balancing the rights of mineral owners and surface owners, veto power, or economic leverage as Brook has suggested. Instead, the EQA explicitly requires that Brook's mine permit application include an instrument of consent from the surface landowner, even a non-resident or non-agricultural landowner, if different from the owner of the mineral estate. W.S. 35-11-406(b)(xii). If Brook cannot obtain all necessary surface landowner consent to its proposed mining plan or reclamation plan, or both, the EQC shall issue an order in lieu of consent if, and only if, it finds the statutory elements have been met. *Id.* The EQA, W.S. 35-11-416, further mandates that "a permit shall not be issued without the execution of a bond or undertaking to the state, whichever is applicable, for the use and benefit of the surface owner or owners of the land, in an amount sufficient to secure the payment for any damages to the surface estate, to the crops and forage, or to the tangible improvement of the surface owner." For the reasons stated above, Brook has not satisfied the statutory elements for an order in lieu of consent. Nor has Brook posted a bond for the use and benefit of BHC in an amount sufficient to protect BHC's interests.

BHC will defend its surface landowner rights under the EQA to: (1) receive and have an adequate opportunity to review the complete and accurate mine and reclamation plan that Brook provided to the WDEQ/LQD in support an approved draft mine permit for publication, and which is sufficiently detailed to assess the scope and duration of impact on BHC operations; (2) ensure that Brook's proposed use will not substantially prohibit BHC's operations; (3) ensure that Brook's proposed reclamation will accommodate approved future use of BHC surface as soon as feasibly possible; (4) ensure that Brook is not permitted to use the 1954 Deed to expand its rights as a mine permit applicant under the EQA; and (5) ensure that payment for foreseeable damages to BHC surface lands from Brook's proposed mine operations are appropriately secured. BHC looks forward to a full and fair opportunity at hearing to demonstrate to the EQC that an order in lieu of consent should not issue in this case, including the right to present additional objections, evidence and exhibits, and to cross examine witnesses.

Sincerely,



Lynne Boomgaarden  
of Crowley Fleck PLLP

Enclosures

cc: Brook Mining Company, c/o Isaac N. Sutphin, P.C., Holland & Hart, LLP (via email)  
Padlock Ranch, c/o Mistee Elliott and Hal Corbett, Lonabaugh & Riggs, LLP (via email)  
Dr. David Bagley, Chairman – Wyoming Environmental Quality Council, c/o Jim Ruby  
(via hand delivery)  
Todd Parfitt, Director – Wyoming Department of Environmental Quality, c/o Jim Ruby  
(via hand delivery)

CROWLEY | FLECK PLLP  
ATTORNEYS

Lynne Boomgaarden  
237 Storey Boulevard, Ste. 110  
Cheyenne, WY 82009  
Office: 307-426-4100  
Direct: 307-426-4104  
Cell: 307-631-1070  
lboomgaarden@crowleyfleck.com

March 6, 2015

Department of Environmental Quality  
Land Quality Division  
Attn: Mr. Alan Edwards, Deputy Director and Acting Administrator  
122 West 25th Street  
Herschler Building  
Cheyenne, WY 82002

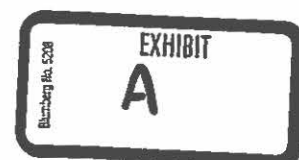
Re: Concerns Regarding Brook Mining Mine Permit Application and Exploratory  
Drilling Activity within Big Horn Coal Co. Mine Permit Area:  
Permit No. 213-T8

Dear Mr. Edwards:

As you are aware, Brook Mining Company, LLC ("Brook Mining")<sup>1</sup> submitted an application for a permit to mine, TFN # 62/025, to the Land Quality Division of the Wyoming Department of Environmental Quality ("DEQ/LQD") on October 31, 2014 ("Brook Mining Application"). My client, Big Horn Coal Company ("BHC")<sup>2</sup>, did not consent to the mine plan and reclamation plan that Brook Mining provided to BHC for review because the proposed activities will unreasonably interfere with BHC's extensive surface infrastructure improvements and its existing use and development plans for the area, including but not limited to the exercise of BHC's rights and obligations under its *existing* Mine Permit No. 213-T8. As you are also aware, Brook Mining, through its agents, representatives and/or contractors, has recently undertaken drilling activity pursuant to a Coal Notification on surface lands owned by BHC in the N1/2N1/2, Section 21, Township 57 North, Range 84 West. BHC was never notified of, did not consent, and, due to its regulatory obligations under Mine Permit No. 213-T8, strenuously objects to any and all such activity without at least having been provided notice and a plan of operations. This letter serves to document BHC's legal

<sup>1</sup> Brook Mining is the developer and operator of coal and coal mining interests owned by Ramaco Wyoming Coal Co., LLC ("Ramaco").

<sup>2</sup> BHC is wholly owned by AE Coal, LLC and AE Coal LLC is wholly owned by Ambre Energy North America, Inc.



and operational concerns with the Brook Mining mine plan, reclamation plan, permit application adjudication and exploratory drilling activity.

### **Background**

Prior to submission of the Brook Mining Application, AE Coal, LLC, was party to an exploration agreement with Ramaco. That exploration agreement, together with all associated permissions for Ramaco to conduct pilot hole and core drilling and other related mineral exploratory and coal prospecting activities on BHC surface lands, expired by its own terms on July 19, 2014. Also prior to submission of the Brook Mining Application, on March 13, 2013, BHC consented to Ramaco conducting baseline environmental studies and surveys on certain BHC surface lands. Notwithstanding the March 2013 Landowner's Consent Agreement, on April 9, 2013, Ramaco sent a letter to BHC declaring that a 1954 deed between its predecessors and BHC provides Ramaco "the legal right to access the surface land for core drilling, pre-permit monitoring or any other pre mining activities" without any additional approval or consent from BHC. This position starkly differed from Ramaco's course of conduct when submitting its Notice of Intent to Explore for Coal By Drilling to DEQ/LQD (Mr. Mark Taylor) on September 21, 2012, in which it referenced the now-expired July 19, 2012 exploration agreement between AE Coal, LLC and Ramaco.

BHC has expressed in writing to Brook Mining its general support of coal mining in the area and, specifically, its support for Brook Mining's proposed mining beneath BHC's surface lands located north of the Tongue River. However, on October 9, 2014, BHC sent a letter to Ramaco confirming that Ramaco's proposed activities on BHC lands south of the Tongue River do not conform to BHC's development plans, that BHC "does not consent to the mining and reclamation plan that is being proposed by the Brook Mine," and that BHC does not agree with Ramaco's assertion that it has the right under the 1954 deed to make reasonable use of BHC's surface lands for mine planning, mining and mine related facilities and activities without surface owner's consent. The extent of Brook Mining's right to use BHC surface lands under the 1954 deed currently is being litigated pursuant to a Declaratory Judgment Complaint filed by Brook Mining in *Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372, and will be determined by the Fourth Judicial District Court for Sheridan County, Wyoming.<sup>3</sup>

---

<sup>3</sup> In its district court complaint, Brook Mining also reserved the right to condemn BHC's property, including its surface rail and bridge infrastructure. Brook Mining's apparent intent to condemn BHC's existing surface infrastructure is curiously inconsistent with the Brook Permit Application, which proposes to mine under the existing surface infrastructure, thereby rendering that valuable infrastructure useless.



**BHC's Surface Owner Rights under W.S. 35-11-406(b)(xii)**

DEQ/LQD has no authority to adjudicate property rights disputes. Conversely, the District Court's determination of Brook Mining's rights under the 1954 deed has no bearing on BHC's rights as a non-resident, non-agricultural landowner under W.S. § 35-11-406(b)(xii). Ramaco admitted this point in its letter to Ambre Energy dated April 9, 2013, wherein Randall W. Atkins, Ramaco CEO, asserted Ramaco's rights under the 1954 deed and further stated,

**Ambre, as a surface owner, has the right at the appropriate time to review our plans and consent, or not consent. If Ambre refuses to offer its consent to a compliant mine and reclamation plan, Ramaco can, and will, petition the Wyoming Environmental Quality Council (EQC) for an order in lieu of consent.**

Despite acknowledging BHC's statutory rights, following BHC's refusal to consent to the mine plan and reclamation plan Brook Mining provided BHC to review (which as noted below was different from the mine plan and reclamation plan Brook Mining submitted to DEQ/LQD with its mine permit application), Brook Mining apparently provided the 1954 deed to DEQ/LQD in lieu of BHC's statutory right of consent. See Adjudication, Appendix A Index, Brook Mining Application. BHC admits that it does not possess the right of consent to entry by definition under W.S. 35-11-406(b)(xi), and by virtue of the surface use reservation in 1954 deed. Nevertheless, *nothing* in the Wyoming surface coal mining statutes permits a mine permit applicant to utilize a deed, with a general reservation of surface rights, to strip a surface owner under W.S. 35-11-406(b)(xii) of its rights to *review* a compliant mine and reclamation plan and to *refuse to consent* to such plan, or to *exempt* a mine permit applicant from its obligation to petition the EQC and provide sufficient evidence upon which the EQC can make the findings necessary under W.S. 35-11-406(b)(xii)(A)-(E) to support an order in lieu of consent.

According to W.S. 35-11-406(b)(xii), the EQC shall issue an order in lieu of consent if it finds that (A) the mining plan and the reclamation plan have been submitted to the surface owner for approval; (B) the mining plan and reclamation plan are detailed so as to illustrate the full proposed surface use, including proposed routes of egress and ingress; (C) the use does not substantially prohibit the operations of the surface owner; (D) the proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible; and (E) for surface coal mining operations, that the applicant has the legal authority to extract coal by surface mining methods. Absent a specific exception in the statute, it is not reasonable to infer that the Wyoming Legislature intended that a deed executed and recorded long before enactment of Wyoming's surface coal mining statutes, by parties who no longer own the minerals or the surface, should negate the EQC's statutory obligation to consider, among other things, whether a mine plan proposed in 2014 would substantially prohibit the present surface owner's operations.

Federal surface coal mining statutes allow a mine permit applicant to submit a conveyance that *expressly grants or reserves the right to extract the coal by surface mining methods* in lieu of written consent from the surface owner. *See* 30 U.S.C.A. § 1260 (b)(6) (“SMCRA”). Wyoming’s surface coal mining statutes, which preceded SMCRA, contain no such provision, and despite adopting other post-SMCRA amendments, the Wyoming legislature has never seen fit to adopt a similar conveyance in lieu of a consent provision. In *Belle Fourche Pipeline Co. v. Wyoming*, 766 P.2d 537, 548 (Wyo. 1988), the Wyoming Supreme Court noted that “[e]ven though this provision is included in the SMCRA, surface owner consent was not one of the provisions specifically required to be included in a state program.” *Id.* According to the court, “Wyoming went even further than the SMCRA in its effort to provide more specific protection of the surface owner” by imposing a qualified requirement that a non-resident, non-agricultural surface owner be “granted the right to a hearing if they object to the proposed mining activities, after which the EQC still could issue an order in lieu of consent.” *Id.* at 547-48. The requirement set forth in W.S. 35-11-406(b)(xii) is clear and unambiguous. Brook Mining cannot avoid this requirement by providing DEQ/LQD reservation language in a 1954 deed.

### Overlapping Permits

As expressly stated in LQD’s Coal Standard Operating Procedure No. 2.1 – Coal Permit Content and Review Procedures Relating to Abutting and Overlapping Coal Permit Area Boundaries, “overlapping permit boundaries create unusual permitting, field inspection, annual reporting, and reclamation performance bonding challenges.” According to SOP No. 2.1 both permittees have joint responsibility and control over shared lands and *“there must be cooperation and agreement between the two permittees. Both permits must have mutually compatible Mine and Reclamation Plans that outline the respective operations within the overlapping permit area.”* SOP 2.1, Section II.D. Brook Mining has been uncooperative. There is no agreement between Brook Mining and BHC; and the mine and reclamation plans provided by Brook Mining to BHC failed entirely to outline the respective operations of Brook Mining and BHC within the overlapping permit area. Indeed, the mine plan Brook Mining provided to BHC for review differs from that presented in the Brook Mine Permit Application.<sup>4</sup> These varied representations of Brook Mining’s plans stand in direct contrast to the cooperation and agreement contemplated by SOP 2.1.

---

<sup>4</sup> Similarly, the map Brook Mining attached to its written offer to purchase 452 acres of BHC’s land is not the same as a supplemental map Brook mining filed in the lawsuit – the map Brook Mining filed with the court shows an area of high wall mining in the north half of Section 22, while the map enclosed with the offer letter does not show any mining in Section 22, but shows the Phase I rail spur being built over the high wall mining area. The map submitted to the DEQ with the Brook Mining permit application shows high wall mining in the north half of Section 22 as well.

SOP 2.1, Section III.B.1.b., Permit Adjudication Section, further provides that a new permit application "must contain a written statement from Permittee 2 that all application elements addressing shared land are acceptable to Permittee 2." It appears that the Brook Mine Permit Application Adjudication Section contains no such written statement from BHC.

SOP 2.1, Section III.B.1.c., Mine Plan, further provides that the Mine Plan for each permit containing an overlapping permit area must include a separate section for each permit area boundary configuration that includes a brief discussion of how the mining operations coincide for the joint use areas. The Brook Mine Permit Application Mine Plan provided to BHC for review contained no such discussion.<sup>5</sup>

SOP 2.1, Section III.B.1.d., Reclamation Plan, further provides that the Reclamation Plan for each permit containing an overlapping permit area must include a separate section for each permit area boundary configuration that includes a map specifying the reclamation responsibility of each permittee. The Brook Mine Permit Application Reclamation Plan provided to BHC for review contained no such map. Nor did the Brook Mine Permit Application provided to BHC for review address the respective performance bond obligations of BHC and Brook Mining within the overlapping permit boundaries as required by SOP 2.1, Section III.B.1.e.

SOP 2.1, Section II.B., Definitions, states that where overlapping permit areas occur, the LQD's position is that both permittees have joint responsibility and control over shared lands. BHC's Mine Permit No. 213-T8 expressly provides that BHC shall conduct their operation in a manner which prevents violation of any applicable State or Federal law. If a violation is found to exist in the overlapping permit area, it is uncertain what effect this will have on BHC, BHC's mining permit, and BHC's insurance coverage, especially if the violation cannot be

---

<sup>5</sup> The proposed "joint use" of greatest concern to BHC is that area south of the Tongue River and adjacent to BHC's existing shop facilities. The area was mined in the early to late 1970's and has since been backfilled with unconsolidated, saturated spoil materials with a direct connection to the Alluvial Valley Floor (AVF) of the Tongue River. Mining the Carney and Masters coal seams in this area would require a significant amount of de-watering and discharges into the Tongue River, causing catastrophic damage to the hydrologic balance. Additional monitoring wells in the immediate vicinity of the proposed coffin pit trench cut would be necessary to quantify the amount of water that would be intercepted.

In addition, Brook Mining has proposed stockpiling material on BHC lands in the immediate vicinity of wetlands and an AVF, without consulting with BHC regarding alternate locations that would be more environmentally friendly and would also accommodate BHC business development strategies.

Finally, Brook Mining's proposed mine plan would render reclamation of the historic Placheck Pit (AML Project No. 171 – Northeast Wyoming Coal) on BHC surface lands impossible.

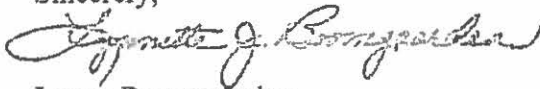


directly associated with one permittee's actions. BHC has many concerns surrounding its potential liability for Brook Mining's activities performed in the overlapping permit area. Additionally, although SOP 2.1 does not specifically address LQD-authorized activities conducted pursuant to a Coal Notification within an existing mine permit boundary, BHC asserts that cooperation between the parties is equally important under those circumstances as the same concerns regarding liability arise for activities performed by Brook Mining pursuant to their Coal Notification in BHC's mine permit area.

Requested Action

BHC sincerely appreciates LQD's responsiveness to BHC's inquiries to date. For the reasons stated above, BHC respectfully requests that DEQ/LQD (1) expressly acknowledge BHC's right, pursuant to W.S. 35-11-406(b)(xii), to review and consent to the mine plan and reclamation plan Brook Mining submitted to DEQ/LQD; (2) absent BHC's consent to a compliant mining plan and reclamation plan, require Brook Mining to petition to the EQC for an order in lieu of consent; and, (3) require that Brook Mining provide BHC (i) a list of wells and plan of operations, and (ii) prior notice of entry, under any existing or future Coal Notification that permits activities within the boundaries of BHC Mine Permit No. 213-T8.

Sincerely,



Lynne Boomgaarden  
Crowley Fleck, PLLP

cc: Andrew Kuhlmann  
Mark Rogaczewski

CROWLEY | FLECK PLLP  
ATTORNEYS

Lynne Boomgaarden  
237 Storey Boulevard, Ste. 110  
Cheyenne, WY 82009  
Office: 307-426-4100  
Direct: 307-426-4104  
Cell: 307-631-1070  
lboomgaarden@crowleyfleck.com

December 16, 2015

Mr. Andrew Kuhlman  
Senior Assistant Attorney General  
Kendrick Building  
2320 Capitol Avenue  
Cheyenne, WY 82002  
[andrew.kuhlmann@wyo.gov](mailto:andrew.kuhlmann@wyo.gov)

Via Electronic and U.S. Mail

Re: Continued Concerns Regarding Lack of Surface Owner Consent and other  
Representations Related to the Brook Mining Mine Permit Application

Dear Mr. Kuhlmann:

As you are aware from prior communications, my client, Big Horn Coal Company ("BHC"), did not consent to the mine plan and reclamation plan that Brook Mining/Ramaco (collectively, "Ramaco") provided to BHC for review because the proposed activities will unreasonably interfere with BHC's extensive surface infrastructure improvements and its existing use and development plans for the area, including but not limited to the exercise of BHC's rights and obligations under its *existing* Mine Permit No. 213-T8. BHC documented its legal and operational concerns with the Ramaco mine plan, reclamation plan, permit application adjudication and exploratory drilling activity in a letter dated March 6, 2015, to Mr. Alan Edwards and copied to you.

BHC recently became aware of certain assertions made by Ramaco to the Wyoming Attorney General and the Department of Environmental Quality Land Quality Division ("DEQ/LQD") in a letter to you from Mr. Tom Sansonetti dated October 13, 2015, and in Ramaco's Round 2 permit review responses.



Accordingly, today's letter is being provided for the purpose of reaffirming BHC's concerns and position regarding the necessity of obtaining the surface owner's consent to mining as required by the Wyoming Environmental Quality Act ("WEQA").

First, notwithstanding Mr. Sansonetti's assertion on behalf of Ramaco that "[t]he 1983 release agreement does not affect any of the rights reserved in the 1954 Deed," and "[t]he 1954 Deed controls the surface use mining rights of Ramaco relative to both Big Horn Coal and Padlock Ranch," the Wyoming district court denied Ramaco's and BHC's competing motions for summary judgment as to those assertions by an order dated September 21, 2015. This matter remains the subject of active litigation before the Fourth Judicial District Court for Sheridan County, Wyoming, in *Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372. As of this date, no formal discovery plans have been made and no trial date has been set. BHC continues to ardently dispute Ramaco's assertion that it has the right under the 1954 deed to use BHC's surface lands to conduct all "necessary or convenient" coal mining activities and that the Ramaco Mine Plan application contains permitted uses of the surface under the 1954 Deed.

Second, as outlined in our March 6, 2015 letter to Mr. Edwards, BHC's surface owner rights under W.S. 35-11-406(b)(xii) are independent of any interpretation or operation of the 1954 deed because *nothing* in the WEQA permits a mine permit applicant to utilize a deed, with a general reservation of surface rights, to strip a surface owner under W.S. 35-11-406(b)(xii) of its rights to *review* a compliant mine and reclamation plan and to *refuse to consent* to such plan, or to *exempt* a mine permit applicant from its obligation to petition the Environmental Quality Council ("EQC") and provide sufficient evidence upon which the EQC can make the findings necessary under W.S. 35-11-406(b)(xii)(A)-(E) to support an order in lieu of consent. Ramaco erroneously relies on *WYMO Fuels, Inc. v. Edwards*, 723 P.2d 1230 (Wyo. 1986) to dispute this fact (see Adjudication, Response AG 1-Round 1). The Supreme Court in *WYMO Fuels* addressed the narrow issue of "whether condemnation of a way of necessity for a railroad spur track and a mine truck haul road ... dispenses with the statutory requirement that a resident or agricultural landowner or a surface landowner consent to mining operations." *Id.* at 1231. In answer to this narrow question, the Supreme Court "afford[ed] efficacy to the condemnation statute," by holding that two parties whose lands had been condemned were no longer surface owners and accordingly, "were left with no interest which required protection pursuant to the Wyoming Environmental Quality Act." *Id.* at 1236. The *WYMO Fuels* decision has no application here. BHC's fee surface interests have not been condemned and neither Ramaco nor DEQ/LQD may ignore BHC's surface consent rights under the WEQA.

For these reasons, BHC respectfully renews its request that DEQ/LQD expressly acknowledge BHC's right, pursuant to W.S. 35-11-406(b)(xii), to review and consent to any mine plan and reclamation plan that Ramaco submits to DEQ/LQD for consideration. Absent BHC's consent to a compliant mining plan and reclamation plan, BHC requests that DEQ/LQD require Ramaco to petition to the EQC for an order in lieu of consent.

Big Horn Coal Company Continued Objection to Brook Mining Company, LLC Permit  
Application, TFN # 62/025  
December 16, 2015  
Page 3

Finally, Ramaco has failed to provide BHC (either directly or through its court filings) any mine and reclamation plans it has submitted to DEQ/LQD for review. To the best of BHC's knowledge, Ramaco still has not outlined the respective operations of Ramaco and BHC within the overlapping permit area. Moreover, Ramaco's mine plans as represented to the court appear to differ substantially from its filings with DEQ/LQD. As previously stated, these varied representations of Ramaco's plans stand in direct contrast to the cooperation and agreement contemplated by DEQ/LQD SOP 2.1 and undermine any credible foundation upon which Ramaco's permit application might succeed.

Thank you for your consideration of BHC's concerns. Please contact me if you have questions or would like to discuss this matter further.

Sincerely,

  
Lynne Boomgaarden  
Crowley Fleck, PLLP

# Exhibit F

For the following reasons, BHC does not approve of Petitioner's proposed mine and reclamation plans, does not consent to Petitioner entering on to BHC lands as proposed in such plans, and respectfully requests that the EQC decline to enter an order in lieu of BHC's consent.



## **I. Introduction**

BHC is a non-resident, non-agricultural surface landowner entitled to protections afforded by the Wyoming Environmental Quality Act (WEQA) at W.S. § 35-11-406(b)(xii).<sup>1</sup> In 1954, BHC purchased surface land and the right to lease and mine the coal under that land from Petitioner's predecessor, Sheridan-Wyoming Coal Company (SWC). BHC leased and mined coal on the land for more than thirty years. By 1982, BHC had developed facilities which connected the regional coal reserves to the main rail line. For example, BHC had built a bridge across the Tongue River and a rail spur that allowed coal to be hauled on the BNSF main line. Those facilities provided a base from which BHC mined and transported coal leased from SWC and others. Though BHC is not currently actively mining, BHC maintains valuable improvements and infrastructure, leases its facilities to third parties for commercial use, and has existing rights and obligations pursuant to its existing Mine Permit No. 213-T8. Approximately 370 acres of land encompassed within BHC's existing mine permit overlap with lands included in Petitioner's mine permit application. Approximately 1,100 acres of BHC surface lands are within Petitioner's proposed mine permit area.

Petitioner provided BHC with incomplete mine plans in the Spring of 2013, and with yet another incomplete set of maps and a request for surface owner consent in July 2014. The surface owner consent request Petitioner provided BHC in July 2014 did not include a complete mine plan and reclamation plan (collectively, "mine and reclamation plans"). In response to Petitioner's 2014 consent request, BHC sent a letter to Petitioner in early October 2014, confirming that Petitioner's proposed activities on BHC lands south of the Tongue River do not conform to BHC's development plans, that BHC "does not consent to the mining and reclamation plan that is being proposed by the Brook Mine," and that BHC further does not agree with Petitioner's continued assertion that it has the right

---

<sup>1</sup> BHC is wholly owned by LHR Coal, LLC (f/k/a AE Coal, LLC) and LHR Coal, LLC is wholly owned by Lighthouse Resources, Inc. (f/k/a Ambre Energy North America, Inc.)

under the 1954 deed to make reasonable use of BHC's surface lands for mine planning, mining and mine related facilities and activities without surface owner's consent. Rather than negotiate a resolution of BHC's concerns, Petitioner instead chose to litigate.<sup>2</sup>

BHC later received mine and reclamation plans from Petitioner's consultant, Western Water Consultants Engineering (WWC), on February 5, 2016. WWC requested BHC's response no later than February 19, 2016. Given BHC's long-standing concerns with Petitioner's ever-changing plans and the impact of those plans on its existing facilities and mine permit obligations and liabilities south of the Tongue River, BHC responded in a letter dated March 9, 2016, that it would not provide surface landowner consent.

Petitioner filed a Request for Order in Lieu of Consent & Request for Hearing on March 16, 2016 ("Petition"). The EQC received evidence on Petitioner's Request for an Order in Lieu of Consent on August 17-18, 2016. Following the close of evidence, on August 26, 2016, Petitioner filed certain revisions to its mine and reclamation plans with Mr. B.J. Kristiansen, Wyoming Department of Environmental Quality ("WDEQ"), Land Quality Division ("LQD"), in part "as a result of the Order in Lieu of Consent hearing." These revisions are outside of the record evidence presented at hearing. Nevertheless, in the interest of efficiency BHC has considered the revisions and addresses them in its argument and proposed findings of fact and conclusions of law, below.

## **II. The EQC should deny the requested order in lieu of consent.**

The Wyoming Environmental Quality Act ("EQA"), W.S. § 35-11-406(b)(xii)(A)-(E), provides that if the mine permit applicant can provide substantial evidence to support EQC findings that five (5) statutory elements have been satisfied, the EQC shall issue an order in lieu of the consent of a nonagricultural, nonresidential surface landowner. In this

---

<sup>2</sup> The extent of Petitioner's right to use BHC surface lands under the 1954 Deed currently is being litigated pursuant to a Declaratory Judgment Complaint filed by Petitioner in *Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372 (Fourth Judicial District Court, Sheridan County).



case, the EQC should deny Petitioner an order in lieu of BHC's consent to Petitioner's mine and reclamation plans, even as those plans were revised following the closing of evidence at hearing, because Petitioner has failed to meet its burden of providing sufficient evidence to establish at least two of the five statutory requirements: W.S. § 35-11-406(b)(xii)(C) and (D).

**A. Petitioner's recently revised mine and reclamation plans are internally inconsistent and are not sufficiently detailed to illustrate the full proposed surface use of BHC surface in accordance with W.S. § 35-11-406(b)(xii)(B).**

W.S. § 35-11-406(b)(xii)(B) requires "[t]hat the mining plan and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress." Nothing in this provision suggests, as Petitioner asserts, *see* Tr. Vol. I, p. 56, ll. 19-24 and p. 57, ll. 6-14, that the standard of detail required to satisfy this element is the same standard the WDEQ/LQD applies when reviewing the mine permit application for completeness. Indeed Mr. B. J. Kristiansen, WDEQ/LQD, explained to the EQC at hearing that the agency does not evaluate a mine plan from the surface owners' "side of it." Tr. Vol. I, p. 171, ll. 11-12. Rather, WDEQ/LQD looks at the mine plan from the applicant's perspective to make sure the applicant has met all of the completeness requirements. The surface owners have to evaluate the mine and reclamation plans based on their knowledge. Tr. Vol., p. 171, ll. 11-18.

Neither did the legislature provide any statutory language that would lessen the level of detail required or exempt Petitioner from providing sufficient detail of its full proposed surface use of BHC surface, so long as Petitioner included a statement in its mine plan that it would not obstruct the use of or access to BHC's existing facilities. The statute does not require, and the EQC should not expect, BHC to simply trust that Petitioner will not obstruct BHC's surface use or access. Any such trust would be particularly misplaced where, as here, Petitioner has refused to negotiate a commercially reasonable compromise, and has chosen instead to litigate in an attempt to secure the broadest possible rights to use BHC surface.

Turning to an evaluation of the information provided in Petitioner's revised mine and reclamation plans, the revisions Petitioner made to those plans on August 26, 2016 relevant to BHC surface lands can be summarized as follows:<sup>3</sup>

- Text at MP-7 to MP-10 revised "to show non obstructed use of BHC shop, bridge, and rail siding."
- Exhibit MP.1-1 revised "to show fencing, roads, and access road."
- Exhibit MP.3-1 revised "to show additional roads."

Petitioner's witness Mr. Barron testified at hearing that a mine permit applicant tries to keep the text of the proposed mine plan general and puts the detail in the mine plan figures, exhibits, and tables, understanding that a "picture is worth a thousand words." Tr. Vol. I, p. 68, ll. 5-25. In the context of Mr. Barron's testimony, and notwithstanding Petitioner's recent plan revisions, Petitioner's revised mine and reclamation plans suffer from the following internal inconsistencies and lack of detail:

- The mine plan text at MP.1.9 now states that "[t]he Brook Mine will not obstruct Big Horn Coal's (Permit 231-T8 [sic]) Shop, Bridge, and Rail Road Siding as they exist in Big Horn Coal's 2015 Annual report. An access road equivalent to the existing improved road will be provided if proposed stockpiles or pits should restrict the existing access as shown on Exhibit MP.1-1." See Exhibit A at p. 4.
  - This revision limits Petitioner's assurance of no obstruction to the use of BHC facilities in 2015 rather than current uses and operations as provided by the Environmental Quality Act.
  - Petitioner's assurance of no obstruction is not reflected on the more detailed mine plan Exhibit MP.1-1, which continues to request mine permit approval of a 400+ acre surface disturbance area (as shown by pink cross-hatch) across BHC's entire Permit 213-T8 area, to include BHC's shop and rail road siding. Brook Ex. 1.

---

<sup>3</sup>The August 26, 2016, post-hearing revisions to Permit to Mine Application TFN 6 2/025 BHC received from Petitioner are attached hereto as Exhibit A.

○ Neither the revised text nor mine plan Exhibit MP.1-1 illustrate how, as a practical matter given the size and location of the proposed stockpiles and pits that could restrict the existing access, Petitioner would be able to relocate BHC's access road on BHC surface. Nor does the text or mine plan Exhibit MP.1-1 indicate that Petitioner has, or would be able to obtain access rights from an adjoining surface owner, if necessary to provide BHC continuing access to its facilities.

• The text at MP.2.1 of the mine plan, Exhibit A at p. 4, states that the "approximate locations of mine facilities are shown on Exhibit MP.2-1. As facilities are designed and constructed they will be added to the exhibit." Other than the Mine Permit and Identification Sign, mine plan Exhibit MP.2-1 indicates no other mine facilities to be located on BHC surface. Brook Ex. 1. However, Mr. Barron testified that it is possible the personnel and equipment facilities could be located on BHC surface lands. Tr. Vol. I, p. 131, l. 2. Mr. Barron also testified that the coal preparation facilities identified in Petitioner's air quality permit application analysis dated December 11, 2015, Padlock Ex. 18, are not currently located on mine plan Exhibit MP.2-1. Tr. Vol. I, p. 118, ll. 14-15. Petitioner did not revise the text at MP.2.1 or mine plan Exhibit MP.2-1 to more specifically describe the possible location of these facilities in its submission on August 26, 2016.

• WDEQ/LQD's Coal Standard Operating Procedure No. 2.1 – Coal Permit Content and Review Procedure Relating to Abutting and Overlapping Coal Permit Area Boundaries ("SOP 2.1"), Section III.B.1.c. requires the mine plan for all new permit applications containing an overlapping permit area boundary to include a separate section for each permit area boundary configuration which, among other things, "includes a brief discussion of how the mining operations coincide for the joint use areas." The reclamation plan for all new permit applications containing an overlapping permit boundary must include a separate section for each permit area boundary configuration which, among other things, includes a map that specifies the reclamation responsibility of each permittee. Petitioner's revised mine and reclamation plans do not include these SOP 2.1 requirements. *See* Exhibit A and Brook Exs. 1 and 2; *see also* Tr. Vol. II, p. 15, ll. 12-25, and p. 16, ll. 1-2.



- Petitioner did not revise the mine plan Table of Contents to remove the reference to Exhibit 3-3 – Railroad Loadout Facility, notwithstanding Mr. Atkins’ representation at hearing that Petitioner has changed its plans and instead of mining coal and transporting it by rail to some utility someplace, “we will probably end up trucking coal to clients that are either contiguous or on our site.” Tr. Vol. I, p. 198, ll. 19-25, p. 199, ll. 1-2; *see also* Exhibit A and Brook Ex. 1 at MP-vii.

Petitioner’s revised mine plan also continues to stand in contradiction of current representations by Petitioner to the WDEQ Air Quality Division (“WDEQ/AQD”), *see* Padlock Ex. 18 at p. 4, Fig. 2-2, and p. 15, and to the District Court, *see* BHC Exs. 5A and 5D, regarding Petitioner’s intent to construct and use a rail loadout facility. Contrary to representations in the revised mine plan, but consistent with Petitioner’s representations to WDEQ/AQD and the court, Mr. Barron’s testimony at hearing was qualified to state that Petitioner will not disturb BHC’s shop, bridge or rail siding *as it stands today*. Tr. Vol. I, p. 87, ll.16-18 (emphasis added). Mr. Atkins similarly qualified his testimony to state that Petitioner “will *probably* end up trucking coal to clients that are either contiguous or on our site.” Tr. Vol. I, p. 198, ll. 19-25, and p. 199, ll. 1-2 (emphasis added).

Under these circumstances, BHC cannot rely on Petitioner’s recent addition to its mine plan of a bald, unsupported statement that Petitioner “will not obstruct Big Horn Coal’s (Permit 231-T8 [sic]) Shop, Bridge, and Rail Road Siding as they exist in Big Horn Coal’s 2015 Annual report.” Petitioner has no binding commitment to BHC and has preserved in its mine plan the opportunity for WDEQ/LQD approval to disturb the surface of BHC’s entire existing mine permit area as shown in mine plan Exhibit MP.1-1. Such approval of MP.1-1 could allow Petitioner to easily modify its permit to expand Petitioner’s use of BHC surface lands following the EQC’s decision in this matter, without then having to satisfy the surface owner protections afforded by W.S. § 35-11-406(b)(xii).

These internal inconsistencies and lack of detail, considered in conjunction with Petitioner’s contradictory filings and qualified testimony, demonstrate Petitioner’s failure to comply with W.S. § 35-11-406(b)(xii)(B). Moreover, the EQC should acknowledge that

the lack of detail, internal inconsistencies, contradictory filings and qualified testimony make it extremely difficult for BHC to fully assess the extent to which Petitioner's proposed use of BHC surface lands will substantially prohibit BHC operations as required by W.S. § 35-11-406(b)(xii)(C).

**B. Petitioner's revised mine and reclamation plans, viewed from the surface owner's perspective, indicate that the proposed mining and reclamation activity will substantially prohibit BHC operations. W.S. § 35-11-406(b)(xii)(C).**

W.S. § 35-11-406(b)(xii)(C) requires Petitioner to demonstrate that its proposed use of BHC surface "does not substantially prohibit" BHC operations. Mr. Jordan Sweeney, BHC Corporate Environmental Manager, testified at hearing that BHC holds an existing mine permit subject to a reclamation performance bond in the amount of \$742,000. Tr. Vol. II., p. 275, ll. 15-17. BHC's mine permit is in compliance and the reclamation performance bond is related to BHC's industrial shop, rail spur and load-out facility. Tr. Vol. I, p. 275, ll. 11-20. BHC considers its shop, rail spur and load-out facility, and the bridge across the Tongue River as valuable assets. Tr. Vol. I, p. 276, ll. 23-25. BHC currently leases its shop to a welding fabrication tenant and to company employees for storage. Tr. Vol. I, p. 279, ll. 6-13. BHC recently entered into a rail storage agreement with a customer of its Decker, Montana mine for use of its rail spur facility for rail storage. Tr. Vol. I, p. 276, l. 25; p. 277, ll. 1-14. BHC is in the process of obtaining the necessary approvals from WDEQ/LQD and Sheridan County for the continued long-term rental and use of these facilities. Tr. Vol. I, p. 283, ll. 3-25, and p. 284, ll. 1-3; BHC Ex. 8. BHC's continued operations of its surface facilities is highly dependent on Petitioner's avoidance of those facilities and BHC's continued access to those facilities. Tr. Vol. II, p. 16, ll. 13-17.

The evidence of record and the information that is included in Petitioner's revised mine and reclamation plans illustrates that Petitioner's proposed mining and reclamation activity will more likely than not, substantially (i.e. "to a great extent") prohibit (i.e. "prevent") BHC's current surface operations. More specifically:

- Mine plan Exhibit MP.1-1, Brook Ex. 1, illustrates by pink cross-hatch, that Petitioner is requesting that WDEQ/LQD approve a surface disturbance area of over 400 acres, inclusive of BHC's existing permit area and BHC's presently leased shop and rail spur facilities. Neither Exhibit MP.1-1 nor the accompanying text provide any detail regarding when, where, or how Petitioner can or will reduce the disturbance area so as not to substantially prohibit BHC operations. BHC cannot reasonably rely on Petitioner's unsupported statements that it will not obstruct the use of BHC facilities and will provide an alternative access road if needed as the basis on which BHC can continue to contract for and conduct operations at its surface facilities. BHC must base its business decisions and contractual obligations on the potential impacts as set forth in the mine and reclamation plans. Tr. Vol. II, p. 20, ll. 8-19. Accordingly, WDEQ/LQD approval of Petitioner's requested disturbance area would substantially prohibit BHC's surface operations.

- Mine plan Exhibit MP.2-1 indicates no personnel or equipment facilities will be located on BHC surface. Brook Ex. 1. Mr. Barron's testimony, however, contradicts the representation on Exhibit MP.2-1 in that he stated it is possible the personnel and equipment facilities could be located on BHC surface lands. Tr. Vol. I, p. 131, l. 2. Mr. Barron also testified that the coal preparation facilities identified in Petitioner's air quality permit application analysis dated December 11, 2015, Padlock Ex. 18, are not currently located on MP.2-1. Tr. Vol. I, p. 118, ll. 14-15. Should any of these facilities be located on BHC surface, they could substantially prohibit use of and access to BHC facilities and operations.

- Should Petitioner later seek to modify its permit to construct rail load out facilities near BHC's existing rail spur consistent with representations it made to WDEQ/AQD and the District Court, such rail load out facilities would necessarily restrict BHC's access to and use of its rail spur.

- Mine plan Exhibit MP.3-1, Brook Ex. 1, illustrates Petitioner's intent to use BHC's existing access road for ingress and egress, yet also illustrates proposed high wall trench cuts that will transect BHC's existing access road. Absent additional information to illustrate how Petitioner would be able to relocate BHC's access road on BHC surface or that Petitioner would be able to obtain access rights from an adjoining surface owner, BHC



cannot reasonably rely on Petitioner's statement it will provide the access necessary for continued operations at BHC facilities. Absent a binding, enforceable commitment that Petitioner can and will relocate BHC's existing access road, it is reasonable to conclude from the record evidence that Petitioner's proposed operations will substantially prohibit BHC and its customers access to and use of BHC facilities.

- Nothing in Petitioner's mine and reclamation plans specifies the respective reclamation responsibilities of BHC and Petitioner or the coordinated joint use of the surface as contemplated by WDEQ/LQD SOP 2.1. Absent specific representations regarding Petitioner's and BHC's joint use of the surface within the overlapping mine permit boundaries, Petitioner's operations could prevent BHC from complying with its existing mine permit obligations and possibly subject BHC to regulatory and civil liabilities.

Petitioner, therefore, has failed to prove the required element set forth at W.S. § 35-11-406(b)(xii)(C).

**III. Any EQC Finding of Fact and/or Conclusion of Law Regarding Petitioner's "legal authority to extract coal by surface mining methods" is for the Limited Purpose of Applying W.S. § 35-11-406(b)(xii) and Does Not Constitute an Adjudication of Any Private Property Rights at Issue in *Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372 (Fourth Judicial District Court, Sheridan County).**

W.S. § 35-11-406(b)(xii)(E) requires, for surface coal mining operations, that the Petitioner "has the legal authority to extract coal by surface mining methods." Petitioner relies on a 1954 deed as the source of its legal authority to extract coal by surface mining methods. Tr. Vol. I, pp. 108-11. BHC does not dispute that Petitioner holds coal rights beneath BHC surface pursuant to that deed; however, BHC asserts that a 1983 release agreement between Petitioner's and BHC's predecessors precludes Petitioner from legally accessing certain surface lands to extract coal by surface mining methods. Tr. Vol. II, p. 29 at lines 18-25. The relative surface rights of BHC and Petitioner on those certain lands are being litigated in District Court in *Brook Mining Company, LLC v. Big Horn Coal*

*Company*, Civil Action No. CV 2014-372 (Fourth Judicial District Court, Sheridan County).

By Petitioner's own admission, the Wyoming Attorney General rejected Petitioner's argument that Petitioner "did not need the consent of [BHC]" because "the 1954 deed already gave it the right to mine coal as well as the right to use the surface as is 'necessary or convenient' to mine coal." Petition, p. 2. In rejecting Petitioner's argument, the Attorney General advised Petitioner "to request an order in lieu of consent." Petition, pp. 2, 4. Thus, the relevant question for the EQC to answer is, what showing of "legal authority" did the legislature intend to require in order for Petitioner to obtain an order in lieu of BHC's consent from the EQC?

Regardless whether the EQC determines that the 1954 deed satisfies Petitioner's burden of demonstrating legal authority necessary to obtain an order in lieu of BHC's consent, it is important that the EQC expressly acknowledges in its conclusions of law that EQC's statutory authority does not extend to the application of Wyoming common law to interpret deeds, assignments or other contracts between BHC and Petitioner. The EQC's authority is limited to that granted to it by the Wyoming State Legislature. *Exxon Mobil Corp. v. Wyoming Dept. of Revenue*, 266 P.3d 944, 951 (Wyo. 2011). The Legislature has given EQC broad authority to "hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by" the Wyoming Department of Environmental Quality, Land Quality Division. W.S. § 35-11-112(a); *see also Platte Dev. Co. v. Env'tl. Quality Council*, 966 P.2d 972, 975 (Wyo. 1998). Consequently, the EQC's determination of "legal authority" is for the limited purpose of deciding whether the statutory requirement under W.S. § 35-11-406(b)(xii)(E) has been met. EQC's determination cannot patently constitute an adjudication of the property rights dispute between BHC and Petitioner pending in District Court.<sup>4</sup>

---

<sup>4</sup> This conclusion is reinforced by the language of the federal surface coal mining statutes which, contrary to the WEQA, allows a mine permit applicant to submit a deed that grants or reserves the right to mine coal by surface mining methods in lieu of written



#### IV. Conclusion

In submitting this Memorandum and Proposed Findings of Fact and Conclusions of Law, BHC does not waive and hereby reserves all rights as an interested party to file written objections and request a hearing before the EQC under W.S. § 35-11-406(k), all rights to protection under W.S. § 35-11-416(a), and all rights, arguments and defenses in *Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372.

The WEQA explicitly requires Petitioner to include an instrument of consent from the surface landowner, even a non-resident or non-agricultural landowner, if different from the owner of the mineral estate, in its mine permit application. W.S. § 35-11-406(b)(xii). If Petitioner cannot obtain all necessary surface landowner consent, the EQC shall issue an order in lieu of consent if, and only if, it finds the statutory elements have been met. *Id.* For the reasons stated, Petitioner is not entitled to an order in lieu of surface owner consent and its mine permit application should therefore be denied. BHC respectfully submits the following Proposed Findings of Fact and Proposed Conclusions of Law as supported by evidence of record and as pertaining specifically to the elements set forth in W.S. § 35-11-406(b)(xii)(B), (C), and (E).

#### **Proposed Findings of Fact**

1. Detail in the mine plan Petitioner presented to BHC for review, mine plan Exhibit MP.1-1, Brook Ex. 1, shows the prospective impacted area to include all of BHC surface within its existing mine permit 213-T8, in Sections 15, 21, and 22, Township 57 North, Range 84 West, Sheridan County, Wyoming.

2. Petitioner's assurance in its revised mine plan dated August 26, 2016, that it will not obstruct Big Horn Coal's shop, bridge and rail road siding as they exist in Big Horn

---

consent from the surface owner. *See* 30 U.S.C.A. § 1260(b)(6)(B) ("SMCRA"). Under SMCRA, if a deed proffered in lieu of surface owner consent does not expressly grant the right to extract coal by surface mining methods, "the surface-subsurface legal relationship shall be determined in accordance with State law: *Provided*, That nothing in this chapter shall be construed to authorize the regulatory authority to adjudicate property rights disputes." *Id.* at § 1260(b)(6)(C).

Coal's 2015 Annual Report, Exhibit A, p. 4, is not reflected on, and is contradicted by, mine plan Exhibit MP.1-1. Brook Ex. 1.

3. Petitioner's mine plan fails to illustrate how Petitioner can feasibly provide an access road equivalent to the existing improved road if proposed stockpiles or pits should restrict the existing access as shown on mine plan Exhibit MP.1-1, as Petitioner stated it would do in its revised mine plan dated August 26, 2016. Exhibit A at p. 4; Brook Ex. 1 at mine plan Exhibit MP.1-1.

4. Personnel and equipment facilities not presently illustrated on mine plan Exhibit MP.2-1 may be constructed on BHC surface lands. Tr. Vol. I, p. 131, l. 2.

5. Petitioner's mine and reclamation plans do not include information required by WDEQ/LQD Standard Operating Procedure 2.1 – Coal Permit Content and Review Procedure Relating to Abutting and Overlapping Coal Permit Area Boundaries, Section III.B.1.c. Exhibit A; Brook Ex. 1; Tr. Vol. II, p. 15, ll. 12-25, and p. 16, ll. 1-2.

6. Petitioner's mine and reclamation plans contradict current representations Petitioner has made to WDEQ/AQD and to the District Court with regard to Petitioner's intent to construct a rail load out facility on BHC surface lands. Brook Ex. 1; Padlock Ex. 18, BHC Exs. 5A and 5C.

7. The Wyoming Department of Environmental Quality, Land Quality Division, did not evaluate Petitioner's mine and reclamation plans from the surface owners' perspective when determining whether Petitioner had met all of the completeness requirements. Tr. Vol. I., p. 171, ll. 11-12.

8. Petitioner holds coal rights beneath BHC surface lands. Tr. Vol. II, p. 29 at ll. 18-19.

9. Petitioner relies on a 1954 deed as the source of its legal authority to extract coal by surface mining methods. Tr. Vol. I, pp. 108-11.

10. BHC relies on a 1983 release agreement to deny Petitioner access to its surface to extract coal by surface mining methods. Tr. Vol. II, p. 29 at ll. 18-25.

11. Petitioner's and BHC's respective rights under the 1954 deed and 1983 release agreement are the subject of active litigation: *Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372 (Fourth Judicial District Court, Sheridan County). BHC Ex. 5A.

### **Proposed Conclusions of Law**

1. Petitioner's mine plan and reclamation plans, as revised on August 26, 2016, lack the detail required by W.S. § 35-11-406(b)(xii)(B) to illustrate Petitioner's full proposed use of BHC surface lands and to ensure BHC unobstructed use of its shop, bridge and rail siding, as stated in the revised plans.
2. Petitioner's proposed use of BHC surface lands, as detailed in mine plan Exhibit MP.1-1, will substantially prohibit BHC's current commercial operations at the shop and rail siding facilities, as well as access across BHC's bridge to BHC lands north of the Tongue River.
3. For purposes of issuing an order in lieu of consent under W.S. § 35-11-406(b)(xii), and for those purposes only, Petitioner has demonstrated sufficient legal authority to extract coal by surface mining methods. The Environmental Quality Council does not adjudicate private property rights as between parties to a proceeding under W.S. § 35-11-406(b)(xii).

DATED: September 23, 2016.

By   
Lynnette Boomgaarden (WSB # 5-2837)  
Crowley Fleck PLLP  
237 Storey Boulevard, Suite 110  
Cheyenne, WY 82009  
(307) 426-4100  
*Attorney for Respondent*  
*Big Horn Coal Company*

### CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2016, I served a true and correct copy of the foregoing by United States mail, postage prepaid and addressed to the following:

Haultain Corbett  
Mistee Elliott  
Lonabaugh and Riggs, LLP  
50 East Loucks Street  
Suite 110  
PO Drawer 5059  
Sheridan, WY 82801-5059  
hal@lonabaugh.com

Thomas L. Sansonetti  
Isaac N. Sutphin, P.C.  
Jeffrey S. Pope  
Holland & Hart LLP  
2515 Warren Ave, Suite 450  
PO Box 1347  
Cheyenne, WY 82003-1347  
tlsansonetti@hollandandhart.com  
insutphin@hollandandhart.com  
jspope@hollandandhart.com

  
Lynnette Boomgaarden

# Exhibit A

Respondent Big Horn Coal Company's Memorandum and  
Proposed Finding of Fact and Conclusions of Law  
(8 Pages)



August 26, 2016

Mr. Jordan Sweeney  
Lighthouse Resources Inc  
170 South Main Street Suite 700  
Salt Lake City UT 84101  
[j.sweeney@lhr-inc.com](mailto:j.sweeney@lhr-inc.com)

**\*\*Via Electronic Delivery\*\***

**RE: Brook Mine- Revision to Mine Plan and Reclamation Plan TFN 6 2/025**

Dear Mr. Sweeney:

On behalf of RAMACO LLC, WWC Engineering is providing Lighthouse Resources Inc copies of revisions to the mine plan and reclamation plan that have been submitted to Wyoming Department of Environmental Quality Land Quality Division WDEQ/LQD August 26, 2016. The revisions are a result of issues raised during the EQC hearing August 17 & 18, 2016 and include mitigation components in the mine plan and reclamation plan that is greater detail than required by WDEQ/LQD.

Please contact, the undersigned at WWC Engineering- (ph: 307-672-0761) if you have any questions or comments regarding this request.

Sincerely,



Jeff Barron, P.E.  
Project Engineer

JB/hjr

Attachment: as noted

K:\Sheridan\RAMACO\13139\WDEQ\_LQD\_comments\_rnd\_6\Cover\_letter\_Lighthouse\_8\_26\_2016.docx

**Exhibit A**  
**Page 1**

August 26, 2016

Mr. B.J. Kristiansen  
Wyoming Department of Environmental Quality  
2100 W. 5<sup>th</sup> Street  
Sheridan, WY 82801

**RE: Permit To Mine Application TFN 6 2/025**

Dear Mr. Kristiansen:

On behalf of RAMACO LLC, WWC Engineering is submitting the attached revisions to the mine plan and reclamation plan as a result of the Order in Lieu of Consent hearing held August 17 & 18, 2016 and ongoing negotiations with Padlock Ranch.

Two copies of the change of index and supplemental information have been included for WDEQ/LQD staff to review.

Please contact, Randall Atkins (RAMACO), or Jeff Barron (WWC Engineering) if you have any questions or comments regarding this submittal.

Sincerely,



Jeff Barron, P.E.  
Project Engineer

# INDEX SHEET FOR MINE PERMIT AMENDMENTS OR REVISIONS

Page 1 of 1  
 Date August 25, 2016  
 TFN 6 2/025

MINE COMPANY NAME: RAMACO, LLC.

MINE NAME: Brook Mine  
 PERMIT NO. TFN 6 2/025

Statement: I, Jeff Barron, an authorized representative of RAMACO, LLC. declared that only the items listed on this and all consecutively numbered Index Sheets are intended as revisions to the current permit document. In the event that other changes inadvertently occurred due to this revision, those unintentional alterations will not be considered approved. Please initial and date.

NOTES: 1) Include all revision or change elements and a brief description of, or reason for, each revision element.

2) **This Change Index is for only those changes made during Round 4a Comment Response.**

VOLUME NUMBER	PAGE, MAP OR OTHER PERMIT ENTRY TO BE REMOVED	PAGE, MAP OR OTHER PERMIT ENTRY TO BE ADDED	DESCRIPTION OF CHANGE
Volume XI	MP-7 to MP-7 (Mine Plan Text tab)	MP-7 to MP-7 (Mine Plan TOC tab)	Update Text to show non obstructed use of BHC shop, bridge, and rail siding.
Volume XI	MP-10 to MP-10 (Mine Plan Text tab)	MP-10 to MP-10 (Mine Plan Text tab)	Update Text to describe fencing
Volume XI	Exhibit MP.1-1	Exhibit MP.1-1	Revise exhibit to show fencing, roads, and access road
Volume XI	Exhibit MP.3-1	Exhibit MP.3-1	Revise exhibit to show additional roads
Volume XII	Exhibit RP.3-1	Exhibit RP.3-1	Revise exhibit to show restoration of water network



Any structure within the Brook Mine Permit Area that is directly affected by mining activities will be properly abandoned and removed or relocated before mining activities commence. Relocation and/or abandonment criteria and procedures will be established to minimize significant impacts to the postmining land use plan.

If mining operations disrupt power or phone lines, the lines will be relocated and put into service before the old lines are abandoned. This will be done to minimize power or phone interruptions.

Relocation of roadways will be coordinated with Sheridan County or the road owner for design and relocation procedures. Interruption to traffic flow will be mitigated through previously formulated plans.

The Brook Mine will operate in conjunction with Taylor Quarry (Permit No. SP-757). The Taylor Quarry Permit Boundary is shown on Exhibit MP.1-1. The mine will work with Taylor Quarry to minimize impacts on Taylor Quarry's operation. Details regarding dual permitted areas are provided in Section MP.22.

The Brook Mine will not obstruct Big Horn Coal's (Permit 231-T8) Shop, Bridge, and Rail Road Siding as they exist in Big Horn Coal's 2015 Annual report. An access road equivalent to the existing improved road will be provided if proposed stockpiles or pits should restrict the existing access as shown on Exhibit MP.1-1.

## **MP.2 MINE FACILITIES**

### **MP.2.1 Personnel and Equipment Facilities**

The approximate locations of mine facilities are shown on Exhibit MP.2-1. As facilities are designed and constructed they will be added to the exhibit.

#### **MP.2.1.1 Administration Building**

The administration building will be located in Sheridan. The administration building will contain offices, a conference room, and training facilities.

#### **MP.2.1.2 Change House and Equipment Service Shop**

The change house includes offices, shower facilities for employees, and a large meeting area and equipment service facility. Waste oil and lubricants will be temporarily stored in the equipment service facility until they can be transported to an offsite disposal facility. The equipment facility area will

emulsions, water gels, and slurry explosives will be stored separately from detonators, initiator products, and ANFO. Locations of explosive storage will be according to regulations.

#### **MP.2.4 Power Transmission and Communication Lines**

Electrical power will be transmitted to the mine property by a 3-phase 4160-Volt line.

Electric power will be purchased from Powder River Energy Corporation. Power distribution and electrical equipment will be constructed to comply with applicable federal, state, and local codes. Power lines within the Brook Mine Permit Area will be constructed to minimize impacts on raptors, as discussed in the Plan to Minimize Adverse Impacts on Fish and Wildlife.

Telephone service will be installed by tapping into a local communications carrier. Communications within the Permit Area will be by mobile business band radios.

#### **MP.2.5 Stockpiles**

Separate topsoil and overburden stockpiles will be required for reclamation activities. The design of stockpiles is discussed in Section MP.4. Stockpile locations are shown on Exhibit MP.4-3.

#### **MP.2.6 Access Control Features**

The mine will control access to the Brook Mine to protect the health and safety of the mine workforce, general public, wildlife, and livestock. A guardhouse will be installed at the entrance to the Brook Mine. Fencing will be constructed around mining activities to prevent wildlife, livestock, and the general public from mistakenly entering as shown on Exhibit MP.1-1. Access will be allowed for existing cattle operations as needed in the NWNE of section 21 T57N R84W as shown on Exhibit MP.1-1. Fencing construction will follow recommendations found in WDEQ/LQD Guideline Number 10 and/or WYDOT standard 607-1A: Fencing, Signs and markers will be placed to alert the general public to the active mining area. Signs, markers, and buffer zones are discussed in Section MP.12. Locations of access control features are shown on Exhibit MP.2-1.



