

Waring, Kim

From: justice@silverstar.com
Sent: Thursday, September 02, 2010 11:08 AM
To: Matt Turner; Esch, Luke; Chris Jorgenson; McKenzie, Don; Moxley, Mark; Waring, Kim
Subject: Evans Construction contested case hearing continuance
Attachments: header.htm

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING**

IN THE MATTER OF THE OBJECTION)
TO THE SMALL MINE PERMIT OF)
EVANS CONSTRUCTION COMPANY)
TFN 5 6/149)

Docket No. 10-4802

FILED

SEP 02 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

AMENDED MOTION FOR CONTINUANCE

The undersigned, Timothy J Bommer, amends his motion for a continuance of any hearing on objection(s) to the application of Evans Construction Company (Evans) to include additional parties or persons upon whom the motion is served. The motion is based upon the following grounds and for the following reasons, and as an officer of the Wyoming state and federal courts, I hereby certify the following to be true:

1. As of the date of preparation of this motion (September 1, 2010), I have not received any notice setting a hearing in this matter. In a letter from the Executive Secretary of the Council dated 8.25.10, which I received on 8.29.10, it provided that "[t]he Council has scheduled your hearing on Friday, September 10, 2010." No other notice providing for the time and place has been received.
2. On the date above, pleadings were received from the attorney for the Council, including a pleading referring to a Pre-Hearing Conference on September 3, 2010. I have not received any notice of that hearing.
3. I am a United States Magistrate Judge, presently recalled to the Eastern District of California in Sacramento, California, on a "when actually employed" basis. I will be in Sacramento for judicial business from September 7 through 15, 2010. This was scheduled weeks before the letter from the Council mentioned in paragraph 1.
4. I am entitled to proper notice of any scheduled hearing and time to prepare for the hearing.
5. As a result of the failure to obtain notice and the receipt of the information from the Council on the above date, I am prejudiced in my ability to prepare for the hearing.

6. As a result of inquiries on the foregoing and based upon my information and belief, the "mine" that Evans seeks to expand was abandoned in the 1990s.

7. Evans, through its attorney, refuses to agree to a continuance of the hearing, and I have not heard from the attorney for the Council.

WHEREFORE, based upon the foregoing, and primarily the inability of the undersigned to attend and prepare for a hearing and the failure of the Council to provide proper notice of any hearing, it is requested that the Council find that sufficient and good cause has been provided and that this matter be continued until all parties are able to appear and have had sufficient notice and time to prepare for the hearing.

Dated this 2nd day of September, 2010.

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of September, 2010, a true and correct copy of the foregoing was placed in the U.S. mail, postage prepaid and/or sent by fax, and/or electronic mail, and/or hand delivered as indicated below and addressed to:

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_____/s/_____
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