

BEFORE THE WYOMING ENVIRONMENTAL QUALITY COUNCIL

In Re Eagle Butte Mine Permit Renewal)	
TFN 6-1/152)	
)	EQC Docket No. 15-4801
)	

POWDER RIVER BASIN RESOURCE COUNCIL RESPONSE TO DEQ’S NOTICE OF BANKRUPTCY STAY

The Powder River Basin Resource Council (“Resource Council” or “PRBRC”) hereby files its response to the Wyoming Department of Environmental Quality (“DEQ” or “Department”) “Notice of Bankruptcy Stay” filed on November 13, 2015 in the above-captioned proceeding.

In its notice, DEQ states:

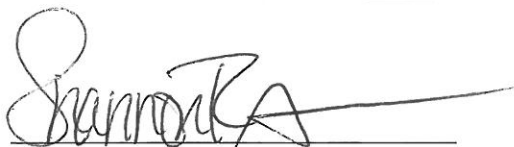
The Stipulation and Order provides in part that “any proceedings relating to the Wyoming Substitution Demand or the Debtor’s self-bonding status, including the informal review process of WDEQ, shall be stayed” . . . The stay is not limited in its preclusive effect to the State of Wyoming and the DEQ, and the failure to abide by the order of the bankruptcy court could subject the Powder River Basin Resource Council or any other initiating individual or entity, including DEQ, to civil contempt proceedings.

First, as discussed in the Resource Council’s petition for hearing, the stipulation entered into between Alpha and Wyoming is a voluntary agreement between the state and the company. It cannot amend state or federal law nor does it bind organizations and entities that are not party to the agreement. *See, e.g.* OSM Reservation of Rights, attached as Exhibit 7 to the Resource Council’s Petition. It cannot therefore take away the rights of the Resource Council to object to the Eagle Butte permit renewal nor can it remove the Resource Council’s public participation opportunities and due process rights afforded under state and federal law. In fact, these public participation opportunities were publicly noticed by DEQ in relation to this permit renewal. *See* attached public notice (“The complainants shall have a right of appeal to the Environmental

Quality Council where the complaint will be heard a second time.”) For those reasons, the agreement should not be controlling in this matter. Moreover, regardless of the agreement, as discussed in the petition, Alpha maintains an obligation to comply with all applicable law during the bankruptcy proceedings. *See* Petition at ¶ 22 (discussing 28 U.S.C. § 959(b)).

Second, assuming for the sake of argument that the agreement is controlling, here DEQ is not attempting to “stay” proceedings. Instead, DEQ is attempting to prevent the proceedings from occurring in the first place. DEQ instructs the Council to “cancel any scheduled proceedings in this matter immediately.” DEQ does not instruct the Council to “stay” any scheduled proceedings. While DEQ is *staying* proceedings initiated by Alpha, including the requested informal conference and state court challenge to the May 26, 2015 Order, DEQ is *denying* proceedings initiated by the Resource Council. *Compare* Letter to Alpha dated October 26, 2015 (staying Alpha’s request for an informal conference) *with* Letter to Resource Council dated October 15, 2015 (denying the Resource Council’s request for an informal conference) (attached). Therefore, should the Council agree with DEQ that the agreement entered into between Wyoming and Alpha in the bankruptcy proceedings is controlling, we urge the Council to order a stay of this proceeding, as required by that agreement. The Council should not “cancel” the proceeding, which would deny the Resource Council’s hearing rights afforded under state and federal law.

Respectfully submitted this 10th day of November, 2015.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of November, 2015, the foregoing RESPONSE TO DEQ'S NOTICE OF BANKRUPTCY STAY was served on the following parties via the Environmental Quality Council's electronic filing system and via electronic mail:

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