

FILED

AUG 02 1976

Ardelle M. Kissler, Clerk
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

| | | |
|----------------------------|---|-------------------|
| In the Matter of |) | |
| Objections to PETER KIEWIT |) | |
| SONS' CO., |) | DOCKET NO. 197-76 |
| Application for a Mining |) | |
| Permit (Whitney Mine) |) | |

MOTION TO DISMISS PROTEST
OF POWDER RIVER BASIN
RESOURCE COUNCIL

Comes now Peter Kiewit by and through its undersigned attorneys and moves the Environmental Quality Council for an Order dismissing the Protest of the Powder River Resource Council on the following grounds:

1) The Environmental Quality Council is a seven member council all of whose members sit in decision as an integrated whole on matters coming before it.

2) Lynn Dickey is a full-fledged member of the Environmental Quality Council and has been since her appointment to the Council over a year and a half ago. Miss Dickey is one of the most active, articulate and respected members of the Environmental Quality Council.

3) As such, and because the Environmental Quality Council sits not as seven separate hearing examiners but as an integrated whole, the Environmental Quality Council cannot help but run the risk of being greatly influenced -- even if only subtly -- by any strongly held belief or position taken by Miss Dickey.

4) Miss Dickey is also the chief executive officer of the Protestant, Powder River Basin Resource Council.

5) Miss Dickey has actively participated in and assisted in the preparation and the promotion of the Protest filed by the Powder River Basin Resource Council, a fact which can be established readily through direct testimony.

6) While Miss Dickey has stated that she will

absent herself from deliberations and from the making of an actual decision in this matter, it would be nevertheless naive and would entirely fail to recognize human nature to believe that the remaining members of the Environmental Quality Council will not run a severe risk of being influenced by the fact that she is a leading figure in the bringing of an environmental protest before the Environmental Quality Council.

7) The absention of herself from the deliberations and decision-making cannot remove from the minds of the Council the image of one of "their own" having a direct vested interest -- both from the standpoint of economics, in that she is employes and paid by the Powder River Basin Resource Council as well as from the standpoint of career involvement and advancement -- in the outcome of the Protest.

8) This Motion is not made to protest or to object to any actual influence, which, even if it did exist, could surely not be substantiated, but it is rather to object to the existence to a real and actual position of conflict which must necessarily call into serious question the impartiality and fairness of any deliberations of the Environmental Quality Council sitting in judgement of a Protest filed by one of its own most respected and liked members.

WHEREFORE, the Applicant prays that the Protest of the Powder River Basin Resource Council be dismissed.

PETER KIEWIT SONS' CO.

By 

DAVID B. KENNEDY
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CERTIFICATE OF SERVICE

I, David B. Kennedy, certify that at Sheridan, Wyoming, on the ~~28th~~ day of July, 1976, I served a copy of the foregoing Motion to Dismiss Protest of Powder River Basin Resource Council by personal service or by depositing copies of the same in the U.S. Mail, postage prepaid, duly enveloped and addressed, to:

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