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ATTORNEYS FOR RESPONDENT
PADLOCK RANCH COMPANY

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

IN RE BROOK MINE APPLICATION)
) Civil Action No. 16-1601
)

**RESPONDENT PADLOCK RANCH COMPANY'S RESPONSE TO MOTION TO
STRIKE SURFACE OWNER BOND AFFIRMATIVE DEFENSE**

COMES NOW Respondent Padlock Ranch Company ("Padlock"), and for its response to Petitioner's Motion to Strike Surface Owner Bond Affirmative Defense, advises the Environmental Quality Council (the "Council") as follows:

1. In its Motion to Strike Surface Owner Bond Affirmative Defense, Petitioner Brook Mining Company, LLC ("Brook Mining" or "Ramaco"¹) asks the Council to refrain from considering the status of surface damage bonds as part of deciding the

¹ Ramaco Wyoming Coal, LLC ("Ramaco") is the owner of the coal and mining interest at issue, which is operated by Brook pursuant to a lease agreement between Ramaco and Brook. See Petitioner's Request for Order in Lieu of Consent and Request for Hearing, p. 1. Padlock's communications with regard to the proposed Brook Mine have always

request for an order in lieu of surface owner consent. As explained below, factual issues relevant to the determination of an appropriate surface damage bond are so closely tied to elements that the Council must consider in deciding whether or not to issue an order in lieu of consent, that it is not practical to preclude the parties from discussing surface damages (including the status of a bond), nor is it appropriate for the Council to refuse to consider surface damages to the extent they are relevant to issuance of an order in lieu of surface owner consent.

2. Petitioner's argument is based in part on a confused or misleading statement of the law regarding when a surface damage bond must be set. It has advised the Council that the bond for the protection of the surface owner is not set "until the permit application is finalized and a mine permit is issued." Petitioner's Mot. to Strike, p. 2. This is incorrect. The Wyoming Environmental Quality Act ("WEQA" or the "Act") clearly provides 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" Wyo. Stat. §35-11-416(a) (emphasis added).² Perhaps Petitioner is confusing the bond for the protection of the surface owner required

been with Ramaco.

² The statement from WDEQ representative, Bj Kristiansen, that "no bond is required until . . . a permit is issued," is an incorrect interpretation of the law to the extent it refers to the surface damage bond required pursuant to Wyo. Stat. §35-11-416(a), and should not be relied upon by the Council. See *Platte Development Co. v. State, Environmental Quality Council*, 966 P.2d 972, 975 (Wyo. 1998) ("Platte may not rely on the DEQ's interpretation of 'overburden' if it does not comport with the language of the statute.").

by Wyo. Stat. §35-11-416(a) with the reclamation performance bond required by Wyo. Stat. §35-11-417.

3. Petitioner also implies that Padlock has no legal authority to waive the surface damage bond. Petitioner's Mot. to Strike, p. 2. This is also incorrect. Wyoming Statute §35-11-416(a) clearly states that a bond for surface damage shall not be required when the agreement negotiated between the surface owner and the mineral developer waives any requirement therefor. One reason the parties are before the Council is that Ramaco has heretofore refused to enter into negotiations with Padlock for an agreement which would adequately compensate Padlock for the damages and disruption to its agricultural operations caused by Ramaco's proposed mine, which agreement would likely have included a waiver of the surface damage bond. This fact, coupled with the deficient mine plan and reclamation plan that fail to provide enough information for Padlock to even determine the full extent of the surface damages that will result from the mine, are why Padlock could not grant surface owner consent.

4. The inadequacies in the mine plan and reclamation plan also preclude the Council from granting an order in lieu of surface owner consent. It is clear from the WEQA that the effect of proposed mining operations on the surface owner's ability to use the land is an important consideration in determining whether or not an order in lieu of surface owner consent is appropriate. *See* Wyo. Stat. §35-11-406(b)(xii)(A)-(E). Specifically, Padlock argues that the mine plan and reclamation plan at issue fail to

adequately illustrate Ramaco's proposed use of Padlock's lands, but that the use that can be discerned will substantially prohibit Padlock's operations, two facts which negate issuance of an order in lieu of surface owner consent. See Wyo. Stat. §35-11-406(b)(xii)(B), (C). To address these elements at the hearing in this matter, Padlock must be allowed to present evidence regarding surface use and surface damages, which may include discussion of the status of a surface damage bond, or the inability to even determine a proper bond amount because Ramaco's full use of the property is unknown.

5. In situations requiring a surface damage bond (because one has not been waived by the surface owner), the bond amount is determined as follows:

[A] permit shall not be issued without 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 improvements of the surface owner. This amount shall be determined by the administrator and shall be commensurate with the reasonable value of the surrounding land, and the effect of the overall operation of the landowner. This bond is in addition to the performance bond required for reclamation by this act. As damage is determined it shall be paid. Financial loss resulting from disruption of the surface owner's operation shall be considered as part of the damage.

Wyo. Stat. §35-11-416(a). Thus, it is clear from the Act that an appropriate bond amount cannot be determined, nor can an order in lieu of surface owner consent issue, unless and until Ramaco's full use of the property is known. The two are appropriately interrelated because the requirement for surface owner consent is intended to protect the surface

owner by mandating full disclosure of proposed mining operations, which in turn allows for payment of sufficient damages, either by agreement or through a bond.

6. The Council has very broad discretion under the Act to “hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department . . .” Wyo. Stat. §35-11-112(a). It is impractical under the facts of this case, and illogical considering the discretion afforded the Council, to mandate that the Council not consider the status of a surface damage bond in determining whether an order in lieu of surface owner consent should be issued. In analyzing whether or not such an order is appropriate, the Council necessarily has to determine the adequacy of the proposed mine plan and reclamation plan in terms of its illustration of Ramaco’s full use of Padlock’s lands, which is also relevant to the later determination of a sufficient bond.

WHEREFORE, for the reasons stated herein, Padlock respectfully requests that Petitioner’s Motion to Strike Surface Owner Bond Affirmative Defense be denied.

DATED this 9th day of June, 2016.

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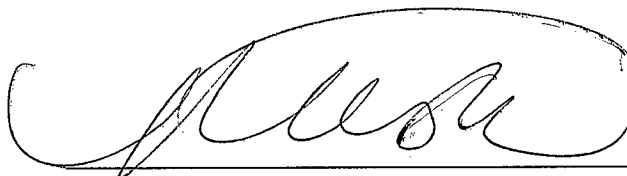
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the within and foregoing was sent to the following by depositing a copy of the same in the U.S. Mails, postage prepaid, on this 9th day of June, 2016.

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A handwritten signature in black ink, appearing to read "Mistee L. Elliott", written over a horizontal line.

Mistee L. Elliott