

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).¹ 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

¹ 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.²

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

² 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:³

- 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.

³The 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.⁴

⁴ 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:

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Lynette 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
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

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Exhibit A
Page 1

August 26, 2016

Mr. B.J. Kristiansen
Wyoming Department of Environmental Quality
2100 W. 5th 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

JB/hjr
Attachment: as noted
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Exhibit A
Page 2

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.

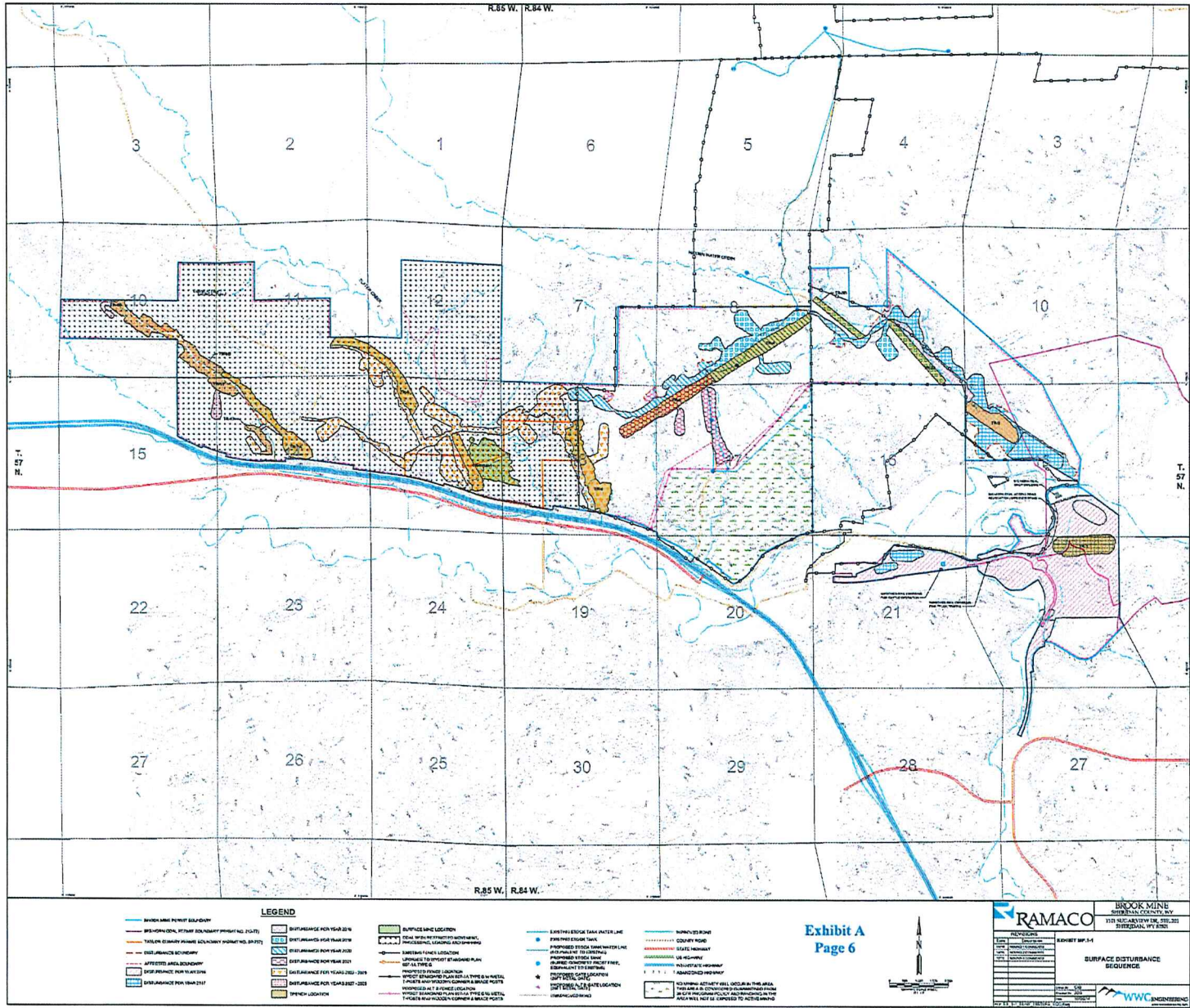


Exhibit A
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		BROOK MINE BROOK COUNTY, WV
1515 NEW AUSTIN DR. STE. 201 BETHLEHEM, WV 26032		EXHIBIT WP-3-4
SURFACE DISTURBANCE SEQUENCE		
DATE: 05/11/2011 TIME: 10:00 AM		SCALE: AS SHOWN

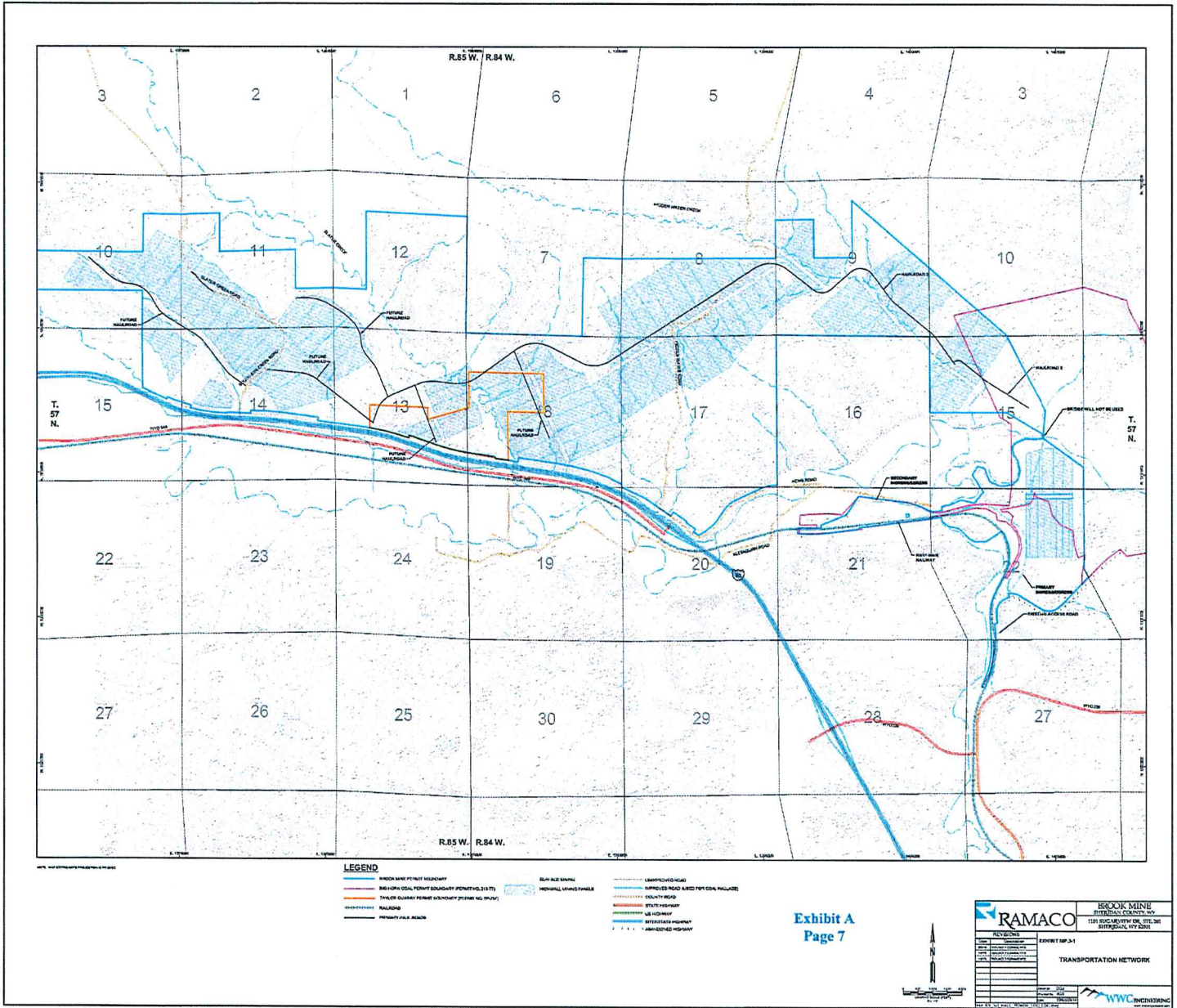


Exhibit A
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