Filed: 9/23/2016 4:47:25 PM WEQC

Thomas L. Sansonetti (Wyo. State Bar # 5-1546)
Isaac N. Sutphin, P.C. (Wyo. State Bar # 6-3711)
Jeffrey S. Pope (Wyo. State Bar # 7-4859)
HOLLAND & HART LLP
2515 Warren Avenue, Suite 450
P.O. Box 1347
Cheyenne, WY 82003-1347
Telephone: (307) 778-4200
tlsansonetti@hollandhart.com
insutphin@hollandhart.com
jspope@hollandhart.com

ATTORNEYS FOR PETITIONER
BROOK MINING COMPANY, LLC

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

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

BROOK MINE'S BRIEF ON WHY ITS MINE PLAN WILL NOT SUBSTANTIALLY PROHIBIT THE OPERATIONS OF BIG HORN COAL COMPANY

INTRODUCTION

When asked if it was "necessary to make the assumption that what they [Brook] say in the mine plan is what is going to occur," Big Horn Coal Company's (Big Horn) mine manager, Jordan Sweeney, said yes because "that is what is written in the mine plan, and that is the legal document to mine." Hearing Transcript (Tr.) Vol. II, p. 20. The Council should likewise trust what is in Big Horn and Brook's mine and reclamation plans. Those plans tell the Council why Brook Mine (Brook) will not substantially prohibit Big Horn's operations.

Big Horn's reclamation plan on file with the Wyoming Department of Environmental Quality (DEQ) requires that Big Horn demolish its shop, rail siding, and rail load out facilities. Trusting that document means that Big Horn must end its own operations. Assuming that Big Horn follows its plan and legal obligation, Big Horn will have no shop, no rail siding, and no

other facilities. In other words, Big Horn will have no operations for Brook to prohibit, substantially or otherwise.

On the other hand, the Council can trust that Brook's mine and reclamation plans would not disrupt those operations even if Big Horn could continue to use its existing facilities. Brook has unilaterally revised its mine plan to ensure that Big Horn will have uninterrupted access to the shop and committed to never disturb Big Horn's rail siding. So even if Big Horn somehow avoids its promised reclamation obligations, it can continue to use all of its facilities. In short, Brook's use of Big Horn's surface will not substantially prohibit Big Horn's operations.

ARGUMENT

The relevant element that this Council asked the parties to brief reads: "the use does not substantially prohibit the operations of the surface owner." Wyo. Stat. Ann. § 35-11-406(b)(xii)(C). The key words that the Council must compare to the evidence are "substantially," "prohibit," and "operations." Although the Wyoming Supreme Court has not defined these words, they are simple ones. The Council should apply their plain meaning. *See In re Calcon Mut. Mortg. Corp.*, 2014 WY 56, ¶ 9, 323 P.3d 1098, 1102 (Wyo. 2014) (in interpreting statutes, courts first look the "plain meaning of the language chosen by the legislature....") Substantially means to a great extent or for the most part. Tr. Vol. I, p. 92. Prohibit means make impossible or prevent. *Id.*

The word operations requires a more contextual definition. Big Horn provided that context, defining its operations as renting out its shop for industrial use, leasing pasture for grazing, and upgrading its rail siding for use as empty rail-car storage. Tr. Vol. I, pp. 276-282.

Applying those definitions here, the Council should grant the order in lieu if Brook will not for the most part make it impossible for Big Horn to use its shop, lease pasture, or use its rail

siding. This also means that the Council can grant the order in lieu even if Brook prohibits some of Big Horn's operations because the element allows for insubstantial prohibition.

Here, Brook will not substantially prohibit Big Horn's operations for two reasons. First, Big Horn has no legally permitted operations for Brook to disrupt. Second, Brook's revised mine plan will allow Big Horn to use its existing facilities.

I. Big Horn has no legally permitted operations for Brook to disrupt.

Many decades ago, Big Horn operated a surface coal mine in the area in and around Brook's proposed mine. That mining ended sixteen years ago. Tr. Vol. II, p. 40. Once mining ended, Big Horn's permit with the State of Wyoming required it to reclaim all of the land it had disturbed to mine coal. Tr. Vol. II, pp. 37, 45. For reasons unknown, Big Horn still has not completed that reclamation. But that does not change Big Horn's obligations. Big Horn has to demolish the shop, rail siding, and rail load out facility as soon as possible. Tr. Vol. II, pp. 45-46. Big Horn admitted as much in its annual report filed weeks before the hearing. *Id.*

These reclamation obligations make it irrelevant what Brook would or could do to Big Horn's operations. Without any legally permitted operations, outside of reclamation, Brook's mine plan could disturb every inch of Big Horn's surface and destroy all existing facilities without any consequence. If that happened, Brook would just simplify Big Horn's reclamation efforts, saving Big Horn time and money. Brook, however, would not substantially prohibit any operations that Big Horn has already committed to end on its own.

In truth, Brook would not destroy or disrupt anything. Instead, Mr. Barron testified that Brook's plan will not affect the shop or the rail siding. Tr. Vol. I, p. 87. Mr. Barron also said that Brook would relocate its pit or the existing road should any of Brook's mining activities impede

Big Horn's access to its shop. Tr. Vol. I, pp. 101-03. Even Big Horn's only legally allowed operation—grazing—can continue on other parts of Big Horn's surface. Tr. Vol. I, p.103.

Big Horn, however, contends that it has plans that will change its reclamation requirements and expand its existing operations into something yet undefined that Brook will prohibit. Tr. Vol. II, pp. 46, 48-49. Both claims are speculation without supporting evidence. *See* Wyo. Stat. Ann. § 16-3-114(c); *Dale v. S&S Builders, LLC*, 2008 WY 84, ¶¶ 9-11, 188 P.3d 554, 557-59 (Wyo. 2008) (explaining that "substantial evidence" must support an agency decision.)

The evidence showed that Big Horn has not begun any formal process to change its reclamation requirements Tr. Vol. II, pp. 45-46. Big Horn has only had discussions with the DEQ regarding changing the zoning of the property to industrial to allow beneficial post-mining land use. Tr. Vol. II, p. 46. Likewise, Big Horn has only had conversations with Sheridan County about zoning changes, nothing formal has been filed. Tr. Vol. II, pp. 47-48.

In other words, Big Horn has not:

- applied for a zoning change with Sheridan County; or
- requested a formal land use change from the Department of Environmental Quality. Tr. Vol. II, p. 47.

Without either of these, Big Horn must reclaim the shop, rail siding, and rail load out facility. Tr. Vol. II, pp. 45-46. It also means that Big Horn's current operations violate Sheridan County's zoning laws. Tr. Vol. II, pp. 70-71.

Big Horn's undefined future plan to expand its operations suffers from the same speculation. Big Horn's planned future operations assume:

- Sheridan County will approve a zoning change (Tr. Vol. II, pp.47-48);

- the Department of Environmental Quality will approve a post-mining land use change (Tr. Vol. II, p. 47);
- the Department of Environmental Quality will approve a revised reclamation plan that does not reclaim the shop or rail siding (Tr. Vol. II, pp. 45-46);
- Big Horn will upgrade the rail siding to expand its rail operations (Tr. Vol. II, p. 27);
- Big Horn will have enough capital to complete the necessary upgrades (Tr. Vol. II, p. 49); and
- Big Horn will have 70% occupancy in its shop long-term (Tr. Vol. II, p. 27).

But Big Horn has no evidence that any of this will happen. Tr. Vol. II, p. 45. In fact, Mr. Sweeney admitted that Big Horn does not know if it will upgrade its rail siding. Tr. Vol. II, pp. 48-49. He also admitted that Big Horn had no documents that showed the future operations calculated in its exhibit 9 were true. Tr. Vol. II, pp. 43-44.

Beyond the factual problems, Big Horn's claims have a legal problem too. The substantial prohibition element evaluates current operations—not future. Tr. Vol. II, pp. 50-51. Had the Legislature wanted the Council to look into the future, it would have added that word to the statute. The Legislature, however, chose not to include any reference to future operations. *See* In re *Gallagher*, 2011 WY 112, ¶ 13, 256 P.3d 522, 525 (Wyo. 2011) (when the legislature omits language from a statute, courts consider it "intentional.")

This leaves the Council to consider only Big Horn's current operations. The evidence leads to one conclusion—Big Horn should soon have no operations. This reality makes it moot whether Brook would substantially prohibit Big Horn's existing operations. Those operations will end with or without Brook.

II. Even if Big Horn had the right to continue its operations, Brook has revised its mine plan to ensure no interruption.

Despite not believing that Big Horn has any legal right to continue operating the shop or rail siding, Mr. Barron testified at the hearing that Brook would not disturb those operations. Mr. Barron explained that Brook would make sure Big Horn could access its shop by either moving the pit or relocating the access road. Tr. Vol. I, pp. 101-03. Mr. Barron also said that Brook has no current or future plans to disturb Big Horn's rail siding even though it fell within Brook's disturbance area. Tr. Vol. I, p. 87.

Still, the Council and Big Horn suggested that Brook's commitment be in writing. Initial talks with Big Horn failed because Big Horn had demanded the unrealistic amount of $29 million, including payments for past Big Horn medical and pension liabilities. (See Big Horn Ex 6). Brook had hoped that the hearing in August would reset the parties' talks to a more realistic approach. So Brook again attempted to settle the issue with Big Horn, following the hearing. Those talks, however, have not as of yet yielded an agreement.

Despite not signing a formal agreement, Brook took its prior testimony about mitigation and reduced it to writing. Brook voluntarily revised its mine plan to:

- commit to not disturbing Big Horn's rail siding; and
- agree to ensure Big Horn's access to its shop by relocating the access road if needed;[1]

Although Brook revised its mine plan after the hearing, the Council can take administrative notice of these changes because the mine plan is a public document. *Application of Campbell Cty.*, 731 P.2d 1174, 1180 (Wyo. 1987).

---

[1] To assist the Council, Brook has attached copies of the mine plan revisions and its cover letter to DEQ as an Appendix.

Brook's revised mine plan eliminates any doubt that its use will not substantially prohibit Big Horn's operations. The revisions mean that Big Horn will have uninterrupted access to its shop and any other operations. Big Horn will also have uninterrupted use of its rail siding. And an enforceable document now exists that commits Brook to these mitigation measures. *See* Wyo. Stat. §§ 35-11-106, 401, 403, and 437.

Beyond these measures, Big Horn has additional protection from loss through the surface owner protection bond process. That process will result in a bond that compensates Big Horn should Brook's mitigation efforts not be enough. So no matter Big Horn's current or speculative, future operations, Big Horn will remain whole.

CONCLUSION

The evidence shows that the Brook mine will not and could not substantially prohibit Big Horn's operations. Thus, the Council should grant Brook's Petition and issue an Order in Lieu of Consent. Pursuant to the Environmental Quality Act, the Council is authorized to grant a surface owner's consent when the five elements of Wyo. Stat.§ 35-11-406(b)(xii) are met. Brook has successfully proven each of the elements and met its burden of proving an order in lieu of consent is warranted. What that really means is the Council's order will take the place of the DEQ's Form 8 Landowner Consent. That Form not only gives landowner consent to the mine and reclamation plans, it also provides landowner consent for DEQ personnel to access the mine site.

The Council's order in this matter should reflect each of those provisions for two reasons. First, it is the point of the order in lieu process to secure the same consent as would appear on a

Form 8. Second, DEQ has demanded that Brook secure access for its personnel.[2] Brook has provided a proposed order with its findings of fact and conclusions of law that reflects what would appear on a Form 8 for the Council's convenience and respectfully requests that this Council grant the Order in Lieu of Consent immediately.

DATED: September 23, 2016.

Thomas L. Sansonetti (Wyo. State Bar # 5-1546)
Isaac N. Sutphin, P.C. (Wyo. State Bar # 6-3711)
Jeffrey S. Pope (Wyo. State Bar # 7-4859)
HOLLAND & HART LLP
2515 Warren Avenue, Suite 450
P.O. Box 1347
Cheyenne, WY 82003-1347
Telephone: (307) 778-4200
tlsansonetti@hollandhart.com
insutphin@hollandhart.com
jspope@hollandhart.com

ATTORNEYS FOR PETITIONER
BROOK MINING COMPANY, LLC

[2] DEQ made this demand after the hearing and contrary to its authority under the Environmental Quality Act. Had DEQ properly notified Brook about the access issue, Brook would have presented evidence through Mr. Kristiansen about the access provisions in a Form 8. Still, Form 8 is a public document available to the Council through administrative notice.

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2016, I served a true and correct copy of the foregoing by electronic mail and addressed to the following:

Haultain Corbett
50 East Loucks Street
Suite 110
PO Drawer 5059
Sheridan, WY 82801-5059
hal@lonabaugh.com

Lynnette J. Boomgaarden
Crowley Fleck, PLLP
237 Storey Boulevard, Suite 110
Cheyenne, WY 82009
lboomgaarden@crowleyfleck.com

Thomas L. Sansonetti

9110630_1

WWC ENGINEERING

1849 Terra Avenue • Sheridan, WY 82801
Phone: 307-672-0761 • Fax: 307-674-4265
www.wwcengineering.com

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
K:\Sheridan\RAMACO\13139\correspondence\WDEQ\Comment_response_rnd_6__8_26_2016.doc

Innovation
Quality
Value

INDEX SHEET FOR MINE PERMIT AMENDMENTS OR REVISIONS

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.

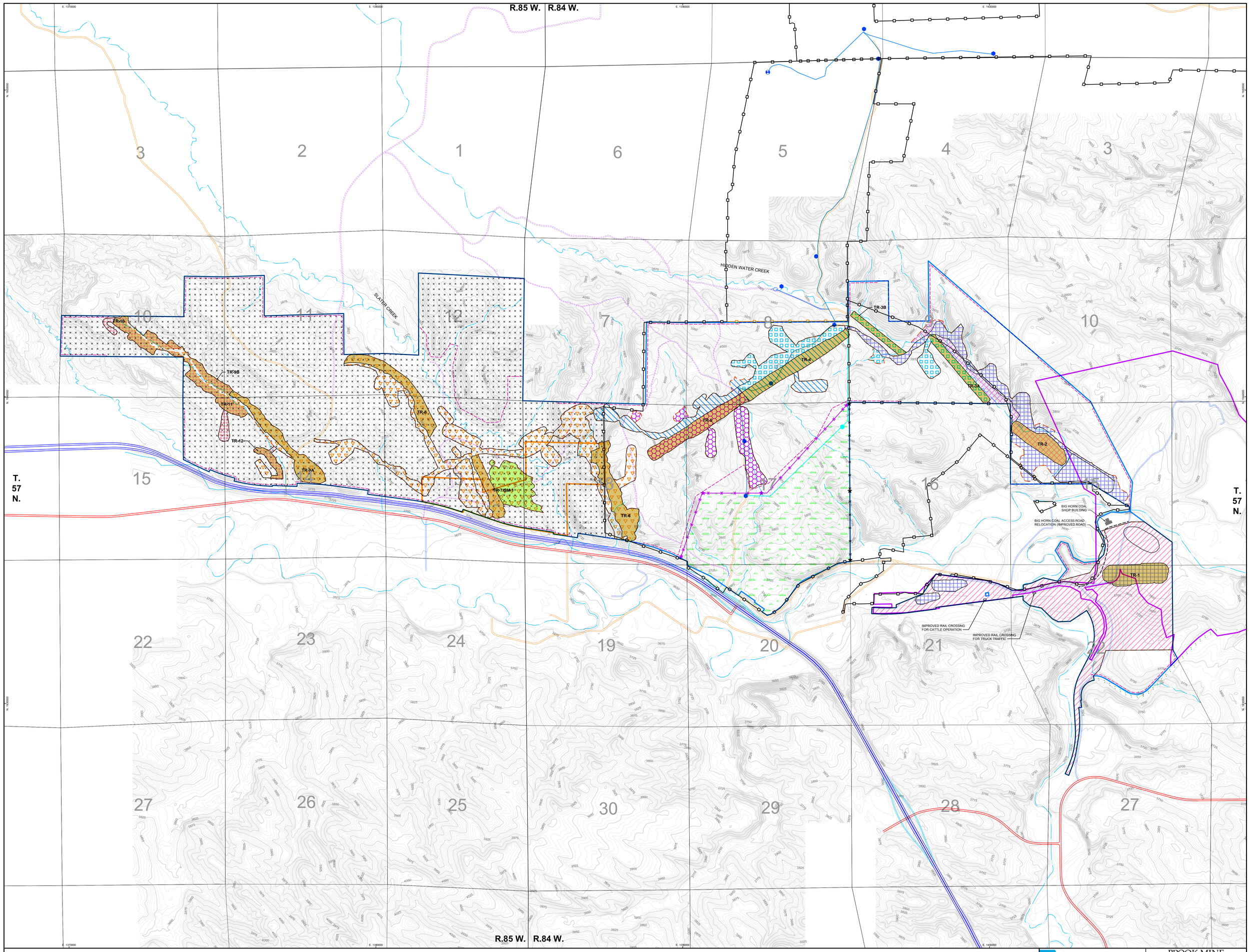
Telephone service will be installed by tapping into a local communications carrier. Communications within the Permit Area will be by mobile business band radios.

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.



LEGEND

- BROOK MINE PERMIT BOUNDARY
- BIG HORN COAL PERMIT BOUNDARY (PERMIT NO. 213-T7)
- TAYLOR QUARRY PERMIT BOUNDARY (PERMIT NO. SP-757)
- DISTURBANCE BOUNDARY
- AFFECTED AREA BOUNDARY
- DISTURBANCE FOR YEAR 2016
- DISTURBANCE FOR YEAR 2017
- DISTURBANCE FOR YEAR 2018
- DISTURBANCE FOR YEAR 2019
- DISTURBANCE FOR YEAR 2020
- DISTURBANCE FOR YEAR 2021
- DISTURBANCE FOR YEARS 2022 - 2026
- DISTURBANCE FOR YEARS 2027 - 2028
- TRENCH LOCATION
- SURFACE MINE LOCATION
- COAL WITH RESTRICTED MOVEMENT, PROCESSING, LOADING AND SHIPPING
- EXISTING FENCE LOCATION
- UPGRADE TO WYDOT STANDARD PLAN 607-1A TYPE G
- PROPOSED FENCE LOCATION WYDOT STANDARD PLAN 607-1A TYPE G W /METAL T-POSTS AND WOODEN CORNER & BRACE POSTS
- PROPOSED ALT B FENCE LOCATION WYDOT STANDARD PLAN 607-1A TYPE G W/ METAL T-POSTS AND WOODEN CORNER & BRACE POSTS
- EXISTING STOCK TANK WATER LINE
- EXISTING STOCK TANK
- PROPOSED STOCK TANK WATER LINE (EQUIVALENT TO EXISTING)
- PROPOSED STOCK TANK (BURIED CONCRETE FROST FREE, EQUIVALENT TO EXISTING)
- PROPOSED GATE LOCATION (20FT METAL GATE)
- PROPOSED ALT B GATE LOCATION (20FT METAL GATE)
- UNIMPROVED ROAD
- IMPROVED ROAD
- COUNTY ROAD
- STATE HIGHWAY
- US HIGHWAY
- INTERSTATE HIGHWAY
- ABANDONED HIGHWAY
- NO MINING ACTIVITY WILL OCCUR IN THIS AREA. THIS AREA IS CONSIDERED QUARANTINED FROM 30 CFR PROGRAM POLICY AND RANCHING IN THE AREA WILL NOT BE EXPOSED TO ACTIVE MINING

N

0 500 1,000 1,500 2,000
GRAPHIC SCALE (FEET)
C.I. = 5'

RAMACO

BROOK MINE
SHERIDAN COUNTY, WY

1101 SUGARVIEW DR. STE. 201
SHERIDAN, WY 82801

REVISIONS

Date	Description
06/15	ROUND 1 COMMENTS
10/15	ROUND 2 COMMENTS
12/15	ROUND 3 COMMENTS

EXHIBIT MP.1-1

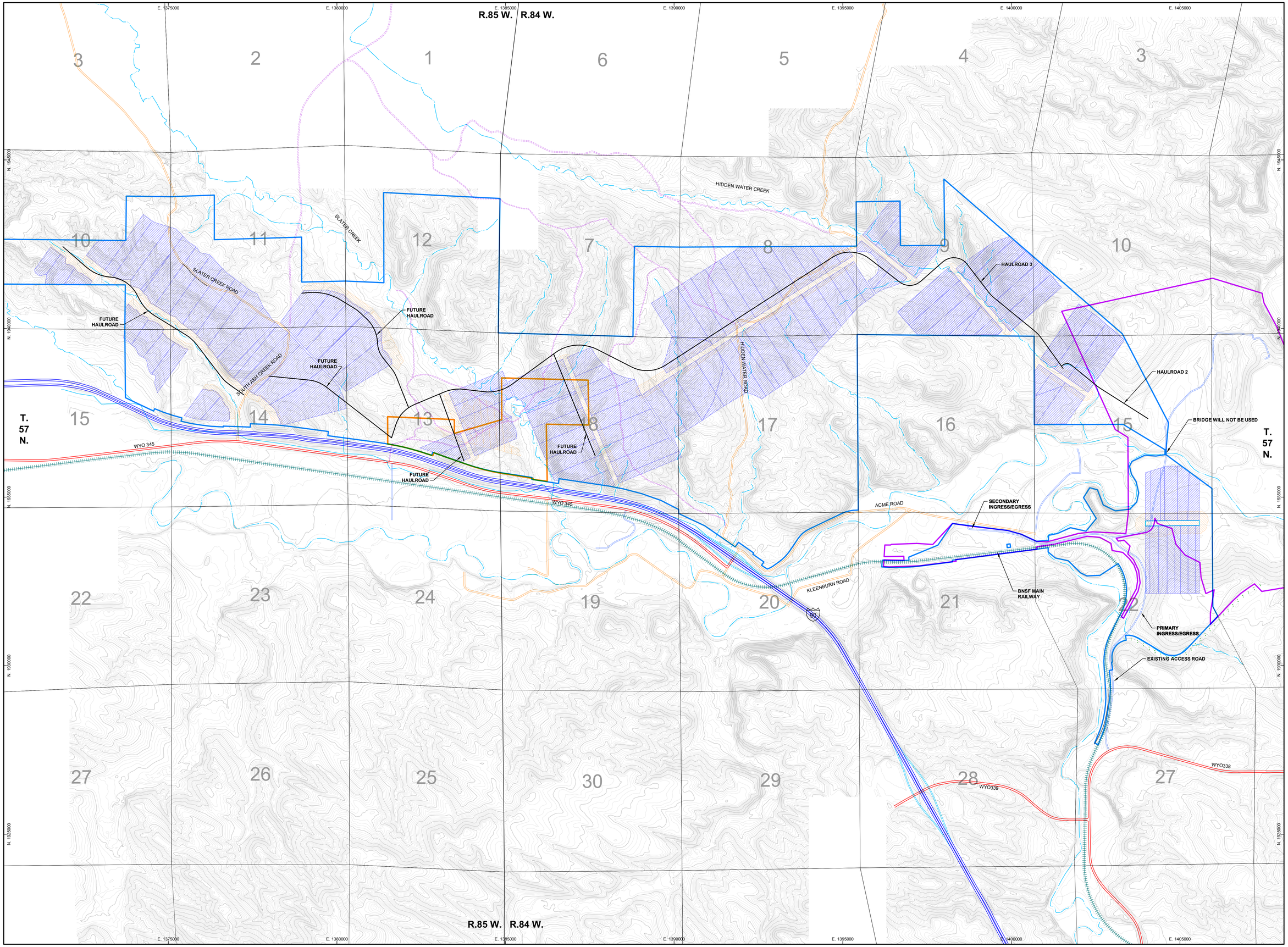
SURFACE DISTURBANCE SEQUENCE

Drawn By: CIG
Checked By: JGB
Date: 10/08/14

WWC ENGINEERING
www.wwcengineering.com

FILE: EX_1-1_SURF_DISTURB_EQC.dwg

K:\Sheridan\RAMACO\13139\ACAD_WY83EC\DWGS_MINE_PLAN_RESPONSE_EQC\EX_1-1_SURF_DISTURB_EQC.dwg 9/25/2018 1:51:36 PM dave johnson



NOTE: MAP COORDINATE PROJECTION IS WY 83 EC

LEGEND

- BROOK MINE PERMIT BOUNDARY
- BIG HORN COAL PERMIT BOUNDARY (PERMIT NO. 213-T7)
- TAYLOR QUARRY PERMIT BOUNDARY (PERMIT NO. SP-757)
- RAILROAD
- PRIMARY HAUL ROADS
- SURFACE MINING
- HIGHWALL MINING PANELS
- UNIMPROVED ROAD
- IMPROVED ROAD (USED FOR COAL HAULAGE)
- COUNTY ROAD
- STATE HIGHWAY
- US HIGHWAY
- INTERSTATE HIGHWAY
- ABANDONED HIGHWAY

N

0 500 1,000 1,500 2,000
GRAPHIC SCALE (FEET)
C.I. = 5'

RAMACO

BROOK MINE
SHERIDAN COUNTY, WY
1101 SUGARVIEW DR. STE. 201
SHERIDAN, WY 82801

REVISIONS

Date	Description
06/15	ROUND 1 COMMENTS
10/15	ROUND 2 COMMENTS
12/15	ROUND 3 COMMENTS

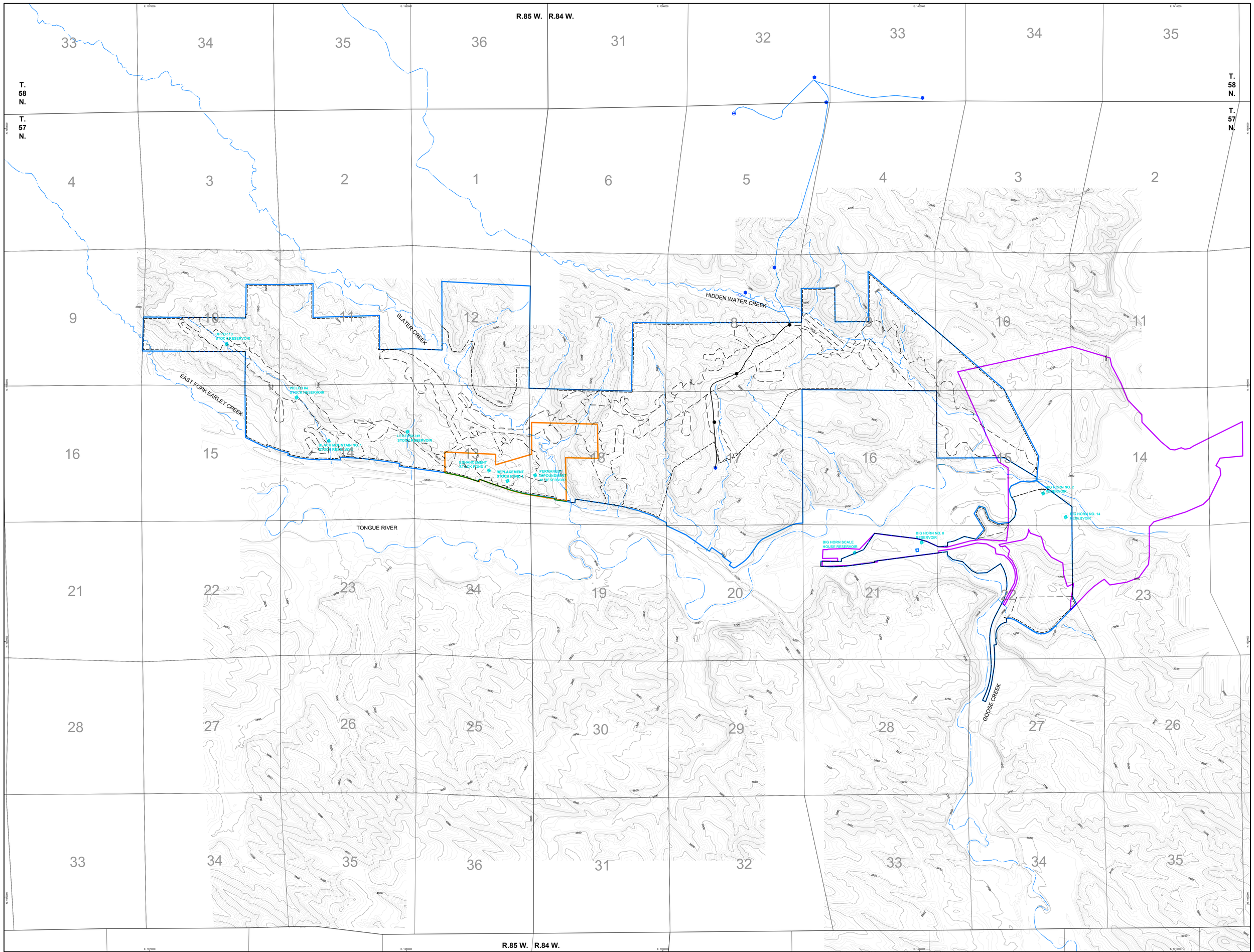
EXHIBIT MP.3-1

TRANSPORTATION NETWORK

Drawn By: DCJ
Checked By: JGB
Date: 10/08/2014

WWC ENGINEERING
www.wwcengineering.com

FILE: EX_3-1_HAUL_ROADS_LOC_EQC.dwg



LEGEND

- BROOK MINE PERMIT BOUNDARY
- AFFECTED AREA BOUNDARY
- DISTURBANCE BOUNDARY
- TAYLOR QUARRY PERMIT BOUNDARY (PERMIT NO. SP-757)
- BIG HORN COAL PERMIT BOUNDARY (PERMIT NO. 213-T7)
- WELCH #4 STOCK RESERVOIR — PERMANENT POSTMINE IMPOUNDMENT
- EXISTING STOCK TANK WATER LINE
- EXISTING EXISTING STOCK TANK
- RECLAIMED STOCK TANK WATER LINE
- RECLAIMED STOCK TANK

N

0 500 1,000 1,500 2,000
GRAPHIC SCALE (FEET)
C.I. = 10'

RAMACO

BROOK MINE
SHERIDAN COUNTY, WY

1101 SUGARVIEW DR. STE. 201
SHERIDAN, WY 82801

REVISIONS

Date	Description
06/15	ROUND 1 COMMENTS
10/15	ROUND 2 COMMENTS

EXHIBIT RP.3-1

POSTMINE TOPOGRAPHY

Drawn By: DCJ
Checked By: JGB
Date: 11/1/14

WWC ENGINEERING
www.wwcengineering.com

FILE: RP-3-1_PM_TOPO_EQC.dwg

WWC ENGINEERING
1849 Terra Avenue • Sheridan, WY 82801
Phone: 307-672-0761 • Fax: 307-674-4265
www.wwcengineering.com

September 8, 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 change package that was submitted on 8/26/2016.

Two copies of the revisions 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
K:\Sheridan\RAMACO\13139\correspondence\WDEQ\Comment_response_rnd_6__9_8_2016.doc

Innovation
Quality
Value

INDEX SHEET FOR MINE PERMIT AMENDMENTS OR REVISIONS

Date September 8, 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-10 to MP-10 (Mine Plan Text tab)	MP-10 to MP-10 (Mine Plan Text tab)	Update Text to describe corridor fencing
Volume XI	Exhibit MP.1-1	Exhibit MP.1-1	Revise exhibit to show corridor

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.

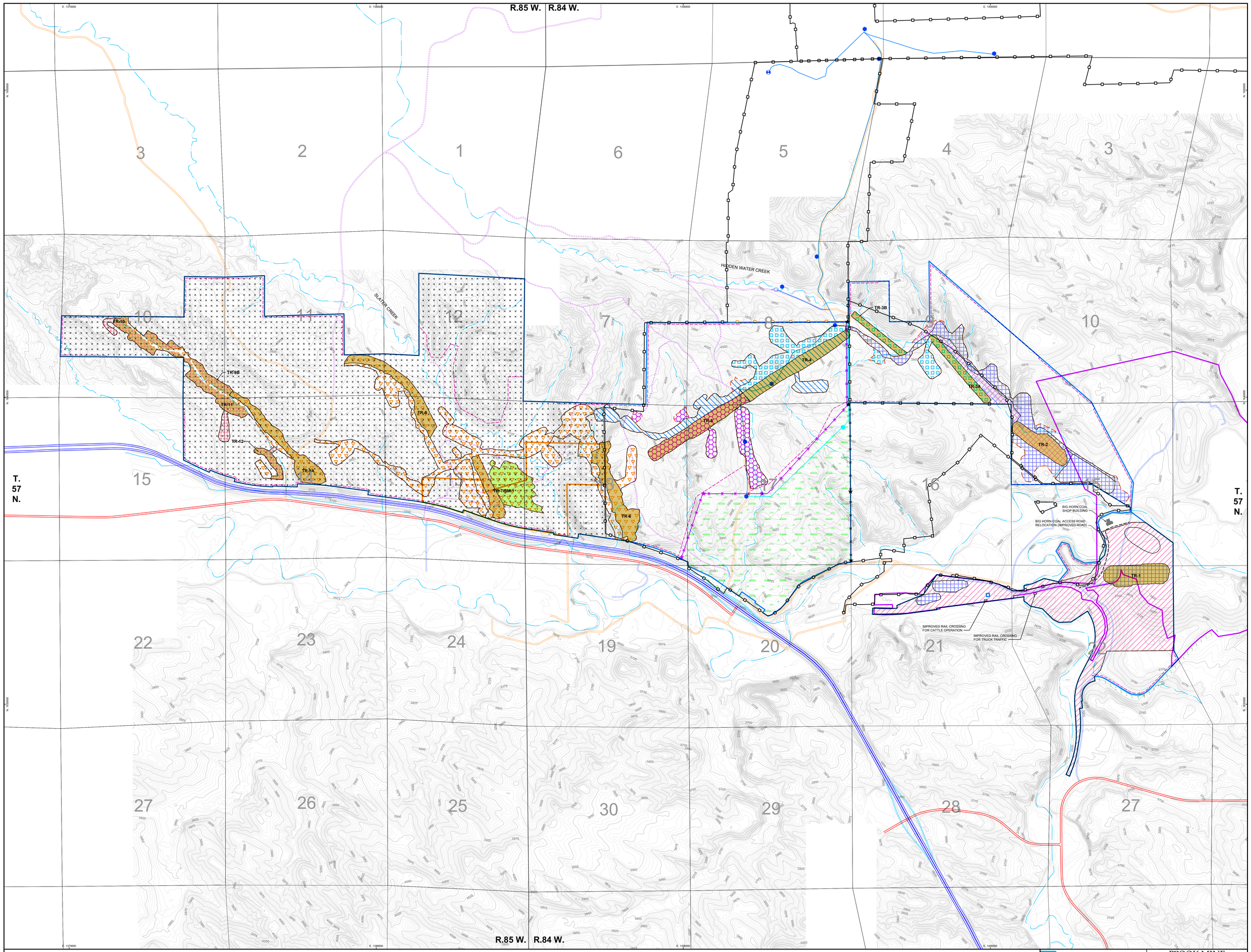
Telephone service will be installed by tapping into a local communications carrier. Communications within the Permit Area will be by mobile business band radios.

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 and SE of section 8 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.



LEGEND

- BROOK MINE PERMIT BOUNDARY
- BIG HORN COAL PERMIT BOUNDARY (PERMIT NO. 213-T7)
- TAYLOR QUARRY PERMIT BOUNDARY (PERMIT NO. SP-757)
- DISTURBANCE BOUNDARY
- AFFECTED AREA BOUNDARY
- DISTURBANCE FOR YEAR 2016
- DISTURBANCE FOR YEAR 2017
- DISTURBANCE FOR YEAR 2018
- DISTURBANCE FOR YEAR 2019
- DISTURBANCE FOR YEAR 2020
- DISTURBANCE FOR YEAR 2021
- DISTURBANCE FOR YEARS 2022 - 2026
- DISTURBANCE FOR YEARS 2027 - 2028
- TRENCH LOCATION
- SURFACE MINE LOCATION
- COAL WITH RESTRICTED MOVEMENT, PROCESSING, LOADING AND SHIPPING
- EXISTING FENCE LOCATION
- UPGRADE TO WYDOT STANDARD PLAN 607-1A TYPE G
- PROPOSED FENCE LOCATION WYDOT STANDARD PLAN 607-1A TYPE G W /METAL T-POSTS AND WOODEN CORNER & BRACE POSTS
- PROPOSED ALT B FENCE LOCATION WYDOT STANDARD PLAN 607-1A TYPE G W/ METAL T-POSTS AND WOODEN CORNER & BRACE POSTS
- EXISTING STOCK TANK WATER LINE
- EXISTING STOCK TANK
- PROPOSED STOCK TANK WATER LINE (EQUIVALENT TO EXISTING)
- PROPOSED STOCK TANK (BURIED CONCRETE FROST FREE, EQUIVALENT TO EXISTING)
- PROPOSED GATE LOCATION (20FT METAL GATE)
- PROPOSED 100' WIDE CATTLE CORRIDOR
- UNIMPROVED ROAD
- IMPROVED ROAD
- COUNTY ROAD
- STATE HIGHWAY
- US HIGHWAY
- INTERSTATE HIGHWAY
- ABANDONED HIGHWAY
- NO MINING ACTIVITY WILL OCCUR IN THIS AREA. THIS AREA IS CONSIDERED QUARANTINED FROM 30 CFR PROGRAM POLICY AND RANCHING IN THE AREA WILL NOT BE EXPOSED TO ACTIVE MINING

N

0 500 1,000 1,500 2,000
GRAPHIC SCALE (FEET)
C.I. = 5'

RAMACO

BROOK MINE
SHERIDAN COUNTY, WY

1101 SUGARVIEW DR. STE. 201
SHERIDAN, WY 82801

REVISIONS

Date	Description
06/15	ROUND 1 COMMENTS
10/15	ROUND 2 COMMENTS
12/15	ROUND 3 COMMENTS

EXHIBIT MP.1-1

SURFACE DISTURBANCE SEQUENCE

Drawn By: CIG
Checked By: JGB
Date: 10/08/14

WWC ENGINEERING
www.wwcengineering.com

FILE: EX_1-1_SURF_DISTURB_EQC.dwg

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

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

BROOK MINE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR ITS REQUESTED ORDER IN LIEU OF CONSENT FROM BIG HORN COAL COMPANY

INTRODUCTION

1. On October 31, 2014, Brook Mining Company, LLC (Brook) applied for a coal mine permit with Wyoming's Department of Environmental Quality (DEQ). Brook sought to permit a high wall mine near Sheridan, WY that blends elements of open pit mining and underground mining. Hearing Transcript (Tr.) Vol I, p. 33-34.

2. With its permit application, Brook included a mine plan and a reclamation plan. Brook would later revise its mine and reclamation plans. Tr. Vol I, pp. 67, 88; Brook Hearing Exs. 1, 2.

3. After Brook applied for a permit, the DEQ began the review and comment process, requesting that Brook correct deficiencies in the mine and reclamation plans. Brook and DEQ went through five rounds of comments, leaving only one deficiency—surface owner consent. Tr. Vol I, pp. 66, 151-153.

4. Brook was missing surface owner consent forms (Form 8) from two parties, Big Horn Coal Company (Big Horn) and Padlock Ranch. Tr. Vol I, pp. 8, 235.

5. Big Horn owns surface in Township 57 North, Range 84 West, Sections 3, 7, 8, 9, 10, 14, 15, 17, 18, 19, 20, 21, 22, 27, 28, Sheridan County, Wyoming; Township 57 North,

Range 85 West, Sections 14, 23, Sheridan County, Wyoming, that Brook would disturb or use as part of its coal mining operations.

6. Brook and Big Horn attempted to negotiate an agreement that would result in Big Horn signing a Form 8 and consenting to Brook's mine permit application. Those good-faith negotiations, however, failed. Tr. Vol I, pp. 220-223; 255-56.

7. On March 16, 2016, Brook petitioned this Council for two Orders in Lieu of Consent under Wyo. Stat. Ann. § 35-11-406(b)(xii). Brook requested that the Council grant one order for Padlock Ranch and another for Big Horn.

8. To decide whether it should grant the Orders in Lieu of Consent, this Council held a hearing from August 17-18, 2016 to hear evidence on the statutory elements for granting such an order. During that hearing, the Council received exhibits from Brook, Padlock Ranch, and Big Horn. The Council also heard testimony from five witnesses.

9. Based on the evidence received at the hearing and information received by administrative notice, the Council has to decide whether Brook has proven:

a. That the mining plan and the reclamation plan have been submitted to the surface owner for approval;

b. That the mining and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress;

c. That the use does not substantially prohibit the operations of the surface owner;

d. The proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible;

e. For surface coal mining operations, that the applicant has the legal authority to extract coal by surface mining methods.

Wyo. Stat. Ann. § 35-11-406(b)(xii)(A)-(E).

10. Applying these elements to the evidence, the Council finds that Brook has proven all of the elements for the Council to grant an Order in Lieu of Consent as to Big Horn. In support of that decision, the Council makes the following findings of fact and conclusions of law as to each element.

Element 1: That the mining plan and the reclamation plan have been submitted to the surface owner for approval

11. The Council finds that Brook met this element. Big Horn agrees that Brook sent the current version of its mine and reclamation plan to Big Horn in February 2016. Tr. Vol. II, p. 5. Big Horn confirmed that it received a copy of the mine and reclamation plan. *Id*.

Element 2: That the mining and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress

12. After reviewing Brook's mine and reclamation plan, the Council finds those plans show:

- the locations of mining trenches;
- the locations and paths of haul roads;
- the location of top soil piles;
- the location of overburden piles;
- the sequence of removing top soil;
- the sequence of removing overburden;
- the overall sequence of mining; and

- the overall sequence and timing of reclamation.

Brook Hearing Exs. 1, 2.

13. The text of the plans also adds detail to the maps, exhibits, and addendum. When compared to the DEQ's completeness criteria, the Council finds that Brook's mine and reclamation plans comply with those criteria. Tr. Vol I, pp. 56-58, Brook Hearing Ex. 37.

14. The Council notes that these details allowed both Padlock Ranch and Big Horn to analyze the potential effects of Brook's plans.

15. The Council finds that the details in the mine and reclamation plan contains sufficient detail so as to illustrate the full proposed surface use including proposed routes of egress and ingress.

Element 3: That the use does not substantially prohibit the operations of the surface owner

16. The key words that the Council must consider for this element are "substantially," "prohibit," and "operations." The Council finds that these are simple words and will apply their plain meaning. *See In re Calcon Mut. Mortg. Corp.*, 2014 WY 56, ¶ 9, 323 P.3d 1098, 1102 (Wyo. 2014) (in interpreting statutes, courts first look the "plain meaning of the language chosen by the legislature….")

17. The Council accepts the definitions that Brook provided at hearing for substantially and prohibit. Substantially means to a great extent or for the most part. Hearing Transcript (Tr.) Vol. I, p. 92. Prohibit means make impossible or prevent. *Id*.

18. The Council agrees with Brook that it must define the word "operations" in context of the specific surface owner. Big Horn provided that context, defining its operations as renting out its shop for industrial use, leasing pasture for grazing, and upgrading its rail siding for use as empty rail-car storage. Tr. Vol. I, pp. 276-282.

19. Comparing these definitions to the evidence, the Council finds that Brook will not substantially prohibit Big Horn's operations.

20. Currently, Big Horn has no legally permitted operations that Brook could affect. Big Horn's permit with the State of Wyoming required it to reclaim all of the land it had disturbed to mine coal. Tr. Vol. II, pp. 37, 45. Big Horn has to demolish its shop, rail siding, and rail load out facility as soon as possible. Tr. Vol. II, pp. 45-46. Big Horn's only legally allowed operation—grazing—can continue on other parts of Big Horn's surface. Tr. Vol. I, p.103.

21. Big Horn, however, contends that it has plans that will change its reclamation requirements and expand its existing operations into some undefined future industrial operation that Brook will prohibit. Tr. Vol. II, pp. 46, 48-49.

22. The Council finds that the evidence does not support Big Horn's position. The evidence showed that Big Horn has not begun any formal process to change its reclamation requirements Tr. Vol. II, pp. 45-46. Big Horn has only had discussions with the DEQ regarding changing the zoning of the property to industrial and moving the structures into a beneficial land mining use. Tr. Vol. II, p. 46. Likewise, Big Horn has only had conversations with Sheridan County, nothing formal has been filed. Tr. Vol. II, pp. 47-48.

23. Without a zoning change, formal land use change, and amended reclamation plan, Big Horn still must reclaim the shop, rail siding, and rail load out facility. Tr. Vol. II, pp. 45-46. It also means that Big Horn's current operations violate Sheridan County's zoning laws. Tr. Vol. II, pp. 70-71.

24. The Council also gives no weight to Big Horn's testimony about future operations because that testimony assumes:

- Sheridan County will approve a zoning change (Tr. Vol. II, pp.47-48);

- DEQ will approve a post-mining land use change (Tr. Vol. II, p. 47);
- DEQ will approve a revised reclamation plan that does not reclaim the shop or rail siding (Tr. Vol. II, pp. 45-46);
- Big Horn will upgrade the rail siding to expand its rail operations (Tr. Vol. II, p. 27);
- Big Horn will have enough capital to complete the necessary upgrades (Tr. Vol. II, p. 49); and
- Big Horn will have 70% occupancy in its shop long-term (Tr. Vol. II, p. 27).

The Council finds no evidence to support any of these assumptions.

25. The Council also declines to evaluate Big Horn's future operations. The statute describing this element omits the word future, leaving the Council to consider Big Horn's current operations. Based on the evidence about those operations Big Horn has no legally permitted operations that Brook could substantially prohibit.

26. Although the Council finds that the evidence at the hearing showed Big Horn's operations will end with or without Brook, Brook took steps to ensure its mine would have little to no impact on Big Horn should it continue operations. Brook attached these mine plan revisions to its Brief as an appendix.

27. Records from DEQ show that Brook unilaterally revised its mine plan to include mitigation measures.

28. These mitigation measures include:

- committing to not disturb Big Horn's rail siding; and
- agreeing to ensure Big Horn's access to its shop by relocating the access road if needed;

29. Although Brook filed these revisions with DEQ after the hearing, the Council will take administrative notice of these changes because the mine plan is a public document. *Application of Campbell Cty.*, 731 P.2d 1174, 1180 (Wyo. 1987).

30. Brook's voluntary revisions mean that Big Horn will have uninterrupted access to its shop and any other operations. Big Horn will also have uninterrupted use of its rail siding. And an enforceable document now exists that commits Brook to these mitigation measures.

31. The surface owner protection bond will cover any disturbance that occurs despite Brook's mitigation efforts

32. Together, Brook's revisions and the evidence the Council received at the hearing show that Brook will not substantially prohibit Big Horn's operations.

Element 4: The proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible

33. The Council finds that Brook's reclamation plan will reclaim the surface as soon as feasibly possible.

34. Brook's mining method will allow it to reclaim trenches during mining with replacement of topsoil soon thereafter. Tr. Vol. I, pp. 103-05.

35. Big Horn, however, argued that the 16-year plan to replace topsoil on its property does not meet this element. Tr. Vol. II, pp. 19-20.

36. The Council disagrees. The experts at DEQ reviewed the timeframe for reclamation and approved it. Tr. Vol. I, p. 165. The Council finds their evaluation persuasive and agrees that reclamation will occur as soon as feasibly possible.

Element 5: For surface coal mining operations, that the applicant has the legal authority to extract coal by surface mining methods

37. The Council finds that Brook's 1954 Deed provides the legal authority for Brook to mine coal by surface mining methods. Brook Hearing Ex. 3. The reservation in the Deed states:

> The Grantor reserving unto itself, its successors and assigns all gas, oil, coal and other minerals contained in all of the above described lands, together with the right to mine, explore, drill, extract and remove the same, and including the right to use so much of the surface of said lands as may be necessary or convenient in order to enable the Grantor, its successors and assigns to mine, explore, drill, extract and remove said oil, gas, coal and other minerals. And in the event that the Grantor, its successors or assigns, shall hereafter mine, drill, explore, extract and remove gas, oil, coal or minerals and shall utilize any part of the surface of said lands in connection therewith, they shall be free from any liability or claim for damage to the surface of said lands that might be asserted by the Grantee, its successors and assigns, on account of subsidence or other injury to the surface of said lands resulting from such operations. …

38. The Council finds that the plain language in the Deed reserves a broad grant of authority for Brook to use Big Horn's surface to mine coal. Brook has the authority to use the surface as is "necessary or convenient" to mine coal. The Council finds that this broad authority includes surface mining methods.

39. The Council also finds that Brook's use of Big Horn's surface as described in the mine and reclamation plan is necessary or convenient for Brook to mine coal. So Brook's mine plan fits within Brook's authority to mine coal.

40. The Council also finds that the parties to the 1954 Deed, Brook's predecessor Sheridan-Wyoming Coal Company and Big Horn, knew about surface mining methods when they entered into the 1954 Deed. At that time, Big Horn was using surface mining methods to extract coal in the same area.

41. Big Horn disputes Brook's authority to use surface mining methods and contends that a 1983 Lease Release Agreement controls Brook's rights. Specifically, Big Horn claimed that Section 5 of the Agreement limits Brook's rights The Council disagrees.

42. The Council has reviewed the text of the Release Agreement, including Section 5. Brook Hearing Ex. 4. The Council finds no language that supports Big Horn's view. No language in the Release Agreement limits Brook's rights in the 1954 Deed.

43. Rather, Section 5 of the Release Agreement prohibits Big Horn from opposing Brook's efforts to secure approval of a mine plan.

> If the Lessor makes application for approval of a plan to mine any of the coal in the pertinent portions of these two sections, its application shall in no way be prejudiced by the existence of any structures or stockpiles or the location of State Highway 338 in these sections. Lessee will not oppose any such mine plan before any governmental agency and will take no action, direct or indirect, to induce any federal, state, or local agency to disapprove or otherwise object to such mine plan. If approval is conditioned upon Lessee's consent to remove or relocate the road or any structures or stockpiles, Lessee shall not withhold such consent. …

44. The Release Agreement also includes a lease between Brook's predecessor and a company related to Big Horn. Brook's predecessor granted the right to use surface mining methods, and Big Horn did not object.

45. The Council finds that the Agreement supports Brook's position that it has the legal authority to extract coal by surface mining methods.

CONCLUSION AND ORDER

46. Based on the evidence, the Council finds that it should grant Brook an Order in Lieu of Consent as to Big Horn.

47. Because the Order in Lieu of Consent process will take the place of the traditional Form 8, the Council finds that when it issues an Order in Lieu of Consent it will in effect sign a Form 8 on behalf of Big Horn. So the Order in Lieu should reflect the contents of a Form 8.

48. Therefore, **it is Ordered that**: the Council having examined the Brook mine and reclamation plans finds that in compliance with the Wyoming Environmental Quality Act the Council on behalf of Big Horn Coal Company, does hereby approve said plans and give consent for Brook to enter and carry out said mining and reclamation programs on said lands as proposed therein. The Council also on behalf of Big Horn Coal Company hereby grants unrestricted access to the mine site to the Department of Environmental Quality, Land Quality Division to enter and carry out mine inspections on said lands during normal business hours.

DATED: _____

_____

9133017_1