



Environmental Quality Act, however, empowers this Council to decide all of the elements for an order in lieu of consent, including if Brook has that authority. That gives the Council the power to apply the language in Brook's 1954 Deed and decide if Brook has the right to mine using surface mining methods. Big Horn's arguments to the contrary have no legal support.

Second, Big Horn's claim that the order would prejudice the Sheridan litigation is untrue. Big Horn can argue whatever it would like in that case. The district court can then make its own findings. This Council has a duty to decide the elements for an order in lieu of consent. But the Council has no duty to either Brook or Big Horn in any other litigation.

Finally, Big Horn's objections aim to disconnect the Council's findings of fact and conclusions of law on the fifth element of an order in lieu, making the Council's order more vulnerable on appeal. The Council has a statutory duty to make findings of fact and conclusions of law that logically flow from each other. Big Horn would have the Council eliminate one of the grounds supporting the Council's decision on the final element. That final element requires the Council to find that Brook has the legal authority to extract coal by surface mining methods. The Council should not accept an objection designed to give a party a tactical advantage on appeal by diluting the Council's findings.

Therefore, Brook requests that the Council enter the order that Mr. Ruby circulated on November 15, 2016 without any changes.

DATED: November 16, 2016.

/s/ Isaac N. Sutphin

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## CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2016, I served a true and correct copy of the foregoing by email and addressed to the following:

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