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ATTORNEYS FOR OBJECTORS
BIG HORN COAL COMPANY

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

IN RE BROOK MINE APPLICATION)
) Docket No. 17-4802
)
TFN 6 2-025)

**BIG HORN COAL COMPANY’S RESPONSE TO BROOK MINE’S MOTION TO
DISMISS BIG HORN COAL COMPANY’S PETITION FOR A CONTESTED
CASE HEARING**

Big Horn Coal Company (“Big Horn”), through its undersigned counsel, hereby submits this Response to Brook Mining Company, LLC’s (“Brook Mine”) Motion to Dismiss Big Horn’s Petition for a Contested Case Hearing (“Brook Mine’s Motion”).

Whether Brook Mine’s surface coal mine permit application complies with the Wyoming Environmental Quality Act (“Act”) is the issue properly before the Wyoming Environmental Quality Council (“Council”) in this docket. It is time for the Council to put Brook Mine to its burden of proof under Wyo. Stat. Ann. § 35-11-406(n). It is also time for the Council to put a definitive stop to Brook Mine’s persistent misrepresentation of facts and law, vilification of interested persons exercising their rights under the Act, and

waste of agency and party resources. For the reasons set forth below, the Council should summarily deny Brook Mine's motion to dismiss.

I. The Facts

Objection to Brook Mine Application TFN 6 2-025 - EQC Docket 17-4801 (dismissed) and EQC Docket 17-4802

Big Horn is an adversely affected surface owner, overlapping mine permit holder, and adjacent surface and mineral interest owner. As such, Big Horn is an "interested person" with the right to file written objections to the Brook Mine permit application pursuant to Wyo. Stat. Ann. § 35-11-406(k). Brook Mine does not contest Big Horn's standing to object to the mine permit application. Big Horn timely filed its written objections on January 25, 2017, with a request that the Department of Environmental Quality ("DEQ") conduct an informal conference. On January 30, 2017, Big Horn learned that the Council had docketed a contested case matter (EQC Docket 17-4801) and issued a Pre-hearing Conference Order, and that Director Parfitt had denied Big Horn's request for an informal conference and was "referring this permit application to the [Council] for their review and determination at contested case hearing." See **Exhibit A**.

During the February 2, 2017 pre-hearing conference, Big Horn and Brook Mine agreed that a hearing in March (or as early as the week of February 20th) would be acceptable. **Exhibit B**, Tr. p. 22, ln. 14-18; p. 23, ln. 13-19; p. 26, ln. 18-25; p. 29, ln. 19-25. Hearing officer Flitner's limited availability overrode the parties' stipulation for a March or later February hearing and the hearing was scheduled for February 13-14, 2017, over the due process objections of Big Horn and other objectors. *Id.* at Tr. p. 23, ln. 1-6; p.

27, ln. 2-7; p. 34, ln. 15-17; p. 42, ln. 3-19. Brook Mine would not stipulate to a hearing date later than March. *Id.* at Tr. p. 34, ln. 1-4.

On February 7, 2017, the Council, on its own initiative, issued an Order Vacating Contested Case Hearing and Setting Oral Argument, which asked the parties to brief the issue of “whether there is a proper appeal before the Council at this time that necessitates a contested case,” and set a hearing for oral arguments on this issue for February 21st. Neither Brook Mine nor any other party objected to the Council’s briefing and oral argument schedule, which necessarily took the proceedings past the February 16, 2017 twenty-day deadline set forth in Wyo. Stat. Ann. § 35-11-406(k).

On February 15, 2017, concurrent with filing its brief asserting that the Council was without jurisdiction to hear EQC Docket 17-4801, Big Horn renewed its request to DEQ to conduct an informal conference and, in the alternative, petitioned the Council for a contested case hearing and determination on Brook Mine’s permit application. Director Parfitt denied Big Horn’s renewed request for an informal conference by letter dated February 21, 2017. *See Exhibit C.* Following its decision to dismiss Docket No. 17-4801 in its entirety, *see Order of Dismissal* entered February 22, 2017, the Council docketed the current matter, Docket No. 17-4802, effective February 15, 2017. Brook Mine filed its Motion to Dismiss Big Horn’s petition for hearing on February 22nd, claiming Big Horn’s request for hearing is too late, and asking the Council to rule that Big Horn has breached a contractual obligation and find that Big Horn has engaged in “contemptuous conduct” or has used “dilatatory tactics.” In the alternative, Brook Mine asks the Council to limit Big Horn’s participation in the hearing, asserting that the Order in Lieu of Consent proceedings

estop Big Horn from addressing certain objections it submitted to the Administrator pursuant to Wyo. Stat. Ann. § 35-5-406(k). *See* Brook Mine's Motion, pp. 2-6.

Order in Lieu of Consent – EQC Docket 16-1601

As a non-resident, non-agricultural surface landowner, Big Horn is entitled to the specific protections afforded by the Act at Wyo. Stat. Ann. § 35-11-406(b)(xii) *prior to* the administrator deeming a mine permit application complete and suitable for publication, and the opportunity for public inspection, comment, and objection pursuant to Wyo. Stat. Ann. § 35-11-406(g)-(k). Seeking to protect its improvements, infrastructure and surface use rights, as well as its obligations and liabilities as the holder of Mine Permit No. 213-T8, Big Horn exercised its right and refused to consent to Brook Mine's February 2016 mine and reclamation plans. Accordingly, Brook Mine filed a Request for Order in Lieu of Consent and Request for Hearing.

After hearing evidence, the Council granted Brook Mine's request, making the specific findings the legislature set forth in Wyo. Stat. Ann. § 35-11-406(b)(xii)(A)-(E). Big Horn has petitioned the district court to review the Council's order, seeking a reversal only with respect to the Council's interpretation and purported adjudication of Big Horn's and Brook Mine's rights under a 1954 Deed. *See In the Matter of the Decision of the Wyoming Environmental Quality Council, Granting the Petition of Brook Mining Company for an Order in Lieu of Consent as to Its Mining Plan and Reclamation Plan, as Against Big Horn Coal* (EQC Docket No. 16-1601, *In Re Brook Mine Application*), Civil Action No. 187-120 (First Judicial District, Laramie County). During the Order in Lieu of Consent proceedings, Big Horn repeatedly made the Council aware that the extent of Brook

Mine's right, if any, to use Petitioner's surface lands under the 1954 Deed is being litigated pursuant to a Declaratory Judgment Complaint filed by Brook Mine in *Brook Mining Company LLC v. Big Horn Coal Company*, Civil Action No. CF 2014-372 (Fourth Judicial District Court, Sheridan County).

II. The Law

Objection to Brook Mine Application TFN 6 2-025 - EQC Docket 17-4801 (dismissed) and EQC Docket 17-4802

Within thirty days after the last publication of notice of a mine permit application pursuant to Wyo. Stat. Ann. § 35-11-406(j), “[a]ny interested person has the right to file written objections to the application with the administrator.” *Id.* -406(k). The DEQ director “may hold an informal conference if requested and take action on the application in accordance with the department’s rules of practice and procedure, with the right of appeal to the council which shall be heard and tried de novo.” *Id.* The DEQ director must render a decision on the application within thirty days after completion of the notice period “*if no informal conference or hearing is requested.*” *Id.* -406(p) (emphasis added). “An informal conference or a public hearing shall be held within twenty (20) days after the final date for filing objections *unless a different period is stipulated to by the parties,*” *id.* -406(k) (emphasis added), and following *mandatory* publication of “notice of the time, date and location of the hearing or conference in a newspaper of general circulation in the locality of the proposed operation once a week for two (2) consecutive weeks immediately prior to the hearing or conference.” *Id.* “The hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act...” *Id.* Ultimately, “[n]o surface coal mining permit shall be approved unless the applicant affirmatively

demonstrates and the administrator finds in writing” that all of the requirements set forth in Wyo. Stat. Ann. § 35-11-406(n)(i)-(vii) have been met.

As was discussed at length before the Council at hearing on February 21, 2017, neither the Act nor DEQ Rules of Practice and Procedure provide a clear path forward or timeline for compliance with statutory notice requirements and deadlines under circumstances such as these where:

- 1) Timely requests for an informal conference were made and the requests were denied;
- 2) After denying requests for an informal conference the DEQ Director inappropriately referred the matter to the Council causing the Council to schedule a contested case hearing, which it later dismissed due to lack of jurisdiction;
- 3) Prior to dismissal of the contested case the parties participated in a scheduling conference at which they stipulated to a March hearing date outside the twenty-day statutory deadline, but the hearing officer stated he could not be available during the month of March;
- 4) Big Horn filed a petition for hearing, without delay, concurrent and consistent with its brief asserting that the Council lacked jurisdiction to hear the matter as referred to it by the Director; and
- 5) The course of proceedings through the dismissal of EQC Docket No. 17-4801 rendered it impossible for a hearing in EQC Docket No. 17-4802 to be scheduled and noticed within the twenty-day window provided by Wyo. Stat. Ann. § 35-11-406(k).

Order in Lieu of Consent

Wyo. Stat. Ann. § 35-11-406(b)(xii)(A)-(E) provides that the Council “shall issue an order in lieu of consent if it finds:”

- (A) That the mining plan and reclamation plan have been submitted to the surface owner for approval;

- (B) That 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;
- (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.

These five legal elements are specific to the interests of a non-resident, non-agricultural surface landowner and the circumstances under which an order in lieu of consent shall issue. Absent surface owner consent to the mine and reclamation plan on the Land Quality Division's "Form 8," an order in lieu of consent is required in order for the DEQ to conclude that a mine permit application is technically complete and suitable for public notice and comment pursuant to Wyo. Stat. Ann. § 35-11-406(j). There is no language in Wyo. Stat. Ann. § 35-11-406(b)(xii) that precludes a non-resident, non-agricultural surface landowner from objecting to a published mine permit application under Wyo. Stat. Ann. § 35-11-406(k), that discharges a mine permit applicant from satisfying its burden of proof under Wyo. Stat. Ann. § 35-11-406(n), or that excuses the administrator from making the required findings under Wyo. Stat. Ann. § 35-11-406(n)(i)-(vii).

III. Argument

Brook Mine's persistent efforts to vilify and misrepresent the interests of those who assert their rights under the Act to object, conduct discovery, and present evidence in a proceeding over which the Council has proper jurisdiction cannot be used to avoid or obscure the burden the legislature has squarely placed on Brook Mine to establish that its

application is in compliance with the Act and all applicable state laws. Wyo. Stat. Ann. § 35-11-406(n).

Big Horn's Request for a Contested Case Hearing is Timely

In its motion to dismiss, Brook Mine relies on Wyo. Stat. Ann. § 35-11-406(k) to assert that an objector to a mine permit application must request a contested case hearing before the Council at the same time it requests an informal conference before the administrator or Director. Brook Mine cites no legal authority for this assertion, because there is none. Section 406(k) does contemplate a hearing within twenty days of the final day to object, but Section 406(k) also contemplates the parties can stipulate to a different deadline. *Nowhere does the statute impose a deadline for requesting a hearing.*

Brook Mine's argument runs afoul of the very proceedings in this matter, where: (1) the Public Notice of the mine permit informed interested parties *only that* "[t]he Director may hold an informal conference if requested," and that either "an informal conference or a public hearing shall be held within twenty (20) days after the final date for filing objections unless a different period is stipulated to by the parties;" and, (2) the Council indicated during its decision to dismiss EQC Docket No. 17-4801 that each objector could request a contested case hearing before the Council should it wish to do so. *See Exhibit D.* Unsurprisingly, Brook Mine also utterly fails to acknowledge that: (1) under Wyo. Stat. Ann. § 35-11-406(k), the parties may stipulate to a hearing outside the twenty day statutory window; (2) Brook Mine and Big Horn already stipulated to a hearing in March, outside the statutory twenty-day window; and, (3) Brook Mine never objected to the Council's briefing and oral argument schedule.

Contrary to Brook Mine's allegations, Big Horn did not drag its feet or delay its request for a contested case hearing. Big Horn requested a hearing before the Council at the earliest reasonable time under the circumstances of this case – when, on order of the Council, it filed its brief asserting that the Council had no jurisdiction to hear the matter as docketed in EQC Docket No. 17-4801. Brook Mine has claimed no prejudice and, by not objecting to the Council's prior scheduling and rulings, has waived any right to argue that Big Horn's request was untimely under the circumstances presented here. *See Amoco Production Co. v. Wyoming State Bd. of Equalization*, 7 P.3d 900, 906 (Wyo. 2000) (holding that “if a party has an opportunity to object to the administrative tribunal's procedural rulings and fails to do so, it waives its right to challenge the administrative tribunal's procedure on appeal”).

The legislature clearly intended to afford an opportunity for public comment and adversarial presentation on a surface coal mine permit application in accordance with the Wyoming Administrative Procedure Act, on request. Wyo. Stat. Ann. § 35-11-406(j), (k) and (p). Moreover, for good cause and absent a showing of prejudice, the Council has broad discretion to schedule and conduct such proceedings in a timely manner. *See* Wyo. Stat. Ann. § 35-11-112(a)(iv); WY Rules and Regulations ENV PP Ch. 1 § 10(b); *see also Grams v. Environmental Quality Council*, 730 P.2d 784, 786-88 (Wyo. 1986). The facts of this case provide plenty of good cause for exercise of the Council's discretion to

effectuate the legislature's clear intent. Brook Mine's argument that Big Horn's request for hearing was untimely lacks any merit.¹

Big Horn has Every Right to a Contested Case Hearing

Brook Mine next asserts that “[e]ven if Big Horn had made a timely request, it had no right to make one,” boldly asking the Council to step outside its statutory jurisdiction and to interpret and enforce a private contract – the 1983 Release Agreement.

It is well established that the Council has no inherent or common law powers, may exercise only those powers legislatively delegated, and must find its authority to decide an issue within the Act. *Exxon Mobil Corp. v. Wyoming Dept. of Revenue*, 266 P.3d 944, 951 (Wyo. 2011); *Tri-County Elec. Ass’n, Inc. v. City of Gillette*, 525 P.2d 3, 8 (Wyo. 1974). Wyo. Stat. Ann. § 35-11-112 does not authorize the Council to decide breach of contract claims or to limit the participation of an interested party because a permit applicant alleges that an interested party contractually agreed to give up its statutory right to object. The Wyoming Supreme Court recognized this very type of jurisdictional limitation in *Tri-State Generation and Transmission Ass’n, Inc. v. Wyoming Public Service Com’n*, 784 P.2d 627 (Wyo. 1989), where the Court stated that the Public Service Commission (PSC) “is not empowered to decide whether a breach of contract occurred in this case,” and “does not have jurisdiction to determine the rights of parties to a contract.” *Id.* at 630.

¹ Even Mr. Sutphin, Brook Mine's attorney, recently represented to the Sheridan County Commissioners that “the Environmental Quality Council will be hearing this matter ... there is going to be a public hearing on the permit and the public and especially those objectors who are participating will have a right to speak,” in direct contradiction of Brook Mine's motion to dismiss Big Horn's and the other objectors' petition for hearing. See <http://www.sheridanmedia.com/news/group-says-deq-denied-them-hearing-ramaco91677>.

In *Tri-State*, like here, the parties were involved in litigation outside of the matter before the agency.² The Court recognized that “adjudication of the breach of contract issues litigated in the federal courts is very different from the more limited mission of the PSC[.]” *Id.* The same result is mandated here. The court’s adjudication of Brook Mine’s and Big Horn’s respective surface rights under the 1954 Deed and 1983 Release Agreement, or any claimed breach of those private contracts, is very different from the Council’s more limited authority to hear and determine cases and issues pertaining to Brook Mine’s mine permit application “arising under the laws, rules, regulations, standards or orders issued or administered by” the DEQ and its Land Quality Division. Wyo. Stat. Ann. § 35-11-112(a). The *Tri-State* Court held that the PSC’s proper determination that the sale of Shoshone River Power, Inc. and Garland Light & Power Company assets to Pacific Power & Light did not result in unjust or unreasonable utility rates for affected consumers *was not altered by an assertion that the sales were in breach of contract.* Likewise, this Council’s determination and findings as to whether Brook Mine’s mine permit application is in compliance with the Act as required by Wyo. Stat. Ann. § 35-11-406(n) cannot and will not be altered by Brook Mine’s assertion that Big Horn has breached the 1983 Release Agreement.

² Big Horn and Brook Mine are currently litigating the language and effect of the 1954 Deed and the 1983 Release Agreement as those agreements govern the parties’ respective surface use rights, in the Fourth Judicial District Court, Sheridan County. *See Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372. If Brook Mine wants to assert that Big Horn has breached the 1983 Release Agreement by objecting to Brook Mine’s permit application, that claim and any alleged damages are within the court’s jurisdiction, not the Council’s.

The 1983 Release Agreement is a private contract that operated to release a series of coal leases Big Horn had with Brook Mine's predecessor and to protect certain Big Horn surface uses and improvements within the Brook Mine proposed permit area. Brook Mine initiated a lawsuit in 2014, well prior to publishing its mine permit application, requesting that the court declare its rights to use Big Horn's surface lands under a 1954 Deed. Brook Mine and Big Horn filed cross motions for summary judgment, asking the court to determine as a matter of law which document, the 1954 Deed or the 1983 Release Agreement, controls Brook Mine's surface use rights. The court denied both Brook Mine's and Big Horn's cross motions for summary judgment, determining that material issues of fact exist which preclude any judgment as a matter of law. *See Order Denying Motion for Summary Judgment, Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372 (Wyo. Dist. 4th 2015). Accordingly, the court will conduct a trial prior to determining which contract controls.³ Brook Mine's request that this Council determine material issues of fact related to an alleged breach of the 1983 Release Agreement is wholly inappropriate. Any breach of contract claim Brook Mine wants to make under the 1983 Release Agreement must be raised with the district court, not the Council. *See Tri-County*, 525 P.2d at 9.

In the alternative to dismissal, Brook Mine argues that collateral estoppel limits the objections Big Horn can raise in these proceedings, because many of Big Horn's objections are issues already raised and decided in the Order in Lieu of Consent proceedings. Brook

³ On June 15, 2016, the court stayed its proceedings indefinitely at the Parties' request, but did not relinquish any jurisdiction to the Council to interpret the contracts.

Mine's collateral estoppel argument fails under the very case it cites for the proposition that collateral estoppel applies to adjudicative administrative decisions. The Wyoming Supreme Court made abundantly clear in *Slavens v. Board of County Com'rs For Uinta County*, 854 P.2d 683, 685-86 (Wyo. 1993), that for collateral estoppel to apply four factors must be satisfied. The first factor is "whether the issue decided in the prior adjudication was *identical* with the issue presented in the present action." *Id.* (emphasis in original); *see also Matthews v. Fetzner*, 768 P.2d 590, 592 (Wyo. 1989) (holding that "[f]or collateral estoppel to apply, *the identical issue must have been actually and necessarily determined*") (emphasis added).⁴ The issues decided in the Order in Lieu of Consent proceedings are statutorily distinct from and are *not* identical to the issues presented and to be decided in this docket.

As set forth above, the Council decided only the following five issues prior to issuing its Order in Lieu of Consent:

- (A) That Brook Mine's mining plan and the reclamation plan was submitted to Big Horn, as a surface owner, for approval;
- (B) That Brook Mine's mining plan and the reclamation plan was sufficiently detailed to illustrate the full proposed surface use including proposed routes of egress and ingress;
- (C) That Brook Mine's proposed use would not substantially prohibit Big Horn's surface operations;

⁴ It should also be noted here that the Council's Order in Lieu of Consent presently is being reviewed by the district court. *See In the Matter of the Decision of the Wyoming Environmental Quality Council, Granting the Petition of Brook Mining Company for an Order in Lieu of Consent as to Its Mining Plan and Reclamation Plan, as Against Big Horn Coal* (EQC Docket No. 16-1601, *In Re Brook Mine Application*), Civil Action No. 187-120 (First Judicial District, Laramie County).

(D) Brook Mine's proposed plan would reclaim Big Horn's surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible;

(E) That Brook Mine has the legal authority to extract coal by surface mining methods.

Wyo. Stat. Ann. § 35-11-406(b)(xii). Brook Mine was the Petitioner in the Order in Lieu of Consent proceeding and the relief Brook Mine requested was the issuance of an Order in Lieu of Big Horn's consent to the mine and reclamation plan so that Brook Mine's application could be deemed complete and published for public comment.

The mine permit application, mine plan, and reclamation plan requirements in Wyo. Stat. Ann. § 35-11-406(n)(i)-(vii) and in Wyo. Admin. Code ENV LQD are issues that are wholly separate and distinct from the five discrete, statutorily-defined requirements the Council was obligated to consider in the Order in Lieu of Consent proceedings. In the present proceeding, Big Horn argues, specifically, that Brook Mine cannot satisfy its burden of demonstrating that its mine permit application is in compliance with the Act and all applicable state laws, including, but not limited to, all requirements set forth in Wyo. Stat. Ann. § 35-11-406(n) and all relevant DEQ Land Quality Division Rules and Regulations, including those in Wyo. Admin. Code ENV LQD Ch. 2 and Ch. 12. *See* Objector Big Horn Coal Company's Petition for a Hearing before the Environmental Quality Council, p. 4. The Act expressly provides that "[n]o surface coal mining permit shall be approved unless the applicant affirmatively demonstrates and the administrator finds in writing" that all of the requirements set forth in Wyo. Stat. Ann. 35-11-406(n)(i)-(vii) have been met. Wyo. Stat. Ann. § 35-11-406(n).

To the extent that Big Horn's objections in this proceeding address concerns related to access and interference with Big Horn's surface facilities and improvements, reclamation timelines, and overlapping permit boundaries discussed in part during the Order in Lieu of Consent proceedings, those concerns are raised in this proceeding for the purpose of the Council considering whether any specific changes should be made or conditions imposed on the proposed mine permit to address those concerns, not for the purpose of the Council providing the consent required for publication of the mine permit application as reflected in Wyo. Stat. Ann. § 35-11-406(b)(xii). Big Horn had no opportunity whatsoever in the Order in Lieu of Consent proceedings to request that the Council mandate changes to the permit or the impose permit conditions. In that proceeding, the Council was to find that Brook Mine either met the five elements set forth in Wyo. Stat. Ann. § 35-11-406(b)(xii) or it didn't. To the extent that Big Horn's objections in this proceeding address lack of detail, sampling, testing, and analysis related to Brook Mine's highwall design and probable subsidence, deficiencies in Brook Mine's groundwater model and downstream monitoring plan, and underground fire controls, those objections relate to the failure of Brook Mine's permit application to satisfy the specific requirements of Wyo. Stat. Ann. § 35-11-406(n), not Wyo. Stat. Ann. § 35-11-406(b)(xii). The issues in this proceeding, EQC Docket 17-4802, are in no way identical to the issues the Council adjudicated in EQC Docket 16-1601; therefore, collateral estoppel does not apply to preclude or limit Big Horn's objections or participation in the present docket.⁵

⁵ Big Horn has no intention of confusing the issues at hearing and is mindful of the Council's authority to exclude irrelevant, immaterial or unduly repetitious evidence. However, Big Horn also is aware that Councilwoman Degenfelder did not participate in

Brook Mine also argues that Big Horn should be excluded from these proceedings because its conduct has been contemptuous and dilatory under Wyo. Admin. Code ENV PP Ch. 1 Sec. 13. This argument is both flippant and specious.⁶ The facts and law repudiate Brook Mine's allegations in this regard. The Council can take notice that Brook Mine is seeking to improperly exclude Big Horn from exercising its rights in a full and fair manner as contemplated by the Act. The Council can also take notice of the fact that Brook Mine advocates that this Council can or should adopt and enforce Brook Mine's interpretation of the 1983 Release Agreement as a matter of law, even though it has separately initiated a suit against Big Horn in the District Court and the court declined to do so. The Council can further take notice that Brook Mine seeks by its motion to have the Council sideline Big Horn and other adversely impacted landowners and relegate them to the role of silent observers.

Big Horn is squarely within its rights to respond to legal proceedings Brook Mine initiates and to oppose Brook Mine's mining and reclamation plans in this proceeding. Such actions are appropriate, within the spirit and letter of the law, and neither dilatory nor contemptuous. In exercising its rights in this matter, Big Horn has never disrespected or disobeyed the Council or its orders or proceedings. As the facts and law show, Big Horn has sought nothing more than to exercise its statutory rights in a fair,


EQC Docket 16-1601 and recently appointed Councilwoman Baumer likewise is unfamiliar with the facts and issues surrounding the consideration of Brook Mine's permit application.

⁶ Brook Mine and its representatives have an affirmative obligation to the Council and parties to conform to recognized standards of ethical conduct. WY Rules and Regulations ENV PP Ch. 2 § 6(b).

transparent, and timely manner. At no point has Big Horn taken any action to unreasonably delay or transform the proceedings beyond that required by law and within the Council's jurisdiction. To suggest otherwise is spurious and does a disservice to the orderliness of these proceedings and Big Horn's good faith conduct, and as a result Big Horn urges the Council to specifically repudiate Brook Mine's allegations in this regard.

For all these reasons, Big Horn respectfully requests that the Council summarily deny Brook Mine's motion to dismiss, exclude, or to otherwise limit what Big Horn can present in support of its objections and evidence that Brook Mine cannot meet its burden of proof that its mine permit application satisfies all of the requirements set forth in Wyo. Stat. Ann. § 35-11-406(n)(i)-(vii) and DEQ Rules and Regulations .

DATED: March 15, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2017, a true and correct copy of the foregoing was served by email to the following:

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