

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

IN RE BROOK MINE APPLICATION)
) **DOCKET 17-4801**
)
TFN 6 2-025)

ORDER OF DISMISSAL

On the 21st day of February, 2017, the Council held a hearing on its own motion in Room 1699, Herschler Building, 1st Floor West, 122 West 25th St. Cheyenne WY 82009. The issue heard was whether there is a proper appeal before the Council at this time necessitating a contested case.

Council members present were Megan Degenfelder, Nick Agopian, Tim Flitner, Meghan Lally, Dr. Dave Bagley, and Rich Fairservis. Council member Aaron Clark was absent. Present on behalf of the parties were Isaac Sutphin, Jeffrey Pope, and Thomas Sansonetti on behalf of Brook Mine LLC., Andrew Kuhlman and James LaRock on behalf of the Department of Environmental Quality, Shannon Anderson on behalf of Powder River Basin Resource Council, Lynnette Boomgaarden on behalf of Big Horn Coal, and Jay Gilbertz on behalf of Mary and David Brezik- Fisher.

After reviewing the pleadings and hearing oral argument from the parties, the Council unanimously finds that there currently is not a proper appeal before it necessitating a contested case. Currently, no interested person, as part of this docket, has filed a petition for a contested case with the Council that would allow the Council to exercise its jurisdiction over the Brook Mine permit application. Following his denial of requests for an informal conference, the

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**Jim Ruby, Executive Secretary
Environmental Quality Council**

Director of the Department of Environmental Quality referred this matter directly to the Council on January 30, 2017, for the Council's review and determination at a contested case matter. However, the Council may not exercise any authority over the Brook Mine permit application on a referral from the Director. Under Wyoming Statutes § 35-11-406(k) and (p) and the Department of Environmental Quality's rules of practice and procedure, the Council may only exercise jurisdiction over the Brook Mine permit application after an interested person has filed a petition for a contested case with the Council – something not done as part of this docket. The Council, in this docket, is without authority to accept jurisdiction over the Brook Mine permit application through the referral from the Director.

IT IS HEREBY ORDERED that this docket, in its entirety, is dismissed.

ENTERED this 22nd day of February, 2017.



Tim Flitner, Hearing Officer
Environmental Quality Council 